the case will be remanded promptly to the Judge for further proceedings.

§ 2700.75 Reconsideration.

Unless the Commission orders otherwise, the filing of a petition for reconsideration shall not stay the effect of any decision or order of the Commission and shall not affect the finality of any decision or order for purposes of review in the courts.

Miscellaneous

§ 2700.80 Standards of conduct; disciplinary proceedings.

(a) *Standards of conduct.* Individuals practicing before the Commission shall conform to the standards of ethical conduct required of practitioners in the courts of the United States.

(b) *Grounds.* Disciplinary proceedings may be instituted against anyone who is practicing or has practiced before the Commission on grounds that he has engaged in unethical or unprofessional conduct, or that he is practicing without authority under the provisions of these rules, or that he has violated any provisions of the laws and regulations governing practice before the Commission, or that he has been disbarred or suspended by any court or administrative agency, or has been disciplined by a Judge under paragraph (e) of this section.

(c) *Procedure.* Except as provided in subsection (e), a Judge or other person having knowledge of circumstances that may warrant disciplinary proceedings against an individual who is practicing or has practiced before the Commission, shall forward such information, in writing, to the Commission for action. Whenever in the discretion of the Commission, by a majority vote of the members present and voting, the Commission determines that the circumstances reported to it warrant disciplinary proceedings, the Commission shall either hold a hearing and issue a decision or refer the matter to a Judge for hearing and decision. Except as provided in subsection (e), no disciplinary action may be taken except by the Commission or the Judge to whom the Commission has referred the matter. The Commission or the Judge to whom the matter has been referred shall give the individual adequate notice of, and opportunity for reply and hearing on, the specific charges against him, with opportunity to present evidence and cross-examine witnesses. The decision shall include findings and conclusions and either (1) an order dismissing the charges or (2) an appropriate disciplinary order, which may include reprimand, suspension or disbarment from practice before the Commission.

(d) *Appeal from Judge's decision.* Within 30 days after the issuance of the decision of the Judge appointed by the Commission, any person adversely affected or aggrieved by the Judge's decision may file a notice of appeal with the Commission.

(e) *Misbehavior before a Judge.* A Judge may order the removal of any person who engages in contumacious or disruptive behavior or other misconduct in the Judge's presence. The Judge shall allow the party represented by the person removed a reasonable time to engage another representative. The Judge shall promptly file a written decision on the matter. A person aggrieved by the Judge's order may file, within 30 days of the written decision, a petition for interlocutory review, or may, after the Judge has filed a decision in which he finally disposes of the proceedings, assign the Judge's ruling as error in a petition for discretionary review.

§ 2700.81 Disqualification.

(a) *Withdrawal generally.* A Commissioner or Judge may withdraw from a proceeding whenever he deems himself disqualified.

(b) *Request to withdraw.* Any party may request a Commissioner, or the Judge (at any time following his designation and before the filing of his decision), to withdraw on grounds of personal bias or disqualification, by filing promptly upon discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(c) *Procedure if Judge does not withdraw.* If the Judge does not disqualify himself and withdraw from the proceeding, he shall so rule upon the record, stating the grounds for his ruling and shall proceed with the hearing, or, if the hearing has been completed, he shall proceed with the issuance of his decision, unless the Commission stays the hearing or further proceedings by granting a petition for interlocutory review.

§ 2700.82 Ex parte communications.

(a) *Generally.* There shall be no ex parte communication with respect to the merits of any case not concluded, between the Commission, including any member, Judge, officer, or agent of the Commission who is employed in the decisional process, and any of the parties or intervenors, representatives, or other interested persons.

(b) *Procedure in case of violation.* (1) In the event an ex parte communication in violation of this section occurs, the Commission or the Judge may make such orders or take such action as fairness requires. Upon notice and hearing, the Commission may take disciplinary action against any person who knowingly and willfully makes or causes to be made a prohibited ex parte communication.

(2) All ex parte communications in violation of this section shall be placed on the public record of the proceeding.

(c) *Inquiries.* Any inquiries concerning filing requirements, the status of cases before the Commissioners, or docket information shall be directed to the Office of the Executive Director of the Commission at: Federal Mine Safety and Health Review Commission, 1730 K Street, N.W., Sixth Floor, Washington, D.C. 20006.

§ 2700.83 Authority of Executive Director to sign orders.

(a) The Commission has authorized the Executive Director to sign, on its behalf, orders of the Commission disposing of motions. 44 FR 8932 (1979). The Executive Director shall ascertain either orally or in writing the vote of each participating Commissioner. His signature on a Commission order is a certification that a quorum of Commissioners has participated in the matter, and that a majority of the participating Commissioners voted to dispose of the motion in the manner indicated by the order. The Executive Director shall note on the order a dissenting vote if requested to do so by the dissenting Commissioner. A person aggrieved by an order signed by the Executive Director may move within 10 days of the date of the order that the order be signed or initialed by the participating Commissioners.

(b) The Executive Director is authorized to sign orders disposing of the following motions: motions for extensions of time; motions for permission to file briefs in excess of page limits; motions to accept late filed briefs; motions to consolidate; motions to expedite proceedings; and motions for oral argument.

§ 2700.84 Effective date.

These rules are effective July 30, 1979 and apply to cases initiated after they take effect. They also apply to further procedures in cases then pending, except to the extent that application of the rules would not be feasible, or would work injustice, in which event former rules of procedure apply.

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federal register

Friday
June 29, 1979

Part VIII

Department of Justice

Bureau of Prisons

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

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 500, 501, 522, 523, 527, 540, 544, 547, 548, 549, 550, 551,and 571

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

AGENCY: Bureau of Prisons.

ACTION: Final rules.

SUMMARY: This document contains final rules relating to the control, custody, care, treatment and instruction of inmates. This document is intended to give the public notice of the rules in this area, not just changes from prior policy.

DATE: Effective date: August 1, 1979

ADDRESS: 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: In this document the Bureau of Prisons is publishing final rules relating to the following:

(1) Definitions;
(2) Contact with news media;
(3) Good time and extra good time;
(4) Scope of rules;
(5) Telephone regulations for inmates;
(6) Grooming;
(7) Religious beliefs and practices;
(8) Inmate manuscripts;
(9) Inmate organizations;
(10) Civil contempt of court commitments;
(11) Voluntary surrender commitments and transfers to Bureau of Prisons facilities;
(12) Apprentice training in institutions;
(13) Education program certificates;
(14) Plastic surgery and identification records;
(15) Birth control, pregnancy, child placement and abortion;
(16) Inmate contributions;
(17) Military and Coast Guard inmates;
(18) Postsecondary education programs for inmates;
(19) Optional programming;
(20) Religious diet requirements;
(21) Urine surveillance to detect and deter illegal drug use;
(22) Administering of polygraph test;
(23) Release gratuities; and
(24) Discharge of inmates under 18 USC 4163.

Each subject has been published in the **Federal Register** previously as a proposed rule. Final rules (1)–(4) were published as proposed rules on May 23, 1977 (at 42 FR 26334 et seq.). Final rules (5)–(9) were published as proposed rules on August 16, 1977 (at 42 FR 41368 et seq.). Final rules (10)–(17) were published as proposed rules on December 21, 1977 (at 42 FR 64082 et seq.). Final rules (18)–(24) were published as proposed rules on July 17, 1978 (at 43 FR 30574 et seq.). In the July 17, 1978 **Federal Register**, the Bureau published its proposed rule on the Maximum Security Unit at the Federal Correctional Institution, Alderson, West Virginia. This unit has been discontinued and the rule is withdrawn.

Interested persons were invited to submit comments on the proposed rules and public comments were received from numerous sources. On the basis of these comments and internal staff review of Bureau policies, changes have been made. These have been either of a minor nature or are generally less restrictive than the original proposed rules. Thus, no republication for comment prior to their adoption as final rules is necessary. Members of the public may, of course, submit further comments concerning these rules by writing to the previously cited address. These comments will be considered, but will receive no formal response in the **Federal Register**. Public comments which were received in these areas and the changes which were made are discussed below.

Summary of Changes

I. Part 500—General Definitions

Several clarifications are included in § 500.1. Subsections (a) and (d) are amended to specify "Federal Community Treatment Center" as opposed to "Community Treatment Center" in the proposed rule. Subsection (b) is amended to include employees of Federal Prison Industries, Inc. Subsection (c) is amended so that "inmate" includes only those federal prisoners who are placed in a Bureau of Prisons institution. Persons on work or study release from Bureau institutions are included within this definition.

II. Part 501—Scope of Rules

Section 501.1 now includes a procedural requirement that a Warden notify the Director within eight hours of the suspension of any rule under the Warden's emergency authority.

III. Part 522, Subpart B—Civil Contempt of Court Commitments

(1) § 522.10 In response to a suggestion, § 522.10 is expanded to include a statement that the confinement of civil contempt inmates terminates when the Bureau of Prisons receives notification from the court that the reason for the contempt commitment has ended or that the inmate is to be released for any other reason.

(2) § 522.11 Proposed subsections (b) and (c) are combined into a final subsection (b). A comment suggested that since the committing court retains continuing jurisdiction over the contempt witness, Bureau rules should specify placement of the contempt witness in a facility designated by the court. In response to this comment, a new subsection (c) provides that when the committing court specifies a place of confinement in its contempt order, the Bureau of Prisons shall designate that specified facility in accordance with the judicial wishes, unless there is reason for not placing the inmate in that facility, in which case the matter is called to the attention of the court and an attempt made, with the agreement of the committing court, to arrive at an acceptable place of confinement. Subsection (f) is amended to state that an inmate serving a civil contempt sentence in a Bureau institution is treated the same as a person awaiting trial, except where the inmate is serving a civil contempt sentence and a concurrent criminal sentence, in which case the inmate is treated the same as a person serving a criminal sentence.

IV. Part 522, Subpart D—Voluntary Surrender Commitments and Transfers to Bureau of Prisons Facilities

Proposed Subpart E is redesignated final Subpart D. The first sentence of § 522.30 is expanded to read "When the court orders or recommends . . ." The final rule also inserts a reference to the Bureau of Prisons policy on furloughs.

V. Part 523, Subpart A—Good Time; Subpart B—Extra Good Time

These provisions are expanded substantially to incorporate various Bureau policies concerning extra good time credits. As most of these additions do not change but only refine the proposed rules and as public comment on the proposed rules in this area was minimal (the only comment received stated that extra good time should be eliminated entirely), no republication for comment is necessary.

(1) § 523.1 The definitions of "extra good time", "seniority", and "earning

status" are expanded or added for clarification purposes.

(2) § 523.10 This section is expanded and clarifies the meaning and effect of a "disallowance" or "termination" of extra good time.

(3) §§ 523.11–523.16 These sections deal separately with each type of extra good time award. Work/Study Release Good Time and Community Treatment Center Good Time were not mentioned in the proposed rules. Standards for awarding meritorious good time are clarified in § 523.11(a).

(4) §523.17 This section expands considerably on proposed §§ 523.11–12. Subsections (b), (c), (d), (e), (f), (h), (i), (j), (k), (l), (m), (n), (o) and (p) are entirely new provisions which reflect present Bureau policies in this area. Subsection (g) changes proposed § 523.11(b)(6) in that an extra good time award may not be terminated after an inmate has been absent from an institution for a period of one month. Instead, any termination must be based on the inmate's conduct, as in other circumstances. Subsection (q) is added merely as a clarification.

VI. Part 527, Subpart B—Military and Coast Guard Inmates

Subpart B, identified previously as Naval and Coast Guard Prisoners, is retitled Military and Coast Guard Inmates to better reflect the subject matter. § 527.10(a) is amended to specifically recognize Coast Guard inmates as acceptable for transfer. § 527.10(b) is expanded to include Coast Guard inmates within the scope of this subsection and to incorporate into subsection (b) "subject to the same discipline and treatment" language of 10 USC 858. §§ 527.10 (c) and (d) are new and relate to the Bureau's acceptance of sentence computation and clemency consideration procedures as provided by the military or Coast Guard authorities.

VII. Part 540, Subpart E—Contact With News Media

(1) § 540.60 The final rule includes a cross reference to § 540.2, which defines "representatives of the news media". § 540.2 was published in the **Federal Register** June 19, 1979 (at 44 FR 35959 et seq.).

(2) § 540.62 The last sentence of proposed § 540.62(b), which discouraged the "use of the inmate's name, identifiable photographs or voice recordings," is deleted as this is not a mandatory requirement.

(3) § 540.63 The provisions in proposed § 540.63(h) limiting interviews to two one-hour sessions per inmate per month are deleted, since there is insufficient justification for this absolute limitation. Consequently, the word "further" in proposed § 540.63(h)(2) is also deleted.

(4) § 540.65(a) This section has been amended to include examples of unusual, newsworthy incidents. Final § 540.65(b)(6) is revised to read "conviction and sentencing data". Proposed §§ 540.65(b)(6)–(10) and §§ 540.65(b)(13)–(14) are encompassed within this phrase. Proposed §§ 540.65(b)(11)–(12) are renumbered final §§ 540.65(b)(7)–(8). As a result of these changes, § 540.65(c) now reads ". . .(b)(1) through (8)".

VIII. Part 540, Subpart I—Telephone Regulations for Inmates

(1) This section, identified previously as Inmate Telephone Use, is retitled Telephone Regulations for Inmates. Proposed §§ 540.140–144 are renumbered final §§ 540.100–104 respectively.

(2) § 540.100 The final rule specifies that the Warden will ordinarily allow an inmate at least three minutes for each call. The reference in the proposed rule to § 540.143 is amended in the final rule to read § 540.103.

(3) § 540.101 Numerous comments were received concerning monitoring of inmate telephone calls. These comments are accommodated in the final rule, which requires the placement of notices on telephones used by inmates, alerting them to the possibility of monitoring on commonly used telephones. The revision reflects that an inmate's properly placed attorney call is not monitored and requires the Warden to notify inmates of procedures to be followed for an inmate to have an unmonitored telephone conversation with an attorney.

(4) § 540.103 The final rule requires that an inmate be advised that violation of the institution's telephone regulations may result in disciplinary action. Part 541, Subpart B (Discipline) is referenced.

(5) § 540.104 The final rule includes additional examples of cases where the cost of a call may be paid by the institution.

(6) § 540.105 Comment was received that the language of proposed § 540.145 is vague and difficult to interpret. Inmates in Disciplinary Segregation and inmates in general population are allowed a telephone call at least once each three months. The language of final § 540.100 governs in all situations, and therefore proposed § 540.145 has been deleted. Similarly, proposed § 540.146 has also been deleted. A new § 540.105 is added which allows the Warden to establish procedures for inmates in admission, holdover, or segregation status to make phone calls as provided in § 540.100. The rule provides that withholding of phone privileges as a disciplinary measure is to be avoided unless the infraction for which disciplinary action was taken involves abuse, or clear potential for abuse, of phone privileges.

IX. Part 544, Subpart C—Postsecondary Education Programs for Inmates

(1) Proposed §§ 544.30–31 are renumbered final §§ 544.20–21.

(2) §544.20 The final rule is expanded to describe what is meant by the term "college-level programs".

X. Part 544, Subpart F—Apprentice Training in Institutions

§ 544.90 is renumbered final § 544.50 and is amended by substitution of the word "registered" for "approved" to more clearly define the apprentice training programs.

XI. Part 544, Subpart G—Education Program Certificates

Proposed §§544.110–111 are renumbered final §§544.60–61. § 544.61(b)(5) amends the proposed rule by substitution of the term "institutional" for "bureau" certificates, to better reflect the origin of the certificates. This section is further amended by substitution of the more expansive term "occupational" for "vocational" and inclusion of recreation and social education certification as additional examples of institutional certificates. A further amendment is a cross reference to subsection (b)(4) with deletion from the proposed rule of the cross reference to § 523.3(a). Subsection (b)(6) is amended to include further examples of where a transcript may be issued.

XII. Part 544, Subpart H—Optional Programming

Proposed §§ 544.120–122 are renumbered final §§ 544.70–72 respectively. § 544.71 specifies staff "shall", as opposed to "may", place an inmate in an appropriate program for a specified time, not to exceed 90 days. This language reflects the intent of optional programming.

XIII. Part 547, Subpart B—Religious Diet Requirements

(1) Due to the similarity of subject matter, proposed Subpart B (Use of Pork and Pork Derivatives in the Preparation and Seasoning of Specific Food Items) and proposed Subpart C (Kosher Food) are combined into a new Subpart B, Religious Diet Requirements.

(2) A commenter noted that the language of proposed § 547.20 contains a reference not incorporated in the pork usage rule, proposed § 547.10. For the final rule, the two subparts are combined into a new § 547.10 and encompass both types of religious diet requirements.

Another comment noted that the constraint of custodial considerations (proposed § 547.20) was not appropriate. We believe that there are circumstances when security and related concerns may be involved in establishing dietary programs for a particular religious group, and these must be balanced. The phrase has been reworded to reflect the more specific requirement, as noted in the case law, which is the constraint of considering the security and orderly running of the institution.

(3) As a result of establishing an amended Subpart B, final § 547.11 is retitled "Use of Pork and Pork Derivatives in the Preparation and Seasoning of Specific Food Items". A comment to proposed § 547.11(b) noted that the rule conceivably allows pork derivatives to be used in all vegetables served or prepared when more than one vegetable was offered for a particular meal. This was not the intent of the proposed rule, and the final rule requires that at least one vegetable which does not contain pork or pork derivatives be offered at any meal where vegetables are offered the general population.

(4) Proposed § 547.21 is renumbered final section 547.12 and is retitled Kosher Food Eligibility. A cross reference to Part 542 is deleted from the final rule.

(5) Proposed § 547.22 is renumbered final § 547.13 and is expanded to require that staff provide proper utensils for serving and eating Kosher food.

XIV. Part 548, Subpart B—Religious Beliefs and Practices

(1) § 548.11(a) The last sentence of this section is amended to read, "Upon request, the Chaplain is available to provide pastoral care, counseling, religious education, and religious instruction." This clarification is made to better reflect when this service is provided. This section is further amended in the first sentence by indicating that the Chaplains "are available to", as opposed to "shall" provided religious assistance.

(2) § 548.11(b) The term "coordinated" has been substituted for "under general supervision of" to more accurately reflect the function of the Chaplain. The reference to the Warden, in the second sentence, is amended to read "under general supervision of the Warden". Deleted is the language "specific supervision procedures are designated by the Warden".

(3) § 548.11(c) This subsection is amended to acknowledge that the Bureau accepts the services of the volunteers. It inserts the language of "help inmates pursue their religious beliefs" for "achieve the purposes of the Bureau of Prisons policy . . ." to better reflect the intent of the subsection.

(4) § 548.11(d) This subsection is amended to state that no one may coerce an inmate to change religious affiliation.

(5) § 548.11(e) This section acknowledges an inmate's right to designate no religious preference.

(6) § 548.11(g) This section is changed by deleting from the second sentence, ". . . in accordance with Part 551", and inserting the phrase "within the context of maintaining security, safety, and orderly conditions in the institution . . .".

(7) § 548.11(h) A new subsection (h) is added, which allows an inmate to wear religious headgear within the institution as prescribed by the respective faith groups and within the context of maintaining security, safety and orderly conditions in the institution. Proposed subsection (h) becomes final subsection (i) and is amended by deleting the cross references to Part 551. The last sentence of § 548.11(i) is expanded by stating that literature, publications, or books about religion or religious teaching are permitted in accordance with the procedures governing incoming publications.

(8) § 548.12(a) This section is expanded to include a cross reference to Part 547 Subpart B, Religious Diet Requirements.

(9) § 548.13 The title of this section is amended by substituting the word "scheduling" for "rescheduling" to indicate the full scope of the section. The word "sacraments" is deleted from the final rule as it is included within the phrase "celebrations".

XV. Part 549, Subpart D—Plastic Surgery and Identification Records

To insure that an inmate is agreeable to undergoing plastic surgery, § 549.51(a) requires that staff obtain written informed consent of the inmate before surgery is performed. The section further specifies that surgery may be performed only by qualified medical personnel.

XVI. Part 550, Subpart D—Urine Surveillance To Detect and Deter Illegal Drug Use

The phrase "have a history of drug use and * * *" is deleted from § 550.30(a). The final rule requires that testing be performed on at least 50% of those inmates who are involved in community activities. § 550.30(c) is expanded to require that when an inmate does not provide a urine sample when requested, staff shall maintain the inmate under supervision for the two hour period specified in the rule. This action is intended to eliminate the possibility of a diluted or adulterated sample.

XVII. Part 551, Subpart A—Grooming

(1) § 551.2 This section is retitled "Mustaches and Beards". The final rule acknowledges that an inmate may wear a beard. The rule allows the Warden to require an inmate with a beard to wear a beard covering when working in food service or in an area where a beard could result in increased likelihood of work injury.

(2) § 551.3 Proposed § 551.3, Beards, is deleted. Proposed § 551.4, Hairpieces, becomes new § 551.3 and allows a female inmate to wear a wig or hairpiece. The rule specifies that a male inmate may not wear an artificial hairpiece.

(3) § 551.4 Proposed § 551.5 becomes new § 551.4. Part (c) of the proposed rule is eliminated as its substance was in conflict with parts (a) and (b).

(4) Proposed §§ 551.6 and 551.7 become final §§ 551.5 and 551.6 respectively.

XVIII. Part 551, Subpart C—Birth Control, Pregnancy, Child Placement, and Abortion

(1) Proposed §§ 551.40, 42, 43 and 44 are renumbered final §§ 551.20, 22, 23 and 24 respectively. Proposed § 541.41 is renumbered final § 551.21.

(2) § 551.21 Comments noted that the birth control language covers only advice and consultation about methods for birth control. It was suggested that this be expanded to provide for prescription and access to methods for birth control. Existing policy of the Bureau allows for such access. The final rule (§ 551.21) specifies that prescriptions for and providing methods of birth control are made where medically appropriate.

(3) § 551.22 Subsection (c) is new and specifies that medical staff will arrange for childbirth to take place at a hospital outside the institution. Since this provision is encompassed as part of § 551.22, Pregnancy, the term "childbirth" has been removed from both the title of this rule and from final § 551.20.

(4) § 551.24 Subsection (a) is amended to specify that the Warden

may not permit the inmate's newborn child to visit except in accordance with the Bureau of Prisons policy on visiting. Deleted from the final rule is the specific reference to Part 540.

XIX. Part 551, Subpart D—Inmate Organizations

(1) Proposed §§ 551.60, 61, 63, 64, 65 and 66 are renumbered final §§ 551.30, 31, 32, 33, 34, and 35 respectively. Proposed § 551.62 is renumbered final § 551.36.

(2) § 551.34 The final rule is amended to clearly indicate that all activities and projects sponsored by the organization must be approved by the Warden.

(3) § 551.35 This section is amended to state that the attendance of guests at institution organization meetings and activities requires the Warden's approval. Deleted from the proposed rule is the word "regular".

(4) § 551.36 The proposed rule requires an organization to maintain suitable financial records, furnish financial statements and have an annual audit completed. Implicit within this requirement is the expectation that failure to adhere to these areas would result in disbandment of the organization. The final rule specifically addresses this issue in a new subsection (d). As a result of this new subsection, proposed subsection (d) becomes final subsection (e).

XX. Part 551, Subpart E—Inmate Contributions

Proposed § 551.80 is renumbered final § 551.50. Comments within this section focused on use of the word "nonpolitical" in proposed subsection (b), concluding that it would prohibit contributions to outside political organizations. This is not the intent of the rule. Proposed subsection (a) permits contribution to political parties. The intent of the proposed publication is reflected in the amended language to make it clear that inmates may contribute to individual political candidates, and to any political parties or organizations so long as the contribution does not violate any law or regulation.

XXI. Part 551, Subpart G—Administering of Polygraph Test

(1) Proposed §§ 551.95–96 are renumbered final §§ 551.70–71 respectively.

(2) § 551.71 Several comments on the proposed rule centered on those provisions which allow the Warden, in certain instances, to disallow polygraph testing. The restriction on testing in the lesser legal proceedings of misdemeanors and civil matters is a recognition that polygraph testing does provide some disruption to the program of an institution, both for staff and inmate involved. Unless special conditions exist which convince the Warden otherwise, polygraph testing ordinarily will not be permitted for lesser legal proceedings. The final rule (subsection (b)) reflects that testing will be allowed when there is a federal court order for the test. A comment on subsection (d) which objects to the use of "feeling" in the denial process is reflected in our change of the rule to remove this language. Subsection (e) is amended to require a written request to conduct a polygraph examination.

A commenter noted that proposed § 551.96(g) is unclear as to the nature of the records placed in the inmate central file. There was objection to the possibility that the results of the testing were placed in the inmate's file. It is not the intent of the Bureau of Prisons to maintain the results of the test. The purpose of the subsection is to make sure that there is documentation for the occurrence of the test, and the inmate's consent for conducting the test. In order to clarify this part, the rule is amended through substitution of the word "indicating" for "including".

XXII. Part 551, Subpart H—Inmate Manuscripts

The proposed rules published two subpart F's, one on Inmate Arts and Hobbycrafts, the other on Inmate Manuscripts. For purposes of clarification, proposed Subpart F, §§ 551.100–103, on Inmate Manuscripts is redesignated final Subpart H, §§ 551.80–83. § 551.81 amends the proposed rule and specifies that "the inmate may use only non-work time to prepare a manuscript". This revision better reflects the extent of an inmate's opportunity to work on a manuscript.

XXIII. Part 571, Subpart C—Release Gratuities

Proposed §§ 571.30–32 are renumbered final §§ 571.20–22.

XXIV. Part 571, Subpart D—Discharge of Inmates Under 18 U.S.C. 4163

This section, originally identified as proposed Subpart H, § 571.90 is redesignated final Subpart D, § 571.30. Language in subsection (b) is reworded in an effort to clarify the intent of this section.

Other Comments

I. Part 500—General Definitions

One comment indicated that the name "Federal Correctional Institution" should be changed to "U.S. Jail", as the word "correctional" was misleading. That suggestion is rejected because the present name more accurately describes these facilities, and is a name of common and professional usage and understanding.

II. Part 501—Scope of Rules

Comments suggested that this section specify that suspension of the operation of the rules requires "clear and present danger", that the Director approve or disapprove the suspension within eight hours of its occurrence, and provide for periodic review of the suspension by the Director. The commenter also believed the rules should specify that the suspension occurs only as long as the emergency exists. We believe the Warden is in the best position to ascertain if a threat exists to human life or safety within the institution as well as when this danger ceases to exist. While the Director is kept informed of the situation and will receive written detailed information, these are internal procedures and are not subject to publication as rules. In response to a comment calling for due process safeguards for the inmate who is placed in segregation during an emergency, the procedures described in Part 541, Subpart B will apply once the emergency ends.

III. Part 522, Subpart B—Civil Contempt of Court Commitments

(1) § 522.11 One comment indicated that the phrase "or other reasons" in § 522.11(b) is vague and unacceptable. However, it is necessary to leave discretion to allow staff to choose an appropriate facility, and not all reasons can be anticipated and specified.

Another comment expressed the view that § 522.11(d), which authorized the interruption of NARA and YCA sentences for civil contempt commitments, adversely affects the rehabilitative efforts of persons committed under those acts. This interruption is inevitable in any type of intervening court proceeding, and also happens if the YCA or NARA commitment returns to court for regular appearances. To conclude that the sentences are not to be interrupted is to immunize persons on the specialized commitments from contempt citations and the sanction of a civil contempt commitment.

(2) A comment was also received concerning the fingerprinting and identification of civil contempt prisoners. It is essential to have adequate identification of all persons committed to federal custody, and therefore fingerprinting, photographing and other identification procedures are essential.

IV. Part 523, Subpart A—Good Time; Subpart B—Extra Good Time

One comment indicated that extra good time should be eliminated entirely, as it reduces actual periods of incarceration to the point of misleading the public and "bribing" inmates to obey institutional regulations. With regard to the former, we agree that good time awards and parole grants may give the public a mistaken impression as to actual length of sentences since they reduce the time actually served. This is one of many issues being addressed by Congress and the Administration in reform of the Federal Criminal Code. We do not believe that elimination of extra good time awards would be proper at this time. With regard to whether extra good time constitutes "administrative bribery" of inmates, we believe it is desirable for inmates to be able to earn good time credits by obeying institutional regulations. We believe that the "light at the end of the tunnel" provided by good time credits is particularly desirable for persons serving long sentences. The comment indicated that "extra good time" as a disciplinary tool could be replaced by increasing an inmate's sentence each time the inmate violates institutional regulations. Only the courts can change a sentence and we have found that criminal prosecution is not an adequate substitute for institutional discipline.

V. Part 540, Subpart E—Contact With News Media

(1) § 540.61 With regard to subparts (b), (c), and (d) of this section, one comment asserted that the proposed rules attempt to control the content of what a member of the news media will publish or broadcast, and thus infringe upon the First Amendment rights of both prisoners and members of the news media. To so view these subsections, however, is to be insensitive to the serious potential ramifications of inaccurate and abusive reports. These rules do nothing to repress the truth. To the contrary, by urging representatives of the news media to recognize their professional responsibility to make reasonable attempts to verify allegations, to provide the Bureau of Prisons with an opportunity to respond to any allegations, and to collect information from primary sources only, they seek to ensure that some standard of accuracy is maintained, without limiting either the right or ability of reporters to pursue and publish material that they find genuinely newsworthy.

(2) § 540.62 Several comments were received regarding the rules on institutional visits, one of which contended that subsection (b), granting inmates the right not to be photographed or have their voices recorded without their own consent, is vague and seeks to interfere with reporters' First Amendment rights. This, however, is not true. A prison is, for all practical purposes, an inmate's temporary home, and as such, there should be as much privacy as possible. Since inmates have almost no power to select those persons who are allowed access to their living areas, it is only proper that their permission be requested before such infringements on personal privacy as photographs and voice recordings are allowed.

Another comment took exception to subsection (c), which empowers the Warden to suspend all media visits during emergency periods, suggesting that the public has a right to know about significant events during such crucial times. The Bureau of Prisons recognizes that public right and provided for it in § 540.65(a) by requiring the Warden promptly to release to the news media information about unusual events. However, the Warden must have latitude to restore order and to protect staff, inmates, and members of the public and the news media alike.

As for subsection (d), barring a confined inmate from being employed as a reporter and publishing under a byline, one comment contended the provisions involved an unjustified deprivation of First Amendment rights. However, experience has shown that such activities often result in an inmate's gaining a disproportionate prominence and influence among other prisoners which can pose a serious threat to the order of the institution.

A comment objected to the lack of guidelines in § 540.62(e), pertaining to persons referred to within this subsection being granted or denied permission to conduct interviews. § 540.63 discusses aspects of personal interviews and subsection (g) specifically addresses reasons for disapproval of a request for interview.

(3) § 540.63 A comment objected to the provision in § 540.63(d) that an inmate's written denial of consent becomes part of the inmate's central file, stating this serves no legitimate institutional purpose, only a punitive one. We disagree, as the choice of whether or not to consent to an interview is strictly the choice of the inmate. Inclusion in the central file is solely for the purpose of documentation of the inmate's decision.

Strong objections were raised to subsection (e), which requires an inmate, as a prerequisite to the granting of an interview, to authorize responses by institution staff to his or her comments.

Primarily, it was claimed that this restriction violated a prisoner's First, Fourth and Ninth Amendment rights, and that access to news media could not be conditioned on an individual's waiver of such rights. However, this "right" of an inmate to be free from rejoinder by the Government as an implicated party is granted only by statute (the Privacy Act). Thus, it can be freely waived without sacrifice of constitutional rights. Furthermore, this policy is justified not by any desire of the Bureau of Prisons to avoid healthy criticism, but rather by the Bureau's interest in preventing the kind of exploitation of the news media that is likely to occur if inmates can always retreat behind a statutory shield which insulates them from good faith rebuttal.

Other comments, directed toward subsection (g), took issue with various grounds on which Wardens are empowered to deny interviews. One contended that the fact that an inmate is a juvenile should not make possible such a denial where no parental consent has been granted, for parents and guardians have no sufficient independent interest in the interview. Rather than an attempt to deprive juveniles of constitutional rights, the parental consent requirement is intended to protect individuals who, in many states, are legally presumed to be yet unprepared to assume certain responsibilities. As an interview invades an inmate's right to privacy, and may release information that could be harmful to the inmate's best interest, it is desirable that some checks exist to reduce such risks.

Another comment contended that Wardens should not have the power to deny interviews with pretrial detainees, pending clearance by the relevant court. The rule does not require the Warden to obtain specific permission from the court having jurisdiction. It only requires the Warden to ensure that no judicial order limiting pretrial publicity has been entered.

Further criticisms were addressed to the subsection (h) provisions empowering Wardens to limit interview

time for entire institutions and for an inmate in a special status. One comment contended that the former restriction, which can be invoked only when the Warden determines that interviews are imposing a serious drain on staff and facilities, is vague, and thus could be arbitrarily and capriciously enforced. The Warden is the person best qualified to judge at what point a prison's effectiveness is significantly impaired, and he is also the person responsible for acting to ensure the efficient functioning of an institution. As such, the Warden must have the kind of discretion provided in this subsection.

Another comment suggested that the latter restriction, which limits interviews to one hour per month for inmates in segregation and other special circumstances if required by security, custodial, or supervisory needs, violates constitutional guarantees of equal protection. However, the greater latitude required by Wardens in handling these prisoners is consistent with both the problems related to and the reasons underlying their special status.

VI. Part 540, Subpart I—Telephone Regulations for Inmates

(1) § 540.100 The most frequent comment on the telephone use rule involved the frequency of calls. The rule provides for at least one telephone call each three months. The Bureau of Prisons recognizes the desirability of frequent contacts with family and others in the community. Most institutions have adopted local policies which allow for more frequent access to telephones. The intent of the rule is to set a minimum which will be required at each institution.

(2) § 540.101 Comment was received concerning telephone calls with members of the news media. The suggestion was made that these should be, like attorney calls, not subject to monitoring if properly placed. The news media is not in the same category as legal counsel. The Supreme Court has recognized that news media access to institutions and contacts with news media are of the same type as those with the general public. There are administrative limitations on the availability of telephones for private, unmonitored calls. For these reasons, the suggestion for unmonitored news media calls is not adopted.

(3) § 540.102 Comments were received in reference to the requirement that the Warden may not apply frequency limitations on inmate calls to attorneys when the inmate demonstrates that other means of access are inadequate. One comment suggested that to require an inmate to "demonstrate" a need requires the inmate to discuss confidential material. This, however, is not our intent. There is no need for the inmate to go into substance, but the inmate must show a need. For example, the existence of a court deadline, which does not allow inmate-attorney communication by correspondence, visiting or normal telephone use.

(4) § 540.103 A comment that suspension of phone calls should not apply to attorney calls has some merit. Attorney calls may not be suspended under this rule, if the inmate demonstrates that communication by other means will not suffice in order to have communication with an attorney on legal matters. It is intended that § 540.102, specifically dealing with attorney telephone calls, will be the governing rule and that the standards of that section will apply for any such calls. With respect to this section and in response to comments on these points, it is noted that Bureau policy does provide for the posting of notices concerning phone usage and that minimal due process is provided before the removal of telephone privileges. See Inmate Discipline, Part 541.

(5) § 540.104 A comment suggested that the government bear the expense of inmate telephone calls to attorneys. Typically, such telephone calls are placed collect to the attorney's office. It is believed that this is the proper placement of responsibility for bearing the cost of such calls. In emergency situations, as provided in the rule, a telephone call to an attorney may be placed at government expense, but this would be considered an exceptional circumstance.

VII. Part 544, Subpart C—Postsecondary Education Programs for Inmates

(1) § 544.20 A comment suggested that the phrase "college level programs" not be used throughout this rule, since it is a limiting phrase, and that "postsecondary programs" be substituted. The title of the rule is Postsecondary Education Programs. As is made clear in both § 544.21(d) and in the amended section on "Purpose and scope", the guidelines and requirements apply to all types of educational and vocational programs at the postsecondary level. The phrase "college level programs" is easily read and understood, and is described in the rule.

(2) § 544.21 Another comment suggested that the language in § 544.21 does not provide objective guidelines. Since levels of resources differ from time to time, the guidelines in this rule must, of necessity, be flexible. The difference between "appropriate component" and "necessary component" in subsections (b) and (c) was also noted. This is intended to specify that the partial funding of college fees may be made by the institution, if resources are available, at a slightly lower rate than the total payment of such costs, which is occasionally permitted under subsection (c). Greater specificity is not desirable in view of the large variety of situations which may occur in this program area.

VIII. Part 547, Subpart B—Religious Diet Requirements

(1) Comments on the proposed rule, and particularly § 547.10, noted that specific language dealing with the First Amendment rights of inmates had not been included in the rule. A variety of phrases and standards have been used by courts in dealing with the religious rights of prisoners. However, it is not necessary to include a discussion of these in the language of the rule. The rule itself reflects an accommodation of the standards and guidelines which have been developed by the courts in this area.

Another comment stated that the phrase "standard ration allowances" needs to be defined. This phrase is one in common use in nutrition and food preparation and is dealt with in the publications of other agencies, such as the Department of Agriculture. It does vary from time to time, as knowledge and information develop in the field. The Bureau of Prisons standard ration exceeds the recommended daily allowance called for by the U.S. Department of Agriculture. It is not believed that an expanded definition is needed in the context of this rule.

(2) It was noted in one comment to proposed § 547.11 that the rule should provide not only for abstinence from pork "but other food related religious practices as well, such as fasting". This particular part deals with providing special food preparation to meet religious dietary requirements. Fasting does not require such special preparation. The recognition of fasting and special religious meals is considered within the Bureau rules dealing with religious activities of inmates.

(3) Comments to proposed § 547.21 centered primarily on the removal of an inmate from the Kosher food program. In view of the special administrative, financial and security accommodations which are necessary to provide a Kosher food program, it was agreed in

discussion with representatives of various Jewish groups at the time of development of the Kosher food program that inmates who failed to observe the Kosher laws may be removed on the basis of that action alone. An inmate may not switch from the Kosher food line to the main food line from one meal to another depending on the inmate's preferences in the diet that is being provided at a particular meal. Some courts have suggested in the recognition of special religious program, that the sincerity of the individual inmate may be grounds for placement of the inmate in the program, and removal from it. Testing the sincerity of the inmate is an extremely difficult task, but failure to observe dietary laws once they have been provided is grounds for removal from the special program. The rules do provide for review of the removal process through the Administrative Remedy Procedure.

Another comment on the Kosher food section expressed concern that an inmate might believe he or she was not being provided a nutritionally adequate Kosher diet, but that if the inmate went to the regular food line in order to sustain health he or she would be removed from the Kosher food program. This concern is adequately covered by the rule. The provision of a diet which will sustain the inmate in good health is considered to be the equivalent of the provision of a nutritionally adequate diet. If the inmate was not being provided a nutritionally adequate Kosher diet, the Bureau of Prisons would be in violation of its own standards. A final suggestion that the rule specify that an inmate may receive additional portions of non-ration food items is not necessary, since the meaning of "non-ration food" is that any inmate may receive added portions of such items from the food serving line.

IX. Part 548, Subpart B—Religious Beliefs and Practices

(1) § 548.10(b) A comment was received stating that there should be a hearing held before discontinuing a religious activity and that the reason for discontinuation be documented. It is the Bureau's position that a hearing is not necessary due to the immediate need for action in certain situations to insure the security and good order of the institution. Another comment suggested that inmates who worship together should be allowed to limit participation in or attendance at a religious activity to persons who share their adherence to a particular faith. The comment further suggests that the presence of outsiders violates religious doctrine and inhibits free exercise of religion and religious practices. The Bureau's position in this matter is that in a prison setting open worship services are essential and constitutional.

(2) § 548.11(c) A commenter objected to the term "may" in relation to "contract with clergy or representatives of faith groups in the community". The commenter believes staff should be required to make necessary arrangements for visiting clergy to conduct religious services, stating reasonable access to representatives of one's professed religion is compelled by the Constitution. The Bureau believes its present language (§ 548.10(a)) of "greatest amount of freedom of and opportunity for pursuing individual religious beliefs and practices as is consonant with the maintenance of security and good order of the institution" clearly demonstrates this intent and sufficient staff resources may exist to preclude the need for contract services.

(3) § 548.11(f) It was suggested that this paragraph be amended to specify that "participation or non-participation in religious programs shall not be taken into consideration by the Parole Commission when making its decision." This addition was not added, as such a rule is within the authority of the Parole Commission, not the Bureau of Prisons.

(4) § 548.11(g) Another comment suggested that this paragraph be amended to include medals and other symbols related to religious observance. These articles are a part of the liturgical apparel and may be worn so long as their substance or symbolic nature would not serve as a weapon or incite a disturbance within the institution.

(5) § 548.12(b) A comment was received that the Bureau should require its staff to make every effort to promote inmates' awareness of ritual meals, especially on holidays. We believe the existing language adequately provides this and that further expansion is not necessary.

(6) § 548.13(a) It was suggested that we list the religious holidays. However, there are too many diverse religious groups in society to list each holiday.

(7) Another comment suggested that conversation between inmates and religious representatives be protected by the cloak of confidentiality. It is the Bureau's position that this is a matter of legislation, not for Bureau regulation.

X. Part 549, Subpart D—Plastic Surgery and Identification Records

A comment stated that there was no mechanism for monitoring the Warden's criteria for the "solution of inmates eligibility for plastic surgery" (sic). § 549.51 discusses conditions under which an inmate may be approved for plastic surgery. This plus the inmate's written informed consent ensures that plastic surgery is performed within specified criteria. An inmate whose request for plastic surgery is denied may file an appeal under the Administrative Remedy Procedure.

XI. Part 550, Subpart D—Urine Surveillance To Detect and Deter Illegal Drug Use

(1) One comment called for a fuller description of the validation procedures used in drug testing. The administrative requirement is that there be reliability in the testing procedure. Validation and other testing aspects may change from time to time. This is not a requirement of the rule but rather it is an administrative procedure which will be assured in the internal implementing instructions of the Bureau of Prisons.

(2) There was a comment that random testing should not be allowed, and that inmates should be notified in advance when they are to be tested. Such a procedure would obviously destroy the intent of the program, which is both to detect and deter drug usage of persons in confinement. A commenter also requested that all negative results from the testing program be placed in inmate files. This would not appear to serve a valid correctional purpose or justify the administrative burden of placing this additional amount of paper in inmate files. Positive results will ordinarily result in disciplinary actions. The absence of any comments in an inmate's file can be interpreted by a reviewer of the file to indicate that the inmate has not received a positive test result while confined.

(3) Another comment suggested that reasonable suspicion must exist before urine testing is required. Providing a urine sample is not a search of the inmate, and therefore the reasonable suspicion test is not applicable.

XII. Part 551, Subpart C—Birth Control, Pregnancy, Child Placement, and Abortion

(1) § 551.20 Comment was received, inquiring as to why there was no definition of which inmates are covered by the scope of this rule. The services and programs covered by this subpart are available to all inmates who are confined in Bureau of Prisons institutions. There is no distinction according to type of institution or categories of inmates.

(2) § 551.21 It was suggested that specific methods of birth control be

included in the language of the rule, with the requirement that the advantages and disadvantages of various methods be explained with the final decision being made by the individual inmate. It is our intent that such explanation be included in the counseling concerning methods of birth control, but such specifics do not belong in the content of a rule.

(3) § 551.22 Suggestions were made as to specific types of tests and medical care which should be supplied to all women inmates and to those who are pregnant. We do not believe that such details of medical care should be spelled out in rule making. The general requirement for the provision of such care is contained in the rule. A suggestion that a pregnant inmate be allowed or encouraged to consult with family and friends is covered by the general visiting rules.

(4) § 551.23 On this section as in the preceding one, there was a suggestion that the pregnant inmate receive an opportunity to consult family and friends, and have access to consultants outside the prison setting. Access to such consultation may be advisable, and it is enabled within the counseling services provided by the Bureau of Prisons. Visiting rights for the inmate include opportunity for consultation with family and friends. As appropriate, consultation with specialist(s) in the community who may be requested by the inmate should be considered by staff at the institution.

(5) § 551.24 One suggestion proposes that a woman be permitted to bring her child to the institution with her and that the child be allowed to remain with its mother until the age of 2. Other suggestions include the retention of the child until age 1, or as determined by an independent board. We are familiar with literature in this field and suggestions from various groups for this type of placement. We do not favor exposing infants or young children to the prison environment. In any event, the separation of the young child at a time after mother and child have become more psychologically attached poses a serious problem. Additional suggestions that the inmate have the choice of placing the child with relatives or friends, or in temporary placement or adoption go into specific suggestions which are encompassed in the general guidance of the rule's language. It is intended that staff counsel with the inmate as to these various options and arrive at a decision for placement of the child according to the inmate's preferences. A suggestion that prison staff work with the inmate to receive reports concerning the children places a requirement on institution staff which is beyond their ability to provide. It is expected that case management and other staff will help the inmate to the extent possible to obtain such information as is available and helpful under the circumstances. (6) A comment was received suggesting that an additional section be added in this subpart, banning sterilization of prisoners and expressly prohibiting tubal ligations, vasectomies and hysterectomies for sterilization purposes. This suggestion states that voluntary consent for sterilization is not possible in a prison setting. We do not agree that consent is never voluntary in such a situation. To ban sterilization would prevent an inmate from obtaining such a medical procedure when he or she would be able to obtain it in the outside community. The Bureau of Prisons does not generally perform sterilization, since it is an elective procedure and not medically necessary during confinement.

XIII. Part 551, Subpart D—Inmate Organizations

(1) § 551.30 A comment was received stating that this paragraph was too narrow, that there should be political reasons as well as educational and spiritual. Education and religious activities are to be covered in other parts of the rules and these deal with the activities of the groups and meetings. Political functions fall under civic activities.

(2) § 551.31 Another comment stated that there were no guidelines to the exercise of the Warden's very broad discretion. The rest of this subpart gives the Warden some general guidelines. However, there are many types of guidelines and these are too complex to spell out for every situation. A commenter questioned the Warden's authority to amend the constitution and bylaws of an inmate organization. As stated in the rule, the Warden may approve an inmate organization when it does not operate in conflict with the security, good order and discipline of the institution. The Warden may find that the constitution must be amended in order to meet that standard.

A comment on § 551.31(a)(2) urged the Bureau of Prisons to adopt the position of the American Bar Association which requires that an organization must have an unlawful purpose to justify denial of recognition, and that there exist a clear and present danger to the Warden of the institution. We are not aware that this position has been officially adopted by the governing body of the ABA. If it has, the Bureau of Prisons disagrees with this position and the clear and present danger standard. The Bureau favors security, good order and discipline of the institution as the appropriate standard.

Another comment suggested that any denial of the establishment of an organization by the Warden be in writing. In the event of denial by the Warden an inmate has the opportunity to obtain written reasons for the denial through the Administrative Remedy process.

(3) § 551.33 A comment was received suggesting that the group be allowed to request the assignment of a specific employee to provide supervision of their meeting. While the Bureau may consider any request by the group, staff are assigned to the meeting on the availability of work schedules and an assignment will not be changed to accommodate an organization meeting. It is necessary for the security, good order and discipline of the institution that staff supervision be maintained.

(4) § 551.34 It is the opinion of one commenter that the restriction against competing with the commissary be eliminated. It is the position of the Bureau that the commissary is the sales vehicle for the institution. Items not in competition may be sold.

XIV. Part 551, Subpart G—Administering of Polygraph Test

(1) § 551.71 Comments centered on the Warden's authority to disallow polygraph tests as indicated by proposed § 551.96. While the denial of testing because of potential disruption of security or good order of the institution may not occur frequently, the Warden needs the necessary latitude for denial of testing in such circumstances.

Other comments called for articulable reasons for denial of a request for polygraph testing and for an appeal process. If the inmate wishes to have the testing he or she may appeal through the Administrative Remedy process. If a law enforcement official or other party wishes to appeal a disallowance, that may be done to the Regional Director, and to the Director of the Bureau.

(2) Suggestion by commenters that the rules should call for the provision of attorneys for inmates who are being tested and for the signing of a consent by the inmate are requirements of the testing procedure and should be followed by the persons conducting the test. The Bureau of Prisons does not conduct polygraph tests nor establish the standards for such testing.

(3) A comment from one source indicated that the rule should explicitly state that an inmate's refusal will in no

way be used against him. The Bureau of Prisons does not use a polygraph test in any of its activities. It is not necessary to indicate in rules all the negative possibilities as to the use of material or information. Through the publication of the rule, the Bureau is setting the framework for the conducting of polygraph testing by other agencies and individuals.

XV. Part 551, Subpart H—Inmate Manuscripts

(1) § 551.82 Two comments were received stating that there was no justification for prohibiting an inmate from circulating the manuscript within the institution and that this restriction should be eliminated. We do not agree. The purpose of this section is to allow an inmate to write for public, not internal circulation.

(2) § 551.83 It was suggested that this paragraph be clarified in connection with inmates in segregation. This subpart is for inmates in the regular population, not segregation.

XVI. Part 571, Subpart C—Release Gratuities

(1) One comment on this rule noted that the limitation on gratuities to $100.00 is "ridiculously low considering today's inflation and unemployment rate". This is a statutory limitation and it cannot be changed by the rule. The Bureau of Prisons has requested an increase in the ceiling, and it has been included in suggested legislative amendments to Title 18, U.S. Code.

(2) A comment called for a minimum flat grant of gratuity, except where obviously unneeded, and for discretionary awards above this flat grant based upon financial need. The commenter suggested that an assessment of need be guided by concrete standards. Since levels of institutional and inmate resources differ from time to time and from inmate to inmate, flexibility in Bureau guidelines is considered appropriate. Minimum flat grants are not supported because individual programming anticipates that the inmate will generate his own release funds through institutional pay programs or pre-release community employment.

(3) Other comments on this rule related to an encouragement to use the loan provisions of 18 USC 4284 and to give advice to inmates as to the availability of job placement programs and other financial aid available in the community. These alternative release procedures are available elsewhere, and are dealt with in the release preparation practices of the Bureau. The experience of the Bureau of Prisons with the loan procedure has been very unsatisfactory. The burden of collecting loans and the low rate of repayment of the loans convinced the Bureau that an outright gratuity allowance was preferable to a loan procedure.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. § 552(a) and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96(t), 28 CFR, Chapter V, is amended as set forth below. The effective date of these rules will be August 1, 1979.

Dated: June 25, 1979.

Norman A. Carlson,

Director, Bureau of Prisons.

Chapter V of Title 28 is amended by adding new Subchapters A, B, C, and D which consist of the following parts:

CHAPTER V—BUREAU OF PRISONS, DEPARTMENT OF JUSTICE

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

Part
500 General Definitions.
501 Scope of Rules.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

522 Admission to Institution.
523 Computation of Sentence.
527 Transfers.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

540 Contact with Persons in the Community.
544 Education.
547 Food Service.
548 Religious Programs.
549 Medical Services.
550 Drug Programs.
551 Miscellaneous.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

571 Release from Custody.

2. Title 28 is amended by adding Parts 500 and 501 to Subchapter A as follows:

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 500—GENERAL DEFINITIONS

§ 500.1 Definitions.

As used in this chapter, (a) The "Warden" means the chief executive officer of a U.S. Penitentiary, Federal Correctional Institution, Medical Center for Federal Prisoners, Federal Prison Camp, Federal Community Treatment Center, Federal Detention Center, Metropolitan Correctional Center, or any federal penal or correctional institution or facility. "Warden" also includes any staff member with authority explicitly delegated by any chief executive officer.

(b) "Staff" means any employee of the Bureau of Prisons or Federal Prison Industries, Inc.

(c) "Inmate" means any person who is committed to or in the custody of the U.S. Attorney General and who is placed or designated to serve his sentence in a Bureau of Prisons institution. "Inmate" also includes any person who is serving a civil contempt sentence in an institution of the Bureau of Prisons.

(d) "Institution" means a U.S. Penitentiary, Federal Correctional Institution, Medical Center for Federal Prisoners, Federal Prison Camp, Federal Community Treatment Center, Federal Detention Center, or Metropolitan Correctional Center.

(e) "Shall" means an obligation is imposed.

(f) "May" means a discretionary right, privilege, or power is conferred.

(g) "May not" means a prohibition is imposed.

(h) "Contraband" means anything that an inmate is not authorized to possess in an institution.

(5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99)

PART 501—SCOPE OF RULES

§ 501.1 Institutional emergencies.

When there is an institutional emergency which the Warden considers a threat to human life or safety, the Warden may suspend the operation of the rules contained in this chapter to the extent he deems necessary to handle the emergency. The Warden shall notify the Director of the Bureau of Prisons within eight hours of any suspension of rules under this section.

(18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99)

3. Subchapter B is amended by adding new Parts 522, 523, and 527 to read as follows:

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 522—ADMISSION TO INSTITUTION

Subpart A [Reserved]

Subpart B—Civil Contempt of Court Commitments

Part
522.10 Purpose and scope.
522.11 Procedures.

Subpart C [Reserved]

Subpart D—Voluntary Surrender Commitments and Transfers to Bureau of Prisons Facilities

522.30 Purpose and scope.

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

Subpart A [Reserved]

Subpart B—Civil Contempt of Court Commitments

§ 522.10 Purpose and scope.

Occasionally federal civil commitments for contempt of court may be referred to the Bureau of Prisons. These cases are not regular commitments to the custody of the Attorney General and are not convictions for any offense against the laws of the United States. The Bureau of Prisons cooperates with the federal courts in implementing the sentence by making its facilities and resources available. The confinement of civil contempt inmates shall terminate when the Bureau of Prisons receives notification from the court that the reason for the contempt commitment has ended or that the inmate is to be released for any other reason.

§ 522.11 Procedures.

(a) The United States Marshal's Service has primary jurisdiction in federal civil contempt commitments.

(b) When a U.S. Marshal requests designation from the Bureau of Prisons for a federal civil contempt commitment because local jails are not suitable, due to medical, security or other reasons, staff may designate the nearest Bureau institution having the necessary facilities.

(c) When the committing court specifies a Bureau of Prisons institution as the place of incarceration in its contempt order, the Bureau of Prisons shall designate that specified facility in accordance with the judicial wishes, unless there is a reason for not placing the inmate in that facility, in which case the matter shall be called to the attention of the court and an attempt made to arrive at an acceptable place of confinement with the agreement of the committing court.

(d) If an inmate is serving a federal criminal sentence when a civil contempt sentence is ordered, the criminal sentence is suspended for the duration of the civil contempt sentence and time spent serving the contempt sentence is inoperative on any sentence being served, including a Narcotic Addict Rehabilitation Act or Youth Corrections Act commitment, unless the court committing for the contempt orders otherwise.

(e) If a civil contempt is in effect when a criminal sentence is ordered, the criminal sentence runs concurrently with the contempt sentence, unless the judge issuing the criminal judgment specifically states that any sentence imposed is to run consecutively to preserve the intended effect of the civil contempt order.

(f) An inmate serving a civil contempt sentence in a Bureau institution will be treated the same as a person awaiting trial; where the inmate is serving a civil contempt sentence and a concurrent criminal sentence, the inmate will be treated the same as a person serving a criminal sentence.

(g) An inmate is not entitled to statutory or extra good time credits under 18 USC 4161–62 while only the civil contempt sentence is in effect. Time spent serving only a civil contempt sentence is not considered jail time under 18 USC 3568.

Subpart C [Reserved]

Subpart D—Voluntary Surrender Commitments and Transfers to Bureau of Prisons Facilities

§ 522.30 Purpose and scope.

When the court orders or recommends an unescorted commitment to a Bureau of Prisons institution, the Bureau of Prisons authorizes the commitment and designates the institution for service of sentence. The Bureau of Prisons also authorizes furlough transfers of inmates between Bureau of Prisons institutions or to nonfederal institutions in appropriate circumstances in accordance with 18 USC 4082, and within the guidelines of the Bureau of Prisons policy on furloughs, which allows inmates to travel unescorted and to report voluntarily to an assigned institution.

PART 523—COMPUTATION OF SENTENCE

Subpart A—Good Time

Sec.
523.1 Definitions.

Subpart B—Extra Good Time

523.10 Purpose and scope.
523.11 Meritorious good time.
523.12 Work/study release good time.
523.13 Community treatment center good time.
523.14 Industrial good time.
523.15 Camp or farm good time.
523.16 Lump sum awards.
523.17 Procedures.

Authority: 5 U.S.C. 301; 18 U.S.C. 3568, 4001, 4042, 4081, 4082, 4161–4166, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart A—Good Time

§ 523.1 Definitions.

(a) "Extra Good Time" means a credit to a sentence as authorized by 18 U.S.C. 4162 for performing exceptionally meritorious service or for performing duties of outstanding importance in an institution or for employment in a Federal Prison Industry or Camp. "Extra Good Time" thus includes Meritorious Good Time, Work/Study Release Good Time, Community Treatment Center Good Time, Industrial Good Time, Camp or Farm Good Time, and Lump Sum Awards. Extra good time and seniority are inseparable with the exception of lump sum awards for which no seniority is earned.

(b) "Seniority" refers to the time accrued in an extra good time earning status. Twelve months of "seniority" automatically cause the earning rate to increase from three days per month to five days per month and seniority is then vested.

(c) "Earning Status" refers to the status of an inmate who is in an assignment or employment which accrues extra good time.

Subpart B—Extra Good Time

§ 523.10 Purpose and scope.

The Bureau of Prisons awards extra good time credit for performing exceptionally meritorious service, or for performing duties of outstanding importance or for employment in an industry or camp. An inmate may earn only one type of extra good time award at a time (e.g., an inmate earning industrial or camp good time is not eligible for meritorious good time), except that a lump sum award as provided in § 523.16 may be given in addition to another extra good time award. The Warden and the Institution Discipline Committee may not forfeit or withhold extra good time. The Warden may disallow or terminate the awarding of any type of extra good time (except lump sum awards), but only in a nondisciplinary context and only upon recommendation of staff. The Institution Discipline Committee may disallow or terminate the awarding of any type of extra good time (except lump sum awards) as a disciplinary sanction. Once an awarding of meritorious good time has been terminated, the Warden must approve a new staff recommendation in order for the award to recommence. A "disallowance" means that an inmate does not receive

an extra good time award for only one calendar month. Unless other action is taken, the award resumes the following calendar month. A "disallowance" must be for the entire amount of extra good time for that calendar month. There may be no partial disallowance. A decision to disallow or terminate extra good time may not be suspended pending future consideration. A retroactive award of meritorious good time may not include a month in which extra good time has been disallowed or terminated.

§ 523.11 Meritorious good times.

(a) Staff is responsible for recommending meritorious good time based upon work performance. Each recommendation must include a justification which clearly shows that the work being performed is of an exceptionally meritorious nature or is of outstanding importance in connection with institutional operations. Work performance or the importance of the work performed is the only criteria for awarding meritorious good time.

(b) Meritorious good time may be retroactively awarded for three months, excluding the month in which the approval is made, provided staff substantiate the inmate's eligibility. Meritorious good time may not be awarded prior to the beginning date of the sentence.

(c) Meritorious good time continues uninterrupted regardless of work assignment changes unless the Warden or the Institution Discipline Committee takes specific action to terminate or disallow the award.

§ 523.12 Work/study release good time.

Extra good time for an inmate in work or study release programs is awarded automatically, beginning on the date the inmate is assigned to the program and continuing without further approval as long as the inmate is participating in the program, unless the award is disallowed.

§ 523.13 Community treatment center good time.

Extra good time for an inmate in a Federal or contract Community Treatment Center is awarded automatically, beginning on arrival at the facility and continuing as long as the inmate is confined at the Center, unless the award is disallowed.

§ 523.14 Industrial good time.

Extra good time for an inmate employed in Federal Prison Industries, Inc., is automatically awarded, beginning on the first day of such employment, and continuing as long as the inmate is employed by Federal Prison Industries, unless the award is disallowed. An inmate on a waiting list for employment in Federal Prison Industries is not awarded industrial good time until actually employed.

§ 523.15 Camp or farm good time.

An inmate assigned to a farm or camp is automatically awarded extra good time, beginning on the date of commitment to the camp or farm, and continuing as long as the inmate is assigned to the farm or camp, unless the award is disallowed.

§ 523.16 Lump sum awards.

(a) Any staff member may recommend, to the Warden, the approval of an inmate for a lump sum award of extra good time. Such recommendations must be for an exceptional act or service that is not a part of a regularly assigned duty. The Warden may make lump sum awards of extra good time not to exceed thirty days. If the recommendation is for an award in excess of thirty days and the Warden concurs, the Warden shall refer the recommendation to the Regional Director who may approve the award. No award may be approved which would exceed the maximum number of days allowed under 18 USC § 4162. The actual length of time served on the sentence, including jail time, to the date that the exceptional act or service terminated is the basis on which the maximum amount possible to award is calculated, less any extra good time previously earned. No seniority is accrued for such awards. Staff may recommend lump sum awards of extra good time for the following reasons:

(1) An act of heroism;

(2) Voluntary acceptance and satisfactory performance of an unusually hazardous assignment;

(3) An act which protects the lives of staff or inmates or the property of the United States; this is to be an act and not merely the providing of information in custodial or security matters;

(4) A suggestion which results in substantial improvement of a program or operation, or which results in significant savings; or

(5) Any other exceptional or outstanding service.

§ 523.17 Procedures.

(a) Extra good time is awarded at a rate of three days per month during the first twelve months of seniority in an earning status and at the rate of five days per month thereafter. The first twelve months of seniority need not be based on a continuous period of twelve months. If the beginning or termination date of an extra good time award occurs after the first day of a month, a partial award of days is made.

(b) An inmate may be awarded extra good time even though some or all of the inmate's statutory good time has been forfeited or withheld.

(c) Parole violators may earn extra good time the same as other inmates; any extra good time or seniority earned on the initial portion of the sentence is not carried over to the violator term.

(d) Staff working in the community have the same extra good time authority as the Warden when approving the award of good time for an inmate confined in a nonfederal facility and may approve meritorious good time or lump sum awards in accordance with this rule upon recommendations made by a responsible person employed by the nonfederal facility. The appropriate staff in the Regional Office may review all such awards if the Regional Director requires the review.

(e) An inmate who is transferred remains in the earning status at time of transfer, unless the reason for transfer would otherwise have caused removal from an earning status and provided the inmate's behavior is such while in transit that it does not justify removal. Where the receiving institution is a camp, farm, or community treatment center, the extra good time continues automatically upon the inmate's arrival. Where the receiving institution is other than a camp, farm, or community treatment center, the extra good time is terminated upon arrival, and staff at the receiving institution shall review each case to determine if the inmate should continue in meritorious good time earning status if not immediately employed in Federal Prison Industries or assigned to a work/study release program. If the inmate then is not continued in meritorious good time earning status, later awards must comply with procedures outlined in § 523.11.

(f) An inmate serving a life sentence may earn extra good time even though there is no mandatory release date from which to deduct the credit since the possibility exists that the sentence may be reduced or commuted to a definite term.

(g) Extra good time is not automatically discontinued while an inmate is hospitalized, on furlough, out of the institution on a writ of habeas corpus, or removed under the Interstate Agreement on Detainers. Extra good time may be terminated or disallowed during such absences if the Warden or the Institution Discipline Committee

finds that the inmate's behavior warrants such action.

(h) Extra good time earned by an inmate in a District of Columbia Department of Corrections facility is treated the same as if earned in a Bureau of Prisons institution, upon transfer to a Bureau institution.

(i) An inmate committed under the provisions of 18 USC 3651 (split sentence) may earn extra good time credits provided the sentence imposed is not under the provisions of 18 USC 5010 (b) or (c) (YCA). All extra good time and seniority earned is carried over to any subsequent probation violator sentence based on the original split sentence.

(j) An inmate committed under the provisions of 18 USC 4205(c) may earn extra good time credits towards the final sentence that may be imposed. Such extra good time credits do not reduce the three months allowed for study.

(k) Inmates committed under the provisions of 18 USC §§ 4244, 4246–47, 4252, 5010 (b), (c), (e), or 5037(c) are not entitled to extra good time deductions.

(l) An unsentenced inmate is not entitled to extra good time deductions.

(m) An inmate committed for civil contempt is not entitled to extra good time deductions while serving the civil contempt sentence.

(n) A military or Coast Guard inmate may earn extra good time. Extra good time earned in Federal Prison Industries in a military or Coast Guard installation is treated the same as if earned in Federal Prison Industries in the Bureau of Prisons. Other forms of military or Coast Guard extra good time, such as Army Abatement time, are fully credited, but no seniority is allowed.

(o) American citizens who are serving sentences in foreign countries and who are subsequently returned to this country under the provisions of 18 USC Chapter 306 (Pub. L. 95–144) may have earned work, labor, or program time credits in the foreign country similar to extra good time earned under 18 USC 4162. Such foreign "extra good time" credits shall be treated as if awarded under § 523.16, Lump Sum Awards, with any future lump sum award consideration in this country calculated on the basis of time served in custody of the Bureau of Prisons. After return to this country an inmate may earn extra good time at the three-day rate and advance to the five-day rate after one year of seniority is accrued. No seniority is accrued for foreign "extra good time" credits.

(p) An inmate in an extra good time earning status may not waive or refuse extra good time credits.

(q) Once extra good time is awarded, it becomes vested and may not be forfeited or withheld or retroactively terminated or disallowed.

PART 527—TRANSFERS

Subpart A [Reserved]

Subpart B—Military and Coast Guard Inmates

Sec.
527.10 Purpose and scope.

Authority: 10 U.S.C. 858; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 4201–4218, 28 U.S.C. 509; 28 CFR 0.95–0.99.

Subpart A [Reserved]

Subpart B—Military and Coast Guard Inmates

§ 527.10 Purpose and scope.

(a) The Bureau of Prisons will accept a military or Coast Guard inmate recommended for transfer to an institution if, after examination of all available information, the Bureau of Prisons can provide appropriate resources for the inmate's needs.

(b) Military or Coast Guard inmates confined in Bureau of Prisons institutions are subject to the same discipline and treatment as other inmates in those institutions (See 10 U.S.C. 858).

(c) The Bureau of Prisons will accept the sentence computation so provided by the military or Coast Guard authorities with the exception that the Bureau of Prisons shall release such inmates, if not paroled, under the provisions of 18 USC 4164 provided they have accrued good time deductions in excess of 180 days. Staff shall refer to the appropriate military or Coast Guard authorities for resolution suspected sentence computation errors or discrepancies, or challenges to the sentence computation by the inmate or his representative or both.

(d) Military and Coast Guard inmates are eligible for clemency consideration and the Bureau of Prisons will honor such clemency actions as issued by military or Coast Guard authorities.

4. Subchapter C is amended as follows:

A. In part 540, Subparts E and I are added, and Subparts C, D, F, G and H are reserved.

B. Parts 544, 547, 548, 549, 550 and 551 are added.

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

Subpart A

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Subpart B

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Subpart C-D [Reserved]

Subpart E—Contact With News Media

Sec.
540.60 Purpose and scope.
540.61 Authorization.
540.62 Institutional visits.
540.63 Personal interviews.
540.64 Press pools.
540.65 Release of information.

Subpart F-H [Reserved]

Subpart I—Telephone Regulations for Inmates

540.100 Purpose and scope.
540.101 Monitoring of inmate telephone calls.
540.102 Inmate telephone calls to attorneys.
540.103 Responsibility for inmate misuse of telephones.
540.104 Expenses of inmate telephone use.
540.105 Telephone calls for inmates in admission, holdover, or segregation status.

Authority: 5 U.S.C. 551, 552a; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subparts C-D [Reserved]

Subpart E—Contact With News Media

§ 540.60 Purpose and scope.

The Bureau of Prisons recognizes the desirability of establishing a policy that affords the public information about its operations via the news media. Representatives of the news media (see § 540.2) may visit institutions for the purpose of preparing reports about the institution, programs, and activities. It is not the intent of this rule to provide publicity for an inmate or special privileges for the news media, but rather to insure a better informed public. The Bureau of Prisons also has a responsibility to protect the privacy and other rights of inmates and members of the staff. Therefore, an interview in an institution must be regulated to insure the orderly and safe operation of the institution.

§ 540.61 Authorization.

(a) A news media representative who desires to make a visit or conduct an interview at an institution must make application in writing to the Warden, indicating that he or she is familiar with the rules and regulations of the institution and agrees to comply with them.

(b) As a condition of authorizing interviews and making facilities available to conduct an interview, the news media representative shall recognize a professional responsibility to make reasonable attempts to verify

any allegations regarding an inmate, staff member or institution.

(c) A representative of the news media is requested to provide the Bureau of Prisons an opportunity to respond to any allegation, which might be published or broadcast prior to distribution.

(d) A representative of the news media shall collect information only from the primary source. A representative of the news media may not obtain and use personal information from one inmate about another inmate who refuses to be interviewed.

(e) The Warden may be contacted concerning discussions or comments regarding applicability of any rule or order.

(f) Failure to adhere to the standards of conduct set forth by this rule for the news media representative constitutes grounds for denying that news media representative, or the news organization which he or she represents, permission to conduct an interview.

(g) Any questions as to the meaning or application of this subpart are resolved by the Director of the Bureau of Prisons.

§ 540.62 Institutional visits.

(a) A media representative shall make advance appointments for visits.

(b) When media representatives visit the institutions, photographs of programs and activities may be taken, and media representatives may meet with groups of inmates engaged in authorized programs and activities. An inmate has the right not to be photographed and not to have his or her voice recorded by the media. A visiting representative of the media is required to obtain written permission from an inmate before photographing or recording the voice of an inmate participating in authorized programs and activities.

(c) The Warden may suspend all media visits during an institutional emergency and for a reasonable time after the emergency.

(d) An inmate currently confined in an institution may not be employed or act as a reporter or publish under a byline.

(e) Interviews by reporters and others not included in § 540.2 may be permitted only by special arrangement and with approval of the Warden.

§ 540.63 Personal interviews.

(a) An inmate may not receive compensation or anything of value for interviews with the news media.

(b) Either an inmate or a representative of the news media may initiate a request for a personal interview at an institution.

(c) Visits by the news media to conduct personal interviews are subject to the same conditions stated in § 540.62. A media representative shall make a request for personal interview within a reasonable time prior to the personal interview.

(d) Staff shall notify an inmate of each interview request, and shall, as a prerequisite, obtain from the inmate written consent for the interview prior to the interview taking place. The written consent or denial becomes part of the inmate's central file.

(e) As a prerequisite to granting the interview, an inmate must authorize the institutional staff to respond to comments made in the interview and to release information to the news media relative to the inmate's comments.

(f) The Warden shall normally approve or disapprove an interview request within 24 to 48 hours of the request.

(g) The Warden shall document any disapproval. A request for interview may be denied for any of the following reasons.

(1) The news media representative, or the news organization which he or she represents, does not agree to the conditions established by this subpart or has, in the past, failed to abide by the required conditions.

(2) The inmate is physically or mentally unable to participate. This must be supported by a medical officer's statement (a psychologist may be used to verify mental incapacity) to be placed in the inmate's record, substantiating the reason for disapproval.

(3) The inmate is a juevnile (under age 18) and written consent has not been obtained from the inmate's parent or guardian. If the juvenile inmate's parents or guardians are not known or their addresses are not known, the Warden of the institution shall notify the representative of the news media of the inmate's status as a juvenile, and shall then consider the request.

(4) The interview, in the opinion of the Warden, would endanger the health or safety of the interviewer, or would probably cause serious unrest or disturb the good order of the institution.

(5) The inmate is involved in a pending court action and the court having jurisdiction has issued an order forbidding such interviews.

(6) In the case of unconvicted persons (including competency commitments under 18 USC 4244 and 4246) held in federal institutions, interviews are not authorized until there is clearance with the court having jurisdiction, ordinarily through the U.S. Attorney's Office.

(7) The inmate is a "protection" case and revelation of his or her whereabouts would endanger the inmate's safety.

(h) Interviews are normally held in the institution visiting room during normal weekday business hours. The Warden may:

(1) Determine that another location is more suitable for conducting the interview;

(2) Limit interview time for the entire institution if the Warden determines that the interviews are imposing a serious drain on staff or use of the facilities;

(3) Limit to one one-hour interview per month for an inmate in segregation, restricted, holdover, control unit, or hospital status if required by special security, custodial, or supervisory needs; and

(4) Limit the amount of audio, video, and film equipment or number of media personnel entering the institution if the Warden determines that the requested equipment or personnel would create a disruption within the institution.

(i) In conjunction with the personal interview, if the member of the media wishes to tour the institution, he or she must comply with the provisions of § 540.61.

(j) Interviews are not subject to auditory supervision.

§ 540.64 Press pools.

(a) The Warden may establish a press pool whenever he or she determines that the frequency of requests for interviews and visits reaches a volume that warrants limitations.

(b) Whenever the Warden establishes a press pool, the Warden shall notify all news media representatives who have requested interviews or visits that have not been conducted. Selected representatives are admitted to the institution to conduct the interviews under the specific guidelines established by the Warden.

(c) All members of the press pool are selected by their peers and consist of not more than one representative from each of the following groups:

(1) The national and international news services;

(2) The television and radio networks and outlets;

(3) The news magazines and newspapers; and

(4) All media in the local community where the institution is located. If no interest has been expressed by one or more of these groups, no representative from such group need be selected.

(d) All news material generated by such a press pool is made available to

all media without right of first publication or broadcast.

§ 540.65 Release of information.

(a) The Warden shall promptly make announcements stating the facts of unusual, newsworthy incidents to local news media. Examples are deaths, inside escapes, and institution emergencies.

(b) The Warden shall provide information about an inmate that is a matter of public record to the representatives of the media upon request. The information is limited to the inmate's:

(1) Name;

(2) Register number;

(3) Place of incarceration;

(4) Age;

(5) Race;

(6) Conviction and sentencing data: this includes the offense(s) for which convicted, the court where convicted, the date of sentencing, the length of sentence(s), the amount of good time earned, the parole eligibility date and parole release (presumptive or effective) date, and the date of expiration of sentence, and includes previous Federal, state, and local convictions;

(7) Past movement via transfers or writs;

(8) General institutional assignments.

(c) Information in paragraphs (b)(1) through (8) of this section may not be released if confidential for protection cases.

(d) A request for additional information concerning an inmate by a representative of the news media is referred to the Public Information Officer, Central Office, Washington, D.C.

(e) The Public Information Officer, Central Office, Washington, D.C. shall release all announcements related to:

(1) Bureau of Prisons policy;

(2) Changes in an institutional mission;

(3) Type of inmate population; or

(4) Changes in executive personnel.

Subparts F–H [Reserved]

Subpart I—Telephone Regulations for Inmates

§ 540.100 Purpose and scope.

An inmate may call a person of his choice outside the institution on a telephone provided for that purpose. Inmate telephone use is subject to limitations and restrictions which the Warden determines are necessary to insure the security, good order, and discipline of the institution and to protect the public. The Warden shall establish procedures and facilities for inmate telephone use. The Warden shall permit an inmate who has not been restricted from telephone use under § 540.103 to make at least one telephone call each three months. Ordinarily, an inmate is allowed at least three minutes for each call.

§ 540.101 Monitoring of inmate telephone calls.

The Warden may establish procedures that enable monitoring of telephone conversations on any telephone located within the institution, said monitoring to be done to preserve the security and orderly management of the institution and to protect the public. The Warden must provide notice to the inmate of the potential for monitoring where it exists. Staff may not monitor an inmate's properly placed call to an attorney. The Warden shall notify an inmate of the proper procedures to have an unmonitored telephone conversation with an attorney.

§ 540.102 Inmate telephone calls to attorneys.

The Warden may not apply frequency limitations on inmate telephone calls to attorneys when the inmate demonstrates that communication with attorneys by correspondence, visiting, or normal telephone use is not adequate.

§ 540.103 Responsibility for inmate misuse of telephones.

The inmate is responsible for any misuse of the telephone. The Warden shall refer incidents of unlawful inmate telephone use to law enforcement authorities. The Warden shall advise an inmate that violation of the institution's telephone regulations may result in institutional disciplinary action (See Part 541, Subpart B).

§ 540.104 Expenses of inmate telephone use.

An inmate is responsible for the expenses of inmate telephone use except that the Warden may direct the government to bear the expense of inmate telephone use under compelling circumstances such as when an inmate has lost contact with his family or has a family emergency. Another example is where the inmate experiences a lack of visits over an extended period of time. This is particularly true where there are no financial resources available either from the inmate or his family.

§ 540.105 Telephone calls for inmates in admission, holdover, or segregation status.

The Warden shall establish procedures for allowing inmates in admission, holdover, or segregation status to make phone calls as provided in § 540.100. Staff may not withhold phone privileges as a disciplinary measure except where the infraction for which disciplinary action is taken involves abuse, or a clear potential for abuse, of phone privileges.

PART 544—EDUCATION

Subpart A–B [Reserved]

Subpart C—Postsecondary Education Programs for Inmates

Sec.

544.20 Purpose and scope.

544.21 Procedures.

Subpart D–E [Reserved]

Subpart F—Apprentice Training in Institutions

544.50 Purpose and scope.

Subpart G—Education Program Certificates

544.60 Purpose and scope.

544.61 Procedures.

Subpart H—Optional Programming

544.70 Purpose and scope.

544.71 Description.

544.72 Procedures.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart A–B [Reserved]

Subpart C—Postsecondary Education Programs for Inmates

§ 544.20 Purpose and scope.

The Bureau of Prisons encourages an interested inmate's enrollment in college-level programs whenever staff recommends such enrollment to meet a correctional goal. The Warden shall establish procedures for implementation of college-level programs. The term "college-level programs" as used in this rule shall include courses of study provided by junior or community colleges, four-year colleges and universities, and postsecondary vocational or technical schools.

§ 544.21 Procedures.

(a) When an inmate expresses interest in college-level work and staff agrees it is an appropriate program goal, staff shall assist the inmate to explore possible sources of tuition support.

(b) The institution may, as resources permit, pay up to 50 percent of the cost of college-level courses and related expenses for an inmate when: (1) Staff determines participation to be an appropriate component of the inmate's program; and (2) The inmate lacks personal and tuition support resources to pay the total cost.

(c) The institution may, as resources permit, pay total costs of college-level courses and related expenses for an inmate when: (1) No other sources of support are available; and (2) Participation is a necessary component of an inmate's correctional program.

(d) Staff may apply these financial arrangements to the following: (1) Institutional and community-based programs; (2) Correspondence programs offered by junior or community colleges; (3) Four-year colleges and universities; and (4) Postsecondary vocational or technical schools.

Subpart D-E [Reserved]

Subpart F—Apprentice Training in Institutions

§ 544.50 Purpose and scope.

The Bureau of Prisons provides an inmate the opportunity to participate in apprentice training programs to prepare the inmate for career employment in various trades. The Bureau of Apprenticeship and Training (BAT), U.S. Department of Labor, through its Regional, State and area representatives, makes BAT personnel available to Bureau of Prisons educational staff for the development of registered apprenticeship training programs. The Warden shall determine the feasibility of establishing an apprenticeship system in an institution in accordance with BAT policy.

Subpart G—Education Program Certificates

§ 544.60 Purpose and scope.

The Bureau of Prisons encourages certification when an inmate completes an education program. The Warden shall establish a system in the institution's education department for issuing certificates.

§ 544.61 Procedures.

(a) Staff shall issue a certificate when it: (1) Contributes to an inmate's future plans in such a way that it validates the inmate's education and training;

(2) Supports the inmate's chances of securing employment;

(3) Improves the inmate's acceptance for advanced education; or

(4) Enhances the inmate's opportunity for success in any other activity the inmate chooses to pursue.

(b) Staff shall approve and issue a certificate that fits one or a combination of the following categories: (1) Accredited certificates—High school diplomas and vocational training certificates approved or issued through local school districts, state departments of education, or other recognized accrediting educational organizations;

(2) Postsecondary certificates—Postsecondary degrees or course certificates approved or issued through a sponsoring accredited educational institution;

(3) General Education Development tests—Programs sponsored by the American Council on Education;

(4) Private certificates—Outside agencies other than those stated in paragraph (b)(1) of this section;

(5) Institutional certificates—Approved general education, occupational training, recreation and social education certificates, issued to an inmate who completes a program, and when the institution cannot provide a certificate as provided in paragraph (b)(1) and (4) of this section; or

(6) Transcript—Issued to an inmate who completes general education programs, formal vocational training, on-the-job and apprentice training and work assignments, and, upon request of or with consent of the inmate, to schools and colleges, business and industry and other agencies when needed and requested for assistance to inmates who are engaged in advancing or improving their social and economic status.

Subpart H—Optional Programming

§ 544.70 Purpose and scope.

The Bureau of Prisons shall afford each inmate the opportunity for constructive use of time. An inmate shall be able to choose from quality programs which are made available, so as to increase the success of post-release adjustment.

§ 544.71 Description.

Optional Programming: After a discussion with the inmate, staff shall place the inmate in an appropriate educational, vocational training or industrial program for a specified period not to exceed 90 days. At the end of this period, the inmate shall meet again with staff and may "opt out" of the program without negative consequences. If an inmate "opts out" of an educational, vocational training, or industrial program, the inmate will be assigned to work on another activity.

§ 544.72 Procedures.

(a) Staff of each institution shall develop and make known the criteria of eligibility and acceptance for each available program.

(b) Staff of each institution shall establish local policy to provide: (1) Procedure for placing an inmate in an educational, vocational training, or industrial program; (2) The minimum stay in respective programs before an inmate may "opt out"; and (3) Procedure for "opting out" of a program.

PART 547—FOOD SERVICE

Subpart A [Reserved]

Subpart B—Religious Diet Requirements

Sec.

547.10 Purpose and scope.
547.11 Use of pork and pork derivatives in the preparation and seasoning of specific food items.
547.12 Kosher food eligibility.
547.13 Basic Kosher menu.

Authority: 5 USC 301; 18 USC 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 USC 509, 510; 28 CFR 0.95–0.99.

Subpart A [Reserved]

Subpart B—Religious Diet Requirements

§ 547.10 Purpose and scope.

The Bureau of Prisons extends the greatest amount of individual freedom to inmates in the selection of food items within the constraints of standard ration allowances, budget limitations, and consideration of the security and orderly running of the institution. Inmates who wish to observe religious dietary laws will be provided a diet sufficient to sustain them in good health without violating those dietary laws.

§ 547.11 Use of pork and pork derivatives in the preparation and seasoning of specific food items.

(a) In the preparation of 35-day cycle menus for administrative appraisal, staff shall identify with an asterisk all food items to be prepared or seasoned with pork or pork derivatives. Staff shall post the menus, with pork items identified, on menu boards in all dining rooms and shall inform the institution population of the meaning of the asterisk or other marking.

(b) In instances where the posted menu offers only one vegetable for a meal, pork or pork derivatives may not be used as a seasoning agent for that vegetable. If more than one vegetable is offered, at least one will be pork free.

§ 547.12 Kosher food eligibility.

(a) A Jewish inmate who wishes to observe Jewish dietary laws shall sign a statement to that effect. The inmate must present this statement to the institution's chaplain and discuss it with him. Upon presentation of the statement the inmate is entitled to receive Kosher food as soon as practical. This entitlement continues as long as the inmate observes the dietary laws.

(b) If an inmate fails to observe the dietary laws, the Warden may remove the inmate from the Kosher food program. The inmate who is removed may appeal the removal through the Administrative Remedy Procedure.

§ 547.13 Basic Kosher menu.

(a) All food (except raw eggs, fruits and vegetables) to be provided to inmates observing the Jewish dietary laws shall be certified or deemed acceptable by the Kashruth Division of the Union of Orthodox Jewish Congregrations of America or any other Jewish agency deemed acceptable by the inmates at the local institution.

(b) Staff shall provide proper utensils for preparing, storing, serving and eating Kosher food.

(c) The Warden may assign an inmate entitled to Kosher food to the food service to facilitate the implementation of these regulations.

PART 548—RELIGIOUS PROGRAMS

Subpart A [Reserved]

Subpart B—Religious Beliefs and Practices

Sec.
548.10 Purpose and scope.
548.11 Procedures.
548.12 Diet.
548.13 Scheduling to observe religious holidays, services, meetings and activities.

Authority: 18 U.S.C. 4001, 4042; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart A [Reserved]

Subpart B—Religious Beliefs and Practices.

§ 548.10 Purpose and scope.

(a) The Bureau of Prisons extends to an inmate the greatest amount of freedom of and opportunity for pursuing individual religious beliefs and practices as is consonant with the maintenance of security and good order of the institution.

(b) When it is considered necessary for security or good order of the institution, the Warden may limit attendance at or discontinue completely a religious activity, service, or meeting. The Warden may not restrict or allow the religious group itself to restrict attendance at or participation in a religious activity, service, or meeting on the basis of race, color, nationality, or creed.

(c) All religious services, activities, and meetings must comply with institution schedules and guidelines.

§ 548.11 Procedures.

(a) Institution Chaplains are available to assist in the expansion of an inmate's knowledge and understanding of and commitment to the beliefs and principles of the inmate's religion. Upon request, the Chaplain is available to provide pastoral care, counseling, religious education, and religious instruction.

(b) Institution Chaplains shall schedule religious services of worship, activities, and meetings. All religious services, meetings, and activities are coordinated by the Chaplain, under general supervision of the Warden. If an institution has no staff Chaplain, a staff member designated by the Warden shall exercise the authority of the Chaplain.

(c) Institution staff may contract with clergy or representatives of faith groups in the community and may also accept the services of volunteers to help inmates pursue their religious beliefs.

(d) No one may disparage the religious beliefs of an inmate, nor coerce or deliberately seek to persuade an inmate to change religious affiliation.

(e) An inmate may designate any or no religious preference. An inmate may change this designation at any time.

(f) Attendance at all religious worship services, activities, and meetings is voluntary.

(g) An inmate may wear, during a religious service, appropriate personal liturgical apparel. An inmate may retain this apparel within the context of maintaining security, safety, and orderly conditions in the institution and it may be worn or used only during scheduled religious services or in private devotional observances.

(h) Within the context of maintaining security, safety, and orderly conditions in the institution, an inmate may wear within the institution religious headgear such as yarmulkes and kufis as prescribed by the respective faith groups.

(i) Each inmate who wishes to have religious books, publications, or materials must comply with the general rules of the institution regarding the retention and accumulation of personal property. Literature, publications, or books about religion or religious teaching are permitted in accordance with the procedures governing incoming publications.

§ 548.12 Diet.

(a) An inmate may abstain from eating food items served to the general inmate population which are prohibited by the inmate's religion (See Part 547, Subpart B).

(b) As a once-a-year accommodation, staff may make arrangements with an inmate religious group to have a special meal which meets liturgical standards of the religion. In most situations, all or most food items to be served are from the main serving line. If the inmates representing the organization request, based upon documented necessity, staff may purchase from a food supplier specially prepared food items which meet religious requirements. Funds for the purchase of special food items are provided from:

(1) Funds from Chaplain's budget;

(2) Inmates' commissary accounts; or

(3) funds provided by the community organization.

548.13 Scheduling to observe religious holidays, services, meetings, and activities.

(a) The Warden shall endeavor to facilitate the observance of important religious holidays or celebrations that do not coincide with legal holidays, and to facilitate that observance in accordance with specific requirements of a faith group, e.g., fasting, worship, diet, or work proscription. The inmate must initiate a request for specific observance of a religious holiday.

(b) The Warden may relieve an inmate from a work assignment if a religious activity, service, or meeting is also scheduled at that time. The Warden may schedule the inmate to make up work at another time. The Warden shall take into consideration the availability of staff and space within the institution when scheduling religious services, activities or meetings.

(c) The chapel may be open during the noon meal hour for prayer and worship.

PART 549—MEDICAL SERVICES

Subpart A–C [Reserved]

Subpart D—Plastic Surgery and Identification Records

Sec.
549.50 Purpose and scope.
549.51 Procedures.

Authority: 18 U.S.C. 4001, 4005, 4042, 4081, 4082, 5006–5024, 5039; 28 CFR 0.95–0.99.

Subpart A–C [Reserved]

Subpart D—Plastic Surgery and Identification Records

§ 549.50 Purpose and scope.

The correction of obvious disfigurements on any part of the body, particularly facial disfigurements or functional impairments, can be a significant factor in improving an inmate's self-image, emotional stability, and social adjustment. The result may well affect institutional adjustment and particularly post-release adjustment and

employability. Therefore, such a procedure can be an integral part of an inmate's overall correctional program. The Bureau of Prisons provides, within available resources, corrective and reconstructive surgery for an inmate to correct obvious disfigurement. The Warden shall establish criteria for the selection of an inmate for plastic surgery procedures which may alter an inmate's physical appearance or otherwise affect identification.

§ 549.51 Procedures.

(a) The inmate's written request for plastic surgery may be approved by the Warden with approval by the appropriate medical and other institutional staff. Plastic surgery may be performed only by qualified medical persons and only with the written informed consent of the inmate involved.

(b) Staff shall approve an inmate for plastic surgery when:

(1) It is indicated for medical reasons; or

(2) It is believed that such surgery will assist the inmate's institutional or particularly his post-release adjustment.

(c) Staff shall consider for correction repulsive disfigurements and nude, lewd, or lascivious tattoos.

(d) Staff is not restricted to those areas of paragraph (c) of this section when other sound medical or psychological and social reasons are identified.

(e) Staff shall photograph and make written descriptions of an inmate's features that are to be altered before and after surgery. Any operation which changes the identification of the inmate in any way is made a part of his record and shall be reported to the FBI.

PART 550—DRUG PROGRAMS

Subpart A-C [Reserved]

Subpart D—Urine Surveillance To Detect and Deter Illegal Drug Use

Sec.
550.30 Purpose and scope.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 4251–4255, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart A-C [Reserved]

Subpart D—Urine Surveillance To Detect and Deter Illegal Drug Use

§ 550.30 Purpose and scope.

(a) The Warden shall establish programs of urine testing for drug use, to monitor specific groups or individual inmates who are considered as high risk for drug use, such as those involved in community activities, those with a known history of drug use, and those inmates specifically suspected of drug use. Testing shall be performed with frequency determined by the Warden on at least 50 percent of those inmates who are involved in community activities. In addition, staff shall randomly sample each institution's inmate population during each month to test for drug use.

(b) Institution staff shall have each positive urine test result validated to substantiate the positive result. If the inmate's urine test shows a positive result for the presence of drugs which the inmate cannot justify, staff shall file a disciplinary report.

(c) If an inmate is unwilling to provide a urine sample within two hours of a request for it, staff may file a disciplinary report. To eliminate the possibility of diluted or adulterated samples, staff shall keep the inmate under direct supervision during this two-hour period.

PART 551—MISCELLANEOUS

Subpart A—Grooming

Sec.
551.1 Policy.
551.2 Mustaches and beards.
551.3 Hairpieces.
551.4 Hair length.
551.5 Restrictions and exceptions.
551.6 Bathing and clothing.

Subpart B [Reserved]

Subpart C—Birth Control, Pregnancy, Child Placement, and Abortion

551.20 Purpose and scope.
551.21 Birth control.
551.22 Pregnancy.
551.23 Abortion.
551.24 Child placement.

Subpart D—Inmate Organizations

551.30 Purpose and scope.
551.31 Approval.
551.32 Dues.
551.33 Meetings.
551.34 Fund raising projects.
551.35 Special activities.
551.36 Accountability for funds.

Subpart E—Inmate Contributions

551.50 Policy.

Subpart F [Reserved]

Subpart G—Administering of Polygraph Test

551.70 Purpose and scope.
551.71 Procedures.

Subpart H—Inmate Manuscripts

551.80 Definition.
551.81 Manuscript preparation.
551.82 Mailing inmate manuscripts.
551.83 Limitations on an inmate's accumulation of manuscript material.

Authority: 5 USC 301; 18 USC 4001, 4042, 4081, 4082, 4161–4166, 5006–5024, 5039; 28 USC 509, 510; 28 CFR 0.95–0.99.

Subpart A—Grooming

§ 551.1 Policy.

The Bureau of Prisons permits an inmate to select the hair style of personal choice, and expects personal cleanliness and dress in keeping with standards of good grooming and the security, good order, and discipline of the institution.

§ 551.2 Mustaches and beards.

An inmate may wear a mustache or beard or both. The Warden may require an inmate with a beard to wear a beard covering when working in food service or where a beard could result in increased likelihood of work injury.

§ 551.3 Hairpieces.

(a) A female inmate may wear a wig or hairpiece.

(b) A male inmate may not wear an artificial hairpiece.

§551.4 Hair length.

(a) The Warden may not restrict hair length if the inmate keeps it neat and clean.

(b) The Warden shall require an inmate with long hair to wear a cap or hair net when working in food service or where long hair could result in increased likelihood of work injury.

§ 551.5 Restrictions and exceptions.

The Warden may impose restrictions or exceptions for documented medical reasons.

§ 551.6 Bathing and clothing.

Each inmate must observe the standards concerning bathing and clothing that exist in the institution as required by standards of § 551.1.

Subpart B [Reserved]

Subpart C—Birth Control, Pregnancy, Child Placement, and Abortion

§ 551.20 Purpose and scope.

The Bureau of Prisons provides an inmate with medical and social services related to birth control, pregnancy, child placement, and abortion. The Warden shall ensure compliance with the applicable law regarding these matters.

§ 551.21 Birth control.

Medical staff shall provide an inmate with advice and consultation about methods for birth control and, where medically appropriate, prescribe and provide methods for birth control.

§ 551.22 Pregnancy.

(a) The Warden shall ensure that each pregnant inmate is provided medical, case managment, and counseling services.

(b) In order to insure proper medical and social services, the inmate shall inform the institution medical staff as soon as she suspects she is pregnant.

(c) Medical staff shall arrange for the childbirth to take place at a hospital outside the institution.

§ 551.23 Abortion.

(a) The inmate has the responsibility for deciding to have an abortion or bear the child.

(b) The Warden shall provide medical, religious and social counseling to aid the inmate in making the decision to have an abortion or bear the child.

(c) An inmate shall sign a statement of responsibility for the decision to have an abortion or bear the child.

(d) At the inmate's request, medical staff shall arrange for the abortion to take place at a hospital or clinic outside the institution.

§ 551.24 Child placement.

(a) The Warden may not permit the inmate's new born child to return to the institution except in accordance with the Bureau of Prisons policy governing visiting.

(b) Child placement is the inmate's responsibility.

(c) The Warden shall provide opportunities for counseling by institution staff and community social agencies to aid the inmate with placement.

(d) The institution staff shall work closely with community agencies and persons to ensure the child is appropriately cared for. The staff shall give notice to the responsible community agency of the inmate's plan for her child. Child welfare workers may come to the institution in appropriate cases to interview and counsel an inmate.

Subpart D—Inmate Organizations

§ 551.30 Purpose and scope.

The Bureau of Prisons permits inmate organizations to function for recreational, social, civic, and benevolent purposes.

§ 551.31 Approval.

(a) A warden may approve an inmate organization when:

(1) The organization has a constitution and bylaws which include its purpose and operation and the duties and responsibilities of the officer(s); the Warden may amend the constitution and bylaws; and

(2) The organization does not operate in opposition to the security, good order, and discipline of the institution.

(b) Every inmate organization shall be coordinated by a staff sponsor whose duties are performed while in official duty status. Staff may volunteer off-duty time to work with inmate organizations.

§ 551.32 Dues.

The organization may not make payment of dues a requirement of membership for an inmate who lacks funds. The organization may not collect dues unless the Warden has approved the rate and method of collection.

§ 551.33 Meetings.

All meetings scheduled must be approved by the Warden and supervised by staff. The organization may not hold meetings at times which are competitive with scheduled inmate work and program activities.

§ 551.34 Fund raising projects.

All activities and projects sponsored by the organization require the Warden's approval. Inmates shall do most of the work in fund raising projects. The Warden may not approve a project that is competitive with the commissary nor one that creates work beyond the resources available to the institution.

§ 551.35 Special activities.

Banquets, community programs, charitable contributions, or the attendance of guests at institution organization meetings and activities require the Warden's approval. The Warden shall require guests to purchase a meal ticket when attending banquets where the government incurs the cost.

§ 551.36 Accountability for funds.

(a) The organization treasurer shall keep financial records to reflect:

(1) Income identified by source; and

(2) Expenditures with applicable receipts.

(b) The treasurer of the inmate organization shall prepare financial statements by April 20, July 20, October 20, and January 20 each year. The treasurer shall present the reports to the membership, the staff sponsor, and the Warden.

(c) The Warden shall require an audit of each inmate organization at least once a year.

(d) The Warden shall disband an inmate organization that fails to maintain suitable financial records, to furnish financial statements, or to complete the required annual audit.

(e) The inmate organization may not use its funds to compensate or to furnish gifts to staff or to finance the staff sponsor's activities.

Subpart E—Inmate Contributions

§ 551.50 Policy.

(a) An inmate may contribute to a candidate for election to a federal, state or local office, in a primary, general, or special election.

(b) An inmate may contribute to any international, national or local organization, including political parties, so long as the contribution does not violate any law or regulation.

Subpart F [Reserved]

Subpart G—Administering of Polygraph Test

§ 551.70 Purpose and scope.

The Bureau of Prisons cooperates with law enforcement officials and other authorized individuals in the performance of their duties by permitting them to administer polygraph tests to an inmate if the inmate consents to the testing.

§ 551.71 Procedures.

(a) The Warden may permit polygraph tests in connection with a State or Federal criminal felony investigation.

(b) The Warden may permit polygraph tests in connection with misdemeanor offenses, civil proceedings, or any other matters. This type of request, however, is generally disapproved, absent a federal court order for the test.

(c) The Warden may permit a polygraph test at the request of a defense counsel or other representative of the inmate. These requests are subject to the same standards and procedures applicable to testing by law enforcement officials.

(d) The Warden may deny any request for testing which may disrupt the security or good order of the institution.

(e) Upon written request to conduct a polygraph examination of an inmate, the Warden may approve the request if: (1) The validity of the request and of the examining agency can be confirmed; (2) The request complies with this section; and (3) The inmate gives written consent to the testing.

(f) If the request is approved, the Warden shall notify the requestor that he is responsible for meeting all state and local requirements in administering the test.

(g) The Bureau of Prisons maintains a record in the inmate's central file of the polygraph test indicating the inmate's

consent and the time and place of and the personnel involved in the testing.

Subpart H—Inmate Manuscripts

§ 551.80 Definition.

As used in this rule, "manuscript" means fiction, nonfiction, poetry, music and lyrics, drawings and cartoons, and other writings of a similar nature.

§ 551.81 Manuscript preparation.

An inmate may prepare a manuscript for private use or for publication while in custody without staff approval. The inmate may use only non-work time to prepare a manuscript.

§ 551.82 Mailing inmate manuscripts.

An inmate may mail a manuscript as general correspondence, in accordance with Part 540, Subpart B of this chapter. An inmate may not circulate his manuscript within the institution.

§ 551.83 Limitations on an inmate's accumulation of manuscript material.

The Warden may limit, for housekeeping, fire-prevention, or security reasons, the amount of accumulated inmate manuscript material.

5. Subchapter D is amended by the addition of Part 571 which reads as follows:

PART 571—RELEASE FROM CUSTODY

Subpart A–B [Reserved]

Subpart C—Release Gratuities

Sec.
571.20 Purpose and scope.
571.21 Procedures.
571.22 Release clothing.

Subpart D—Discharge of Inmates Under 18 USC 4163

571.30 Procedures.

Authority: 5 USC 301; 18 USC 4001, 4042, 4081, 4082, 4161–4166, 4201–4218, 5006–5024, 5031–5042; 28 USC 509, 510; 28 CFR 0.95–0.99.

Subpart A–B [Reserved]

Subpart C—Release Gratuities

§ 571.20 Purpose and scope.

When an inmate is released, it is the policy of the Bureau of Prisons that the inmate possess funds to care for himself in the community until the inmate begins to receive an income. 18 USC 4281 provides for a discretionary gratuity of up to $100 per inmate for this purpose.

§ 571.21 Procedures.

(a) An inmate is eligible for a gratuity as determined by the availability of personal and community resources. The Warden may give greater consideration to an inmate without funds or community resources.

(b) A federal prisoner boarded in a nonfederal facility is eligible for a release gratuity. The director of the nonfederal facility housing federal inmates or the community programs officer shall determine the amount of the release gratuity up to $100 for federal inmates housed in nonfederal facilities.

(c) The inmate transferred to a Federal Community Treatment Center may not receive a gratuity. The inmate may receive payment for travel expenses, including meals, en route to the Center.

(d) The inmate who is without personal funds may receive a gratuity when transferred to a contract halfway house. The amount shall enable the inmate to care for needs in transit and allow for the purchase of necessary personal items upon arrival.

(e) Staff shall provide the inmate released to a detainer with information on how to apply for a gratuity if released prior to expiration of the Federal sentence.

(f) The Warden shall insure that each alien released to immigration authorities has at least $20 cash. This provision does not apply to aliens serving 60 days or less in contract facilities.

§ 571.22 Release clothing.

(a) Staff shall provide work clothes at the time of release to the inmate who requests them. The nonavailability of work clothes may limit this practice.

(b) The institution staff shall provide the inmate transferred to a Community Treatment Center or Work Release with appropriate clothing for the time of year and the inmate's geographical destination.

Subpart D—Discharge of Inmates Under 18 USC 4163

§ 571.30 Procedures.

(a) Pursuant to 18 USC 4163, the Bureau of Prisons releases an inmate whose release date falls on a Saturday, Sunday, or holiday, on the preceding regular work day, unless it is necessary to detain the inmate for another jurisdiction seeking custody under a detainer or for any other reason which might indicate that the inmate should not be released until the inmate's normal release date.

(b) The number of days used under 18 USC 4163 may not be added to the number of days remaining to be served to release an inmate "as if . . . on parole" (18 USC 4164) who would otherwise have been released by expiration of sentence.

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28 CFR Parts 540, 541, and 543

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

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rules.

SUMMARY: This document contains the Bureau of prisons final rules on Incoming Publications, Control Unit Programs, and Inmate Legal Activities. These rules relate to the control, custody, care, treatment, and instruction of federal prison inmates. This document is intended to give the public notice of the rules in these areas, not just changes from prior policy.

DATE: Effective date: August 1, 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.

SUPPLEMENTARY INFORMATION: On May 23, 1977, the Bureau of Prisons published its proposed rules (at 42 FR 26345 et seq.) on Inmate Legal Activities. On August 16, 1977, the Bureau of Prisons published its proposed rules (at 42 FR 41369) on control Unit Programs. On July 17, 1978, the Bureau of Prisons published its proposed rules (at 43 FR 30576) on Incoming Publications. At the time of each publication, interested persons were invited to submit their comments on the proposed rules.

Public comments were received on each of these rules. In addition, the Bureau of Prisons operation of Control Unit Programs was the subject of federal court review, in the case of *Bono* v *Saxbe* (450 F. Supp. 934, Eastern District of Illinois, 1978). Also subject to federal court review, in the case of *Bell* v *Wolfish*, decided by the Supreme Court on May 14, 1979, was the Bureau of Prisons "publisher only" rule as this relates to Incoming Publications.

On the basis of comments received, internal staff review, and, as applicable, federal court review, changes have been made in the proposed rules.

These changes are either of a minor nature, or their substance is generally less restrictive than the proposed rules, or their need has been confirmed by a federal court. Thus no republication for public comment prior to their adoption

is necessary. Members of the public may, of course, submit further comments concerning these rules by writing to the previously cited address. These comments will be considered, but will receive no formal response in the Federal Register.

Summary of Changes

I. Part 540—Subpart F—Incoming Publications

(1) § *540.70* The first sentence in § 540.70 is expanded to acknowledge that an inmate may subscribe to or receive publications without prior approval. Comments were received suggesting that the last sentence of proposed § 540.70 implies that brochures, flyers and catalogues are prohibited. This was not our intent and this section has been reworded in the final rule to encompass within the definition of publications those flyers, brochures and catalogues addressed to a specific inmate. The term "publication" was further clarified by specifying that it is a single issue of a magazine or newspaper.

Another comment expressed concern that the Bureau does not specify the procedures which determine whether an incoming publication is detrimental to the security, discipline, or good order of the institution. In our final rule, we have addressed this issue in two ways. First, proposed § 540.71(a), renumbered final § 540.70(b), is amended to indicate that the Warden may designate staff to review and where appropriate to approve incoming publications. The final rule further requires that only the Warden may reject a publication. Second, final § 540.71 has been amended to include examples which the Bureau of Prisons believes would clarify what constitutes a threat to the security, discipline, or good order of the institution or facilitate criminal activity. Accordingly, the term "might facilitate criminal activity" has been included in final § 540.70(a) as justification for exclusion of an incoming publication.

(2) § *540.71(a)* We received several comments objecting to the provision that publications must come directly to the institution from either the publisher or from a bookstore. The Bureau's final rule expands the proposed rule to allow hardcover publications to come directly to the institution from a book club. However, we believe there is a continuing need for this restriction insofar as it relates to hardcover publications. Contraband is difficult to detect in hardcover publications. However, we believe this danger does not exist to the same degree with softcover materials and therefore have amended proposed § 540.71(b), renumbered final § 540.71(a), to allow an inmate to receive softcover material from any source.

(3) § *540.71(b)* Proposed § 540.71(c), renumbered final § 540.71(b), is amended to include examples which may create a threat to the security, good order, or discipline of the institution or which may facilitate criminal activity. This section further specifies that the Warden may not reject a publication solely because of its religious, philosophical, political, social or sexual content or because its content is unpopular or repugnant. As a result of this action, proposed § 540.71(d), is deleted.

(4) § *540.71(c)* Comments were received questioning how we could ban future issues of a subscription publication without examination of the content. Consistent and repeated publication of the same content can lead, at some point, to a presumption of further publication of the same kind. However, the Bureau agrees that rejection of a publication should preferably be based on a review of the individual issue. Accordingly, proposed § 540.71(e), which authorized the exlusion of a subscription publication, has been deleted. Proposed § 540.71(f), which becomes final § 540.71(c), is reworded to specify that the Warden shall review the individual publication prior to the rejection of that publication.

(5) § *540.71(d)* Comments on proposed § 540.71(g) suggested establishment of a specific time limit for informing an inmate that his incoming publication has been rejected and the reasons for this action. While we agree that the inmate should be promptly notified of the rejection, we do not consider it feasible to establish a specific time frame in which this must occur. There are too many variables which may affect this process. We do agree that notification should be given without undue delay and proposed § 540.71(g) which becomes final § 540.71(d) has been reworded to require the inmate be "promptly" advised.

Another comment objected to the fact that the rule does not provide an inmate with opportunity to review objectionable material. We agree in principle that the inmate should be permitted to review rejected material for purposes of considering appeal. In many cases, however, the review itself is objectionable. Final § 540.71(d) allows review unless the review is determined to provide an inmate with information which is deemed to pose a threat or detriment to the security, good order, or discipline of the institution, or to encourage or instruct in criminal activity.

Proposed § 540.71(h), which relates to filing an appeal through the Administrative Remedy Procedure and to obtaining a further review of a subscription publication after a six month lapse, has been deleted. Reference to the Administrative Remedy Procedure is now incorporated in final § 540.71(d), and since the Bureau of Prisons no longer excludes subscription publications, the remainder of proposed subsection (h) is superfluous.

(6) § *540.71(e)* In response to a comment and as a result of other revisions, proposed § 540.71(i), which becomes final § 540.71(e), is reworded to allow either the publisher or sender of an unacceptable publication to obtain an independent review of the rejection. A further modification instructs the Warden to retain the unacceptable material at the institution for review where an inmate indicates an intent to file an appeal under the Administrative Remedy Procedure. Where appeal is not indicated, or where the rejection is sustained, the unacceptable material is returned to the publisher or sender. A final change to this subsection deletes the phrase "discontinue mailing the subscription" as subscription publications may no longer be excluded.

(7) § *540.71(f)* In response to comment, proposed § 540.71(j), which becomes final § 540.71(f), is amended by deletion of security as a reason for limiting the number of publications an inmate may receive or retain in his quarters. As now stated, such limitations may be set for fire, sanitation or housekeeping reasons. The rule was further amended to allow limitations to be set on the volume of the publications, in recognition that publications vary greatly in their dimensions.

Other comments suggested that an inmate be allowed to place in the prison library material which exceeds the local limits. Two comments called for exclusion of legal materials from these limitations.

The Bureau of Prisons permits an inmate to retain legal materials necessary for legal actions, including legal reference materials such as books which are not available in the institution library. However, this material may not be exluded from those limitations on incoming publications as may be necessary for fire, safety, sanitation or housekeeping reasons. Regardless of the nature of the material, if an accumulation of material will pose one of these hazards, this accumulation must be restricted. An effort may be made to

provide additional storage for excess legal materials. Accordingly, we have included in new § 540.71(f) a reference to the Bureau policy on personal property of inmates, which authorizes staff to provide an inmate additional storage space in connection with legal activities on a temporary, short-term basis.

(8) Proposed § 540.71(k) which dealt with completion of a subscription when an inmate is transferred and the inmate's responsibility to notify the publisher of his new address has been deleted. Subscriptions are no longer excluded. An inmate's responsibility to notify the publisher of the inmate's new address is not a rule which can be imposed by the Bureau of Prisons but is a requirement better left to the subscriber of the publication.

II. Part 541—Subpart D—Control Unit Programs

(1) § *541.40* Proposed § 541.50 is renumbered final § 541.40. The final rule significantly amends the proposed rule. It now requires that the Bureau of Prisons provide written criteria for the referral, placement, review, and release of an inmate in a control unit progam. The final rule states that an inmate housed in such a program is to have the opportunity to participate in programs and activities, restricted only as necessary to protect the security, good order, or discipline of the institution. As amended, the final rule establishes a framework to provide hearing procedures with respect to placement within a control unit program, and to provide information to an inmate of his or her status while housed within the unit.

(2) § *541.41* Proposed § 541.51 is deleted. Proposed § 541.52 is renumbered final § 541.41 and is retitled "Institutional Referral". The final rule amends the proposed rule and identifies factors which the Warden is to consider in a referral to the Regional Director for an inmate's placement within a control unit program. Criteria contained in proposed § 541.52 is either clarified or, as in the instance of subsection (a)(2), is deleted. Additional factors for consideration are also listed in the final rule.

(3) § *541.42* This section is new. It establishes a Hearing Administrator to initially determine the appropriateness of an inmate's placement in a control unit program. Qualifications required for a person to serve as a Hearing Administrator are identified within this section.

(4) § *541.43* This section is new. It describes the hearing which is provided to an inmate recommended for a control unit placement. The final rule requires that the inmate receive advance written notice and a copy of the rule on control unit programs at least 24 hours prior to the hearing. The final rule identifies that information which is to be contained in the written notice. This section also discusses the inmate's rights at the hearing (right to be present, to staff representation, to present documentary evidence, to present witnesses), as well as procedures for staff to follow where an inmate is illiterate.

(5) § *541.44* This section is new. It requires that the Hearing Administrator prepare a written decision as to whether a control unit placement is warranted. A summary of the hearing and of the information supporting the decision is also required. The final rule states the inmate is to receive a copy of the report, unless knowledge of it would pose a threat to individual safety or institutional security, in which case that limited information may be withheld. The final rule also requires the inmate be advised that the decision of the Hearing Administrator is forwarded for review of the Executive Panel, and that the inmate may file an appeal of the Hearing Administrator's decision with this Panel.

(6) § *541.45* Final § 541.45 is new. It identifies those persons who comprise the Executive Panel and describes this Panel's role in relation to the referral for control unit placement. An inmate's right to appeal a decision of the Executive Panel is discussed within this section.

(7) § *541.46* Proposed § 541.53 is renumbered final § 541.46 and is retitled "Programs and Services". The final rule amends and expands the proposed rule. The contents of proposed § 541.53(a) are deleted as levels no longer are required within the operation of a control unit program. The final rule significantly expands proposed § 541.53(b). Proposed subsections on education, legal activities, work, visiting, correspondence, religion, recreation, and commissary within the control unit are discussed in greater detail within the final rule. Proposed § 541.53(b)(3), counseling, is deleted, with its concept incorporated into the new final rule subsections on casemanagement services, counselor services, and mental health services. The scope of proposed § 541.53(b)(9), leisure activities, is incorporated into the final rule on recreation (§ 541.46(e)). The rule on recreation now requires that an inmate receive a minimum of seven hours (as opposed to two hours in the proposed rule) weekly recreation and exercise out of the cell. Additional subsections incorporated into final § 541.46 include industries, medical services, and food service and personal hygiene.

(8) § *541.467* Final § 541.47 is new and describes Bureau requirements when an inmate is admitted to a control unit program. This final rule includes requirements that an inmate be notified of the expected duration of his or her confinement within the unit, a summary of the unit's rules and procedures, expectations concerning the inmate's involvement in control unit activities, and criteria for release from the unit.

(9) § *541.48* Proposed § 541.54 is renumbered final § 541.48 and is retitled "Review of Control Unit Placement". The final rule amends the proposed rule in several ways. A cross reference within the proposed rule to Part 524 is deleted. The final rule requires that unit staff evaluate informally and daily an inmate's adjustment within the control unit. The final rule retains the provision contained in the proposed rule that an inmate be formally reviewed at least once every 30 days (as opposed to once every month in the proposed rule language) and identifies those persons who normally comprise the control unit team. The final rule identifies those factors which are to be considered in this review process. An expansion of the proposed rule is contained in those provisions that (a) establish the Warden as the review authority for unit team actions, and (b) recognizes an inmate's rights to appeal the decision of the Warden to the Executive Panel. Final § 541.48(d) is a new provision and requires that, at least once every 60–90 days, the Executive Panel review the status of an inmate housed in a control unit program. The final rule specifies that ordinarily an inmate is interviewed in person at the Panel review. An inmate's right to appeal a decision of the Executive Panel is discussed within this section.

(10) § *541.49* Proposed § 541.55 is renumbered final § 541.49 and is amended to state that either the unit team, with approval of the Warden, or the Executive Panel may release an inmate from a control unit program. Deleted from the proposed rule is the language which authorized the Assistant Director, Correctional Programs Division to release an inmate from a control unit program. The final rule identifies factors to be considered in the evaluation of an inmate's readiness for release from a control unit program.

III. Part 543—Subpart B—Legal Matters

(1) § *543.10* Proposed § 543.11 is renumbered final § 543.10. The final rule

contains a provision that law libraries are not provided at Federal Community Treatment Centers nor at the Federal Detention Center, El Paso, Texas, as these facilities have presented no demand or need for such materials.

(2) § *543.11* Proposed § 543.12 is renumbered final § 543.11. The final rule contains a new subsection (b) which requires the Warden ensure that the inmate law libraries are kept intact and that lost or damaged materials are replaced. A complete list of materials required in each law library will not be included in the rules due to the combersome and changing nature of such a list. However, a list is provided below of the materials which we expect will be provided in each institution's main law library. Many institutions have other, smaller "basic" law libraries in their segregation or camp units. These libraries are similarly required to be kept intact and updated. A list of materials for "basic" law libraries is also included below. Proposed subsection (b) is relettered final subsection (c). Proposed subsection (c) is relettered final subsection (d) and is amended by stating that an inmate may receive legal documents from his attorney through the mail or incident to visiting. It further provides for these documents to be inspected for contraband but states that, if properly presented, the documents may not be read. This subsection is also amended to allow inmates to receive hardcover law books from bookstores and softcover materials (for example, paperback books, newspapers, magazines) from any source. Proposed subsections (d) and (e) are relettered final subsections (e) and (f). Proposed subsection (f) becomes final subsection (g) and is amended to indicate that an inmate has no right to have legal documents duplicated by staff when the inmate can accomplish the same by use of carbon paper. This provision was added in consideration of the limited availability of duplication equipment in some institutions. Proposed subsections (g) and (h) are relettered final subsections (h) and (i). Proposed subsection (i) becomes final subsection (j) and is amended by deleting the qualifying phrases "as far as practical" and "equal to inmates in the general population". Our intent is to ensure that an inmate has access to legal materials and an opportunity to prepare legal documents. New subsection (j) provides for an inmate to have a reasonable amount of legal material while in detention or segregation.

A. "Basic" Law Library Materials

1. *Reporter:* "Decisions of the United States Supreme Court" (summaries of decisions).

2. *Statutes:* (a) United States Code Annotated.

(1) Title 5, Sections 1–5100 (includes Freedom of Information and Privacy Acts).

(2) Title 18—Complete (Criminal Code and Criminal Procedures).

(3) Title 21—Complete (Food and Drugs).

(4) Title 26, Sections 4001 to End (Narcotic Offenses).

(5) Title 28—Volumes containing Rules of the Supreme Court of the United States; United States Court of Appeals Rules and Federal Rules of Appellate Procedure.

(6) Title 28, Sections 2241 to End (Habeas Corpus and Motions to Vacate Sentence).

(7) Title 42, Sections 1891–2010 (Public Health and Welfare).

(8) U.S. Constitution and Amendments (Complete).

(b) Federal Rules of Civil Procedure (Pamphlet).

3. *Regulations:* Title 28, Code of Federal Regulations; Judicial Administration

4. *Other Materials:*

(a) Black's Law Dictionary.

(b) Complete Manual of Criminal Forms, Bailey and Rothblatt.

(c) Criminal Law Reporter, current year's subscription.

(d) Modern Criminal Procedure, Hall and Kamisar.

(e) Constitutional Rights of Prisoners, Palmer.

(f) Federal Habeas Corpus, Sokol.

(g) You and the Law, Reader's Digest.

(h) Legal Research in a Nutshell, Cohen.

(i) Legal Research, Writing and Analysis, West Publishing Company.

(j) Corrections and Prisoners' Rights, Krantz.

(k) Manual for Prison Law Libraries, Werner.

(l) Modern Federal Practice Digest, Volumes 16–18A, 26, 26A, 39, and 42.

(m) Manual for Courts Martial, U.S. Government Printing Office.

(n) Justice and the Military, Public Law Education Institute.

(o) Rights of the Imprisoned, Singer.

(p) Practice Manual on Military Discharge Upgrading, American Civil Liberties Union.

(q) Prisoners' Assistance Directory, The National Prison Project.

(r) Criminal Procedure in a Nutshell, Israel and LaFave.

B. "Main" Law Library Materials

1. All "Basic" law library materials; PLUS.

2. Reporters:

(a) United States Supreme Court Reports (Lawyers' Edition 2d Series), Volumes 4–26, 37–present.

(b) Supreme Court Reporter, Volumes 91–93A.

(c) Federal Reporter, 2d Series, Volumes 267–present.

(d) Federal Supplement, Volumes 173–present.

3. Statutes:

(a) United States Code Annotated (Complete).

(b) District of Columbia Code Annotated (Complete).

4. Other Materials:

(a) American Jurisprudence 2d (Complete).

(b) Shepard's United States and Federal Citations.

(c) Ballentine's Law Dictionary.

(d) United States Supreme Court Digest Annotated (Complete).

(3) § *543.12* Proposed § 543.13 is renumbered final § 543.12.

(4) § *543.13* This section was originally published as proposed § 540.46 and was a part of the Bureau of Prisons proposed rules on Inmate Visiting (42 FR 26337 et seq.). Concern about a misunderstanding of proposed § 540.46(f), which allowed searches of attorneys and their belongings prior to their entry into an institution, required that the phrase "for the purpose of ascertaining if contraband is present" be added in the final rule (§ 543.13). Proposed § 540.46(g), which referred the reader to Part 543, is deleted as the section on Visits by Attorneys is now included within Part 543.

(5) § *543.14* Deleted from the final rule are cross references to Part 540 and Part 542 in proposed subsections (a) and (d) respectively. Final §§ 543.14, 543.15 and 543.16 are expanded to clearly state what was meant by the use, within the proposed rules, of the phrase "institution regulations". § 543.14(a)(3) is amended to read "conspiracy to commit".

(6) § *543.15* The final rule states that the Warden shall refer a request or decision to terminate or restrict individual participants within a legal aid program to the Regional Counsel.

(7) § *543.16* Proposed § 543.6 is renumbered final § 543.16. The final rule is amended to state that the Warden "may", as opposed to "shall" in the proposed rule, have each assistant complete the indicated statement and pledge.

Other Comments

Part 540—Subpart F—Incoming Publications

(1) § *540.71* One comment stated that the Bureau's rule is not compatible with the Department of Justice Standard 002 (Mail and Visiting). The Department of Justice standards are draft standards and open to comment. Accordingly, we have suggested that Standard 002 be modified in the format of our amended § 540.71(a), thereby allowing receipt of softcover material from any source but retaining the publisher, book club, or bookstore requirement for hardcover material.

(2) Comments also suggested that the phrase "detrimental to the security, good order or discipline of the institution or if it might facilitate criminal activity", (§ 540.71(b)) is vague and overbroad. More specifically, one commenter suggested the Bureau of Prisons correctional officials were overstepping their authority by including "might facilitate criminal activity". We do not agree. It is in the public interest, we believe, to take steps to deter criminal activity. We believe that "detrimental to the security, good order or discipline" is by necessity broad in its scope, but it is not overbroad.

Another comment suggested that the rule does not recognize that rehabilitation is enhanced by contact with and communication between an inmate and the community. If the publication is detrimental to the security or good order of the institution, this must be controlling. There are many alternative opportunities for community contact.

Comments proposed that the Bureau never exclude publications for reasons stated in the proposed rule unless there is present impermissible content under the *Procunier* v. *Martinez* standard We believe our standards comply with the standards established in *Martinez*. A comment that our use of the word "solely" implies that a publication may be excluded at least in part on its religious, philosophical, political, social or sexual content has been considered and rejected. We recognize that on occasion an individual issue, in its religious, or sexual, or other broad content, may specificially be detrimental to the security, good order or discipline of the institution and therefore warrant exclusion for that reason.

Another comment suggested that only the offending portions of a publication be deleted. We do not agree with this, as it would mean defacing the material and laboriously going over each article in each publication, even after identifying an article that otherwise would be sufficient to reject the publication. Also articles may be cumulatively objectionable, though not objectionable when taken singly.

(3) Another comment calls for the Bureau to make available a list of rejected and approved publications. The commenter states this will greatly contribute towards reduction in inconsistent decisions between institutions while helping establish precedents. We do not believe implementation of this suggestion is appropriate. Our final rule (§ 540.71(c)) prohibits excluded lists, with individual issues subject to rejection only for reasons as indicated in § 540.71(b). These steps provide sufficient details as to when a publication may be rejected, yet allow the Warden the necessary flexibility to consider a publication's acceptability within the context of his particular institution. Discretion is left with individual institutions to determine whether a publication is admissible.

(4) A comment suggesting that judicial determination be sought to review Bureau rejection of a publication on the basis of obscenity is not appropriate, since obscenity is not a criterion in this regulation for rejection of an incoming publication. Another comment expressed concern that the rules do not provide for review by non-correctional officials. We recognize the rights of appeal of both the inmate, through the Administrative Remedy Procedure, and of the publisher or sender of the material, through appeal to the Regional Director. We do not believe it is necessary to impose this burdensome requirement.

We do not concur with comments on proposed § 540.71(h) that the inmate should have the right to assistance, including counsel, to challenge a publication's rejection or that the Administrative Remedy Procedure be amended to provide direct and immediate review by the Regional Director or Central Office. Involvement of counsel is neither legally required nor administratively desirable. The rejection of a publication is not of such an emergency nature that it requires automatic priority. The Administrative Remedy Procedure provides an inmate ample opportunity to appeal an adverse decision, thereby receiving a higher level review and decision.

(5) A comment requesting a detailed description of the standards involved in an "independent review" (§ 540.71(e)) has been considered. We do not believe it necessary or feasible to provide such a description any more than for the original review. The standard is stated in the rule. We have in final § 540.71(b) provided examples of the type of materials which we believe warrant rejection.

(6) A comment suggested that minimum standards be provided and that the limitations placed on the number of publications received or kept (§ 540.71(f)) must be justified in terms of the *Martinez* standard of security, order or rehabilition. We note, however, that *Martinez* talks about standards of review for incoming correspondence but does not address how much material may be stored. Security and order are the justification for the safety and housekeeping standard of the rule. A comment that an inmate be allowed to retain material has been considered and the rule has been modified to reflect that an inmate, upon indication of need, may receive on a temporary basis additional storage space for legal materials. However, we do not consider the completion of serials in publications to be of sufficient significance to overcome legitimate restrictions on safety and good housekeeping. A comment that reasons for limitations be placed in writing, go in an inmate's permanent file, and be made known to the inmate has been considered and rejected. We do not believe this requirement is necessary as the limitation is imposed uniformly on all inmates.

II. Part 541—Subpart D—Control Unit Programs

(1) Several comments questioned the establishment of control unit programs and the need for such units in the Bureau of Prisons. These questions have been considered in the past, and were reconsidered on the basis of these comments. In 1978, a federal court agreed with the need for such a control unit program. *Bono* v. *Saxbe*, 450 F. Supp. 934. Limitations and procedural requirements of these final rules are, in most cases, as required and approved by that court. It is believed necessary to have such a specialized program for those inmates who pose serious problems in the orderly operation of the institution. The final rules have been amended to incorporate rights of procedural and substantive due process, the lack of which was cited by one commenter as a deficiency of the proposed rules.

(2) A comment was received inquiring as to whether the Control Unit at the U.S. Penitentiary at Marion, Illinois is the only such unit presently operated by the Bureau of Prisons, and further as to whether the Bureau intends to open any further units. In response to this comment, it is noted that the Marion

Control Unit is the only one presently operated by the Bureau of Prisons under this rule. However, it is indeed possible that, in the future, other control units could be established and operated under the guidelines of this subpart. The Bureau is currently considering the need for such a unit for female offenders.

(3) A commenter suggested that a "maximum time which a prisoner can spend in the control unit should be set to avoid the possibility of abuse by prison officials". The commenter recommended 90 days. We do not believe that establishment of a maximum period is feasible. Some inmates are so extremely dangerous or continously disruptive as to preclude a 90-day ceiling as a reasonable limit. The purpose of a control unit is to place into a separate unit those inmates who are unable to function in a less restrictive environment. The lapse of a specified number of days does not resolve the scope of this concern. The Bureau's final rule requires regular review of each inmate confined in a control unit program and establishes factors to consider in determining release readiness. We believe this review process provides the balance to avoid abuse and is a more appropriate course to follow.

(4) Comment was received on the exercise periods which are available under proposed § 541.53. Recreation, including physical exercise out of the cell, is considered an important element of a control unit program. Recreation is expanded in the final rule to include a minimum of seven hours of weekly recreation and exercise out of the cell. Other types of recreation are also available. It is important to note however that, contrary to the assumption of the comment, the rule does not act as punishment by setting a limit on exercise. It sets a minimum amount of exercise which must be achieved under any circumstances. Additional exercise is often accomplished, according to the number of inmates who are assigned in the unit and the availability of staff to open up and supervise the exercise areas.

The same commenter suggested the use of control unit "graduates" or citizen boards in establishing programs for the unit. The responsibility for conduct of this unit, especially as it is closely related to security concerns, is lodged in the U.S. Attorney General, and through his delegation in correctional employees of the Bureau of Prisons. The suggestion for "graduate" or citizen involvement has been considered; it is rejected because it is not believed that such ongoing involvement would be of significant benefit to the operation of the control unit program.

III. Part 543—Subpart B—Inmate Legal Activities

(1) § *543.11* One comment objected to the limiting phrases "whenever practical" in the first sentence and "where practical" in the third sentence of § 543.11(a); this commenter indicated that inmates should be able to use the inmate law library whenever they are free and that inmates should always be able to prepare legal documents in their own quarters. These proposed phrases are being retained, since use of an inmate law library requires adequate supervision by staff, and since inmates must schedule their activities in their own quarters to minimize conflict with other inmate activities in those quarters.

One comment objected to the limitation on sources of law books in proposed subsection (c) and indicated that inmates should be able to purchase law books from any source due to the high cost of such books. This rule has been modified (final § 543.11(d)) to allow inmates to receive softcover materials from any source. Continued limitations on receipt of hardcover publications are necessary because the security risk is increased when hardcover books are sent into an institution from sources other than publishers or bookstores. The expansion of the Bureau of Prisons law libraries should further alleviate the law book availability problem.

One comment objected to the limiting phrase "unless clearly impractical" in subsection (h) and indicated that the phrase is too vague and provides no guidance. However, this phrase was intentionally worded broadly to accommodate a wide variation in typewriter availability in the many types of institutions in the Bureau of Prisons.

(2) § *543.13* Some objections were raised to the requirement in proposed § 540.46 that attorneys make advance appointments prior to visiting an inmate-client, on the basis that attorneys, at least during regular visiting hours, should not be subject to any more stringent regulations than other visitors. The provision for attorney visits, however, is necessary given the arrangements which often must be made to provide added privacy for attorney-client consultation. This by no means prohibits attorneys from making regular visits without prior appointments under the same conditions as other visitors.

(3) § *543.14* Several comments objected to provisions in subsection (a) which indicates circumstances in which attorney correspondence or visiting may be limited. One comment indicated that attorney correspondence should only be limited if the attorney violates federal or state laws through his use of the mails. Another comment indicated that subsections (a)(2) and (a)(4) are vague and/or overbroad. The first comment fails to recognize the fact that security precautions must be geared to the degree of threat to institutional security rather than simply to the source of the threat. As to the second comment, we disagree. It is contemplated, however, that these provisions will be invoked infrequently and only after other courses of action have proved to be insufficient.

(4) § *543.15*–§ *543.16* One comment objected to the word "generally" in the second sentence of § 543.15(a) and indicated that legal aid programs should always be allowed to operate with the same independence as privately retained attorneys. The Bureau of Prisons agrees with that argument but is bound by state laws and court rules which restrict the operation of legal aid programs.

One comment objected to provisions in proposed §§ 543.15(c) and 543.6(b)(3) and indicated that provisions relating to legal assistants should be no more restrictive than those relating to attorneys in proposed § 543.14. However, legal assistants are not subject to the same educational, professional, and licensing requirements as attorneys, and extra caution in the supervision of assistants' activities is therefore appropriate.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96(t), 28 CFR, Chapter V, is amended as set forth below. The effective date of these rules will be August 1, 1979.

Dated: June 27, 1979.

Norman A. Carlson,

Director, Bureau of Prisons.

Part 540, Subpart F is added as set forth below:

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

* * * * *

Subpart F—Incoming Publications

Sec.

540.70 Purpose and scope.
540.71 Procedures.

Authority: 5 USC 301; 18 USC 4001, 4042, 4081, 4082, 5015, 5039; 28 USC 509, 510; 28 CFR 0.95–0.99.

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Subpart F—Incoming Publications

§ 540.70 Purpose and scope.

(a) The Bureau of Prisons permits an inmate to subscribe to or to receive publications without prior approval and has established procedures to determine if an incoming publication is detrimental to the security, discipline, or good order of the institution or if it might facilitate criminal activity. The term publication, as used in this rule, means a book, or a single issue of a magazine or newspaper, plus such other materials addressed to a specific inmate as advertising brochures, flyers, and catalogues.

(b) The Warden may designate staff to review and where appropriate to approve all incoming publications in accordance with the provisions of this rule. Only the Warden may reject an incoming publication.

§ 540.71 Procedures.

(a) An inmate may receive hardcover publications only from the publisher, from a book club, or from a bookstore. An inmate may receive softcover material (for example, paperback books, newspapers, magazines) from any source. The Warden may have all incoming publications inspected for contraband.

(b) The Warden may reject a publication only if it is determined detrimental to the security, good order, or discipline of the institution or if it might facilitate criminal activity. The Warden may not reject a publication solely because its content is religious, philosophical, political, social or sexual, or because its content is unpopular or repugnant. Publications which may be rejected by a Warden include but are not limited to publications which meet one of the following criteria:

(1) It depicts or describes procedures for the construction or use of weapons, ammunition, bombs or incendiary devices;

(2) It depicts, encourages, or describes methods of escape from correctional facilities, or contains blueprints, drawings or similar descriptions of Bureau of Prisons institutions;

(3) It depicts or describes procedures for the brewing of alcoholic beverages, or the manufacture of drugs;

(4) It is written in code;

(5) It depicts, describes or encourages activities which may lead to the use of physical violence or group disruption;

(6) It encourages or instructs in the commission of criminal activity;

(7) It advocates or may lead to prohibited sexual activity in the institution.

(c) The Warden may not establish an excluded list of publications. This means the Warden shall review the individual publication prior to the rejection of that publication. Rejection of several issues of a subscription publication is not sufficient reason to reject the subscription publication in its entirety.

(d) Where a publication is found unacceptable, the Warden shall promptly advise the inmate in writing of the decision and the reasons for it. The notice must contain reference to the specific article(s) or material(s) considered objectionable. The Warden shall permit the inmate an opportunity to review this material for purposes of filing an appeal under the Administrative Remedy Procedure unless such review may provide the inmate with information of a nature which is deemed to pose a threat or detriment to the security, good order or discipline of the institution or to encourage or instruct in criminal activity.

(e) The Warden shall provide the publisher or sender of an unacceptable publication a copy of the rejection letter. The Warden shall advise the publisher or sender that he may obtain an independent review of the rejection by writing to the Regional Director within 15 days of receipt of the rejection letter. The Warden shall return the rejected publication to the publisher or sender of the material unless the inmate indicates an intent to file an appeal under the Administrative Remedy Procedure, in which case the Warden shall retain the rejected material at the institution for review. In case of appeal, if the rejection is sustained, the rejected publication shall be returned when appeal or legal use is completed.

(f) The Warden may set limits locally (for fire, sanitation or housekeeping reasons) on the number or volume of publications an inmate may receive or retain in his quarters. The Warden may authorize an inmate additional storage space for storage of legal materials in accordance with the Bureau of Prisons procedures on personal property of inmates.

Part 541, Subpart D is added as set forth below:

* * * * *

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

Subpart A [Reserved]

Subpart B * * *

* * * * *

Subpart C [Reserved]

Subpart D—Control Unit Programs

Sec.

541.40 Purpose and scope.
541.41 Institutional referral.
541.42 Designation of hearing administrator.
541.43 Hearing procedure.
541.44 Decision of the hearing administrator.
541.45 Executive panel review and appeal.
541.46 Programs and services.
541.47 Admission to control unit.
541.48 Review of control unit placement.
541.49 Release from the control unit.

Authority: 5 USC 301; 18 USC 4001, 4042, 4081, 4082, 4161–4166, 5015, 5039; 28 USC 509, 510; 28 CFR 0.95–0.99.

* * * * *

Subpart D—Control Unit Programs

§ 541.40 Purpose and scope.

(a) In an effort to maintain a safe and orderly environment within its institutions, the Bureau of Prisons operates Control Unit Programs intended to place into a separate unit those inmates who are unable to function in a less restrictive environment without being a threat to others or to the orderly operation of the institution. The Bureau of Prisons provides written criteria for the:

(1) Referral of an inmate for possible placement within the Control Unit;

(2) Selection of an inmate for placement within the Control Unit;

(3) Regular review of an inmate while housed in the Control Unit; and

(4) Release of an inmate from the Control Unit.

(b) The Bureau of Prisons provides an inmate confined within the Control Unit the opportunity to participate in programs and activities restricted as necessary to protect the security, good order, or discipline of the unit.

§ 541.41 Institutional referral.

(a) The Warden shall submit a recommendation for referral of an inmate for placement in the Control Unit to the Regional Director in the region where the inmate is located.

(b) The Warden shall consider the following factors in a recommendation for Control Unit placement.

(1) Any incident during confinement in which the inmate has caused injury to other persons.

(2) Any incident in which the inmate has expressed threats to the life or well-being of other inmates or staff members.

(3) Any incident involving possession by the inmate of deadly weapons or dangerous drugs.

(4) Any incident in which the inmate is involved in a disruption of the orderly operation of a prison, jail or other correctional institution.

(5) Escapes and escape attempts.

(6) The nature of the offense for which committed. For referral to a control unit in a Security Level 6 institution, factors (1)–(4) in this paragraph (b) may be considered; for referral to a control unit in a Level 6 institution, factors (5) and (6) in this paragraph (b) may not be considered, except as provided in paragraph (c) of this section.

(c) The Warden may not refer an inmate for placement in the Control Unit:

(1) If the inmate shows evidence of significant mental disorder or major physical disabilities;

(2) Solely on the nature of the crime which resulted in the inmate's incarceration if the referral is to a Control Unit in a Level 6 institution; for that referral, the nature of the crime may be considered in combination with other factor(s), as described in paragraph (b) of this section;

(3) Solely on the basis of escape attempts, or incidents involving possession of escape tools or plans if the referral is to a Control Unit in a Security Level 6 institution; for that referral, however, if injury or threat to life or use of deadly weapons occurs in an escape attempt, a requisite factor will be met, to warrant consideration for a recommended referral to the Control Unit.

(4) On the basis that the inmate is a protection case, e.g., a homosexual, an informant, etc., unless the inmate meets other criteria as described in paragraph (b) of this section.

§ 541.42 Designation of hearing administrator.

The Regional Director shall designate a person in the Regional Office to review the institutional referral and to conduct a hearing on the appropriateness of an inmate's placement in the Control Unit. The Hearing Administrator shall have the following qualifications:

(a) Correctional experience, including institutional work with inmates, processing of inmate disciplinary actions, significant institutional experience in observing and evaluating inmate adjustment and disruptive behavior, and knowledge of the options available in the Bureau of Prisons for dealing with such conduct;

(b) Lack of former personal involvement in an Institution Disciplinary Committee action involving the particular inmate referred; and

(c) Familiarity with Bureau of Prisons policies and operations, including the criteria for placement of inmates in different institutions and in the Control Unit.

§ 541.43 Hearing procedure.

(a) The Hearing Administrator shall provide a hearing to an inmate recommended for placement in the Control Unit. The hearing shall take place at the recommending or sending institution.

(b) The hearing shall proceed as follows.

(1) Staff shall provide an inmate with advance written notice of the hearing and a copy of this rule at least 24 hours prior to the hearing. The notice will advise the inmate of the specific act(s) or other evidence which forms the basis of the recommendation that the inmate be transferred to the Control Unit, unless such evidence would likely endanger staff or others. If an inmate is illiterate, staff shall explain the notice and this rule to the inmate and document that this explanation has occurred.

(2) The inmate has the right to be present throughout the hearing, except where institutional security is jeopardized. The Hearing Administrator may conduct a hearing in the absence of the inmate when the inmate refuses to appear. The Hearing Administrator shall document an inmate's refusal to appear, or other reason for non-appearance, in the record of the hearing.

(3) The Hearing Administrator shall provide an inmate the service of a full time staff member to represent the inmate, if the inmate so desires. The Hearing Administrator shall document in the record of the hearing an inmate's request for or refusal of staff representation. The inmate may select a staff representative from the local institution. If the selected staff member declines or is unavailable, 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 an inmate is illiterate, the Warden shall provide a staff representative. The staff representative shall be available to assist the inmate and, if the inmate desires, shall contact witnesses and present favorable evidence at the hearing. The Hearing Administrator shall afford the staff representative adequate time to speak with the inmate and to interview available witnesses.

(4) The inmate is entitled to present documentary evidence and to have witnesses appear, provided that calling witnesses would not jeopardize or threaten institutional security or individual safety, and further provided that the witnesses are available at the institution where the hearing is being conducted.

(i) The evidence to be presented must be material and relevant to the issue as to whether the inmate can and would function within any prison population without being or posing a threat to staff or others or to the orderly operation of the institution. The Hearing Administrator may not consider evidence offered to reverse or repeal a prior finding of a disciplinary violation.

(ii) Repetitive witnesses need not be called. Staff who recommend placement in the Control Unit are not required to appear, provided their recommendation is fully explained in the record. Staff who were involved, in any capacity, in former disciplinary proceedings need not be called as to their involvement in those proceeding, since this hearing is not to go over the factual basis for prior actions which have been decided.

(iii) When a witness is not available within the institution, or not permitted to appear, the inmate may submit a written statement by that witness. The Hearing Administrator shall, upon the inmate's request, postpone any decision following the hearing for a reasonable time to permit the obtaining and forwarding of written statements.

(iv) The Hearing Administrator shall document in the record of the hearing the reasons for declining to permit a witness or to receive documentary evidence.

§ 541.44 Decision of the hearing administrator.

(a) At the conclusion of the hearing and following review of all material related to recommendation for placement of an inmate in the Control Unit, the Hearing Administrator shall prepare a written decision as to whether this placement is warranted. The Hearing Administrator shall:

(1) Prepare a summary of the hearing and of all information presented upon which the decision is based; and

(2) Indicate the specific reasons for the decision, to include a description of the act, or series of acts, or evidence on which the decision is based.

(b) The Hearing Administrator shall advise the inmate in writing of the

decision. The inmate shall receive the information described in paragraph (a) of this section unless it is determined that the release of this information could pose a threat to individual safety, or institutional security, in which case that limited information may be withheld. The Hearing Administrator shall advise the inmate that the decision will be submitted for review of the Executive Panel. The Hearing Administrator shall advise the inmate that, if the inmate so desires, the inmate may submit an appeal of the Hearing Administrator's decision to the Executive Panel. This appeal, with supporting documentation and reasons, must be filed within five working days of the inmate's receipt of the Hearing Administrator's decision.

(c) The Hearing Administrator shall send the decision, whether for or against placement in the Control Unit, and supporting documentation to the Executive Review Panel. Ordinarily this is done within 20 working days after conclusion of the hearing. Any reason for extension is to be documented.

§ 541.45 Executive panel review and appeal.

The Executive Panel is composed of the Regional Director of the region where the Control Unit is located to which referral is being considered and the Assistant Director, Correctional Programs Division.

(a) The Executive Panel shall review the decision and supporting documentation of the Hearing Administrator and, if submitted, the information contained in an inmate's appeal. The Panel shall accept or reject the Hearing Administrator's decision within fifteen working days of its receipt, unless for good cause there is reason for delay, which shall be documented in the record.

(b) The Executive Panel shall provide a copy of their decision to the Warden at the institution to which the inmate is to be transferred, to the inmate, to the referring Warden, and to the Hearing Administrator.

(c) An inmate may appeal a decision of the Executive Panel, through use of the Administrative Remedy Procedure, directly to the Office of General Counsel, Bureau of Prisons.

§ 541.46 Programs and services.

The Warden shall provide the following services to the Control Unit inmate.

(a) *Education:* The Warden shall assign a member of the education staff to the Control Unit on at least a part-time basis to assist in developing an educational program to fulfill each inmate's academic needs. Study courses are provided for all levels, i.e., adult basic education, GED programs, correspondence courses, areas of special interest, and college courses. The education staff member is also ordinarily a member of the Control Unit team.

(b) *Work Assignments:* Staff may assign inmates to a work assignment, such as range orderly. The manner in which these duties are carried out will reflect the inmate's unit adjustment, and will assist staff in evaluating the inmate.

(c) *Industries:* If an industry program exists in the Control Unit, each inmate participating in this program may earn industrial good time and industrial pay, subject to the regulations of Federal Prison Industries, Inc. The industry program is supervised by an industry foreman. The Control Unit team will determine when or if an industry assignment is appropriate for each inmate who submits a request for possible assignment to industries work.

(d) *Legal:* The Control Unit legal library is equipped with basic legal reference books, table and chair, typewriter, paper and carbon. The library is offered to each inmate, upon request and in turn.

(e) *Recreation:* The recreation program in the control unit shall include the following requirements.

(1) Each inmate shall have the opportunity to receive a minimum of seven hours weekly recreation and exercising out of the cell.

(2) Staff shall provide recreation by a rotation of participants during the day. When an inmate refuses recreation, staff shall note this fact on the inmate's recreation form.

(3) An inmate who desires to recreate with another inmate or other inmates may submit a request to do so. The inmates involved must all sign the form, indicating that they are willing to recreate together. Before release from the unit, each inmate must have shown, for a significant period of time, the ability to recreate at the same time and cooperatively with others.

(4) Staff shall offer outdoor recreation to inmates who desire this, weather permitting. Staff shall provide foul weather gear for inmates who choose to recreate outdoors during inclement weather.

(5) Staff shall provide various games and exercise materials as consistent with custodial considerations. Inmates who alter or intentionally damage recreation equipment will be deprived of the use of that equipment in the future.

(f) *Casemanagement Services:* The casemanager is responsible for all areas of case management including preparation of the visiting list, notarizing documents, preparation of various reports, and other casemanagement duties. The casemanager is ordinarily a member of the Control Unit team.

(g) *Counselor Services:* The unit counselor handles phone call requests, special concerns and requests of inmates, requests for administrative remedy forms, and is available for consultation.

(h) *Medical Services:* A member of the medical staff shall visit the Control Unit inmates daily. A physician will visit the unit as the need arises. Should an illness require evaluation or treatment which cannot be administered in the unit, and upon the request of the medical doctor or dentist, staff shall escort the inmate patient to the institution hospital.

(i) *Mental Health Services:* During the first 30-day period in the Control Unit, staff shall schedule the Control Unit inmate for a psychological evaluation conducted by a staff psychologist. Additional individual evaluations shall occur no less than every 3 months. The psychologist shall assist on other problems, related to his or her field, upon request. Psychiatric services will be provided when necessary.

(j) *Religion:* Staff shall issue religious materials upon request, limited by security consideration and housekeeping rules in the unit. This material may come from an inmate's personal property or from the chaplain's office. The institutional chaplains shall make weekly visits to the Control Unit, and additional visits as needed. Religious assemblies or group meetings will not be allowed in the unit.

(k) *Food Service and Personal Hygiene:* Staff shall provide food services and personal hygiene care consistent with the requirements of the current rule regarding Special Housing Units.

(l) *Correspondence:* Inmates confined in the Control Unit are considered, by reason of their placement in the Unit, to be security risks, and are therefore placed in restricted correspondence status.

(m) *Visiting:* Visits for inmates confined in the Control Unit are conducted in a controlled visiting area, separated from regular visiting facilities. Staff shall allot a minimum of 16 hours per month visiting time to the Control Unit inmate. The number of consecutive hours visiting on a particular day may be limited by the number of visitors waiting to visit. All visitors must be on the inmate's approved visiting list.

(n) *Commissary:* Staff shall establish a commissary purchase schedule. The

amount of money Control Unit inmates can spend per month is comparable to what inmates residing in the general population can spend for commissary and hobbycraft items. Staff may limit commissary items to ensure the safety and security of the unit.

§ 541.47 Admission to control unit.

Staff shall provide an inmate admitted to the Control Unit with:

(a) Notice of the expected duration of the inmate's confinement in the Control Unit;

(b) The choice of a closed front or open front cell (staff may place an inmate in a solid front cell, which screens out noise and light, only with the inmate's written consent); the inmate has this choice only when closed front cells are available in the unit;

(c) That personal property which is allowable in the unit (items made of glass or metal will not be permitted);

(d) A summary of the rules and regulations and disciplinary procedures applicable in the unit;

(e) An explanation of the activities of the Control Unit;

(f) The expectations of the inmate's involvement in Control Unit Activities; and

(g) The criteria for release from the unit, and how those criteria specifically relate to this confinement period in the unit and any specific requirements in the inmate's individual case.

§ 541.48 Review of control unit placement.

(a) Unit staff shall evaluate informally and daily an inmate's adjustment within the Control Unit. Once every 30 days, the Control Unit team, comprised of the Control Unit Manager, and other members designated by the Warden (ordinarily to include the casemanager and education staff member assigned to the unit) shall meet with an inmate in the Control Unit. The unit team shall consider the inmate's:

(1) Unit status;

(2) Adjustment; and

(3) Readiness for release from the unit. (See § 541.49(a))

(b) The Warden shall serve as the review authority at the institutional level for unit team actions.

(c) An inmate may appeal the Warden's decision to the Executive Panel within five working days of receipt of that decision.

(d) At least once every 60 to 90 days, the Executive Panel shall review the status of an inmate in the Control Unit to determine the inmate's readiness for release from the Unit. The Executive Panel shall consider those factors specified in § 541.49(a), along with any recommendations by the unit team and Warden.

The decision of the Executive Panel is communicated to the inmate. Ordinarily, the inmate is interviewed in person at this review. If the inmate refuses to appear for this review, or if there is other reason for not having an in-person review, this will be documented.

(e) An inmate may appeal a decision of the Executive Panel, through use of the Administrative Remedy Procedure, directly to the Office of General Counsel, Bureau of Prisons.

§ 541.49 Release from the control unit.

(a) Either the unit team, with approval of the Warden, or the Executive Review Panel may release an inmate from the Control Unit. The following factors are considered in evaluation of an inmate's readiness for release from the Control Unit:

(1) Personal grooming and cleanliness;

(2) Quarters' sanitation;

(3) Relationship with other inmates and staff members, which demonstrates improvement in the type of disruptive behavior which was the basis for placement in the unit;

(4) Satisfactory involvement in work and recreational activities and assignments;

(5) Adherence to institution and Bureau of Prisons rules and policy.

(b) An inmate released from the Control Unit may be returned:

(1) To the institution from which the inmate was originally transferred;

(2) To another institution;

(3) Into the general population of the institution which has the Control Unit.

Part 543 is added as set forth below:

PART 543—LEGAL MATTERS

Subpart A [Reserved]

Subpart B—Inmate Legal Activities

Sec.

543.10 Purpose and scope.
543.11 Legal research and preparation of legal documents.
543.12 Retention of attorneys.
543.13 Visits by attorneys.
543.14 Limitation or denial of attorney visits and correspondence.
543.15 Legal aid program.
543.16 Other paralegals, clerks, and legal assistants.

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

Subpart A [Reserved]

Subpart B—Inmate Legal Activities

§ 543.10 Purpose and scope.

The Bureau of Prisons affords an inmate reasonable access to legal materials and counsel, and reasonable opportunity to prepare legal documents. The Warden shall establish an inmate law library, and procedures for access to legal reference materials and to legal counsel, and for preparation of legal documents. Law libraries are not provided at Federal Community Treatment Centers or at the Federal Detention Center, El Paso, Texas.

§ 543.11 Legal research and preparation of legal documents.

(a) The Warden shall make materials in the inmate law library available whenever practical, including evening and weekend hours. The Warden shall allow an inmate a reasonable amount of time, ordinarily during the inmate's leisure time, to do legal research and to prepare legal documents. Where practical, the Warden shall allow preparation of documents in living quarters during an inmate's leisure time.

(b) The Warden shall periodically ensure that materials in each inmate law library are kept intact and that lost or damaged materials are replaced.

(c) Staff shall advise an inmate of rules and local procedures governing use of the inmate law library. Unauthorized possession of library materials by an inmate constitutes a prohibited act, generally warranting disciplinary action (see Part 541 of this chapter).

(d) An inmate may receive or purchase law materials from outside the institution, but the Warden may reject material if there is a compelling reason in the interest of institution security, good order, or discipline. The Warden may limit for housekeeping reasons the amount of legal materials an inmate may accumulate. An inmate may receive hardcover law books from publishers or bookstores. An inmate may receive softcover material (for example, paperback books, newspapers, magazines) from any source. An inmate may receive court or legal documents from court clerks or judges or from his attorney through the mail or incident to visiting. Staff may inspect these documents for contraband but may not read them if properly presented.

(e) An inmate is responsible for submitting his documents to court. Institution staff who are authorized to administer oaths shall be available to provide necessary witnessing of these

documents, as requested by inmates and at times scheduled by staff.

(f) Unless the institution has an active, ongoing legal aid program, the Warden shall allow an inmate the assistance of another inmate during their leisure time for purposes of legal research and preparation of legal documents. The Warden may impose limitations on this assistance in the interest of institution security, good order, or discipline.

(g) The institution staff shall, upon an inmate's request and at times scheduled by staff, duplicate legal documents if the inmate demonstrates that more than one copy must be submitted to court and that the duplication cannot be accomplished by use of carbon paper. The inmate shall bear the cost, and the duplication shall be done so as not to interfere with regular institution operations. Staff may waive the cost if the inmate is without funds or if the material to be duplicated is minimal, and the inmate's requests for duplication are not large or excessive.

(h) Unless clearly impractical, the Warden shall allow an inmate preparing legal documents to use a typewriter, or, if the inmate cannot type, to have another inmate type his documents. The Warden may allow the inmate to hire a public stenographer to type documents outside the institution, but the institution may not assume the expense of hiring the public stenographer. Staff shall advise the inmate of any delay in the typing of which they have received notice.

(i) The Warden shall give special time allowance for research and preparation of documents to an inmate who demonstrates a requirement to meet an imminent court deadline. Otherwise, each inmate shall continue his regular institutional activities without undue disruption by legal activities.

(j) With consideration of the needs of other inmates and the availability of staff and other resources, the Warden shall provide an inmate confined in disciplinary segregation or administrative detention a means of access to legal materials, along with an opportunity to prepare legal documents. The Warden shall allow an inmate in segregation or detention a reasonable amount of personal legal materials. In no case shall the amount of personal legal materials be such as to pose a fire, sanitation, security, or housekeeping hazard.

§ 543.12 Retention of attorneys.

(a) The Warden shall allow an inmate to contact and retain attorneys. With the written consent of the inmate, staff may advise an attorney of the inmate's available funds. Staff may not interfere with selection and retention of attorneys if the inmate has attained majority and is mentally competent. If the inmate is a mental incompetent or a minor, the Warden shall refer to the inmate's guardian or to the appropriate court all matters concerning the retention and payment of attorneys.

(b) The Bureau of Prisons may not act as guarantor or collector of fees. As to correspondence with attorneys and telephone calls to attorneys, see Part 540 of this chapter.

§ 543.13 Visits by attorneys.

(a) The Warden shall, under the conditions of this section, permit visits by the retained, appointed, or prospective attorney of an inmate or by an attorney who wishes to interview an inmate as a witness.

(b) The Warden generally may not limit the frequency of attorney visits since the number of visits necessary is dependent upon the nature and urgency of the legal problems involved. The Warden shall set the time and place for visits, which ordinarily take place during regular visiting hours. Attorney visits shall take place in a private conference room, if available, or in a regular visiting room in an area and at a time designed to allow a degree of privacy. The Warden may make exceptions according to local conditions or for an emergency situation demonstrated by the inmate or visiting attorney.

(c) The attorney shall make an advance appointment for the visit through the Warden prior to each visit; however, the Warden shall make every effort to arrange for a visit when prior notification is not practical.

(d) The Warden may require an attorney to indicate where he is licensed as an attorney and how that fact may be verified. Prior to each appointment or visit, the Warden shall require each attorney to identify himself and to confirm that he wishes to visit an inmate who has requested his visit or whom he represents or whom he wishes to interview as a witness. The Warden may not ask the attorney to state the subject matter of the law suit or interview. If there is any question about the identity of the visitor or his qualification as an attorney in good standing, the Warden shall refer the matter to the Regional Counsel.

(e) Staff may not subject visits between an attorney and an inmate to auditory supervision. The Warden may permit tape recordings to be used by an attorney during the course of a visit only if the attorney states in writing in advance of the interview that the sole purpose of the recording is to facilitate the attorney-client or attorney-witness relationship.

(f) The Warden may, at any time, subject an attorney to a search of his person and belongings for the purpose of ascertaining if contraband is present, as a condition of visiting an inmate.

§ 543.14 Limitation or denial of attorney visits and correspondence.

(a) An act by an attorney which violates Bureau regulations or institution guidelines and which threatens the security, good order, or discipline of the institution is grounds for limitation or denial by the Warden of the attorney's privileged visitation and correspondence rights. Acts by an attorney which may warrant such limitation or denial include, for example the following:

(1) A false statement as to the attorney's identity or qualifications;

(2) A plan, attempt, or act to introduce contraband into the institution;

(3) A conspiracy to commit, an attempt to commit, or the actual commission of an act of violence within an institution; and

(4) Encouraging an inmate to violate the law, Bureau of Prisons rules, or local implementing guidelines.

(b) Unless the breach of regulations is extreme or repeated, limitation rather than a denial of visitation or correspondence rights is proper, especially where the inmate is represented by the attorney and is confronted with a court deadline. For example, the Warden may subject an attorney to a search of his person and belongings or may permit the attorney only non-privileged correspondence. The Warden shall also consider referral of the matter to the state agency regulating the attorney's professional conduct.

(c) An act by an inmate in violation of Bureau regulations or institution guidelines warrents a limitation by the Warden of the inmate's correspondence or visiting rights with attorneys only if necessary to protect institution security, good order, or discipline. The Warden may not deny correspondence or visiting rights with attorneys generally.

(d) The attorney may appeal any limitation or denial by the Warden of attorney visits or correspondence rights to the Regional Director. The inmate affected may appeal through the Administrative Remedy Procedures.

§ 543.15 Legal aid program.

(a) A legal aid program which is funded or approved by the Bureau is expected to provide a broad range of

legal assistance to inmates. Staff shall allow these programs generally to operate with the same independence as privately retained attorneys. The Warden shall refer a request or decision to terminate or restrict a program, or individual participants in a program, to the Regional Counsel.

(b) In order to promote the inmate-program relationship, the Warden shall give those students or legal assistants working in legal aid programs the same status as attorneys with respect to visiting and correspondence except where specific exceptions are made in this section and in Part 540 of this chapter.

(c) An attorney or law school professor shall supervise students and legal assistants participating in the program. The supervisor shall provide the Warden with a signed statement accepting professional responsibility for acts of each student or legal assistant affecting the institution. The Warden may require each student or legal assistant to complete and sign a personal history statement and a pledge to abide by Bureau regulations and institution guidelines. If necessary to maintain security or good order in the institution, the Warden may prohibit a student or legal assistant from visiting or corresponding with an inmate.

§ 543.16 Other paralegals, clerks, and legal assistants.

(a) The Bureau of Prisons recognizes the use of assistants by attorneys to perform legal tasks and, with proper controls and exceptions enumerated in this section and in Part 540 of this chapter, accords such assistants the same status as attorneys with respect to visiting and correspondence.

(b) The attorney who employs an assistant and who wishes the assistant to visit or correspond with an inmate on legal matters shall provide the Warden with a signed statement including:

(1) Certification of the assistant's ability to perform in this role and awareness of the responsibility of this position;

(2) A pledge to supervise the assistant's activities; and

(3) Acceptance of personal and professional responsibility for all acts of the assistant which may affect the institution, its inmates, and staff. The Warden may require each assistant to fill out and sign a personal history statement and a pledge to abide by Bureau regulations and institution guidelines. If necessary to maintain security or good order in the institution, the Warden may prohibit a legal assistant from visiting or corresponding with an inmate.

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Part IX

Department of the Interior

Bureau of Land Management

Outer Continental Shelf Minerals Leasing and Rights-of-Way Granting Programs

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2880 and 3300

[Circular No. 2446]

Outer Continental Shelf Minerals Leasing and Rights-of-Way Granting Programs

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking implements the changes mandated in the Outer Continental Shelf Mineral Leasing and Rights-of-way Granting program administered by the Secretary of the Interior by the enactment of the Outer Continental Shelf Lands Act Amendments of 1978. The final rulemaking contains changes to make Part 3300 more readable as directed by Executive Order 12044, and rearranges the subparts to make the part easier to follow and understand. Finally, subpart 2883, (Part 2880) Rights-of-way on the Outer Continental Shelf, is being moved to Part 3300 in order to consolidate all Outer Continental Shelf programs in one part.

EFFECTIVE DATE: July 30, 1979.

ADDRESS: Any recommendations or comments on the final rulemaking should be sent to: Director (712), Bureau of Land Management, Department of the Interior, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: William J. Quinn (202) 343–8457 or Robert C. Bruce (202) 343–8735.

SUPPLEMENTARY INFORMATION: The proposed rulemaking on the Outer Continental Shelf Minerals Leasing and Rights-of-way Granting program was published in the **Federal Register** on February 1, 1979 (44 FR 6471). The proposed rulemaking invited comments for 60 days ending on April 2, 1979. During the comment period, a total of 37 comments were received and considered. Thirteen comments came from companies interested in the Outer Continental Shelf, 12 came from State Governments, five from industry interest groups, three from environmental interest groups and four from Federal agencies.

Among the general comments were expressions that the rulemaking followed the requirements of the Outer Continental Shelf Land Act Amendments of 1978 (43 U.S.C. 1331 et seq.). Several of the State comments also commended the Department of the Interior on its efforts to work with the States on this rulemaking and to incorporate provisions that facilitated the coordination of the Outer Continental Shelf program with the States. One comment was that the rulemaking was wordy and a large portion of it could be eliminated in keeping with the provisions of Executive Order 12044. However, most of the comments requested additional wording for the rulemaking, wording that made the final rulemaking longer than the proposed document.

Several of the comments expressed concern that the proposed rulemaking made no reference to the national policy section or the mandate in section 3 of the Outer Continental Shelf Lands Act Amendments to protect specific resources, such as fisheries or recreation. In response to these comments, a new section on policy was added to clarify the Bureau of Land Management's responsibilities and to include these references.

Several comments raised questions about the lack of reference in the rulemaking to the National Environmental Policy Act, (42 U.S.C. 4321 et seq.), the Coastal Zone Management Act (16 U.S.C. 1451 et seq.), and protection of the environment mandated by the policy sections of the Outer Continental Shelf Lands Act Amendments. These comments were not only general but were made in reference to many sections of the proposed rulemaking. These three areas are, among others, areas of major concern to the Department of the Interior and the Bureau of Land Management in carrying out their responsibilities under the Outer Continental Shelf Lands Act, as amended. Not only are these responsibilities recognized and accepted, but the National Environmental Policy Act and many other statutes impose obligations on the Department and the Bureau at virtually every phase of the leasing and resource management process. For these reasons, it was not considered necessary to enumerate in every section of the rulemaking the legal obligations of the Department and the Bureau. This repetition of clearly accepted obligations would be redundant and lengthen the rulemaking.

A few comments stated that a section was needed in the rulemaking that outlined the responsibilities of each of the agencies involved in the mineral leasing program on the Outer Continental Shelf. The addition of a "responsibilities" section was not considered appropriate for inclusion in the text of the rulemaking which deals primarily with the role of the Bureau of Land Management. The Bureau's responsibilities are implicit in this rulemaking: the responsibilities of other agencies in the leasing process are covered in their own rules. Some important responsibilities of other agencies are mentioned in the text as required for clarity, typically by cross-reference to other regulations or by citation of applicable laws. The responsibilities of the major Federal agencies participating in the process are outlined below.

Briefly, the Bureau of Land Management is the lead agency for the Outer Continental Shelf leasing process and is responsible for the issuance and maintenance of leases. The Bureau of Land Management also issues rights-of-way for the transportation of minerals through the Outer Continental Shelf. The Bureau of Land Management, along with the U.S. Geological Survey, is responsible for providing an index and summary of existing information on the Outer Contiental Shelf to affected States.

The U.S. Geological Survey provides technical advice throughout the leasing process. The Geological Survey is responsible for supervising and regulating pre-lease exploration activity and post-lease exploration, development and production activities on the lease area. The Geological Survey also grants rights of use and easements on the Outer Continental Shelf.

The Department of Energy has responsibilities transferred from the Department of the Interior to issue regulations which relate to:

(1) fostering of competition for Federal leases;

(2) implementation of alternative bidding systems authorized for the award of Federal leases;

(3) implementation of diligence requirements for operations conducted on Federal leases;

(4) setting rates of production for Federal leases; and

(5) specific procedures, terms and conditions for the acquisition and disposition of Federal royalty interest taken in kind, except determination of value. The Department of Energy is afforded up to 30 days to review the final lease terms and conditions on all Outer Continental Shelf leases relative to the five functions cited above.

A number of comments expressed a desire for extensive cross-referencing to other laws in various sections of the rulemaking, especially the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). These comments

were not adopted, but a new section on cross-references, 3300.0–6, was added to the final rulemaking which includes extensive cross-reference to other applicable regulations, including National Environmental Policy Act compliance.

Several comments suggested changes in the definitions used in the proposed rulemaking. After careful consideration of the suggested changes, it was decided to change the definition of the term "mineral" in order to remove an ambiguous reference. All of the other definitions track the language of the Outer Continental Shelf Lands Act Amendments and are sufficiently clear.

A suggestion was offered that section 3300.1 set the scale and availability of leasing maps and diagrams. The preparation of leasing maps and diagrams is an internal Bureau of Land Management procedure. Further, the scale of available maps and diagrams is subject to change and the Bureau should be permitted the broadest possible latitude in the preparation process.

A few comments on section 3300.1 questioned why withdrawal of areas of the Outer Continental Shelf as provided for in section 12 (a) and (d) of the Act was not covered. The focus of withdrawal, e.g., for defense or any other purpose in the national interest, and the procedures for withdrawal are not appropriate for consideration in this rulemaking which deals with mineral leasing. However, deletion of tracts, for whatever reason, is specifically covered by the rulemaking.

A large number of comments were received on section 3300.2 indicating confusion as to the form, content, timing and distribution of information to the affected States. In reference to these comments, the wording of the section has been changed in an effort to clear up the confusion reflected in the comments.

The current policy of the Department of the Interior is to prepare a joint Bureau of Land Management—U.S. Geological Survey regional index of Outer Continental Shelf information. This index is widely distributed and is updated, as needed, so as to be of maximum use to the affected States and the public. This joint index lists those documents prepared and controlled by each agency so the user will be required to refer to only one list for all relevant information. Another change in section 3300.2 was the addition of language that emphasizes that information under the control of the Bureau of Land Management that is listed on the index, e.g., environmental statements or studies, lease sale data, etc., generally is information that is not protected by the Freedom of Information Act and will be released to the public upon request. Information under the control of the U.S. Geological Survey that is listed in the index is more likely to be proprietary and is subject to the U.S. Geological Survey regulations for thr release of such data. The rulemaking makes it clear that the Bureau of Land Management cannot release protected data listed on the index under the control of the U.S. Geological Survey. The section also closely controls the release of proprietary data controlled by the Bureau of Land Management, namely the specific nominations of tracts made by industry. This expanded wording, which is in response to a sizable number of comments on this subject, should dispell doubts expressed in the comments about the release of protected information listed on the index.

The timing of the updating of the index drew a large number of comments. As was pointed out, the index must be current in order to be useful. The updating of the index is likely to vary greatly among regions according to the levels of leasing and development activity taking place in an area. Therefore, it is not practicable to set a definite timetable in the rulemaking for the updating of the index, as serveral comments suggested. The Department of the Interior will make every effort to keep the public fully informed of the availability of key documents through the use of local press releases, **Federal Register** notices and other means. Such notices will also be used to notify the public of the availability of an updated index, as was recommended by one comment.

Since the index is a public document that will receive broad distribution, the suggestions that its distribution be limited by the rulemaking were not adopted. Similarly, recommendations to restrict the distribution of information listed in the index could not be adopted. The Bureau of Land Management will, as required by law, honor all requests for information except that which is withheld under the Freedom of Information Act or information protected by the provisions of the Outer Continental Shelf Lands Act Amendments. The phrase "in conjuncton with the USGS" was made a part of the section as recommended in one of the comments to clarify the intent to publish a single joint index for each region. The cross references to 30 CFR 250, 251 and 252 are retained to guide the readers of this rulemaking to companion regulations but do not imply that the Bureau of Land Management can release any information controlled by the U.S. Geological Survey.

A number of wording changes recommended in the comments were adopted to make section 3300.2 internally consistent. Finally, a recommendation to move section 3300.2 and make it a part of section 3313 Call for Nominations and Comments was not accepted because the information covered by section 3300.2 is much broader than that covered by a single pre-lease event in the leasing process.

Several comments were directed to section 3300.3. As was suggested, wording from existing regulations on this subject was restored to the final rulemaking to make it clear that the extraction of helium will not be the cause for substantial delay in the delivery of natural gas. In order to clear up confusion about who determines reasonable compensation for losses, wording was added that the United States would make such determinations. However, comments that suggested that the Federal government should be made solely responsible for all risk, cost and expenses connected with the removal of helium were not adopted. The determination of those issues will be made on case-by-case basis when the United States exercises its option to extract helium.

In connection with section 3300.4 payments, comments suggesting that the section be deleted in favor of specific references to payments at each stage of the process which calls for a payment were not adopted. The suggested change would add a great deal of language to the rulemaking and not add much additional clarity.

One comment recommended the use of electronic fund transfer or Federal fund drafts as the required form of payment. While the merits of these systems are under discussion and the rulemaking is flexible enough to allow their use as methods of payment, a formal adoption of this recommendation cannot be made at this time. This recommendation is being considered as a separate issue. If these systems can be adapted to the OCS Leasing program they will be considered in a future amendment. There are many amounts of money collected under this program that are too small to be amenable to payment to either of these two systems.

Several comments, in addressing section 3313, suggested that the rulemaking include a commitment to publish the Call for Nominations and Comments for oil and gas lease sales. In keeping with the current policy of the Department of the Interior to publish calls in the **Federal Register** and to

announce them through press releases, this suggestion has been adopted and appropriate language added to the section.

A comment suggested additional State involvement in the preparation of the Call for Nominations and Comments. The wording of section 3313.1(a) was not changed. An additional layer of coordination efforts mandated by regulation would only serve to burden an already complicated pre-lease process. The affected States have ample opportunities for input to the very early leasing decision and sale design. Affected States are, by law and regulation, given the opportunity to review and comment on the 5-year leasing program which is now being developed and which will be reviewed annually and on the Call for Nominations, after it is issued. The intergovernmental planning program also allows continuous input by affected States to all phases of the leasing and lease management processes.

There were several suggestions to further describe the terms used in section 3313 of the rulemaking. In response, language has been added showing examples of the types of information the Director may request in the Call for Nominations and Comments. The Call requests "nominations", i.e., asks interested parties to nominate tracts they wish to be included in a lease sale for an area which has been designated as being potentially available for leasing. One suggestion was that "negative nominations" referred to in the Outer Continental Shelf Lands Act Amendments be explicitly included in the term "nominations" as it is used in this section. This is not the intent of the Act. The Call requests nominations as well as "Comments" on potential environmental impacts and use conflicts in the areas under consideration. The comments often identify areas or specific tracts which the individuals making comments feel should receive special concern or analysis, or which should be deleted from the sale area. The comment to delete a tract or tracts is what is referred to in the Act as a "negative nomination."

Nominations of tracts by the industry or States do not assure their selection for further analysis or ultimate inclusion in a lease sale. Comments, including the request to delete a tract, or so called "negative nominations" do not assure automatic deletion of a tract or tracts from the sale area.

Similarly, selection of tracts for further analysis does not assure their inclusion in any subsequent lease sale offering, nor does it mean they will be deleted for environmental or other reasons. In other words, it is the intention of the Bureau of Land Management to consider, during the Call and the tentative tract selection processes, all available information which might influence the recommendation of tracts for further environmental analysis. Such information includes, but is not limited to, multiple uses of the area, including fisheries, environmental and geological conditions, resource potential, and indications of interest. Tentative tract selection leads to recommendations by the Director to the Secretary of the tracts which should be further analyzed.

The term "recommendation", as it is used in the rulemaking, implies justification of the decision being recommended. This being true, it was not necessary to adopt a suggestion that language be added to the rulemaking requiring the Director to justify his recommendations.

As suggested by several comments, a new section 3313.2 has been added providing procedures for State consultation on tracts within three miles of a State's seaward boundary. Subpart 3314, tentative tract selection, has been given a new title and strengthened as a result of comments directed to it. First, a sentence has been added to section 3314.1(a) permitting the Director to include in the recommendation tracts not nominated. Second, another sentence has been added to the same section requiring the Director to consider environmental and all other relevant information before making recommendations on tract selection. For clarity, the section has been broken into two subsections, with the word "tentatively" to indicate that this stage is an interim designation of tracts to be further considered for leasing. Another change in subsection (b) was the addition of "local governments" to the list of agencies and individuals whose recommendations will be considered. Finally, a phrase has been included in subsection (b) requiring the Director not only to assess the impacts of leasing but also to develop appropriate measures to mitigate adverse impacts.

A new subsection (c) has been added to the section requiring the Director to inform the public as soon as possible of any tract additions or deletions that occur after the tentative selections have been made.

A suggestion that a public hearing be held before a tentative tract selection was not adopted since there is ample opportunity for public input associated with the Call for Nominations and Comments. An additional hearing would only burden the process without yielding any real benefit.

A suggestion that was not adopted was that a coordination process be written into section 3314 of the rulemaking. The language calls for consultation with other agencies that is designed to determine priorities and will vary with each tract selection process.

In connection with section 3314.2, a suggestion was made that the term "reasonable economic production unit" be defined. The term is used as a criterion for selecting tracts larger than 5760 acres. This decision will be made on a sale or tract basis.

The language of subpart 3315, lease sales, was changed in several instances in response to a number of comments. The titles of the first two sections were changed to more accurately reflect the contents of the sections.

Several comments suggested that affected States be directly involved in the development of lease stipulations and conditions. This suggestion could not be adopted since it would add another layer of consultation that is not warranted. Affected States are afforded an opportunity for continuous input into leasing decisions through the intergovernmental planning program. Further, State agencies are consulted while mitigating measures are being developed during the environmental analysis. Affected States have an opportunity to submit written comments on mitigating measures and may give testimony at hearings, during the public comment period. Finally, States are allowed 60 days to comment on the proposed notice of rule, which includes mitigating measures as part of the proposal.

Suggestions to significantly expand or restrict the involvement of affected States and to require consultation with local governments, the industry and the public, go beyond the intent of the Outer Continental Shelf Lands Act, as amended, and could not be accepted since the language of section 19 of the Act is quite specific on this point. For example, suggestions made to require the Secretary of the Interior to give the same weight to affected local government recommendations as to those from the Governors of affected States could not be adopted because of the very precise wording of section 19(c) of the Act. Similarly, the scope of the recommendations by affected States and which the Secretary typically must accept is clearly spelled out in section 19(a) of the Act and cannot be expanded, as suggested, to cover comments on lease stipulations. This is

not to imply, however, that Governors or any member of the public are in any sense prohibited from commenting on any part of the proposed notice or that any such comment will not be given due consideration.

Subsection (a) of section 3315.1 has been revised, as suggested, to define "mitigating measures" as including lease stipulations but does not spell out the issues which the stipulations might address, e.g., geologic hazards, etc. These issues are sale or tract-specific and would not be appropriately the subject of a rulemaking that covers all sales. Another suggestion on this section was that industry be contacted to discuss the development of particularly unusual or extreme stipulations. While this suggestion was not adopted, it was felt to have merit and efforts will be made by the Department of the Interior, when appropriate, to elicit industry involvement in the development of stipulations that impose substantial burdens on the lessee.

Another suggestion of merit that was not added to section 3315.1 of the rulemaking dealt with the addition of a sale date in the proposed notice. While this is an item that is not appropriately included in a rulemaking, there will be an attempt to publish a tentative sale date as part of the proposed notice to facilitate planning.

A new subsection (c) added to section 3315.1 outlines the publication procedure on a proposed notice of sale. The subsection also requires the notice to be sent to the Governor of any affected State at the same time it is published in the **Federal Register.** This subsection was added when it was discovered that the proposed rulemaking failed to include this requirement.

A suggested amendment to section 3315.2(b) was adopted by the addition of a new sentence to expand the provision relating to how a determination of national interest will be made and to reemphasize the Department of the Interior's commitment to developing resources consistent with the findings, purposes and policies of the Outer Continental Shelf Lands Act, as amended. For further clarity, subsection (b) was divided into two parts, with the second part becoming a new subsection (c). A recommendation to require the Secretary to respond to the Governors' recommendations within 30 days was rejected as being too restrictive.

A new section 3315.3, Department of Energy review added to the regulations specifies the review process with the Department of Energy. This change was made in response to a suggestion that pointed out the importance of this mandated review.

Section 3315.4(b) was amended by the addition of a sentence pointing out that the suggested formats for bidder submissions and joint bidder's statements have been prepared and added to Part 3300 as appendices. This addition will be of assistance to those who are required to file the documents. A cut-off date for the use of multiple bidding submissions for statistical purposes was added to section 3315.4(e) to reflect the language of the Outer Continental Shelf Lands Act Amendments. The need for this date was indicated in several comments. An amendment that was suggested but not adopted was a request that the procedures for multiple bidding be spelled out in greater detail. The Department of the Interior will detail the procedures for use of the multiple bidding systems at the time a decision is made to use such systems.

Many minor wording changes to subpart 3316, Issuance of Leases, were made. Most of these changes were recommended in the comments and are designed to clarify the subpart. One major change was the addition of a sentence to section 3316(b) to include two provisions of the Outer Continental Shelf Lands Act Amendments relating to lease term. One suggestion to provide for a 10-year lease term for tracts when production technology is not available for the water depths involved was not accepted. Rather the statutory language was retained to allow the determination of the need for a longer lease term to be made on a sale-by-sale basis.

A number of comments requested that the reference to diligence requirements in section 3316.4(i) be expanded to included definitions, standards, hearing procedures, etc., or alternatively, be deleted until such definitions and procedures are available. While the expressed concerns are valid, the language of the subsection was not changed. The subsection necessarily draws the attention of potential bidders to the diligence provisions of the Act. The establishment of diligence requirements and the setting of production rates are the responsibility of the Department of Energy. The U.S. Geological Survey has the responsibility for setting deadlines for the submission of exploration and development plans, requirements which deal with diligence in the broad sense of the word. The U.S. Geological Survey has already surfaced exploration and development plan submission requirements in its proposed rulemaking, 30 CFR 250.34. There is movement, therefore, towards more precise definitions of the responsibilities of lessees to actively explore and develop offshore leases.

Several comments objected to the possibility of a potential bidder receiving a notice of disqualification just prior to a lease sale and wanted a 30 or 60 day notice period to be included. The language of the law prohibits submission of bids by a bidder found not to be diligent on other leases, without mention of a specific period for notification prior to a sale. However in practice, it is reasonable to expect that a potential bidder would have ample notice of possible disqualification because of the statutory requirement for notice and hearing. No change was made in the rulemaking.

Among other changes to section 3316.5 is the rearrangement of provisions to more closely follow the sequence of events in the issuing of leases. A suggestion to require bidders to submit an "add-on" bid to determine the winning high bid in case of a tie bid was not adopted since tie bids are rare. The procedure outlined is sufficient to handle the problem. Several comments objected to the reduced time allowed for execution of leases and payment of the balance of the cost bonus. The language was left to stand. The benefits to the Government far outweigh the inconvenience which successful joint bidders might experience in executing leases within the fifteen days allowed. Recommended language to further clarify what happens when the 15th day coincides with a holiday or weekend was not adopted because it was not needed. Standard practice recognized in the Government extends a deadline that falls on a holiday or weekend to the next working day.

Several suggestions on section 3316.5(i), renumbered (h), to require the payment of interest on deposits while bids are being considered were not accepted. The Outer Continental Shelf Lands Act Amendments clearly leaves this matter to the discretion of the Secretary of the Interior. However, the wording was changed to make interest provisions apply, again at the discretion of the Secretary, in cases where sale areas are withdrawn or restricted before leases are issued. The Department of the Interior is presently exploring, in consultation with the Treasury Department, procedures to pay interest on deposits.

Several comments asked what would happen if the Secretary of the Interior rejected a highest qualified bid upon the recommendation of the Attorney General after the anti-trust review of the bids. This is a difficult question because

it is current practice to hold only the highest bids and return all others. There has been no need to hold other bids because to date there has been no rejection of high bids because of the recommendation of the Attorney General. However, this is recognized as a potential problem area and there may be a need, at some future date, to change current practices or to amend this rulemaking to cover this specific situation.

The change in section 3317 of the proposed rulemaking requiring rental payments in lieu of minimum royalties was intended to simplify accounting procedures for future leases. Many of those making comments stated that the wording of the proposed rulemaking was unclear as to when the new provisions would apply. Others pointed out that there would be some increased financial burden to lessees in the first year of production since royalties could not be credited against production royalties as could the minimum royalty required by existing leases. The accounting involved to negate this unintended result and make rentals creditable against royalties would be far more complicated and troublesome than existing procedures. The comments indicate that the proposed change in the procedure caused confusion and could create additional accounting burdens, contrary to the intent of the change. Therefore, the final rulemaking will contain the language of the existing regulations rather than the language of the porposed rulemaking.

One comment recommended that subpart 3317 be expanded to deal with net profit shares as well as rentals and royalties. New language will be added to the subpart after a new profit share bidding system has been developed and adopted.

A comment pointed out that the language of section 3318.1(f) was ambiguous and needed clarification. The section was changed to clarify that the filing of separate bonds, after default on the $300,000 area wide bond, would meet the bonding requirements for those leases on which the new separate bonds had been filed.

Comments on subpart 3318 addressed the amount of the bond and the rationale for requiring additional bonding. The general wording of the subpart has not been changed since it covers all situations, including particular site specific operating conditions where additional bonding might be warranted. Situations of this type can be best handled on a case-by-case basis at the discretion of the authorized officer rather than through requirements in regulations.

Subpart 3319, Assignments, Transfers and Extensions, received a number of comments, many of which were adopted. A major change in the subpart was the addition of a new section 3319.3, which spells out the 30-day time period allowed for Attorney General review of an assignment or transfer.

A number of comments made the point that operating agreements do not transfer title and should not be subject to the filing requirement in section 3319.2(a)(1). The wording of the section was changed to require "filing of operating rights" which do affect record title and which, historically, have been required to be filed. Section 3319.2(a)(2) was changed to require that any document not required to be filed by this rulemaking must be accompained by a $25 fee per each lease affected and further to authorize the authorized officer to reject any such documents. This change will permit the recovery of costs related to the recording of unnecessary documents and allow rejection of those documents that are not, in the opinion of the authorized officer, a proper part of the case file.

A number of comments noted that the proposed change in section 3319.4(b), renumbered 3319.5(b) in the final rulemaking, is a change from current practice and might discourage "farmouts". After careful review, it was determined that the change would not be a significant disincentive to "farmouts". The provision was left to stand as in the proposed rule. The change is consistent with Departmental efforts to encourage prompt and efficient development as required by section 5(a)(7) of the Act. While segregations, especially those near the end of the primary term, would be discouraged, a new subsection (c) was added to protect the small number of existing segregated leases.

It was suggested that the wording of 30 CFR 250.35 be incorporated in section 3319.5, renumbered section 3319.6 of the final rulemaking rather than referred to in the section. The reference to this section of title 30 of the Code of Federal Regulations is adequate for this rulemaking and the suggestion was not adopted. Another suggestion that the phrase "any officially designated subdivision" be defined was not adopted. This phrase has been in the regulations on this subject for a number of years and has not caused confusion indicating that this term of art is well understood in the industry and does not need to be defined.

Several comments suggested that the word "accrued" be deleted from section 3320.1 as a modifier of the phrase "rentals and royalties" since rentals are payable in advance. While it is true that rentals and royalties are normally payable in advance and would not accrue, rentals not paid on time do accrue and are due before relinquishment takes effect. Therefore, the wording of the section was left essentially intact with only minor editorial changes to make the section clearer.

One comment asked that the phrase "at the option of the lessee" be inserted in that portion of section 3320.1 that requires the removal or conditioning of all platforms and other facilities upon relinquishment. This suggestion was not adopted. The section does not impose any unreasonable burden on the lessee and retains the flexibility needed by the Director, U.S. Geological Survey, to determine the best means of protecting the environment. Further, the language parallels that of 30 CFR 250.

A number of comments requested that section 3320.2(d) be amended to include all of the various conditions under which lease cancellation can occur. It is true that the language of the proposed rulemaking did not make reference to the five-year suspension period or incorporate all of the conditions for cancellation or fair value considerations, etc. The section was amended to delete all the procedural references and to include a cross-reference to 30 CFR 250.12 which deals at length with this subject.

One comment suggested that the language of the rulemaking be greatly expanded to detail the procedures and conditions under which the Bureau of Land Management would notify the U.S. Geological Survey and the Secretary of the Interior of the potential threats which might warrant cancellation. This suggestion was not adopted because these internal procedures, e.g., consultation among bureaus of the Department of the Interior, are covered by Secretarial Order 2974, and are not appropriate for inclusion in a rulemaking.

Many comments were made on the timing and use of the studies described in section 3331. Most of the recommendations were accommodated through the inclusion of the new policy section, section 3300.0–2 and by changes in the wording of section 3331.

The new policy section included in this rulemaking states that the Secretary of the Interior shall use available environmental data in making decisions, i.e., for all decisions at all stages of the

lengthy leasing and lease management process. The new policy section re-emphasizes the commitment of the Department of the Interior and the Bureau of Land Management to use such data. This commitment is further strengthened by the addition of a recommended phrase to section 3331.1(e) that specifies that the studies program is designed to provide information in a form and "in a timeframe" that can be used in decisionmaking. These changes should remove any lingering doubt about the use of environmental data for decisionmaking.

The Outer Continental Shelf Lands Act Amendments specify a deadline of six months prior to a sale for the initiation of studies. The language of the rulemaking mirrors that requirement. It is emphasized that this does not preclude the use of data collected earlier in the decisionmaking process, nor does it preclude starting studies much earlier, including studies in areas not identified in the five-year leasing program, subject, of course, to budgetary and management constraints. Specific starting times for studies (other than the six-month statutory requirement), were purposely not addressed in the rulemaking in order to allow the necessary flexibility to tailor the design of the studies program to make relevant data available in time to influence decisions. The time for initiation of studies was left flexible rather than set by this rulemaking to a specific term, as was recommended in several comments.

There were a number of comments that suggested the listing of the specific statutory requirements of section 20(a)(3) of the Outer Continental Shelf Lands Act, as amended, with regard to what subjects are to be studied, e.g., the introduction of drilling muds or the laying of pipe. These suggestions were adopted by the addition of a sentence to section 3331.1(a) dealing with the focus of the predictive studies to be carried out. However, the phrase "environmental impacts of pollutants introduced into the environments" was used in place of the more restrictive language of the Amendments that does not provide an all-inclusive list of potential impacts. The broader language adopted for the final rulemaking allows, for example, the study of the effects of air pollution, as well as the impacts on marine biota of chronic or acute oil spills and drilling muds and fluids mentioned in the Act.

The phrase "if appropriate" was deleted from the last sentence of section 3331.1(d) as recommended in the comments. The purpose of the modifier was to indicate that the results of the studies would be used to improve mitigating measures only when the findings of the studies recommended such changes. The phrase was misleading and redundant and was dropped.

There was a recommendation to specify all the decision points in the leasing and resource management processes. This was not considered appropriate for inclusion in the rulemaking since many of the events and documents generated in the studies program are parts of internal processes which can vary over time according to a particular sale and the issues involved.

The addition of a separate sentence to section 3331.1(a) dealing specifically with predictive studies also points up the Department of the Interior's commitment to such studies and to the move away from the baseline studies approach. Several of the comments stated that the language of the proposed rulemaking did not place enough emphasis on the need for predictive studies.

Several recommended wording changes to section 3331 were not adopted because they added unneeded language that lengthened the rulemaking without adding any substance. There was, for example, a suggestion to reword the first sentence of section 3331.1(a) to read ". . . impacts on the human, marine and coastal environments of the outer continental shelf and the coastal areas which may be affected by OCS oil and gas activities. . . ." This change was not adopted as the environments listed in the suggestion and the text of the rulemaking include the OCS and the coastal areas by definition. Another suggestion on this section wanted studies sent to affected States. The availability of studies is fully covered by section 3300.2 and does not need to be provided for here. Finally, there was a suggestion to list the types of impacts and the types of resources to be studies. This suggestion was not adopted in that the general language of the section allows study of all impacts and all resources in all areas. The rulemaking already contains one listing of resource areas, section 3313.1(b), which is sufficient.

In subpart 3340, new section 3340.0–1, purpose, and section 3340.0–2, policy, have been added to expand on the purpose of the rulemaking, to draw attention to the compliance requirements of other affected Federal agencies, and to spell out the Department of the Interior's policy of engaging in advance transportation planning through programs designed to involve affected parties. These two new sections were added in response to a number of comments on these subjects.

One comment proposed an expanded definition section to clarify the classification of pipelines and the corresponding division of responsibilities between the Bureau of Land Management and the U.S. Geological Survey for granting rights-of-way, easements and permits on the Outer Continental Shelf Lands. Even though the suggestion was not adopted, it did focus on an issue of concern. The growth of the offshore pipeline network requires a careful look at jurisdictional questions and an evaluation of the effects on existing and future operations which could result from any change in definitions. The Department of the Interior is presently considering the pipeline jurisdiction questions.

One comment recommended a change in section 3340.1(a)(1) providing that maximum environmental protection be achieved by utilization of the best available and safest technologies (BAST). While section 5(e) of the Outer Continental Shelf Lands Act, as amended, is phrased that way, the comment was not adopted. The intent of this section is to give the authorized officer sufficient discretion to assure maximum environmental protection as required by the Act under varying circumstances. Environmental stipulations may be required which are not related to technology. One comment pointed out that the word "Maximum" was not shown to modify environmental protection in the proposed rulemaking as it appears in section 5(e) of the Outer Continental Shelf Lands Act, as amended. The word has been restored to the section in the final rulemaking. However, the phrase "which the Secretary determines to be economically feasible" was not deleted as a test for BAST as was recommended by one comment, since section 21 of the Act, which deals with safety regulations, includes such a qualifier of the use of BAST. Because of this inclusion in the Act, the qualifier was retained in the final rulemaking wherever there is a reference to BAST.

Several comments requested a cross-reference to the U.S. Geological Survey regulations be added to section 3340.1(a)(1) which mentions BAST. This request was not accepted since the U.S. Geological Survey has not at this time completed its rulemaking on this subject.

One comment noted that section 3340.1(a)(1) should require the use of common pipelines wherever possible.

This was not adopted as it was felt that the decision as to whether to require common pipelines should be made on a case-by-case basis after examining the facts rather than having it mandated in every instance by regulation. The rulemaking allows the authorized officer to require the use of a common pipeline as part of the application approval process.

Several comments sought the deletion of the reference in section 3340.1(a)(4) to rights-of-way within boundaries of areas designated for pipelines. This suggestion has been adopted. The intergovermental planning program provides an appropriate and flexible mechanism for designating transportation routes.

Several comments requested section 3340.1(a)(1) be changed to give preference to the rights of the initial or prior right-of-way grant over those of all subsequent grants. This was not adopted since the language of the section is consistent with the nature of the grant from the United States, i.e., it is a limited grant for a limited purpose. Safety and protection of the environment will be considerations that are essential ingredients of the authorized officer's decision. The authorized officer is given flexibility to quickly and equitably resolve conflicts between an applicant and the holders of existing grants by the removal of the protest provisions in section 3340.2–1(e)(1). The procedures provided by the rulemaking are adequate to protect the legitimate rights of prior holders.

A question was raised in the comments on the applicability of the new rental rates provided for in the proposed rulemaking. It is intended that the rental rates will apply to all rights-of-way, existing and new.

One comment noted that section 3340.1(a)(6) of the proposed rulemaking greatly expanded the provisions of the existing regulation dealing with the requirements for revocation or termination of a grant. The comment suggested cross-referencing Department of Transportation regulations on this subject rather than listing requirements as was done in the proposed rulemaking. This suggestion was not adopted because the Bureau of Land Management, as the permitting agency, needs to have its own authority to enforce practices it deems necessary for maximum environmental protection required under the law.

A comment suggested that the discretionary authority given the authorized officer be restricted to allow suspension only for and during an emergency which would result in serious, irreparable or immediate harm. This suggestion was not adopted. The rulemaking is in compliance with the broad language of the Outer Continental Shelf Lands Act, as amended, which allows suspension if there is a threat of harm. The language of section 3340.1(a)(7) was amended to include authority for suspension of operations in cases where there is a threat of serious harm.

A comment requesting section 3340.1(a)(7) be changed to allow Federal and State agency input to the determination of whether to suspend operations was adopted. However, a comment suggesting the addition of provisions for State involvement in all the procedures covered by section 3340.1 was not adopted because it would be redundant. State involvement and the consistency of the application with approved coastal zone management plans are already covered at length in sections 3340.2–2 (c) and (d).

Another comment suggested that section 3340.1(a)(7) include a cross-reference to the U.S. Geological Survey suspension and cancellation provisions. This was not accepted because it would be inappropriate to cross-reference these provisions that deal with subjects other than pipelines. However, the section has been expanded considerably to address some of the conditions under which suspension and cancellation might occur and to provide public input into the determination to cancel or suspend operations.

The wording of section 3340.1(a)(8) was questioned in the comments. One change made was the deletion of the term "project" and insertion of the term "pipeline" to make the section more precise. However, the section was not expanded to further define the phrase "unreasonable obstruction to fishing and shipping operations". The rulemaking will allow the determination of what constitutes an unreasonable obstruction on a case-by-case basis. It does not set a rigid definition of what constitutes an unreasonable obstruction that fits all situations.

There was a suggestion to require continuous monitoring of pipeline operations by the Bureau of Land Management as part of section 3340.1(a)(8). This provision was not considered necessary because the U.S. Coast Guard and the U.S. Geological Survey already monitor pipelines on a continuing basis. Should a leak be found, the various emergency provisions would come into effect. Should damage result from the leak, the Outer Continental Shelf Lands Act, as amended, provides several funds for clean-up and compensation. Since all of these provisions are covered by other regulations and other sections of this rulemaking, it was decided not to repeat the provisions in this section.

There was a suggestion to exempt common carriers from the requirements of section 3340.1(a)(9) to furnish the authorized officer with copies of contracts for transportation. This suggestion was not adopted since it is the intent of the section to obtain needed information only upon request.

There were several recommendations to amend section 3340.1(a)(10) to specifically exempt common carrier oil pipelines from the requirements to purchase crude oil. The language of the section parallels the language of the Outer Continental Shelf Lands Act, as amended, and has not been changed. The section is phrased as an either/or provision and should not cause any operational problems. A primary intent of this section is to draw attention to the authority of the Federal Energy Regulatory Commission to regulate common carriers on the OCS.

A sentence was added to section 3340.1(c) that authorizes temporary cessation of use for proper maintenance when a pipeline segment becomes corroded or otherwise worn and needs replacing. This provision is needed to cover this specific situation.

A recommendation was made that emphasis be given State involvement in the granting process by requiring that a copy of the application required by section 3340.2–1 be funished an affected State. This recommendation was not adopted since sections 3340.2–2(c) and (d) and the policy of involving States through the intergovernmental planning program already give adequate opportunity for an affected State to be a part of the process. A related suggestion to make approval of an application dependent upon compliance with State law and regulations was not accepted. The provisions of sections 3340.2–2(c) and (d) describe and require involvement by an affected State in the approval of any grant that will subsequently cross or affect the coastal zone of a State.

The map scale notation in section 3340.2–1(b)(1) was inadequate in the proposed rulemaking and has been corrected in the final rulemaking to make it clear that the map scale is to be 1 inch to 4,000 feet.

A comment was received that recommended deletion of the requirement to specify the diameter of the pipeline in the application. This recommendation was not adopted because a considerable amount of detail is required to properly evaluate an

application and clear it through the many approving agencies. Further, if the estimate of the diameter of the pipeline is incorrect or is revised an amended application can be filed.

One of the comments suggested that the application show the complete route of the proposed pipeline, through State as well as Federal lands. This suggestion was adopted and section 3340.2–1(b)(4) has been amended to reflect the change.

One comment suggested that the application map show geologic features which might affect construction and operation. This suggestion was not adopted since it is already a part of the detailed instructions for filing an application. In addition to the map accompanying the application described in section 3340.2–1(b), the applicant must submit other maps showing geologic hazards, locations of archeological resources, etc.

A comment noted that the wording of section 3340.2–1(e)(2) was ambiguous as to when and how "safety, envionmental and economic factors" would be considered in approving or denying an application. The placing of this phrase is confusing and more properly belongs in the section 3340.2–2 which deals with approval action and, in fact, is already incorporated by reference in section 3340.2–2(a). The last sentence of this section which deals with the decision on the application was also moved to the approval section for clarity. In connection with moving language from section 3340.2–1 to section 3340.2–2, it was decided to rearrange section 3340.2–2 so that the approval action follows a natural sequence in the final rulemaking, making the whole process clearer.

One comment objected to the use of the word "may" in section 3340.2–2(a) as it applies to the actions, consultation efforts, etc., carried on by the authorized officer in considering an application. The wording has not changed since the conditions and issues involved vary greatly among applications and need to be handled on a case-by-case basis. The use of the word "shall" would require State and Federal consultation, public hearings, etc., for every application, even though analysis might indicate no environmental or other concerns sufficient to warrant such commitments of time and effort.

A recommendation was made that the Director prepare an environmental assessment before approving a grant for pipeline right-of-way. This recommendation was adopted but the balance of the recommendation which suggested referencing the National Environmental Policy Act and the Coastal Zone Management Act and spelling out the focus of such an assessment was not adopted. The phrase "in accordance with applicable policies and guidelines" is an adequate statement of the requirements governing the preparation of the environmental assessment and no further change is needed.

Reference to the intergovermental planning program has been added to the newly numbered section 3340.2–2(a) as suggested in a number of comments. The addition of the reference serves to re-emphasize the Department of the Interior's commitment to involve the affected States in policy and planning decisions. The addition also addresses the request of one State that it be involved in the annual review of rights-of-way grants. The intergovernmental planning program will provide an adequate vehicle for continuous input by the States

One comment characterized the consistency provisions of section 3340.2–2(d) as "a weak attempt to circumvent the intent of the Coastal Zone Management Act." The consistency provisions refer to the intergovernmental planning program and require that the entire pipeline be described so it can be reviewed. An affected State will have early and ample opportunity to evaluate the right-of-way proposal in terms of consistency with its coastal zone plan. Further, the U.S. Geological Survey regulations deal with gathering lines normally described in development and production plans. A major pipeline can proceed only through the granting of a right-of-way covered by an application filed with the Bureau of Land Management. A consistency determination is made only when a pipeline comes ashore or if a pipeline application is submitted as part of a development or production plan.

One comment suggested that the authorized officer be required to approve any application for a grant found to be in compliance with all pertinent law and regulations. The approval language of the rulemaking is consistent with the provisions of the Outer Continental Shelf Lands Act, as amended, in that it allows discretion for approving grants for pipeline rights-of-way. For this reason, the suggestion was not adopted.

The section covering construction procedure has been renumbered 3340.3 in the final rulemaking. One comment suggested that the word "significant" be added in section 3340.3(b) to modify the changes in conditions which may be grounds for altering the grant. The suggestion was adopted.

It was suggested in one of the comments that the requirement to "construct the pipeline within 5 years" be expanded to avoid the unlikely situation where a grant would be forfeited at the end of the fifth year if the pipeline was not quite finished. The wording has not been changed because this provision has never caused any operational problems and should not in the future.

A suggestion was received to limit abandonment requirements to those specified in section 3340.1(a)(6). Section 3340.5 has been revised to reference the earlier section.

Several comments objected to the provisions in section 3340.6 requiring prior approval of a change in the use or flow of a pipeline covered by a grant. The requirement has not been changed because the information is needed if the authorized officer is to be able to carry out responsibilities under the law and regulations.

One comment questioned the authority of the Secretary of the Interior to require bonding for pipeline right-of-way grants. While there is no express authority in the Outer Continental Shelf Lands Act, as amended, requiring bonding, the general grant of authority in section 5(e) of the Act allowing the Secretary to issue appropriate regulations is the basis for the bonding requirement. Without the protection afforded by bonding, it is questionable that the Secretary of the Interior could adequately carry out his responsibilities to manage the resources and protect the environments of the Outer Continental Shelf. Several comments questioned whether it was the intent of the rulemaking to require separate bonds for a lease and a pipeline right-of-way grant. That is the intent of the rulemaking. The rulemaking also requires the posting of a bond for existing rights-of-way not presently bonded.

The provisions for reimbursement of costs contained in section 3340.8 have been deleted from the final rulemaking. This very complicated issue needs further study before a final decision is made on how cost recovery will be applied to the outer continental shelf. If it is decided that cost recovery should be applied, the regulations of this part will be amended.

Editorial changes and corrections have been made throughout the rulemaking as necessary.

The principal authors of this final rulemaking are William J. Quinn, Division of Minerals Program

Development and Analysis, Hans L. Larsen and Chris Oynes, Division of Mineral Resources, Robert C. Bruce, Office of Legislation and Regulatory Management, all of the Bureau of Land Management, and Sandra E. Seim, staff assistant to the Assistant Secretary for Land and Water Resources.

It is hereby determined that the publication of this document is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.), Part 3300, Group 3300, Subchapter C, and Part 2880, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations are amended as set forth below.

Guy R. Martin,

Assistant Secretary of the Interior.

June 25, 1979.

PART 2880 [Amended]

1. Part 2880 is amended by the deletion of subpart 2883.

2. Part 3300 is revised to read as follows:

Group 3300—Outer Continental Shelf Minerals and Rights-of-way Management

PART 3300—OUTER CONTINENTAL SHELF MINERALS AND RIGHTS-OF-WAY MANAGEMENT, GENERAL

Subpart 3300—Outer Continental Shelf Minerals and Rights-of-way Management, General.

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Authority: 43 U.S.C. 1331 et seq.

Subpart 3300—Outer Continental Shelf Mineral and Rights-of-way Management, General

§ 3300.0–1 Purpose.

The purpose of these regulations is to establish the procedures under which the Secretary of the Interior will exercise the authority granted to administer a leasing program for minerals and grant rights-of-way on the submerged lands of the Outer Continental Shelf.

§ 3300.0–2 Policy.

The management of Outer Continental Shelf resources is to be conducted in accordance with the findings, purposes and policy directions provided by the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1332, 1801, 1802), and other Executive, legislative judicial and Departmental guidance. The Secretary of the Interior shall consider available environmental information in making decisions affecting Outer Continental Shelf resources.

§ 3300.0–3 Authority.

The Outer Continental Shelf Lands Act as amended, (43 U.S.C. § 1331 et seq.) authorizes the Secretary of the Interior to issue, on a competitive basis, leases for oil and gas, sulphur, geopressured-geothermal and associated resources, and other minerals in submerged lands of the Outer Continental Shelf. The act authorizes the Secretary of the Interior to grant rights-of-way through the submerged lands of the Outer Continental Shelf. The Energy Policy and Conservation Act of 1975 (42 U.S.C. 6213), prohibits joint bidding by major oil and gas producers.

§ 3300.0–5 Definitions.

As used in this part, the term:

(a) "Act" refers to the Outer Continental Shelf Lands Act of August 7, 1953 (43 U.S.C. 1331 et seq.) as amended.

(b) "Director" means the Director, Bureau of Land Management.

(c) "OCS" means the Outer Continental Shelf, as that term is defined in 43 U.S.C. 1331(a).

(d) "Secretary" means the Secretary of the Interior.

(e) "Bureau" means the Bureau of Land Management.

(f) "Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shore lines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454(b)(1));

(g) "Affected State" means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of the act, any State—

(1) the laws of which are declared, pursuant to section 4(a)(2) of the act, to be the law of the United States for the portion of the Outer Continental Shelf on which such activity is, or is proposed to be conducted;

(2) which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 4(a)(1) of the act;

(3) which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the Outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the Outer Continental Shelf; or

(5) in which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities;

(h) "Marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, conditions, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the Outer Continental Shelf;

(i) "Coastal environment" means the physical atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, conditions, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone;

(j) "Human environment" means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the Outer Continental Shelf;

(k) "Mineral" includes oil, gas, sulphur, geopressured-geothermal and associated resources, and such other minerals as are disposable under mineral laws applicable to the public lands.

(l) "Authorized officer" means any person authorized by law or by delegation of authority to or within the Bureau of Land Management to perform the duties described in this part.

§ 3300.0–6 Cross references.

(a) For Geological Survey regulations governing exploration, development and production on leases, see 30 CFR 250 et seq.

(b) For multiple use conflicts see the Environmental Protection Agency listing of ocean dumping sites—40 CFR 228.

(c) For related National Oceanic and Atmospheric Administration programs see:

(1) Marine sanctuary regulations, 15 CFR 922;

(2) Fishermen's Contingency Fund, 50 CFR 296;

(3) Coastal Energy Impact Program, 15 CFR 931;

(d) For Federal Maritime Commission regulations on the oil spill liability of vessels, see 46 CFR 544.

(e) For Coast Guard regulations on oil spill liability of operators, see 33 CFR 135–6.

(f) For Coast Guard regulations on port access routes, see 33 CFR 164.

(g) For compliance with the National Environmental Policy Act, see 40 CFR 1500–08.

(h) For Department of Transportation regulations on offshore pipeline facilities, see 49 CFR 195.

(i) For Department of Defense regulations on military activities on offshore areas, see 32 CFR 252.

§ 3300.1 Leasing maps and diagrams

(a) Any area of the OCS which has been appropriately platted as provided in paragraph (b) of this section, is subject to lease for any mineral not included in a subsisting lease issued under the act or meeting the requirements of subsection (a) of section 6 of the act. Before any lease is offered or issued an area may be (1) withdrawn from disposition pursuant to section 12(a) of the act, or (2) designated as an area or part of an area restricted from operation under section 12(d) of the act.

(b) The Bureau shall prepare leasing maps and official protraction diagrams of areas of the OCS. The areas included in each mineral lease shall be in accordance with the appropriate leasing map or official protraction diagram.

§ 3300.2 Information to States.

(a) The information covered in this subsection is prepared by or directly obtained by the Director. Such information is typically not considered to be proprietary or privileged, with the primary exception of specific tract nominations by industry received in response to a Call for Nominations and Comments issued by the Secretary. All other proprietary and privileged information is obtained by or under the control of the U.S. Geological Survey which is responsible for its release in accordance with its regulations (see 30 CFR 250, 251, 252).

(b) The Director, in conjunction with the Director, U.S. Geological Survey, shall prepare an index to OCS information (see 30 CFR 252.5). The index shall list all relevant actual or proposed programs, plans, reports, environmental impact statements, nominations information, environmental study reports, lease sale information and any similar type of relevant information including, modifications,

comments and revisions, prepared by or directly obtained by the Director under the act. The index shall be sent on a regular basis to affected States and, upon request, it shall be sent to any affected local government. The public shall be informed of the availability of the index.

(c) Upon request, the Director shall transmit to affected States, local governments or the public, a copy of any information listed in the index which is subject to the control of the Bureau in accordance with the requirements and subject to the limitations of the Freedom of Information Act (5 U.S.C. 552) and regulations implementing said Act, and the regulations contained in 43 CFR Part 2, except as provided in (d) below.

(d) Upon request, the Director shall provide relative indications of interest on tracts nominated as well as any comments filed in response to a Call for Nominations and Comments for a proposed sale. However, no information transmitted shall identify any particular tract with the name of any particular party so as not to compromise the competitive position of any participants in the nominating process.

§ 3300.3 Helium.

(a) Each lease issued or continued under these regulations shall be subject to a reservation by the United States, under section 12(f) of the act, of the ownership of and the right to extract helium from all gas produced from the leased area.

(b) In case the United States elects to take the helium, the lessee shall deliver all gas containing helium, or the portion of gas desired, to the United States at any point on the leased area or at an onshore processing facility. Delivery shall be made in the manner required by the United States to such plants or reduction works as the United States may provide.

(c) The extraction of helium shall not cause a reduction in the value of the lessee's gas or any other loss for which he is not reasonably compensated, except for the value of the helium extracted. The United States shall determine the amount of reasonable compensation. The United States shall have the right to erect, maintain and operate on the leased area any and all reduction works and other equipment necessary for the extraction of helium. The extraction of helium shall not cause substantial delays in the delivery of natural gas produced to the purchaser of that gas.

§ 3300.4 Payment.

(a) Payments of bonuses, including deferred bonuses, first year's rental, other payments due upon lease issuance, filing charges and fees, annual rentals and costs for grants of pipeline rights-of-way shall be made to the manager of the appropriate OCS field office. All payments shall be made by cash, check or bank draft payable to the Bureau of Land Management, unless otherwise directed by the Secretary.

(b) All other payments required by a lease or the regulations in this part shall be payable to the United States Geological Survey.

Subpart 3310—Leasing Program

§ 3310.0-5 Definitions.

As used in this subpart, the term—"Affected State" and "affected States" means Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, California, Oregon, Washington, and Alaska.

§ 3310.1 Receipt and consideration of nominations; public notice and participation.

(a) During preparation of a proposed 5-year leasing program, the Secretary shall invite and consider suggestions and relevant information for such program from Governors of affected States, local government, industry, other Federal agencies, including the Attorney General in consultation with the Federal Trade Commission, and all interested parties, including the general public. This request for information shall be issued as a notice in the **Federal Register**. Local governments wishing to respond to such request shall first submit their responses to the Governor of the State in which the local government is located.

(b) The Secretary shall send letters to the Governors of the affected States requesting them to identify specific laws, goals, and policies which they believe should be considered by the Secretary in connection with the leasing program. The Secretary shall also request from the Secretary of Energy information on regional and national energy markets, on OCS production goals and on transportation networks.

§ 3310.2 Review by State and local governments.

(a)(1) The Secretary shall prepare a proposed leasing program. At least 60 days prior to publication of the proposed program in the **Federal Register**, a copy of the draft of the proposed program shall be forwarded to the Governor of each affected State for comment. The Governor may solicit comments from local governments in his or her State which the Governor determines will be affected by the proposed program.

(2) The Secretary shall reply in writing to any comment on the draft of the proposed program from the Governor of an affected State which is received at least 15 days prior to the submission of the proposed program to the Congress and publication in the **Federal Register**. All such correspondence between the Secretary and Governor of such State shall accompany the proposed program when it is submitted to the Congress.

(b) The proposed leasing program shall be submitted to the Governors of the affected States for review and comment at the time it is submitted to the Congress and the Attorney General and published in the **Federal Register**. The Governor of an affected State shall, upon request from any local government affected by the program, submit a copy of the proposed program to such local government. Comments and recommendations on any aspect of the proposed program may be submitted by a State or local government to the Secretary within 90 days after the date of its publication in the **Federal Register**. Comments and recommendations from local governments shall be submitted first to the Governor of the State in which the local government is located.

(c) At least 60 days prior to approving the final leasing program and any later significant revision, the Secretary shall submit it to the President and the Congress, together with any comments. The Secretary shall indicate in such submission why any specific recommendation of the Attorney General or of a State or local government was not accepted.

§ 3310.3 Periodic consultation with interested parties.

The Secretary shall provide for periodic consultation with State and local governments, existing and potential oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in any activity in or on the OCS, including those involved in fish and shellfish recovery, and recreational activities. This consultation shall take place primarily through appropriate public notice as described in §§ 3310.1 and 3310.2 and through the OCS Advisory Board and its committees, on a regional and national basis. Meetings of the OCS Advisory Board shall be held on specific

issues as required by the Board's charter.

§ 3310.4 Consideration of coastal zone management program.

In the development of the leasing program, consideration shall be given to the coastal zone management program being developed or administered by an affected coastal State under section 305 or 306 of the Coastal Zone Management Act of 1972 as amended, (16 U.S.C. 1454, 1455). Information concerning the relationship between a State's coastal zone management program and OCS oil and gas activity shall be requested from the Governors of the affected coastal States and from the Secretary of Commerce prior to the development of the proposed leasing program at the time information is requested under § 3310.1 of this title.

Subpart 3312—Reports From Federal Agencies

§ 3312.1 General.

For oil and gas lease sales shown in an approved leasing schedule and as the need arises for other mineral leasing, the Director shall request the Director, Geological Survey, to prepare a report describing the general geology and potential mineral resources of the area under consideration. The Director shall request other interested Federal agencies to prepare reports describing, to the extent known, any other valuable resources contained within the general area and the potential effect of mineral operations upon the resources or upon the total environment or other uses of the area.

Subpart 3313—Call for Nominations and Comments

§ 3313.1 Nominations of tracts.

(a) The Director may receive and consider tract nominations or requests describing areas and expressing an interest in leasing of minerals.

(b) In accordance with an approved program and schedule for the leasing of lands which may contain oil and gas, the Director shall issue Calls for Nominations and Comments on tracts for the leasing of such minerals in specified areas. The Call for Nominations and Comments shall be published in the **Federal Register** and may be published in other publications as desirable. Nominations and comments on tracts shall be addressed to the manager of the appropriate OCS office, with copies to the Director and to the Director and the Regional Conservation manager of the Geological Survey. The Director shall also request comments on tracts which should receive special concern and analysis. For an oil and gas lease sale call area, the Director may request comments concerning geological conditions, including bottom hazards; archaeological or cultural sites on the seabed or nearshore; multiple uses of the proposed leasing area, including navigation, recreation and fisheries; and other socioeconomic, biological and environmental information.

§ 3313.2 Tracts near Coastal States.

(a) At the time nominations are solicited for leasing of tracts within 3 geographical miles of the seaward boundary of any coastal State, the Secretary shall provide the Governor of that State information required under section 8(g)(1) of the act. The Director shall furnish information identifying the areas for leasing as well as all relevant available environmental data for such areas (see 30 CFR 251.14).

(b) After receipt of nominations for tracts within the area described in (a) hereof, the Secretary shall inform the Governor of those tracts that are to be given further consideration for leasing. The Secretary shall enter into consultation with the Governor to determine whether the area may contain oil or gas pools or fields underlying both the OCS and lands subject to the jurisdiction of the State.

(c) After selection for leasing of those tracts which may have oil or gas pools or fields underlying both the OCS and lands under State jurisdiction, the Secretary shall offer the Governor an opportunity to enter into an agreement for the equitable disposition of revenues from such tracts under section 8(g)(2) of the act.

(d) If no agreement can be reached within 90 days of the Secretary's offer, the tracts may be leased and all revenues deposited in a separate Treasury account pending equitable disposition of the revenues under sections 8(g) (3) and (4) of the act.

Subpart 3314—Tentative Tract Selection

§ 3314.1 General.

(a) The Director, in consultation with the Director, Geological Survey and other appropriate Federal agencies, shall recommend to the Secretary tracts for further environmental analysis and consideration for leasing. The Director, on his or her own motion, in consultation with the Director, Geological Survey, may include in the recommendation tracts which have not been nominated. In making a recommendation, the Director shall consider all available environmental information, multiple-use conflicts, resource potential, industry interest and other relevant information. Comments received from States and local governments and interested parties in response to Calls for Nominations and Comments shall be considered in making recommendations.

(b) After tracts have been tentatively selected, the Director shall evaluate fully the potential effect of leasing on the human, marine and coastal environments, and develop measures to mitigate adverse impacts, including lease stipulations. The views and recommendations of Federal agencies, State agencies, local governments, organizations, industries, and the general public shall be utilized, as appropriate. The Director may hold public hearings on the environmental analysis after appropriate notice.

(c) In general, the Director shall seek to inform the public as soon as possible of tract additions or deletions that occur after the tentative selection of tracts.

§ 3314.2 Tract size.

A tract selected for leasing shall consist of a compact area not exceeding 5760 acres, unless the authorized officer finds that a larger area is necessary to comprise a reasonable economic production unit.

Subpart 3315—Lease Sales

§ 3315.1 Proposed Notice of Sale.

(a) The Director shall in consultation with appropriate Federal agencies develop measures, including lease stipulations and conditions, to mitigate adverse impacts on the environments. For oil and gas lease sales, appropriate proposed stipulations and conditions shall be contained in the proposed notice of lease sale.

(b) A proposed notice of lease sale shall be submitted to the Secretary for approval. All comments and recommendations received and the Director's findings or actions thereon, shall also be forwarded to the Secretary.

(c) Upon approval by the Secretary, the proposed Notice of Sale shall be sent to the Governor of any affected State and be published in the **Federal Register.**

§ 3315.2 State comments.

(a) Within 60 days after notice of a proposed lease sale, a Governor of any affected State or any affected local government in such State may submit recommendations to the Secretary regarding the size, timing or location of

the proposed lease sale. Prior to submitting recommendations to the Secretary, any affected local government shall forward such recommendation to the Governor.

(b) The Secretary shall accept such recommendations of the Governor and may accept recommendations of any affected local government if he determines, after having provided the opportunity for consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. A determination of the national interest shall be based on the findings, purposes and policies of the act.

(c) The Secretary shall communicate to the Governor, in writing, the reasons for his determination to accept or reject such Governor's recommendations, or to implement any alternative means identified in consultation with the Governor to provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State.

§ 3315.3 Department of Energy review.

The Secretary shall allow 30 days for review of the lease terms and conditions by the Secretary of Energy, unless there is an agreement that a shorter period provides a reasonable opportunity for review.

§ 3315.4 Notice of sale.

(a) Upon approval of the Secretary, the Director shall publish the notice of lease sale in the **Federal Register** as the official publication, and may publish the notice in other publications. The publication in the **Federal Register** shall be at least 30 days prior to the date of the sale. The notice shall state the place and time at which bids shall be filed, and the place, date and hour at which bids shall be opened. The notice shall contain a description of the areas to be offered for lease and any stipulations, terms and conditions of the sale.

(b) Tracts shall be offered for lease by competitive sealed bidding under conditions specified in the notice of lease sale and in accordance with all applicable laws and regulations. Suggested formats for bidder submissions and joint bidder's statements appear in Appendix A and B of this part.

(c) The notice of lease sale shall contain a reference to the OCS lease form which shall be issued to successful bidders.

(d) With the approval of the Secretary, the Director may defer any part of the payment of the cash bonus according to a schedule announced at the time of the notice of lease sale. Payment shall be made no later than 5 years after the date of the lease sale. The schedule shall contain provisions for guaranteed payment of a deferred bonus.

(e) In order to obtain statistical information to determine which bidding alternatives best accomplish the purposes and policies of the act, the Director may, until September 18, 1983, require each bidder to submit bids for any OCS area in accordance with more than one of the bidding systems described in section 8(a)(1) of the act. No more than 10 percent of the tracts offered each year shall contain such a requirement. Leases may be awarded using a bidding alternative selected at random for statistical purposes, if it is otherwise consistent with the purposes and policies of the act.

Subpart 3316—Issuance of Leases

§ 3316.1 Qualifications of lessees.

(a) In accordance with section 8 of the act, leases shall be awarded only to the highest responsible qualified bidder.

(b) Mineral leases issued pursuant to section 8 of the act may be held only by: (1) citizens and nationals of the United States, (2) aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20); (3) private, public or municipal corporations organized under the laws of the United States or of any State or of the District of Columbia or territory thereof, or (4) associations of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States, or political subdivisions of States.

§ 3316.2 Lease term.

(a) All oil and gas leases shall be issued for an initial period of 5 years, or not to exceed 10 years where the authorized officer finds that such longer period is necessary to encourage exploration and development in areas because of unusually deep water or other unusually adverse conditions.

(b) An oil and gas lease shall continue after such initial period for as long as oil or gas is produced from the lease in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted. The term of an oil and gas lease is subject to further extension as provided in § 3319.9 of this title.

(c) Sulphur leases shall be issued for a term not to exceed 10 years and so long thereafter as sulphur is produced from the leasehold in paying quantities, or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon.

(d) Other minerals leases shall be issued for such term as may be prescribed at the time of offering the leases in the notice of lease sale.

§ 3316.3 Joint Bidding Provisions.

§ 3316.3-1 Definitions.

The following definitions shall be applicable to § 3316.3 of this title:

(a) *"Single bid"* means a bid submitted by one person for an oil and gas lease under section 8(a) of the act.

(b) *"Joint bid"* means a bid submitted by two or more persons for an oil and gas lease under section 8(a) of the act.

(c) *"Average Daily Production"* is the total of all production in an applicable production period which is chargeable under § 3316.3-3 of this title divided by the exact number of calendar days in the applicable production period.

(d) *"Barrel"* means 42 United States gallons.

(e) *"Crude Oil"* means a mixture of liquid hydrocarbons including condensate that exists in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities, but does not include liquid hydrocarbons produced from tar sand, gilsonite, oil shale, or coal.

(f) *"An Economic Interest"* means any right to, or any right dependent upon, production of crude oil, natural gas, or liquefied petroleum products and shall include, but not be limited to, a royalty interest, or overriding royalty interest, whether payable in cash or in kind, a working interest, a net profits interest, a production payment, or a carried interest.

(g) *"Liquefied Petroleum Products"* means natural gas liquid products including the following: ethane, propane, butane, pentane, natural gasoline, and other natural gas products recovered by a process of absorption, adsorption, compression, or refrigeration cycling, or a combination of such processes.

(h) *"Natural Gas"* means a mixture of hydrocarbons and varying quantities of nonhydrocarbons that exist in the gaseous phase.

(i) *"Oil and Gas Lease"* means an oil and gas lease either offered or issued pursuant to the provisions of the act.

(j) *"Owned"* means:

(1) *With respect to crude oil*—having either an economic interest in or a power of disposition over the production of crude oil;

(2) *With respect to natural gas*—having either an economic interest in or

a power of disposition over the production of natural gas; and

(3) *With respect to liquefied petroleum products*—having either an economic interest in or a power of disposition over any liquefied petroleum product at the time of completion of the liquefaction process.

(k) *"Prior Production Period"* means the continuous six month period of January 1 through June 30 preceding November 1 through April 30 for joint bids submitted during the six month bidding period from November 1 through April 30, and means the continuous six month period of July 1 through December 31 preceding May 1 through October 31 for joint bids submitted during the six month bidding period from May 1 through October 31.

(l) *"Production"*—(1)*of crude oil* means the volume of crude oil produced worldwide from reservoirs during the prior production period. The amount of such crude oil production shall be established by measurement of volumes delivered at the point of custody transfer (e.g., from storage tanks to pipelines, trucks, tankers, or other media for transport to refineries or terminals) with adjustments for

(i) Net differences between opening and closing inventories, and

(ii) Basic sediment and water;

(2) *Of natural gas* means the volume of natural gas produced worldwide from natural oil and gas reservoirs during the prior production period, with adjustments, where applicable, to reflect

(i) The volume of gas returned to natural reservoirs; and

(ii) The reduction of volume resulting from the removal of natural gas liquids and nonhydrocarbon gases.

(3) *Of liquefied petroleum peoducts* means the volume of natural gas liquids produced from reservoir gas and liquefied at surface separators, field facilities, or gas processing plants worldwide during the prior production period; these liquefied petroleum products include the following:

(i) *Condensate*—natural gas liquids recovered from gas well gas (associated and non-associated) in separators or field facilities;

(ii) *Gas Plant Products*—natural gas liquids recovered from natural gas in gas processing plants and from field facilities. Gas plant products shall include the following as classified according to the standards of the Natural Gas Processors Association (NGPA) or the American Society for Testing and Materials (ASTM):

(A) Ethane—C_2H_6

(B) Propane—C_3H_8

(C) Butane—C_4H_{10} including all products covered by NGPA specifications for commercial butane

(*1*) Isobutane,

(*2*) Normal butane,

(*3*) Other butanes—all butanes not included as isobutane or normal butane;

(D) Butane-Propane Mixtures—All products covered by NGPA specifications for butane-propane mixtures;

(E) Natural Gasoline—A mixture of hydrocarbons extracted from natural gas, which meet vapor pressure, end point, and other specifications for natural gasoline set by NGPA;

(F) Plant Condensate—A natural gas plant product recovered and separated as a liquid at gas inlet separators or scrubbers in processing plants or field facilities; and

(G) Other Natural Gas Plant Products meeting refined product standards (i.e., gasoline, kerosene, distillate, etc.).

(m) *"Six Month Bidding Period"* means the six month period of time

(1) From May 1 through October 31; or

(2) From November 1 through April 30, respectively.

§ 3316.3-2 Joint bidding requirements.

(a) Any person who submits a joint bid for any oil and gas lease during a 6 month bidding period shall have filed under oath with the Director a Statement of Production of crude oil, natural gas, and liquefied petroleum products, hereinafter referred to as a Statement of Production, no later than 45 days prior to the commencement of the applicable six month bidding period, except that for the bidding period of November 1, 1978, through April 30, 1979, no joint bid may be considered at any sale unless statements of production from all parties to that bid have been received in the office of the Director, Bureau of Land Management (Attention 722), Washington, D.C. 20240, by close of business on Friday before the sale. Statements of Production shall be filed with the Director, Bureau of Land Management (attention 722), Washington, D.C. 20240. A Statement of Production shall state whether or not the person filing the Statement of Production was chargeable in accordance with § 3316.3-3 of this title with an average daily production in excess of 1.6 million barrels of crude oil, natural gas, and liquefied petroleum products for the prior production period. The Director shall, no less than semi-annually, publish in the **Federal Register** a "List of Restricted Joint Bidders," to be effective immediately upon publication and to continue in force and effect until a subsequent list is published. The List of Restricted Joint Bidders shall be made up of those persons who in the judgment of the Director, based on information available to him, including, but not limited to, sworn Statements of Production, are chargeable under § 3316.3-3 of this title with an average daily production in excess of 1.6 million barrels of crude oil, natural gas, and liquefied petroleum products for the prior production period.

(b) When a person is placed on the List of Restricted Joint Bidders the Director shall serve that person either personally or by certified mail, return receipt requested, with a copy of the Director's Order placing that person on the List of Restricted Joint Bidders. Any appeal from that Order or from an adverse effect of that Order shall be made in accordance with the provisions of 43 CFR Part 4.

(c) The submission of a Statement of Production or of a detailed Report of Production under § 3316.4(g) of this title which misrepresents the chargeable production of the reporting person shall constitute failure to comply with these regulations and any lease awarded in reliance on that Statement or Report of Production may be canceled, pursuant to section 8(o) of the act and regulations issued thereunder as having been obtained by fraud or misrepresention.

(d) The Secretary may exempt a person from the provisions of §§ 3316.3-2(a), 3316.3-4, 3316.4(g) and 3319.1(b) of this title if it is found, on the record, after an opportunity for an agency hearing, that lands being offered have extremely high cost exploration and development problems and that exploration and development will not occur on such lands unless the exemption is granted.

§ 3316.3-3 Chargeability for production.

(a) As used in this section the following definitions shall control:

(1) *"Person"* means a natural person or company.

(2) *"Company"* means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any group of persons whether incorporated or not; it also means any receiver, trustee in bankruptcy, or similar official acting for such a company.

(3) *"Subsidiary"* means a company 50 percent or more of whose stock or other interest having power to vote for the election of directors, trustees, or other similar controlling body of the company is directly or indirectly owned, controlled, or held with the power to vote by another company; a subsidiary shall be deemed a subsidiary of the other company owning, controlling, or

holding 50 percent or more of the stock or other voting interest.

(4) *"Security or securities"* means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) A person filing a Statement of Production under § 3316.3–2 of this title shall be charged with the following production during the applicable prior production period:

(1) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products which it owned worldwide;

(2) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by every subsidiary of the reporting person;

(3) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by any person or persons of which the reporting person is a subsidiary; and

(4) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by any subsidiary, other than the reporting person, of any person or persons of which the reporting person is a subsidiary.

(c) A person filing a Statement of Production shall be charged with, in addition to the production chargeable under paragraph (b) of this section, but not in duplication thereof, its proportionate share of the average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by every person: (1) Which has an interest in the reporting person, and (2) in which the reporting person has an interest, whether the interest referred to in paragraphs (c) (1) and (2) of this section is by virtue of ownership of securities or other evidence of ownership, or by participation in any contract, agreement, or understanding respecting the control of any person or of any person's production of crude oil, natural gas, or liquefied petroleum products, equal to said interest. As used in paragraph (c) of this section "interest" means an interest of at least 5 percent of the ownership or control of a person.

(d) All measurements of crude oil and liquefied petroleum products under this section shall be at 60° F.

(e)(1) For purposes of computing production of natural gas under § 3316.3–2 of this title, chargeability under this section, and reporting under § 3316.4(g) of this title, 5,626 cubic feet of natural gas at 14.73 pounds per square inch (msl) shall equal one barrel.

(2) For purposes of computing production of liquefied petroleum products under § 3316.3–2 of this title, chargeability under § 3316.4(g) of this title, 1.454 barrels of natural gas liquids at 60° F shall equal one barrel of crude oil.

§ 3316.3–4 Bids disqualified.

The following bids for any oil and gas lease shall be disqualified and rejected in their entirety:

(a) A joint bid submitted by 2 or more persons who are on the effective List of Restricted Joint Bidders; or

(b) A joint bid submitted by 2 or more persons when 1 or more of those persons has not filed the required Statement of Production pursuant to § 3316.3–2 of this title for the applicable 6-month bidding period, or when 1 or more of those persons has failed or refused to file a detailed Report of Production when required to do so under § 3316.4(g) of this title, or

(c) A single or joint bid submitted pursuant to an agreement (whether written or oral, formal or informal, entered into or arranged prior to or simultaneously with the submission of such single or joint bid, or prior to or simultaneously with the award of the bid upon the tract) which provides (1) for the assignment, transfer, sale, or other conveyance of less than a 100 percent interest in the entire tract on which the bid is submitted, by a person or persons on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to another person or persons on the same List of Restricted Joint Bidders; or (2) for the assignment, sale, transfer or other conveyance of less than a 100 percent interest in any fractional interest in the entire tract (which fractional interest was originally acquired by the person making the assignment, sale, transfer or other conveyance, under the provisions of the Act) by a person or persons on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to another person or persons on the same List of Restricted Joint Bidders; or (3) for the assignment, sale, transfer, or other conveyance of any interest in a tract by a person or persons not on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to 2 or more persons on the same List of Restricted Joint Bidders; or (4) for any of the types of conveyance described above in paragraph (c) (1), (2), or (3) where any party to the conveyance has not filed a Statement of Production pursuant to § 3316.3–2 of this title for the applicable 6 month bidding period. Assignments expressly required by law, regulation, lease, or stipulation to lease shall not disqualify an otherwise qualified bid; or

(d) A bid submitted by or in conjunction with a person who has filed a false, fraudulent or otherwise intentionally false or misleading Statement of Production or detailed Report of Production.

§ 3316.4 Submission of bids.

(a) A separate sealed bid shall be submitted for each tract unit bid upon as described in the notice of lease sale. A bid may not be submitted for less than an entire tract.

(b) Each bidder shall submit with the bid, a certified or cashier's check or bank draft on a solvent bank, or cash, or any other form of payment approved by the Secretary for one-fifth of the amount of the cash bonus, unless otherwise stated in the Notice of Sale.

(c) If the bidder is an individual a statement of citizenship shall accompany the bid.

(d) If the bidder is an association (including a partnership), the bid shall also be accompanied by a certified copy of the articles of association or appropriate reference to the record of the Bureau in which such a copy has already been filed, with a statement as to any subsequent amendments.

(e) If the bidder is a corporation, the following information shall be submitted with the bid:

(1) A certified copy of the articles of incorporation and a copy either of the minutes of the meeting of the board of directors or of the bylaws indicating that the person signing the bid has authority to do so, or,

(2) In lieu of such a copy, a certificate to that effect signed by the secretary or the assistant secretary of the corporation over the corporate seal, or appropriate reference to the records submitted to the Bureau in connection with which such articles and authority have been previously furnished.

(3) The bid shall be executed in conformance with corporate requirements.

(f) Bidders should be aware of the provisions of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

(g) Every joint bid submitted for any oil and gas lease shall be accompanied by a sworn statement by each joint bidder stating that the bid is not disqualified under § 3316.3–4(c) of this title.

(h) To verify the accuracy of any statement submitted pursuant to § 3316.3–2 of this title and paragraph (g) of this section, the Director may require the person submitting such information to: (1) submit no later than 30 days after receipt of the request by the Director, a detailed Report of Production which shall list, in barrels, the average daily production of crude oil, natural gas and liquefied petroleum products chargeable to the reporting person in accordance with § 3316.3–3 of this title for the prior production period, and (2) permit the inspection and copying by an official of the Department of the Interior of such documents, records of production of crude oil, natural gas and liquefied petroleum products, analyses and other material as are necessary to demonstrate the accuracy of any statement or information upon which any information in any Statement of Production or Report of Production was based or from which it was derived.

(i) No bid for a lease may be submitted if the Secretary finds, after notice and hearing, that the bidder is not meeting due diligence requirements on other OCS leases.

§ 3316.5 Award of leases.

(a) Sealed bids received in response to the notice of lease sale shall be opened at the place, date and hour specified in the notice. The opening of bids is for the sole purpose of publicly announcing and recording the bids received and no bids shall be accepted or rejected at that time.

(b) The United States reserves the right to reject any and all bids received for any tract, regardless of the amount offered.

(c) In the event the highest bids are tie bids, the tie bidders (unless they would be disqualified under § 3316.1(b) of this title, or disqualified under § 3316.3–4 of this title if their bids had been joint bids) may file with the Director, within 15 days after notification, an agreement to accept the lease jointly; otherwise all bids shall be rejected.

(d) Pursuant to section 8(c) of the act, the Attorney General may review the results of the lease sale prior to the acceptance of bids and issuance of leases.

(e) If the authorized officer fails to accept the highest bid for a lease within 60 days after the date on which the bids are opened, all bids for that lease shall be considered rejected.

(f) Written notice of the authorized officer's action shall be transmitted promptly to those bidders whose deposits have been held. If a bid is accepted, such notice shall transmit 3 copies of the lease to the successful bidder. The bidder shall be required, not later than the 15th day after receipt of the lease to execute the lease, pay the first year's rental, pay the balance of the bonus bid, unless deferred, and file a bond as required in § 3318.1 of this title. Deposits and any interest due shall be refunded on rejected bids.

(g) If the successful bidder fails to execute the lease within the prescribed time or otherwise comply with the applicable regulations the deposit shall be forfeited and disposed of as other receipts under the act.

(h) If, before the lease is executed on behalf of the United States, the land which would be subject to the lease is withdrawn or restricted from leasing, all deposits and any interest due shall be refunded.

(i) If the awarded lease is executed by an agent acting on behalf of the bidder, the lease shall be accompanied by evidence that the bidder authorized the agent to execute the lease. When three copies of the lease are executed and returned to the authorized officer, the lease shall be executed on behalf of the United States, and one fully executed copy shall be transmitted to the successful bidder.

(j) No lease or permit shall be issued for any area within 15 statute miles of the boundaries of the Point Reyes Wilderness in California unless the State of California allows exploration, development or production activities in the adjacent navigable waters of the State under section 11(h) of the act.

§ 3316.6 Lease form.

Oil and gas leases and leases for sulphur shall be issued on forms approved by the Director. Other mineral leases shall be issued on such forms and may be prescribed by the Secretary.

§ 3316.7 Dating of leases.

All leases issued under the regulations in this part shall be dated and become effective as of the first day of the month following the date leases are signed on behalf of the lessor. When prior written request is made, a lease may be dated and become effective as of the first day of the month within which it is so signed.

Subpart 3317—Rentals and Royalties

§ 3317.1 Rentals.

(a) An annual rental shall be due and payable, in advance, at the rate specified in the oil and gas lease, on the first day of each lease year prior to discovery of oil or gas on the lease.

(b) The owner of any lease created by the segregation of a portion of a producing lease and on which segregated portion there is no production, actual or allocated, shall pay an annual rental for such segregated portion at the rate per acre specified in the lease. This rental shall be payable each lease year following the year in which the segregation became effective and prior to a discovery on such segregated portion.

(c) Annual rental paid in any year shall be in addition to, and shall not be credited against, any royalties due from production.

(d) An annual rental on a lease for a mineral other than oil or gas, shall be due and payable, in advance, on the first day of each lease year prior to discovery in paying quantities, at a rate specified in the lease form.

§ 3317.2 Royalties.

(a) Royalties on oil and gas shall be at the rate specified in the lease, unless the Secretary, in order to promote increased production on the leased area through direct, secondary or tertiary recovery means, reduces or eliminates any royalty set forth in the lease.

(b) The royalty on sulphur shall be not less than 5 percent of the gross production or value of the sulphur at the wellhead.

§ 3317.3 Minimum royalty.

For leases which provide for minimum royalty payments, each lessee shall pay the minimum royalty specified in the lease at the end of each lease year beginning with the first lease year following a discovery on the lease.

§ 3317.4 Effect of suspensions on royalty and rental.

(a) If under the provisions of 30 CFR 250.12 (c), (d)(1), or (d)(4), the Director, Geological Survey, with respect to any lease, directs the suspension of both operations and production, or, with respect to a lease on which there is no producible well, directs the suspension of operations, no payment of rental or minimum royalty shall be required for or during the period of suspension.

(b) The lessee shall not be relieved of the obligation to pay rental, minimum royalty or royalty for or during the period of suspension if the Director,

Geological Survey: (1) under the provisions of 30 CFR 250.12(d)(1) approves, at the request of a lessee, the suspension of operations or production, or both, or (2) under the provisions of 30 CFR 250.12(d)(3) suspends any operation, including production.

(c) If the lease anniversary date falls within a period of suspension for which no rental or minimum royalty payments are required under paragraph (a) of this section, the prorated rentals or minimum royalties are due and payable as of the date the suspension period terminates. These amounts shall be computed and notice thereof given the lessee. The lessee shall pay the amount due within 30 days after receipt of such notice. The anniversary date of a lease shall not change by reason of any period of lease suspension or rental royalty relief resulting therefrom.

Subpart 3318—Bonding

§ 3318.1 Acceptable bonds.

(a) The successful bidder, prior to the issuance of an oil and gas or sulphur lease, shall furnish the authorized officer a corporate surety bond in the sum of $50,000 conditioned on compliance with all the terms and conditions of the lease. Such bond shall not be required if the bidder already maintains or furnishes a bond in the sum of $300,000 conditioned on compliance with the terms of oil and gas and sulphur leases held by the bidder on the OCS for the area in which the lease to be issued is situated.

(b) For the purposes of this section, there are four areas: (1) the Gulf of Mexico; (2) the area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii; (3) the area offshore the Coast of Alaska; and (4) the area offshore the Atlantic Coast.

(c) A separate bond shall be required for each area. An operator's bond in the same amount may be substituted at any time for the lessee's bonds.

(d) The amount of bond coverage on leases for other minerals shall be determined by the Director at the time of the offer to lease and shall be stated in the notice of lease sale.

(e) If, as the result of a default, the surety on a Mineral Lease Bond makes payment to the United States of any indebtedness under a lease secured by the bond, the face amount of such bond and the surety's liability shall be reduced by the amount of such payment.

(f) A new bond in the amount of $300,000 shall be posted within 6 months or such shorter period as the authorized officer may direct after a default. In lieu of the $300,000 bond required in this paragraph, a separate bond for each lease may be filed within the time period authorized. Failure to post a new bond shall, at the discretion of the authorized officer, be the basis of cancellation of all leases covered by the defaulted bond, except to the extent a separate bond in lieu of the $300,000 bond required by this paragraph has been filed within the time authorized.

§ 3318.2 Form of bond.

All bonds furnished by a lessee or operator shall be in a form approved by the Director.

§ 3318.3 Additional bonds.

The authorized officer may require additional security in the form of a supplemental bond or bonds or to increase the coverage of an existing bond if, after operations or production have begun, such additional security is deemed necessary.

Subpart 3319—Assignments, Transfers, and Extensions

§ 3319.1 Assignment of leases or interests therein.

(a) Subject to the approval of the authorized officer, leases, or any undivided interest therein, may be assigned in whole, or as to any officially designated subdivision, to anyone qualified under § 3316.1(b) of this title to hold a lease.

(b) An assignment shall be void if it is made pursuant to any prelease agreement described in § 3316.3–4(c) of this title that would cause a bid to be disqualified.

(c) Any approved assignment shall be deemed to be effective on the first day of the lease month following its filing in the appropriate office of the Bureau, unless at the request of the parties, an earlier date is specified in the approval.

(d) The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment.

(e) The assignee shall be liable for all obligations under the lease subsequent to the effective date of an assignment, and shall comply with all regulations issued under the act.

§ 3319.2 Requirements for filing of transfers.

(a)(1) All instruments of transfer of a lease or of an interest therein as to any officially designated subdivision, including operating rights, subleases and assignments of record interest, shall be filed in triplicate for approval within 90 days from the date of final execution. They shall include a statement over the transferee's own signature with respect to citizenship and qualifications similar to that required of a lessee and shall contain all of the terms and conditions agreed upon by the parties thereto. Carried working interests, overriding royalty interests or payments out of production may be created or transferred without requirement for filing or approval.

(2) An application for approval of any instrument required to be filed shall not be accepted unless accompanied by a nonrefundable fee of $25. Any document not required to be filed by these regulations but submitted for record purposes shall be accompanied by a nonrefundable fee of $25 per lease affected. Such documents may be rejected at the discretion of the authorized officer.

(b) An attorney in fact, in behalf of the holder of a lease, operating rights or sublease, shall furnish evidence of authority to execute the assignment or application for approval and the statement required by § 3316.4 of this title.

(c) Where an assignment creates a segregated lease, a bond shall be furnished in the amount prescribed in § 3318.1 of this title. Where an assignment does not create separate leases, the assignee, if the assignment so provides and the surety consents, may become a joint principal on the bond with the assignor.

(d) An heir or devisee of a deceased holder of a lease, or any interest therein, shall be recognized as the lawful successor to such lease or interest, if evidence of status as an heir or devisee is furnished in the form of: (1) a certified copy of an appropriate order or decree of the court having jurisdiction of the distribution of the estate or, (2) if no court action is necessary, the statements of two disinterested parties having knowledge of the facts or a certified copy of the will.

(e) In addition to the requirements of paragraph (d) of this section, the heirs or devisees shall file statements that they are the persons named as successors to the estate with evidence of their qualifications as provided in § 3316.4 of this title.

(f) In the event an heir or devisee is unable to qualify to hold the lease or interest, the heir or devisee shall be recognized as the lawful successor of the deceased and be entitled to hold the lease for a period of not to exceed 2 years from the date of death of the predecessor in interest.

(g) Each obligation under any lease and under the regulations in this part shall inure to the heirs, executors, administrators, successors, or assignees of the lessee.

(h) Where the proposed assignment or transfer is by a person who, at the time of acquisition of an interest in the lease, was on the List of Restricted Joint Bidders, and that assignment or transfer is of less than the entire interest of the assignor or transferor, to a person or persons on the same List of Restricted Joint Bidders, the assignor or transferor shall file a copy, prior to approval of the assignment, of all agreements applicable to the acquisition of that lease or a fractional interest.

§ 3319.3 Attorney General review.

Prior to the approval of an assignment or transfer, the Secretary shall consult with and give due consideration to the views of the Attorney General. The Secretary may act on an assignment or transfer if the Attorney General has not responded to the request for consultation within 30 days of said request.

§ 3319.4 Separate filings for assignments.

A separate instrument of assignment shall be filed for each lease. When transfers to the same person, association or corporation, involving more than one lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee shall be sufficient.

§ 3319.5 Effect of assignment of particular tract.

(a) When an assignment is made of all the record title to a portion of the acreage in a lease, the assigned and retained portions become segregated into separate and distinct leases. In such a case, the assignee becomes a lessee of the Government as to the segregated tract that is the subject of assignment, and is bound by the terms of the lease as though the lease had been obtained from the United States in the assignee's own name, and the assignment, after its approval, shall be the basis of a new record. Royalty, minimum royalty and rental provisions of the original lease shall apply separately to each segregated portion

(b) For assignments of a portion of an oil and gas lease approved after the effective date of ths section, each segregated lease shall continue in full force and effect for the primary term of the original lease and so long thereafter as oil or gas is produced from that segregated portion of the leased area in paying quantities or drillng or well reworking operations as approved by the Secretary are conducted.

(c) For those assignments approved prior to the effective date of this section, each segregated lease shall continue in full force and effect for the primary term of the original lease and so long thereafter as oil and gas may be produced from the original leased area in paying quantities or drilling or well reworking operations, as approved by the Secretary, are conducted.

§ 3319.6 Extension of lease by drilling or well reworking operations.

The term of a lease shall be extended beyond the primary term so long as drilling or well reworking operations are approved by the Secretary according to the conditions set forth in 30 CFR 250.35.

§ 3319.7 Directional drilling.

In accordance with an approved exploration plan or development and production plan, a lease may be maintained in force by directional wells drilled under the leased area from surface locations on adjacent or adjoining land not covered by the lease. In such circumstances, drilling shall be considered to have commenced on the leased area when drilling is commenced on the adjacent or adjoining land for the purpose of directional drilling under the leased area through any directional well surfaced on adjacent or adjoining land. Production, drillling or reworking of any such directional well shall be considered production or drilling or reworking operations on the leased area for all purposes of the lease.

§ 3319.8 Compensatory payments as production.

If an oil and gas lessee makes compensatory payments as provided in 30 CFR 250.33 and if the lease is not being maintained in force by other production of oil or gas in paying quantities or by other approved drilling or reworking operations, such payments shall be considered as the equivalent of production in paying quantities for all purposes of the lease.

§ 3319.9 Effect of suspensions on lease term.

(a) If the Director, Geological Survey, directs the suspension of either operations or production, or both, under the provisions of 30 CFR 250.12 (c), (d)(1) or (d)(4) with respect to any lease in its primary term, the primary terms of the lease shall be extended by a period equivalent to the period of the suspension.

(b) If the Director, Geological Survey, orders or approves the suspension of either operations or production, or both, under the provision for 30 CFR 250.12 (c), (d)(1), or (d)(4) with respect to any lease extended beyond its primary term, the term of the lease shall not be deemed to expire so long as the suspension remains in effect.

Subpart 3320—Termination of Leases

§ 3320.1 Relinquishment of leases or parts of leases.

A lease or any officially designated subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, with the appropriate OCS office of the Bureau. No filing fee is required. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and the surety to make all payments due, including any accrued rentals, royalties and deferred bonuses and to abandon all wells and condition or remove all platforms and other facilities on the land to be relinquished to the satisfaction of the Director, Geological Survey.

§ 3320.2 Cancellation of leases.

(a) Any nonproducing lease issued under the act may be cancelled by the authorized officer whenever the lessee fails to comply with any provision of the act or lease or applicable regulations, if such failure to comply continues for 30 days after mailing of notice by registered or certified letter to the lease owner at the owner's record post office address. Any such cancellation is subject to judicial review as provided in section 23(b) of the act.

(b) Producing leases issued under the act may be cancelled by the Secretary whenever the lessee fails to comply with any provision of the act, applicable regulations or the lease only after judicial proceedings as prescribed by section 5(d) of the act.

(c) Any lease issued under the act, whether producing or not, shall be canceled by the authorized officer upon proof that it was obtained by fraud or misrepresentation, and after notice and opportunity to be heard has been afforded to the lessee.

(d) Pursuant to section 5(a) of the act, the Secretary may cancel a lease when: (1) continued activity pursuant to such lease would probably cause serious harm or damage to life, property, any mineral, national security or defense, or to the marine, coastal or human environment; (2) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and (3) the advantages of continuing such lease or permit in force. Procedures and conditions contained in 30 CFR 250.12 shall apply as appropriate.

Subpart 3321—Section 6 Leases

§ 3321. Effect of regulations on lease.

(a) All regulations in this part, insofar as they are applicable, shall supersede the provisions of any lease which is maintained under section 6(a) of the act. However, the provisions of a lease relating to area, minerals, rentals, royalties (subject to sections 6(a)(8) and (9) of the act), and term (subject to section 6(a)(10) of the act and, as to sulfur, subject to section 6(b)(2) of the act) shall continue in effect, and, in the event of any conflict or inconsistency, shall take precedence over these regulations.

(b) A lease maintained under section 7(a) of the act shall also be subject to all operating and conservation regulations applicable to the OCS. In addition, the regulations relating to geophysical and geological exploratory operations and to pipeline rights-of-way are applicable, to the extent that those regulations are not contrary to or inconsistent with the lease provisions relating to area, the minerals, rentals, royalties and term. The lessee shall comply with any provision of the lease as validated, the subject matter of which is not covered in the regulations in this part.

§ 3321.2 Leases of other minerals.

The existence of a lease that meets the requirements of section 6(a) of the act shall not preclude the issuance of other leases of the same area for deposits of other minerals. However, no other lease of minerals shall authorize or permit the lessee thereunder unreasonably to interfere with or endanger operations under the existing lease. No sulphur leases shall be granted by the United States on any area while such area is included in a lease covering sulphur under section 6(b) of the act.

Subpart 3331—Studies

§ 3331.1 Environmental studies.

(a) The Director shall conduct a study of any area or region included in any lease sale in order to establish information needed for assessment and management of impacts on the human, marine and coastal environments which may be affected by OCS oil and gas activities in such area or region. Any study shall, to the extent practicable, be designed to predict environmental impacts of pollutants introduced into the environments and of the impacts of offshore activities on the seabed and affected coastal areas.

(b) Studies shall be planned and carried out in cooperation with the affected States and interested parties and, to the extent possible, shall not duplicate studies done under other laws. Where appropriate, the Director shall, to the maximum extent practicable, enter into agreements with the National Oceanic and Atmospheric Administration in executing the environmental studies responsibilities. By agreement, the Director may also utilize services, personnel or facilities of any Federal, State or local government agency in the conduct of such study.

(c) Any study of an area or region required by paragraph (a) of this section for a lease sale shall be commenced not later than six months prior to holding a lease sale for that area. The Director may utilize information collected in any prior study. The Director may initiate studies for areas or regions not identified in the leasing program.

(d) After the leasing and developing of any area or region, the Director shall conduct such studies as are deemed necessary to establish additional information and shall monitor the human, marine and coastal environments of such area or region in a manner designed to provide information which can be compared with the results of studies conducted prior to OCS oil and gas development. This shall be done to identify any significant changes in the quality and productivity of such environments, to establish trends in the areas studies, and to design experiments identifying the causes of such changes. Findings from such studies shall be used to recommend modifications in practices which are employed to mitigate the effects of OCS activities and to enhance the data/information base for predicting impacts which might result from a single lease sale or cumulative OCS activities.

(e) Information available or collected by the studies program shall, to the extent practicable, be provided in a form and in a timeframe that can be used in the decisionmaking process associated with a specific leasing action or with longer term OCS minerals management responsibilities.

Subpart 3340—Grants of Pipeline Rights-of-way on the Outer Continental Shelf

§ 3340.0-1 Purpose.

(a) The purpose of these regulations is to provide the procedure for the granting and administering of rights-of-way for the transportation of minerals by pipeline through the OCS.

(b) Compliance with the regulations of this subpart does not supersede the requirements of complying with the regulations of the Department of Transportation, the Department of the Army and the Federal Energy Regulatory Commission.

§ 3340.0-2 Policy.

The respective Bureau of Land Management OCS offices shall, as appropriate, engage in transportation planning in advance of receipt of an application for a right-of-way. The intergovernmental planning program or similar process shall be used to involve relevant parties in this advanced planning.

The construction of gathering lines may be approved by the Director, Geological Survey, in accordance with the provisions of 30 CFR 250.18 and 250.68.

§ 3340.0-5 Definitions.

As used in this subpart, the term "right-of-way" includes the site on which the pipeline and associated structures are situated which shall not exceed 200 feet in width for pipelines unless safety and environmental factors during construction and operations require a greater width and shall be limited to the area reasonably necessary for pumping stations or other accessory structures. It does not include gathering lines and associated structures constructed for the purpose of conveying production for gathering, storage or treating of the production from a lease or leases.

§ 3340.1 Nature of grant.

(a) An applicant, by accepting a right-of-way grant, agrees and consents to comply with the requirements set out below.

(1) The holder shall comply with all existing regulations and with all existing and future regulations which the Secretary determines to be necessary and proper in order to provide for the prevention of waste, the conservation of the natural resources of the OCS and the protection of correlative rights therein. The holder shall comply with all stipulations which the authorized officer attaches to the right-of-way grant for the purpose of assuring maximum environmental protection. The holder shall utilize the best available and safest technologies, such as the safest reasonable pipeline burial techniques, which the Secretary determines to be economically feasible.

(2) The holder shall pay the United States or its lessees or right-of-way holders, as the case may be, the full value for all damages to the property of the United States or its said lessees or right-of-way holders, and shall indemnify the United States against any and all liability for damages to life,

person or property arising from the occupation and use of the area covered by the right-of-way grant.

(3) The authorized officer shall be kept informed at all times of the holder's address, and, if a corporation, of the address of its principal place of business and the name and address of the officer or agent authorized to receive service of notice. In the construction, operation and maintenance of the pipeline, the holder shall not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin and shall require an identical provision in all subcontracts.

(4) The granting of the right-of-way shall be subject to the express conditions that the rights granted shall not prevent or interfere in any way with the management, administration of, or the granting, either prior or subsequent to the right-of-way grant, of other rights by the United States. Moreover, the holder agrees to allow the occupancy and use by the United States, its lessees or other rights-of-way holders of any part of the right-of-way grant not actually occupied or necessarily incident to its use for any necessary operations involved in the management, administration or the enjoyment of such other granted rights.

(5) For the first calendar year or fraction thereof, and thereafter annually, the holder shall pay the Bureau, in advance, an annual rental of $15 for each statute mile or fraction thereof, traversed by the right-of-way and $75 for each area applied for as a site for an accessory to the right-of-way, including, but not limited, to a platform. Payments may be on an annual basis, for a 5-year period or for multiples of the 5-year period.

(6) Upon abandonment, relinquishment, revocation or termination of the right-of-way grant, the holder shall remove any platforms, structures, domes over valves, the pipe, taps and valves along the right-of-way which would present any hazard to navigation or fishing, unless this requirement is waived in writing by the authorized officer. In order to secure a waiver the holder shall demonstrate to the satisfaction of the authorized officer, that any abandonment in place, shall not constitute an unreasonable hazard to navigation, fishing or the marine environment, that the line has been purged to remove materials that, if released, could be harmful to the marine environment. The holder shall also demonstrate to the satisfaction of the authorized officer that all open ends of the pipe have been plugged and buried to a minimum cover of three feet or such other depth as may be required by the authorized officer.

Any improvement required to be removed shall be removed by the holder within one year of the effective date of the relinquishment, revocation, termination or abandonment. All such structures, accessories thereto, or improvements not removed within the time provided herein, shall become the property of the United States but that shall not relieve the holder of liability for the cost of their removal or for restoration of the site. Any application for relinquishment of a right-of-way shall be filed in accordance with § 3340.5 of this title.

(7) The holder shall suspend operations of any pipeline for a period of time specified by the authorized officer upon a determination by the authorized officer that continued operation would threaten or result in serious, irreparable, or immediate harm to life (including fish and other aquatic life), to property, to mineral deposits or the marine, coastal or human environments. The authorized officer may, to aid in the determination, request and consider the views and recommendations of appropriate Federal and State agencies. The authorized officer may also suspend operations if the holder fails to comply with applicable law, regulations or terms of the grant. The Secretary may cancel a grant under section 5(a)(2) of the act.

(8) The holder shall operate and maintain the pipeline in such a manner so as not to pose an unreasonable obstruction to fishing and shipping operations.

(9) The holder shall furnish the authorized officer, within 30 days of request, all data as to maximum design capacity of the pipeline, average product quantity being moved as of the time of request and copies of all contracts for transportation existing at the time of request.

(10) The holder shall assure that such oil or gas pipelines shall, at the option of the Federal Energy Regulatory Commission, either transport or purchase oil or natural gas produced from submerged lands in the vicinity of the pipeline without discrimination and in such proportionate amounts as the Federal Energy Regulatory Commission, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste.

(11) The holder shall provide open and nondiscriminatory access to the pipeline to both owner and nonowner shippers.

(12) The holder shall comply with the provisions of section 5(f)(1)(B) of the act, under which the Federal Energy Regulatory Commission may order an expansion of the throughput capacity of a pipeline which is authorized after September 18, 1978, and which is not located in the Gulf of Mexico or the Santa Barbara Channel.

(b) Failure to comply with the act, regulations or any conditions prescribed by the Secretary as to the right-of-way and the survey, location and width of a pipeline shall be grounds for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States District Court having jurisdiction under the provisions of section 23 of the act.

(c) Any right-of-way granted under the provisions of this subpart shall be for so long as the pipeline is properly maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant. Temporary cessation or suspension shall not terminate the grant. Where pipeline segments become corroded or otherwise worn and need replacement, proper maintenance may be performed under a temporary cessation of use. If the purpose of the grant ceases to exist or use of the pipeline is permanently discontinued for any reason, the grant shall be subject to forfeiture.

§ 3340.2 Application procedures.

§ 3340.2-1 Applications.

(a) No special form of application is required. The application shall be filed in triplicate in the OCS office having jurisdiction of the lands covered by the application. It shall specify that it is made pursuant to the act and these regulations and that the applicant agrees that if the right-of-way grant is approved, the grant shall be subject to the terms and conditions of the regulations in this part. It shall also state the primary purpose for which the right-of-way is to be used. If the right-of-way has been utilized prior to the time the application is made, the application shall state the date such utilization commenced and by whom, and the date applicant obtained control of the improvement. A nonrefundable filing fee of $100 and the rental required herein under § 3340.1(a)(5) of this title, shall accompany the application. A separate application shall be filed for each right-of-way.

(b) Each copy of the application shall be accompanied by a map, showing the

center line of the right-of-way, properly identified so that the right-of-way can be accurately located by a competent engineer. The map shall comply with the following requirements:

(1) The scale shall be at least 1":4,000', or such other scale as may be determined by the authorized officer.

(2) Distances of the center line of the right-of-way and grid references for all turning points shall be given either on the margin of the map or on an attached sheet or sheets with the courses referred to the true or grid meridian, either by deflection from a line of known bearing or by independent observation and calculated distances in feet and decimals.

(3) The total distance and width of the right-of-way shall be given, and the diameter of the pipeline specified.

(4) The initial and terminal points of the right-of-way and any continuation into State jurisdiction shall be accurately located by grid references, even though the right-of-way may have an onshore terminal point.

(5) Each copy of the map shall bear upon its face a signed certificate of the engineer who made the map that the right-of-way is accurately represented upon the map, and the design characteristics are in accordance with Department of Transportation regulations.

(c) Rights-of-way issued pursuant to section 5(e) of the act may be acquired or held only by citizens and nationals of the United States, aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. § 1101(a)(20), private, public or municipal corporations organized under the laws of the United States, the District of Columbia, or of any State, or territory thereof, or associations of such citizens, nationals, resident aliens or private, public or municipal corporation, States or political subdivision of States.

(d)(1) An individual applicant shall submit with the application a statement of citizenship or nationality. An applicant who is an alien lawfully admitted for permanent residence in the United States shall also submit with the application evidence of such status.

(2) If the applicant is an association (including a partnership), the application shall also be accompanied by a certified copy of the articles of association or appropriate reference to the record of the Bureau in which such a copy has already been filed, with a statement as to any subsequent amendments.

(3) If the applicant is a corporation, the following additional information shall be submitted with the application:

(1) a statement certified by the secretary or assistant secretary of the corporation with the corporate seal, showing the state in which it is incorporated and the name of the person(s) authorized to act on behalf of the corporation, or

(2) in lieu of such a statement, an appropriate reference to statements or records previously submitted to the Bureau (including material submitted in compliance with prior regulations).

(e)(1) An applicant shall show the extent to which the right-of-way applied for invades or crosses mineral leases, rights-of-way or Geological Survey easements other than the applicant's own. The application shall contain a statement that a copy of the application has been delivered personally or by registered or certified mail to each lessee or right-of-way grant holder whose lease or right-of-way is so affected. When the statement is filed, no final action shall be taken on the right-of-way grant application until 30 days have elapsed after the date of service of such papers, in order to afford the parties concerned ample opportunity to comment on the granting of the right-of-way. A copy of the comments shall be filed with the authorized officer for his consideration.

(2) If the authorized officer determines that a change in the application as filed should be made based on the comments received, the authorized officer shall notify the applicant that an amended application shall be filed subject to changes which the authorized officer stipulates. The authorized officer shall determine whether the applicant shall deliver copies of the amended application to other parties for comment pursuant to 3340.2–1 of this title.

§ 3340.2–2 Approval action.

(a) In considering the application for a right-of-way, the authorized officer shall consider the potential effect of the pipeline on the human, marine and coastal environments, life, including aquatic life, property and mineral resources in the entire area during construction and operational phases. The authorized officer shall prepare an environmental analysis in accordance with applicable policies and guidelines. To aid in the evaluation and determinations, the authorized officer may request and consider views and recommendations of appropriate Federal agencies, may hold public meetings after appropriate notice, and may consult, as appropriate, with State agencies, organizations, industries and individuals. The authorized officer shall attach, as a condition to approval, special stipulations and conditions necessary to protect human, marine and coastal environments, life, including aquatic life, property and mineral resources, located on or adjacent to the proposed right-of- way. In approving the pipeline right-of-way, consideration shall be given to any recommendation of the intergovernmental planning program, or similar process, for the assessment and management of OCS oil and gas transportation.

(b) If the right-of-way as applied for crosses any area withdrawn from disposal or restricted from oil and gas activities, it shall be rejected unless the Federal agency in charge of such withdrawn or restricted area gives its consent to the granting of the right-of-way. In such case the applicant, upon request filed within 30 days after receipt of the rejection notice, shall be allowed an opportunity to file an amended application rerouting the proposed right-of-way so as to eliminate the conflict.

(c) Should the proposed route of the right-of-way adjoin and subsequently cross any State submerged lands, the applicant shall submit to the authorized officer evidence that the State or States so affected have reviewed the application, and shall submit any comment received, including any recommendations to relocate the route, if such relocation is considered necessary. In the event of a State recommendation to relocate the proposed route, the authorized officer shall coordinate with the appropriate State officials all applications for right-of-way grants that pass from Federal to State submerged lands.

(d) If an application is for a grant for a right-of-way affecting any land or water use in the coastal zone of any State with a coastal zone management program approved under section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), then the application shall not be approved unless it is consistent with the approved coastal zone management program or until the Secretary of Commerce makes a finding that the right-of-way will be consistent with the objectives or purposes of the Coastal Zone Management Act of 1972, or is necessary in the interest of national security. However, if the application is for a grant for a right-of-way that has been described in detail in an approved development and production plan, then the application may be approved without a further finding of consistency with any approved coastal zone management program or a further finding on the part of the Secretary of Commerce. (See 30 CFR 250.34–2)

(e) If the application and other required information are found to be in compliance with applicable law and regulations, the right-of-way may be granted. If the application is rejected, the decision shall be in writing and shall state the reasons for the decision.

§ 3340.3 Construction.

(a) Failure to construct the pipeline within 5 years from the date of the grant shall be deemed to be an abandonment of the grant and deemed to be a forfeiture. Proof of construction shall be submitted to the authorized officer within 90 days after completion of construction of the pipeline. Such proof shall consist of drawings of the pipeline as built, in triplicate; a signed certificate by the engineer that the pipeline is accurately represented; grid references for all turning points on the line; and other data as required by the authorized officer. If there is substantial deviation from the right-of-way as shown on the original map, the unused portion of the grant shall be relinquished and maps, in triplicate, of the location of the right-of-way as constructed shall be furnished to the authorized officer as soon as possible after the deviation is determined to be necessary or advisable. Any deviation made prior to approval of such supplemental plat shall be at the risk of the holder.

(b) Right-of-way grants shall be reviewed annually prior to commencement of construction of any pipeline. Any significant change in conditions subsequent to the granting of a right-of-way but prior to commencement of construction may be grounds for a request to alter the grant by the authorized officer. The authorized officer shall give consideration to any recommendation of the intergovernmental planning program or similar process.

§ 3340.4 Assignment of right-of-way.

(a) Assignment may be made of a right-of-way grant in whole or of any lineal segment thereof, subject to the approval of the authorized officer. Any such proposed assignment shall be filed in triplicate, accompanied by an application for approval in which the assignee shall make the showing required by § 3340.2–1(c) of this title and agree to the terms and conditions prescribed in § 3340.1(a) of this title.

(b) Any proposed assignment, in whole or in part of any right, title or interest in a right-of-way grant, shall be accompanied by the same showing of qualifications of the assignees as is required of an applicant, and shall be supported by a stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the right-of-way grant. No transfer shall be recognized unless and until it is first approved, in writing, by the authorized officer. A nonrefundable fee of $25 shall acompany the application for the approval of an assignment.

§ 3340.5 Relinquishment of rights-of-way.

A right-of-way grant or a portion thereof may be surrendered by the record holder by filing a written relinquishment, in triplicate, with the authorized officer. A relinquishment shall take effect on the date it is filed subject to the satisfaction of all requirements for abandonment in § 3340.1(a)(6) of this title.

§ 3340.6 Change of use or flow.

(a) A change may be made by the holder in the use of the pipeline or direction of flow from that specified in the approved permit only if prior approval is obtained from the Department of Transportation and the authorized officer. Application for such a change shall be filed not less than 15 working days in advance of the proposed change of use or flow.

(b) Each application shall specify whether the change is to be temporary or permanent, and any technical changes necessary to accommodate the change.

(c) Each application shall demonstrate that the pipeline is physically and technically adaptable to the proposed change without adverse environmental effects.

§ 3340.7 Bonding.

(a) Prior to the issuance of a right-of-way grant the applicant shall furnish the authorized officer a corporate surety bond in the sum of $300,000 conditioned on compliance with all the terms of the grant. A similar bond shall be furnished for all previously issued rights-of-way within 90 days of the effective date of this section. Such bond shall not be required if the applicant already maintains or furnishes a bond in the sum of $300,000 conditioned on compliance with the terms of all right-of-way grants held by the applicant on the OCS for the area in which the grant to be issued is situated. This bond shall be in addition to any bond required of a lessee in subpart 3318 of this title.

(b) For the purposes of this section, there are four areas: (1) the Gulf of Mexico; (2) the area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii; (3) the area offshore the Coast of Alaska; and (4) the area offshore the Atlantic Coast.

(c) A separate bond shall be required for each area.

(d) If, as the result of a default, the surety on a right-of-way grant bond makes payment to the Government of any indebtedness under a grant secured by the bond, the face amount of such bond and the surety's liability shall be reduced by the amount of such payment.

(e) A new bond in the amount of $300,000 shall be posted within 6 months or such shorter period as the authorized officer may direct after a default. Failure to post a new bond shall, at the discretion of the authorized officer, be the basis of cancellation of all grants covered by the defaulted bond.

Appendix A

Suggested Bid Form. It is suggested that bidders submit their bids to the Manager, Outer Continental Shelf Office, in the following form:

Oil and Gas Bid

The following bid is submitted for an oil and gas lease on the tract of the Outer Continental Shelf specified below:

Tract No.....
Total amount bid.....
Amount per acre/hectare.....
Amount of cash bonus submitted with bid.....

Proportionate Interest of Company(ies) Submitting Bid

Qualification No.....
Company.....
Percent interest.....
Address.....
Signature...(Please type signer's name under signature)

Appendix B

Required Joint Bidder's Statement. In the case of joint bids, each joint bidder is required to execute a joint bidder's statement before a notary public and submit it with his bid. A suggested form for this statement is shown below.

Joint Bidder's Statement

I hereby certify that

_____ (entity submitting bid) is eligible under 43 CFR 3316.3 to bid jointly with the other parties submitting this bid.

_____
Signature (Please type signer's name under signature)

Sworn to and subscribed before me this _____ day of _____ 19——.

_____
Notary Public
State of.....
County of.....

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