

used after wet scrubbers or at points where two streams with different pollutant concentrations are combined. The tester may select other traverse points provided that they can be shown to the satisfaction of the Administrator to provide a representative sample over the stack or duct cross section. If method 6B is used, sampling time and timer operation may be adjusted for the stratification test to collect an adequate sample volume; however, both sampling trains are to be operated similarly.

If the mean of the absolute difference between the three paired runs agree to within 10 percent, the location is adequate for the Method 6B 24-hour tests. If the agreement is not within 10 percent, choose a new location and repeat the stratification tests.

4.1 Sampling. All sample collection shall be within 3 cm of the sample location meeting the stratification test in section 4.0.

4.2 Determination of a F_c Factor. Select an applicable F_c factor as described in Method 19, Section 5.2.

4.3 Calculation of a Boiler Operating Day Emission Rate. Determine a daily SO_2 emission rate, E_{SO_2} , as described in Method 6A, Section 7.6.2 (Equation 6A-8); in ng/J (1b/10⁶ Btu).

4.4 Calculation of the 30-Day Rolling Average. Calculate the mean 30-day emission rate using the daily measured values in ng/J (1b/10⁶ Btu) for successive boiler operating days (rolling averages) as follow:

$$\bar{E}_{30} = \frac{1}{n} \sum_{i=1}^n E_{SO_2} \quad (\text{Equation 19A-6})$$

where:

$\bar{E}_{30}$ = SO_2 emission rate 30-day rolling average, ng/J (1b/10⁶ Btu).

E_{SO_2} = Daily SO_2 emission rates, ng/J (1b/10⁶ Btu).

n = Number of daily SO_2 emission rates obtained in the 30 boiler operating day period.

5. Calculation of Emission Rate from Combined Cycle-Gas Turbine Systems

Determine the SO_2 emission rate from the steam generator as described in Method 19, Section 5.4

6. Calculation when Available Emission Measurement Data Are Less Than the Minimum

Perform the following calculations when the number of data values is less than the minimum required in the applicable subpart for calculation of the 30-day rolling average.

6.1 Mean Emission Rate. Calculate the mean emission rate for the reporting period using all emission measurement values (hourly averages for CEMS and daily averages for fuel sampling and Method 6B) and the following equation:

$$S_E = \left[\frac{1}{n} - \frac{1}{\max} \right] \left[\frac{\frac{n}{2} \sum_{i=1}^n (E_i - E_{SO_2})^2}{n-1} \right] \quad (\text{Equation 19A-8})$$

where:

S_E = Standard deviation of the mean of the emission values for the reporting period, ng/J (1b/10⁶ Btu).

$\max$ = The maximum number of data values that should have been recorded during the reporting period.

n = The number of available emission rate values for the reporting period-hourly averages for CEMS, daily averages for other methods.

6.3 Confidence Limit. Calculate the upper and lower confidence limit for the mean emission rate using the following equation:

$$E_L = \bar{E} - t_{0.95} S_E \quad (\text{Equation 19A-9})$$

$$E_U = \bar{E} + t_{0.95} S_E \quad (\text{Equation 19A-10})$$

where:

$$\bar{E} = \frac{1}{n} \sum_{i=1}^n E_{SO_2} \quad (\text{Equation 19A-7})$$

where:

$\bar{E}$ = Mean SO_2 emission rate for the reporting period, ng/J (1b/10⁶ Btu).

n = Number of available emission rate values for the reporting period hourly averages for CEMS, daily averages for other methods.

E_{SO_2} = Measured emission rate values, ng/J (1b/10⁶ Btu).

6.2 Standard Deviation of Mean. Calculate the standard deviation of the mean of the available emission rate values using the following equation:

E_L = The lower confidence limit for the mean emission rate; ng/J (1b/10⁶ Btu).

E_U = The upper confidence limit for the mean emission rate; ng/J (1b/10⁶ Btu).

$t_{0.95}$ = Values shown below for the indicated number of data points (n).

Values for $t_{0.95}$

n	$t_{0.95}$	n	$t_{0.95}$	n	$t_{0.95}$
2	6.31	8	1.89	22-26	1.71
3	2.42	9	1.86	27-31	1.70
4	2.35	10	1.83	32-41	1.68
5	2.13	11	1.81	52-61	1.67
6	2.02	12-16	1.77	92-151	1.66
7	1.94	17-21	1.73	152 or more	1.65

The values of this table are corrected for $n-1$ degrees of freedom. Use n equal to the number of emission rate values.

[FR Doc. 83-28566 Filed 10-20-83; 8:45 am]

BILLING CODE 6560-50-M

Registered Federal Prisons

Friday
October 21, 1983

Part VI

Department of Justice

Bureau of Prisons

Control, Custody, Care, Treatment, and
Instruction of Inmates, and Modification
of List of Bureau of Prisons Institutions

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 500, 527, and 552

Control, Custody, Care, Treatment,
and Instruction of Inmates; D.C.
Women Offenders, et al.

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rules.

SUMMARY: In this document, the Bureau of Prisons is publishing its final rule on Designations and Transfers of D.C. Women Offenders. The rule concerns the designation of women District of Columbia (D.C.) Code violators to the Bureau of Prisons and the transfer of women D.C. offenders in federal institutions to the District of Columbia Department of Corrections.

In this document, the Bureau of Prisons is also amending two existing rules. The Bureau is amending its rule on definitions to revise the terms "inmate" and "contraband" and to add the term "qualified health personnel". The Bureau is also amending its rule on Searches of Housing Units, Inmates, and Inmate Work Areas to refine and/or clarify the existing rule.

EFFECTIVE DATE: November 21, 1983.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 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: In this document, the Bureau of Prisons is publishing final and amended rules. The new final rule is on Designations and Transfers of D.C. Women Offenders. The rule on Searches of Housing Units, Inmates, and Inmate Work Areas is amended. In addition, the term "qualified health personnel" is added and the terms "inmate" and "contraband" are amended in the definitions section of the rules. Each of these subjects has been published in the *Federal Register* as a proposed rule. The amended definitions for "inmate" and "contraband" were published in the *Federal Register* January 19, 1983 (at 48 FR 2503). The other rules were published in the *Federal Register* April 29, 1983 (at 48 FR 19576 et seq.). Interested persons were invited to submit comments on the proposed rules. Public comment was received for the rule on searches. Members of the public may submit comments concerning the final rules by writing the previously cited address. These comments will be considered but

will receive no response in the *Federal Register*.

The Bureau of Prisons has determined that these rules are not major rules for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to these rules since the rules involve agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that these rules, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), do not have a significant impact on a substantial number of small entities.

Summary of Changes

I. Designations and Transfers of D.C. Women Offenders

1. Section 527.50—The phrases "will designate" and "will refer" are revised to read "designates" and "refers" respectively.

2. Section 527.52—Section 527.52(a) is reworded, but its intent is unchanged.

3. Section 527.53—The "Notice of Eligibility" form is retitled "Notice of Eligibility for Referral."

4. Section 527.54—Section 527.54(b) is expanded to provide the inmate with information on where to send a complaint filed under the D.C. Department of Corrections grievance procedure.

II. Searches of Housing Units, Inmates, and Inmate Work Areas

1. Section 552.11—Comments to § 552.11(a) opposed the proposed change allowing staff of the opposite sex to perform pat searches. Commenters suggested that such a policy is an invitation to arguments, confrontations, and problems, that it will be sexually arousing, increase anxiety, and will not reinforce moral attitudes and behavior. One commenter stated that a "cross-sex" pat search serves no useful purpose except for the sexual gratification of the male staff member.

As stated in the preamble to the proposed rule, the nature and purpose of the pat search, inspection of a clothed inmate on a routine or random basis, does not warrant the requirement that the search be done by a staff member of the same sex as the inmate. The pat search is a reasonable means by which the Bureau may attempt to control contraband in a correctional institution. Bureau staff are trained to make the pat search in a detached, professional manner and to conduct the search so as to preserve the dignity of the individual. A properly performed pat search, whether done by a man or woman, ordinarily should not adversely affect the inmate, whether man or woman. Staff abuse of the search procedure

subjects the staff member to disciplinary action. An inmate who believes such an abuse has occurred may file a complaint through the Administrative Remedy Procedure (Part 542, Subpart B).

A commenter notes that courts have reviewed and balanced the issues concerning the "conflict between the rights of prisoners to a modicum of privacy versus the rights of staff to equal job opportunity." We believe Bureau rules sufficiently balance these concerns within the constraints of maintaining institution security, good order, and discipline. The rule allows staff, regardless of sex, to conduct a search of a clothed inmate. To require otherwise could adversely affect staff work assignments, or necessitate a situation requiring a male staff member to leave his assigned post, thereby endangering institution security, to pat search a male inmate detained by a female staff member. While a search by a member of the same sex as the inmate is ordinarily appropriate for visual searches (§ 552.11(b)), inasmuch as it recognizes the privacy rights of an inmate, a similar procedure is not warranted for the search of a clothed inmate.

Section 552.11(c) is clarified by inserting the phrase "Acting Warden", to recognize the authorizing official in the absence of the Warden. Internal implementing instructions state that only the Warden or Acting Warden may approve a digital or simple instrument search.

List of Subjects in 28 CFR Parts 500, 527, 552

Prisons Bureau, Justice Department, Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR, Chapter V is amended as set forth below.

Dated: October 18, 1983.

Norman A. Carlson,
Director, Bureau of Prisons.

Amend Subchapter A, B, and C of 28 CFR, Chapter V as follows:

I. Subchapter A, Part 500 is amended as follows:

SUBCHAPTER A—GENERAL
MANAGEMENT AND ADMINISTRATION

PART 500—GENERAL DEFINITIONS

A. The authority citation for Part 500 reads as follows:

Authority: 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.

B. In § 500.1, revise paragraphs (c) and (h) and add a new paragraph (i) to read as follows:

§ 500.1 Definitions.

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

(h) "Contraband" is material prohibited by law, or by regulation, or material which can reasonably be expected to cause physical injury or adversely affect the security, safety, or good order of the institution.

(i) "Qualified health personnel" includes physicians, dentists, and other professional and technical workers who engage in activities within their respective levels of health care training or experience which support, complement, or supplement the administration of health care.

II. In Subchapter B, add Subpart F to Part 527.

Subchapter B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 527—TRANSFERS

Subpart F—Designations and Transfers of D.C. Women Offenders

Sec.	
527.50	Purpose and scope.
527.51	Definitions.
527.52	Designation.
527.53	Transfer Referrals.
527.54	Grievance Procedures.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5003, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart F—Designations and Transfers of D.C. Women Offenders

§ 527.50 Purpose and scope.

(a) The Bureau of Prisons designates federal institutions for most female D.C. Code violators who are serving sentences of more than one year and who are not within nine months of a parole eligibility, sentence expiration, or mandatory release date.

(b) The Bureau of Prisons refers to the District of Columbia (D.C.) Department of Corrections and to the D.C. Board of Parole for transfer consideration any District of Columbia female inmate in Bureau of Prisons custody provided the

inmate has made a request for transfer and is within nine months of a parole eligibility, sentence expiration, or mandatory release date.

527.51 Definitions.

For purposes of this rule, the following definitions apply.

(a) Parole eligibility date—the date on which the inmate becomes eligible for parole consideration.

(b) Sentence expiration date—the date on which the inmate is to be released by good time allowances or other statutory means, and not by parole action, and with 180 days or less remaining on the sentence.

(c) Mandatory release date—the date on which the inmate is to be released by good time allowances, and not by parole action, and with more than 180 days remaining on the sentence.

(d) Appropriate District of Columbia officials—officials of the District of Columbia Department of Corrections and/or the District of Columbia Board of Parole.

§ 527.52 Designation.

Bureau of Prisons staff shall review all requests for designation of female D.C. Code violators to a federal institution to ensure that the individual is not within nine months of a parole eligibility, sentence expiration, or mandatory release date. When staff determine that the inmate is within nine months of such a release date, the request for designation shall be held in abeyance until a determination has been made by the appropriate District of Columbia officials with respect to the inmate's suitability for community placement or parole.

(a) Bureau staff shall proceed with the designation of a federal institution for the inmate upon being notified that the appropriate District of Columbia officials have determined that the inmate is presently considered unsuitable for both community placement and for parole.

(b) Bureau staff should not proceed with the designation upon being notified that the appropriate District of Columbia officials have determined that the inmate is considered a suitable candidate for community placement and/or parole.

§ 527.53 Transfer referrals.

(a) Staff, at the time of the inmate's initial classification, shall notify the inmate of her right to request referral to the District of Columbia and the procedures to be followed with respect to making this request. Staff shall give the inmate a copy of the "Notice of Eligibility for Referral" form to sign and

ask that the inmate indicate on this form whether she wishes to be referred, at the time of her eligibility, for transfer to the District of Columbia.

(1) When an inmate requests referral to the D.C. Department of Corrections, Bureau staff shall make this referral when the inmate is within nine months of her parole eligibility, sentence expiration, or mandatory release date.

(2) The inmate may choose not to be referred to the District of Columbia Department of Corrections. Staff shall provide an inmate who, at the time of initial classification, elects not to be referred, a second opportunity for referral when she is within nine months of her parole eligibility or upon her request. A copy of all declinations for referral by the inmate shall be forwarded by Bureau staff both to the D.C. Department of Corrections and to the D.C. Board of Parole.

(b) If the D.C. Board of Parole indicates that the inmate's parole prognosis is such that they do not wish to have her returned to the District of Columbia for a hearing, and she is also denied acceptance by the D.C. Department of Corrections for community placement, Bureau staff are to use the following timetable with respect to a re-referral of the inmate to both agencies: when the inmate's sentence is less than five years, a re-referral may occur after six months; where the maximum sentence is five years or more, she is eligible for re-referral in one year.

(c) If the inmate is approved for community placement and/or parole by the appropriate District of Columbia officials, arrangements shall be coordinated between officials of the Bureau of Prisons and the District of Columbia for inmate's transfer to the District of Columbia.

§ 527.54 Grievance procedures.

District of Columbia women wishing to express a formal complaint regarding their designation or transfer may file a grievance under one of the following procedures.

(a) The Bureau of Prisons Administrative Remedy Procedure is to be used for matters under Bureau of Prisons jurisdiction.

(b) The D.C. Department of Corrections grievance procedure is to be used for matters under the D.C. Department of Corrections jurisdiction. An inmate wishing to use this procedure should send a letter to the Judicial Affairs Officer, D.C. Department of Corrections, 1923 Vermont Avenue, NW., Washington, D.C. 20001. The letter should state that the inmate is filing a

grievance under the D.C. Department of Corrections grievance procedure.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

III. In Subchapter C, Part 552 is amended to read as follows:

PART 552—CUSTODY

Subpart B—Searches of Housing Units, Inmates, and Inmate Work Areas

1. The authority citation for Part 552, Subpart B is as follows:

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.

2. In § 552.11, revise paragraph (a) and (c) to read as follows:

§ 552.11 Body searches of inmates.

(a) Pat search—an inspection of an inmate, using the hands, that does not require the inmate to remove clothing. The inspection includes a search of the inmate's clothing and personal effects. A metal detector search may be done under the same circumstances. Staff may conduct a pat search of an inmate on a routine or random basis to control contraband.

(c) Digital or simple instrument search—inspection for contraband or any other foreign item in a body cavity of an inmate by use of fingers or simple instruments, such as an otoscope, tongue blade, short nasal speculum, and simple forcep. A digital or simple instrument search may be conducted only by designated qualified health personnel (for example, physicians, physician assistants, and nurses) upon approval of the Warden or Acting Warden and only if the Warden or Acting Warden has reasonable belief that an inmate is concealing contraband in or on his person. If located, the contraband or foreign item may be removed immediately by medical staff if such removal can easily be effected by use of fingers or the simple instruments referred to above. Staff shall document all digital and simple instrument searches and the reasons for the searches in the inmate's central file.

3. In § 552.12, revise paragraph (b) to read as follows:

§ 552.12 X-ray, major instrument, fluoroscope, or surgical intrusion.

(b) The institution physician may authorize use of an X-ray for medical reasons and only with the consent of the inmate. When there exists no reasonable alternative, and an X-ray examination is determined necessary for

the security, good order, or discipline of the institution, the Warden, upon approval of the Regional Director, may authorize the institution physician to order a non-repetitive X-ray examination for the purpose of determining if contraband is concealed in or on the inmate (for example: in a cast or body cavity). The X-ray examination may not be performed if it is determined by the institution physician that it is likely to result in serious or lasting medical injury or harm to the inmate. Staff shall place documentation of the examination and the reasons for the examination in the inmate's central file and medical file.

[FR Doc. 83-28773 Filed 10-20-83; 8:45 am]

BILLING CODE 4410-05-M

28 CFR Part 571

Control, Custody, Care, Treatment, and Instruction of Inmates; Fines and Costs; Confinement Until Paid

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: Bureau of Prisons is publishing its final rule on Fines and Costs. The rule provides that when a federal court orders an inmate confined until a fine and/or costs are paid, the Bureau of Prisons will so confine that inmate, unless the inmate qualifies for release as an indigent under 18 U.S.C. 3589. The rule is intended to discuss Bureau of Prisons procedures with respect to the inmate who is ordered committed until a fine and/or costs are paid, and who requests a discharge from imprisonment because of indigency.

EFFECTIVE DATE: November 21, 1983.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 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: In this document the Bureau of Prisons is publishing its final rule on Fines and Costs. A proposed rule on this subject was published in the *Federal Register* January 19, 1983 (at 48 FR 2503 et seq.). Public comment was invited on the proposed rule. Members of the public may submit comments on the final rule by writing the previously cited address. These comments will be considered but will receive no formal response in the *Federal Register*.

The Bureau of Prisons has determined that this rule is not a major rule for the

purpose of EO 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Public Comment/Summary of Changes

1. Section 571.50 While we agree with a comment that favors increasing the \$20.00 limitation for non-exempt property, the Bureau has no authority to raise this amount because the \$20.00 limit is set by statute. For clarity, § 571.50(b) is rewritten to indicate that an indigent inmate may not be held past his regularly established release date solely for nonpayment of a fine. The phrase "court decision" in § 571.50(b) becomes "court decisions" in the final rule. These decisions are *Williams v. Illinois*, 399 U.S. 235 (1970), and *Tate v. Short*, 401 U.S. 395 (1971).

2. Section 571.52 The phrase, "Promptly after the inmate's commitment," is added to § 571.52(a) to identify when the inmate will be notified of the committed fine. Proposed § 571.52 (c) and (d) are relocated in a new § 571.55. As a result of this change, proposed § 571.52(e) becomes final § 571.52(c). The final rule requires staff to interview an inmate who has an unpaid committed fine at least 75 days (was 60 days) prior to the inmate's pending release date.

3. Section 571.54 Section 571.54 is retitled "Determination of indigency by U.S. Magistrate—inmates in federal institutions". Proposed § 571.54(b) is relocated in a new § 571.55. As a result of this change, proposed § 571.54(c)–(e) becomes final § 571.54(b)–(d).

4. Section 571.55 Proposed §§ 571.52(c)–(d) and 571.54(b) are now in new § 571.55, "Determination of indigency by U.S. Magistrate—inmates in contract community-based facilities or state institutions." Although slightly reworded, the general intent of these sections is unchanged.

5. Section 571.56 Based on new final § 571.55, proposed § 571.55 is renumbered final § 571.56. In publishing its proposed rule, the Bureau quoted a portion of 18 U.S.C. 3589(a). In publishing this portion, the *Federal Register* deleted the phrase "or fine". That phrase is now included within final § 571.56(b).

List of Subjects in 28 CFR Part 571

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the

Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR chapter V is amended by adding a new Subpart F to Part 571.

Dated: October 18, 1983.

Norman A. Carlson,
Director.

In Subchapter D, Part 571 is amended by adding a new Subpart F to read as follows:

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

Subpart F—Fines and Costs

Sec.

571.50 Purpose and scope.

571.51 Definitions.

571.52 Procedures—committed fines.

571.53 Determination of indigency by Warden.

571.54 Determination of indigency by U.S. Magistrate—inmates in Federal institutions.

571.55 Determination of indigency by U.S. Magistrate—inmates in contract community-based facilities or state institutions.

571.56 Review by Regional Director.

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3569, 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart F—Fines and Costs

§ 571.50 Purpose and scope.

When the court orders a prisoner's confinement until a fine and/or costs are paid, the Bureau of Prisons shall confine that inmate until the fine and/or costs are paid, unless the inmate qualifies for release under 18 U.S.C. 3569.

(a) An inmate who is unable to pay such fine and/or costs and whose non-exempt property does not exceed \$20 may request discharge from imprisonment on the basis of indigency (see 18 U.S.C. 3569).

(b) 18 U.S.C. 3569 states that the determination of indigency may be made by the Warden of the federal institution where the inmate is confined or by the U.S. Magistrate. Where the Warden and/or U.S. Magistrate make a finding of non-indigency based on the inmate's application for a determination of his ability to pay the committed fine and/or costs, the appropriate Regional Director shall review the application for the purpose of making a final decision on the inmate's discharge under 18 U.S.C. 3569. It is to be noted that 18 U.S.C. 3569 provides for confining an inmate for thirty days for nonpayment of a committed fine. By court decisions, an indigent inmate may not be held for any time past his regularly established

release date for nonpayment of a fine. Only a person who has resources and refuses to pay may be held on a committed fine under 18 U.S.C. 3569.

§ 571.51 Definitions.

(a) *Fine*—a monetary penalty associated with an offense imposed as part of a judgment and commitment. There are two types of fines.

(1) *Committed fine*—a monetary penalty imposed with a condition of imprisonment until the fine is paid.

(2) *Non-committed Fine*—a monetary penalty which has no condition of confinement imposed.

(b) *Costs of the prosecution*—monetary costs of the legal proceeding which the court may levy.

Imposition of costs is similar in legal effect to imposition of a fine. The court may also impose costs with a condition of imprisonment.

§ 571.52 Procedures—committed fines.

(a) Promptly after the inmate's commitment, staff shall inform the inmate that there is a committed fine on file against the inmate, as part of the sentence. Staff shall then impound the inmate's trust fund account until the fine is paid except—

(1) The inmate may spend money from his trust fund account for the purchase of commissary items not exceeding the maximum monthly allowance authorized for such purchases.

(2) Staff may authorize the inmate to make withdrawals from his trust fund account for emergency family or emergency personal needs or for furlough purposes.

This rule on impounding an inmate's trust fund account applies only when the inmate is confined in a federal institution. It does not apply to a federal inmate confined in a state institution or a contract community-based facility.

(b) If the inmate pays the committed fine, or if staff verifies payment prior to confinement, staff shall document payment in the appropriate file and release the inmate's trust fund account from impoundment.

(c) Staff shall interview an inmate with an unpaid committed fine at least 75 days prior to the inmate's pending release date. Staff shall explain to the inmate that to secure release without paying the committed fine in full, the inmate must make an application, on the appropriate form, to either the Warden or the U.S. Magistrate for a determination on whether the inmate is considered indigent under 18 U.S.C. 3569.

571.53 Determination of indigency by Warden.

An inmate in a federal institution who has a committed fine may apply to the Warden of that institution for a determination on the inmate's ability to pay the committed fine. If application is made to the Warden and the Warden determines that the inmate is not indigent under 18 U.S.C. 3569, the inmate may elect to apply to the U.S. Magistrate for a determination on the inmate's ability to pay the committed fine.

(a) The Warden's decision as to the inmate's indigency must be made on the basis of the inmate's property and the determination as to whether such property exceeds " * * \$20.00 in value, except such as is by law exempt from being taken on execution for debt * * " (18 U.S.C. 3569).

(b) If the Warden finds that the inmate is indigent, the Warden shall notify the inmate that the inmate may take the "Pauper's Oath" (see 18 U.S.C. 3569) on the inmate's regularly established date of release providing the inmate's indigency status does not change.

(c) If the Warden finds that the inmate is not indigent under 18 U.S.C. 3569, the Warden shall refuse to administer the oath and notify the inmate in writing as to the reasons for this refusal. The Warden shall advise the inmate that, if the inmate disagrees with the Warden's non-indigency finding, an application, if not previously made, may be submitted to the nearest U.S. Magistrate for a determination as to the inmate's indigency under 18 U.S.C. 3569. The Warden shall also advise the inmate that in the event a finding of non-indigency is made by the Warden and, if submitted, a similar finding is made by the U.S. Magistrate, the inmate's application for a determination of indigency under 18 U.S.C. 3569 shall be forwarded by staff to the Regional Director for final disposition.

§ 571.54 Determination of indigency by U.S. Magistrate—inmates in federal institutions.

(a) An inmate with a committed fine who is imprisoned in a federal institution may make application directly to the U.S. Magistrate for a determination of the inmate's indigency under 18 U.S.C. 3569.

(b) An inmate who elects to apply to the U.S. Magistrate after a finding of non-indigency by the Warden must complete a new application. Staff shall offer to forward the completed forms and any other applicable information the inmate chooses to the U.S. Magistrate.

(c) If the U.S. Magistrate finds that the inmate is indigent, the U.S. Magistrate will administer the oath to the inmate. The inmate shall be released no earlier than the inmate's regularly established release date.

(d) If the U.S. Magistrate finds that the inmate is not indigent, Bureau staff shall forward a referral package to the Regional Director for a final determination as to the inmate's ability to pay the committed fine.

§ 571.55 Determination of indigency by U.S. Magistrate—inmates in contract community-based facilities or state institutions.

(a) Inmates with committed fines may be transferred to contract community-based facilities, to state institutions as boarders, or to state institutions for service of federal sentences concurrently with state sentences.

(b) Inmates with committed fines may be committed directly to contract community-based facilities or to state institutions as boarders or may be designated to state institutions for service of federal sentences concurrently with state sentences.

(c) An inmate with a committed fine who is imprisoned in a contract community-based facility or a state institution and who desires to make application for a determination of ability to pay the committed fine and/or costs under 18 U.S.C. 3569 must make application directly to the U.S. Magistrate.

§ 571.56 Review by Regional Director.

(a) When a finding of non-indigency is made by the Warden and/or U.S. Magistrate, staff shall forward material to the Regional Director who will make a final determination as to the inmate's ability to pay the committed fine. This authority may not be delegated below the level of acting Regional Director.

(b) If the Regional Director determines that the " * * * retention by such convict of all of such property is reasonably necessary for his support or that of his family, such convict shall be released without further imprisonment solely for the nonpayment of such fine, or fine and costs; or if he finds that the retention by such convict of any part of such property is reasonably necessary for his support or that of his family, such convict shall be released without further imprisonment solely for nonpayment of such fine or fine and costs upon payment on account of his fine and costs, of that portion of his property in excess of the amount found to be reasonably necessary for his support or that of his family." (18 U.S.C. 3569)

(c) After making a determination as to the property that the inmate possesses in excess of what is exempt by law, and what property the inmate may need in the community, the Regional Director may take one of the following three actions: (1) release the inmate without any payment toward the fine; (2) require partial payment of the fine prior to the inmate's release; or (3) require payment of the fine in full prior to the inmate's release. Regardless of the action taken, the Regional Director shall furnish the inmate with a written statement stating the action taken and the reasons for that action.

[FR Doc. 83-28774 Filed 10-20-83; 8:45 am]

BILLING CODE 4410-05-M

28 CFR Part 572

Control, Custody, Care, Treatment, and Instruction of Inmates; Prison Overcrowding

AGENCY: Bureau of Prisons, Justice.
ACTION: Interim rule.

SUMMARY: The Bureau of Prisons is amending its final rule on the implementation of 18 U.S.C. 4205(g). The Bureau is experiencing overcrowding within its institutions. In an effort to alleviate this situation, the Bureau is publishing an interim rule authorizing an additional reason under which the Bureau may file a motion with the sentencing court to reduce the minimum term of the inmate's sentence to time served. Specifically, in order to reduce overcrowding, a motion under 18 U.S.C. 4205(g) may be filed with the court, provided the Bureau of Prisons has received a written statement from the U.S. Parole Commission that the inmate could safely be released from prison under current Parole Commission standards, but that such a release is barred by a judicially imposed minimum sentence. The rule also identifies the criteria that must be met.

EFFECTIVE DATE: October 5, 1983.

Public comments on the interim rule must be received on or before December 19, 1983.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 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: In this document, the Bureau of Prisons is publishing an interim rule on procedures for the implementation of 18 U.S.C. 4205(g). A final rule on this subject was

published in the *Federal Register* April 4, 1980 (at 45 FR 23366). The present revision retains the rationale of "particularly meritorious or unusual circumstances which could not reasonably have been foreseen by the court at the time of sentencing." This language is now contained in § 572.40(a). Section 572.40(b) is new and authorizes the Bureau of Prisons to use 18 U.S.C. 4205(g) to relieve prison overcrowding, provided the Bureau has received a written statement from the U.S. Parole Commission that the inmate could be safely released from prison under current Parole Commission standards, but that such a release is barred by a judicially imposed minimum sentence. This modification will assist the Bureau in its efforts to relieve prison overcrowding. In conjunction with this effort, the U.S. Parole Commission published in the *Federal Register* September 29, 1983 (at 48 FR 44525 et seq.) a final rule on the subject "Relief of Prison Overcrowding". Their rule authorizes the U.S. Parole Commission to recommend to the Director, Bureau of Prisons that a motion under 18 U.S.C. 4205(g) be made on behalf of an inmate whom the Parole Commission identifies as otherwise suitable for release at or after service of the time required by the maximum of the Commission's applicable guideline range (28 CFR 2.20). The Parole Commission's proposed rule on this subject was published in the *Federal Register* May 23, 1983 (at 48 FR 22949). The Commission stated it received forty-six letters from the public commenting on the proposal, and that the "majority of them strongly support the new rule".

Section 572.41 of the Bureau's rule is clarified by referencing the phrase "meritorious or unusual circumstances" in both the title and body of this section. Interim § 572.42, "Criteria for request—to relieve prison overcrowding", is new. This section identifies the criteria to be met before the Bureau will submit a motion under 18 U.S.C. 4205(g) for the purpose of reducing prison overcrowding. This procedure may be used only to relieve overcrowding within Bureau of Prisons institutions (as distinguished from overcrowding within one or more institutions), provided the Bureau has been advised by the U.S. Parole Commission that while the inmate could be safely released from prison under current U.S. Parole Commission guidelines, such release is barred by a judicially imposed minimum sentence. In addition, the inmate ordinarily must meet the following criteria: The inmate does not require a high level of security; the inmate's