FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 10:30 a.m. on Thursday, May 28, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director, C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum regarding the Corporation's purchase of microcomputers.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsection (c)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2)).

Dated: May 28, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-12591 Filed 5-29-87; 1:04 pm]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 28, 1987.

TIME AND PLACE: 10:00 a.m., June 4, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Quinland Coal Company*, Docket No. WEVA 85-169. (Issues include whether the judge's findings of violation are supported by substantial evidence whether the judge properly admitted certain evidence, and whether the judge erred in failing to address the issued of unwarrantable failure.)

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87-12593 Filed 5-29-87; 1:18 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, June 8, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Street, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 29, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-12625 Filed 5-29-87; 3:34 pm]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, June 3, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. 731-TA-377 (P) (Internal combustion engine fork-lift trucks from Japan)—briefing and vote.
6. Inv. 731-TA-347, (F) (Certain malleable cast-iron pipe fittings from Japan)—briefing and vote.
7. Any item left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

May 22, 1987.

[FR Doc. 87-12624 Filed 5-29-87; 3:34 pm]

BILLING CODE 7020-02-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, June 9, 1987.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first three items will be open to the public. The last three items will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Pipeline Accident Report: Williams Pipe Line Company's Liquid Pipeline Rupture and Fire, Mounds View, Minnesota, July 8, 1986.
2. Briefs of Accidents/Incidents with Probable Air Traffic Control Involvement.
3. Recommendation to FAA re Defective Carburetor Float and Automotive Gasoline.
4. Order: Administrator v. Chirino, Docket SE-7883; disposition of respondent's petition for reconsideration.
5. Opinion and Order: Administrator v. Brasher, Docket SE-7485; disposition of the Administrator's appeal.
6. Administrator v. Larson and Gelineau, Dockets SE-7491 and SE-7492.

FOR MORE INFORMATION, CONTACT: Bea Hardesty, Staff Assistant, (202) 382-6525.

May 29, 1987.

[FR Doc. 87-12626 Filed 5-29-87; 3:58 pm]

BILLING CODE 7533-01-M

federal register

Tuesday
June 2, 1987

Part II

Environmental Protection Agency

40 CFR Parts 141, 142, and 144

Water Pollution Control; National Primary Drinking Water Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141, 142, and 144

[FRL 3138-3]

Water Pollution Control; National Primary Drinking Water Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On June 19, 1986, the President signed into law the Safe Drinking Water Act Amendments of 1986. These amendments make changes to EPA's drinking water program. The purpose of this rule is to amend EPA's drinking water regulations so they are consistent with the statutory amendments and to incorporate those statutory provisions that have immediate or near-term effects on the regulated community.

EFFECTIVE DATE: This rule is effective June 2, 1987.

ADDRESSES: Additional information may be obtained at the EPA Headquarters, Office of Drinking Water, 401 M St. SW., Washington, DC 20460 and at the Drinking Water Supply Branches in EPA's Regional Offices. ("See **SUPPLEMENTARY INFORMATION** below.")

FOR FURTHER INFORMATION CONTACT: Susan MacMullin, Office of Drinking Water (WH-550D), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Phone: (202) 475-8049.

SUPPLEMENTARY INFORMATION:

Table of Contents

EPA Regional Offices

I. JFK Federal Bldg., Room 2203, Boston, MA 02203, Phone: (617) 565-3715, Jerome Healey

II. 26 Federal Plaza, Room 824, New York, NY 10278, Phone: (212) 264-1800, Walter Andrews

III. 841 Chestnut St. Philadelphia, PA 19107, Phone: (215) 597-9873, John Capacausa

IV. 345 Courtland Street, Atlanta, GA 30365, Phone: (404) 257-4450, Robert Jourdan

V. 230 S. Dearborn St., Chicago, IL 60604, Phone: (312) 353-2650, Joseph Harrison

VI. 1201 Elm St., Dallas, TX 75270, Phone: (214) 729-2656, James Graham

VII. 726 Minnesota Ave., Kansas City, KS 66101, Phone: (913) 236-2815, Gerald R. Foree

VIII. One Denver Place, 999 18th St., Suite 3000 Denver, CO 80202-2413, Phone: (303) 293-1424, Marc Alston

IX. 215 Fremont St., San Francisco, CA 94105, Phone: (415) 974-8076, William Thurston

X. 1200 Sixth Ave., Seattle, WA 98101, Phone: (206) 442-1225, Jerry Opatz

I. Authority

These regulations are issued under the authority of sections 1401, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1421, 1422, 1423, 1431, and 1450 of the Safe Drinking Water Act, 42 U.S.C. 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300h, 300h-1, 300h-2, 300i, and 300j-9 as amended by the Safe Drinking Water Act Amendments of 1986 (Pub. L. 99-339, 100 Stat. 642 (1986)).

II. Background

The Safe Drinking Water Act ("SDWA") or "Act" (42 U.S.C. 300f, *et seq.*), enacted in 1974, requires EPA to establish primary drinking water regulations for public water systems. The SDWA includes provisions for interim and revised regulations with monitoring, reporting, and public notification requirements. The SDWA also has provisions for state primary enforcement responsibility, and variances and exemptions.

The Act also provides for an underground injection control (UIC) program designed to protect underground sources of drinking water from endangerment by the subsurface emplacement of fluids. EPA is to establish regulations that define effective State UIC programs. States may apply to assume primacy enforcement responsibility for such programs. If a State does not assume primacy, EPA must promulgate and administer the program in that State. The Act provides an alternative mechanism whereby States may assume primacy for the oil and gas portion of their UIC programs, and sets certain limitations on the requirements imposed on injection of fluid brought to the surface in connection with oil and natural gas production or natural gas storage operations.

III. Safe Drinking Water Act Amendments of 1986

The SDWA Amendments ("Amendments") were enacted on June 19, 1986. The Amendments change the procedures for establishing primary drinking water standards and set forth a schedule for EPA to follow in setting these standards for specified contaminants. In addition, the Amendments require EPA to establish criteria to determine which surface water supplies must install filtration and to promulgate a treatment technique regulation for disinfection. The Amendments also provide for monitoring of unregulated contaminants and modify the requirements for public notification of violations and the procedures for issuance of variances and exemptions.

Other significant features of the Amendments relate to enforcement; for example, the Administrator may issue an administrative order to require compliance with a regulation (only civil lawsuits were available before). The Amendments also prohibit the use of lead pipes, solder, and flux in public water systems and plumbing, which provide for human consumption, unless the pipes, solder, and flux are "lead free" as defined in the Act.

IV. Purpose of Today's Rule

Because of the Amendments, some of the current drinking water regulations no longer conform to the law. The purpose of this rule is to amend the regulations so that they are consistent with the statute and to incorporate certain requirements that are effective immediately or in the near term. By modifying the current EPA regulations to reflect the new statutory amendments, this notice serves to clarify the effect of the amendments on the responsibilities of the regulated community and indicates which parts of the existing regulations have been superseded by new requirements. This effort to bring EPA's regulations into line with the new statutory provisions also benefits the Agency's enforcement efforts. An important aspect of any effective enforcement program is to inform the regulated community of its responsibilities under the law. EPA is making these modifications to the existing rules through an interpretive rule. Interpretive rules are issued by an agency to advise the public of the agency's administration of the statutes for which it has authority. As an interpretive rule, this rule is not required to undergo notice and comment. Therefore, EPA is making these changes effective immediately. See the Administrative Procedures Act, 5 U.S.C. 553(b)(3)(A); *Citizens to Save Spencer County V. EPA*, 600 F.2d 844, 875 (D.C. Cir. 1979).

V. Codification of the Regulations

The following is a brief explanation of each of the sections which are codified in the regulations.

A. Public Water System Supervision Program

Part 141—National Primary Drinking Water Regulations

Section 141.2 Definitions. Section 1412(a)(2) of the Act, as amended, states that each "recommended maximum contaminant level" ("RMCL") published before June 19, 1986, shall be treated as a "maximum contaminant level goal" ("MCLG"). This notice substitutes the new term for the old term in the definitions section, and throughout 40 CFR Part 141.

Section 141.43 Prohibition on use of lead pipes, solder, and flux and public notice. This is a new section which sets out the ban on the use of lead pipes, solder, and flux found in section 1417 of the Act. This notice codifies the general prohibition, including the deadline for state enforcement, penalties available against a State for failure to enforce the requirements of section 1417, and the Act's definition of "lead free." "Lead-free" materials are solders and flux containing not more than 0.2 percent lead, and pipes and pipe fittings containing not more than 8.0 percent lead. The public notification requirements for lead are not included in this notice. EPA proposed these requirements (to be codified in 40 CFR 141.34) as part of the amendments to the general public notification requirements (40 CFR 141.32) (52 FR 10972, April 6, 1987).

Part 142—National Interim Primary Drinking Water Regulations Implementation

The title of Part 142 is being revised to delete the word "Interim".

Section 142.10. Requirements for a determination of primary enforcement responsibility. The SDWA Amendments revised sections 1412 (a) and (b) to change the terminology for primary drinking water regulations (from "interim" and "revised" to "national") and set schedules for promulgating those regulations. Section 1413(a) of the Act, which sets out the requirements for a State to obtain primary enforcement responsibility for public water systems (i.e., "primacy"), was also amended to reflect the changes in terminology. This notice revises § 142.10(a) to reflect this change.

Section 142.30 Failure by State to assure enforcement. Paragraphs (c), (d), and (e) which describe certain steps the Administrator must take before bringing an enforcement action have been removed because they are no longer required by the Act. EPA intends to propose and promulgate new regulations regarding enforcement of the Act, which implement the new enforcement provisions of the Amendments, at a later date.

Section 142.31 Federal action. This section explains when EPA may bring a civil enforcement action against a public water system. Many of the restrictions in this section no longer apply under the amended Act. Therefore, EPA is removing this section and reserving it until it promulgated new enforcement regulations.

Section 142.41 Variance request. The only change to this section is the insertion of the word "additional" before "interim control measures" to reflect this same change in section 1415(a)(1)(A)(ii) of the Act.

Section 142.42 Consideration of a variance request. Section 1415(a)(1)(A) of the SDWA has been amended to state that "[a] variance may only be issued to a system after the system's application of the best technology, treatment techniques, or other means, which the Administrator finds are available (taking costs into consideration)." This notice amends § 142.42 to reflect this change.

Section 142.43 Disposition of a variance request. This notice corrects an incorrect citation in § 142.43(b)(1); in the last sentence "§ 141.44" has been changed to "§ 142.44". This rule inserts the word "additional" before "control measures" in paragraph (c)(2) and before "interim control measures" in paragraph (f) to reflect the same change in section 1415(a)(1)(A)(ii). In addition, this rule revises paragraph (g). Section 1415(a)(1) of the Act previously required that the primacy agent issue a schedule for compliance and implementation of interim control measures within one year after issuing a variance. This section was amended to require that the primacy agent issue the variance and schedule at the same time. Paragraph (g), as revised, incorporates this change.

Section 142.44 Public hearings on variances and schedules. The only change to this section is the substitution of "and" between "variance" and "schedule" instead of "or." This notice amends § 142.44 to reflect the requirement that EPA must prescribe the schedule of compliance at the same time it grants a variance as specified in section 1415(a)(2), as amended.

Section 142.45 Action after hearing. Same as § 142.44, above.

Section 142.53 Disposition of an exemption request. This notice revises § 142.53 to reflect the requirement in section 1416(b)(1) of the Act, as amended, that a schedule for compliance and implementation of control measures be issued at the same time that an exemption is granted.

Section 142.54 Public hearings on exemption schedules. Section 142.54(d) has been changed to correct an error. In the last sentence of the paragraph, 5 days has been changed to 15 days.

Section 142.55 Final schedule. As noted above Congress amended section 1416(b) of the Act to require that issuance of an exemption from a maximum contaminant level (MCL) or treatment technique requirement be accompanied by a schedule for compliance with the MCL or treatment technique requirement. In the case of an exemption granted with respect to an MCL or treatment technique requirement promulgated under section 1412(a) (i.e., national interim and revised primary drinking water regulations), the schedule must require compliance by June 19, 1987. In the case of an exemption granted with respect to an MCL or treatment technique requirement prescribed by any other national primary drinking water regulation, the schedule must require compliance within 12 months after date of issuance of the exemption. This notice revises § 142.55 to reflect these deadlines.

Section 142.56 Extension of compliance date. Under section 1416(b)(2)(B) of the Act, the final date for compliance may be extended provided that the public water system makes certain showings. In the case of a system which does not serve more than 500 service connections and which needs financial assistance to make the necessary improvements, section 1416(b)(2)(C) allows the compliance deadline to be extended for one or more additional two-year periods provided that the system establishes that it is taking all practicable steps to meet the requirements listed in section 1416(b)(2)(B). This notice adds a new section, § 142.56, to reflect this change.

B. Underground Injection Control Program

Part 144 Underground Injection Control Program

Section 144.1 Purpose and scope of Part 144. This notice amends paragraph (d)(4) to clarify that emergency action may be taken to prevent contamination of underground sources of drinking water. This reflects the amendments to section 1431 of the Act.

Section 144.3. The definition of the SDWA has been amended.

Section 144.6 Classification of wells. This notice amends paragraph (b)(1) to reflect the amendments to section 1421(b)(2)(A) which clarify that wells which inject fluids which are brought to the surface in connection with natural gas storage operations are Class II wells.

Section 144.12 Prohibition of movement of fluid into underground sources of water. This notice adds a sentence to the end of paragraphs (b) and (c)(2) to clarify that orders issued under this section are only authorized under the appropriate provisions of the SDWA. In addition, paragraph (e), the emergency action provision, has been revised for compatibility with the new language in section 1431 of the SDWA by adding the phrase "or underground source of drinking water," and has also been revised to explain the conditions under which EPA may take emergency action.

VI. Rulemaking Requirements

A. Executive Order 12291: Regulatory Impact Analysis

Executive Order 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined by the Order, and, "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. This action is not a "major" regulatory action as defined by the executive order. Therefore, EPA has not prepared an RIA. This rule was submitted to OMB for review. EPA received no written comments.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires EPA to explicitly consider the effect of proposed regulations on small entities. If there is a significant impact on a substantial number of small systems, the RFA states that means should be sought to minimize the effects.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act is intended to minimize the reporting burden on the regulated community as well as minimize the cost of Federal information collection and dissemination. There are no information collection requirements in this rule.

List of Subjects

40 CFR Part 141

Chemicals, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Administrative practices and procedure, Chemicals, Radiation protection, Reporting and recordkeeping requirements, Intergovernmental relations, Water supply.

40 CFR Part 144

Classification of wells, Order authority, Emergency provision.

Dated: May 21, 1987.

Lee M. Thomas,

Administrator.

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for Part 141 is revised to read as follows:

(Authority: 42 U.S.C. 300g-1, 300g-3, 300g-6, 300j-4, and 300j-9.)

2. Section 141.2 is amended by revising paragraph (u) to read as follows:

§141.2 Definitions.

* * * * *

(u) "Maximum contaminant level goal" or "MCLG" means the maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health or persons would occur, and which allows an adequate margin of safety. Maximum contaminant level goals are nonenforceable health goals.

* * * * *

3. Subpart E is amended by revising the title and adding §141.43 to read as follows:

Subpart E—Special Regulations, Including Monitoring Regulations and Prohibition on Lead Use.

* * * * *

§ 141.43 Prohibition on use of lead pipes, solder, and flux.

(a) *In general*—(1) *Prohibition.* Any pipe, solder, or flux, which is used after June 19, 1986, in the installation or repair of—

(i) Any public water system, or

(ii) Any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system shall be lead free as defined by paragraph (d) of this section. This paragraph (a)(1) shall not apply to leaded joints necessary for the repair of cast iron pipes.

(2) Each public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system,

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

Notice shall be provided notwithstanding the absence of a violation of any national drinking water standard. The manner and form of notice are specified in § 141.34 of this part.

(b) *State enforcement*—(1) *Enforcement of prohibition.* The requirements of paragraph (a)(1) of this section shall be enforced in all States effective June 19, 1988. States shall enforce such requirements through State or local plumbing codes, or such other means of enforcement as the State may determine to be appropriate.

(2) *Enforcement of public notice requirements.* The requirements of paragraph (a)(2) of this section, shall apply in all States effective June 19, 1988.

(c) *Penalties.* If the Administrator determines that a State is not enforcing the requirements of paragraph (a) of this section, as required pursuant to paragraph (b) of this section, the Administrator may withhold up to 5 percent of Federal funds available to that State for State program grants under section 1443(a) of the Act.

(d) *Definition of lead free.* For purposes of this section, the term "lead free"

(1) When used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead, and

(2) When used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead.

4. In addition to the amendments set forth above, in 40 CFR Part 141 remove the words "recommended maximum contaminant level(s)" and add, in their place, the words "maximum contaminant level goal(s)", and remove the term "RMCL" and add, in its place, the term "MCLG".

PART 142—NATIONAL INTERIM PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for Part 142 is revised to read as follows:

Authority: 42 U.S.C. 300g-2, 300g-3, 300g-4, 300g-4, 300g-5, 300j-4, and 300j-9.

2. The title of Part 142 is revised to read "National Primary Drinking Water Regulations Implementation".

3. Section 142.10 is amended to revise paragraph (a) to read as follows:

§ 142.10 Requirements for a determination of primary enforcement responsibility.

* * * * *

(a) Has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations in effect under sections 1412(a) and 1412(b) of the Safe Drinking Water Act;

* * * * *

§ 142.30 [Amended]

4. Section 142.30 is amended by removing paragraphs (c), (d) and (e).

§ 142.31 [Removed and Reserved]

5. Section 142.31 is removed and reserved.

6. Section 142.41 is amended by revising paragraph (c)(6) to read as follows:

§ 142.41 Variance request.

* * * * *

(c) * * *

(6) A plan for additional interim control measures during the effective period of variance.

7. In § 142.42, paragraph (c) is redesignated (d) and a new paragraph (c) is added to read as follows:

* * * * *

(c) A variance may only be issued to a system after the system's application of the best technology, treatment techniques, or other means, which the Administrator finds are available (taking costs into consideration).

* * * * *

8. Section 142.43 is amended by revising paragraphs (b)(1), (c)(2), (f), and (g) to read as follows:

§ 142.43 Disposition of a variance request.

* * * * *

(b) * * *

(1) For the type of variance specified in § 142.40(a) such notice shall provide that the variance will be terminated when the system comes into compliance with the applicable regulation, and may be terminated upon a finding by the Administrator that the system has failed to comply with any requirements of a final schedule issued pursuant to § 142.44.

(c) * * *

(2) Implementation by the public water system of such additional control measures as the Administrator may require for each contaminant covered by the variance.

* * * * *

(f) The proposed schedule for implementation of additional interim control measures during the period of variance shall specify interim treatment techniques, methods and equipment, and dates by which steps toward meeting the additional interim control measures are to be met.

(g) The schedule shall be prescribed by the Administrator at the time of granting of the variance, subsequent to provision of opportunity for hearing pursuant to § 142.44.

9. Section 142.44 is amended by revising paragraphs (a), (b) introductory text, (b)(3), (c)(2), and (f) to read as follows:

§ 142.44 Public hearings on variances and schedules.

(a) Before a variance and schedule proposed by the Administrator pursuant to § 142.43 may take effect, the Administrator shall provide notice and opportunity for public hearing on the variance and schedule. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice.

(b) Public notice of an opportunity for hearing on a variance and schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed variance and schedule, and shall include at least the following:

* * * * *

(3) Such notice shall include a summary of the proposed variance and schedule and shall inform interested persons that they may request a public hearing on the proposed variance and schedule.

* * * * *

(c) * * *

(2) A brief statement of the interest of the person making the request in the proposed variance and schedule, and of information that the requester intends to submit at such hearing;

(f) The variance and schedule shall become effective 30 days after notice of opportunity for hearing is given pursuant to paragraph (b) of this section if no timely request for hearing is submitted and the Administrator does not determine to hold a public hearing on his own motion.

10. Section 142.45 is revised to read as follows:

§ 142.45 Action after hearing.

Within 30 days after the termination of the public hearing held pursuant to § 142.44, the Administrator shall, taking into consideration information obtained during such hearing and relevant information, confirm, revise or rescind the proposed variance and schedule.

11. Section 142.53 is amended by revising paragraph (d) to read as follows:

§ 142.53 Disposition of an exemption request.

* * * * *

(d) The schedule shall be prescribed by the Administrator at the time the exemption is granted, subsequent to provision of opportunity for hearing pursuant to § 142.54.

12. Section 142.54 is amended by revising paragraph (d) to read as follows:

§ 142.54 Public hearings on exemption schedules.

* * * * *

(d) The Administrator shall give notice in the manner set forth in paragraph (b) of this section of any hearing to be held pursuant to a request submitted by an interested person or on his own motion. Notice of the hearing shall also be sent to the person requesting the hearing, if any. Notice of the hearing shall include a statement of the purpose of the hearing, information regarding the time and location of the hearing, and the address and telephone number of an office at which interested persons may obtain further information concerning the hearing. At least one hearing location specified in the public notice shall be within the involved State. Notice of the hearing shall be given not less than 15 days prior to the time scheduled for the hearing.

* * * * *

13. Section 142.55 is amended by revising paragraph (b) to read as follows:

§ 142.55 Final schedule.

* * * * *

(b) Such schedule must require compliance as follows:

(1) In the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the national primary drinking water regulations promulgated under section 1421(a) of the Safe Drinking Water Act, not later than June 19, 1987, and

(2) In the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by national primary drinking water regulations, other than a regulation referred to in section 1412(a), 12 months after the issuance of the exemption.

* * * * *

14. Section 142.56 is added to read as follows:

§ 142.56 Extension of date for compliance.

(a) The final date for compliance provided in any schedule in the case of any exemption may be extended by the State (in the case of a State which has primary enforcement responsibility) or by the Administrator (in any other case) for a period not to exceed 3 years after the date of the issuance of the exemption if the public water system establishes that:

(1) The system cannot meet the standard without capital improvements which cannot be completed within the period of such exemption;

(2) In the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance; or

(3) The system has entered into an enforceable agreement to become a part of a regional public water system; and the system is taking all practicable steps to meet the standard.

(b) In the case of a system which does not serve more than 500 service connections and which needs financial assistance for the necessary improvements, an exemption granted under paragraph (a) (1) or (2) may be renewed for one or more additional 2-year periods if the system establishes that it is taking all practicable steps to meet the requirements of paragraph (a) of this section.

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for Part 144 is revised to read as follows:

Authority: Pub. L. 93–523, as amended by Pub. L. 95–190, Pub. L. 96–63, Pub. L. 96–502, and Pub. L. 99–339, 42 U.S.C. 300f *et seq.*

2. Section 144.1 is amended by revising paragraphs (a) and (d)(4) to read as follows:

§ 144.1 Purpose and scope of Part 144.

(a) *Contents of Part 144.* The regulations in this part set forth requirements for the Underground Injection Control (UIC) program promulgated under Part C of the Safe Drinking Water Act (SDWA) (Pub. L. 93–523, as amended; 42 U.S.C. 300f *et seq.*) and, to the extent that they deal with hazardous waste, the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 as amended; 42 U.S.C. 6901 *et seq.).*

* * * * *

(d) * * *

(4) Section 1431 authorizes the Administrator to take action to protect the health of persons when a contaminant which is present in or may enter a public water system or underground source of drinking water may present an imminent and substantial endangerment to the health of persons.

* * * * *

3. Section 144.3 is amended by revising the definition of SDWA to read as follows:

§ 144.3 Definitions.

* * * * *

SDWA means the Safe Drinking Water Act (Pub. L. 93–523, as amended; 42 U.S.C. 300f *et seq.*).

* * * * *

4. Section 144.6 is amended by revising paragraph (b)(1) to read as follows:

§ 144.6 Classification of wells.

* * * * *

(b) * * *

(1) Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an intergral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

* * * * *

5. Section 144.12 is amended by revising paragraphs (b), (c)(2) and (e) to read as follows:

§ 144.12 Prohibition of movement of fluid into underground sources of drinking water.

* * * * *

(b) For Class I, II and III wells, if any water quality monitoring of an underground source of drinking water indicates the movement of any contaminant into the underground source of drinking water, except as authorized under Part 146, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit in accordance with § 144.39, or the permit may be terminated under § 144.40 if cause exists, or appropriate enforcement action may be taken if the permit has been violated. In the case of wells authorized by rule, see §§ 144.21 through 144.24. For EPA administered programs, such enforcement action shall be taken in accordance with appropriate sections of the SDWA.

(c) * * *

(2) Order the injector to take such actions (including, where required, closure of the injection well) as may be necessary to prevent the violation. For EPA administered programs, such orders shall be issued in accordance with the appropriate provisions of the SDWA; or

* * * * *

(e) Notwithstanding any other provision of this section, the Director may take emergency action upon receipt of information that a contaminant which is present in or likely to enter a public water system or underground source of drinking water may present an imminent and substantial endangerment to the health of persons. If the Director is an EPA official, he must first determine that the appropriate State and local authorities have not taken appropriate action to protect the health of such persons, before taking emergency action.

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Part III

Department of Justice

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

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

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is publishing final amendments to its rule on Inmate Discipline and Special Housing Units. These amendments are intended to clarify the existing Bureau policy or to address concerns that have arisen since the 1982 publication of the final rule.

EFFECTIVE DATE: July 6, 1987.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is revising its final rule on Inmate Discipline and Special Housing Units. Proposed amendments to this rule were published in the **Federal Register** June 20, 1985 (at 50 FR 25664 et seq.).

Interested persons were invited to submit comments on the proposed rule. Members of the public may submit comments concerning the present rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

In addition to the previously published proposed amendments, other changes are also being made to the final rule. These changes are meant to clarify the scope or intent of the existing rule, or reflect management decisions. Based on the nature of these changes, the Bureau finds good cause under 5 U.S.C. 553 to include these changes within the final rule without a notice of proposed rulemaking, or an opportunity for public comment. In recognition of these revisions, and for ease of reading, the Bureau is republishing its entire rule on Inmate Discipline.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. 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.

Summary of Changes/Comments

1. *Section 541.10*—To clearly indicate the scope of the Bureau's rule on Inmate Discipline, § 541.10(a) states that this rule applies to all persons committed to the care, custody, and control (direct or constructive) of the Bureau of Prisons. This includes, but is not limited to, inmates in pretrial status, inmates on writ, inmates on escorted trip or furlough, and inmates who are returned to Bureau custody from contract facilities. Section 541.10(b)(6)(a) is amended to reflect the current standard as set forth in the Comprehensive Crime Control Act of 1984.

2. *Section 541.11*—In Table 1, paragraph 1—Dispositions, the wording, "Except for prohibited acts in the greatest or high severity categories" is added to specify those categories that may not be informally resolved by the writer of the report. With respect to prohibited acts in the greatest severity category, existing § 541.14(a) states that only the IDC may make a final disposition on such prohibited acts. The requirement as to prohibited acts in the high severity category is added because the consequences of these offense can pose a serious threat to the security or orderly running of the institution and warrant further review by a higher institutional authority (e.g., a Lieutenant), before such charges are informally resolved or dropped. Also in this paragraph, and for purposes of clarity, the phrase "writer of the report" replaces "observing staff", because it is only the person initiating the disciplinary action who can informally resolve a moderate or low moderate prohibited act.

In Table 1, paragraph 2—Dispositions, the wording, "Except for prohibited acts in the greatest severity category" is again added to emphasize the language in § 541.14(a). In paragraph 5, the proposed wording, "but may not increase any valid disciplinary action taken" is replaced with, "but may not increase the sanctions imposed in any valid disciplinary action taken". This paragraph also recognizes that the Warden, Regional Director, or General Counsel may direct that the inmate be given a rehearing. Although the wording has changed, the intent remains the same.

Table 2, Time Limits in Disciplinary Process, is revised. The word "ordinarily" is added to "[ordinarily] maximum of 24 hours" to recognize that there may be occasions where it is not feasible to give the inmate a copy of the charges within 24 hours of the time staff become aware of the inmate's involvement in the incident (e.g., where the inmate is out of the institution). The final rule is further revised to read that the inmate receives an initial hearing a "maximum ordinarily of 2 work days from the time staff became aware of the inmate's involvement in the incident." This excludes the day staff become aware of the inmate's involvement, weekends, and holidays. This language is consistent with the intent of § 541.15(b). The "Note" paragraph of Table 2, which previously stated that staff may suspend disciplinary proceedings for a period not to exceed "2 weeks", is revised to read "2 *calendar* weeks". It is the Bureau's intent to provide inmates this time period to informally resolve a situation before disciplinary proceedings are re-instituted.

3. *Section 541.12*—In § 541.12, item number 11 inserts the right of inmates to use their funds for commissary and other purchases, consistent with institution security and good order, for opening bank or savings accounts, and for assisting their families. Accordingly, in the responsibilities column, item number 11 states that inmates have the responsibility to show financial responsibility (see Part 545, Subpart B) including, but not limited to, meeting court-imposed assessments, fines, and restitution.

4. *Section 541.13*—Following an assessment of the Bureau's prohibited acts, several further revisions are being made to the listing of prohibited acts in Table 3 of § 541.13. These provisions are intended as statements of management policy, and are made to clarify the scope of the prohibited act, to provide greater specificity, and to help ensure institution security and good order. A summary is given below.

a. *Code 101*—The phrase, "(a charge for assaulting any person is to be used only when serious physical injury has been attempted or carried out by an inmate)", is added to limit the use of Code 101 to only those acts which are of a serious nature. Other prohibited acts, albeit physically threatening or offensive, must now be appropriately placed in a lesser severity category where a standard of serious physical injury cannot be demonstrated.

b. *Code 109*—To recognize the seriousness of the unauthorized use of narcotics, existing prohibited act 210 becomes new prohibited act 109. The unauthorized possession, introduction or use of narcotics, marijuana, drugs, or related paraphernalia can have an adverse, and, in many cases, highiy dangerous effect on the security, good order and discipline of the institution. This change places no additional requirements on the inmates, as such usage is prohibited in current policy. Rather, it is intended to recognized the serious nature of this prohibited act. By raising the prohibited act severity level, the Bureau is allowing the IDC greater flexibility in its efforts to deter drug abuse in the institution.

c. *Code 110*—Because it is necessary to parallel an inmate's refusal to provide a urine sample or to take part in other drug-abuse testing with the use of drugs, existing prohibited act 214 becomes new prohibited act 110. If the refusing to provide a urine specimen or to take part in other drug-testing were to remain in the 200 series offense code, inmates who knew or suspected they would test positive for drugs could refuse to provide a urine sample, thereby avoiding disciplinary sanctions in the greatest severity category. This could seriously hinder the Bureau's effort to detect, and eliminate drug usage within its institutions.

d. *Code 218*—The phrase, "or destroying, altering, or damaging life-safety devices (e.g., fire alarm) regardless of financial value" is added to Code 218 because such actions, and the potential consequences of the actions, are clearly considered within the scope of this prohibited act. In the past, staff had available Code 299 when violations of this nature occurred.

e. *Code 221*—Proposed new prohibited act 221 is reworded, but the intent remains the same.

f. *Code 223*—Existing prohibited act 323 becomes new prohibited act 223. In the Bureau's proposed rule, Code 322 was moved to the high severity category, Code 222 (Making, possessing, or using intoxicants). In reviewing the proposed rule, the Bureau realized that refusing to breathe into a breathalyzer must be of a parallel severity category to "using intoxicants" to eliminate having inmates simply refuse participate in tesing to avoid the potential of more severe disciplinary sanctions.

g. *Code 303*—The phrase, "or in excess of the amount authorized" is added to keep consistent the intent and language of 28 CFR 553.13(d) which states that staff may not allow an inmate to possess funds in excess of established institutional limits.

h. *Code 331*—This code is revised to include both non-hazardous tools and other non-hazardous contraband. While non-hazardous contraband could have fallen under Code 399, the Bureau has decided to specifically include it within Code 331, to recognize the scope of the prohibited act.

i. *Code 401*—This code is reworded to indicates that it applies to inmates who possess clothing in excess of the amounts authorized for retention. Although the wording has changed, the intent remains the same.

j. *Code 406*—This code is revised by adding the phrase, "May be categorized and charged in terms of greater severity, according to the nature of the unauthorized use; e.g., the telephone is used for planning, facilitating, committing an armed assault on the institution's secure perimeter, would be charged as Code 101, Assault. As with final prohibited act 314, this language is intended to provide direction to staff in the appropriate application of codes for violations of prohibited acts of a greater severity in nature. Although staff are currently authorized to use the "99" series of violations which constitute a higher severity scale, the Bureau believes specific guidance for code 406 is warranted.

A commenter suggests that the addition of codes 198, 298, 398, and 498, and the revision of codes 199, 299, 399, and 499 makes the Bureau's rule even more "open-ended" and . . . "even more arbitrary". We do not agree. The revised "99" code is intended to clearly recognize that the discipline rule applies to inmates who are committed to the care, custody and control of the Bureau of Prisons. This includes inmates both in and out of the institution (e.g., on escorted trip, furlough). The revised language also recongizes that the discipline rules are those set by the Bureau, not by the institution.

In addition of the "98" codes, involving interference with staff in their official work, provides institution staff with offense codes which can be used when a more specific code may not be clearly applicable. The commenter seems to be suggesting that the Bureau provide in the rule a "specific code offense" that will clearly address any misconduct for which a prisoner may be charged. This is what has been done in the past. While the Bureau favors specificity where possible, as shown by several of the current modifications, it is not possible to specifically encompass every possible violation. For example, chewing gum in our society is ordinarily thought of as a harmless item. However, in a prison, gum can cause serious problems in the security and orderly operation of an institution, and therefore it is not authorized for retention by inmates. Mere possession of gum by an inmate, with no extenuating circumstances, would ordinarily be considered a moderate severity violation of code 305, "possession of anything not authorized for retention or receipt by an inmate . . ." However, if the inmate puts the gum inside a security lock, the offense severity would be classified in a high category for "tampering with or blocking any lock device", code 208. Perhaps because most security locks are of a value greater than $100.00, damage to government property in excess of $100.00 (code 218) would be an appropriate charge. To carry this example one step further, suppose an inmate used gum to jam a cell lock during an assault, particularly where staff were unable to open the cell door. Putting gum in a lock which prevents staff from stopping an assault or from giving aid to an injured person is considerably more serious misconduct than possessing contraband, tampering with locking devices, or damage to government property, and would be classified as 100 series conduct of the greatest severity. Because there is no "specific code" in the 100 series, staff could charge the inmate with a violation of code 198, "interfering with a staff member in the performance of duties", or code 199, "conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons", as most comparable to prohibited act code 101, assaulting any person. We believe using 198 & 199 series offense codes in these situations is the most appropriate way to charge an inmate, especially where all of the variables of an incident cannot be predicted. There is enough specificity to these charges to put inmates on notice that disruptive or interfering actions are unacceptable conduct. Institution staff are thoroughly trained and tested in the discipline process and in the application of code offenses prior to being authorized to act on the Institution Discipline Committee. An inmate who is determined by the discipline committee to have violated a code offense is provided, in writing, the specific evidence relied on to support the findings, and the reason for the sanction imposed. If, at the conclusion of the proceedings, the inmate believes the code offense inappropriate, or any part of the committee findings in error, that inmate can appeal the finding through the Administrative Remedy Procedure.

k. *Section 541.13, Table 4, Sanctions*—In Table 4, paragraph 1, D., the word "acts" replaces the word "episodes". The wording is changed but the intent remains the same. The final rule is further revised by deleting from the rule the examples previously cited. A discussion of what can warrant consecutive disciplinary segregation sanctions is now included in the internal implementing language to the rule.

l. *Table 6 of § 541.13* is revised to recognize that an inmate who commits a second or third offense in the low moderate category is subject to placement in disciplinary segregation as set forth in Table 5. The statement that an inmate is to apply for a restoration of statutory good time is deleted from the note following Table 6. It is not necessary for the inmate to apply to receive consideration for restoration of good time. Also deleted from the language following Table 6 is the previous final rule requirement that the Regional Office approve a Community Treatment Center placement for an inmate with forfeited good time.

5. *Section 541.15*—In § 541.15 the phrase, "or play any significant part in having the charges referred to the UDC" is added to further ensure impartiality on the part of those members selected to serve on the Unit Discipline Committee. While this phrase is new, the intent of this section remains the same.

In § 541.15(a) the word "ordinarily" has been added to the phrase, "within 24 hours of the time staff became aware of the inmate's involvement in the incident". It is, and has been, the Bureau's intent that only in unusual circumstances should the 24-hour rule not be observed. For clarity, § 541.15(b) is revised by substituting the sentence, "This two day work period excludes the day staff become aware of the inmate's involvement in the incident, weekends, and holidays", for "(excluding day of notice, weekends, and holidays)." The intent of this section remains the same.

The word "shall" replaces "may" in the fourth sentence of § 541.15(c) which now states that an inmate's refusal to appear at the hearing "shall be shown by a memorandum". (Note—Similar changes are made in §§ 541.17(d), 541.20(c) and 541.22(c) with respect to showing the refusal of an inmate to appear before the IDC and for the refusal of an inmate in Special Housing status to appear before the reviewing authority at a formal review.)

In §§ 541.15(f) and 541.17(f), a commenter requested the Bureau acknowledge their interpretation of the "some facts" standard with respect to the Supreme Court ruling in *Superintendent, MCI Walpole v Hill*, 86 L Ed 2d 356 (1985). The *Hill* standard of "some facts" or "any facts", establishes the minimum standard of evidence needed to suppport findings of misconduct. To this, the Bureau has added a "greater weight of the evidence" standard to apply in those cases where there is conflicting evidence.

6. *Section 541.17*—In proposed § 541.17(c), the phrase, "who have information directly relevant to the charge(s)" replaces, "when necessary for an appreciation of the circumstances surrounding the charge(s)". The general intent of the paragraph is unchanged.

A commenter to paragraph (c) believes it is understandable to allow for a separate, confidential report, not available to the inmate, provided that the reason for the confidentiality is premised on jeopardizing or threatening institutional or individual security. The Bureau's basis for employing a confidential requirement is indeed the potential threat non-confidentiality poses to security.

In § 541.17(d) the phrase, "may affirm the earlier action taken, . . . may modify the finding of the original IDC as to the offense which was committed" is added to the proposed rule to fully state the responsibility of the IDC upon rehearing sanctions imposed in absentia. Although the wording in this latter section is new, the intent remains the same because § 541.17(f)(1) directs in part that the IDC shall consider all evidence presented at the hearing and shall find that the inmate committed the prohibited act charged, or a "similar prohibited act" if reflected in the Incident Report. The rule does not permit an increase in sanctions. Other modifications to this paragraph are made for the purpose of clarity and do not change the intent of the paragraph.

A commenter to paragraph (d) commends the Bureau for imposing a time limit for rehearing the case of an absent or escaped prisoner returned to custody, but questions the constraints imposed on staff when the case is not reheard within the specified time period. The rule referenced by the commenter refers to the rehearing of a case "ordinarily within 60 days" of the inmate's arrival at the institution to which the inmate is designated after return to custody. Bureau staff are trained in the requirements of the discipline process and are responsible to adhere to these. Inmates who have not received a hearing within the specified time can raise this matter through the Administrative Remedy Procedure (Part 542, Subpart B). This review will allow alleged violations to be examined in light of the individual circumstances and, if indicated, for appropriate corrective action to be taken.

Section 541.17(e) is revised, and states that the IDC may, after considering the evidence, "refer the case back to the UDC for further information or disposition". The Bureau believes the IDC, upon determining the available evidence in a case does not warrant IDC involvement, may return the case to the UDC for disposition at the UDC level, or, in the alternative, for the UDC to provide additional, sufficient evidence to warrant IDC action.

In 541.17(i) the phrase, "or if the IDC finds that the inmate has committed a prohibited act(s) other than the act(s) charged" is added. The new language is consistent with the language in § 541.17(f)(1). This same paragraph is further revised to state that the Incident Report must be changed to show "only the incident and code references to charges which were proved". Although the wording of this paragraph is changed, the intent remains the same.

7. *Section 541.19*—The first paragraph of new proposed § 541.19 adds the phrase, "including ordering a rehearing" as one option available through the appeal process. The term "15 days" is clarified to read "15 calendar days from the date that the inmate receives the written notice". Proposed paragraph § 541.19(b) is revised, but its intent is unchanged.

8. *Section 541.21*—The phrase, "per inmate" is added to paragraph (8) and the phrase, "including unit" is added to proposed paragraph (9). Unit staff are to arrange to visit inmates in special housing within a reasonable time after the inmate's request.

9. *Section 541.22*—In the first paragraph of § 541.22, the word "self" is substituted for "himself". Proposed § 541.22(a)(6)(i) is further revised to indicate that staff "ordinarily" within 90 days of an inmate's placement in post-disciplinary detention shall either return the inmate to general population or "request regional level assistance" to effect a transfer to a more suitable institution. These changes are made to recognize that the action ordinarily is to occur within 90 days and that transfers between institutions require regional assistance.

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), Chapter V of 28 CFR is amended as follows: In Subchapter C, Part 541, Subpart B is revised.

Dated: May 19, 1987.

Norman A. Carlson,

Director, Bureau of Prisons.

In Subchapter C, Part 541, Subpart B is revised as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

* * * * *

Subpart B—Inmate Discipline and Special Housing Units

Subpart B—Inmate Discipline and Special Housing Units

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

§ 541.10 Purpose and scope.

(a) So that inmates may live in a safe and orderly environment, it is necessary for institution authorities to impose discipline on those inmates whose behavior is not in compliance with Bureau of Prisons rules. The provisions of this rule apply to all persons committed to the care, custody, and control (direct or constructive) of the Bureau of Prisons.

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

(1) Only institution staff may take disciplinary action.

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

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

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

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

(6) If it appears at any stage of the disciplinary process that an inmate is mentally ill, staff shall refer the inmate to a mental health professional for determination of whether the inmate is responsible for his conduct or is incompetent. Staff may take no disciplinary action against an inmate whom mental health staff determines to be incompetent or not responsible for his conduct.

(i) A person is not responsible for his conduct if, at the time of the conduct, the person, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. When a person is determined not responsible for his conduct, the Incident Report is to show as a finding that the person did not commit the prohibited act because that person was found not to be mentally responsible for his conduct.

(ii) A person is incompetent if that person lacks the ability to understand the nature of the disciplinary proceedings, or to assist in his defense at the proceedings. When a person is determined incompetent, the disciplinary proceedings shall be postponed until such time as the inmate is able to understand the nature of the disciplinary proceedings and to assist in his defense at those proceedings. If competency is not restored within a reasonable period of time, the Incident Report is to show as a finding that the inmate is incompetent to assist in his or her defense at the disciplinary proceedings.

§ 541.11 Notice to inmate of Bureau of Prison rules.

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

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

(b) The disciplinary system within the institution and the time limits thereof (see Tables 1 and 2);

(c) The inmate's rights and responsibilities (see § 541.12);

(d) Prohibited acts and disciplinary severity scale (see § 541.13, Tables 3, 4, and 5); and

(e) Sanctions by severity of prohibited act, with eligibility for restoration of forfeited and withheld statutory good time (see Table 6).

BILLING CODE 4410-05-M

SUMMARY OF DISCIPLINARY SYSTEM

TABLE 1

	Procedures	Dispositions
1.	Incident involving possible commission of prohibited act.	Except for prohibited acts in the greatest or high severity categories, the writer of the report may resolve informally or drop the charges.
2.	Staff prepares Incident Report and forwards it to Lieutenant.	Except for prohibited acts in the greatest severity category, the Lieutenant may resolve informally, or drop the charges.
3.	Appointment of investigator who conducts investigation and forwards material to Unit Discipline Committee.	
4.	Initial hearing before Unit Discipline Committee.	Unit Discipline Committee may drop or resolve informally any High, Moderate, or Low Moderate Charge, impose allowable sanctions or refer to Institution Discipline Committee.
5.	Hearing before Institution Discipline Committee.	Institution Disciplinary Committee may impose allowable sanctions, or drop the charges.
6.	Appeals through Administrative Remedy Procedure.	The Warden, Regional Director, or General Counsel may approve, modify, reverse, or send back with directions, including ordering a rehearing, but may not increase the sanctions imposed in any valid disciplinary action taken.

TIME LIMITS IN DISCIPLINARY PROCESS

TABLE 2

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

ordinarily maximum of 24 hours

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

maximum ordinarily of 2 work days from the time staff became aware of the inmate's involvement in the incident. (Excludes the day staff become aware of the inmate's involvement, weekends, and holidays.)

3. Initial hearing.

minimum of 24 hours (unless waived)

4. Institution Discipline Committee hearing.

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

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

BILLING CODE 4410-05-C

§ 541.12 Inmate Rights and Responsibilities.

Rights	Responsibilities
1. You have the right to expect that as a human being you will be treated respectfully, impartially, and fairly by all personnel..	1. You have the responsibility to treat others, both employees and inmates, in the same manner.
2. You have the right to be informed of the rules, procedures, and schedules concerning the operation of the institution.	2. You have the responsibility to know and abide by them.
3. You have the right to freedom of religious affiliation, and voluntary religious worship.	3. You have the responsibility to recognize and respect the rights of others in this regard.
4. You have the right to health care, which includes nutritious meals, proper bedding and clothing, and a laundry schedule for cleanliness of the same, an opportunity to shower regularly, proper ventilation for warmth and fresh air, a regular exercise period, toilet articles and medical and dental treatment.	4. It is your responsibility not to waste food, to follow the laundry and shower schedule, to maintain neat and clean living quarters, to keep your area free of contraband, and to seek medical and dental care as you may need it.
5. You have the right to visit and corespond with family members, and friends, and correspond with members of the news media in keeping with Bureau rules and institution guidelines.	5. It is your responsibility to conduct yourself properly during visits, not to accept or pass contraband, and not to violate the law or Bureau rules or institution guidelines through your correspondence.
6. You have the right to unrestricted and confidential access to the courts by correspondence (on matters such as the legality of your conviction, civil matters, pending criminal cases, and conditions of your imprisonment).	6. You have the responsibility to present honestly and fairly your petitions, questions, and problems to the court.
7. You have the right to legal counsel from an attorney of your choice by interviews and correspondence.	7. It is your responsibility to use the services of an attorney honestly and fairly.
8. You have the right to participate in the use of law library reference materials to assist you in resolving legal problems. You also have the right to receive help when it is available through a legal assistance program.	8. It is your responsibility to use these resources in keeping with the procedures and schedule prescribed and to respect the rights of other inmates to the use of the materials and assistance.
9. You have the right to a wide range of reading materials for educational purposes and for your own enjoyment. These materials may include magazines and newspapers sent from the community, with certain restrictions.	9. It is your responsibility to seek and utilize such materials for your personal benefit, without depriving others of their equal rights to the use of this material.
10. You have the right to participate in education, vocational training and employment as far as resources are available, and in keeping with your interests, needs, and abilities..	10. You have the responsibility to take advantage of activities which may help you live a successful and law-abiding life within the institution and in the community. You will be expected to abide by the regulations governing the use of such activities.
11. You have the right to use your funds for commissary and other purchases, consistent with institution security and good order, for opening bank and/or savings accounts, and for assisting your family.	11. You have the responsibility to meet your financial and legal obligations, including, but not limited to, court-imposed assessments, fines, and restitution. You also have the responsibility to make use of your funds in a manner consistent with your release plans, your family needs, and for other obligations that you may have.

§ 541.13 Prohibited acts and disciplinary severity scale.

(a) There are four categories of prohibited acts—Greatest, High, Moderate, and Low Moderate (see Table 3 for identification of the prohibited acts within each category). Specific sanctions are authorized for each category (see Table 4 for a discussion of each sanction). Imposition of a sanction requires that the inmate first is found to have committed a prohibited act.

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

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

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

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

(b) Aiding another person to commit any of these offenses, *attempting* to commit any of these offenses, and *making plans* to commit any of these offenses, in all categories of severity, *shall be considered the same as a commission of the offense itself.* In these cases, the letter "A" is combined with the offense code. For example, planning an escape would be considered as Escape and coded 102A. Likewise, attempting the adulteration of any food or drink would be coded 209A.

(c) Suspensions of any sanction cannot exceed six months. Revocation and execution of a suspended sanction require that the inmate first is found to have committed any subsequent prohibited act. Only the Institution Discipline Committee (IDC) may execute, suspend, or revoke and execute suspension of sanctions A through F. The Institution Discipline Committee or Unit Discipline Committee (UDC) may execute, suspend, or revoke and execute suspensions of sanctions G through P. Revocations and execution of suspensions may be m ade only at the level (IDC or UDC) which originally imposed the sanction.

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

(e) A discipline committee may impose increased sanctions for repeated, frequent offenses according to the guidelines presented in Table 5.

(f) Sanctions by severity of prohibited act, with eligibility for restoration of forfeited and withheld statutory good time are presented in Table 6.

TABLE 3. PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE

[The UDC shall refer all Greatest Severity Prohibited Acts to the IDC with recommendations as to an appropriate disposition]

Code	Prohibited acts	Sanctions
	Greatest Category	
100	Killing	A. Recommend parole date rescission or retardation. B. Forfeit earned statutory good time (up to 100%) and/or terminate or disallow extra good time (an extra good time sanction may not be suspended). C. Disciplinary Transfer (recommend). D. Disciplinary segregation (up to 60 days). E. Make monetary restitution. F. Withhold statutory good time (Note—can be in addition to A through E—cannot be the only sanction executed).
101	Assaulting any person (includes sexual assault) or an armed assault on the institution's secure perimeter (a charge for assaulting any person is to be used only when serious physical injury has been attempted or carried out by an inmate)	
102	Escape from escort; escape from a secure institution (Security Level 2 through 6); or escape from a Security Level 1 institution *with* violence	
103	Setting a fire (charged with this act in this category only when found to pose a threat to life or a threat of serious bodily harm or in furtherance of a prohibited act of Greatest Severity, e.g., in furtherance of a riot or escape; otherwise the charge is properly classified Code 218, or 329	

TABLE 3. PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—Continued

[The UDC shall refer all Greatest Severity Prohibited Acts to the IDC with recommendations as to an appropriate disposition]

Code	Prohibited acts	Sanctions
104	Possession, manufacture, or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive or any ammunition	
105	Rioting	
106	Encouraging other to riot	
107	Taking hostage(s)	
108	Possession, manufacture, or introduction of a hazardous tool (Tools most likely to be used in an escape or escape attempt or to serve as weapons capable of doing serious bodily harm to others; or those hazardous to institutional security or personal safety; e.g., hack-saw blade)	
109	Possession, introduction, or use of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff	Sanctions A–F.
110	Refusing to provide a urine sample or to take part in other drug-abuse testing	
198	Interfering with a staff member in the performance of duties (*Conduct must be of the Greatest Severity nature.*) This charge is to be used only when another charge of greatest severity is not applicable	
199	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons (*Conduct must be of the Greatest Severity nature.*) This charge is to be used only when another charge of greatest severity is not applicable	
	High Category	
200	Escape from unescorted Community Programs and activities and Open Institutions (Security Level 1) and from outside secure institutions—without violence	A. Recommend parole date rescission or retardation.
201	Fighting with another person	B. Forfeit earned statutory good time up to 50% or up to 60 days, whichever is less, and/or terminate or disallow extra good time (an extra good time sanction may not be suspended).
202	(Not to be used)	
203	Threatening another with bodily harm or any other offense	C. Disciplinary transfer (recommend). D. Disciplinary segregation (up to 30 days).
204	Extortion, blackmail, protection: Demanding or receiving money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing	E. Make monetary restitution. F. Withhold statutory good time.
205	Engaging in sexual acts	G. Loss of privileges: commissary, movies, recreation, etc.
206	Making sexual proposals or threats to another	H. Change housing (quarters).
207	Wearing a disguise or a mask	I. Remove from program and/or group activity.
208	Possession of any unauthorized locking device, or lock pick, or tampering with or blocking any lock device (includes keys)	J. Loss of job. K. Impound inmate's personal property.
209	Adulteration of any food or drink	L. Confiscate contraband.
210	(Not to be used)	M. Restrict to quarters.
211	Possessing any officer's or staff clothing	
212	Engaging in, or encouraging a group demonstration	Sanctions A–M.
213	Encouraging others to refuse to work, or to participate in a work stoppage	
214	(Not to be used)	
215	Introduction of alcohol into BOP facility	
216	Giving or offering an official or staff member a bribe, or anything of value	
217	Giving money to, or receiving money from, any person for purposes of introducing contraband or for any other illegal or prohibited purposes	
218	Destroying, altering, or damaging government property, or the property of another person, having a value in excess of $100.00 or destroying, altering, or damaging life-safety devices (e.g., fire alarm) regardless of financial value	
219	Stealing (theft; this includes data obtained through the unauthorized use of a communications facility, or through the unauthorized access to disks, tapes, or computer printouts or other automated equipment on which data is stored.)	
220	Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bag), wrestling, or other forms of physical encounter, or military exercises or drill	
221	Being in an unauthorized area with a person of the opposite sex without staff permission	Sanctions A–M.
222	Making, possessing, or using intoxicants	
223	Refusing to breathe into a breathalyzer or take part in other alcohol abuse testing	
298	Interfering with a staff member in the performance of duties (*Conduct must be of the High Severity nature.*) This charge is to be used only when another charge of high severity is not applicable	
299	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons (*Conduct must be of the High Severity nature.*) This charge is to be used only when another charge of high severity is not applicable	
	Moderate Category	
300	Indecent exposure	A. Recommend parole date rescission or retardation.
301	(Not to be used)	
302	Misuse of authorized medication.	
303	Possession of money or currency, unless specifically authorized, or in excess of the amount authorized	B. Forfeit earned statutory good time up to 25% or upt to 30 days, whichever is less, and/or terminate or disallow extra good time (an extra good time sanction may not be suspended)
304	Loaning of property or anything of value for profit or increased return	C. Disciplinary transfer (recommend). D. Disciplinary segregation (up to 15 days).
305	Possession of anything not authorized for retention or receipt by the inmate, and not issued to him through regular channels	E. Make monetary restitution. F. Withhold statutory good time.
306	Refusing to work, or to accept a program assignment	G. Loss of privileges: commissary, movies, recreation, etc.
307	Refusing to obey an order of any staff member (May be categorized and charged in terms of greater severity, according to the nature of the order being disobeyed; e.g., failure to obey an order which furthers a riot would be charged as 105, Rioting; refusing to obey an order which furthers a fight would be charged as 201, Fighting; refusing to provide a urine sample when ordered would be charged as Code 110)	H. Change housing (quarters). I. Remove from program and/or group activity J. Loss of job. K. Impound inmate's personal property. L. Confiscate contraband.
308	Violating a condition of a furlough	M. Restrict to quarters. N. Extra duty.
309	Violating a condition of a community program	
310	Unexcused absence from work or any assignment	
311	Failing to perform work as instructed by the supervisor	Sanctions A–N.
312	Insolence toward a staff member	
313	Lying or providing false statement to a staff member	
314	Counterfeiting, forging or unauthorized reproduction of any document, article of identification, money, security, or official paper. (May be categorized in terms of greater severity according to the nature of the item being reproduced; e.g., counterfeiting release papers to effect escape, Code 102 or Code 200)	
315	Participating in an unauthorized meeting or gathering	
316	Being in an unauthorized area	

TABLE 3. PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—Continued

[The UDC shall refer all Greatest Severity Prohibited Acts to the IDC with recommendations as to an appropriate disposition]

Code	Prohibited acts	Sanctions
317	Failure to follow safety or sanitation regulations	
318	Using any equipment or machinery which is not specifically authorized	
319	Using any equipment or machinery contrary to instructions or posted safety standards	
320	Failing to stand count	
321	Interfering with the taking of count	
322	(Not to be used)	
323	(Not to be used)	
324	Gambling	
325	Preparing or conducting a gambling pool	Sanctions A-N.
326	Possession of gambling paraphernalia	
327	Unauthorized contacts with the public	
328	Giving money or anything of value to, or accepting money or anythng of value from: another inmate, or any other person without staff authorization	
329	Destroying, altering, or damaging government property, or the property of another person, having a value of $100.00 or less	
330	Being unsanitary or untidy; failing to keep one's person and one's quarters in accordance with posted standards	
331	Possession, manufacture, or introduction of a non-hazardous tool or other non-hazardous contraband (Tool not likely to be used in an escape or escape attempt, or to serve as a weapon capable of doing serious bodily harm to others, or not hazardous to institutional security or personal safety; Other non-hazardous contraband includes such items as food or cosmetics)	
398	Interfering with a staff member in the performance of duties (*Conduct must be of the Moderate Severity nature.*) This charge is to be used only when another charge of moderate severity is not applicable	
399	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons (*Conduct must be of the Moderate Severity nature*). This charge is to be used only when another charge of moderate severity is not applicable	
	Low Moderate Category	
400	Possession of property belonging to another person	E. Make monetary restitution. F. Withold statutory good time.
401	Possessing unauthorized amount of otherwise authorized clothing	G. Loss of privileges: commissary, movies, recreation, etc.
402	Malingering, feigning illness	
403	Smoking where prohibited	H. Change housing (quarters).
404	Using abusive or obscene language	I. Remove from program and/or group activity.
405	Tattooing or self-mutilation	J. Loss of job.
406	Unauthorized use of mail or telephone (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G) (May be categorized and charged in terms of greater severity, according to the nature of the unauthorized use; e.g., the telephone is used for planning, facilitating, committing an armed assault on the institution's secure perimeter, would be charged as Code 101, Assault)	K. Impound inmate's personal property. L. Confiscate contraband. M. Restrict to quarters. N. Extra duty. O. Reprimand. P. Warning.
407	Conduct with a visitor in violation of Bureau regulations (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G)	
408	Conducting a business	
409	Unauthorized physical contact (e.g., kissing, embracing)	
498	Interfering with a staff member in the performance of duties (*Conduct must be of the Low Moderate Severity nature.*) This charge is to be used only when another charge of low moderate severity is not applicable	
499	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons (*Conduct must be of the Low Moderate Severity nature.*) This charge is to be used only when another charge of low moderate severity is not applicable	Sanctions E-P.

Table 4.—Sanctions

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

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

(b) *Forfeit earned statutory good time and/or terminate or disallow extra good time.* The statutory good time available for forfeiture is limited to an amount computed by multiplying the number of months served at the time of the offense for which forfeiture action is taken, by the applicable monthly rate specified in 18 U.S.C., section 4161 (less any previous forfeiture or withholding outstanding). Disallowance of extra good time is limited to the extra good time for the calendar month in which the violation occurs. It may not be withheld or restored. The sanction of termination or disallowance of extra good time may not be suspended. Authority to restore forfeited statutory good time is delegated to *only* the Institution Discipline Committee of each institution. Limitations on this sanctions and eligibility for restoration are based on the severity scale. (See Table 6)

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

(d) *Disciplinary segregration.* The IDC may direct that an inmate be placed or retained in disciplinary segregation pursuant to guidelines contained in this rule. Consecutive disciplinary segregation sactions can be imposed and executed for inmates charged with and found to have committed offenses that are part of different acts only. Specific limits on time in disciplinary segregation are based on the severity scale. (See Table 6)

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

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

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

Only the Institution Discipline Committee may restore withheld statutory good time. Restoration eligibility is based on the severity scale. (See Table 6)

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

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

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

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

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

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

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

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

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

(o) *Reprimand.* The IDC or UDC may reprimand an inmate either verbally or in writing.

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

TABLE 5.—SANCTIONS FOR REPETITION OF PROHIBITED ACTS WITHIN SAME CATEGORY

When the appropriate committee finds that an inmate has committed a prohibited act in the Low Moderate, Moderate, or High category, and when there has been a repetition of the same offense(s) within recent months (offenses for violation of the same code), the IDC may impose additional sanctions according to the followinug chart. (Note: An informal resolution may not be considered as a prior offense for purposes of this chart.)

Category	Prior offense (same code) within time period	Frequency of repeated offense	Sanction permitted
Low Moderate (400 Series	6 months	2d offense	Low Moderate Sanctions, plus: 1. Disciplinary segregation, up to 7 days. 2. Forfeit earned SGT up to 10% or up to 15 days, whichever is less, and/or terminate or disallow extra good time (EGT) (and EGT sanction may not be suspended).
		3d offense, or more	Any sanctions available in Moderate (300) and Low Moderate (400) series.
Moderate (300 Series)	12 months	2d offense	Moderate Sanctions (A,C,E–N), plus: 1. Disciplinary segregation, up to 21 days. 2. Forfeit earned SGT up to 37 ½% or up to 45 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
		3d offense, or more	Any sanctions available in Moderate (300) and High (200) series.
High (200 Series)	18 months	2d offense	High Sanctions (A, C, E–M), plus: 1. Disciplinary segregation, up to 45 days. 2. Forfeit earned SGT up to 75% or up to 90 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
		3d offense, or more	Any sanctions available in High (200) and Greatest (100) series.

TABLE 6.—SANCTIONS BY SEVERITY OF PROHIBITED ACT, WITH ELIGIBILITY FOR RESTORATION OF FORFEITED AND WITHHELD STATUTORY GOOD TIME

Severity of act	Sanctions	Max. amt. fort. SGT [1]	Max. amt. W/hd SGT	Elig. restoration fort. SGT	Elig. restoration W/hd SGT/	Max. dis seg [1]
Greatest	A–F	100%	Good time creditable for single month during which violation occurs. Applies to all categories.	24 mos	18 mos	60 days.
High	A–M	50% or 60 days, whichever is less.		18 mo	12 mos	30 days.
Moderate	A–N	25% or 30 days, whichever is less.		12 mos	6 mos	15 days.
Low Moderate	E–P	N/A		N/A (1st offense) 6 mos. (2nd or 3rd offense in same category within six months).	3 mos	N/A (1st offense). 7 days (2nd offense). 15 days (3rd offense).

[1] Restoration will be approved at the time of initial eligibility only when the inmate has shown a period of time with improved good behavior. When the IDC denies restoration of forfeited or withheld statutory good time, the IDC shall notify the inmate of the reasons for denial. The IDC establish a new eligibility date, not to exceed six months from the date of denial.

An inmate with an approaching parole effective date, or an approaching mandatory release or expiration date who also has forefeited good time may be placed in a Community Treatment Center only if that inmate is otherwise eligible under Bureau policy, and if there exists a legitimate documented need for such placement. The length of stay at the Community Treatment Center is to be held to the time necessary to establish residence and employment.

§ 541.14 Incident report and investigation.

(a) *Incident report.* The Bureau of Prisons encourages informal resolution (requiring consent of both parties) of incidents involving violations of Bureau regulations. However, when staff witnesses or has a reasonable belief that a violation of Bureau regulations has been committed by an inmate, and when staff considers informal resolution of the incident inappropriate or unsuccessful, staff shall prepare an Incident Report and promotly forward it to the appropriate Lieutenant. Except for prohibited acts in the Greatest Severity Category, the Lieutenant may informally dispose of the Incident Report or forward the Incident Report for investigation consistent with the section. The Lieutenant shall expunge the inmate's file of the Incident Report if informal resolution is accomplished. Only the IDC may make a final disposition on a prohibited act in the Greatest Severity Category.

(b) *Investigation.* Staff shall conduct the investigation promptly unless circumstances beyond the control of the investigator intervene. The investigating officer should be an employee of supervisory level and may not be the employee reporting the incident, or one who was involved in the incident, in question.

(1) When it appears likely that the incident may be the subject of criminal prosecution, the investigating officer shall suspend the investigation, and staff may not question the inmate until the Federal Bureau of Investigation or other investigative agency interviews have been completed or until the agency responsible for the criminal investigation advises that staff questioning may occur.

(2) The inmate may receive a copy the Incident Report prior to being seen by the investigating agency. The investigating officer (Bureau of Prisons) shall give the inmate a copy of the Incident Report at the beginning of the investigation, unless there is good cause for delivery at a later date, such as absence of the inmate from the institution or a medical condition which argues against delivery. If the investigation is delayed for any reason, any employee may deliver the charge(s) to the inmate. The staff member shall note the date and time the inmate received a copy of the Incident Report. The investigator shall also read the charge(s) to the inmate and ask for the inmate's statement concerning the incident unless it appears likely that the incident may be the subject of criminal prosecution. The investigator shall advise the inmate of the right to remain silent at all stages of the disciplinary process but that the inmate's silence may be used to draw an adverse inference against the inmate at any stage of the institutional disciplinary process. The investigator shall also inform the inmate that the inmate's silence alone may not be used to support a finding that the inmate has committed a prohibited act. The investigator shall then thoroughly investigate the incident. The investigator shall record all steps and actions taken on the Incident Report and forward all relevant material to the staff holding the initial hearing. The inmate does not receive a copy of the investigation. However, if the case is ultimately forwarded to the Institution Discipline Committee, the Committee shall give a copy of the investigation and other relevant materials to the inmate's staff representative for use in presentation on the inmate's behalf.

§ 541.15 Initial hearing.

The Warden shall delegate to one or more institution staff members the authority and duty to hold an initial hearing upon completion of the investigation. The Warden shall authorize these staff members to impose minor sanctions (G through P) for violation of prohibited act(s). In order to ensure impartiality, the appropriate staff member(s) (hereinafter usually referred to as the Unit Discipline Committee (UDC)) may not be the reporting or investigating officer or a witness to the incident, or play any significant part in having the charges referred to the UDC. However, a staff member witnessing an incident may serve on the UDC where virtually every staff member in the institution witnesses the incident in whole or in part. If the UDC finds at the initial hearing that an inmate has committed a prohibited act, the UDC may impose minor dispositions and sanctions. When an alleged violation of Bureau rules is serious and warrants consideration for other than minor sanctions, the UDC shall refer the charges to the Institution Discipline Committee for further hearing. The UDC must refer all greatest category charges to the IDC. The following minimum standards apply to initial hearings in all institutions.

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

(b) Each inmate so charged is entitled to an initial hearing before the UDC, ordinarily held within two work days from the time staff became aware of the inmate's involvement in the incident. This two work day period excludes the day staff become aware of the inmate's involvement in the incident, weekends, and holidays.

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

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

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

(f) The Unit Discipline Committee shall consider all evidence presented at the hearing and shall make a decision based on at least some facts, and if there is conflicting evidence, it must be based on the greater weight of the evidence. The UDC shall take one of the following actions:

(1) Find that the inmate committed the prohibited act charged and/or a similar prohibited act if reflected in the Incident Report;

(2) Find that the inmate did not commit the prohibited act charged or a similar prohibited act if reflected in the Incident Report; or

(3) Refer the case to the IDC for further hearing.

The UDC shall give the inmate a written copy of the decision and disposition by the close of business the next work day. Any action taken as a minor disposition is reviewable under the Administrative Remedy Procedure (see Part 542 of this Chapter).

(g) The UDC shall prepare a record of its proceedings which need not be verbatim. A record of the hearing and supporting documents are kept in the inmate's file.

(h) When an alleged violation of Bureau rules is serious and warrants consideration for other than minor sanctions (G through P), the UDC shall refer the charge(s) without indication of findings as to commission of the alleged violation to the Institution Discipline Committee (IDC) for hearing and disposition. The UDC shall forward copies of all relevant documents to the chairman of the IDC with a brief statement of reasons for the referral along with any recommendations for appropriate disposition if the IDC finds the inmate has committed the act charged and/or a similar prohibited act. The inmate whose charge is being referred to the Institution Discipline Committee may be retained in administrative detention or other restricted status, but the UDC may not impose a final disposition if the matter is being referred to the IDC.

(i) When charges are to be referred to the Institution Discipline Committee, the UDC shall advise the inmate of the rights afforded at a hearing before the IDC. The UDC shall ask the inmate to indicate a choice of staff representative, if any, and the names of any witnesses the inmate wishes to be called to testify at the hearing and what testimony they are expected to provide. The UDC shall advise the inmate that the inmate may waive the right to be present at the IDC hearing, but still elect to have witnesses any/or a staff representative appear in the inmate's behalf at this hearing.

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

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

§ 541.16 Establishment and functioning of Institution Discipline Committee.

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

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

(c) The Institution Discipline Committee shall conduct hearings, make findings, and impose appropriate sanctions for incidents of inmate misconduct referred to it for disposition following the hearing required by § 541.15 before the UDC. The IDC may not hear any case or impose any sanctions in a case not heard and referred by the UDC. Only the Institution Discipline Committee shall have the authority to impose or suspend sanctions A through F. This Committee shall conduct reviews of inmates placed in disciplinary segregation in accordance with the requirements of § 541.20.

§ 541.17 Procedures in Institution Discipline Committee hearings.

The Institution Discipline Committee shall proceed as follows:

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

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

When it appears that the inmate is not able to properly make a presentation on his own behalf (for example, an illiterate inmate), the Warden shall appoint a staff representative for that inmate, even if one is not requested.

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

(d) An inmate has the right to be present throughout the Institution Discipline Committee hearing except during deliberations of the Committee or when institutional security would be jeopardized. The chairman must document in the record the reason(s) for excluding an inmate from the hearing. An inmate may waive the right to be present at the hearing, provided that the waiver is documented by staff and reviewed by the IDC. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. The Committee may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. When an inmate escapes or is otherwise absent from custody, the Institution Discipline Committee shall conduct a hearing in the inmate's absence at the institution in which the inmate was last confined. When an inmate returns to custody following absence during which sanctions were imposed by the IDC, the Warden shall have the charges reheard before the Institution Discipline Committee ordinarily within 60 days after the inmate's arrival at the institution to which the inmate is designated after return to custody, and following appearance before the Unit Discipline Committee at that institution. The UDC shall ensure that the inmate has all rights required for appearance at the Institution Discipline Committee, including delivery of charge(s), advisement of the right to remain silent and other rights to be exercised at the IDC. All the applicable procedural requirements of Institution Discipline Committee hearings apply to this rehearing, except that written statements of witnesses not readily available may be liberally used instead of in-person witnesses. The IDC upon rehearing may affirm the earlier action taken, may dismiss the charge(s), may modify the finding of the original IDC as to the offense which was committed, or may modify but may not increase the sanctions previously imposed in the inmate's absence.

(e) The IDC may refer the case back to the UDC for further information or disposition. The IDC may postpone or, at any time prior to making a decision as to whether or not a prohibited act was committed, may continue the hearing until a later date whenever further investigation or more evidence is needed. A postponement or continuance must be for good cause (determined by the IDC chairman) shown by the inmate or staff and should be documented in the record of the hearing.

(f) The IDC shall consider all evidence presented at the hearing and shall make a decision based on at least some facts, and if there is conflicting evidence, it must be based on the greater weight of the evidence. The Committee shall find that the inmate either:

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

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

When a disciplinary committee decision is based on confidential informat information, the UDC or IDC shall document, ordinarily in the committee report, its finding as to the reliability of each confidential informant relied on *and the factual basis for that finding.* When it appears that this documentation in the committee report would reveal the confidential informant's identify, the finding as to the reliability of each confidential informat relied on and the factual basis for that finding shall be made part of the hearing record in a separate report, prepared by the IDC chairman, not available to the inmate.

(g) The Institution Discipline Committee shall prepare a record of its proceedings which need not be verbatim. This record must be sufficient to document the advisement of inmate rights, the Committee's findings, the Committee's decision and the specific evidence relied on by the Committee, and must include a brief statement of the reasons for the sanctions imposed. The evidence relied upon, the decision, and the reasons for the actions taken must be set out in specific terms unless doing so would jeopardize institutional security. The IDC shall give the inmate a written copy of the decision and disposition, ordinarily within 10 days of the IDC's decision.

(h) A record of the hearing and supporting documents are to be kept in the inmate central file.

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

§ 541.18 Dispositions of the Institution Discipline Committee.

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

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

(b) Impose sanctions A through P as provided in § 541.13.

(c) Suspend the execution of a sanction it imposes as provided in § 541.13.

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

At the time the Unit Discipline Committee or Institution Discipline Committee gives an inmate written notice of its decision, they shall also advise the inmate that the inmate may appeal the decision within 15 calendar days from the date that the inmate receives the written notice under Administrative Remedy Procedures (see Part 542 of this Chapter). On appeals, the Warden, Regional Director, or General Counsel may approve, modify, reverse, or send back with directions, including ordering a rehearing, any disciplinary action of the Unit Discipline Committee or Institution Discipline Committee but may not increase any valid sanction imposed. On appeals, the Warden, Regional Director, or General Counsel shall consider:

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

(b) Whether the Unit Discipline Committee or Institution Discipline Committee based its decision on some facts, and if there was conflicting evidence, whether the decision was based on the greater weight of the evidence; and

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

§ 541.20 Justification for placement in disciplinary segregation and review of inmates in disciplinary segregation.

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

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

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

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

§ 541.21 Conditions of disciplinary segregation.

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

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

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

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

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

(3) *Clothing and bedding.* An inmate in segregation may wear normal institution clothing but may not have a belt. Staff shall furnish a mattress and bedding. Cloth or paper slippers may be substituted for shoes at the discretion of the Warden. An inmate may not be segregated without clothing, mattress, blankets and pillow, except when prescribed by the medical officer for medical or psychiatric reasons. Inmates in special housing status will be provided, as nearly as practicable, the same opportunity for the issue and exchange of clothing, bedding, and linen, and for laundry as inmates in the general population. Exceptions to this procedure may be permitted only when found necessary by the Warden or designee. Any exception, and the reasons for this, must be recorded in the unit log.

(4) *Food.* Staff shall give a segregated inmate nutritionally adequate meals, ordinarily from the menu of the day for

the institution. Staff may dispense disposable utensils when necessary.

(5) *Personal hygiene.* Segregated inmates shall have the opportunity to maintain an acceptable level of personal hygiene. Staff shall provide toilet tissue, wash basin, tooth brush, eye glasses, shaving utensils, etc., as needed. Staff may issue a retrievable kit of toilet articles. Each segregated inmate shall have the opportunity to shower and shave at least three times a week, unless these procedures would present an undue security hazard. This security hazard will be documented and signed by the Warden, indicating the Warden's review and approval. Inmates in special housing will be provided, where practicable, barbering and hair care services. Exceptions to this procedure may be permitted only when found necessary by the Warden or designee.

(6) *Exercise.* Staff will permit each segregated inmate no less than five hours exercise each week. Exercise should be provided in five one-hour periods, on five different days, but if circumstances require, one-half hour periods are acceptable if the five-hour minimum and different days schedule is maintained. These provisions must be carried out unless compelling security or safety reasons dictate otherwise. Institution staff shall document these reasons.

Exercise periods, not to exceed one week, may be withheld from an inmate by order of the Warden, upon recommendation of the Institution Discipline Committee. This recommendation may be made only following a hearing before the IDC, the hearing to be held in accordance with the provisions of § 541.17, following those provisions which are appropriate to these circumstances, and only upon a finding by the IDC that the actions of the segregated inmate pose a threat to the safety or health conditions of the unit.

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

(8) *Reading material.* Staff shall provide a reasonable amount of nonlegal reading material, not to exceed five books per inmate at any one time, on a circulating basis. Staff shall provide the inmate opportunity to possess religious scriptures of the inmate's faith. As to legal materials, see Part 543, Subpart B.

(9) *Supervision.* In addition to the direct supervision afforded by the unit officer, a member of the medical department and one or more responsible officers designated by the Warden (ordinarily a Lieutenant) shall see each segregated inmate daily, including weekends and holidays. Members of the program staff, including unit staff, shall arrange to visit inmates in special housing within a reasonable time after receiving the inmate's request.

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

§ 541.22 Administrative detention.

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

(a) *Placement in administrative detention.* The Warden may delegate authority to place an inmate in administrative detention to Lieutenants. Prior to the inmate's placement in administrative detention, the Lieutenant is to review the available information and determine whether the inmate's placement in administrative detention is warranted. The Warden may place an inmate in administrative detention when the inmate is in holdover status (i.e., en route to a designated institution) during transfer, or is a new commitment pending classification. The Warden may also place an inmate in administrative detention when the inmate's continued presence in the general population poses a serious threat to life, property, self, staff, other inmates or to the security or orderly running of the institution and when the inmate:

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

(2) Is pending an investigation of a violation of Bureau regulations;

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

(4) Is pending transfer;

(5) Requests admission to administrative detention for the inmate's own protection, or staff determines that admission to or continuation in administrative detention is necessary for the inmate's own protection (see § 541.23); or

(6) Is terminating confinement in disciplinary segregation and placement in general population is not prudent. The Institution Discipline Committee is to advise the inmate of this determination and the reasons for such action.

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

(ii) The Assistant Director, Correctional Programs Division, shall review for purpose of making a disposition, the case of an inmate not transferred from post-disciplinary detention within the timeframe specified in paragraph (a)(6) (i) of this section.

(iii) In Security Level 6 institutions, staff will attempt to adhere to the 90-day limit for an inmate's placement in post-disciplinary detention. Because security needs required for an inmate in a Security Level 6 institution may not be available outside of post-disciplinary detention, the Warden may approve an extension of this placement upon determining in writing that it is not practicable to release the inmate to the general inmate population or to effect a transfer to a more suitable institution.

(iv) The appropriate Regional Director and the Assistant Director, Correctional Programs Division, shall review for purpose of making a disposition, the case of an inmate in a Security Level 6 institution not transferred from post-disciplinary detention within the 90-day timeframe specified in paragraph (a)(6)(iii) of this section. A similar, subsequent review shall be conducted every 60–90 days if post-disciplinary detention continues for this extended period.

(b) *Memorandum detailing reasons for placement.* The Warden shall prepare a memorandum detailing the reasons for placing an inmate in administrative detention, with a copy given to the inmate, provided institutional security is not compromised thereby. Staff shall deliver this memorandum to the inmate within 24 hours of the inmate's placement in administrative detention, unless this delivery is precluded by exceptional circumstances. A memorandum is not necessary for an inmate placed in administrative detention when this placement is a direct result of the inmate's holdover status.

(c) *Review of inmates housed in administrative detention.* (1) Except as otherwise provided in paragraphs (c)(2) and (c)(3) of this section, the Warden shall designate appropriate staff to review the status of inmates housed in administrative detention. The reviewing authority shall conduct a record review within three work days of the inmate's placement in administrative detention and shall hold a hearing and formally review the status of each inmate who spends seven continuous days in administrative detention, and thereafter shall review these cases on the record (in the inmate's absence) each week, and shall hold a hearing and review these cases formally at least every 30 days. The inmate appears before the reviewing authority at the hearing unless the inmate waives the right to appear. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. Staff shall conduct a psychiatric or psychological assessment, including a personal interview, when administrative detention continues beyond 30 days. The assessment, submitted to the reviewing authority in a written report, shall address the inmate's adjustment to surroundings and the threat the inmate poses to self, staff and other inmates. Staff shall conduct a similar psychiatric or psychological assessment and report at subsequent one-month intervals should detention continue for this extended period. Administrative detention is to be used only for short periods of time except where an inmate needs long-term protection (see § 541.23), or where there are exceptional circumstances, ordinarily tied to security or complex investigative concerns. An inmate may be kept in administrative detention for longer term protection only if the need for such protection is documented by the reviewing authority. Provided institutional security is not compromised, the inmate shall receive at each formal review a written copy of staff's decision and the basis for this finding. The reviewing authority shall release an inmate from administrative detention when reasons for placement cease to exist.

(2) The Warden shall designate appropriate staff to meet weekly with an inmate in administrative detention when this placement is a direct result of the inmate's holdover status. Staff shall also review this type of case on the record each week.

(3) When an inmate is placed in administrative detention for protection, but not at that inmate's request, the Warden or designee is to review the inmate's status within two work days of this placement to determine if continued protective custody is necessary. A formal hearing is to be held within seven days of the inmate's placement (see § 541.23, Protection Cases).

(d) *Conditions of administrative detention.* The basic level of conditions as described in § 541.21(c) for disciplinary segregation also apply to administrative detention. If consistent with available resources and the security needs of the unit, the Warden shall give an inmate housed in administrative detention the same general privileges given to inmates in the general population. This includes, but is not limited to, providing an inmate with the opportunity for participation in an education program, library services, social services, counseling, religious guidance and recreation. Unless there are compelling reasons to the contrary, institutions shall provide commissary privileges and reasonable amounts of personal property. An inmate in administrative detention shall be permitted to have a radio, provided that the radio is equipped with ear plugs. Exercise periods, at a minimum, will meet the level established for disciplinary segregation and will exceed this level where resources are available. The Warden shall give an inmate in administrative detention visiting, telephone, and correspondence privileges in accordance with Part 540 of this Chapter. The Warden may restrict for reasons of security, fire safety, or housekeeping the amount of personal property that an inmate may retain while in administrative detention.

§ 541.23 Protection cases.

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

(1) Victims of inmate assaults;

(2) Inmate informants;

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

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

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

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

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

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

(b) Inmates who are placed in administrative detention for protection, but not at their own request or beyond the time when they feel they need to be detained for their own protection, are entitled to a hearing, no later than seven days from the time of their admission (or from the time of their detention beyond their own consent). This hearing is conducted in accordance with the procedural requirements of § 541.17, as to advance written notice, staff representation, right to make a statement and present documentary evidence, to request witnesses, to be present throughout the hearing, and advance advisement of inmate rights at the hearing, and as to making a record of the proceedings.

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

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

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