

Sunshine Act Meetings

Federal Register

Vol. 54, No. 51

Friday, March 17, 1989

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

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—March 22, 1989.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to the public:

1. Controlled Carrier Status of Neptune Orient Lines, Inc.

Portion Closed to the public:

1. Docket No. 87-13—*Pate Stevedore Company of Mobile, et al. v. The Alabama State Docks Department and Aetna Casualty and Surety Company* and Docket No. 87-17—*Atlantic & Gulf Stevedores of Alabama and*

Alabama Insurance Guaranty Association v. The Alabama State Docks Department and Aetna Casualty and Surety Company—Compliance with Commission Order.

2. Docket No. 87-29—*Hemisphere Navigation Co. Inc. v. Sea-Land Service, Inc.*—Motion for Discontinuance and Motion to Vacate Initial Decision.

3. Docket No. 88-14—*Direct Container Line, Inc. et al. v. Atlantic Container Line, et al.*—Appeal of Order Dismissing Complaint.

CONTACT PERSON FOR MORE

INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,
Secretary.

[FR Doc. 89-6466 Filed 3-15-89; 3:15 pm]

BILLING CODE 6730-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting.

TIME AND DATE: 9:30 a.m., Thursday, March 23, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Long Range ADP Plan. Closed pursuant to exemption (2).
3. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. Appeals of Denials of Insurance Coverage on Accounts Maintained in a FCU. Closed pursuant to exemptions (6), (8), (9)(B), and (10).
5. Establishment of Office of Inspector General. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 89-6469 Filed 3-15-89; 8:45 am]

BILLING CODE 7535-01-M

Corrections

Federal Register

Vol. 54, No. 51

Friday, March 17, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-78-110]

Energy Conservation Program for Consumer Products: Final Rulemaking Regarding Regulations Related to Energy Conservation Standards for Consumer Products

Correction

In rule document 89-2716 beginning on page 6062 in the issue of Tuesday, February 7, 1989, make the following corrections:

1. On page 6076, in the third column, in the 31st line from the bottom, "C_{1.7}" should read "C_j=1.7".
2. On the same page, in the same column, in the 29th line from the bottom, "I_{KJacket}" should read "I_J=jacket".

3. On page 6086, in the second column, in equation (6a), in the parenthetical expression, the broken line should be a solid line; and "EPA" should read "EPS".

4. On the same page, in the third column, in equation (6b), in the parenthetical expression, the broken line should be a solid line.

5. On the same page, in the same column, in the 13th line from the bottom, remove the last two symbols immediately preceding "min".

6. On page 6087, in the first column, in the 13th line from the bottom, "≥" should read ">".

7. On the same page, in the second column, in the third line above the heading *Manufacturer—Option Testing*, "≤" should read "<".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88D-0367]

Bacteriological Analytical Manual, Chapter 29—Listeria Isolation; Revised Method of Analysis; Correction

Correction

In notice document 89-4257, beginning on page 7995, in the issue of Friday, February 24, 1989, make the following corrections:

On page 7995, in the second column, in the SUMMARY, in the tenth line "Listeria" should read "Listeria".

On the same page, in the third column in the table, in the first table-column, all entries should be italicized, and in the second and third table-columns the headings should read "*Staphylococcus aureus*" and "*Rhodococcus equi*" respectively.

On the same page, in the third column, in item 5, "Monocytogenes" and "monocytogenes", should read "Monocytogenes" and "Monocytogenes" respectively.

On page 7996, in the first column, in the third paragraph, in the fourth and sixth lines, "Fermentation" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF INTERIOR

Bureau of Land Management

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

Correction

In notice document 89-4224 appearing on page 7890 in the issue of Thursday, February 23, 1989, make the following correction: In the 1st column, under Willamette Meridian, in the 2nd paragraph, the 11th line should read "6,213.99 feet; thence south 22°36'50" east,".

BILLING CODE 1505-01-DI

Estimote Federal Reporter

Friday
March 17, 1989

Part II

Department of Justice

Bureau of Prisons

28 CFR Parts 511, 513, 541, 544, and 545
Control, Custody, Care, Treatment, and
Instruction of Inmates; Final and
Proposed Rules

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 511

Control, Custody, Care, Treatment, and Instruction of Inmates; Searching/Detaining of Non-Inmates; Arresting Authority; Use of Metal Detectors

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons is publishing final amendments to its rule on searching/detaining of non-inmates; arresting authority; use of metal detectors, to include a requirement that neither a camera nor recording equipment may be used on institution grounds without the written consent of the Warden.

EFFECTIVE DATE: March 17, 1989.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 754, 320 1st Street NW., Washington, DC 20534.

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

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons is publishing final amendments to its rule on searching/detaining of non-inmates, arresting authority, and use of metal detectors. The Bureau published an interim rule on this subject July 18, 1986 (at 51 FR 26126) to determine if any revisions or clarifications would be necessary. Interested persons were invited to submit comments on the interim rule. No public comment was received and the Bureau has determined no further revisions are required. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no response in the *Federal Register*. The present amendment finalizes the Bureau of Prisons' long-standing practice of requiring the Warden's approval for an individual to use either a camera or recording

equipment while visiting the institution. The unauthorized use of cameras or recording equipment presents a potential threat to the security of the institution, and may invade an individual's privacy.

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.

List of Subjects in 28 CFR Part 511

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), the interim rule for 28 CFR 511.12(a) published at 51 FR 26126 is affirmed as final with the following change.

Dated: March 14, 1989.

J. Michael Quinlan,

Director, Bureau of Prisons.

In Subchapter A, Part 511, amend Subpart B to read as follows:

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION**PART 511—GENERAL MANAGEMENT POLICY****Subpart B—Searching/Detaining of Non-Inmates; Arresting Authority; Use of Metal Detectors**

The authority citation for Part 511, Subpart B is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 752, 1791, 1792, 1793, 3050, 3621, 3622, 3624, 4001, 4012, 4042, 4081, 4082 (Repealed as to conduct occurring on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to

conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99, 6.1.

[FR Doc. 89-6288 Filed 3-16-89; 8:45 am]

BILLING CODE 4410-05-M

28 CFR Part 541**Control, Custody, Care, Treatment, and Instruction of Inmates Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others**

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is finalizing its interim rule on Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others. This rule, originally published October 8, 1987, establishes the procedures to follow when an inmate who tests HIV positive indicates by his actions or verbally a disposition to engage in conduct which poses a significant threat to transmit the HIV virus to another person. The rule is intended to remove from the general inmate population an inmate whose conduct poses a substantial health risk to others.

EFFECTIVE DATE: March 17, 1989.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 754, 320 First Street, NW., Washington, DC 20534. Comments received will be available for examination by interested persons at the above address.

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

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons is finalizing its interim rule on Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others. The Bureau published its interim rule on this subject October 8, 1987 (at 52 FR 37730 *et seq.*) and invited public comment on how this rule may be further refined or modified. No public comment was received and the Bureau has determined no major revisions are required. One rule change that was made substitutes the Program Review Division for the Office of General Counsel as the reviewing authority for inmate appeal of the

Regional Director's decision. This change recognizes the relocation of the Administrative Remedy Section from the Office of General Counsel to the Program Review Division.

Because the changes pose no additional restrictions and are primarily intended to substitute one reviewing authority for another, the Bureau of Prisons finds good cause under 5 U.S.C. 553 to make this rule effective immediately without a notice of proposed rulemaking, opportunity for public comment, or delay in effective date.

Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no response in the *Federal Register*.

The rule authorizes Bureau staff to place an inmate in controlled housing status when there is reliable evidence causing staff to believe that the inmate may engage in conduct posing a health risk to others. This evidence may be the inmate's behavior, or statements of the inmate, or other reliable evidence. The rule establishes procedures for referring an inmate for placement in controlled housing status, requires the inmate be afforded a hearing, and provides for regional review of the Hearing Administrator's recommendation. The rule specifies that the inmate, consistent with available resources and security needs of the institution, is to be considered for activities and privileges afforded the general inmate population. The rule requires the inmate to have his status reviewed regularly, and identifies the factors to be considered in evaluating an inmate's readiness for release from controlled housing status.

The scope of this rule is limited to the inmate who tests HIV positive and for whom there is reliable evidence that the inmate is engaged in, or may engage in, conduct posing a health risk to others (e.g., sexual predators). To prevent the spreading of the virus to others, the Bureau has engaged in an educational program for all its inmates and staff. A person who tests HIV positive is given counseling about the risks of his behavior. When, despite such education and counseling, a person engages or shows a disposition to engage in high-risk behavior, the Bureau believes it is necessary to immediately implement procedures for removing such inmates from the general inmate population.

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.

List of Subjects in 28 CFR Part 541

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), the interim rule published at 52 FR 37730 adding a new Subpart E to Part 541 is affirmed as final with the following changes.

Dated: March 14, 1989.

J. Michael Quinlan,
Director.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

I. Authority citation for Part 541 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 and 4161-4166 (These sections are repealed as to conduct occurring on or after November 1, 1987); 5006-5024 (Repealed October 12, 1984 as to conduct occurring after that date); 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

II. Part 541 is amended by revising Subpart E to read as follows:

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

* * * * *

Subpart E—Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others

Sec.

- 541.60 Purpose and scope.
- 541.61 Standard for placement in controlled housing status.
- 541.62 Referral for placement.
- 541.63 Hearing procedure.
- 541.64 Decision of the Hearing Administrator.
- 541.65 Regional Director review and appeal.
- 541.66 Programs and services.
- 541.67 Review of controlled housing status.
- 541.68 Release from controlled housing status.

Subpart E—Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others

§ 541.60 Purpose and scope.

In an effort to maintain a safe and orderly environment within its institutions, the Bureau of Prisons may place in controlled housing status an inmate who tests HIV positive when there is reliable evidence that the

inmate may engage in conduct posing a health risk to another person.

§ 541.61 Standard for placement in controlled housing status.

An inmate may be placed in a controlled housing status when there is reliable evidence causing staff to believe that the inmate engage in conduct posing a health risk to others. This evidence may be the inmate's behavior, or statements of the inmate, or other reliable evidence.

§ 541.62 Referral for placement.

(a) The Warden shall consider an inmate for controlled housing status when the inmate has been confirmed as testing HIV positive and when there is reliable evidence indicating that the inmate may engage in conduct posing a health risk to others. This evidence may come from the statements of the individual, repeated misconduct (including disciplinary actions), or other behavior suggesting that the inmate may engage in predatory or promiscuous sexual behavior, assaultive behavior where body fluids may be transmitted to another, or the sharing of needles.

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

(c) Based on the perceived health risk to others posed by the inmate's threatened or actual actions, the Warden may, with the telephonic approval of the Regional Director, temporarily (not to exceed 20 work days) place an inmate in a special housing status (e.g., administrative detention, or a secure hospital room), pending the inmate's appearance before the Hearing Administrator. Reasons for this placement, and the approval of the Regional Director, shall be documented in the inmate central file. The inmate should be seen daily by case management and medical staff while in this temporary status, and a psychological or psychiatric assessment report should be prepared during this temporary placement period.

§ 541.63 Hearing procedure.

(a) The Regional Director in the region where the inmate is located shall review the institution's recommendation for referral of an inmate for controlled housing status. If the Regional Director concurs with the recommendations, the Regional Director shall designate a person in the Regional Office or a person at department head level or above in the institution to conduct a

hearing on the appropriateness of an inmate's placement in controlled housing status. This Hearing Administrator shall have correctional experience, no former personal involvement in the instant situation, and a knowledge of the type of behavior that poses a health risk to others, and of the options available for dealing with an inmate who poses such a health risk to others.

(b) The Hearing Administrator shall provide a hearing to an inmate recommended for controlled housing status. The hearing ordinarily shall take place at the institution housing the inmate.

(c) The hearing shall proceed as follows:

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

(2) The Hearing Administrator shall upon request of the inmate provide an inmate the service of a full-time staff member to represent the inmate. The Hearing Administrator shall document in the record of the hearing an inmate's request for, or refusal of staff representation. The inmate may select a staff representative from the local institution. If the selected staff member declines for good reason or is unavailable, the inmate has the option of selecting another representative or, in the case of an absent staff member, of waiting a reasonable period (determined by the Hearing Administrator) for the staff member's return, or of proceeding without a staff representative. When an inmate is illiterate, the Warden shall provide a staff representative. The staff representative shall be available to assist the inmate and, if the inmate desires, shall contact witnesses and present favorable evidence at the hearing. The Hearing Administrator shall afford the staff representative adequate time to speak with the inmate and to interview available witnesses.

(3) The inmate has the right to be present throughout the hearing, except where institutional security or good order is jeopardized. The Hearing Administrator may conduct a hearing in the absence of the inmate when the inmate refuses to appear. The Hearing

Administrator shall document an inmate's refusal to appear, or other reason for nonappearance, in the record of the hearing.

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

(i) The evidence to be presented must be material and relevant to the issue as to whether the inmate can and would pose a health risk to others, if allowed to remain in general prison population. This evidence may come from the statements of the individual, repeated misconduct (including disciplinary actions), or other behavior suggesting that the inmate may engage in predatory or promiscuous sexual behavior, assaultive behavior where body fluids may be transmitted to others, or the sharing of needles.

(ii) Repetitive witnesses need not be called. Staff who recommend placement in a controlled housing status are not required to appear, provided their recommendation is fully explained in the record.

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

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

§ 541.64 Decision of the Hearing Administrator.

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

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

(2) Indicate the specific reasons for the decision, to include a description of the act, or series of acts, or other reliable evidence on which the decision is based, along with evidence of the inmate's HIV positive status.

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

(c) The Hearing Administrator may order the continuation of the inmate in special housing pending review by the Regional Director. The Hearing Administrator should state the reasons for this order in the record of the Hearing.

(d) The Hearing Administrator shall send the decision, whether for or against placement in a controlled housing status, and supporting documentation to the Regional Director. Ordinarily, this is done within 20 working days after conclusion of the hearing. Any reason for extension is to be documented.

§ 541.65 Regional Director review and appeal.

(a) The Regional Director shall review the decision and supporting documentation of the Hearing Administrator and, if submitted, the information contained in an inmate's appeal. The Regional Director shall accept or reject the Hearing Administrator's decision within 30 working days of its receipt, unless for good cause there is reason for delay, which shall be documented in the record. The authority of the Regional Director may not be delegated below the level of acting Regional Director.

(b) The Regional Director shall provide a copy of his decision to the Warden at the institution housing the inmate, to the inmate, and to the Hearing Administrator.

(c) An inmate may appeal a decision of the Regional Director, through the Administrative Remedy Procedure, directly to the Program Review Division,

Bureau of Prisons, within 30 calendar days of the inmate's receipt of the Regional Director's decision.

§ 541.66 Programs and services.

To the extent consistent with available resources and the security needs of the institution, an inmate in controlled housing status is to be considered for activities and privileges afforded to the general population. This includes, but is not limited to, providing an inmate with the opportunity for participation in an education program, library services, counseling, and religious guidance, as well as access to case management, medical and mental health assistance, and legal services, including access to the institution's law libraries. An inmate in controlled housing status should be afforded at least five hours weekly recreation and exercise out of the cell. The recreation shall be by himself or under close supervision. Unless there are compelling reasons to the contrary, institutions shall provide commissary privileges and reasonable amounts of personal property. The Warden may restrict for reasons of security, fire safety, or housekeeping the amount of personal property that an inmate may retain while in controlled housing status. An inmate shall be permitted to have a radio, provided it is equipped with ear plugs. Visits shall be carefully monitored.

§ 541.67 Review of controlled housing status.

(a) Staff designated by the Warden shall evaluate regularly an inmate's adjustment while in controlled housing status. A medical staff member shall see the inmate daily, and regularly record medical and behavioral impressions. Once every 90 days, staff, comprised of a correctional and case management supervisor, and a member of the medical staff, shall meet with the inmate. The inmate is required to attend this meeting in order to be considered for release to the general population. Any refusal by the inmate to attend this meeting will be documented. Staff, at this meeting, shall make an assessment of the inmate's adjustment while in controlled housing and the likely health threat the inmate poses to others by his actions.

(b) The Warden shall serve as the review authority at the institutional level, and shall make a recommendation to the Regional Director when he believes the inmate should be considered for release from controlled housing.

(c) An inmate may appeal a Warden's decision not to recommend release from controlled housing to the Regional Director within five days of receipt of that decision.

(d) Upon recommendation of the Warden, or upon appeal from the inmate, the Regional Director may

decide whether or not to release the inmate to general population from controlled housing status.

(e) An inmate may appeal a decision of the Regional Director, through the Administrative Remedy Procedure, directly to the Program Review Division, Bureau of Prisons within 30 calendar days from the date of the Regional Director's decision.

§ 541.68 Release from controlled housing status.

(a) Only the Regional Director may release an inmate from controlled housing status. The following factors are considered in the evaluation of an inmate's readiness for return to the general population:

(1) Relationship with other inmates and staff members, which demonstrate that the inmate is able to function in a less restrictive environment without posing a health threat to others or to the orderly operation of the institution;

(2) Involvement in work and recreational activities and assignments or other programs; and

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

(b) An inmate released from a controlled housing status may be returned to the general population of that institution, or to another federal or non-federal institution.

[FR Doc. 89-6287 Filed 3-16-89; 8:45 am]

BILLING CODE 4410-05-M