

51.15 Mental Health Services
51.16 Nursing
51.17 Optometry (O.D.)
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51.21 Podiatry (D.P.M., D.P., Pod.D.)
51.22 Public Health
51.23 Rehabilitation/Therapeutic Services
51.24 Veterinary Medicine (D.V.M.)

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Federal Register

**Thursday
December 16, 1993**

Part IX

Department of Justice

Bureau of Prisons

28 CFR Part 544

**Control, Custody, Care, Treatment and
Instruction of Inmates; Inmate Recreation
Programs; Final Rules**

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Inmate Recreation Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document the Bureau of Prisons is amending its rule on Inmate Recreation Programs. This amendment broadens the scope of the programs offered to inmates and establishes the overall wellness needs of the inmate as a program goal. This amendment also clarifies existing provisions relating to the disposition of completed hobbycraft items and utilization of hobbycraft facilities. This amendment is intended to increase constructive opportunities for inmates, and reduce personal stress and institution tension.

EFFECTIVE DATE: December 16, 1993.

ADDRESSES: Office of General Counsel, Bureau of Prisons, Room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its rule on Inmate Recreation Programs. A final rule on this subject was published in the *Federal Register* on September 12, 1986 (51 FR 32602). A summary of the changes in this amendment follows.

In § 544.30, the list of recreation programs offered by the Bureau is broadened by the addition of "games" and reference is made to wellness activities.

In § 544.31(a), the definition of "Leisure activities" is amended to include "games", and to include religious activities, psychological services and education classes when they are used specifically to encourage knowledge, skills and attitudes related to leisure activity involvement. In paragraph (b), the phrase " * * * and occur at a scheduled time and place" is added to clarify the definition of "Organized activities". In paragraph (d), "ceramics" is added to the definition of "Hobbycraft activities". A new paragraph (e) is added containing a definition of "Inmate wellness program activities."

In § 544.32, the list of goals is amended to include overall wellness needs of inmates. The phrase "and desire" is removed in conformance with

revisions to § 544.81 published elsewhere in today's *Federal Register*.

Section 544.33 is revised to designate the Supervisor of Education as being responsible for ensuring that X-rated movies are not shown when an institution has a program to show movies and to remove limitations on regular movie rentals.

Section 544.34 is redesignated and revised as § 544.35, and a new § 544.34 is added to allow for inmate running events.

In new § 544.35(b) the word "completed" is added to show when the marking of art or hobbycraft items must be provided. Revised paragraph (c)(1) is clarified to indicate the quantity of items that may be given to authorized visitors is to be determined by the Warden. This provision, which is intended to ensure orderly operations in the visiting room, was already in the Bureau's implementing guidelines, and consequently represents no change in procedures. Paragraph (d)(1) is clarified by specifying the Warden may restrict for reasons of security and housekeeping the size and quantity of all products made in the art and hobbycraft program. Existing regulations on Inmate Personal Property contain limitations on storage space (see 28 CFR 553.11). As revised, paragraph (d)(1) recognizes that approved storage space for inmate personal property effectively limits the size of an individual hobbycraft item or the size of an accumulation of hobbycraft items. In paragraph (d)(2) the word "items" is added to clearly define the intent of this section. Paragraph (d)(4) is amended to indicate that appropriate hobbycraft activities shall be encouraged in inmate living areas, and that completed hobbycraft items must be removed from the living area when completed unless they are approved as personal property. Paragraph (d)(6) is amended to indicate that rotation of hobbycraft participants to allow for maximum utilization of resources is another way the Warden may set limits on the amount of time an inmate may use a hobbycraft facility. Paragraph (d)(7) is added to indicate that disciplinary action may be taken against inmates found with unauthorized hobbycraft materials in their possession. This action may include removal of the inmate from the hobbycraft program. It is the Bureau's longstanding policy that inmates possessing unauthorized material are subject to disciplinary action (see 28 CFR 541.13 and 553.13). This amendment merely reiterates existing Bureau policy.

Because these amendments merely clarify existing policy or are less

restrictive in nature, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the *Federal Register*.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866. 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 544

Prisoners.

Kathleen M. Hawk,
Director, Bureau of Prisons.

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(p), subchapter C of 28 CFR chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

1. The authority citation for 28 CFR part 544 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. Subpart D, consisting of §§ 544.30 through 544.34, is revised to consist of §§ 544.30 through 544.35 as follows:

Subpart D—Inmate Recreation Programs

Sec.	
544.30	Purpose and scope.
544.31	Definitions.
544.32	Goals.
544.33	Movies.
544.34	Inmate running events.
544.35	Art and hobbycraft.

Subpart D—Inmate Recreation Programs

§ 544.30 Purpose and scope.

The Bureau of Prisons encourages inmates to make constructive use of leisure time and offers movies, games, sports, social activities, arts and

hobbycrafts, wellness and other group and individual activities.

§ 544.31 Definitions.

(a) *Leisure activities* are a wide range of activities in which inmates may participate when not performing assigned duties. Leisure activities include participation in organized and informal games, sports, physical fitness, table games, hobbycrafts, music programs, intramural activities, social and cultural organizations, movies, and stage shows. Religious activities, psychological services, and education classes are not included within this definition, except when they are used specifically to encourage knowledge, skills, and attitudes related to leisure activity involvement.

(b) *Organized activities* are those activities accounted for by registration or roster of individual participants, and occur at a scheduled time and place.

(c) *Art work* includes all paintings and sketches rendered in any of the usual media (oils, pastels, crayons, pencils, inks, and charcoal).

(d) *Hobbycraft activities* include ceramics, leatherwork, models, clay, mosaics, crochet, knitting, sculptures, woodworking, lapidary, and other forms consistent with institution guidelines.

(e) *Inmate wellness program activities* include screening, assessments, goal setting, fitness/nutrition prescriptions and counseling.

§ 544.32 Goals.

The Warden is to ensure, to the extent possible, that leisure activities are provided to meet social, physical, psychological, and overall wellness needs of inmates.

(a) Leisure activities are designed to attract inmate participation regardless of ethnic, racial, age, or sex difference, or handicap considerations, and to enhance the potential for post-release involvement.

(b) Leisure activities are designed to ensure that an inmate with the need has the opportunity to complete one or more activities (see 28 CFR 544.81).

§ 544.33 Movies.

If there is a program to show movies, the Supervisor of Education shall ensure that X-rated movies are not shown.

§ 544.34 Inmate running events.

Running events will ordinarily not exceed 10 kilometers or 6.2 miles. Appropriate medical staff and fluid supplies (e.g., water) should be available for all inmate running events.

§ 544.35 Art and hobbycraft.

(a) An inmate engaged in art or hobbycraft activities may obtain materials through:

- (1) The institution art program (if one exists);
- (2) The commissary sales unit;
- (3) Special purchase commissary orders, if the sales unit is unable to stock a sufficient amount of the needed materials; or
- (4) Other sources approved by the Warden.

(b) Each inmate shall identify completed art or hobbycraft products by showing the inmate's name and register number on the reverse side of the item.

(c) Completed or abandoned art or hobbycraft articles must be disposed of in one of the following ways:

- (1) Upon approval of the Warden, by giving the item to an authorized visitor. The quantity of items will be determined by the Warden.
- (2) By mailing the item to a verified relative or approved visitor at the inmate's expense.
- (3) By selling, through an institution art and hobbycraft sales program, if one exists, after the institution price committee has determined the sale price.
- (4) Other methods established by the Warden.

(d) Restrictions: Art and hobbycraft programs are intended for the personal enjoyment of an inmate and as an opportunity to learn a new leisure skill. They are not for the mass production of art and hobbycraft items by artists or to provide a means of supplementing an inmate's income.

(1) The Warden may restrict, for reasons of security and housekeeping, the size and quantity of all products made in the art and hobbycraft program. Paintings mailed out of the institution must conform to both institution guidelines and postal regulations. If an inmate's art work or hobbycraft is on public display, the Warden may restrict the content of the work in accordance with community standards of decency.

(2) The Warden may set limits, in compliance with commissary guidelines, on the amount of money an inmate may spend on art or hobbycraft items or materials.

(3) The Warden may restrict for reasons of security, fire safety, and housekeeping, the use or possession of art and hobbycraft items or materials.

(4) Appropriate hobbycraft activities shall be encouraged in the inmate living areas. However, the Warden may limit hobbycraft projects in the cell/living areas to those which can be contained/stored in provided personal property containers. Exceptions may be made for

such items as a painting where the size would prohibit placement in a locker. Hobbycraft items must be removed from the living area when completed unless they are approved as personal property.

(5) The Warden shall require the inmate to mail completed hobbycraft articles out of the institution at the inmate's expense, or to give them to an authorized visitor within 30 days of completion, or to dispose of them through approved sales. However, articles offered for sale must be sold within 90 days of completion, or must be given to an authorized visitor or mailed out of the institution at the inmate's expense.

(6) Where space and equipment are limited and demand is high, the Warden may set limits on the amount of time an inmate may use a hobbycraft facility, e.g., the Warden may limit an inmate's use of any workshop or classroom to six months to make room for new students. Hobbycraft participants may be rotated to allow for maximum utilization of the resources.

(7) Disciplinary action may be taken against inmates found with unauthorized hobbycraft materials in their possession. This action may include the removal of the inmate from the hobbycraft program.

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28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Education, Training and Leisure-Time Program Standards

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

SUMMARY: In this document the Bureau of Prisons is amending its regulations on Education, Training and Leisure-Time Program Standards. This amendment makes changes to the development, delivery and documentation of this program. This amendment also consolidates regulations on Social Education Guidelines and Education Program Certificates into the revised final rule on Education, Training and Leisure-Time Program Standards. The purpose of this amendment is to improve the efficient operation of the Bureau's education and recreation programs.

EFFECTIVE DATE: December 16, 1993.

ADDRESSES: Office of General Counsel, Bureau of Prisons, room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel,

Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Education, Training and Leisure-Time Program Standards. This amendment consolidates the existing provisions for Social Education Guidelines and Education Program Certificates into the Education, Training and Leisure-Time Program Standards. This amendment makes changes in the development, delivery and documentation of the program. These changes broaden program opportunities for inmates. Because the changes in this amendment are less restrictive in nature, the Bureau of Prisons finds good cause under 5 U.S.C. 553(b) to publish the amendment without going through proposed rulemaking, opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning the changes in the final rule by writing the previously cited address. These comments will be considered but will receive no response in the *Federal Register*. The most important of the changes are described below.

Subpart G, Education Program Certificates, which consists of §§ 544.60 and 544.61, is being consolidated into the revised subpart I, Education, Training and Leisure-Time Program Standards. The provisions in § 544.60 are removed because new § 544.82(a)(5) designates the Supervisor of Education as the person responsible for establishing other requirements necessary for achieving program goals. Such requirements would include the issuance of certificates. The provisions in § 544.61 on procedures for issuing certificates are incorporated into § 544.82(b) with some minor changes in wording; the intent remains unchanged.

Revised subpart I consists of §§ 544.80 through 544.83. Revised § 544.80 now makes it clear that inmates are afforded the opportunity to improve their knowledge and skills through the academic, occupation and leisure-time activities outlined in this rule. Independent camps are no longer specifically excepted from the requirement to provide a full range of these activities. Community Treatment Centers are removed from the revised rule because they are no longer directly operated by the Bureau of Prisons.

In § 544.81, the phrase "during confinement" is removed and the phrase "and sufficient time to serve" is added to clarify that the opportunity to complete a program is dependent, in part, upon the amount of time left in an inmate's sentence. The phrase "and

desire" is removed to clarify that, in some instances (e.g., the Adult Literacy program), inmate participation may be mandatory. Because an inmate's participation in a non-mandatory program is voluntary, we believe that this is a sufficient guaranty of the inmate's desire, and the Bureau therefore finds it unnecessary to retain the phrase. The program goals are broadened to include English-as-a-Second Language, fitness, wellness or sport activities, Pre-Release programs, and Career Counseling. Reference to the Adult Basic Education (ABE) program has been removed as this is covered in new § 544.81(a) by the Adult Literacy program, in conformance with the revised provisions of the Bureau's Literacy Program (28 CFR part 544, subpart H). Reference to Social Education activities has been removed as these activities are now being offered through other programs (for example, Adult Continuing Education activities) described in paragraph (e). Paragraph (b) of former § 544.81 which placed emphasis on specific inmate needs is removed because these needs are encompassed within the language of new § 544.81. The word "participate" is used instead of the word "complete" in new § 544.81 when the activities described in that section may be of a nature which do not require completion.

Section 544.82 on general program characteristics is revised. Paragraph (a) introductory text of that section now designates the Supervisor of Education as the person responsible for meeting minimum criteria for any education program, thus making former paragraph (a)(3) unnecessary. Paragraph (a)(1) elaborates on the provisions of former § 544.82(a)(1). Paragraph (a)(2) clarifies the provisions of former § 544.82(a)(2) by specifying clear criteria be established on minimum expectations for program completion, as well as provisions for the assessment of student progress. Former paragraph (a)(4) is reworded and becomes new final paragraph (a)(3). Paragraph (a)(4) is a new provision encouraging Supervisors to provide programs with open enrollment policies for students. Paragraph (a)(5) is another new provision which allows the Supervisor of Education to establish other requirements to assure that program goals are achieved. Paragraph (b) of § 544.82 establishes the system for issuing certificates and generally incorporates provisions from former § 544.61. This paragraph allows staff the discretion to issue and/or review certificates of completion; the word "may" is used instead of the word

"shall" because some activities may be of a nature that they do not require a certificate.

New § 544.83 specifies that institutions may establish an inmate tutor/aide program and requires the development of guidelines regarding the training and supervision of inmate tutors/aides.

Subpart J, Social Education Guidelines, which consists of §§ 544.90 and 544.91, is also being consolidated into the revised subpart I. The provisions formerly in §§ 544.90 and 544.91 are covered in revised §§ 544.80 through 544.82 and in the implementing language; consequently, it is not necessary to state them separately.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866. 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 544

Prisoners.
Kathleen M. Hawk,
Director, Bureau of Prisons.

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(p), subchapter C of 28 CFR Chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

1. The authority citation for 28 CFR part 544 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart G—[Removed and Reserved]

2. In part 544, subpart G, consisting of §§ 544.60 and 544.61, is removed and reserved.

Subpart I—[Revised]

3. In part 544, subpart I, formerly consisting of §§ 544.80 through 544.82, is revised to consist of §§ 544.80 through 544.83 and reads as follows:

Subpart I—Education, Training and Leisure-Time Program Standards

Sec.
544.80 Purpose and scope.
544.81 Program goals.

Sec.

544.82 General program characteristics.

544.83 Inmate tutors.

Subpart I—Education, Training and Leisure-Time Program Standards**§ 544.80 Purpose and scope.**

In consideration of inmate education, occupation, and leisure-time needs, the Bureau of Prisons affords inmates the opportunity to improve their knowledge and skills through academic, occupation and leisure-time activities. All institutions, except satellite camps, detention centers and metropolitan correctional centers, shall operate a full range of activities as outlined in this rule.

§ 544.81 Program goals.

The Warden shall ensure that an inmate with the need, capacity, and sufficient time to serve, has the opportunity to:

- (a) Complete an Adult Literacy program leading to a General Educational Development (GED) certificate and/or high school diploma;
 - (b) Complete one or more levels of English-as-a-Second Language;
 - (c) Acquire or improve marketable skill through one or more programs of Occupation Education (OE);
 - (d) Complete one or more Postsecondary Education activities;
 - (e) Complete one or more Adult Continuing Education activities;
 - (f) Participate in one or more leisure, fitness, wellness or sport activities;
 - (g) Participate in a Pre-Release program; and,
 - (h) Participate in Career Counseling.
- Staff shall encourage each inmate to accept the responsibility to identify any specific education needs, set personal goals, and select activities, programs

and/or work experiences which will help to reach those goals.

§ 544.82 General program characteristics.

(a) The Supervisor of Education shall assure that the following minimum criteria are met for the institution's education program set forth in § 544.81.

- (1) There is a written curriculum which establishes measurable behavioral objectives and procedures.
- (2) There are clear criteria which establish minimum expectations for program completion, as well as provisions for the assessment of student progress.

(3) There are provisions for periodic review of the relevancy and effectiveness of the program.

(4) Unless unusual circumstances (e.g., college credit courses) exist, all programs should allow for open entry and exit, at least on a monthly basis.

(5) The Supervisor of Education may establish other requirements necessary to assure that the stated goals of the program are achieved.

(b) Upon an inmate's completion of a program specified in § 544.81, staff may issue and/or review and file a certificate when it contributes to an inmate's future plans in such a way that it validates the inmate's education and training; supports the inmate's chances of securing employment; improves the inmate's acceptance for advanced education; or enhances the inmate's opportunity for success in any other activity the inmate chooses to pursue. The certificate will confirm that the inmate has completed the requirements to receive a certificate that fits one or a combination of the following categories:

- (1) Accredited certificates—high school diplomas and occupation training certificates approved or issued through local school districts, state

departments of education, or other recognized accrediting educational organizations;

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

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

(4) Private certificates—outside agencies, private business and industry, other than those stated in paragraph (b)(1) of this section;

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

(6) Transcripts—issued to an inmate who completes general education programs, formal occupation training, on-the-job and apprentice training and work assignments. With the inmate's consent, transcripts may be sent to schools and colleges, business, industries and other agencies.

§ 544.83 Inmate tutors.

Institutions may establish an inmate tutor/aide program. Guidelines shall be developed regarding the training and supervision of inmate tutors/aides where such programs are available.

Subpart J—[Removed and Reserved]

4. In part 544, subpart J, consisting of §§ 544.90 and 544.91, is removed and reserved.

[FR Doc. 93-30712 Filed 12-15-93; 8:45 am]

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