

DEPARTMENT OF JUSTICE**Bureau of Prisons****28 CFR Part 541****[BOP-1040-P]****RIN 1120-AA34****Inmate Discipline and Good Conduct Time****AGENCY:** Bureau of Prisons, Justice.**ACTION:** Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to implement provisions of the Violent Crime Control and Law Enforcement Act of 1994 which make the earning of good conduct time by violent offenders contingent upon exemplary compliance with institution regulations. The list of sanctions which may be imposed by the Discipline Hearing Officer in instances where an inmate has been determined to be not in compliance with institution regulations is accordingly being modified to achieve this purpose.

DATES: Comments must be submitted by December 26, 1995.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC 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: Bureau of Prisons regulations on inmate discipline were previously published in the Federal Register January 5, 1988 (53 FR 197) and were amended October 17, 1988 (53 FR 40686), September 22, 1989 (54 FR 38987 and 39095), February 1, 1991 (56 FR 4159), July 10, 1991 (56 FR 31530), June 2, 1992 (57 FR 23260), and July 21, 1993 (58 FR 39095).

Section 20405 of the Violent Crime Control and Law Enforcement Act of 1994 provides that a prisoner who is serving a term of imprisonment of more than one year for a crime of violence, other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of the term, subject to the determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with such institutional disciplinary regulations.

To that purpose, the Bureau is proposing the following amendments.

28 CFR 541.13(a)(1) is amended to ensure that when a VCCLEA inmate rated as violent (i.e., an inmate who, as specified in the Violent Crime Control and Law Enforcement Act of 1994, committed a crime of violence after September 13, 1994) is found to have committed a greatest category offense, the Discipline Hearing Officer (DHO) must, as a minimum, impose a sanction disallowing all Good Conduct Time (GCT) for the evaluation period. This means a loss of 54 days GCT. Section 541.13(a)(2) is similarly amended to require the DHO to impose, as a minimum, a sanction disallowing all GCT when a VCCLEA inmate rated as violent is found to have committed a high category offense. As revised, paragraph (a)(2) also requires that all high category offense charges for a VCCLEA inmate rated as violent be referred to the DHO for disposition.

Section 541.13(a)(3) is amended to require the DHO to impose, as a minimum, a sanction disallowing up to 14 days GCT when the DHO finds that a VCCLEA inmate rated as violent has committed a moderate offense category. As revised, paragraph (a)(3) allows, but does not require, the Unit Discipline Committee to refer to the DHO a moderate category charge for a VCCLEA inmate rated as violent.

Section 541.13(a)(4) is amended to require the DHO to impose, as a minimum, a sanction disallowing up to 7 days GCT when the DHO finds that a VCCLEA inmate rated as violent has committed a low moderate category offense. As revised, paragraph (a)(3) allows, but does not require, the Unit Discipline Committee to refer to the DHO a low moderate category charge for a VCCLEA inmate.

Section 541.13(f) is amended in conformance with changes to Table 6 as discussed below.

Table 3 for § 541.13 is amended by specifying the applicable loss of GCT in Sanction B.1 for the various categories of offenses, by specifying in Sanction B.1 that disallowance sanction may not be suspended, and by including reference to non-vested GCT in Sanction B. Previously, GCT became vested when awarded. Because Section 20412 of the Violent Crime Control and Law Enforcement Act of 1994 requires that, for VCCLEA inmates (whether rated violent or not), GCT is vested upon obtaining or upon making satisfactory progress toward obtaining a GED, it is possible for a VCCLEA inmate to have been awarded GCT which is not vested.

Table 4 for § 541.13 is amended to include conforming changes to the explanations of Sanctions B and B.1. With respect to Moderate Category and

Low Moderate Category Prohibited Acts, Sanction B.1 provides that the amount of disallowed GCT for VCCLEA inmates rated as violent ordinarily shall be a minimum of 14 days or 7 days GCT respectively, but that the DHO may impose less upon careful examination of mitigating factors.

Table 5 for § 541.13 is amended to include reference to non-vested GCT.

Section 541.14(a) is amended to specify that only the DHO may make a final disposition on a prohibited act in the Greatest Severity or on a High Category prohibited act (when the High Category prohibited act has been committed by a VCCLEA inmate rated as violent).

As noted above, these proposed sanctions are applicable to VCCLEA inmates rated as violent (i.e., inmates who, as specified in the Violent Crime Control and Law Enforcement Act of 1994, committed a crime of violence after September 13, 1994). Inmates who are eligible for good conduct time because they were sentenced under the provisions of the Sentencing Reform Act of 1984, but who were sentenced for a crime of violence committed on or before September 13, 1994 are not defined as "VCCLEA inmates rated as violent" and consequently would be unaffected by the proposed new sanctions for those inmates.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the previously cited address. Comments received during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the previously cited address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. 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.**

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), part 541 in subchapter C of 28 CFR, chapter V is proposed to be amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

1. The authority citation for 28 CFR part 541 continues 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), 4161–4166 (Repealed 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. In § 541.13, paragraphs (a) (1) through (4), (f), and Tables 3, 4, and 5 are revised to read as follows:

§ 541.13 Prohibited acts and disciplinary severity scale.

(a) * * *

(1) *Greatest category offenses.* The Discipline Hearing Officer (DHO) shall impose and execute one or more of sanctions A through E. Sanction B.1 must be imposed for a VCCLEA inmate rated as violent (i.e., an inmate who, as specified in the Violent Crime Control

and Law Enforcement Act of 1994, committed a crime of violence after September 13, 1994). The DHO may impose and execute sanction F and/or G only in addition to execution of one or more of sanctions A through E. Except as noted in the sanction, the DHO may also suspend one or more additional sanctions A through G.

(2) *High category offenses.* The Discipline Hearing Officer shall impose and execute one or more of sanctions A through M, and, except as noted in the sanction, may also suspend one or more additional sanctions A through M. Sanction B.1 must be imposed for a VCCLEA inmate rated as violent. The Unit Discipline Committee shall impose and execute one or more of sanctions G through M, and may suspend one or more additional sanctions G through M, except for a VCCLEA inmate rated as violent. All high category offense charges for a VCCLEA inmate rated as violent must be referred to the DHO.

(3) *Moderate category offenses.* The Discipline Hearing Officer shall impose at least one sanction A through N, but, except as noted in the sanction, may suspend any sanction or sanctions imposed. Sanction B.1 must be imposed for a VCCLEA inmate rated as violent. Except for charges referred to the DHO, the Unit Discipline Committee shall

impose at least one sanction G through N, but may suspend any sanction or sanctions imposed. The UDC ordinarily shall refer to the DHO a moderate category charge for a VCCLEA inmate rated as violent. The UDC must thoroughly document in writing the reasons why the charge for such inmate was not referred to the DHO.

(4) *Low moderate category offenses.* The Discipline Hearing Officer shall impose at least one sanction B.1, or E through P. The Discipline Hearing Officer may suspend any E through P sanction or sanctions imposed (a B.1 sanction may not be suspended). Except for charges referred to the DHO, the Unit Discipline Committee (UDC) shall impose at least one sanction G through P, but may suspend any sanction or sanctions imposed. The UDC ordinarily shall refer to the DHO a low moderate category charge for a VCCLEA inmate rated as violent. The UDC must thoroughly document in writing the reasons why the charge for such inmate was not referred to the DHO.

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

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TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE GREATEST CATEGORY

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

Code/Prohibited acts	Sanctions
100 Killing	A. Recommend parole date rescission or retardation.
101 Assaulting any person (includes sexual assault) or an armed assault on the institution's secure perimeter (a charge for assaulting any person at this level is to be used only when serious physical injury has been attempted or carried out by an inmate)	B. Forfeit earned statutory good time or non-vested good conduct time credit (up to 100%) and/or terminate or disallow extra good time (an extra good time sanction may not be suspended).
102 Escape from escort: escape from a secure institution (low, medium, high and administrative type institutions); or escape from a minimum security level institution <i>with</i> violence	B1. Disallow ordinarily between 50 and 75% (27–41 days) of good conduct time (GCT) credit available for year (a disallowance sanction may not be suspended) VCCLEA inmates rated as violent will be disallowed all GCT for that evaluation period.
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 prohibited act of Greatest Severity, e.g., in furtherance of a riot or escape; otherwise the charge is properly classified Code 218 or 329)	C. Disciplinary Transfer (recommend).
104 Possession, manufacture, or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive or any ammunition	D. Disciplinary Segregation (up to 60 days).
105 Rioting	E. Make monetary restitution.
106 Encouraging others to riot	F. Withhold statutory good time (Note—can be in addition to A through E—cannot be the only sanction executed).
107 Taking hostage(s)	G. Loss of privileges (Note—can be in addition to A though E—cannot be the only sanction executed).
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	
110 Refusing to provide a urine sample or to take part in other drug-abuse testing	

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE GREATEST CATEGORY—Continued
 [The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition]

Code/Prohibited acts	Sanctions
<p>198 Interfering with a staff member in the performance of duties. (<i>Conduct must be of the Greatest Severity nature.</i>) This charge is to be used only when another charge of greatest severity is not applicable</p> <p>199 Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (<i>Conduct must be of the Greatest Severity nature.</i>) This charge is to be used only when another charge of greatest severity is not applicable</p> <p>200 Escape from unescorted Community Programs and activities and Open Institutions (minimum security level) and from outside secure institutions—<i>without</i> violence</p> <p>201 Fighting with another person</p> <p>202 (Not to be used)</p> <p>203 Threatening another with bodily harm or any other offense</p> <p>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</p> <p>205 Engaging in sexual acts</p> <p>206 Making sexual proposals or threats to another</p> <p>207 Wearing a disguise or a mask</p> <p>208 Possession of any unauthorized locking device, or lock pick, or tampering with or blocking any lock device (includes keys), or destroying, altering, interfering with, improperly using, or damaging any security device, mechanism, or procedure</p> <p>209 Adulteration of any food or drink</p> <p>210 (Not to be used)</p> <p>211 Possessing any officer's or staff clothing</p> <p>212 Engaging in, or encouraging a group demonstration</p> <p>213 Encouraging others to refuse to work, or to participate in a work stoppage</p> <p>214 (Not to be used)</p> <p>215 Introduction of alcohol into BOP facility</p> <p>216 Giving or offering an official or staff member a bribe, or anything of value</p> <p>217 Giving money to, or receiving money from, any person for purposes of introducing contraband or for any other illegal or prohibited purposes</p> <p>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</p> <p>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.)</p> <p>220 Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bag), wrestling, or other forms of physical encounter, or military exercise or drill</p> <p>221 Being in an unauthorized area with a person of the opposite sex without staff permission</p> <p>222 Making, possessing, or using intoxicants</p> <p>223 Refusing to breathe into a breathalyzer or take part in other testing for use of alcohol</p> <p>224 Assaulting any person (charged with this act only when a less serious physical injury or contact has been attempted or carried out by an inmate)</p> <p>298 Interfering with a staff member in the performance of duties. (<i>Conduct must be of the High Severity nature.</i>) This charge is to be used only when another charge of high severity is not applicable</p> <p>299 Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (<i>Conduct must be of the High Severity nature.</i>) This charge is to be used only when another charge of high severity is not applicable</p>	<p>A. Recommend parole date rescission or retardation.</p> <p>B. Forfeit earned statutory good time or non-vested good conduct time credit 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).</p> <p>B1. Disallow ordinarily between 25 and 50% (14–27 days) of good conduct time credit (GCT) available for year (a disallowance sanction may not be suspended). VCCLEA inmates rated as violent will be disallowed all GCT for that evaluation period.</p> <p>C. Disciplinary Transfer (recommend).</p> <p>D. Disciplinary segregation (up to 30 days).</p> <p>E. Make monetary restitution.</p> <p>F. Withhold statutory good time.</p> <p>G. Loss of privileges: commissary, movies, recreation, etc.</p> <p>H. Change housing (quarters).</p> <p>I. Remove from program and/or group activity.</p> <p>J. Loss of job.</p> <p>K. Impound inmate's personal property.</p> <p>L. Confiscate contraband.</p> <p>M. Restrict to quarters.</p>

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE GREATEST CATEGORY—Continued
 [The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition]

Code/Prohibited acts	Sanctions
300 Indecent exposure	A. Recommend parole date rescission or retardation.
301 (Not to be used)	B. Forfeit earned statutory good time or non-vested good conduct time up to 25% or up to 30 days whichever is less, and/or terminate or disallow extra good time (an extra good time sanction may not be suspended).
302 Misuse of authorized medication	B.1 Disallow ordinarily up to 25% (1–14 days) of good conduct time credit available for year (a disallowance sanction may not be suspended).
303 Possession of money or currency, unless specifically authorized, or in excess of the amount authorized	C. Disciplinary transfer (recommend).
304 Loaning of property or anything of value for profit or increased return	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.
306 Refusing to work, or to accept a program assignment	F. Withhold statutory good time.
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)	G. Loss of privileges: commissary, movies, recreation, etc.
308 Violating a condition of a furlough	H. Change housing (quarters).
309 Violating a condition of a community program	I. Remove from program and/or group activity.
310 Unexcused absence from work or any assignment	J. Loss of job.
311 Failing to perform work as instructed by the supervisor	K. Impound inmate's personal property.
312 Insolence towards a staff member	L. Confiscate contraband.
313 Lying or providing a false statement to a staff member	M. Restrict to quarters.
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)	N. Extra duty.
315 Participating in an unauthorized meeting or gathering	
316 Being in an unauthorized area	
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	
326 Possession of gambling paraphernalia	
327 Unauthorized contacts with the public	
328 Giving money or anything of value to, or accepting money or anything 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. (<i>Conduct must be of the Moderate Severity nature.</i>) 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. (<i>Conduct must be of the Moderate Severity nature.</i>) This charge is to be used only when another charge of moderate severity is not applicable	

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE GREATEST CATEGORY—Continued
 [The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition]

Code/Prohibited acts	Sanctions
400 Possession of property belonging to another person	B.1 Disallow ordinarily up to 12.5% (1–7 days) of good conduct time credit available for year (to be used only where inmate found to have committed a second violation of the same prohibited act within 6 months); Disallow ordinarily up to 25% (1–14 days) of good conduct time credit available for year (to be used only where inmate found to have committed a third violation of the same prohibited act within 6 months) (a disallowance sanction may not be suspended). E. Make monetary restitution. F. Withhold statutory good time. G. Loss of privileges: commissary, movies, recreation, etc. 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. M. Restrict to quarters. N. Extra duty. O. Reprimand. P. Warning.
401 Possessing unauthorized amount of otherwise authorized clothing	
402 Malingering, feigning illness	
403 Smoking where prohibited	
404 Using abusive or obscene language	
405 Tattooing or self-mutilation	
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)	
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. <i>Conduct must be of the Low Moderate Severity nature.</i>) 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. <i>(Conduct must be of the Low Moderate Severity nature.)</i> This charge is to be used only when another charge of low moderate severity is not applicable	

Note: *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 offenses itself.

TABLE 4.—SANCTIONS

1. *Sanction of the Discipline Hearing Officer.* (upon finding the inmate committed the prohibited act)
 - A. *Recommend parole date rescission or retardation.* The DHO may make recommendations to the U.S. Parole Commission for retardation or rescission of parole grants. This may require holding fact-findings hearings upon request of or for the use of the Commission.
 - B. *Forfeit earned statutory good time, non-vested good conduct 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. 4161 (less any previous forfeiture or withholding outstanding). The amount of good conduct time (GCT) available for forfeiture is limited to the total number of days in the "non-vested" status at the time of the disciplinary hearing (less any previous forfeiture). 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 good time is delegated to the Warden. This decision may not be delegated lower than the Associate Warden level. Forfeited good conduct time will not be restored until the inmate has earned a high school diploma, equivalent degree (GED), or has been given an exemption to the GED requirement. Limitations on this sanction and eligibility for restoration are based on the severity scale. (See Table 6)
 - B.1 *Disallowance of good conduct time.* An inmate sentenced under the Sentencing Reform Act provisions of the 1984 Comprehensive Crime Control Act (includes the inmate who committed his or her crime on or after November 1, 1987) may not receive statutory good time, but is eligible to receive 54 days good conduct time credit each year (18 U.S.C. 3624(b)). Once awarded, the credit is vested, and may not be disallowed. However, for crimes committed on or after September 13, 1994, credit toward an inmate's service of sentence shall not be vested unless the inmate has earned or is making satisfactory progress toward a high school diploma or an equivalent degree, or has been exempted from participation because of a learning disability. Once disallowed, the credit may not be restored, except by immediate review or appeal action as indicated below. Prior to this award being made, the credit may be disallowed for an inmate found to have committed a prohibited act. A sanction of disallowance of good conduct time may not be suspended. Only the DHO can take action to disallow good conduct time. The DHO shall consider the severity of the prohibited act and the suggested disallowance guidelines in making a determination to disallow good conduct time. A decision to go above the guideline range is warranted for a greatly aggravated offense or where there is a repetitive violation of the same prohibited act that occurs within a relatively short time frame (e.g., within 18 months for the same greatest severity prohibited act, within 12 months for the same high severity prohibited act, and within 6 months for the same moderate severity prohibited act). A decision to go below the guidelines is warranted for strong mitigating factors. Any decision outside the suggested disallowance guidelines is to be documented and justified in the DHO report.
- VCCLEA inmates rated as violent will ordinarily be disallowed 14 days good conduct time for each moderate level prohibited act they are found to have committed at a DHO hearing; VCCLEA inmates rated as violent will ordinarily be disallowed 7 days good conduct time for each low moderate level prohibited act they are found to have committed at a DHO hearing. However, the DHO may, after careful consideration of mitigating factors (seriousness of the offense, the inmate's past disciplinary record, the lack of available good conduct time, etc.) choose to impose a lesser sanction, or even disallow no GCT for moderate level and low moderate level prohibited acts by VCCLEA inmates rated as violent. The DHO must thoroughly detail the rationale for choosing to disallow less than 14 days or 7 days respectively. This will be documented in Section VII of the DHO report. Disallowances of amounts greater than 14 days or 7 days respectively will occur with repetitive offenses consistent with Table 5.

TABLE 4.—SANCTIONS—Continued

- The decision of the DHO is final and is subject only to review by the Warden to ensure conformity with the provisions of the disciplinary policy and by inmate appeal through the administrative remedy procedures. The DHO is to ensure that the inmate is notified that any appeal of a disallowance of good conduct time must be made within the time frames established in the Bureau's rule on administrative remedy procedures.
- Except for VCCLEA inmates rated as violent, Sanction B.1 may be imposed on the Low Moderate category *only* where the inmate has committed the same low moderate prohibited act more than one time within a six-month period.
- C. *Recommend disciplinary transfer.* The DHO 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 Regional Director the transfer of an inmate prior to either a UDC or DHO Hearing. Transfers for disciplinary reasons prior to a hearing before the UDC or DHO may be used in emergency situations and only with approval of the 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 Discipline Hearing Officer. 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 or DHO hearings contained in this rule are appropriate, except that written statements of unavailable witnesses are liberally accepted instead of live testimony.
- D. *Disciplinary segregation.* The DHO may direct that an inmate be placed or retained in disciplinary segregation pursuant to guidelines contained in this rule. Consecutive disciplinary segregation sanctions 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 DHO 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 DHO 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 DHO, consecutive withholding actions. When this is the intent, the DHO shall specify at the time of the initial DHO hearing that good time may be withheld until the inmate elects to return to work. During the running of such a withholding order, the DHO shall review the offense with the inmate on a monthly basis. For an on-going offense, staff need not prepare a new Incident Report or conduct an investigation or initial hearing (UDC). The DHO shall provide the inmate an opportunity to appear in person and to present a statement orally or in writing. The DHO shall document its action on, or by an attachment to, the initial Institution Discipline report. If further withholding is ordered, the DHO shall advise the inmate of the inmate's right to appeal through the Administrative Remedy procedures (Part 542). Only the Warden may restore withheld statutory good time. This decision may not be delegated lower than the Associate Warden level. Restoration eligibility is based on the severity scale. (See Table 6)
2. *Sanctions of the Discipline Hearing Officer/Unit Discipline Committee:* (upon finding the inmate committed the prohibited act)
- G. *Loss of privileges: commissary, movies, recreation, etc.* The DHO 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. However, the DHO or UDC may impose a loss of privilege sanction not directly related to the offense when there is a lack of other appropriate sanctions or when imposition of an appropriate sanction previously has been ineffective.
- H. *Change housing (quarters).* The DHO 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 DHO 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 DHO 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 DHO 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 DHO or UDC may direct that any contraband in the possession of an inmate be confiscated and disposed of appropriately.
- M. *Restrict quarters.* The DHO 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 DHO or UDC may direct that an inmate perform tasks other than those performed during regularly assigned institutional job.
- O. *Reprimand.* The DHO or UDC may reprimand an inmate either verbally or in writing.
- P. *Warning.* The DHO or UDC may verbally warn an inmate regarding committing prohibited act(s).

TABLE 5.—SANCTIONS FOR REPETITION OF PROHIBITED ACTS WITHIN SAME CATEGORY¹

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 or non-vested GCT up to 10% or up to 15 days, whichever is less, and/or terminate or disallow extra good time (EGT) (an 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 or non-vested GCT up to 37½% 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 Sanction (A, C, E–M), plus:

TABLE 5.—SANCTIONS FOR REPETITION OF PROHIBITED ACTS WITHIN SAME CATEGORY¹—Continued

Category	Prior offense (same code) within time period	Frequency of repeated offense	Sanction permitted
		3d offense, or more	1. Disciplinary segregation, up to 45 days. 2. Forfeit earned SGT or non-vested GCT up to 75% or up to 90 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended). Any sanction available in High (200) and Greatest (100) series.

¹ When the Unit Discipline Committee or DHO 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), increased sanctions are authorized to be imposed by the DHO according to the following chart.
(Note: An informal resolution may not be considered as a prior offense for purposes of this chart.)

3. In § 541.14, paragraph (a) is amended by revising the last sentence to read as follows:

§ 541.14 Incident report and investigation.
(a) *Incident report.* * * * Only the DHO may make a final disposition on a prohibited act in the Greatest Severity Category or on a prohibited act in the High Category (when the High Category

prohibited act has been committed by a VCCLEA inmate rated as violent).
* * * * *
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