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## DEPARTMENT OF JUSTICE

### Bureau of Prisons

#### 28 CFR Parts 540 and 545

[BOP-1049-I]

RIN 1120-AA39

#### Telephone Regulations and Inmate Financial Responsibility

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Interim Rule With Request for Comments, and Withdrawal of Effective Date-Delayed Provisions.

**SUMMARY:** In this document, the Bureau of Prisons (Bureau) is withdrawing the provisions in its regulations relating to limitations on telephone privileges for inmates who have refused participation in the inmate financial responsibility program, (IFRP) which were to become effective January 4, 1996. In addition, the Bureau is increasing to \$75.00 the amount of money to be excluded from assessment in an inmate's financial responsibility plan. These actions are made pursuant to the terms of a settlement approved by the District Court in a nationwide federal prisoner class action, *Washington v. Reno*, Nos. 93-217, 93-290 (E.D.KY.).

**DATES:** The withdrawal of 28 CFR 540.105(c) and 545.11(d)(10), and the amendment to 28 CFR 540.100(a) is effective January 2, 1996; the amendment to 28 CFR 545.11(b) introductory text is effective January 3, 1996. Comments on 28 CFR 545.11(b) are due on March 4, 1996.

**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, telephone (202) 514-6655.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons (Bureau) is withdrawing certain provisions in its rules on telephone regulations and on

the inmate financial responsibility program (IFRP) which were published in the Federal Register on April 4, 1994 (59 FR 15812).

In the April 4, 1994, revision of its rules on telephone regulations and on the IFRP, the Bureau delayed the effective date for provisions in §§ 540.105(c) and 545.11(d)(10) which imposed limitations on the telephone privileges of inmates refusing to participate in the IFRP. These provisions were to become effective January 3, 1995. Due to ongoing litigation in *Washington v. Reno*, the effective date for these provisions was further delayed until January 4, 1996 (60 FR 240). In accordance with the Court-approved settlement in *Washington v. Reno*, the Bureau is withdrawing these provisions and the reference to the IFRP telephone restrictions contained in 28 CFR 540.100(a), and is publishing elsewhere in today's Federal Register a new proposed rule to impose a different restriction on the telephone privileges of inmates who refuse to participate in the IFRP.

In accordance with the settlement in *Washington v. Reno*, the Bureau is also amending, on an interim basis with request for comments, the provision in 28 CFR 545.11(b) which relates to the exclusion of certain funds from an inmate's financial responsibility plan. Under this provision, unit team staff currently exclude \$50.00 per month from assessment in developing the inmate's payment plan in the IFRP. This provision is revised to raise the exclusion to \$75.00 per month, per the terms of the settlement in *Washington v. Reno* and, for clarification purposes, the third and fourth sentences of this paragraph are being combined into one sentence.

Because the revisions to 28 CFR 545.11(b) are made pursuant to the court-approved settlement in *Washington v. Reno*, the Bureau is issuing the revisions as an interim rule pursuant to the "good cause" exemption of 5 U.S.C. 553(d)(3). Interested persons may participate in this rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received on the interim rule provisions during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address.

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 has not been reviewed by the Office of

Management and Budget pursuant to 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 Parts 540 and 545

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), parts 540 and 545 in subchapter C of 28 CFR, chapter V are amended as set forth below.

#### SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

#### PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 continues to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3013, 3571, 3572, 3621, 3622, 3624, 3663, 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. In § 540.100, paragraph (a) is amended by revising the fifth sentence to read as follows:

#### § 540.100 Purpose and scope.

\* \* \* \* \*

(a) \* \* \* In addition to the procedures set forth in this subpart, inmate telephone use is subject to those limitations which the Warden determines are necessary to ensure the security or good order, including discipline, of the institution or to protect the public. \* \* \*

#### § 540.105 [Amended]

3. In § 540.105, paragraph (c), which was previously to become effective January 4, 1996, (59 FR 15824, 60 FR 240) is removed and reserved.

#### PART 545—WORK AND COMPENSATION

4. The authority citation for 28 CFR part 545 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 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.

5. In § 545.11, the introductory text of paragraph (b) is amended by revising the dollar amount "\$50.00" in the fifth sentence to read "\$75.00"; by removing the third and fourth sentences; by adding a new third sentence to read as follows; and in addition, paragraph (d)(10), which was to become effective

January 4, 1996, (59 FR 15825, 60 FR 240) is removed and reserved.

**§ 545.11 Procedures.**

\* \* \* \* \*

(b) Payment. \* \* \* In developing an inmate's financial plan, the unit team shall exclude from its assessment \$75.00 a month deposited into the inmate's trust fund account after subtracting from

the trust fund account the inmate's IFRP minimum payment schedule for UNICOR or non-UNICOR work assignments, set forth below in paragraph (b)(1) and (b)(2) of this section.

\* \* \* \* \*

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