

that FDA initiate rulemaking to amend paragraph (e) of this section to remove an essential use. FDA may initiate notice-and-comment rulemaking to remove an essential use on its own initiative or in response to a petition, if granted. If the petition is to remove an essential use from paragraph (e) of this section, the petitioner must submit compelling evidence of any one of the following criteria:

- (1) The product using an ODS is no longer being marketed; or
- (2) After January 1, 2005, FDA determines that the product using an ODS no longer meets the criteria in paragraph (f) of this section after consultation with a relevant advisory committee(s) and after an open public meeting; or
- (3) For individual active moieties marketed as ODS products and represented by one new drug application (NDA):
  - (i) At least one non-ODS product with the same active moiety is marketed with the same route of administration, for the same indication, and with approximately the same level of convenience of use as the ODS product containing that active moiety;
  - (ii) Supplies and production capacity for the non-ODS product(s) exist or will exist at levels sufficient to meet patient need;
  - (iii) Adequate U.S. postmarketing use data is available for the non-ODS product(s); and
  - (iv) Patients who medically required the ODS product are adequately served by the non-ODS product(s) containing that active moiety and other available products; or
- (4) For individual active moieties marketed as ODS products and represented by two or more NDAs:
  - (i) At least two non-ODS products that contain the same active moiety are being marketed with the same route of delivery, for the same indication, and with approximately the same level of convenience of use as the ODS products; and
  - (ii) The requirements of paragraphs (g)(3)(ii), (g)(3)(iii), and (g)(3)(iv) of this section are met.

Dated: April 15, 2002.

**Lester M. Crawford,**

*Deputy Commissioner.*

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## DEPARTMENT OF JUSTICE

### Bureau of Prisons

#### 28 CFR Part 523

[BOP-1106-F]

RIN 1120-AB05

### District of Columbia Educational Good Time Credit

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

**ACTION:** Interim final rule.

**SUMMARY:** In this document, the Bureau of Prisons (Bureau) describes procedures for awarding educational good time credit consistent with D.C. Code § 24-221.01 (DCEGT). This rule will apply to D.C. Code offenders in Bureau institutions or Bureau contract facilities under the National Capital Revitalization and Self-Government Improvement Act of 1997 (D.C. Revitalization Act), D.C. Code § 24-101(b), who committed their offenses before August 5, 2000. Through this rule, we will allow inmates sentenced under the D.C. Code to retain benefits permitted by the D.C. Code while fulfilling our statutory mandate to provide for their custody consistent with the sentence imposed.

**DATES:** This rule is effective on July 24, 2002. Comments are due by September 23, 2002.

**ADDRESSES:** Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:**  
Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

#### SUPPLEMENTARY INFORMATION:

##### What Will This Rule Do?

Through this rule, the Bureau of Prisons (Bureau) will add a subpart D to its regulations in 28 CFR part 523, on Computation of Sentence. The new subpart D will establish procedures for awarding educational good time credit consistent with D.C. Code § 24-221.01. (We refer to educational good time credit consistent with the D.C. Code as "DCEGT.")

This rule will apply to D.C. Code offenders who committed their offense before August 5, 2000 and are in Bureau institutions or Bureau contract facilities under the D.C. Revitalization Act.

#### Why Are We Making This Rule?

We are making this rule to comply with the D.C. Revitalization Act, enacted August 5, 1997. This Act makes

the Bureau responsible for the "custody, care, subsistence, education, treatment and training" of "the felony population sentenced pursuant to the District of Columbia Code" (D.C. Code offenders). (D.C. Code § 24-101(b)) D.C. Code offenders in Bureau custody are subject to Federal laws and Bureau regulations as long as they are "consistent with the sentence imposed."

In August of 1997, when the D.C. Revitalization Act was enacted, the Bureau began absorbing approximately 8000 D.C. Code offenders. It was unclear at that time to what extent, if any, the Bureau would be bound by D.C. Code legislation which purported to direct Bureau functions.

As numerous D.C. Code provisions were analyzed for applicability to Bureau functions, it was generally concluded that the Bureau would have to follow D.C. Code sentence calculation provisions (e.g., good time, jail credit, etc.) to the extent non-compliance would result in an *ex post facto* violation of the offender's sentence. The Bureau based this approach on the provision in D.C. Revitalization Act requiring the Bureau to apply Federal laws to D.C. Code offenders "consistent with the sentence imposed."

The Bureau concluded that D.C. Code offenders who committed their offenses before August 5, 2000 are entitled to educational good time sentence credit. As a result, we developed these rules to give effect to the D.C. Code educational good time sentence credit (DCEGT) provisions in the Bureau's education and sentence calculation systems.

Section 24-221.01 of the D.C. Code provides for "educational good time credits of no less than 3 days a month and not more than 5 days a month" when a D.C. Code offender completes an educational program and obeys institution rules. This provision applies when a D.C. Code offender completes an educational program on or after April 11, 1987, when section 24-221.01 was enacted.

Section 24-403.01(d) of the D.C. Code, enacted April 23, 1998, however, requires that D.C. Code offenders who committed their offense on or after August 5, 2000, receive good time credit "only as provided in 18 U.S.C. 3624(b)." This statute in the Federal Criminal Code directs the Bureau how to award good time credit to U.S. Code offenders. Bureau regulations implementing this provision are in 28 CFR 523.20.

D.C. Code offenders who successfully complete an educational program on or after April 11, 1987, and who committed their offense before August 5, 2000, may receive educational good time credit consistent with D.C. Code

§ 24–221.01 (DCEGT). By contrast, D.C. Code offenders who commit their offense on or after August 5, 2000, are eligible for good time credit only under the Federal law, 18 U.S.C. 3624(b).

To be “consistent with the sentence imposed,” as required by the D.C. Revitalization Act (D.C. Code § 24–101(b)), the Bureau developed these rules on DCEGT to conform with D.C. law on DCEGT in D.C. Code § 24–221.01.

### How Do These Rules Work?

The rules describe eligibility for DCEGT, how we award it, how we limit it, and how to appeal our decisions on DCEGT. We will allow 5 days of DCEGT for each calendar month that a D.C. offender is enrolled in a Bureau-designated education program. Eligible D.C. offenders can earn DCEGT up to a Bureau-determined maximum amount, which varies for different types of educational programs.

### Why Is This an Interim Final Rule?

We are making this an interim final rule for the following reasons:

As a result of National Capital Revitalization and Self-Government Improvement Act of 1997 (D.C. Revitalization Act), D.C. Code § 24–101(b), passed August 5, 1997, we are responsible for administering the sentences of D.C. Code offenders in our custody, including DCEGT awards.

Since the D.C. Revitalization Act’s enactment on August 5, 1997, D.C. Code offenders in Bureau custody may have completed educational programs designated by these rules as eligible for DCEGT.

If we do not implement this rule as soon as possible, inmates eligible for DCEGT risk being considered parole eligible at a later date than if the credit were awarded. Also, for D.C. Code offenders projected for mandatory release, an award of DCEGT may affect their release date.

Therefore, to insure that D.C. Code offenders in our custody receive the benefit of DCEGT, these rules must take effect as soon as possible. Having a DCEGT system in place also provides eligible offenders incentive to pursue educational programming, which may ultimately help them re-adjust to the community.

### Where To Send Comments

You can send written comments on this rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534.

We will consider comments we receive during the comment period

before we take final action. We will try to consider comments we receive after the end of the comment period. In light of comments we receive, we may change the rule.

We do not plan to have oral hearings on this rule. All the comments we receive remain on file for public inspection at the above address.

### Executive Order 12866

The Office of Management and Budget (OMB) determined that certain rules are part of a category of actions which are not “significant regulatory actions” under section 3(f) of Executive Order 12866. Because this rule falls within that category, OMB did not review it.

### Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

### Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau’s appropriated funds.

### Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

companies to compete with foreign-based companies in domestic and export markets.

### Plain Language Instructions

We want to make Bureau documents easier to read and understand. If you can suggest how to improve the clarity of these regulations, call or write to Sarah Qureshi at the address or telephone number listed above.

### List of Subjects in 28 CFR Part 523

Prisoners.

**Kathleen Hawk Sawyer,**  
*Director, Bureau of Prisons.*

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend part 523 in subchapter B of 28 CFR, chapter V as set forth below.

### SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

### PART 523—COMPUTATION OF SENTENCE

1. The authority citation for 28 CFR part 523 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3568 (Repealed November 1, 1987 as to offenses committed on or after that date), 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 4161–4166, (repealed October 12, 1984, 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. Add Subpart D, consisting of §§ 523.30 through 523.34, to read as follows:

#### Subpart D—District of Columbia Educational Good Time Credit

Sec.

523.30 What is educational good time sentence credit?

523.31 Who is eligible for DCEGT?

523.32 How much DCEGT can I earn?

523.33 How is eligibility for DCEGT limited?

523.34 How can I challenge DCEGT award decisions?

#### Subpart D—District of Columbia Educational Good Time Credit

##### § 523.30 What is educational good time sentence credit?

Educational good time sentence credit is authorized by District of Columbia (D.C.) Code § 24–221.01, and reduces the amount of time to serve under a term of imprisonment. In these rules, we refer to D.C. educational good time as “DCEGT.”

**§ 523.31 Who is eligible for DCEGT?**

You are eligible for DCEGT if:

- You are incarcerated in a Bureau of Prisons' (Bureau) institution or a Bureau contract facility;
- You are serving a term of imprisonment for a D.C. criminal code violation committed before August 5, 2000;
- Your Unit Team approved or designed a plan for you to complete a program designated by the Bureau as eligible for DCEGT;
- The Supervisor of Education (SOE) finds that you successfully completed a Bureau-designated education program on or after August 5, 1997; and
- You did not violate prison discipline rules while enrolled in the program (see § 523.33).

**§ 523.32 How much DCEGT can I earn?**

- You can earn 5 days DCEGT for each month you were enrolled in a designated program, up to the maximum amount designated by the Bureau for the type of program successfully completed.
- You are limited to 5 days per month DCEGT, even if enrolled in more than one designated program.
- Enrollment in a designated program for any portion of a calendar month earns one full month's worth of DCEGT.
- You are not eligible for DCEGT which, if awarded, would make you past due for release.
- Once appropriately awarded, DCEGT vests, and cannot be forfeited.

**§ 523.33 How is eligibility for DCEGT limited?**

Eligibility for DCEGT is limited in two ways:

- If you violate prison rules, you are not eligible for one month's worth of DCEGT for each disciplinary incident committed during the program enrollment period. A Discipline Hearing Officer, or other staff using procedures similar to those in 28 CFR 541.17, must determine that you committed a prohibited act.

- The nature of your offense may limit your eligibility for DCEGT under D.C. Code 24-221.01b or 24-221.06.

**§ 523.34 How can I challenge DCEGT award decisions?**

You can use the Administrative Remedy Program, 28 CFR 542.10 through 542.19, to challenge Bureau of Prisons decisions regarding DCEGT.

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**DEPARTMENT OF THE TREASURY****31 CFR Part 1****Internal Revenue Service; Privacy Act, Implementation**

**AGENCY:** Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury gives notice of a final rule to exempt an Internal Revenue Service system of records entitled 'Employee System Protection Records-Treasury/IRS 60.000' from certain provisions of the Privacy Act.

**EFFECTIVE DATE:** July 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Chief, Office of Employee Protection, Internal Revenue Service, 477 Michigan Avenue, Detroit, Michigan 48226, telephone (313) 628-3742. This is not a toll free number.

**SUPPLEMENTARY INFORMATION:** The Department of the Treasury published a notice of a proposed rule exempting a system of records from certain provisions of the Privacy Act of 1974, as amended. The Internal Revenue Service (IRS) published the system notice in its entirety at 66 FR 59839-59841 (November 30, 2001), and the proposed rule in the same **Federal Register** on pages 59754-59755.

Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, as amended, if the system is investigatory material compiled for law enforcement purposes. The Employee Protection System Records-Treasury/IRS 60.000, contains investigatory material compiled for law enforcement purposes.

The proposed rule requested that public comments be sent to the Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224, CL:GLD:D, no later than December 31, 2001.

The IRS did not receive comments on the proposed rule. Accordingly, the Department of the Treasury is hereby giving notice that the system of records entitled 'Employee Protection System Records-Treasury/IRS 60.000,' is exempt from certain provisions of the Privacy Act. The provisions of the Privacy Act from which exemption is claimed pursuant to 5 U.S.C. 552a(k)(2) are as follows: 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f).

As required by Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

The regulation will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby certified that these regulations will not significantly affect a substantial number of small entities. The final rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this final rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

**List of Subjects in 31 CFR Part 1**

Privacy.

Part 1, Subpart C of title 31 of the Code of Federal Regulations is amended as follows:

**PART 1—[AMENDED]**

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

**Authority:** 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 paragraph (g)(1)(viii) is amended by adding the following text to the table in numerical order.

**§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.**

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(viii) \* \* \*

System No.	Name of system
*	*
IRS 60.000 .....	Employee Protection System Records
*	*