

assignment described in paragraph (b) of this section.

§ 32.44 Determination.

(a) Upon a Hearing Officer's denying a claim, the PSOB Office shall serve notice of the same upon the claimant (and upon any other claimant who may have filed a claim with respect to the same public safety officer), which notice shall—

(1) Specify the factual findings and legal conclusions that support it; and

(2) Provide information as to appeals.

(b) Upon his approving a claim, the Hearing Officer shall file notice of the same simultaneously with the Director (for his review under subpart F of this part), the PSOB Office, and OJP's General Counsel, which notice shall specify the factual findings and legal conclusions that support it.

(c) Upon a claimant's failure (without reasonable justification or excuse) to pursue in timely fashion the determination of his claim pursuant to his filed request therefor, the Director may, at his discretion, deem the request to be abandoned, as though never filed. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

§ 32.45 Hearings.

(a) At the election of a claimant under subpart B or C of this part, the Hearing Officer shall hold a hearing, at a location agreeable to the claimant and the Officer, for the sole purposes of obtaining, consistent with § 32.5(c),

(1) Evidence from the claimant and his fact or expert witnesses; and

(2) Such other evidence as the Hearing Officer, at his discretion, may rule to be necessary or useful.

(b) Unless, for good cause shown, the Director extends the time for filing, no election under paragraph (a) of this section shall be honored if it is filed with the PSOB Office later than ninety days after service of the notice described in § 32.43(c).

(c) Not less than seven days prior to any hearing, the claimant shall file simultaneously with the PSOB Office and the Hearing Officer a list of all expected fact or expert witnesses and a brief summary of the evidence each witness is expected to provide.

(d) At any hearing, the Hearing Officer may exclude any evidence whose probative value is substantially outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(e) Each witness at any hearing shall be sworn by oath or affirmation.

(f) Each hearing shall be recorded, and the original of the complete record or

transcript thereof shall be made a part of the claim file.

(g) Unless, for good cause shown, the Director grants a waiver, a claimant's failure to appear at a hearing (in person or through a representative) shall constitute a withdrawal of his election under paragraph (a) of this section.

(h) Upon a claimant's failure to pursue in timely fashion his filed election under paragraph (a) of this section, the Director may, at his discretion, deem the same to be abandoned. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

§ 32.46 Appeal.

(a) In order to exhaust his administrative remedies, a claimant seeking relief from the denial of his claim shall appeal under subpart F of this part.

(b) Consistent with § 32.8, any denial that is not appealed under paragraph (a) of this section shall constitute the final agency decision, unless it is reviewed otherwise under subpart F of this part.

Subpart F—Appeals & Reviews

§ 32.51 Scope of subpart.

Consistent with § 32.1, this subpart contains provisions applicable to appeals and reviews of approvals and denials made under subpart E of this part, and reviews of approvals under the Act, at 42 U.S.C. 3796c-1.

§ 32.52 Time for filing appeal.

(a) Unless, for good cause shown, the Director extends the time for filing, no appeal shall be considered if it is filed with the PSOB Office later than thirty-three days after the service of notice of the denial (under subpart E of this part) of a claim.

(b) A claimant may file with his appeal such supporting evidence and legal arguments as he may wish to provide.

§ 32.53 Review.

(a) Upon the filing of the approval (under subpart E of this part) of a claim, the Director shall review the same.

(b) The Director may review—

(1) The denial (under subpart E of this part) of any claim; and

(2) The approval (under the Act, at 42 U.S.C. 3796c-1) of any claim.

(c) Unless the Director judges that it would be unnecessary, the PSOB Office shall serve notice upon the claimant (and upon any other claimant who may have filed a claim with respect to the same public safety officer) of the initiation of a review under paragraph

(a) or (b) of this section. Unless the Director judges that it would be unnecessary, such notice shall—

(1) Indicate the principal factual findings or legal conclusions at issue; and

(2) Offer a reasonable opportunity for filing of evidence or legal arguments.

§ 32.54 Determination.

(a) Upon the Director's approving or denying a claim, the PSOB Office shall serve notice of the same upon the claimant (and upon any other claimant who may have filed a claim with respect to the same public safety officer). In the event of a denial, such notice shall—

(1) Specify the factual findings and legal conclusions that support it; and

(2) Provide information as to appeals.

(b) Upon a claimant's failure (without reasonable justification or excuse) to pursue in timely fashion the determination of his claim pursuant to his filed appeal, the Director may, at his discretion, deem the same to be abandoned, as though never filed. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

§ 32.55 Appeal.

(a) A claimant seeking relief from the denial of his claim may appeal under 28 U.S.C. 1491 (claims against the United States).

(b) Consistent with § 32.8, any approval or denial described in § 32.54(a) shall constitute the final agency decision.

Regina B. Schofield,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 05-14659 Filed 7-25-05; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

[Docket No. BOP-1118-P]

RIN 1120-AB18

Inmate Discipline Rules: Subpart Revision and Clarification

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to amend its Inmate Discipline and Special Housing Unit (SHU) regulations. We intend this amendment to streamline and clarify these regulations,

eliminating unnecessary text and obsolete language and removing internal agency procedures that need not be in rules text. We also make some substantive changes to our list of prohibited acts for which disciplinary sanctions may be imposed and alter the list of possible sanctions available to allow Disciplinary Hearing Officers more flexibility in adapting the sanction to fit the seriousness of the violation.

DATES: Please submit comments by September 26, 2005.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may also comment via the Internet to BOP at BOPRULES@BOP.GOV or by using the <http://www.regulations.gov> comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

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

SUPPLEMENTARY INFORMATION: The Bureau proposes to amend its inmate discipline and special housing unit (SHU) regulations (28 CFR part 541, subpart A and subpart B) to streamline and clarify these regulations, eliminating unnecessary text and obsolete language, and removing internal agency procedures that need not be in rules text. We also make some substantive changes to our list of prohibited acts for which disciplinary sanctions may be imposed and alter the list of possible sanctions available to allow Disciplinary Hearing Officers more flexibility in adapting the sanction to fit the seriousness of the violation.

Below, you will find a section-by-section explanation of how we are revising our previous regulations in subpart A and subpart B on Inmate Discipline.

To identify the rules, we will refer first to the section number of the old rule as it currently exists in 28 CFR, and then we will explain what we did to change that rule. Where we are creating a new rule or provision, we will simply refer to it as new.

Section-by-Section Explanation

Section 541.2 Definitions. This rule contains definitions of Investigating Officer, Unit Disciplinary Committee (UDC), Discipline Hearing Officer (DHO), and Segregation Review Official (SRO). In this proposed rule, we remove this regulation and integrate the definitions into the sections discussing the discipline process and special

housing units. You can find a definition of Investigating Officer in new § 541.05, UDC in new § 541.07, DHO in new § 541.08, and a description of the SRO's duties in new § 541.26.

Section 541.10 Purpose and scope. Paragraph (a) of former § 541.10 is streamlined and encompassed in the new § 541.01. We have deleted paragraph (b), regarding principles staff must follow when taking disciplinary action, because it is redundant and is covered by several of our new rules, including new §§ 541.01 and 541.06–541.08. We will maintain general principles for staff in Bureau policy.

Section 541.11 Notice to inmate of Bureau of Prisons rules. We have deleted this section because it relates solely to internal agency practice and procedures which we retain in Bureau policy on the Admission and Orientation program. We also remove Tables 1 and 2, Summary of Disciplinary System and Time Limits in the Disciplinary Process, because they are redundant and because we retain it as part of Admission and Orientation materials which we provide to all inmates. We also explain the process and time limits elsewhere in the new disciplinary rules.

Further, in our new § 541.02, we explain to whom the disciplinary process applies. Specifically, we explain that the inmate discipline program applies to sentenced and unsentenced inmates in Bureau custody, as well as sentenced and unsentenced inmates designated to non-Bureau facilities, for example, contract facilities, for whom the Bureau is responsible.

Section 541.12, Inmate Rights and Responsibilities. We remove this section as redundant because we explain elsewhere in the disciplinary rules that the inmate has the responsibility of adhering to the various Bureau rules alluded to in this section, as explained below. We will retain language in this section as a handout during the Admission and Orientation process.

This list was informal, at best, and was more of a shorthand vehicle to give inmates a general overview of the Bureau's rules. It was never intended to be a source of law, and, in fact, inadequately describes inmate rights. Each inmate right on the list is more fully and accurately described elsewhere in 28 CFR Chapter V. Inmates are better informed by going directly to the Bureau rules, which are significant, detailed sources of law, than by using an inadequate and inaccurate list.

Below, we identify where each right on the list is discussed more thoroughly elsewhere in the Bureau's rules.

- “1. You have the right to expect that as a human being you will be treated respectfully, impartially, and fairly by all personnel.” The inmate's right to expect fair and impartial treatment is found in 28 CFR 551.90, which states as follows: “Bureau staff shall not discriminate against inmates on the basis of race, religion, national origin, sex, disability, or other political belief. This includes the making of administrative decisions and providing access to work, housing and programs.”

- “2. You have the right to be informed of the rules, procedures, and schedules concerning the operation of the institution.” The inmate's right to information is found in mandatory guidance to staff in our policy on Admission and Orientation, under which inmates will receive a copy of the rights & responsibilities chart removed from rules.

- “3. You have the right to freedom of religious affiliation, and voluntary religious worship.” The inmate's right to freedom of religion is found in 28 CFR part 548, Religious Services.

- “4. You have the right to health care, which includes nutritious meals, proper bedding and clothing, and a laundry schedule for cleanliness of the same, an opportunity to shower regularly, proper ventilation for warmth and fresh air, a regular exercise period, toilet articles and medical and dental treatment.” These inmate rights are generally required by 18 U.S.C. 4042(a)(2), which requires the Bureau to “provide for the safekeeping, care and subsistence” of inmates. Medical Services regulations are in 28 CFR part 549. Grooming, clothing, and hygiene regulations are in 28 CFR part 551 (Subpart A). Also, see 28 CFR part 544, Subpart D, Inmate Recreation Programs.

- “5. You have the right to visit and correspond with family members, and friends, and correspond with members of the news media in keeping with Bureau rules and institution guidelines.

- “6. You have the right to unrestricted and confidential access to the courts by correspondence (on matters such as the legality of your conviction, civil matters, pending criminal cases, and conditions of your imprisonment).

- “7. You have the right to legal counsel from an attorney of your choice by interviews and correspondence.”

These inmate rights are found in 28 CFR part 540, Contact with Persons in the Community, which contains regulations regarding visiting and correspondence, including legal mail and visiting.

- “8. You have the right to participate in the use of law library reference

materials to assist you in resolving legal problems. You also have the right to receive help when it is available through a legal assistance program." These inmate rights are discussed at length in our regulations on Legal Matters, 28 CFR part 543.

- "9. You have the right to a wide range of reading materials for educational purposes and for your own enjoyment. These materials may include magazines and newspapers sent from the community, with certain restrictions." Inmate rights to reading materials and incoming publications are found in 28 CFR part 540, subpart F, Incoming Publications, and part 544, subpart I, Education, Training and Leisure-Time Program Standards, and subpart K, Inmate Library Services.

- "10. You have the right to participate in education, vocational training and employment as far as resources are available, and in keeping with your interests, needs, and abilities." Inmate rights to education, training and employment are found in 28 CFR part 544, regarding Education programs and part 545, subpart C, regarding work and compensation.

- "11. You have the right to use your funds for commissary and other purchases, consistent with institution security and good order, for opening bank and/or savings accounts, and for assisting your family." See 28 CFR part 545, subpart B, regarding the Inmate Financial Responsibility Program. In particular, see § 545.10, in which the Bureau encourages inmates to meet financial obligations through the inmate financial responsibility program. Once more, this program assumes the inmate's right to use their funds, consistent with security and good order.

In sum, every provision in the list of inmate rights is further described and developed elsewhere in Bureau regulations. Further, the existence of this list in the rules is misleading, as its presence assumes that this is a finite list of inmate rights. By eliminating this list, we encourage inmates and the public to look at the rules as a whole to get a better picture of inmate rights and responsibilities.

Furthermore, this list implies that these rights are rules in and of themselves, whereas they are only absolute as long as they are consistent with the Bureau's actual rules. If an inmate reviews the Bureau rules as a whole, that inmate will get a clearer statement of law than by reviewing a terse and inadequate list.

Section 541.13, Prohibited acts and disciplinary severity scale. Much of this regulation provided technical guidance to Disciplinary Hearing Officers (DHO)

and Unit Disciplinary Committees (UDC) regarding types of sanctions, how to impose them, and which sanctions could apply to which inmates. We removed these provisions because they are guidance to Bureau staff, and as internal agency practice, need not be in rules text. We retain thorough guidance to staff on imposing sanctions in Bureau disciplinary policy.

However, in new § 541.03, we retain former Table 3, Prohibited Acts and Disciplinary Severity Scale, as new Table 1, revised for clarity. This comprehensive table explains in detail all the prohibited acts in each of the four severity categories (Greatest [prohibited act series 100], High [prohibited act series 200], Moderate [prohibited act series 300] and Low [prohibited act series 400]) and lists available sanctions that might be imposed for commission of each of these types of prohibited acts. We also made the following changes to this table:

- We establish Greatest and High severity level prohibited acts specifically for sexual assault of any person. Both require non-consensual touching. The Greatest severity level act (114) requires the use or threat of force. The High severity level act (229) is for incidents without the use or threat of force. These codes were created to more specifically place inmates on notice of prohibited behavior.

- We increased the severity level of escapes from non-secure facilities from a 200 (High) to a 100 (Greatest) level prohibited act. In making this change, we eliminate the false implication that escapes from non-secure facilities are not a serious concern.

- We amended prohibited act code 104 (possession of a weapon) to include possession of "any instrument used as a weapon." This terminology change was prompted by the caselaw decision in *Wallace v. Nash*, 311 F.3d 140 (2d Cir. 2002), which found the current prohibited act did not place inmates on sufficient notice that possession of any instrument actually used as a weapon may be disciplined under this section.

- We establish a new prohibited act code, 115, for destroying and/or disposing of any item during a search or attempt to search. We make this change to more specifically place inmates on notice of this prohibited behavior, which significantly inhibits staff ability to locate and monitor the introduction and possession of contraband within prison institutions.

- We establish a High severity level prohibited act code for escape from a work detail, non-secure institution, or other non-secure custody, including a

community facility, with subsequent voluntary return to Bureau of Prisons custody within 4 hours. We make this change to allow for a less severe sanction than that imposed for any other type of escape if an inmate voluntarily chooses to minimize his prohibited act by returning.

- We clarify that possession of a cellular telephone or other electronic communications device is a Greatest level prohibited act. We make this change to incorporate technological advances that were not present when the current rule was drafted.

- We increase the severity of all alcohol-related offenses from a High to a Greatest prohibited act. We make this change to reflect the parity between using alcohol and other illicit substances as disruptive prison behaviors.

- We establish a High severity level prohibited act code for stalking to take into account the growing problem of female staff being stalked by male inmates. There were far fewer female staff members in prisons when the current rule was drafted.

- We establish a High severity level prohibited act code for possession of stolen property. Under 28 CFR § 553.10, inmates are only allowed to possess property that is authorized and/or given to the inmate by institution staff. Therefore, the only way for an inmate to possess unauthorized property is if it is acquired through an unauthorized channel. All inmate property must be cataloged and accounted for by institution staff. Therefore, if an inmate is in possession of property that was stolen by another inmate, that inmate is just as culpable as the one who stole it, because the inmate in possession of the stolen property was under an obligation to report it to institution staff. Any unauthorized or unreported property is considered contraband.

- We establish a Moderate severity level prohibited act code for circulating a petition to specifically place inmates on notice that such conduct is prohibited. The only approved method for inmates to formally grieve prison conditions is through the Administrative Remedy Program, described in 28 CFR part 542. Under this program, every inmate can raise individual complaints and enjoy three levels of review (at the institution, at the Regional level, and at the Bureau's Central Office). Inmate petitions are prohibited because inmates acting as a group against prison management pose a special risk of disruption which does not exist through the sanctioned, individual administrative remedy complaint system. Circulating a petition

would undermine the effectiveness and legitimacy of the Administrative Remedy Program and potentially provide inmates with both a rallying issue and a leader to threaten staff control in an unsanctioned and potentially uncontrollable manner.

- We establish a High severity level prohibited act code for refusing to participate in a required physical test or examination unrelated to testing for drug abuse (*e.g.*, DNA, HIV, tuberculosis). On December 19, 2000, Congress enacted Public Law 106-546, commonly referred to as the DNA Analysis Backlog Elimination Act of 2000 (Act). This Act requires the Bureau to collect DNA samples from individuals convicted of a qualifying federal offense, military offense, or DC Code offense. The FBI is required to analyze the samples and maintain the information in the Combined DNA Index System (CODIS). Because we are required to do this by statute, we need to have specific capability to discipline inmates who jeopardize our compliance with the statute. Also, physical tests such as those which detect HIV or tuberculosis are necessary to protect the health and safety of the inmates being tested, the inmate population, and Bureau staff. We need to be able to discipline those who, in refusing to be tested, would jeopardize the safety and security of the institution.

- We increase the severity level for tattooing and self-mutilation from a Low Moderate to a High severity prohibited act. This change is necessary due to the increased risk to staff and inmates of exposure to blood-borne pathogens.

- We establish a Moderate severity level prohibited act code for the fraudulent or deceptive completion of a skills test. This change is necessary to emphasize the seriousness of the prohibited act. Cheating on tests such as those necessary for GED completion or English as a Second Language jeopardize the credibility of the Bureau's test-taking process, thereby threatening the Bureau's authority and capability to conduct such tests and programs related to these tests. We currently discipline for this act by using other codes, such as 313, lying or giving a false statement to a staff member. Having a separate code for this act more effectively addresses the growing problem of fraudulent or deceptive completion of a skills test by placing inmates on notice that this specific act is prohibited.

- We increase the severity level for conducting a business from a Low Moderate to a Moderate severity prohibited act. Raising the severity level for this offense more effectively reflects

the growing problem and seriousness of inappropriate inmate activity related to conducting a business by placing inmates on notice that this specific act is prohibited.

- We establish a Moderate severity level prohibited act code for communicating gang affiliation. This change is necessary to provide inmates with notice that illegal gang activity will not be tolerated. Since the drafting of the current codes, we have had a growing concern with increased incidents of disruption caused by gang activity in Bureau institutions. This code allows us to discipline for actions which jeopardize the safety and security of the institution, and is an outgrowth of our increased knowledge of how gangs operate.

- We establish prohibited acts at the Greatest, High, and Moderate severity levels for abuse of the mail, both to reflect the increased seriousness of abusing the mail for committing criminal offenses and mail fraud, and to be consistent with telephone prohibited act codes.

- We establish a new sanction of "monetary fine." We made this change to provide DHOs with the flexibility to sanction inmates by imposing monetary fines as a punishment and deterrent to committing prohibited acts.

Additionally, by providing another sanctioning option, DHOs are better able to tailor the discipline of individual inmates' in a manner best suited to affect behavioral changes. We also clarify that the sanctions of "make monetary restitution" and "monetary fine" may only be imposed by DHOs.

- We delete the available formal sanctions of "reprimand" and "warning," although they will be retained as possible forms of informal resolution in the revised policy.

We delete former Table 4, Sanctions, because it merely details sanctions listed in the Prohibited Acts and Disciplinary Severity Scale table for the benefit of DHOs and UDCs. Because this is guidance to staff on how to impose sanctions, it is not required to be rules text. However, in each severity category's list of available sanctions, we increase the maximum amount of time an inmate can be sanctioned to disciplinary segregation from a range of 7 to 60 days to a range of 3 to 12 months, depending on the seriousness of the prohibited act. This change allows us to more effectively discipline and more accurately reflects the serious nature of all of the prohibited acts. There are several reasons that this time frame was chosen for the maximum amount of disciplinary segregation:

Current DS sanctions have been in place since January 5, 1988. In the past 16 years, the inmate population has increased dramatically, most recently to include D.C. Code felony offenders. Likewise, because the population has also changed dramatically, the nature and severity of prohibited acts committed has intensified. Specifically, the Bureau has seen an increase in offenses related to gang-related activity, firearms, and drugs. Also, federal offenses have expanded to include use of firearms, new drug-related offenses, conspiracies, and higher penalties for homicides. In addition, because sentence length has generally increased, the current sanctions of 60-90 days of disciplinary segregation accounts for a much smaller percentage of the typical sentence. Therefore, current DS sanctions no longer effectively function as a deterrent. We increase this sanction to reflect the needs and the nature of the changing and expanding inmate population.

Under the current disciplinary rules, approximately 16% of inmates committing prohibited acts were repeat offenders who were sanctioned to the maximum amount of disciplinary segregation sanction multiple times, resulting in 12 months or more of total disciplinary segregation time. Again, the current maximum DS sanction is not functioning as an effective deterrent.

Finally, it is important to note that this rule increases the maximum amount of the disciplinary segregation sanction available to DHOs. DHOs will not in fact impose the maximum amount of disciplinary segregation in every case; only in the most egregious circumstances for the most serious offenses.

We also remove the sanction of disciplinary transfer, which was listed as a recommended sanction. Instead, transfer decisions will be based on administrative issues, such as population management. Bureau administrators must use transfers as a tool for careful management of inmate population interests. Transfers are not an appropriate disciplinary sanction.

We retain former Table 5, Sanctions for Repetition of Prohibited Acts Within Same Category, as new Table 2, revised slightly for clarity, because this table further details available increased sanctions for repeated offenses in each of the four severity categories. Also in this table, we increase the maximum amount of time an inmate can be sanctioned to disciplinary segregation from a range of 7 to 60 days to a range of 1 to 18 months, depending on the seriousness or frequency of commission of the prohibited act. This change

allows us to more effectively discipline and more accurately reflects the serious nature of all of the prohibited acts.

We revise former Table 6, Sanctions by Severity of Prohibited Act, With Eligibility for Restoration of Forfeited and Withheld Statutory Good Time, as new § 541.04, which details when an inmate must lose good time credit for committing a prohibited act. In the new rule, we simplify the table and explain the circumstances under which loss of good time credits is mandatory.

Section 541.14 Incident report and investigation. We consolidate this section into new § 541.05. In doing so, we retain the substance of the regulation, merely simplifying and clarifying language where possible. We also remove provisions relating solely to internal agency management, practice and procedure.

Section 541.15 Initial hearing. This section becomes new § 541.07. As with the previous section, we simplified the language and removed provisions relating to internal agency practice and procedures. In this section, we detail the UDC process as the first disciplinary review. We also change the number of days from three work days to five work days that the unit discipline committee (UDC) will ordinarily conduct a review after an incident report is issued. This change is necessary because of the large increase of inmates and consequential increase in disciplinary actions since the drafting of the current rule.

Section 541.16 Establishment and functioning of the Disciplinary Hearing Officer. We delete this section because it relates to internal agency practice in describing the process through which a DHO is established. We retain this guidance to staff and Wardens in Bureau policy.

Section 541.17 Procedures before the Discipline Hearing Officer and 541.18 Dispositions of the Discipline Hearing Officer. These sections are consolidated into new § 541.08. As with other disciplinary regulations, we simplify the language while retaining the substance of the regulations, but remove provisions relating solely to internal agency practice.

We also change the rule to allow DHOs to impose sanctions that are also available at the UDC level, since such apparently lesser sanctions may likewise be useful in changing inmate behavior at the DHO level.

Section 541.19 Appeals from Unit Discipline Committee or Discipline Hearing Officer. In our new regulations on UDC and DHO process (new §§ 541.05–541.08), we state that inmates may appeal UDC and DHO decisions through the Administrative Remedy

Program (28 CFR §§ 542.10–542.19). The remainder of former § 541.19 describes procedures the reviewing authority will follow in reviewing UDC and DHO decisions. This is guidance to the Administrative Remedy Program staff and, as internal agency procedures, does not need to be rules text. We will retain this guidance to staff in Bureau Administrative Remedy policy.

Section 541.20 Justification for placement in disciplinary segregation and review of inmates in disciplinary segregation.

We retain subsection (a) of this regulation as new § 541.24, which explains that an inmate may be placed in disciplinary segregation by the DHO as a sanction for committing a prohibited act in the Greatest, High, or Moderate severity categories, or a repeated offense in the Low severity category.

We delete subsection (b) of this rule because it is guidance to the warden. As internal agency procedural guidance, it does not need to be in rules text.

Subsections (c) and (d) of this rule describe SRO hearing procedures. We streamline and clarify this language and retain the substance of this provision in new §§ 541.22–541.26.

Section 541.21 Conditions of disciplinary segregation. We streamline, clarify, and retain the substance of this regulation in new § 541.31.

Section 541.22 Administrative detention. As with the above regulation, we streamline, clarify, and retain the substance of this regulation in new §§ 541.27–541.28.

Section 541.23 Protection cases. We consolidate and streamline this regulation in new §§ 541.28–541.30.

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., 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

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review”, section 1(b), Principles of Regulation. The Director, Bureau of

Prisons has determined that this rule is a “significant regulatory action” under Executive Order 12866, section 3(f), and accordingly this rule has been reviewed by the Office of Management and Budget.

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 Section 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.

List of Subjects in 28 CFR Part 541

Prisoners.

Harley G. Lappin,
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 propose to amend 28 CFR part 541 as follows.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

1. Revise the authority citation for part 541 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.

Subpart A—General

2. Revise Subpart A to read as follows:

Subpart A—Inmate Discipline Program

Sec.

541.01 What is the purpose of this subpart?

541.02 Who is subject to the inmate discipline program?

541.03 What are the prohibited acts and available sanctions?

541.04 When will I lose good conduct sentence credit as a mandatory sanction?

541.05 How does the discipline process start?

541.06 What happens if I am mentally ill?

541.07 What happens at a Unit Discipline Committee's (UDC) review of the incident report?

541.08 What happens at a Discipline Hearing Officer's (DHO) hearing?

Subpart A—Inmate Discipline Program

§ 541.01 What is the purpose of this subpart?

This subpart describes the Federal Bureau of Prisons' (Bureau) inmate discipline program. This program helps ensure the safety, security, and orderly operation of correctional facilities, and protect the public, by allowing Bureau staff to impose sanctions on inmates who commit prohibited acts. Sanctions will not be imposed in a capricious or retaliatory manner. The Bureau's inmate discipline program is authorized by 18 U.S.C. 4042(a)(3).

§ 541.02 Who is subject to the inmate discipline program?

This program applies to sentenced and unsentenced inmates in Bureau

custody. It also applies to sentenced and unsentenced inmates designated to non-Bureau facilities, for example, contract facilities, and for whom the Bureau is responsible.

§ 541.03 What are the prohibited acts and available sanctions?

(a) *Prohibited acts.* The list of prohibited acts are divided into four separate categories based on severity: Greatest; High; Moderate; and Low. We describe the prohibited acts in Table 1—Prohibited Acts and Available Sanctions. Aiding, abetting, or making plans to commit any of the prohibited acts is treated the same as committing the act itself.

(b) *Available sanctions.* The list of available sanctions for committing prohibited acts is listed in Table 1—Prohibited Acts and Available Sanctions. If you commit repetitive prohibited acts, we can impose increased sanctions, as listed in Table 2—Additional Available Sanctions for Repeated Prohibited Acts Within the Same Severity Level.

TABLE 1.—PROHIBITED ACTS AND AVAILABLE SANCTIONS GREATEST SEVERITY LEVEL PROHIBITED ACTS

100	Killing.
101	Assaulting any person, 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 accomplished by an inmate).
102	Escape from escort; escape from any secure or non-secure institution, including a community facility; escape from unescorted community program or activity; escape from outside a secure institution.
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 of a prohibited act of Greatest Severity, e.g. in furtherance of a riot or escape; otherwise the charge is properly classified Code 218, or 329).
104	Possession, manufacture, or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive, ammunition, or any instrument used as a weapon.
105	Rioting.
106	Encouraging others to riot.
107	Taking hostage(s).
108	Possession, manufacture, introduction, or loss 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, portable telephone, pager, or other electronic communication device).
109	(Not to be used).
110	Refusing to provide a urine sample; refusing to breathe into a Breathalyzer; refusing to take part in other drug-abuse testing.
111	Introduction or making of any narcotics, marijuana, drugs, alcohol, intoxicants, or related paraphernalia, not prescribed for the individual by the medical staff.
112	Use of any narcotics, marijuana, drugs, alcohol, intoxicants, or related paraphernalia, not prescribed for the individual by the medical staff.
113	Possession of any narcotics, marijuana, drugs, alcohol, intoxicants, or related paraphernalia, not prescribed for the individual by the medical staff.
114	Sexual assault of any person, involving non-consensual touching by force or threat of force.
115	Destroying and/or disposing of any item during a search or attempt to search.
196	Use of the mail to further criminal activity.
197	Use of the telephone to further criminal activity.
198	Interfering with a staff member in the performance of duties most like another Greatest severity prohibited act. This charge is to be used only when another charge of Greatest severity is not accurate. The offending conduct must be "most like" one of the listed Greatest severity prohibited acts.
199	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another Greatest severity prohibited act. This charge is to be used only when another charge of Greatest severity is not accurate. The offending conduct must be "most like" one of the listed Greatest severity prohibited acts.

Available Sanctions for Greatest Severity Level Prohibited Acts

- A. Recommend parole date rescission or retardation.
- B. Forfeit and/or withhold earned statutory good time or non-vested good conduct time (up to 100%) and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).

TABLE 1.—PROHIBITED ACTS AND AVAILABLE SANCTIONS GREATEST SEVERITY LEVEL PROHIBITED ACTS—Continued

- B.1. Disallow ordinarily between 50% and 75% (27–41 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended).
- C. Disciplinary segregation (up to 12 months).
- D. Make monetary restitution.
- E. Monetary fine.
- F. Loss of privileges (e.g., visiting, telephone, commissary, movies, recreation).
- G. Change housing (quarters).
- H. Remove from program and/or group activity.
- I. Loss of job.
- J. Impound inmate's personal property.
- K. Confiscate contraband.
- L. Restrict to quarters.
- M. Extra duty.

High Severity Level Prohibited Acts

- 200 Escape from a work detail, non-secure institution, or other non-secure custody, including a community facility, with subsequent voluntary return to Bureau of Prisons custody within four hours.
- 201 Fighting with another person.
- 202 (Not to be used).
- 203 Threatening another with bodily harm or any other offense.
- 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.
- 205 Engaging in sexual acts.
- 206 Making sexual proposals or threats to another.
- 207 Wearing a disguise or a mask.
- 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.
- 209 Adulteration of any food or drink.
- 210 (Not to be used).
- 211 Possessing any officer's or staff clothing.
- 212 Engaging in or encouraging a group demonstration.
- 213 Encouraging others to refuse to work, or to participate in a work stoppage.
- 214 (Not to be used).
- 215 (Not to be used).
- 216 Giving or offering an official or staff member a bribe, or anything of value.
- 217 Giving money to, or receiving money from, any person for the purpose of introducing contraband or any other illegal or prohibited purpose.
- 218 Destroying, altering, or damaging government property, or the property of another person, having a value in excess of \$100.00, or destroying, altering, damaging life-safety devices (e.g., fire alarm) regardless of financial value.
- 219 Stealing; theft (including data obtained through the unauthorized use of a communications device, or through unauthorized access to disks, tapes, or computer printouts or other automated equipment on which data is stored).
- 220 Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bag), wrestling, or other forms of physical encounter, or military exercises or drill (except for drill authorized and conducted by staff).
- 221 Being in an unauthorized area with a person of the opposite sex without staff permission.
- 222 (Not to be used).
- 223 (Not to be used).
- 224 Assaulting any person (a charge at this level is used when less serious physical injury or contact has been attempted or accomplished by an inmate).
- 225 Stalking another person, as evidenced by a pattern of contacting the person with an intent to harass, alarm, or annoy, after having been warned to stop such conduct.
- 226 Possession of stolen property.
- 227 Refusing to participate in a required physical test or examination unrelated to testing for drug abuse (e.g., DNA, HIV, tuberculosis).
- 228 Tattooing or self-mutilation.
- 229 Sexual assault of any person, involving non-consensual touching without force or threat of force.
- 296 Use of the mail for abuses other than criminal activity, and which circumvent mail monitoring procedures (e.g., special mail abuse; writing letters in code; directing others to send, sending, or receiving a letter or mail through unauthorized means; sending mail for other inmates without authorization; sending correspondence to a specific address with directions or intent to have the correspondence sent to an unauthorized person; and using a fictitious return address in an attempt to send or receive unauthorized correspondence).
- 297 Use of the telephone for abuses other than criminal activity, and which circumvent telephone monitoring procedures (e.g., possession and/or use of another inmate's PIN number; third-party calling; third-party billing; using credit card numbers to place telephone calls; conference calling; talking in code; three-way calls; allowing another inmate to use your PIN number; placing another inmate's telephone number on your approved telephone list).
- 298 Interfering with a staff member in the performance of duties most like another High severity prohibited act. This charge is to be used only when another charge of High severity is not accurate. The offending conduct must be "most like" one of the listed High severity prohibited acts.
- 299 Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another High severity prohibited act. This charge is to be used only when another charge of High severity is not accurate. The offending conduct must be "most like" one of the listed High severity prohibited acts.

Available Sanctions for High Severity Level Prohibited Acts

- A. Recommend parole date rescission or retardation.
- B. Forfeit and/or withhold earned statutory good time or non-vested good conduct time up to 50% or up to 60 days, whichever is less, and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).
- B.1 Disallow ordinarily between 25% and 50% (14–27 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended).

TABLE 1.—PROHIBITED ACTS AND AVAILABLE SANCTIONS GREATEST SEVERITY LEVEL PROHIBITED ACTS—Continued

C.	Disciplinary segregation (up to 6 months).
D.	Make monetary restitution.
E.	Monetary fine.
F.	Loss of privileges (e.g., visiting, telephone, commissary, movies, recreation).
G.	Change housing (quarters).
H.	Remove from program and/or group activity.
I.	Loss of job.
J.	Impound inmate's personal property.
K.	Confiscate contraband.
L.	Restrict to quarters.
M.	Extra duty.

Moderate Severity Level Prohibited Acts

300	Indecent Exposure.
301	(Not to be used).
302	Misuse of authorized medication.
303	Possession of money or currency, unless specifically authorized, or in excess of the amount authorized.
304	Loaning of property or anything of value for profit or increased return.
305	Possession of anything not authorized for retention or receipt by the inmate, and not issued to him through regular channels.
306	Refusing to work or to accept a program assignment.
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 as part of a drug-abuse test would be charged as 110).
308	Violating a condition of a furlough.
309	Violating a condition of a community program.
310	Unexcused absence from work or any assignment.
311	Failing to perform work as instructed by the supervisor.
312	Insolence towards a staff member.
313	Lying or providing a false statement to a staff member.
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).
315	Participating in an unauthorized meeting or gathering.
316	Being in an unauthorized area.
317	Failure to follow safety or sanitation regulations (including safety regulations, chemical instructions, tools, MSDS sheets, OSHA standards).
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 or quarters in accordance with posted standards.
331	Possession, manufacture, introduction, or loss of a non-hazardous tool, equipment, supplies, or other non-hazardous contraband (tools 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, cosmetics, cleaning supplies).
332	Smoking where prohibited.
333	Fraudulent or deceptive completion of a skills test, e.g., cheating on a GED, or other educational or vocational skills test.
334	Conducting a business; conducting or directing an investment transaction.
335	Communicating gang affiliation; participating in gang related activities; possession of paraphernalia indicating gang affiliation.
336	Circulating a petition.
336	Use of the mail for abuses other than criminal activity which do not circumvent mail monitoring procedures.
337	Use of the telephone for abuses other than criminal activity which do not circumvent telephone monitoring procedures (e.g., inmate calls a number on an approved list and other individuals pick-up extension lines and talk simultaneously; inmate uses the telephone during assigned work period; inmate provides false information to place an unauthorized individual on an approved telephone list).
338	Interfering with a staff member in the performance of duties most like another Moderate severity prohibited act. This charge is to be used only when another charge of Moderate severity is not accurate. The offending conduct must be "most like" one of the listed Moderate severity prohibited acts.
339	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another Moderate severity prohibited act. This charge is to be used only when another charge of Moderate severity is not accurate. The offending conduct must be "most like" one of the listed Moderate severity prohibited acts.

Available Sanctions for Moderate Severity Level Prohibited Acts

A.	Recommend parole date rescission or retardation.
B.	Forfeit and/or withhold 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 or good conduct time sanction may not be suspended).

TABLE 1.—PROHIBITED ACTS AND AVAILABLE SANCTIONS GREATEST SEVERITY LEVEL PROHIBITED ACTS—Continued

- B.1 Disallow ordinarily up to 25% (1–14 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended).
- C. Disciplinary segregation (up to 3 months).
- D. Make monetary restitution.
- E. Monetary fine.
- F. Loss of privileges (e.g., visiting, telephone, commissary, movies, recreation).
- G. Change housing (quarters).
- H. Remove from program and/or group activity.
- I. Loss of job.
- J. Impound inmate’s personal property.
- K. Confiscate contraband.
- L. Restrict to quarters.
- M. Extra duty.

Low Severity Level Prohibited Acts

- 400 (Not to be used).
- 401 (Not to be used).
- 402 Malingering, feigning illness.
- 403 (Not to be used).
- 404 Using abusive or obscene language.
- 405 (Not to be used).
- 406 (Not to be used).
- 407 Conduct with a visitor in violation of Bureau regulations.
- 408 (Not to be used).
- 409 Unauthorized physical contact (e.g., kissing, embracing).
- 498 Interfering with a staff member in the performance of duties most like another Low severity prohibited act. This charge is to be used only when another charge of Low severity is not accurate. The offending conduct must be “most like” one of the listed Low severity prohibited acts.
- 499 Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another Low severity prohibited act. This charge is to be used only when another charge of Low severity is not accurate. The offending conduct must be “most like” one of the listed Low severity prohibited acts.

Available Sanctions for Low Severity Level Prohibited Acts

- 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 good conduct time sanction may not be suspended).
- D. Make monetary restitution.
- E. Monetary fine.
- F. Loss of privileges (e.g., visiting, telephone, commissary, movies, recreation).
- G. Change housing (quarters).
- H. Remove from program and/or group activity.
- I. Loss of job.
- J. Impound inmate’s personal property.
- K. Confiscate contraband.
- L. Restrict to quarters.
- M. Extra duty.

TABLE 2.—ADDITIONAL AVAILABLE SANCTIONS FOR REPEATED PROHIBITED ACTS WITHIN THE SAME SEVERITY LEVEL

Prohibited act severity level	Time period for prior offense (same code)	Frequency of repeated offense	Additional available sanctions
Low Severity (400 level)	6 months	2nd offense	1. Disciplinary segregation (up to 1 month). 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). Any available Moderate severity level sanction (300 series).
		3rd or more offense.	
Moderate Severity (300 level)	12 months	2nd offense	1. Disciplinary segregation (up to 6 months). 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). Any available High severity level sanction (200 series).
		3rd or more offense.	
High Severity (200 level)	18 months	2nd offense	1. Disciplinary segregation (up to 12 months). 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).
		3rd or more offense.	Any available Greatest severity level sanction (100 series).

TABLE 2.—ADDITIONAL AVAILABLE SANCTIONS FOR REPEATED PROHIBITED ACTS WITHIN THE SAME SEVERITY LEVEL—
Continued

Prohibited act severity level	Time period for prior offense (same code)	Frequency of repeated offense	Additional available sanctions
Greatest Severity (100 level)	24 months	2nd or more of-fense.	Disciplinary Segregation (up to 18 months).

§ 541.04 When will I lose good conduct sentence credit as a mandatory sanction?

(a) You will lose good conduct sentence credit as a mandatory disciplinary sanction if you are in one of the following two groups:

(1) *VCCLEA-violent inmates*. The date of your U.S. Code offense was on or after September 13, 1994, but before April 26, 1996, and you committed a “crime of violence” as defined by the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA); or

(2) *PLRA inmates*. The date of your U.S. Code offense was on or after April 26, 1996, and, therefore, under the Prison Litigation Reform Act (PLRA), or the date of your District of Columbia (DC) Code offense was on or after August 5, 2000.

(b) If you are an inmate in one of the above groups and commit a prohibited act, you will lose good conduct sentence credit as a mandatory disciplinary sanction. The amount of good conduct sentence credit you will lose depends on the severity level of the prohibited act(s) committed, as follows:

(1) *Greatest Severity Level Offenses*. You will lose at least 41 days, or 75% of available credit if less than 54 days are available for the prorated period, for each act committed.

(2) *High Severity Level Offenses*. You will lose at least 27 days, or 50% of available credit if less than 54 days are available for the prorated period, for each act committed.

(3) *Moderate Severity Level Offenses*. You will lose at least 14 days, or 25% of available credit if less than 54 days are available for the prorated period, after committing two or more Moderate severity acts during the current year of your good conduct sentence credit availability.

(4) *Low Severity Level Offenses*. You will lose at least 7 days, or 12.5% of available credit if less than 54 days are available for the prorated period, after committing three or more Low severity acts during the current year of your good conduct sentence credit availability.

§ 541.05 How does the discipline process start?

(a) *Incident report*. The discipline process starts when a staff witness

reasonably believes that you committed a prohibited act. A staff member will issue you an incident report describing the incident and the prohibited act(s) you are charged with committing. You will ordinarily receive the incident report within 24 hours of staff becoming aware of your involvement in the incident.

(b) *Investigation*. After you receive an incident report, a Bureau staff member will investigate it.

(1) *Information*: The investigator will specifically inform you:

(A) Of the charge(s) against you; and
(B) That you may remain silent at all stages of the discipline process, but that your silence may be used to draw an adverse inference against you at any stage of the process. Your silence alone, however, cannot be the basis for finding you committed the prohibited act(s).

(2) *Statement*: When the investigator asks for your statement, you may give an explanation of the incident, request any witnesses be interviewed, or request that other evidence be obtained and reviewed. However, the staff investigation of the incident report may be suspended before requesting your statement if it is being investigated for possible criminal prosecution.

(3) *Informally resolving the incident report*: The incident report may be informally resolved at any stage of the disciplinary process, except for prohibited acts in the Greatest and High severity levels, or as otherwise required by law or these rules. If the incident report is informally resolved, it will be removed from your records.

§ 541.06 What happens if I am mentally ill?

If it appears you are mentally ill at any stage of the discipline process, you will be examined by mental health staff.

(a) *Competency to Participate in Disciplinary Proceedings*. If evidence indicates that you cannot understand the nature of the disciplinary proceedings, or cannot help in your own defense, disciplinary proceedings may be postponed until you are competent to participate. The UDC or DHO will make this decision based on evidence, including evidence presented by mental health staff.

(b) *Responsibility for Conduct*. You will not be disciplined for conduct committed when, as the result of a severe mental disease or defect, you were unable to appreciate the nature and quality, or wrongfulness of the act. The UDC or DHO will make this decision based on evidence, including evidence presented by mental health staff.

§ 541.07 What happens at a Unit Discipline Committee’s (UDC) review of the incident report?

A Unit Discipline Committee (UDC) will review the incident report once the staff investigation is complete. The UDC’s review involves the following:

(a) *Available dispositions*. The UDC will make one of the following decisions after reviewing the incident report:

(1) You committed the prohibited act(s) charged, and/or a similar prohibited act(s) as described in the incident report;

(2) You did not commit the prohibited act(s) charged; or

(3) The incident report will be referred to the Discipline Hearing Officer (DHO) for further review, based on the seriousness of the prohibited act(s) charged.

(4) If you are charged with a Greatest or High severity prohibited act, or are an inmate covered by § 541.04, the UDC will automatically refer the incident report to the DHO for further review.

(b) *UDC members*. The UDC ordinarily consists of two or more staff. UDC members will not be victims, witnesses, investigators, or otherwise significantly involved in the incident.

(c) *Timing*. The UDC will ordinarily review the incident report within five work days after it is issued, not counting the day it was issued, weekends, and holidays. UDC review of the incident report may also be suspended if it is being investigated for possible criminal prosecution.

(d) *Inmate appearance*. You are permitted to appear before the UDC during its review of the incident report, except during UDC deliberations or when your presence would jeopardize institution security, at the UDC’s discretion. Also:

(1) You may appear either in person or electronically (for example, by video

or telephone conferencing) at the UDC's discretion.

(2) You may waive your appearance before the UDC. If you waive your appearance, the UDC will review the incident report in your absence.

(3) If you escape or are otherwise absent from custody, the UDC will conduct a review in your absence at the institution where you were last confined.

(e) *Evidence.* You are entitled to make a statement and present documentary evidence to the UDC on your own behalf. The UDC will consider all evidence presented during its review. The UDC's decision will be based on at least some facts and, if there is conflicting evidence, on the greater weight of the evidence.

(f) *Sanctions.* If you committed a prohibited act(s), the UDC can impose any of the available sanctions listed in Tables 1 and 2, except loss of good conduct sentence credit, disciplinary segregation, or monetary fines.

(g) *Referral to the DHO.* If the UDC refers the incident report to the DHO for further review, the UDC will advise you of your rights at the upcoming DHO hearing, as detailed in § 541.08.

(h) *Written report.* You will receive a written copy of the UDC's decision following its review of the incident report.

(i) *Appeals.* You may appeal the UDC's action(s) through the Administrative Remedy Program, 28 CFR Part 542, Subpart B.

§ 541.08 What happens at a Discipline Hearing Officer's (DHO) hearing?

The Discipline Hearing Officer (DHO) will only conduct a hearing on the incident report if referred by the UDC. The DHO's hearing involves the following:

(a) *Available dispositions.* The DHO will make one of the following decisions after a hearing on the incident report:

(1) You committed the prohibited act(s) charged, and/or a similar prohibited act(s) as described in the incident report;

(2) You did not commit the prohibited act(s) charged; or

(3) The incident report will be referred back for further investigation, review, and disposition.

(b) *Discipline Hearing Officer.* The DHO will be an impartial decision maker who was not a victim, witness, investigator, or otherwise significantly involved in the incident.

(c) *Timing.* You will receive written notice of the charge(s) against you at least 24 hours before the DHO's hearing. You may waive this requirement, in which case the DHO's hearing can be conducted sooner.

(d) *Staff Representative.* You are entitled to have a staff representative during the DHO hearing process as follows:

(1) *How to get a staff representative.* You may request the staff representative of your choice, so long as that person was not a victim, witness, investigator, or otherwise significantly involved in the incident. If your request(s) cannot be fulfilled, and you still want a staff representative, the Warden will appoint one. The Warden will also appoint a staff representative if it appears you are unable to adequately represent yourself before the DHO, for example, if you are illiterate or have difficulty understanding the charges against you.

(2) *How the staff representative will help you.* Prior to the DHO's hearing, the staff representative will be available to help you understand the incident report charges and potential consequences. The staff representative may also assist you by speaking with and scheduling witnesses, obtaining written statements, and otherwise helping you prepare evidence for presentation at the DHO's hearing. During the DHO's hearing, you are entitled to have the staff representative appear and assist you in understanding the proceedings. The staff representative can also assist you in presenting evidence during the DHO's hearing.

(3) *How the staff representative may appear.* Your staff representative may appear either in person or electronically (for example, by video or telephone conferencing) at the DHO's discretion. If your staff representative is not available for the scheduled hearing, you may either select another staff representative, request the hearing be postponed for a reasonable amount of time until your staff representative can appear, or proceed without a staff representative.

(e) *Inmate appearance.* You are permitted to appear before the DHO during the hearing on the incident report as follows:

(1) You may appear either in person or electronically (for example, by video or telephone conferencing), at the DHO's discretion.

(2) Your appearance may be prohibited during DHO deliberations or when your presence would jeopardize institution security, at the DHO's discretion.

(3) You may waive your appearance before the DHO. If you waive your appearance, the DHO hearing will be conducted in your absence.

(4) If you escape or are otherwise absent from custody, the DHO will conduct a hearing in your absence at the institution where you were last confined.

(f) *Evidence and witnesses.* You are entitled to make a statement and present documentary evidence to the DHO on your own behalf. The DHO will consider all evidence presented during the hearing. The DHO's decision will be based on at least some facts and, if there is conflicting evidence, on the greater weight of the evidence. Witnesses may appear at the DHO's hearing as follows:

(1) Witnesses may appear before the DHO either in person or electronically (for example, by video or telephone conferencing) at the DHO's discretion.

(2) The DHO will call witnesses who have information directly relevant to the charge(s) and who are reasonably available. However, the DHO need not call witnesses adverse to you if their testimony is adequately summarized in the incident report or other investigation materials.

(3) You or your staff representative may request witnesses appear at the hearing to testify on your behalf. Your requested witnesses may not appear if, in the DHO's discretion, they are not reasonably available, their presence at the hearing would jeopardize institution security, or they would present repetitive evidence.

(4) If your requested witnesses are unavailable to appear, written statements can be requested by either the DHO or staff representative. The written statements can then be considered during the DHO's hearing.

(5) Only the DHO may directly question witnesses at the DHO's hearing. Any questions by you or your staff representative must be submitted to the DHO, who will present the question to the witness in his/her discretion.

(6) The DHO may consider evidence provided by a confidential informant (CI) that the DHO finds reliable. You will not be informed of the CI's identity. You will be informed of the CI's testimony to the extent it will not jeopardize institution security, at the DHO's discretion.

(g) *Sanctions.* If you committed a prohibited act(s), the DHO can impose any of the available sanctions listed in Tables 1 and 2.

(h) *Written Report.* You will receive a written copy of the DHO's decision following the hearing. The DHO is not required to prepare a verbatim record of the hearing. The DHO's written report will document the following:

(1) Whether you were advised of your rights during the DHO process;

(2) The evidence relied on by the DHO;

(3) The DHO's decision;

(4) The sanction imposed by the DHO; and

(5) The reason(s) for the sanction(s) imposed.

(i) *Appeals.* You may appeal the DHO's action(s) through the Administrative Remedy Program, 28 CFR part 542, subpart B.

Subpart B—Inmate Discipline and Special Housing Units

3. Revise Subpart B to read as follows:

Subpart B—Special Housing Units

Sec.

541.20 What is the purpose of this subpart?

541.21 What are SHUs?

541.22 What is my status when placed in the SHU?

541.23 When can I be placed in administrative detention status?

541.24 When can I be placed in disciplinary segregation status?

541.25 What notice will I receive when placed in the SHU?

541.26 How will my placement in the SHU be reviewed?

541.27 When can I be placed in administrative detention as a protection case?

541.28 How will my placement in the SHU as a protection case be reviewed?

541.29 What happens if staff verify my need for protection?

541.30 What happens if staff cannot verify my need for protection?

541.31 What are the conditions of confinement in the SHU?

541.32 What medical and mental health care will I receive in the SHU?

541.33 When will I be released from the SHU?

Subpart B—Special Housing Units

§ 541.20 What is the purpose of this subpart?

This subpart describes the Federal Bureau of Prisons' (Bureau) operation of special housing units (SHU) at Bureau institutions. The Bureau's operation of SHUs is authorized by 18 U.S.C. 4042(a)(2) and (3).

§ 541.21 What are SHUs?

SHUs are housing units in Bureau institutions where inmates are securely separated from the general inmate population, and may be housed either alone or with other inmates. Special housing units help ensure the safety, security, and orderly operation of correctional facilities, and protect the public, by providing alternative housing assignments for inmates removed from the general population.

§ 541.22 What is my status when placed in the SHU?

When placed in the SHU, you are either in administrative detention status or disciplinary segregation status.

(a) *Administrative detention status.* Administrative detention status is an

administrative status which removes you from the general population when necessary to ensure the safety, security, and orderly operation of correctional facilities, or protect the public. Administrative detention status is non-punitive, and can occur for a variety of reasons.

(b) *Disciplinary segregation status.* Disciplinary segregation status is a punitive status imposed only by a Disciplinary Hearing Officer (DHO) as a sanction for committing a prohibited act(s).

§ 541.23 When can I be placed in administrative detention status?

You may be placed in administrative detention status for the following reasons:

(a) *Pending Classification.* You are a new commitment pending classification.

(b) *Holdover Status.* You are in holdover status during transfer to a designated institution or other destination.

(c) *Removal from general population.* Your presence in the general population poses a threat to life, property, self, staff, other inmates, the public, or to the security or orderly running of the institution and:

(1) *Investigation.* You are under investigation or awaiting a hearing for possibly violating a Bureau rule or criminal law;

(2) *Transfer.* You are pending transfer to another institution or location;

(3) *Protection cases.* You requested, or staff determined you need, administrative detention status for your own protection.

(4) *Post-disciplinary detention.* You are ending confinement in disciplinary segregation status, and your return to the general population would threaten the safety, security, and orderly operation of a correctional facility, or public safety.

§ 541.24 When can I be placed in disciplinary segregation status?

You may be placed in disciplinary segregation status only by the DHO as a sanction for committing a prohibited act(s) in the Greatest, High, or Moderate severity categories, or a repeated offense in the Low severity category.

§ 541.25 What notice will I receive when placed in the SHU?

You will be notified of the reason(s) you are placed in the SHU as follows:

(a) *Administrative detention status.* When placed in administrative detention status, you will receive a copy of the administrative detention order, ordinarily within 24 hours, detailing the reason(s) for your placement. However,

when placed in administrative detention status pending classification or while in holdover status, you will not receive an administrative detention order.

(b) *Disciplinary segregation status.* When you are to be placed in disciplinary segregation status as a sanction for violating Bureau rules, you will be informed by the DHO at the end of your discipline hearing.

§ 541.26 How will my placement in the SHU be reviewed?

Your placement in the SHU will be reviewed by the Segregation Review Official (SRO) as follows:

(a) *Three day review.* Within three work days of your placement in administrative detention status, not counting the day you were admitted, weekends, and holidays, the SRO will review the supporting records. If you are in disciplinary segregation status, this review will not occur.

(b) *Seven day reviews.* Within seven continuous calendar days of your placement in either administrative detention or disciplinary segregation status, the SRO will formally review your status at a hearing you can attend. Subsequent reviews of your records will be performed in your absence by the SRO every seven continuous calendar days thereafter.

(c) *Thirty day reviews.* After every 30 calendar days of continuous placement in either administrative detention or disciplinary segregation status, the SRO will formally review your status at a hearing you can attend.

(d) *Administrative remedy program.* You can submit a formal grievance challenging your placement in the SHU through the Administrative Remedy Program, 28 CFR part 542, subpart B.

§ 541.27 When can I be placed in administrative detention as a protection case?

You may be placed in administrative detention status as a protection case in the following circumstances.

(a) *Victim of inmate assault or threats.* You were the victim of an inmate assault, or are being threatened by other inmates, including threats of harm if you do not act in a certain way, for example, threats of harm unless you engage in sexual activity.

(b) *Inmate informant.* Your safety is threatened because you provided, or are perceived as having provided, information to staff or law enforcement authorities regarding other inmates or persons in the community.

(c) *Inmate refusal.* You refuse to enter the general population because of alleged pressures or threats from

unidentified inmates, or for no expressed reason.

(d) *Staff concern.* Based on evidence, staff believe your safety may be seriously jeopardized by placement in the general population.

§ 541.28 How will my placement in the SHU as a protection case be reviewed?

(a) *Staff investigation.* Whenever you are placed in the SHU as a protection case, whether requested by you or staff, an investigation will occur to verify the reasons for your placement.

(b) *Inmate consents.* If you consent to placement in the SHU as a protection case, you will be reviewed as an ordinary administrative detention case so long as reasons exist to support your placement, or while an investigation is pending to verify the reasons for your placement.

(c) *Inmate contests.* If you contest your placement in the SHU as a protection case, you will receive a hearing according to the procedural requirements of § 541.26(b) within seven calendar days of your placement. Additionally, if you feel at any time your placement in the SHU as a protection case is unnecessary, you may request a hearing under this section. If you remain in administrative detention status following such a hearing, you will be periodically reviewed as an ordinary administrative detention case under § 541.26.

§ 541.29 What happens if staff verify my need for protection?

If a staff investigation verifies your need for placement in the SHU as a protection case, you may remain in the SHU or be transferred to another institution where your status as a protection case may not be necessary, at the Warden's discretion.

§ 541.30 What happens if staff cannot verify my status as a protection case?

If a staff investigation fails to verify your need for placement in the SHU as a protection case, you will be instructed to return to the general population. If you refuse to return to the general population under these circumstances, you may be subject to disciplinary action.

§ 541.31 What are the conditions of confinement in the SHU?

Your living conditions in the SHU will meet or exceed standards for healthy and humane treatment, including, but not limited to, the following specific conditions:

(a) *Environment.* Your living quarters will be well-ventilated, adequately lighted, appropriately heated, and maintained in a sanitary condition.

(b) *Cell Occupancy.* Your living quarters will ordinarily house only the amount of occupants for which it is designed. The Warden, however, may authorize more occupants so long as adequate standards can be maintained.

(c) *Clothing.* You will receive adequate institution clothing, including footwear, while housed in the SHU. You will be provided necessary opportunities to exchange clothing and/or have it washed.

(d) *Bedding.* You will receive a mattress, blankets, a pillow, and linens for sleeping. You will receive necessary opportunities to exchange linens.

(e) *Food.* You will receive nutritionally adequate meals.

(f) *Personal hygiene.* You will have access to a wash basin and toilet. You will receive personal items necessary to maintain an acceptable level of personal hygiene, for example, toilet tissue, soap, toothbrush and cleanser, shaving utensils, etc. You will ordinarily have an opportunity to shower and shave at least three times per week. You will have access to hair care services as necessary.

(g) *Exercise.* You will receive the opportunity to exercise outside your individual quarters at least five hours per week, ordinarily on different days in one-hour periods. You can be denied these exercise periods for a week at a time by order of the Warden if it is determined that your use of exercise privileges threatens safety, security, and orderly operation of a correctional facility, or public safety.

(h) *Personal property.* In either status, your amount of personal property may be limited for reasons of fire safety or sanitation.

(1) In administrative detention status you are ordinarily allowed a reasonable amount of personal property and access to the commissary.

(2) In disciplinary segregation status your personal property will be impounded, with the exception of limited reading/writing materials, and religious articles. Also, your commissary privileges may be limited.

(i) *Correspondence.* You will receive correspondence privileges according to Part 540, Subpart B.

(j) *Telephone.* You will receive telephone privileges according to Part 540, Subpart I.

(k) *Visiting.* You will receive visiting privileges according to Part 540, Subpart D.

(l) *Legal Activities.* You will receive an opportunity to perform personal legal activities according to Part 543, Subpart B.

(m) *Staff monitoring.* You will be monitored by staff assigned to the SHU, including program and unit team staff.

(n) *Programming Activities.* In administrative detention status, you will have access to programming activities to the extent safety, security, orderly operation of a correctional facility, or public safety are not jeopardized. In disciplinary segregation status, your participation in programming activities, e.g., educational programs, may be suspended.

(o) *Administrative remedy program.* You can submit a formal grievance challenging any aspect of your confinement in the SHU through the Administrative Remedy Program, 28 CFR part 542, subpart B.

§ 541.32 What medical and mental health care will I receive in the SHU?

(a) *Medical Care.* A health services staff member will visit you daily to provide necessary medical care. Emergency medical care is always available.

(b) *Mental Health Care.* After every 30 calendar days of continuous placement in either administrative detention or disciplinary segregation status, mental health staff will examine you, including a personal interview. Emergency mental health care is always available.

§ 541.33 When will I be released from the SHU?

(a) *Administrative detention status.* You will be released from administrative detention status when the reasons for your placement no longer exist.

(b) *Disciplinary segregation status.* You will be released from disciplinary segregation status after satisfying the sanction imposed by the DHO. The SRO may release you earlier if it is determined you no longer require disciplinary segregation status.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[FRL-7940-9]

Adequacy of Indiana Municipal Solid Waste Landfill Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 is proposing to approve a modification to Indiana's