

is permitted as necessary in furtherance of active litigation, after establishing that communication with the verified attorney by confidential correspondence or visiting, or monitored telephone use, is not adequate due to an urgent or impending deadline.

#### **§ 540.205 Visiting limitations.**

(a) *Regular visiting* may be limited to immediate family members. The frequency and duration of regular visiting may also be limited to four one-hour visits each calendar month. The number of visitors permitted during any visit is within the Warden's discretion. Such visits must occur through no-contact visiting facilities.

(1) Regular visits may be simultaneously monitored and recorded, both visually and auditorily, either in person or electronically.

(2) The Warden may require such visits to be conducted in English, or simultaneously translated by an approved interpreter.

(b) *Attorney visiting* is limited to attorney-client privileged communication as provided in this part. These visits may be visually, but not auditorily, monitored. Regulations and policies previously established under 28 CFR part 543 are applicable.

(c) For convicted inmates (as defined in 28 CFR part 551), regulations and policies previously established under 28 CFR part 543 are applicable.

## **PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS**

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AUTHORITY: 15 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161—4166 (Repealed as to offenses committed on or after November 1, 1987), 5006—5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.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—Inmate Discipline Program

SOURCE: 75 FR 76267, Dec. 8, 2010, unless otherwise noted.

#### § 541.1 Purpose.

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 the protection of 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).

#### § 541.2 Application.

This program applies to sentenced and unsentenced inmates in Bureau custody. It also applies to sentenced and unsentenced inmates designated to any prison, institution, or facility in

which persons are held in custody by direction of, or under an agreement with, the Bureau of Prisons.

#### § 541.3 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, attempting, 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).
102 .....	Escape from escort; escape from any secure or non-secure institution, including community confinement; 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, <i>e.g.</i> , 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; <i>e.g.</i> , hack-saw blade, body armor, maps, handmade rope, or other escape paraphernalia, portable telephone, pager, or other electronic 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 for an illegal purpose or to commit or further a Greatest category prohibited act.

TABLE 1—PROHIBITED ACTS AND AVAILABLE SANCTIONS—Continued

197 .....	Use of the telephone for an illegal purpose or to commit or further a Greatest category prohibited act.
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 charged as “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 charged as “most like” one of the listed Greatest severity prohibited acts.
<b>Available Sanctions for Greatest Severity Level Prohibited Acts</b>	
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).
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).
B.2. ....	Forfeit up to 41 days of earned First Step Act (FSA) Time Credits (see 28 CFR part 523, subpart E) for each prohibited act committed.
C. ....	Disciplinary segregation (up to 12 months).
D. ....	Make monetary restitution.
E. ....	Monetary fine.
F. ....	Loss of privileges ( <i>e.g.</i> , 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.
<b>High Severity Level Prohibited Acts</b>	
200 .....	Escape from a work detail, non-secure institution, or other non-secure confinement, including community confinement, 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 ( <i>e.g.</i> , 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 by staff).

TABLE 1—PROHIBITED ACTS AND AVAILABLE SANCTIONS—Continued

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 through repeated behavior which harasses, alarms, or annoys the person, after having been previously 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 ( <i>e.g.</i> , DNA, HIV, tuberculosis).
228 .....	Tattooing or self-mutilation.
229 .....	Sexual assault of any person, involving non-consensual touching without force or threat of force.
231 .....	Requesting, demanding, pressuring, or otherwise intentionally creating a situation, which causes an inmate to produce or display his/her own court documents for any unauthorized purpose to another inmate.
296 .....	Use of the mail for abuses other than criminal activity which circumvent mail monitoring procedures ( <i>e.g.</i> , use of the mail to commit or further a High category prohibited act, 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 illegal activity which circumvent the ability of staff to monitor frequency of telephone use, content of the call, or the number called; or to commit or further a High category prohibited act.
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 charged as “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 charged as “most like” one of the listed High severity prohibited acts.
<b>Available Sanctions for High Severity Level Prohibited Acts</b>	
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).
B.2 .....	Forfeit up to 27 days of earned FSA Time Credits for each prohibited act committed.
C. ....	Disciplinary segregation (up to 6 months).
D. ....	Make monetary restitution.
E. ....	Monetary fine.
F. ....	Loss of privileges ( <i>e.g.</i> , 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.
<b>Moderate Severity Level Prohibited Acts</b>	
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.

TABLE 1—PROHIBITED ACTS AND AVAILABLE SANCTIONS—Continued

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, <i>e.g.</i> , 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 program 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, <i>e.g.</i> , counterfeiting release papers to effect escape, Code 102).
315 .....	Participating in an unauthorized meeting or gathering.
316 .....	Being in an unauthorized area without staff authorization.
317 .....	Failure to follow safety or sanitation regulations (including safety regulations, chemical instructions, tools, MSDS sheets, OSHA standards).
318 .....	Using any equipment or machinery without staff authorization.
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, smoking apparatus and tobacco in any form where prohibited, and unauthorized nutritional/dietary supplements).
332 .....	Smoking where prohibited.
333 .....	Fraudulent or deceptive completion of a skills test ( <i>e.g.</i> , cheating on a GED, or other educational or vocational skills test).
334 .....	Conducting a business; conducting or directing an investment transaction without staff authorization.
335 .....	Communicating gang affiliation; participating in gang related activities; possession of paraphernalia indicating gang affiliation.
336 .....	Circulating a petition.
396 .....	Use of the mail for abuses other than criminal activity which do not circumvent mail monitoring; or use of the mail to commit or further a Moderate category prohibited act.
397 .....	Use of the telephone for abuses other than illegal activity which do not circumvent the ability of staff to monitor frequency of telephone use, content of the call, or the number called; or to commit or further a Moderate category prohibited act.
398 .....	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 charged as "most like" one of the listed Moderate severity prohibited acts.
399 .....	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 charged as "most like" one of the listed Moderate severity prohibited acts.
<b>Available Sanctions for Moderate Severity Level Prohibited Acts</b>	
A. ....	Recommend parole date rescission or retardation.

TABLE 1—PROHIBITED ACTS AND AVAILABLE SANCTIONS—Continued

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).
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).
B.2 ....	Forfeit up to 27 days of earned FSA Time Credits for each prohibited act committed.
C. ....	Disciplinary segregation (up to 3 months).
D. ....	Make monetary restitution.
E. ....	Monetary fine.
F. ....	Loss of privileges ( <i>e.g.</i> , 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 ( <i>e.g.</i> , 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 charged as “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 charged as “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).
B.2 ....	Forfeit up to 7 days of earned FSA Time Credits (only where the inmate is found to have committed a second violation of the same prohibited act within 6 months; forfeit up to 14 days of FSA Time Credits (only where the inmate is found to have committed a third violation of the same prohibited act within 6 months).
D. ....	Make monetary restitution.
E. ....	Monetary fine.
F. ....	Loss of privileges ( <i>e.g.</i> , 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).
Moderate Severity (300 level)	12 months .....	3rd or more offense 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).
High Severity (200 level) .....	18 months .....	3rd or more offense 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). Any available Greatest severity level sanction (100 series).
Greatest Severity (100 level)	24 months .....	3rd or more offense 2nd or more offense.	Disciplinary Segregation (up to 18 months).

[75 FR 76267, Dec. 8, 2010; 75 FR 81854, Dec. 29, 2010, as amended at 85 FR 66229, Oct. 19, 2020; 87 FR 2719, Jan. 19, 2022]

#### § 541.4 Loss of 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 and DC Code offenders*. 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.

#### § 541.5 Discipline process.

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

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reasonably believe 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 regulations. If the incident report is informally resolved, it will be removed from your records.

### § 541.6 Mentally ill inmates.

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 Unit Disciplinary Committee or Discipline Hearing Officer will make this decision based on evi-

dence, 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.

### § 541.7 Unit Discipline Committee (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 § 541.4, 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 or prohibited acts, the UDC can impose any of the available sanctions in Tables 1 and 2 of § 541.3, except loss of good conduct time credit, FSA Time Credits, 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 § 541.8.

(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.

[75 FR 76267, Dec. 8, 2010; 75 FR 81854, Dec. 29, 2010; 87 FR 2719, Jan. 19, 2022]

#### **§ 541.8 Discipline Hearing Officer (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—Special Housing Units

SOURCE: 75 FR 76267, Dec. 8, 2010, unless otherwise noted.

### § 541.20 Purpose.

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 Special Housing Units (SHUs).**

Special Housing Units (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 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 Discipline Hearing Officer (DHO) as a sanction for committing a prohibited act(s).

**§ 541.23 Administrative detention status.**

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

(a) *Pending Classification or Reclassification.* You are a new commitment pending classification or under review for Reclassification.

(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 regulation 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; or

(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.

[75 FR 76273, Dec. 8, 2010; 75 FR 81854, Dec. 29, 2010]

**§ 541.24 Disciplinary segregation status.**

You may be placed in disciplinary segregation status only by the DHO as a disciplinary sanction.

**§ 541.25 Notice received 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 regulations, you will be informed by the DHO at the end of your discipline hearing.

**§ 541.26 Review of placement in the SHU.**

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

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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 Protection case—placement in Administrative Detention status.

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 to enter general population.* 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 Protection case—review of placement in the SHU.

(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) *Hearing.* You will receive a hearing according to the procedural requirements of § 541.26(b) within seven calendar days of your placement. Addi-

tionally, 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.

(c) *Periodic review.* 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 Staff verification of 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 Lack of verification of need for protection.

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 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.

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(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 reasonable 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 Medical and mental health care 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 Release 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.

## Subpart C [Reserved]

## Subpart D—Control Unit Programs

SOURCE: 49 FR 32991, Aug. 17, 1984, unless otherwise noted.

### § 541.40 Purpose and scope.

(a) In an effort to maintain a safe and orderly environment within its institutions, the Bureau of Prisons operates control unit programs intended to place into a separate unit those inmates who are unable to function in a less restrictive environment without being a threat to others or to the orderly operation of the institution. The Bureau of Prisons provides written criteria for the:

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- (1) Referral of an inmate for possible placement within a control unit;
- (2) Selection of an inmate for placement within a control unit;
- (3) Regular review of an inmate while housed in a control unit; and
- (4) Release of an inmate from a control unit.

(b) The Bureau of Prisons provides an inmate confined within a control unit the opportunity to participate in programs and activities restricted as necessary to protect the security, good order, or discipline of the unit.

#### **§ 541.41 Institutional referral.**

(a) The Warden shall submit a recommendation for referral of an inmate for placement in a control unit to the Regional Director in the region where the inmate is located.

(b) The Warden shall consider the following factors in a recommendation for control unit placement.

(1) Any incident during confinement in which the inmate has caused injury to other persons.

(2) Any incident in which the inmate has expressed threats to the life or well-being of other persons.

(3) Any incident involving possession by the inmate of deadly weapons or dangerous drugs.

(4) Any incident in which the inmate is involved in a disruption of the orderly operation of a prison, jail or other correctional institution.

(5) An escape from a correctional institution.

(6) An escape attempt. Depending on the circumstances, an escape attempt, considered alone or together with an inmate's prior history, may warrant consideration for a control unit placement.

(7) The nature of the offense for which committed. An inmate may not be considered solely on the nature of the crime which resulted in that inmate's incarceration; however, the nature of the crime may be considered in combination with other factor(s) as described in paragraph (b) of this section.

(c) The Warden may not refer an inmate for placement in a control unit:

(1) If the inmate shows evidence of significant mental disorder or major physical disabilities as documented in

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a mental health evaluation or a physical examination;

(2) On the basis that the inmate is a protection case, e.g., a homosexual, an informant, etc., unless the inmate meets other criteria as described in paragraph (b) of this section.

#### **§ 541.42 Designation of Hearing Administrator.**

(a) The Regional Director in the region where the inmate is located shall review the institution's recommendation for referral of an inmate for placement in a control unit. If the Regional Director concurs with the recommendation, the Regional Director shall forward a written request, together with the institution's referral material, to the Regional Director of the region where the control unit is located. The Regional Director of the region where the control unit is located shall designate a person in the Regional Office to review the referral material and to conduct a hearing on the appropriateness of an inmate's placement in a control unit.

(b) The Hearing Administrator shall have the following qualifications:

(1) Correctional experience, including institutional work with inmates, processing of inmate disciplinary actions, significant institutional experience in observing and evaluating inmate adjustment and disruptive behavior, and knowledge of the options available in the Bureau of Prisons for dealing with such conduct;

(2) Lack of former personal involvement in an Institution Discipline Committee action involving the particular inmate in incident(s) referred; and

(3) Familiarity with Bureau of Prisons policies and operations, including the criteria for placement of inmates in different institutions and in a control unit.

#### **§ 541.43 Hearing procedure.**

(a) The Hearing Administrator shall provide a hearing to an inmate recommended for placement in a control unit. The hearing ordinarily shall take place at the recommending or sending institution.

(b) The hearing shall proceed as follows.

(1) Staff shall provide an inmate with an advance written notice of the hearing and a copy of this rule at least 24 hours prior to the hearing. The notice will advise the inmate of the specific act(s) or other evidence which forms the basis for a recommendation that the inmate be transferred to a control unit, unless such evidence would likely endanger staff or others. If an inmate is illiterate, staff shall explain the notice and this rule to the inmate and document that this explanation has occurred.

(2) The Hearing Administrator shall provide an inmate the service of a full-time staff member to represent the inmate, if the inmate so desires. The Hearing Administrator shall document in the record of the hearing an inmate's request for, or refusal of staff representation. The inmate may select a staff representative from the local institution. If the selected staff member declines or is unavailable, the inmate has the option of selecting another representative or, in the case of an absent staff member, of waiting a reasonable period (determined by the Hearing Administrator) for the staff member's return, or of proceeding without a staff representative. When an inmate is illiterate, the Warden shall provide a staff representative. The staff representative shall be available to assist the inmate and, if the inmate desires, shall contact witnesses and present favorable evidence at the hearing. The Hearing Administrator shall afford the staff representative adequate time to speak with the inmate and to interview available witnesses.

(3) The inmate has the right to be present throughout the hearing, except where institutional security or good order is jeopardized. The Hearing Administrator may conduct a hearing in the absence of the inmate when the inmate refuses to appear. The Hearing Administrator shall document an inmate's refusal to appear, or other reason for non-appearance, in the record of the hearing.

(4) The inmate is entitled to present documentary evidence and to have witnesses appear, provided that calling witnesses would not jeopardize or threaten institutional security or individual safety, and further provided

that the witnesses are available at the institution where the hearing is being conducted.

(i) The evidence to be presented must be material and relevant to the issue as to whether the inmate can and would function in a general prison population without being or posing a threat to staff or others or to the orderly operation of the institution. The Hearing Administrator may not consider an attempt to reverse or repeal a prior finding of a disciplinary violation.

(ii) Repetitive witnesses need not be called. Staff who recommend placement in a control unit are not required to appear, provided their recommendation is fully explained in the record. Staff who were involved, in any capacity, in former disciplinary proceedings need not be called as to their involvement in those proceedings, since this hearing is not to go over the factual basis for prior actions which have been decided.

(iii) When a witness is not available within the institution, or not permitted to appear, the inmate may submit a written statement by that witness. The Hearing Administrator shall, upon the inmate's request, postpone any decision following the hearing for a reasonable time to permit the obtaining and forwarding of written statements.

(iv) The Hearing Administrator shall document in the record of the hearing the reasons for declining to permit a witness or to receive documentary evidence.

#### **§ 541.44 Decision of the Hearing Administrator.**

(a) At the conclusion of the hearing and following review of all material related to the recommendation for placement of an inmate in a control unit, the Hearing Administrator shall prepare a written decision as to whether this placement is warranted. The Hearing Administrator shall:

(1) Prepare a summary of the hearing and of all information presented upon which the decision is based; and

(2) Indicate the specific reasons for the decision, to include a description of the act, or series of acts, or evidence on which the decision is based.

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(b) The Hearing Administrator shall advise the inmate in writing of the decision. The inmate shall receive the information described in paragraph (a) of this section unless it is determined that the release of this information could pose a threat to individual safety, or institutional security, in which case that limited information may be withheld. The Hearing Administrator shall advise the inmate that the decision will be submitted for review of the Executive Panel. The Hearing Administrator shall advise the inmate that, if the inmate so desires, the inmate may submit an appeal of the Hearing Administrator's decision to the Executive Panel. This appeal, with supporting documentation and reasons, must be filed within five working days of the inmate's receipt of the Hearing Administrator's decision.

(c) The Hearing Administrator shall send the decision, whether for or against placement in a control unit, and supporting documentation to the Executive Panel. Ordinarily this is done within 20 working days after conclusion of the hearing. Any reason for extension is to be documented.

#### § 541.45 Executive Panel review and appeal.

The Executive Panel is composed of the Regional Director of the region where a control unit is located to which referral is being considered and the Assistant Director, Correctional Programs Division.

(a) The Executive Panel shall review the decision and supporting documentation of the Hearing Administrator and, if submitted, the information contained in an inmate's appeal. The Panel shall accept or reject the Hearing Administrator's decision within 30 working days of its receipt, unless for good cause there is reason for delay, which shall be documented in the record.

(b) The Executive Panel shall provide a copy of its decision to the Warden at the institution to which the inmate is to be transferred, to the inmate, to the referring Warden and region, and to the Hearing Administrator.

(c) An inmate may appeal a decision of the Executive Panel, through the Administrative Remedy Procedure, di-

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rectly to the Office of General Counsel, Bureau of Prisons, within 30 calendar days of the inmate's receipt of the Executive Panel's decision.

#### § 541.46 Programs and services.

The Warden shall provide the following services to a control unit inmate. These services must be provided unless compelling security or safety reasons dictate otherwise. These reasons will be documented and signed by the Warden, indicating the Warden's review and approval.

(a) *Education.* The Warden shall assign a member of the education staff to the control unit on at least a part-time basis to assist in developing an educational program to fulfil each inmate's academic needs. The education staff member is ordinarily a member of the control unit team.

(b) *Work assignments.* Staff may assign inmates to a work assignment, such as range orderly. The manner in which these duties are carried out will reflect the inmate's unit adjustment, and will assist staff in evaluating the inmate.

(c) *Industries (UNICOR).* If an industry program exists in a control unit each inmate participating in this program may earn industrial pay, subject to the regulations of Federal Prison Industries, Inc. (UNICOR). The industry program is supervised by an industry foreman. The control unit team will determine when or if an industry assignment is appropriate for each inmate who submits a request for possible assignment to industries work.

(d) *Legal.* An inmate assigned to a control unit may use that unit's inmate basic law library, upon request and in rotation. Consistent with security considerations, the law library is to include basic legal reference books, and ordinarily a table and chair, typewriter, paper and carbon. Abuse of materials in the inmate law library (for example, a typewriter) may result in a decision by the Warden to limit the use of legal materials. A decision to limit materials due to abuse must be documented in writing and signed by the Warden.

(e) *Recreation.* The recreation program in a control unit shall include the following requirements:



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(1) Each inmate shall have the opportunity to receive a minimum of seven hours weekly recreation and exercise out of the cell.

(2) Staff shall provide various games and exercise materials as consistent with security considerations and orderly operation of the unit. Inmates who alter or intentionally damage recreation equipment may be deprived of the use of that equipment in the future.

(f) *Case management services.* The case manager is responsible for all areas of case management. This ordinarily includes preparation of the visiting list, notarizing documents, preparation of various reports, and other case management duties. The case manager is ordinarily a member of the control unit team.

(g) *Counselor services.* The unit counselor ordinarily handles phone call requests, special concerns and requests of inmates, and requests for administrative remedy forms. The unit counselor is also available for consultation and for counseling as recommended in the mental health evaluation (see paragraph (i) of this section—Mental Health Services).

(h) *Medical services.* A member of the medical staff shall visit control unit inmates daily. A physician will visit the unit as the need arises.

(i) *Mental health services.* During the first 30-day period in a control unit, staff shall schedule the control unit inmate for a psychological evaluation conducted by a psychologist. Additional individual evaluations shall occur every 30 days. The psychologist shall perform and/or supervise needed psychological services. Psychiatric services will be provided when necessary. Inmates requiring prescribed psychotropic medication are not ordinarily housed in a control unit.

(j) *Religion.* Staff shall issue religious materials upon request, limited by security consideration and housekeeping rules in the unit. This material may come from an inmate's personal property or from the chaplain's office. The institutional chaplains shall make at least weekly visits to the control unit. While individual prayer and/or worship is allowed in a control unit, religious

assemblies or group meetings are not allowed.

(k) *Food service and personal hygiene.* Staff shall provide food services and personal hygiene care consistent with the requirements of the current rule regarding Special Housing Units.

(l) *Correspondence.* Inmates confined in a control unit are provided correspondence privileges in accordance with the Bureau of Prisons' rule on Inmate Correspondence (see 28 CFR part 540).

(m) *Visiting.* Visits for inmates confined in a control unit are conducted in a controlled visiting area, separated from regular visiting facilities. Staff shall allot a minimum of four hours per month visiting time to a control unit inmate. The number of consecutive hours visiting on a particular day may be limited by the number of visitors waiting to visit. All visitors must be on the inmate's approved visiting list.

(n) *Commissary.* Staff shall establish a commissary purchase schedule. The amount of money which control unit inmates spend per month is comparable to the spending limitation for inmates residing in the general population. Staff may limit commissary items to ensure the safety and security of the unit.

(o) *Personal property.* Personal property retained by an inmate in a control unit is to be stored in the space provided. Personal property items shall be limited in number and type to ensure the safety and good order of the unit.

[49 FR 32991, Aug. 17, 1984, as amended at 60 FR 46484, Sept. 6, 1995]

### § 541.47 Admission to control unit.

Staff shall provide an inmate admitted to a control unit with:

(a) Notice of the projected duration of the inmate's confinement in a control unit;

(b) Notice of the type of personal property which is allowable in the unit (items made of glass or metal will not be permitted);

(c) A summary of the guidelines and disciplinary procedures applicable in the unit;

(d) An explanation of the activities in a control unit;

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(e) The expectations of the inmate's involvement in control unit activities; and

(f) The criteria for release from the unit, and how those criteria specifically relate to this confinement period in the unit and any specific requirements in the inmate's individual case.

### § 541.48 Search of control unit inmates.

(a) The Warden at an institution housing a control unit may order a digital or simple instrument search for all new admissions to the control unit. The Warden may also order a digital or simple instrument search for any inmate who is returned to the control unit following contact with the public. Authorization for a digital or simple instrument search must be in writing, signed by the Warden, with a copy placed in the inmate central file. The Warden's authority may not be delegated below the level of Acting Warden.

(b) An inmate in a control unit may request in writing that an X-ray be taken in lieu of the digital search discussed in paragraph (a) of this section. The Warden shall approve this request, provided it is determined and stated in writing by the institution's Clinical Director or Acting Clinical Director (may not be further delegated) that the amount of X-ray exposure previously received by the inmate, or anticipated to be given the inmate in the immediate future, does not make the proposed X-ray medically unwise. Staff are to place documentation of the X-ray, and the inmate's signed request for it, in the inmate's central and medical files. The Warden's authority may not be delegated below the level of Acting Warden.

(c) Staff may not conduct a digital or simple instrument search if it is likely to result in physical injury to the inmate. In this situation, the Warden, upon approval of the Regional Director, may authorize the institution physician to order a non-repetitive X-ray for the purpose of determining if contraband is concealed in or on the inmate. The X-ray examination may not be performed if it is determined by the institution physician that such an examination is likely to result in serious

or lasting medical injury or harm to the inmate. Staff are to place documentation of the X-ray examination in the inmate's central file and medical file. The authority of the Warden and Regional Director may not be delegated below the level of Acting Warden and Acting Regional Director respectively. If neither a digital or simple instrument search, nor an X-ray examination may be used, the inmate is to be placed in a dry cell until sufficient time has passed to allow excretion.

(d) Staff shall solicit the inmate's written consent prior to conducting a digital or simple instrument search, or, as specified in paragraph (c) of this section, an X-ray examination. However, the inmate's consent is not required.

[50 FR 25662, June 20, 1985, as amended at 60 FR 46484, Sept. 6, 1995]

### § 541.49 Review of control unit placement.

(a) Unit staff shall evaluate informally and daily an inmate's adjustment within the control unit. Once every 30 days, the control unit team, comprised of the control unit manager and other members designated by the Warden (ordinarily to include the officer-in-charge or lieutenant, case manager, and education staff member assigned to the unit), shall meet with an inmate in the control unit. The inmate is required to attend the team meeting in order to be eligible for the previous month's stay in the control unit to be credited towards the projected duration of confinement in that unit. The unit team shall make an assessment of the inmate's progress within the unit and may make a recommendation as to readiness for release after considering the inmate's:

- (1) Unit status;
- (2) Adjustment; and
- (3) Readiness for release from the unit. (See § 541.50(a))

(b) The Warden shall serve as the review authority at the institutional level for unit team actions.

(c) An inmate may appeal the Warden's decision to the Executive Panel within five working days of receipt of that decision. The inmate will receive a response to this appeal at the inmate's next appearance before the Executive Panel.

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(d) At least once every 60 to 90 days, the Executive Panel shall review the status of an inmate in a control unit to determine the inmate's readiness for release from the Unit. The Executive Panel shall consider those factors specified in § 541.50(a), along with any recommendations by the unit team and Warden.

The decision of the Executive Panel is communicated to the inmate. Ordinarily, the inmate is interviewed in person at this review. If the inmate refuses to appear for this review, or if there is other reason for not having an in-person review, this will be documented.

(e) An inmate may appeal a decision of the Executive Panel, through the Administrative Remedy Procedure, directly to the Office of General Counsel, Bureau of Prisons within 30 calendar days from the date of the Executive Panel's response.

[49 FR 32991, Aug. 17, 1984, as amended at 60 FR 46484, Sept. 6, 1995]

### § 541.50 Release from a control unit.

(a) Only the Executive Panel may release an inmate from a control unit. The following factors are considered in the evaluation of an inmate's readiness for release from a control unit:

(1) Relationship with other inmates and staff members, which demonstrates that the inmate is able to function in a less restrictive environment without posing a threat to others or to the orderly operation of the institution;

(2) Involvement in work and recreational activities and assignments;

(3) Adherence to institution guidelines and Bureau of Prisons rules and policy;

(4) Personal grooming and cleanliness; and

(5) Quarters sanitation.

(b) An inmate released from a control unit may be returned:

(1) To the institution from which the inmate was originally transferred;

(2) To another federal or non-federal institution; or

(3) Into the general population of the institution which has a control unit.

[49 FR 32991, Aug. 17, 1984, as amended at 60 FR 46485, Sept. 6, 1995]

## Subpart E—Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others

SOURCE: 54 FR 11323, Mar. 17, 1989, unless otherwise noted.

### § 541.60 Purpose and scope.

In an effort to maintain a safe and orderly environment within its institutions, the Bureau of Prisons may place in controlled housing status an inmate who tests HIV positive when there is reliable evidence that the inmate may engage in conduct posing a health risk to another person.

### § 541.61 Standard for placement in controlled housing status.

An inmate may be placed in a controlled housing status when there is reliable evidence causing staff to believe that the inmate engages in conduct posing a health risk to others. This evidence may be the inmate's behavior, or statements of the inmate, or other reliable evidence.

### § 541.62 Referral for placement.

(a) The Warden shall consider an inmate for controlled housing status when the inmate has been confirmed as testing HIV positive and when there is reliable evidence indicating that the inmate may engage in conduct posing a health risk to others. This evidence may come from the statements of the individual, repeated misconduct (including disciplinary actions), or other behavior suggesting that the inmate may engage in predatory or promiscuous sexual behavior, assaultive behavior where body fluids may be transmitted to another, or the sharing of needles.

(b) The Warden shall submit a recommendation for referral of an inmate for placement in a controlled housing status to the Regional Director in the region where the inmate is located.

(c) Based on the perceived health risk to others posed by the inmate's threatened or actual actions, the Warden may, with the telephonic approval of the Regional Director, temporarily (not to exceed 20 work days) place an inmate in a special housing status

(e.g., administrative detention, or a secure health service unit room) pending the inmate's appearance before the Hearing Administrator. Reasons for this placement, and the approval of the Regional Director, shall be documented in the inmate central file. The inmate should be seen daily by case management and medical staff while in this temporary status, and a psychological or psychiatric assessment report should be prepared during this temporary placement period.

[54 FR 11323, Mar. 17, 1989, as amended at 56 FR 31530, July 10, 1991]

#### § 541.63 Hearing procedure.

(a) The Regional Director in the region where the inmate is located shall review the institution's recommendation for referral of an inmate for controlled housing status. If the Regional Director concurs with the recommendation, the Regional Director shall designate a person in the Regional Office or a person at department head level or above in the institution to conduct a hearing on the appropriateness of an inmate's placement in controlled housing status. This Hearing Administrator shall have correctional experience, no former personal involvement in the instant situation, and a knowledge of the type of behavior that poses a health risk to others, and of the options available for dealing with an inmate who poses such a health risk to others.

(b) The Hearing Administrator shall provide a hearing to an inmate recommended for controlled housing status. The hearing ordinarily shall take place at the institution housing the inmate.

(c) The hearing shall proceed as follows:

(1) Staff shall provide an inmate with an advance written notice of the hearing and a copy of this rule at least 24 hours prior to the hearing. The notice will advise the inmate of the specific act(s) or other evidence which forms the basis for a recommendation that the inmate be placed in a controlled housing status, unless such evidence would likely endanger staff or others. If an inmate is illiterate, staff shall explain the notice and this rule to the in-

mate and document that this explanation has occurred.

(2) The Hearing Administrator shall upon request of the inmate provide an inmate the service of a full-time staff member to represent the inmate. The Hearing Administrator shall document in the record of the hearing an inmate's request for, or refusal of staff representation. The inmate may select a staff representative from the local institution. If the selected staff member declines for good reason or is unavailable, the inmate has the option of selecting another representative or, in the case of an absent staff member, of waiting a reasonable period (determined by the Hearing Administrator) for the staff member's return, or of proceeding without a staff representative. When an inmate is illiterate, the Warden shall provide a staff representative. The staff representative shall be available to assist the inmate and, if the inmate desires, shall contact witnesses and present favorable evidence at the hearing. The Hearing Administrator shall afford the staff representative adequate time to speak with the inmate and to interview available witnesses.

(3) The inmate has the right to be present throughout the hearing, except where institutional security or good order is jeopardized. The Hearing Administrator may conduct a hearing in the absence of the inmate when the inmate refuses to appear. The Hearing Administrator shall document an inmate's refusal to appear, or other reason for nonappearance, in the record of the hearing.

(4) The inmate is entitled to present documentary evidence and to have witnesses appear, provided that calling witnesses would not jeopardize or threaten institutional security or individual safety, and further provided that the witnesses are available at the institution where the hearing is being conducted.

(i) The evidence to be presented must be material and relevant to the issue as to whether the inmate can and would pose a health risk to others, if allowed to remain in general prison population. This evidence may come from the statements of the individual, repeated

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misconduct (including disciplinary actions), or other behavior suggesting that the inmate may engage in predatory or promiscuous sexual behavior, assaultive behavior where body fluids may be transmitted to others, or the sharing of needles.

(ii) Repetitive witnesses need not be called. Staff who recommend placement in a controlled housing status are not required to appear, provided their recommendation is fully explained in the record.

(iii) When a witness is not available within the institution, or not permitted to appear, the inmate may submit a written statement by that witness. The Hearing Administrator shall, upon the inmate's request, postpone any decision following the hearing for a reasonable time to permit the obtaining and forwarding of written statements.

(iv) The Hearing Administrator shall document in the record of the hearing the reasons for declining to hear a witness or to receive documentary evidence.

[54 FR 11323, Mar. 17, 1989, as amended at 63 FR 5218, Jan. 30, 1998]

### § 541.64 Decision of the Hearing Administrator.

(a) At the conclusion of the hearing and following review of all material related to the recommendation for placement of an inmate in a controlled housing status, the Hearing Administrator shall prepare a written decision as to whether this placement is warranted. The Hearing Administrator shall:

(1) Prepare a summary of the hearing and of all information presented upon which the decision is based; and

(2) Indicate the specific reasons for the decision, to include a description of the act, or series of acts, or other reliable evidence on which the decision is based, along with evidence of the inmate's HIV positive status.

(b) The Hearing Administrator shall advise the inmate in writing of the decision. The inmate shall receive the information described in paragraph (a) of this section unless it is determined that the release of this information could pose a threat to individual safety, or institutional security, in which

case that limited information may be withheld. The Hearing Administrator shall advise the inmate that the decision will be submitted for review of the Regional Director in the region where the inmate is located. The Hearing Administrator shall advise the inmate that, if the inmate so desires, the inmate may submit an appeal of the Hearing Administrator's decision to the Regional Director. This appeal, with supporting documentation and reasons, must be filed within five working days of the inmate's receipt of the Hearing Administrator's decision.

(c) The Hearing Administrator may order the continuation of the inmate in special housing pending review by the Regional Director. The Hearing Administrator should state the reasons for this order in the record of the Hearing.

(d) The Hearing Administrator shall send the decision, whether for or against placement in a controlled housing status, and supporting documentation to the Regional Director. Ordinarily, this is done within 20 working days after conclusion of the hearing. Any reason for extension is to be documented.

### § 541.65 Regional Director review and appeal.

(a) The Regional Director shall review the decision and supporting documentation of the Hearing Administrator and, if submitted, the information contained in an inmate's appeal. The Regional Director shall accept or reject the Hearing Administrator's decision within 30 working days of its receipt, unless for good cause there is reason for delay, which shall be documented in the record. The authority of the Regional Director may not be delegated below the level of acting Regional Director.

(b) The Regional Director shall provide a copy of his decision to the Warden at the institution housing the inmate, to the inmate, and to the Hearing Administrator.

(c) An inmate may appeal a decision of the Regional Director, through the Administrative Remedy Program, directly to the National Inmate Appeals

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Administrator, Office of General Counsel, within 30 calendar days of the Regional Director's decision (see 28 CFR 542.15).

[54 FR 11323, Mar. 17, 1989, as amended at 63 FR 5218, Jan. 30, 1998]

### **§ 541.66 Programs and services.**

To the extent consistent with available resources and the security needs of the institution, an inmate in controlled housing status is to be considered for activities and privileges afforded to the general population. This includes, but is not limited to, providing an inmate with the opportunity for participation in an education program, library services, counseling, and religious guidance, as well as access to case management, medical and mental health assistance, and legal services, including access to the institution's law libraries. An inmate in controlled housing status should be afforded at least five hours weekly recreation and exercise out of the cell. The recreation shall be by himself or under close supervision. Unless there are compelling reasons to the contrary, institutions shall provide commissary privileges and reasonable amounts of personal property. The Warden may restrict for reasons of security, fire safety, or housekeeping the amount of personal property that an inmate may retain while in controlled housing status. An inmate shall be permitted to have a radio, provided it is equipped with ear plugs. Visits shall be carefully monitored.

### **§ 541.67 Review of controlled housing status.**

(a) Staff designated by the Warden shall evaluate regularly an inmate's adjustment while in controlled housing status. A medical staff member shall see the inmate daily, and regularly record medical and behavioral impressions. Once every 90 days, staff, comprised of a correctional and case management supervisor, and a member of the medical staff, shall meet with the inmate. The inmate is required to attend this meeting in order to be considered for release to the general population. Any refusal by the inmate to attend this meeting will be documented. Staff, at this meeting, shall

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make an assessment of the inmate's adjustment while in controlled housing and the likely health threat the inmate poses to others by his actions.

(b) The Warden shall serve as the review authority at the institutional level, and shall make a recommendation to the Regional Director when he believes the inmate should be considered for release from controlled housing.

(c) An inmate may appeal a Warden's decision not to recommend release from controlled housing to the Regional Director within five working days of receipt of that decision.

(d) Upon recommendation of the Warden, or upon appeal from the inmate, the Regional Director may decide whether or not to release the inmate to general population from controlled housing status.

(e) An inmate may appeal a decision of the Regional Director, through the Administrative Remedy Program, directly to the National Inmate Appeals Administrator, Office of General Counsel, within 30 calendar days of the Regional Director's decision (see 28 CFR 542.15).

[54 FR 11323, Mar. 17, 1989; 54 FR 18198, Apr. 27, 1989, as amended at 63 FR 5218, Jan. 30, 1998]

### **§ 541.68 Release from controlled housing status.**

(a) Only the Regional Director may release an inmate from controlled housing status. The following factors are considered in the evaluation of an inmate's readiness for return to the general population:

(1) Relationship with other inmates and staff members, which demonstrate that the inmate is able to function in a less restrictive environment without posing a health threat to others or to the orderly operation of the institution;

(2) Involvement in work and recreational activities and assignments or other programs; and

(3) Adherence to institution guidelines and Bureau of Prisons rules and policy.

(b) An inmate released from a controlled housing status may be returned

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to the general population of that institution, or to another federal or non-federal institution.

### PART 542—ADMINISTRATIVE REMEDY

#### Subpart A [Reserved]

#### Subpart B—Administrative Remedy Program

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

SOURCE: 61 FR 88, Jan. 2, 1996, unless otherwise noted.

#### Subpart A [Reserved]

#### Subpart B—Administrative Remedy Program

##### § 542.10 Purpose and scope.

(a) *Purpose.* The purpose of the Administrative Remedy Program is to allow an inmate to seek formal review of an issue relating to any aspect of his/her own confinement. An inmate may not submit a Request or Appeal on behalf of another inmate.

(b) *Scope.* This Program applies to all inmates in institutions operated by the Bureau of Prisons, to inmates designated to contract Community Corrections Centers (CCCs) under Bureau of Prisons responsibility, and to former inmates for issues that arose during their confinement. This Program does not apply to inmates confined in other non-federal facilities.

(c) *Statutorily-mandated procedures.* There are statutorily-mandated procedures in place for tort claims (28 CFR part 543, subpart C), Inmate Accident

Compensation claims (28 CFR part 301), and Freedom of Information Act or Privacy Act requests (28 CFR part 513, subpart D). If an inmate raises an issue in a request or appeal that cannot be resolved through the Administrative Remedy Program, the Bureau will refer the inmate to the appropriate statutorily-mandated procedures.

[67 FR 50805, Aug. 6, 2002]

##### § 542.11 Responsibility.

(a) The Community Corrections Manager (CCM), Warden, Regional Director, and General Counsel are responsible for the implementation and operation of the Administrative Remedy Program at the Community Corrections Center (CCC), institution, regional and Central Office levels, respectively, and shall:

(1) Establish procedures for receiving, recording, reviewing, investigating, and responding to Administrative Remedy Requests (Requests) or Appeals (Appeals) submitted by an inmate;

(2) Acknowledge receipt of a Request or Appeal by returning a receipt to the inmate;

(3) Conduct an investigation into each Request or Appeal;

(4) Respond to and sign all Requests or Appeals filed at their levels. At the regional level, signatory authority may be delegated to the Deputy Regional Director. At the Central Office level, signatory authority may be delegated to the National Inmate Appeals Administrator. Signatory authority extends to staff designated as acting in the capacities specified in this § 542.11, but may not be further delegated without the written approval of the General Counsel.

(b) Inmates have the responsibility to use this Program in good faith and in an honest and straightforward manner.

##### § 542.12 [Reserved]

##### § 542.13 Informal resolution.

(a) *Informal resolution.* Except as provided in § 542.13(b), an inmate shall first present an issue of concern informally