

whether fails charges paid with respect to such a trading practice should be sourced under these regulations.

#### *Effective/Applicability Date*

These regulations apply to qualified fails charges paid or accrued on or after December 8, 2010.

#### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### **Drafting Information**

The principal authors of these regulations are Sheila Ramaswamy and Anthony J. Marra, Office of the Associate Chief Counsel (International). However, other persons from the Office of Associate Chief Counsel (International) and the Treasury Department have participated in their development.

#### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

#### **Adoption of Amendments to the Regulations**

■ Accordingly, 26 CFR part 1 is amended as follows:

#### **PART 1—INCOME TAXES**

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 863(a) and 7805  
\* \* \*

■ **Par. 2.** Section 1.863–10T is added to read as follows:

#### **§ 1.863–10T Source of income from a qualified fails charge (temporary).**

(a) *In general.* Unless paragraph (b) or (c) of this section applies, the source of income from a qualified fails charge shall be determined by reference to the residence of the taxpayer as determined under section 988(a)(3)(B)(i).

(b) *Qualified business unit exception.* The source of income from a qualified fails charge shall be determined by reference to the residence of a qualified business unit of a taxpayer if—

(1) The taxpayer's residence, determined under section 988(a)(3)(B)(i), is the United States;

(2) The qualified business unit's residence, determined under section 988(a)(3)(B)(ii), is outside the United States;

(3) The qualified business unit is engaged in the conduct of a trade or business in the country where it is a resident; and

(4) The transaction to which the qualified fails charge relates is attributable to the qualified business unit. A transaction will be treated as attributable to a qualified business unit if it satisfies the principles of § 1.864–4(c)(5)(iii) (substituting “qualified business unit” for “U.S. office”).

(c) *Effectively connected income exception.* Income from a qualified fails charge that arises from a transaction that under the principles described in § 1.864–4(c) is effectively connected with a United States trade or business shall be sourced in the United States and the income from the qualified fails charge shall be treated as effectively connected to the conduct of a United States trade or business to the same extent as the transaction from which it arises.

(d) *Definitions.*—(1) *Qualified fails charge.* For purposes of this section, a qualified fails charge is a payment that

(i) Compensates a party to a transaction that provides for delivery of a Treasury security in exchange for the payment of cash (delivery-versus-payment settlement) for another party's failure to deliver the specified Treasury security on the settlement date specified in the relevant agreement; and

(ii) Is made pursuant to:

(A) A trading practice or similar guidance approved or adopted by either an agency of the United States government or the Treasury Market Practices Group, or

(B) Any trading practice, program, policy or procedure approved by the Commissioner in guidance published in the Internal Revenue Bulletin.

(2) *Treasury security.* For purposes of this section, a Treasury security is any bill, note, or other evidence of indebtedness issued by the United States Treasury Department.

(e) *Effective/applicability date.* This section applies to qualified fails charges paid or accrued on or after December 8, 2010.

(f) *Expiration date.* This section expires on December 9, 2013.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: December 2, 2010.

**Michael Mundaca,**

*Assistant Secretary of the Treasury.*

[FR Doc. 2010–30895 Filed 12–7–10; 8:45 am]

**BILLING CODE 4830–01–P**

## **DEPARTMENT OF JUSTICE**

### **Bureau of Prisons**

#### **28 CFR Part 541**

[Docket No. BOP–1118–F]

RIN 1120–AB18

#### **Inmate Discipline Program/Special Housing Units: Subpart Revision and Clarification**

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

**ACTION:** Final rule.

**SUMMARY:** In this document, the Bureau of Prisons (Bureau) amends 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 regulations text. We also make 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 Discipline Hearing Officers more flexibility in adapting the sanction to fit the seriousness of the violation.

**DATES:** This rule is effective on March 1, 2011.

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

#### **FOR FURTHER INFORMATION CONTACT:**

Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

**SUPPLEMENTARY INFORMATION:** The Bureau amends 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 regulations text. The proposed regulation contained a detailed section-by-section analysis (published on July

26, 2005, at 70 FR 43093). This regulation finalizes the proposed regulation with only minor changes. We received only four comments containing several similar issues. We address the issues raised by the commenters below.

*Comment: It is unlawful to require DNA testing while in Bureau custody.* One commenter, an inmate, stated that he has a Court order to submit to a non-invasive DNA test as directed by a probation officer upon release, and therefore believes it is unlawful to “require” him to submit to DNA testing while in the Bureau’s custody under prohibited act code 227 (Refusing to participate in a required physical test or examination unrelated to testing for drug abuse).

*Bureau Response:* The 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) is necessary to comply with Federal law. 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 qualifying Federal, military, or DC Code offenses. The FBI is required to analyze the samples and maintain the information in the Combined DNA Index System (CODIS). Although this commenter and other inmates may have court orders requiring such testing upon their release, these court orders are not inconsistent with the Bureau’s authority to conduct testing during incarceration. Because we are required to do this by statute, we need to have the specific capability to discipline inmates who jeopardize the Bureau’s compliance with the statute.

*Comment: Code 296 could result in lawsuits for infringement of the 6th Amendment right of access to the courts.* Another inmate complained that defective copying machines at her institution resulted in staff making copies of legal material for inmates on a staff copier only at times convenient for staff. The inmate then complained that she was therefore “forced” to send originals to a legal assistant to copy and file, violating code 296 (sending correspondence to an address with directions to have the correspondence sent to an unauthorized person). She concluded that code 296 should therefore exclude legal material.

*Bureau Response:* We do not intend to impede inmates’ Constitutional right to access courts. Code 296 is intended to sanction inmate behavior designed to circumvent inmate correspondence

regulations and policy. It will be used to deter correspondence with unauthorized individuals and to prohibit illegal activity. 28 CFR 540.19(d) also allows for inmates to send “legal correspondence” to legal assistants. Inmates must clearly mark the envelope as “legal mail.” If inmates encounter a problem with sending legal mail to their attorneys, they should file an administrative remedy complaint according to procedures in 28 CFR part 542.

*Comment: Distinction should be drawn between violation of 334 (Conducting a business) and management of pre-existing assets by a designated representative, which is allowed under the regulations.* Some commenters were concerned that staff may not understand this distinction, and wanted more details about this code.

*Bureau response:* In response to this commenter, we have amended this code to clarify that inmate activities related to conducting a business that are authorized by staff, such as those the commenter refers to, will not violate the prohibited act code. We revise this code to prohibit only “Conducting a business; conducting or directing an investment transaction without staff authorization.”

Also, in corresponding policy guidance to staff, the Bureau will ensure that staff are aware of the distinction between violation of this prohibited act code and management of pre-existing assets by a designated representative. Staff are currently aware that inmates are permitted limited opportunities to protect personal assets (*see* 28 CFR 540.14(d)(4)) or engage in an approved special visit for the purpose of addressing a business matter (*see* 28 CFR 540.45(a)).

*Comment: Codes 199, 299, 399 and 499 (“Conduct most like” codes) are too vague.*

*Bureau response:* The Bureau gives guidance to its Discipline Hearing Officers (DHOs) that they are to use this charge only when another charge of the same severity level is not applicable. These codes, along with codes 198, 298, 398 and 498 (Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another prohibited act in the same severity level) give the Bureau flexibility to address unique situations.

Currently, the DHO or Unit Disciplinary Committee (UDC) must indicate in its findings a specific finding of the severity level of the conduct and a comparison to the offense in that severity level which the DHO/UDC finds is most comparable. Therefore,

whenever these codes are used, reference will be made to another code which is most like the inmate’s present problematic conduct, making the DHO/UDC finding as specific as possible.

Also, courts have consistently upheld this type of prison regulation, particularly where the act committed is similar to a specifically defined prohibited act. *See Landman v. Royster*, 333 F.Supp. 621, 655–56 (E.D.Va.1971) (For prisoners, “the law requires less in the way of notice, and places a greater burden on the individual to make inquiry or ask permission before acting.”); *Meyers v. Allderedge*, 492 F.2d 296, 309 (3rd Cir. 1974) (“It is nearly impossible for prison authorities to anticipate, through a narrowly drawn regulation, every conceivable form of misconduct which threatens prison security.”); *Schenck v. Edwards*, 921 F. Supp 679 (E.D. Wash 1996) (“One cannot realistically expect prison officials to make and be bound by an exclusive list of every item constituting contraband. Prison officials must have some flexibility to address situations as they arise.”). *See also Coffman v. Trickey*, 884 F.2d 1057 (8th Cir. 1989), in which an inmate was charged with violating a prohibition on violating a published rule. The court found that because prison officials could not point to which rule the inmate actually violated, there was insufficient notice to the inmate of the prohibited act and therefore a violation of due process. As mentioned above, however, DHOs do not use prohibited act codes 199, 299, 399, or 499 without referring to another code which is most like the inmate’s present problematic conduct.

*Comment: It is unfair to impose monetary fines.* One commenter was concerned about what happens if a monetary fine is not paid. That commenter opined that monetary fines are discriminatory and arbitrary in that inmates don’t have the ability to pay and those that do have an advantage.

*Bureau response:* 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 after providing the inmate with due process procedures. DHOs will have the benefit of seeing the total circumstances and situation of the

inmate, and if, for example, the inmate is indigent, the DHO may choose instead to impose a different sanction. DHOs are trained to sanction effectively based on each inmate's circumstances and the punitive value of the sanction for that particular inmate.

If a monetary fine imposed as a sanction by a DHO is not paid, the DHO will have the authority to order that the amount of the fine be "frozen" in that inmate's deposit fund account so that the amount of the fine would not be available for spending by the inmate. Non-payment of a fine is not a prohibited act and will not be a factor for an inmate's placement or continuation in SHU.

*Comment: Forfeiture of good time is unfair.* One commenter states that, before 1996, there was no forfeiture of good time, or good time could be recouped. The commenter wrote: "Is it not discriminatory if those inmates who were sentenced before 1996 must now face additional punishments that were not part of the scheme when they were originally sentenced?"

*Bureau response:* The sanction of forfeiture of good conduct time appeared in the previous regulations. We do not intend to alter its application through this rulemaking. Under previous regulations, which will be incorporated into the Bureau's Inmate Discipline policy, an inmate sentenced under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act (committed his or her crime on or after November 1, 1987) may not receive statutory good time, but is eligible to receive 54 days good conduct time credit each year (18 U.S.C. 3624(b)). Once awarded, the credit is vested, and may not be disallowed.

However for crimes committed on or after September 13, 1994, and before April 26, 1996, credit toward an inmate's service of sentence will not vest unless the inmate has earned or is making satisfactory progress toward a high school diploma or an equivalent degree, or has been exempted from participation because of a learning disability or other status.

In imposing this sanction, the DHO will consider the severity of the prohibited act and the suggested disallowance guidelines in making a determination to disallow good conduct time in a non-discriminatory fashion. Disallowance of good conduct time is not an "additional punishment."

*Comment: The increased disciplinary segregation sanction time is unfair.* One commenter believed that increasing the amount of time an inmate can potentially be placed in disciplinary segregation status as a sanction has a

"deleterious effect on inmates and puts the inmate in jeopardy of permanent psychological damage." The commenter recommended that these increases be available only for "new criminal behavior and not for incident reports that are minor in nature."

*Bureau response:* 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 disciplinary segregation (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 DC 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 regulations, 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 regulation increases the maximum amount of the disciplinary segregation sanction available to DHOs. DHOs will only impose the maximum amount of disciplinary segregation in the most egregious circumstances for the most serious offenses.

Also, with regard to the commenter's concern about the psychological effects on inmates placed in SHU, we note that § 541.32 requires health services staff to visit inmates in SHU daily to provide necessary medical care. That regulation also indicates that, after every 30 calendar days of continuous placement

in SHU, mental health staff will examine the inmate, including a personal interview. Emergency medical and mental health care is always available.

*Comment: Special Housing Unit (SHU) conditions are substandard.* Two commenters complained about SHU conditions, and one opined that inmates in Administrative Detention (AD) status should have the same amenities as those in general population status. Specifically, the commenter believes that "AD food should be the same as that provided in general population," "AD inmates should be allowed the same amount of personal property as permitted for inmates in general population," and "AD inmates should not have telephone calls limited."

*Bureau response:* With regard to the commenters concerns about substandard conditions in Special Housing Units (SHU) for inmates in Administrative Detention or Disciplinary Segregation status, the Bureau's policies for conditions in SHU continue to exist and are applicable nationwide to ensure uniformity.

Also, § 541.31 provides that conditions in SHU will "meet or exceed standards for healthy and humane treatment," and subsection (d) provides that food will be nutritionally adequate. The staff-inmate ratio and other unique circumstances of each institution may render it impractical to have food provided to inmates in SHU be exactly the same as that provided in general population.

With regard to personal property, subsection (h) provides that personal property may be limited for reasons of fire safety or sanitation, but that inmates in AD status will ordinarily be allowed a reasonable amount of personal property and access to the commissary. Inmates in DS status have been placed there as a disciplinary sanction, will have their personal property impounded, with the exception of limited reading/writing materials, and religious articles, and their commissary privileges may be limited. These provisions regarding personal property are not substantively different from the previous regulation or its application.

Telephone calls will be allowed in accordance with 28 CFR part 540, subpart I. Inmates in AD status may have telephone calls limited by the staff-inmate ratio and unique circumstances of that institution. For example, staff may not be available at all times to provide an AD inmate with access to a telephone and may, therefore, have to schedule times to place calls. However, inmates in AD status will have telephone privileges consistent with the

available resources and security needs of the institution.

*Comment: Inmates should be allowed to attend the 3-day review of their placement in AD, and staff information relevant to the AD placement should be presented then.*

*Bureau response:* Section 541.26 states that a Segregation Review Officer (SRO) will review supporting records within three work days of an inmate's placement in administrative detention (AD) status. This is a paper-review by the SRO, not a hearing that can be attended by the inmate. The inmate has an opportunity to attend a formal review hearing both within seven days of placement in AD status and every thirty days thereafter.

*Comment: Table 4 (Sanctions) should not be eliminated because it provides directions for DHOs and without it, DHOs will not follow these processes.*

*Bureau response:* The table describing how DHOs are to impose sanctions will not be eliminated, but rather moved from Federal regulations language to Bureau policy implementing text. It will continue to exist as instruction to staff in the Bureau's Inmate Discipline policy. The Bureau's policies constitute mandatory staff procedures and guidance imposed by the Director. DHOs also receive extensive training and continual guidance regarding imposition of sanctions.

*Comment: Possession of cell phones should be under Code 297 instead of in the greatest severity category, unless the cell phone is used for criminal activity.*

*Bureau response:* The Bureau chooses to make possession of a cellular telephone or other electronic device a Greatest level prohibited act for the following reasons:

Rapid technological advances have resulted in smaller cell phones which are easier to introduce into Bureau facilities. They may be purchased with very little accountability at a very low cost by those seeking to introduce them into Bureau facilities. Also, new wireless communications devices are being introduced to the market with increasing frequency, and are likewise small and easy to introduce. This is causing an increase in the number of electronic devices being introduced into Bureau facilities.

When the Bureau first began investigating the potential problem in 2003, we discovered that during that calendar year, institutions reported confiscating 270 cellular telephones from inmates. At least two inmates escaped from minimum security facilities while in possession of cellular telephones. We therefore increased the severity level for possession of a cellular

telephone or other electronic device to reflect the potential seriousness of the conduct, which may result in aiding escape, continuing criminal activity, facilitating terrorism, and a host of other potential threats to the safety, security, and orderly operation of correctional facilities, and for the protection of the public.

*Other changes:* The Bureau also makes the following minor changes to the prohibited act codes to amend the parenthetical lists of examples of contraband often found in inmates' possession:

Code 331 prohibits possession, manufacture, introduction, or loss of a non-hazardous tool, equipment, supplies, or other non-hazardous contraband. Following this prohibited act code in the table in § 541.03, there is a parenthetical description listing examples of non-hazardous contraband. We amend this list to include smoking apparatus and tobacco in any form where prohibited, and unauthorized nutritional/dietary supplements.

28 CFR 551.162(b)(2) indicates that Wardens may, with the Regional Director's concurrence, prohibit inmate smoking other than for authorized religious activities. We therefore make this conforming amendment to clarify that smoking apparatus and tobacco are non-hazardous contraband and are prohibited in institutions where Wardens have prohibited inmate smoking.

We also include unauthorized nutritional/dietary supplements in the list of examples of non-hazardous contraband for the following reasons: The Bureau has been finding inmates in possession of various types of herbal/dietary supplement items. However, these items do not fall under the same Food and Drug Administration (FDA) rules and regulations, including quality assurance measures, as medications. This has resulted in negative health outcomes for those taking such herbal/dietary supplements. These supplements have not passed through the same rigorous trials as FDA-approved medication in regards to safety, efficacy, adverse reactions, good manufacturing practices, etc.

The FDA has made several announcements regarding the dangerous effects of dietary supplements. Some of these announcements, which can be found at <http://www.fda.gov>, include warnings against "nicotene water," kava associated with severe liver injury, PC/SPES and SPES (which contain the harmful compounds warfarin and alprazolam), LipoKietix (which causes serious liver injuries), nettle (which has high lead content), and many others. For

these reasons, the Bureau has determined that such items constitute non-hazardous contraband and are unauthorized for possession by inmates.

Code 108 prohibits possession, manufacture, introduction, or loss of a hazardous tool, and also gives a parenthetical list of examples of hazardous tools. The list begins with a description of hazardous tools: "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." We amend this list to include body armor, maps, handmade rope, or other escape paraphernalia. This adds more specificity to this prohibited act code and serves to put inmates on greater notice of items considered hazardous.

These are minor amendments to the parenthetical lists of examples of contraband often found in inmates' possession. The lists of examples are intended to be illustrative, not exhaustive.

#### **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 regulation is a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this regulation 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 regulation 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 regulation 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 regulation 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 regulation is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation 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 rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons, we 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.

■ 2. Revise Subpart A to Part 541 to read as follows:

**Subpart A—Inmate Discipline Program**

Sec.

541.1 Purpose.

541.2 Application.

541.3 Prohibited acts and available sanctions.

541.4 Loss of good conduct sentence credit as a mandatory sanction.

541.5 Discipline process.

541.6 Mentally ill inmates.

541.7 Unit Discipline Committee (UDC) review.

541.8 Discipline Hearing Officer (DHO) hearing.

**Subpart A—Inmate Discipline Program****§ 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.
197 .....	Use of the telephone for an illegal purpose or to commit or further a Greatest category prohibited act.

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

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).
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.
<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 (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 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 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 (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 which circumvent mail monitoring procedures (e.g., 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.

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

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).
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.
<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.
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 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, e.g., 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 (e.g., 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.

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

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.
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).
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.
<b>Low Severity Level Prohibited Acts</b>	
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.
<b>Available Sanctions for Low Severity Level Prohibited Acts</b>	
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 ( <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).
		3rd or more of-fense	Any available Moderate severity level sanction (300 series).
Moderate Severity (300 level) .....	12 months .....	2nd offense .....	1. Disciplinary segregation (up to 6 months).



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
High Severity (200 level) .....	18 months .....	3rd or more of- fense. 2nd offense .....	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). 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).
Greatest Severity (100 level) .....	24 months .....	3rd or more of- fense 2nd or more of- fense.	Any available Greatest severity level sanction (100 series). Disciplinary Segregation (up to 18 months).

**§ 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 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 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.

**§ 541.7 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 § 541.04, 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.

#### **§ 541.8 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.

■ 3. Revise subpart B to read as follows:

#### **Subpart B—Special Housing Units**

Sec.

541.20 Purpose.

541.21 Special Housing Units (SHUs).

541.22 Status when placed in the SHU.

541.23 Administrative detention status.

541.24 Disciplinary segregation status.

541.25 Notice received when placed in the SHU.

541.26 Review of placement in the SHU.

541.27 Protection case—placement in Administrative Detention Status.

541.28 Protection case-review of placement in the SHU.

541.29 Staff verification of need for protection.

541.30 Lack of verification of need for protection.

541.31 Conditions of confinement in the SHU.

541.32 Medical and mental health care in the SHU.

541.33 Release from the SHU.

#### **Subpart B—Special Housing Units**

##### **§ 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.

(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 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 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. 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.

(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.

(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.

[FR Doc. 2010-30525 Filed 12-7-10; 8:45 am]

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