

subsection (a) refers to giving BOP discretion as to offering the shock incarceration program.”

Several courts that have ruled on this issue since the discontinuance of the ICC program have found that 18 U.S.C. 4046 does *not* require the Bureau to operate a shock incarceration program—it merely *authorizes* the Bureau to grant certain benefits to those covered by the statute. *Palomino v. Federal Bureau of Prisons*, 408 F. Supp.2d 282 (S.D. Tex. 2005); *Roman v. LaManna*, C/A 8:05–2806–MBS, 2006 WL 2370319 (D.S.C. Aug. 15, 2006); *Serrato v. Clark*, C 05–03416 CRB, 2005 WL 3481442 (N.D. Cal. Dec. 19, 2005); *U.S. v. McLean*, CR 03–30066–AA, 2005 WL 2371990 (D. Ore. Sept. 27, 2005). Indeed, the Bureau has always had the authority to operate a program like the ICC, but prior to passage of 4046 could not have offered the sentence reduction incentive.

The commenters also remarked that Congress appropriated funds for the operation of the ICC program. However, regarding appropriations, Congress has *never* specifically appropriated funds for the ICC program, i.e., there was and is no line item appropriation. The ICC was merely considered as one of a variety of programs in the Bureau’s overall budget needs.

For the aforementioned reasons, we now finalize the removal of the regulations in Subpart D of 28 CFR part 524.

#### Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review”, section 1(b), Principles of Regulation. The Director, Bureau of Prisons has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

#### Executive Order 13132

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

#### Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies

that it will not have a significant economic impact upon a substantial number of small entities because: this rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau’s appropriated funds.

#### Unfunded Mandates Reform Act of 1995

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

#### Small Business Regulatory Enforcement Fairness Act of 1996

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

#### List of Subjects in 28 CFR Part 524

Prisoners.

**Harley G. Lappin,**

*Director, Bureau of Prisons.*

■ Under rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 524 as set forth below.

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

#### PART 524—CLASSIFICATION OF INMATES

■ 1. The authority citation for part 524 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3521–3528, 3621, 3622, 3624, 4001, 4042, 4046, 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; 21 U.S.C. 848; 28 U.S.C. 509, 510.

#### Subpart D—[Removed]

■ 2. Subpart D—Intensive Confinement Center Program, consisting of §§ 524.30

through 524.33, is removed and reserved.

[FR Doc. E8–15784 Filed 7–10–08; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Bureau of Prisons

#### 28 CFR Part 545

[BOP Docket No. BOP 1132–F]

RIN 1120–AB33

#### Inmate Work and Performance Pay Program: Reduction in Pay for Drug- and Alcohol-Related Disciplinary Offenses

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

**ACTION:** Final rule.

**SUMMARY:** In this document, the Bureau of Prisons (Bureau) amends regulations on inmate work and performance pay to require that inmates receiving performance pay who are found through the disciplinary process (found in 28 CFR part 541) to have committed a level 100 or 200 series drug-or alcohol-related prohibited act will automatically have their performance pay reduced to maintenance pay level and will be removed from any assigned work detail outside the secure perimeter of the institution.

**DATES:** This rule is effective August 11, 2008.

#### FOR FURTHER INFORMATION CONTACT:

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

**SUPPLEMENTARY INFORMATION:** In this document, the Bureau amends regulations on inmate work and performance pay to require that inmates receiving performance pay who are found through the disciplinary process (found in 28 CFR part 541) to have committed a level 100 or 200 series drug-or alcohol-related prohibited act will automatically have their performance pay reduced to maintenance pay level and will be removed from any assigned work detail outside the secure perimeter of the institution.

We published this as a proposed rule on November 2, 2006 (71 FR 64505). We received three comments, which we address below.

The first commenter questioned whether “imposing a financial penalty on the prisoner saddled with recognized disabilities like drug addiction and alcoholism \* \* \* will have the benefit of strengthening ongoing efforts to target

an [sic] eliminate the introduction of drugs or alcohol into Bureau institutions.”

This commenter is suggesting that the Bureau ease repercussions of committing a prohibited act related to drugs or alcohol. As the Bureau stated in its preamble to the proposed regulation, the additional financial penalty will serve to deter recurrence of drug- and alcohol-related prohibited acts. Increasing the potential repercussions of committing new prohibited acts will discourage inmates from committing them.

The first commenter also stated that “prisoners suffering from drug addiction and/or alcoholism, absent effective and continuing treatment availability, will find themselves forced into unauthorized and criminal behaviors in order to feed their untreated disabilities.” One of the Bureau’s many goals is to encourage a sense of accountability among inmates. This regulation will help to encourage inmate responsibility by actively deterring the commission of drug- and alcohol-related prohibited acts. Further, the Bureau offers several drug/alcohol treatment programs for qualifying inmates, which should also help to relieve “untreated disabilities” of such inmates.

The first commenter also suggested that, instead of the proposed rule, a “better course appears to be requiring prisoners found to have committed a 100 or 200 series drug or alcohol related prohibited act to attend and successfully complete a drug abuse education course provided by 28 CFR 550.54.” However, under current § 550.54(b), inmates enrolled in a drug abuse education course who fail to meet the requirements of the course may be held at the lowest pay grade. Further, inmates in a residential drug abuse treatment program may be expelled, immediately and without warning, if found by a DHO to have used or possessed alcohol or drugs, or committed a 100 level prohibited act, under current 28 CFR 550.56(d).

The second commenter asked whether the rule would apply retroactively. The answer to this question is that it will not apply retroactively to affect inmates who committed drug- and alcohol-related prohibited acts prior to the effective date of the regulation. After the effective date of the regulation, any inmate who commits a qualifying offense will have their pay reduced according to the regulation.

The second commenter also asked whether the reduction in pay consequence would be indefinite. Under the Bureau’s policy guidance to staff, which will be issued simultaneously

with this final rule, sanctions for performance pay recipients will remain in effect for one year from the date the inmate was found to have committed the prohibited act. We have altered the regulation to add this time limit.

The third commenter suggested that the rule apply not only to performance pay inmates but also to those inmates receiving UNICOR pay. Although the Bureau agrees with the commenter, this regulation relates only to inmates receiving performance pay, and as such, will continue to read as proposed. However, the Bureau is currently revising its policy guidance on UNICOR pay to clarify that UNICOR inmates found through the disciplinary process to have committed a level 100 or 200 series drug-or alcohol-related prohibited act will automatically have their pay reduced to a level 4 pay-grade, which is the equivalent of maintenance pay for performance pay inmates.

Further, the third commenter was concerned that the proposed rule did not “place a timetable on the reduction in the inmate’s pay grade \* \* \* [the reduction in pay] could be indefinite.” We agree and have added the following language: “This reduction to maintenance pay level will ordinarily remain in effect for one year, unless otherwise authorized by the Warden.”

For the foregoing reasons, we now finalize, with minor changes, the proposed rule published on November 2, 2006 (71 FR 64505).

#### **Executive Order 12866**

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute “significant regulatory actions” under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB.

The Bureau has assessed the costs and benefits of this rule as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this rule justify its costs. This rule will have the benefit of strengthening ongoing efforts to target and eliminate the use and/or introduction of drugs or alcohol into Bureau institutions. There will be no new costs associated with this rulemaking.

#### **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. Therefore, under Executive Order 13132, we determine

that this rule does not have sufficient Federalism implications to warrant the preparation of 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 and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau’s appropriated funds.

#### **Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

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

#### **List of Subjects in 28 CFR Part 545**

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 in 28 CFR 0.96, we amend 28 CFR part 545 as set forth below.

#### **SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**

#### **PART 545—WORK AND COMPENSATION**

■ 1. Amend the authority citation for 28 CFR part 545 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. In § 545.25, add paragraph (e) to read as follows:

**§ 545.25 Eligibility for performance pay.**

\* \* \* \* \*

(e) Inmates receiving performance pay who are found through the disciplinary process (part 541 of this subchapter) to have committed a level 100 or 200 series drug- or alcohol-related prohibited act will automatically have their performance pay reduced to maintenance pay level and will be removed from any assigned work detail outside the secure perimeter of the institution. This reduction to maintenance pay level, and removal from assigned work detail outside the secure perimeter of the institution, will ordinarily remain in effect for one year, unless otherwise authorized by the Warden.

[FR Doc. E8–15855 Filed 7–10–08; 8:45 am]

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## **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

### **29 CFR Part 1615**

RIN 3046–AA82

#### **Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Equal Employment Opportunity Commission and Accessibility of Commission Electronic and Information Technology**

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** The Equal Employment Opportunity Commission (EEOC or Commission) is publishing this final rule to amend its regulation to establish that all complaints under section 508 of the Rehabilitation Act of 1973, as amended (section 508), whether filed by members of the public or EEOC employees, will be processed under the procedures for section 504 public complaints. This final rule also updates the terminology used to describe how EEOC enforces section 504 of the Rehabilitation Act with respect to its own programs or activities. Finally, the final rule updates or eliminates certain sections of this regulation that are no longer relevant.

**DATES:** Effective August 11, 2008.

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

Carol R. Miaskoff or Kerry E. Leibig, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission at (202) 663–4638 (voice), (202) 663–7026 (TTY) (This is not a toll-free telephone number.) This document is also available in the following formats: Large print, Braille, audio tape, and electronic file on computer disk. Requests for this document in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY) or to the Publications Information Center at 1–800–669–3362.

**SUPPLEMENTARY INFORMATION:** Section 508 of the Rehabilitation Act provides that each federal agency must ensure that the electronic and information technology it develops, procures, maintains, or uses is accessible to individuals with disabilities who are Federal employees or applicants, or members of the public seeking information or services from the agency. Section 508 authorizes individuals to file administrative complaints and civil actions limited to the alleged failure to procure accessible technology. In a Notice of Proposed Rulemaking (NPRM), the EEOC proposed amendments to its regulations at 29 CFR part 1615 to address the requirements of section 508 and to update terminology and eliminate certain sections that are no longer relevant. *See* 73 Fed. Reg. 9065 (Feb. 19, 2008). The Commission received no public comments in response to the NPRM and therefore has made no changes to the final rule.

#### **Regulatory Procedures**

##### *Executive Order 12866*

In promulgating this rulemaking, the Commission has adhered to the regulatory philosophy and applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. As indicated in the Semi-Annual Regulatory Agenda for Fall 2007, this regulation is not a significant regulation within the meaning of the Executive Order.

##### *Regulatory Flexibility Act*

The Commission certifies under 5 U.S.C. Sec. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not have a significant economic impact on a substantial number of small entities, because it applies exclusively to a federal agency and individuals accessing the services of a Federal

agency. For this reason, a regulatory flexibility analysis is not required.

##### *Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the Unfunded Mandates Reform Act of 1995.

##### *Paperwork Reduction Act*

This regulation contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **List of Subjects in 29 CFR Part 1615**

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

■ For the reasons set forth in the preamble, the EEOC amends 29 CFR part 1615 as follows:

#### **PART 1615—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND IN ACCESSIBILITY OF COMMISSION ELECTRONIC AND INFORMATION TECHNOLOGY**

■ 1. Revise the authority citation for 29 CFR part 1615 to read as follows:

**Authority:** 29 U.S.C. 794 and 29 U.S.C. 794d(f)(2).

■ 2. Part 1615 is amended as follows:

■ A. By revising the heading to read as set forth above.

■ B. By removing the term “handicap” wherever it appears and adding, in its place, the term “disability”.

■ C. By removing the term “handicaps” wherever it appears and adding, in its place, the term “disabilities”.

■ D. By removing the term “nonhandicapped persons” wherever it appears and adding, in its place, the term “individuals without disabilities”.

■ E. By removing the term “Chairman” wherever it appears and adding, in its place, the term “Chair”.

■ F. By removing the term “EEO Director” wherever it appears and adding, in its place, the term “Director of OEO”.

■ 3. Section 1615.101 is amended by redesignating the current paragraph as paragraph (a) and adding a new paragraph (b) to read as follows: