

DEPARTMENT OF JUSTICE**Bureau of Prisons****28 CFR Part 545**

[BOP-1027-F]

RIN 1120-AA29

Inmate Work and Performance Pay Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations on inmate work and performance pay in conformance with revised provisions governing drug abuse treatment programs and pretrial inmates. In addition to making these conforming amendments, the Bureau is also revising various terms defined in the regulations, updating examples cited, and adding exception procedures pertinent to pay reduction and work evaluation. This amendment is intended to provide for the more efficient operation of Bureau institution work programs.

EFFECTIVE DATE: January 4, 1996.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Inmate Work and Performance Pay. A final rule on this subject was published in the Federal Register on October 1, 1984 (49 FR 38915) and was amended on May 21, 1991 (56 FR 23478) and July 10, 1991 (56 FR 31530). A proposed rule on the conforming provisions of the drug abuse treatment programs was published January 7, 1994 (59 FR 1240), and a final rule for those provisions was published October 21, 1994 (59 FR 53342). A final rule for the conforming amendments to the provisions on pretrial inmates was published November 22, 1994 (59 FR 60284).

The January 7, 1994 proposed rule on drug abuse treatment programs (28 CFR 550, subpart F) included conforming amendments to inmate work/program assignment (§ 545.23(a)) and to eligibility for performance pay (§ 545.25(d)). No comment was received on these provisions. These conforming amendments are being adopted as final with the following adjustments. Paragraph (a) of § 545.20 is revised in order to conform to recommended

Federal Register codification practice, to include reference to drug treatment programming, and to make consistent reference to education (rather than educational) program. In § 545.21, paragraph (f) is revised to include reference to drug treatment programming and education programs. As proposed, § 545.23(a) was to be amended by revising the last sentence to include reference to the drug treatment program. This reference is more accurately stated in the second sentence, and the Literacy Program is given as an example of program involvement mandated by either Bureau policy or statute. For ease of reference, the entire paragraph is revised. In § 545.24(d), the reference to "educational" has been revised as "education". The provision on eligibility for performance pay in proposed § 545.25(d) has been revised for the sake of simplification. Paragraph (a)(2) of § 545.25 has been revised to include the acronym for General Education Development in the reference to the Bureau's literacy program. There is no change in the intent of these two paragraphs. In § 545.26, paragraph (e)(1) is revised to include reference to education programs. Section 545.28 is being revised as an administrative measure to allow for the payment of the limited financial incentives authorized by the provisions of the drug abuse treatment programs (§ 550.57(a)(1)).

The November 22, 1994 final rule on pretrial inmates removed references to waiver of separation because the decision to maintain separation in instances where the design, structure, and operation of the institution may make separation not practicable is made by staff. Section 545.23(b) accordingly has been revised to remove similar reference.

Changes to the definitions in § 545.21 include the following. The definition of inmate in paragraph (a) has been removed, because this definition is covered more generally in 28 CFR 500.1. A new paragraph (a) has been added to define the phrase "physically and mentally able." Paragraph (c) has been revised to include Federal Prison Industries' acronym rather than its trade name. Paragraphs (d) through (g) have been redesignated as paragraphs (e) through (h) in order to add a new definition for "commissary assignment." This assignment, also referenced in newly revised § 545.23(a), operates under the Bureau's Trust Fund Division.

In § 545.26, the Bureau is adding a provision in paragraph (d) to make exception for a reduction in inmate pay based upon absence from a scheduled

assignment. This exception provides the Bureau the flexibility to continue payment in instances where the Assistant Director, Correctional Programs Division deems this advisable. In paragraph (e), the Bureau is adding a similar provision with respect to work evaluations. This exception may be invoked at independent camps in instances where, in order to conserve staff resources, staff may monitor an inmate's performance on a periodic basis rather than a monthly basis when the inmate has received exceptional evaluations over an extended period.

Because the additions to the proposed regulations either relieve a restriction on the inmate or are administrative in nature, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and a delay in the effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 545

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 545 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**PART 545—WORK AND COMPENSATION**

1. The authority citation for 28 CFR 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; 28 CFR 0.95-0.99.

2. In § 545.20, paragraph (a) is revised to read as follows:

§ 545.20 Purpose and scope.

(a) The Bureau of Prisons operates an inmate work program within its institutions. To the extent practicable, the work program:

- (1) Reduces inmate idleness, while allowing the inmate to improve and/or develop useful job skills, work habits, and experiences that will assist in post-release employment; and
- (2) Ensures that activities necessary to maintain the day-to-day operation of the institution are completed.

Sentenced inmates who are physically and mentally able to work are required to participate in the work program. When approved by the Warden or designee, drug treatment programming, education, or vocational training may be substituted for all or part of the work program.

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3. In § 545.21, paragraphs (a) and (c) are revised, paragraphs (d) through (g) are redesignated as paragraphs (e) through (h), and a new paragraph (d) is added and newly designated paragraph (f) is revised to read as follows:

§ 545.21 Definitions.

(a) *Physically and mentally able.* For purposes of this rule, this shall include inmates with disabilities who, with or without reasonable accommodation, can perform the essential function of the work assignment.

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(c) *Industry assignment.* A Federal Prison Industries (FPI) work assignment.

(d) *Commissary assignment.* A Trust Fund work assignment.

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(f) *Part-time work assignment.* A work assignment to which an inmate is assigned for only a portion of the scheduled work day. Part-time work assignments are ordinarily made in conjunction with drug treatment programming, education, and/or vocational training programs.

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4. In § 545.23, paragraphs (a) and (b) are revised to read as follows:

§ 545.23 Inmate Work/Program Assignment.

(a) Each sentenced inmate who is physically and mentally able is to be assigned to an institutional, industrial, or commissary work program. Exception shall be made to allow for inmate participation in an education, vocational, or drug abuse treatment program, on either a full or part-time basis, where this involvement is mandated by Bureau policy or statute (for example, the Literacy Program). Where such participation is not required by either policy or statute, exception may be made to allow an inmate to participate in an education, vocational, or drug abuse treatment program rather than work full-time upon the request of the inmate and approval of the Warden or designee.

(b) A pretrial inmate may not be required to work in any assignment or area other than housekeeping tasks in the inmate's own cell and in the community living area, unless the pretrial inmate has signed a waiver of his or her right not to work (see 28 CFR part 551, subpart J).

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§ 545.24 [Amended]

5. In § 545.24, paragraph (d) is amended by revising in the first sentence the word "educational" to read "education".

6. In § 545.25, paragraph (a)(2) is revised and a new paragraph (d) is added to read as follows:

§ 545.25 Eligibility for performance pay.

- (a) * * *
- (2) Literacy program (GED) participation;

* * * * *

(d) An inmate who refuses participation, withdraws, is expelled, or otherwise fails attendance or examination requirements of the drug abuse education course shall be held at the lowest pay grade (Grade 4).

7. In § 545.26, paragraphs (d), (e) introductory text, and (e)(1) are revised to read as follows:

§ 545.26 Performance pay provisions.

* * * * *

(d) An inmate is eligible to receive performance pay only for those hours during which the inmate is actually performing satisfactory work or actively participating in an education or

vocational training program. Absences from an inmate's scheduled assignment for such reasons as call-outs, visits, sick call, interviews, or making telephone calls shall be deducted from the monthly number of hours worked and will accordingly reduce the amount of pay received by the inmate. Any exception to such reduction in pay must be approved by the Assistant Director, Correctional Programs Division, Central Office.

(e) *Work Evaluation.* At the end of each month the work detail/program supervisor shall compute on an evaluation form the hours worked by the inmate and the pay to be awarded. The supervisor shall also rate the inmate's performance over the past month in each of several categories. For example, an inmate may be rated in such categories as quality of work, quantity of work, initiative, ability to learn, dependability, response to supervision and instruction, safety and care of equipment, ability to work with others, and overall job proficiency. Any exception to the work performance evaluation procedures cited above requires approval of the Assistant Director, Correctional Programs Division, Central Office.

(1) An inmate shall receive performance pay only for those hours during which the inmate is satisfactorily performing work or is actively participating in an education/vocational program.

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8. Section 545.28 is revised to read as follows:

§ 545.28 Achievement awards.

(a) With prior approval of the Education Department, each inmate who completes the Literacy program, Vocational Training, or related trades classroom work that is part of a certified apprenticeship program may be granted an achievement award from performance pay funds.

(b) With prior approval of the Psychology Services Department, each inmate who is making satisfactory progress or completes a residential drug treatment program may also be granted an achievement award from performance pay funds.