

DEPARTMENT OF JUSTICE**Bureau of Prisons****28 CFR Part 549****[BOP-1086-P]****RIN 1120-AA81****Over-The-Counter (OTC) Medications****AGENCY:** Bureau of Prisons, Justice.**ACTION:** Proposed rule.

SUMMARY: In this document the Bureau of Prisons is proposing to establish procedures governing inmate access to Over-The-Counter (OTC) medications. Selected OTC medications are currently available to the inmate population through commissary purchase. The Bureau will continue to dispense OTC medications at sick call to inmates in its medical referral facilities and to inmates in Special Housing Units. At all other Bureau institutions, the Bureau will continue to dispense OTC medications at sick call to inmates in the general population only if the inmate does not already have the OTC medication and health services staff determine the inmate has an immediate medical need which needs to be addressed before the inmate's regularly scheduled commissary visit or that the inmate is without funds. The intended effect of these procedures is to allocate medical resources in an efficient and cost effective manner and to continue to meet the medical needs of inmates.

DATES: Comments due by April 30, 1999.

ADDRESSES: Rules Unit, 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 proposing to adopt regulations on Over-The-Counter (OTC) medications (28 CFR part 549, subpart B).

Previously, OTC medications were not available for sale to the inmate at the institution's commissary. OTC medications instead were provided to inmates by Bureau of Prisons staff at sick call. Selected OTC medications, however, are now being made available for sale to the inmate at the institution commissary. Therefore, it is no longer necessary for inmates to visit sick call in order to obtain OTC medications for complaints related to cosmetic, and general hygiene issues. This practice conforms to community standards

where individuals are expected to meet their own cosmetic and general hygiene needs.

The Bureau will continue to provide OTC medications to inmates at sick call when the inmate does not already have the OTC medication and health services staff determine that the inmate has an immediate medical need which needs to be addressed before his or her regularly scheduled commissary visit or when the inmate is without funds.

The Bureau will also continue to provide OTC medications at sick call to inmates at its medical referral facilities such as the U.S. Medical Center for Federal Prisoners, Federal Medical Centers, psychiatric referral centers (currently FCI Butner) and to inmates in Special Housing Units. Health services staff are better able to monitor the intake of medications (both OTC and prescribed) of inmates at its medical and psychiatric referral centers if access to OTC medications is limited to sick call. Inmates in Special Housing Units do not have the same access to the institution's commissary as do inmates in the general population of the institution, but these inmates do have access to sick call.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

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, in accordance with Executive Order 12612, it is determined 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, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation 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.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic at the address listed above.

List of Subjects in 28 CFR Part 549

Prisoners.
Kathleen Hawk Sawyer,
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 549 in subchapter C of 28 CFR, chapter V is proposed to be amended as set forth below.

**SUBCHAPTER C—INSTITUTIONAL
MANAGEMENT****PART 549—MEDICAL SERVICES**

1. The authority citation for 28 CFR part 549 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4005, 4042, 4045, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4241–4247, 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. Subpart B, consisting of §§ 549.30 and 549.31 is added to read as follows:

**Subpart B—Over-The-Counter (OTC)
Medications**

Sec.

549.30 Purpose and scope.

549.31 Inmates without funds.

**Subpart B—Over-The-Counter (OTC)
Medications****§ 549.30 Purpose and scope.**

This subpart establishes procedures governing inmate access to Over-The-Counter (OTC) medications to be followed at all institutions except at the U.S. Medical Center for Federal Prisoners, Federal Medical Centers, and Bureau psychiatric referral centers, or for inmates in Administrative Detention or Special Housing Units. Inmates may purchase OTC medications which are available at the commissary. Inmates may also obtain OTC medications at sick call if the inmate does not already have the OTC medication and:

(a) Health services staff determine that the inmate has an immediate medical need which needs to be addressed before his or her regularly scheduled commissary visit; or

(b) The inmate is without funds.

§ 549.31 Inmates without funds.

The Warden shall establish procedures to provide up to two OTC medications per week for an inmate who is without funds. An inmate without funds is defined as an inmate who has not had a trust fund account balance of \$6.00 for the past 30 days. An inmate without funds may obtain additional OTC medications at sick call if health services staff determine that the inmate has an immediate medical need which needs to be addressed before the inmate is again able to apply for OTC medications under this section. To prevent abuses of this provision (e.g., inmate shows a pattern of depleting his or her commissary funds prior to requesting OTC medications), the Warden may impose restrictions on the provisions of this paragraph.

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