

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 523

[BOP-1032-I]

RIN 1120-AA62

Good Conduct Time

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons is issuing interim regulations for the awarding of good conduct time pursuant to the Prison Litigation Reform Act of 1995 (PLRA). Pursuant to the PLRA, in awarding good conduct time credit, the Bureau shall consider whether the inmate, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or equivalent degree. This interim rule provides that an inmate subject to the PLRA shall be awarded the full 54 days credit for good conduct time (prorated when the time served by the inmate for the sentence during the year is less than a full year) if the inmate has earned or is making satisfactory progress toward earning a General Educational Development (GED) credential. The interim rule further provides that an inmate subject to the PLRA shall be awarded 42 days credit for good conduct time per year (prorated when the time served by the inmate for the sentence during the year is less than a full year) if the inmate has not earned or is not making satisfactory progress toward earning a GED credential. The amount of good conduct time awarded is also subject to disciplinary disallowance.

DATES: Effective November 3, 1997; comments must be submitted by November 25, 1997.

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 adopting interim regulations for the awarding of good conduct time for certain inmates. The awarding and vesting of good conduct time at a rate of 54 days per year (prorated when the time served by the inmate for the sentence during the year is less than a full year) had been clearly stated by statute since the implementation of the Sentencing Reform Act of 1984. The actual

awarding of good conduct time occurs annually on the date marking the anniversary of the inmate's completion of one year in Federal custody. The awarding of good conduct time is also subject to disciplinary disallowance (see Tables 3 through 6 in 28 CFR 541.13).

Further statutory mandates on vesting good conduct time were added by the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) and by the PLRA. Under the Sentencing Reform Act of 1984, good conduct time vested annually. Section 20412 of VCCLEA required, among other things, that credit toward an inmate's service of sentence shall not be vested unless the inmate has earned or is making satisfactory progress toward a high school diploma or an equivalent degree. Section 809 of the PLRA requires, among other things, that credit toward an inmate's service of sentence shall vest on the date the inmate is released from custody, and that in awarding credit, the Bureau shall consider whether the prisoner, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or an equivalent degree. This interim regulation is being issued for the purpose of implementing the discretionary provision of the PLRA pertaining to the awarding of good conduct time.

Regulations for the Bureau's literacy program have been revised to include a definition of "satisfactory progress" (28 CFR 544.73(b)). The revised regulations are published elsewhere in today's **Federal Register**. Pursuant to that definition, an inmate shall be deemed to be making satisfactory progress toward earning a GED credential or high school diploma unless and until the inmate receives a progress assignment confirming that the inmate refuses to enroll in the literacy program, that the inmate has been found to have committed a prohibited act that occurred in a literacy program during the last 240 hours of the inmate's most recent enrollment in the literacy program, or that the inmate has withdrawn from the literacy program. An inmate who receives a progress rating that the inmate is not making satisfactory progress shall be deemed to be making satisfactory progress only after the inmate has received a new progress assignment that the inmate has been continuously enrolled in a literacy program for a minimum of 240 instructional hours. Any further withdrawal or finding that the inmate has committed a prohibited act that occurred in a literacy classroom during the last 240 instructional hours of the

literacy program shall result in a progress assignment indicating that the inmate is again not making satisfactory progress.

An inmate who is subject to the requirements of VCCLEA (i.e., an inmate who has been convicted of an offense committed on or after September 13, 1994 but before April 26, 1996) therefore may have his or her good conduct time vest if he or she possesses a high school diploma, a GED credential, or is making satisfactory progress toward attaining a GED. An inmate who is subject to the PLRA (i.e., an inmate who has been convicted of an offense committed on or after April 26, 1996) is awarded credit upon Bureau consideration whether the inmate has earned or is making satisfactory progress toward earning a high school diploma or an equivalent degree. By statute, good conduct time awarded to such inmate does not vest until the inmate is released from custody. The Bureau has determined (see new § 523.20) that when a PLRA inmate has not earned a high school diploma and is not making satisfactory progress toward earning a GED credential, the inmate shall be awarded 42 days of good conduct time rather than 54 days (prorated when the time served by the inmate during the year is less than a full year). The amount of good conduct time to be awarded is also subject to disciplinary disallowance.

The Bureau is publishing this regulation as an interim rule in order to solicit public comment. Members of the public may submit comments concerning this rule by writing to the previously cited address. Comments received before expiration of the deadline will be considered before the rule is finalized. Comments received after expiration of the deadline will be considered to the extent practicable.

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 pursuant to E.O. 12866. 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 (5 U.S.C. 601 *et seq.*), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because 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, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 523

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 523 in subchapter B of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER**PART 523—COMPUTATION OF SENTENCE**

1. The authority citation for 28 CFR part 523 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3568 (repealed November 1, 1987 as to offenses committed on or after that date), 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 4161–4166 (repealed October 12, 1984 as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. A new subpart C, consisting of § 523.20, is added to read as follows:

Subpart C—Good Conduct Time**§ 523.20 Good conduct time.**

Pursuant to 18 U.S.C. 3624(b), as in effect for offenses committed on or after November 1, 1987 but before April 26, 1996, an inmate earns 54 days credit toward service of sentence (good conduct time credit) for each year served. This amount is prorated when the time served by the inmate for the sentence during the year is less than a full year. The amount to be awarded is also subject to disciplinary disallowance (see Tables 3 through 6 in § 541.13 of this chapter). Pursuant to 18 U.S.C. 3624(b), as in effect for offenses committed on or after April 26, 1996, the Bureau shall consider whether the inmate has earned, or is making satisfactory progress (see § 544.73(b) of this chapter) toward earning a General Educational Development (GED) credential before awarding good conduct time credit.

(a) When considering good conduct time for an inmate serving a sentence for an offense committed on or after April 26, 1996, the Bureau shall award:

(1) 54 days credit for each year served (prorated when the time served by the inmate for the sentence during the year is less than a full year) if the inmate has earned or is making satisfactory progress toward earning a GED credential or high school diploma; or

(2) 42 days credit for each year served (prorated when the time served by the inmate for the sentence during the year is less than a full year) if the inmate has not earned or is not making satisfactory progress toward earning a GED credential or high school diploma.

(b) The amount of good conduct time awarded for the year is also subject to disciplinary disallowance (see Tables 3 through 6 in § 541.13 of this chapter).

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DEPARTMENT OF JUSTICE**Bureau of Prisons****28 CFR Part 541****[BOP–1040–F]****RIN 1120–AA34****Inmate Discipline and Good Conduct Time****AGENCY:** Bureau of Prisons, Justice.**ACTION:** Final rule.

SUMMARY: In this document, the Bureau of Prisons is implementing provisions of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) and the Prison Litigation Reform Act of 1995 (PLRA) which make the earning of good conduct time contingent upon exemplary compliance with institution regulations. The list of sanctions which may be imposed by the Discipline Hearing Officer in instances where an inmate subject to either of these two Acts has been determined to be not in compliance with institution regulations is accordingly being modified to achieve this purpose.

EFFECTIVE DATES: November 3, 1997.**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 (Bureau) is amending its regulations on inmate discipline (28 CFR part 541, subpart B). Section 20405 of the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 3624(b)) provides that a prisoner who is serving a term of imprisonment of more than one year for a crime of violence, other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence, beyond the time

served, of up to 54 days at the end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of the term, subject to the determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with such institutional disciplinary regulations as have been approved by the Attorney General and issued to the prisoner.

A proposed rule on this subject was published in the **Federal Register** on October 26, 1995. In that document the Bureau defined exemplary compliance with institutional disciplinary regulations in terms of the number of times an inmate was found to have committed a prohibited act. Accordingly, the Bureau proposed changes to 28 CFR 541.13(a) (1), (2), (3), and (4), (f), and 541.14(a). For ease of reference, Tables 3, 4 and 5 were revised in their entirety to incorporate changes to sanctions B and B.1. Under the proposed revision, when a VCCLEA inmate who has been rated as violent (i.e., an inmate who, as specified in the Violent Crime Control and Law Enforcement Act of 1994, committed a crime of violence on or after September 13, 1994) is found to have committed a greatest or high category offense during incarceration, the Discipline Hearing Officer (DHO) must, as a minimum, impose a sanction disallowing all Good Conduct Time (GCT) for the evaluation period. This means a loss of 54 days GCT. Sanctions to be imposed for such inmates found to have committed moderate or low category offenses during incarceration were also modified, though in neither case would all available GCT be necessarily disallowed for a single incident. An accumulation of prohibited act determinations, however, could result in such a loss.

The comment period for the proposed rule ended on December 26, 1995. The Bureau received one comment on the proposed rule. The commenter raised two objections: the proposed rule appeared to create inequities in inmate discipline sanctions based upon a difference of commitment date, and the proposed rule would greatly increase the workload of the Discipline Hearing Officer (DHO).

With respect to the apparent creation of inequities in inmate discipline sanctions based on commitment date, the Bureau notes that the statutory authority is explicit as to the consequences of less than exemplary behavior by VCCLEA inmates rated as violent. Since the statutory change potentially affects the loss of good conduct time, the changes can only be