

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Authority: 5 U.S.C. 301; 18 U.S.C. 3568 (repealed November 1, 1987 as to offenses committed on or after that date), 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 4161–4166 (repealed October 12, 1984 as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.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

[FR Doc. 97–25533 Filed 9–25–97; 8:45 am]
BILLING CODE 4410–05–P

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

applied to persons sentenced for an offense committed after the effective date of the Act. The statute has not been implemented retroactively. The distinction, then, is based both on date of the commitment offense and on the inmate's rating as a violent offender. What was at issue in the proposed rule is what constitutes exemplary compliance with institutional disciplinary regulations. The proposed rule procedurally defined this as the avoidance by the inmate of committing greatest or high category offenses. The proposed application of intermediate sanctions based on the commission of moderate or low category offenses by a VCCLEA inmate rated as violent fell within the upper limit of sanctions available for other inmates. The Bureau believes that the proposed application was supportive of the goal of maintaining exemplary compliance by VCCLEA inmates rated as violent. As noted below, however, the Bureau is making an adjustment in its determination of exemplary compliance in order to avoid disparity in the application of exemplary compliance for all inmates in accordance with the provisions of the Prison Litigation Reform Act of 1995 (PLRA).

With respect to a possible increase in the DHO's workload resulting from Unit Discipline Committee referrals of moderate and low category offenses, the Bureau believes that the DHO needs to be aware of the discipline record of VCCLEA inmates rated as violent and, if needed, that additional resources can be considered to address an excessive increase in the DHO's workload.

Section 809 of the PLRA amended 18 U.S.C. 3624 to require all inmates, not only those convicted of a crime of violence, to demonstrate exemplary compliance with institution disciplinary regulations in order to earn good conduct time. The Bureau believes that, having proposed an exemplary compliance standard for violent offenders, it may adopt the standard with modification both for VCCLEA violent offenders and for all inmates who are subject to the PLRA.

The Bureau is therefore modifying § 541.13(a) and 541.14(a) to cover PLRA inmates and revising the explanation of Sanction B.1 in Table 4 to specify that the DHO shall impose a specific minimum disallowance in cases involving a VCCLEA violent offender or a PLRA inmate. The practical result of this is to establish that either one or two 100 or 200 level offenses would result in a VCCLEA violent offender or PLRA inmate's losing all good conduct time for the year. The wording of Sanction B.1 need not change in Table 3. The

proposed revision to § 541.13(f) eligibility for restoration of forfeited good conduct time is not being finalized in this document. The Bureau intends to analyze the impact of the new sanctions on good conduct time before making a final determination. Sanction B in Table 3 and its explanation in Table 4 have been adjusted to note that a good conduct time sanction may not be suspended and that forfeited good conduct time will not be restored. The prohibition on suspension of good conduct time conforms to the treatment of disallowed good conduct time in Sanction B.1. In adopting the proposed rule as final, the Bureau is making two further editorial changes. Prohibited Act 109 (possession, introduction, or use of any narcotics, etc.) is being divided into three separate prohibited acts in order to simplify statistical reporting and analysis of such behavior. Prohibited Act 220 is also amended to exclude drill authorized and conducted by staff (for example, as may be given in an intensive confinement center program). New interim regulations for the intensive confinement center program were published in the **Federal Register** on April 26, 1996 (61 FR 18658). As noted above, the previously proposed revised sanctions are applicable to VCCLEA inmates rated as violent (i.e., inmates 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) and to PLRA inmates (inmates who committed offenses on or after April 26, 1996). Inmates who are eligible for good conduct time because they were sentenced under the provisions of the Sentencing Reform Act of 1984, but who were sentenced for a crime of violence committed before September 13, 1994 are not defined as "VCCLEA inmates rated as violent" or "PLRA inmates" and consequently are unaffected by the new sanctions for those inmates.

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 (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 541

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 541 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

1. The authority citation for 28 CFR part 541 continues 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; 28 CFR 0.95–0.99.

2. In § 541.13, paragraphs (a)(1) through (a)(4) are revised; in Table 3, under GREATEST CATEGORY, Sanction B is revised, the prohibited act language in column 2 for Code 109 is revised, and new Codes 111 through 113 are added in numerical order; in Table 3, under HIGH CATEGORY, Sanction B and the prohibited act for Code 220 are revised; in Table 3, under MODERATE CATEGORY, Sanction B is revised; in Table 4, Items 1.(b) and (b.1) are revised; in Table 5, item 2 under "Sanctions Permitted" for Low Moderate Sanctions, Moderate Sanctions, and High Sanctions is revised; and in Table 6, the column headings and the Note are revised to read as follows:

§ 541.13 Prohibited acts and disciplinary severity scale.

(a) * * *

(1) *Greatest category offenses.* The Discipline Hearing Officer (DHO) shall impose and execute one or more of sanctions A through E. Sanction B.1 must be imposed for a VCCLEA inmate 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) and for a PLRA inmate (i.e., an inmate who has been sentenced for an offense

committed on or after April 26, 1996). The DHO may impose and execute sanction F and/or G only in addition to execution of one or more of sanctions A through E. Except as noted in the sanction, the DHO may also suspend one or more additional sanctions A through G.

(2) *High category offenses.* The Discipline Hearing Officer shall impose and execute one or more of sanctions A through M, and, except as noted in the sanction, may also suspend one or more additional sanctions A through M. Sanction B.1 must be imposed for a VCCLEA inmate rated as violent and for a PLRA inmate. The Unit Discipline Committee shall impose and execute one or more of sanctions G through M, and may also suspend one or more additional sanctions G through M, except for a VCCLEA inmate rated as violent. All high category offense charges for a VCCLEA inmate rated as violent and for a PLRA inmate must be referred to the DHO.

(3) *Moderate category offenses.* The Discipline Hearing Officer shall impose at least one sanction A through N, but, except as noted in the sanction, may suspend any sanction or sanctions imposed. Sanction B.1 ordinarily must be imposed for a VCCLEA inmate rated as violent and for a PLRA inmate. Except for charges referred to the DHO, the Unit Discipline Committee shall impose at least one sanction G through N, but may suspend any sanction or sanctions imposed. The UDC ordinarily shall refer to the DHO a moderate category charge for a VCCLEA inmate rated as violent or for a PLRA inmate if the inmate had been found to have committed a moderate category offense during the inmate's current anniversary year (i.e., the twelve month period of time for which an inmate may be eligible to earn good conduct time). The UDC must thoroughly document in writing the reasons why the charge for such an inmate was not referred to the DHO.

(4) *Low moderate category offenses.* The Discipline Hearing Officer shall impose at least one sanction B.1, or E through P. The Discipline Hearing Officer may suspend any E through P sanction or sanctions imposed (a B.1 sanction may not be suspended). Except for charges referred to the DHO, the Unit Discipline Committee (UDC) shall impose at least one sanction G through P, but may suspend any sanction or sanctions imposed. The UDC ordinarily shall refer to the DHO a low moderate category charge for a VCCLEA inmate rated as violent or for a PLRA inmate if the inmate had been found to have committed two low moderate category offenses during the inmate's current anniversary year (i.e., the twelve month period of time for which an inmate may be eligible to earn good conduct time). The UDC must thoroughly document in writing the reasons why the charge for such an inmate was not referred to the DHO.

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TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE

Code	Prohibited acts	Sanctions
Greatest Category		
The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition.		
* * *		
		B. Forfeit 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).
* * *		
109	(Not to be used)	
* * *		
111	Introduction of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff	
112	Use of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff	
113	Possession of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff	
* * *		
High Category		
* * *		
		B. Forfeit 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).
* * *		
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 and conducted by staff)	

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—Continued

Code	Prohibited acts				Sanctions	
*	*	*	*	*	*	*
Moderate Category						
*	*	*	*	*	*	*
B. Forfeit 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).						
*	*	*	*	*	*	*

TABLE 4.—SANCTIONS

1. * * *

* * * * *

(b) *Forfeit earned statutory good time, non-vested good conduct time, and/or terminate or disallow extra good time.* The statutory good time available for forfeiture is limited to an amount computed by multiplying the number of months served at the time of the offense for which forfeiture action is taken, by the applicable monthly rate specified in 18 U.S.C. 4161 (less any previous forfeiture or withholding outstanding). The amount of good conduct time (GCT) available for forfeiture is limited to the total number of days in the "non-vested" status at the time of the misconduct (less any previous forfeiture). A forfeiture of good conduct time sanction may not be suspended. Disallowance of extra good time is limited to the extra good time for the calendar month in which the violation occurs. It may not be withheld or restored. The sanction of termination or disallowance of extra good time may not be suspended. Forfeited good conduct time will not be restored. Authority to restore forfeited statutory good time is delegated to the Warden. This decision may not be delegated lower than the Associate Warden level. Limitations on this sanction and eligibility for restoration are based on the severity scale. (See Table 6)

(b.1) *Disallowance of good conduct time.* I. An inmate sentenced under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act (includes the inmate who 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 prior to April 26, 1996, 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, or has been exempted from participation because of a learning disability. For crimes committed on or after April 26, 1996, credit toward an inmate's service of sentence shall vest on the date the inmate is released from custody. Once disallowed, the credit may not be restored, except by immediate review or appeal action as indicated below. Prior to this award being made, the credit may be disallowed for an inmate found to have committed a prohibited act. A sanction of disallowance of good conduct time may not be suspended. Only the DHO can take action to disallow good conduct time. The DHO shall consider the severity of the prohibited act and the suggested disallowance guidelines in making a determination to disallow good conduct time. A decision to go above the guideline range is warranted for a greatly aggravated offense or where there is a repetitive violation of the same prohibited act that occurs within a relatively short time frame (e.g., within 18 months for the same greatest severity prohibited act, within 12 months for the same high severity prohibited act, and within 6 months for the same moderate severity prohibited act). A decision to go below the guidelines is warranted for strong mitigating factors. Any decision outside the suggested disallowance guidelines is to be documented and justified in the DHO report.

II. VCCLEA inmates rated as violent and PLRA inmates will ordinarily be disallowed good conduct time for each prohibited act they are found to have committed at a DHO hearing, consistent with the following:

(1) Greatest category offenses: A minimum of 40 days (or, if less than 54 days are available for the prorated period, a minimum of 75% of available good conduct time) for each act committed;

(2) High category offenses: A minimum of 27 days (or, if less than 54 days are available for the prorated period, a minimum of 50% of available good conduct time) for each act committed;

(3) Moderate category offenses: A minimum of 13 days (or, if less than 54 days are available for the prorated period, a minimum of 25% of available good conduct time) for each act committed if the inmate has committed two or more moderate category offenses during the current anniversary period;

(4) Low moderate category offenses: A minimum of 6 days (or, if less than 54 days are available for the prorated period, a minimum of 12.5% of available good conduct time) for each act committed if the inmate has committed three or more low moderate category offenses during the current anniversary period.

However, the DHO may, after careful consideration of mitigating factors (seriousness of the offense, the inmate's past disciplinary record, the lack of available good conduct time, etc.) choose to impose a lesser sanction, or even disallow no GCT for moderate and low moderate prohibited acts by VCCLEA inmates rated as violent or by PLRA inmates. The DHO must thoroughly detail the rationale for choosing to disallow less than 13 days or 6 days respectively. This will be documented in Section VII of the DHO report. Disallowances of amounts greater than 13 days or 6 days respectively will occur with repetitive offenses consistent with the guidelines in this (b.1).

III. The decision of the DHO is final and is subject only to review by the Warden to ensure conformity with the provisions of the disciplinary policy and by inmate appeal through the administrative remedy program. The DHO is to ensure that the inmate is notified that any appeal of a disallowance of good conduct time must be made within the time frames established in the Bureau's rule on administrative remedy procedures.

IV. Except for VCCLEA inmates rated as violent or PLRA inmates, Sanction B.1 may be imposed on the Low Moderate category only where the inmate has committed the same low moderate prohibited act more than one time within a six-month period.

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TABLE 5.—SANCTIONS FOR REPETITION OF PROHIBITED ACTS WITHIN SAME CATEGORY

Category	Prior offense (same code) with- in time period	Frequency of repeated offense	Sanction permitted
			Low Moderate Sanctions, plus.
*	*	*	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).
			Moderate Sanctions (A, C, E–N), plus.
*	*	*	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).
			High Sanctions (A, C, E–M), plus.
*	*	*	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).
*	*	*	

TABLE 6.—SANCTIONS BY SEVERITY OF PROHIBITED ACT, WITH ELIGIBILITY FOR RESTORATION OF FORFEITED AND WITHHELD STATUTORY GOOD TIME

Severity of act	Sanctions	Max. amt. forf. GT	Max. amt W/hd SGT	Elig. restoration forf. SGT	Elig. restoration W/hd/SGT	Max. dis seg
*	*	*	*	*	*	*

Note: (1) In Table 6 headings, "GT" represents both good conduct and statutory good time and "SGT" represents statutory good time. Forfeited good conduct time is not eligible for restoration. Restoration of statutory good time will be approved at the time of initial eligibility only when the inmate has shown a period of time with improved good behavior. When the Warden or his delegated representative denies restoration of forfeited or withheld statutory good time, the unit team shall notify the inmate of the reasons for denial. The unit team shall establish a new eligibility date, not to exceed six months from the date of denial.

(2) An inmate with an approaching parole effective date, or an approaching mandatory release or expiration date who has forfeited good time may be placed in a Community Treatment Center only if that inmate is otherwise eligible under Bureau policy, and if there exists a legitimate documented need for such placement. The length of stay at the Community Treatment Center is to be held to the time necessary to establish residence and employment.

3. In § 541.14, paragraph (a) is amended by revising the last sentence to read as follows:

§ 541.14 Incident report and investigation.

(a) *Incident report.* * * * Only the DHO may make a final disposition on a prohibited act in the Greatest Severity Category or on a prohibited act in the High Category (when the High Category prohibited act has been committed by a VCCLEA inmate rated as violent or by a PLRA inmate).

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

[BOP-1036-I]

RIN 1120-AA33

Literacy Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons is revising its regulations on the literacy program on an interim basis in order to include a definition of "satisfactory progress". This definition is one determinant which is statutorily required for the awarding and/or vesting of good conduct time for certain inmates. In implementing this change, the Bureau has further revised its

regulations on the literacy program for the sake of clarification or simplification.

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 on its literacy program for inmates. A final rule on the literacy program was published in the **Federal Register** May 1, 1991 (56 FR 20089), and was corrected on March 17, 1992 (57 FR 9211).