

## DEPARTMENT OF JUSTICE

## Bureau of Prisons

## 28 CFR Part 545

[BOP-1078-F]

RIN 1120-AA74

## Inmate Work and Performance Pay Program: Work Evaluation

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 to allow for quarterly rather than monthly evaluations of inmates whose work performance is above average. This amendment is intended to streamline institution operations.

**EFFECTIVE DATE:** December 7, 1998.

**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 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 May 21, 1991 (56 FR 23478), July 10, 1991 (56 FR 31531), January 4, 1996 (61 FR 379).

Provisions for inmate work assignment evaluation are contained in § 545.26(e). These provisions are being revised to allow for quarterly work evaluations for inmates who receive above average ratings for their performance. Inmates who receive average or below average ratings will continue to receive monthly work evaluations.

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. After review of the law and regulations, the Director, Bureau of Prisons certifies 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.

Because this amendment merely streamlines institution management operations by foregoing unnecessary work evaluations, the Bureau finds good cause for exempting it from the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in 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**.

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

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

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

1. 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; 28 CFR 0.95-0.99.

2. In § 545.26, paragraph (e) is revised to read as follows:

**§ 545.26 Performance pay provisions.**

\* \* \* \* \*

(e) *Work evaluation.* (1) At the end of each month the work detail/program supervisor shall compute the hours worked by the inmate and the pay to be awarded for that month.

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

(3) The work detail/program supervisor shall rate the inmate's performance in each of several categories on a monthly basis when the inmate's work performance is average or below average or on a quarterly basis when the inmate's work performance is above average. 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 in this paragraph requires approval of the Assistant Director, Correctional Programs Division, Central Office. The work detail/program supervisor shall review the evaluation with the inmate. The supervisor shall request that the inmate sign the evaluation form. If the inmate refuses to sign the form, the supervisor shall note this refusal on the evaluation and, if known, the reasons for refusal.

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