



[4410-050-P]

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

[Docket No. BOP-1172-P]

RIN 1120-AB72

Inmate Discipline Program: New Prohibited Act Code for Pressuring Inmates for Legal Documents.

AGENCY: Bureau of Prisons, Department of Justice.

ACTION: Proposed Rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to add a new code to the list of prohibited act codes in the inmate discipline regulations which will clarify that the Bureau may discipline inmates for pressuring or otherwise intimidating other inmates into producing copies of their own legal documents, such as pre-sentence reports (PSRs), or statement of reasons (SORs).

DATES: Submit written comments on or before [Insert date 60 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Rules Unit, Office of General Counsel, Bureau of Prisons, phone (202) 353-8248.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at www.regulations.gov. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on www.regulations.gov.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the "For Further Information Contact" paragraph.

Proposed Rule:

In this document, the Bureau proposes to add a new code to Table 1 - Prohibited Acts and Available Sanctions in the inmate discipline regulations. See 28 CFR 541.3. The new code will clarify that the Bureau may discipline inmates for pressuring or otherwise intimidating other inmates into producing copies of their own legal documents, such as pre-sentence reports (PSRs), statement of reasons (SORs), or other such documents. New code 231 will put inmates on notice that they may be disciplined for "[r]equesting, demanding, pressuring, or otherwise intentionally creating a situation which causes an inmate to produce or display his/her own court documents for any purpose to another inmate."

The Bureau has found that inmates, or inmate groups, frequently pressure other inmates for copies of their PSRs,

SORs, or other similar sentencing documents from criminal judgments, to learn if they are informants, gang members, have financial resources, to find others involved in offenses, to prove affiliations, etc. Some inmates who produced, or refused to produce, the documents were threatened, assaulted, and/or sought protective custody, all of which jeopardized the Bureau's ability to safely manage its institutions.

The Bureau holds inmates accountable for threatening and coercive behavior under existing provisions of the disciplinary code. This provision, however, will clarify that this specific behavior may result in sanctions. The defense bar, federal sentencing courts and the Bureau identified this issue as one of concern that requires heightened disciplinary attention. We therefore propose to add the aforementioned code provision to underscore the severity of the conduct described.

REGULATORY ANALYSES

Executive Orders 12866, 13563, and 13771.

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

the Bureau's appropriated funds. It takes an average of 7.5 hours of staff time to process an incident report. One of the expected outcomes of this clarifying regulation is that inmates may be deterred from engaging in the prohibited behavior because violations are better defined. This expected outcome would save staff resources required to process incident reports. At this time, however, the Bureau cannot estimate precisely how many incidents will be avoided or the monetary value of the resulting cost/resource savings. Further, the Bureau would expect any anticipated savings generated by this rule to have minimal effect on the economy.

Executive Order 13132.

This regulation will not have substantial direct effect 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. Under Executive Order 13132, we determine that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act.

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and certifies that it will not have a significant economic impact

upon a substantial number of small entities. This regulation 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 regulation 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 are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act.

This regulation is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. This regulation 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.

List of Subjects in 28 CFR Part 541:

Prisoners.

Kathleen Hawk Sawyer
Director, Federal Bureau of Prisons

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons, we propose to amend 28 CFR part 541 as follows.

SUBCHAPTER C – INSTITUTIONAL MANAGEMENT

PART 541 – INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

1. The authority citation for 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.

SUBPART A – GENERAL

2. Amend § 541.3 by adding an entry 231 under "High Severity Level Prohibited Acts" in Table 1 - Prohibited Acts and Available Sanctions to read as follows:

§ 541.3 Prohibited acts and available sanctions

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Table 1 - Prohibited Acts and Available Sanctions

* * * * *	
High Severity Level Prohibited Acts	
* * * * *	
231	Requesting, demanding, pressuring, or otherwise intentionally creating a situation, which causes an inmate to produce or display his/her own court documents for any purpose to another inmate.
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