

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 550

[BOP-1072-F]

RIN 1120-AA68

Urine Surveillance

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is revising its regulations on the use of urine surveillance to detect and deter illegal drug use in order to reorganize the provisions and to allow for the use of discretion by staff in filing an incident report in instances when the inmate is unwilling to provide a specimen. This revision is intended to provide for the continued efficient operation of the institution.

EFFECTIVE DATE: August 26, 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 amending its regulations on urine surveillance. A final rule on this subject was published in the *Federal Register* on October 17, 1988 (53 FR 40687).

Current provisions on the use of urine surveillance to detect and deter illegal drug use by inmates are contained in § 550.30 (subpart D). The Bureau is reorganizing these regulations in order to separate procedural provisions from the statement of the regulation's purpose and scope. The title of the subpart has been shortened. In addition, the revised regulations (see new § 550.31(a)) allow for the use of staff discretion in filing incident reports in instances where the inmate is unwilling to provide a specimen within two hours of a request for the specimen. This provision now specifies that staff ordinarily shall file an incident report. This change is intended to accommodate unusual circumstances which could result in the inmate's being unable to produce a specimen (for example, the inmate has a documented

medical or psychological problem, is dehydrated, etc.).

Because this amendment is either editorial in nature or provides relief with respect to the discretionary filing of an incident report in certain cases, the Bureau finds good cause for exempting 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*.

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 550

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

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**PART 550—DRUG PROGRAMS**

1. The authority citation for 28 CFR part 550 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), 4251-4255, 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. Subpart D is revised to read as follows:

Subpart D—Urine Surveillance

Sec.

550.30 Purpose and scope.

550.31 Procedures.

Subpart D—Urine Surveillance**§ 550.30 Purpose and scope.**

The Warden shall establish programs of urine testing for drug use, to monitor specific groups or individual inmates who are considered as high risk for drug use, such as those involved in community activities, those with a history of drug use, and those inmates specifically suspected of drug use. Testing shall be performed with frequency determined by the Warden on at least 50 percent of those inmates who are involved in community activities. In addition, staff shall randomly sample each institution's inmate population during each month to test for drug use.

§ 550.31 Procedures.

(a) Staff of the same sex as the inmate tested shall directly supervise the giving of the urine sample. If an inmate is unwilling to provide a urine sample within two hours of a request for it, staff ordinarily shall file an incident report. No waiting period or extra time need be allowed for an inmate who directly and specifically refuses to provide a urine sample. To eliminate the possibility of diluted or adulterated samples, staff shall keep the inmate under direct visual supervision during this two-hour period, or until a complete sample is furnished. To assist the inmate in giving the sample, staff shall offer the inmate eight ounces of water at the beginning of the two-hour time period. An inmate is presumed to be unwilling if the inmate fails to provide a urine sample within the allotted time period. An inmate may rebut this presumption during the disciplinary process.

(b) Institution staff shall determine whether a justifiable reason exists, (e.g., use of prescribed medication) for any positive urine test result. If the inmate's urine test shows a positive test result for the presence of drugs which cannot be justified, staff shall file an incident report.

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