

11B(SF), or BE-11C, as applicable, for each nonexempt foreign affiliate.

(ii) Form BE-11B(LF) or (SF) (Report for Majority-owned Foreign Affiliate).

(A) A BE-11B(LF) (Long Form) is required to be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than \$100 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(B) A BE-11B(SF) (Short Form) is required to be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$30 million (positive or negative), but for which no one of these items was greater than \$100 million (positive or negative), at the end of, or for, the affiliate's fiscal year.

(iii) Form BE-11C (Report for Minority-owned Foreign Affiliate) must be filed for each minority-owned nonbank foreign affiliate that is owned at least 20 percent, but not more than 50 percent, directly and/or indirectly, by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$30 million (positive or negative) at the end of, or for, the affiliate's fiscal year. In addition, for the report covering fiscal year 2002 only, a Form BE-11C must be filed for each minority-owned nonbank foreign affiliate that is owned, directly or indirectly, at least 10 percent by one U.S. Reporter, but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$100 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(iv) \* \* \*

(A) None of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds \$30 million (positive or negative).

(B) For fiscal year 2002 only, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined and none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds \$100 million (positive or negative).

(C) For fiscal years other than 2002, it is less than 20 percent owned, directly

or indirectly, by all U.S. Reporters of the affiliate combined.

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[FR Doc. 00-24215 Filed 9-20-00; 8:45 am]

BILLING CODE 3510-06-M

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

#### 28 CFR Part 550

[BOP-1099-P]

RIN 1120-AA95

#### Inmate Drug Testing Programs

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Bureau of Prisons is proposing to revise and consolidate its regulations on inmate alcohol testing and urine surveillance. This revision is intended to eliminate unnecessary regulations and to provide for greater flexibility in the use of drug testing technology.

**DATES:** Comments due by November 20, 2000.

**ADDRESSES:** Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is proposing to consolidate its regulations on alcohol testing (28 CFR part 550, subpart A) and urine surveillance (28 CFR part 550, subpart D). Current regulations on alcohol testing were published in the *Federal Register* on May 20, 1980 (45 FR 33940); current regulations on urine surveillance were published in the *Federal Register* on August 26, 1997 (62 FR 45292).

The existence of separate regulations governing alcohol testing and urinalysis testing reflects, in part, the different test methods traditionally available for detecting alcohol and other drug usage. While breathalyzer devices were commonly used in alcohol testing, urinalysis was the preferred method for detecting other drug usage. Advances in drug testing technology have increased the number of test methods suitable for use. The Bureau's regulations on urine surveillance need to be adjusted accordingly.

The Bureau is therefore revising its regulations on alcohol testing and urine surveillance as one consolidated

regulation on drug testing programs. Consolidating these regulations is appropriate not only for the sake of eliminating unnecessary regulations but also for the sake of consistency with the treatment of alcohol abuse in the Bureau's regulations on drug abuse treatment programs (28 CFR part 550, subpart F).

Rather than specify the particular testing methods to be used, the revised regulations state that the Warden is to be responsible for selecting the method or methods of drug testing from the list of approved drug test methods compiled by the Bureau's Central Office. Having a compiled list of approved drug test methods provides for flexibility in the choice of methods. Documentation as to the validity of the tests and instructions for their use are to be maintained by the Bureau's Central Office as a matter of internal administrative management.

The current regulations defining refusal to participate are keyed solely to urinalysis procedures and are unnecessarily prescriptive, citing two hours as to the length of time given to produce the urine sample or specifying that staff shall offer the inmate eight ounces of water at the start of the two-hour period.

These provisions are revised to specify that staff supervising the drug test are to be the same gender as the inmate being tested if supervising the drug test involves an observation of intimate body parts or bodily functions (for example, the production of a urine sample). Inmates will be subject to disciplinary action in accordance with the provisions governing inmate discipline (28 CFR part 541, subpart B) if they refuse to participate or test positive for prohibited drug use. Refusal to participate can be demonstrated verbally or by actions. For example, if an inmate states that he or she will not take the test, staff may charge the inmate with Prohibited Act Code 110, refusing to provide a urine sample or to take part in other drug-abuse testing. Examples of an inmate refusing to participate by action include an inmate who tampers with a drug test or who fails to provide a urine sample despite being given a reasonable opportunity to do so. The Bureau's internal guidance on defining "reasonable opportunity" retains instructions formerly cited in the regulations as to the availability of water (at least eight ounces) and the length of time (at least two hours) given to produce a urine sample. Staff are to document the circumstances pertaining to the inmate's refusal to participate.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to

the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

#### Executive Order 12866

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.

#### Executive Order 12612

This regulation will not have substantial direct effects 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. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: 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, and its economic impact is limited to the Bureau's appropriated funds.

#### Unfunded Mandates Reform Act of 1995

This rule 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 were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule 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.

#### Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Sarah Qureshi at the address listed above.

#### List of Subjects in 28 CFR Part 550

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(o), we propose to amend part 550 in subchapter C of 28 CFR, chapter V 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. 3521–3528, 3621, 3622, 3624, 4001, 4042, 4046, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; Title V, Pub. L. 91–452, 84 Stat. 933 (18 U.S.C. Chapter 223); 28 CFR 0.95–0.99.

#### Subpart B—[Removed and Reserved]

2. Subpart B, consisting of § 550.10, is removed and reserved.

3. Subpart D is revised to read as follows:

#### Subpart D—Inmate Drug Testing Programs

Sec.

550.30 Purpose and scope.

550.31 Procedures.

#### Subpart D—Inmate Drug Testing Programs

##### § 550.30 Purpose and scope.

The Bureau of Prisons maintains a comprehensive surveillance program to

detect the use of drugs, including alcohol, by inmates. This surveillance program includes random sample monitoring, testing of individual inmates suspected of using drugs, and testing of individual inmates or groups of inmates who are considered to be at risk for using drugs.

##### § 550.31 Procedures.

(a) *Test methods.* The Warden is responsible for selecting the method or methods of drug testing from the list of approved drug test methods compiled by the Bureau's Central Office.

(b) *Test supervision.* Staff are responsible for directly supervising the drug test. If supervision of the drug test involves observation of intimate body parts or bodily functions (for example, the production of a urine sample), staff supervising the test must be the same gender as the inmate being tested.

(c) *Refusal to participate.* An inmate who refuses to participate in a drug test is subject to disciplinary action in accordance with 28 CFR part 541, subpart B. Refusal to participate can be demonstrated verbally or by actions. For example, an inmate who states that he or she will not take the test is refusing to participate. Examples of an inmate refusing to participate by actions include an inmate who tampers with his or her drug test or an inmate who fails to provide a urine sample despite being given a reasonable opportunity to do so. Staff are to document the circumstances pertaining to the inmate's refusal to participate.

(d) *Test results.* An inmate testing positive for prohibited drug use is subject to disciplinary action in accordance with 28 CFR part 541, subpart B.

[FR Doc. 00–24261 Filed 9–20–00; 8:45 am]

BILLING CODE 4410–05–P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[UT–001–0033; FRL–6873–9]

#### Clean Air Act Promulgation of Extension of Attainment Dates for PM<sub>10</sub> Nonattainment Areas; Utah

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to grant a one-year extension of the attainment date for the Salt Lake County, Utah nonattainment area for particulate matter with an aerodynamic diameter