

Although staff determine what behavior illustrates the inmate's level of responsibility, postsecondary education programs are not excluded. Under current Bureau policy, staff may use postsecondary education programs as a sign of positive adjustment by an inmate, as the commenter suggests. Because our current policy already allows for the commenter's suggestion, and because this is a matter of internal agency administration, we do not add further language to this final rule on this subject.

#### Second Public Comment

The second commenter suggested that we should include language in the rule "restricting refusal of postsecondary courses based solely on the information contained within the course (syllabus or informational) text." The commenter felt that "refusal should be limited to courses that pose a tangible threat, such as contact/handling of chemicals, unauthorized objects, or the required construction of unauthorized \* \* \* objects. Except in extreme circumstances, a decision to refuse a postsecondary course should not be made based solely on the knowledge offered by a particular text."

Because of the many different security levels and individual characteristics of our institutions, we afford our Wardens discretion in determining where possible security risks might arise. The Warden delegates this responsibility to the postsecondary education coordinator, who, under § 544.21(b) of these regulations, "determines that the course is appropriate in light of the institution's need for discipline, security, and good order."

If we do what the commenter suggests by articulating a uniform set of factors for Wardens to consider when determining whether or not to allow an inmate to take a particular course, we remove the Warden's discretion.

Also, because our institutions are varied and have individual characteristics, a uniform set of guidelines would curtail a Warden's flexibility in dealing with a particular institution's unique situation or security issue.

In addition, how a Warden makes the decision to allow or deny a particular course is an internal, agency administrative matter. For these reasons, we do not add further language to this final rule on this subject.

#### Executive Order 12866

The Director determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, and therefore it was not

reviewed by the Office of Management and Budget.

#### Executive Order 13132

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. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare 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. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about 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 cause State, local and tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under 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.

#### List of Subjects in 28 CFR Part 544

Prisoners.

**Harley G. Lappin,**

*Director, Bureau of Prisons.*

■ Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 544 as follows.

## SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

### PART 544—EDUCATION

■ 1. Revise the authority citation for 28 CFR part 544 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), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. Revise Subpart C as follows:

#### Subpart C—Postsecondary Education Programs for Inmates

Sec.

544.20 Purpose and scope.

544.21 Procedures.

#### Subpart C—Postsecondary Education Programs for Inmates

##### § 544.20 Purpose and scope.

The Bureau of Prisons offers inmates the opportunity under its postsecondary education program to participate in postsecondary education courses (courses for college credit other than those courses which pertain to occupational education programs) which have been determined to be appropriate in light of the institution's need for discipline, security, and good order. Participation in postsecondary education courses which are part of occupational education programs is governed by the provisions of the Bureau's occupational education program (see subpart F of this part).

##### § 544.21 Procedures.

(a) The Warden or designee must appoint a postsecondary education coordinator (ordinarily an education staff member) for the institution. The postsecondary education coordinator is responsible for coordinating the institution's postsecondary education program.

(b) An inmate who wishes to participate in a postsecondary education course must apply through the postsecondary education coordinator. If the postsecondary education coordinator determines that the course is appropriate in light of the institution's need for discipline, security, and good order, the inmate may enroll provided that:

(1) The inmate meets eligibility requirements for the course which have been set by the course provider,

(2) The inmate is responsible for payment of any tuition either through personal funds, community resources, or scholarships available to the inmate, and