

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Revise § 522.2121 to read as follows:

§ 522.2121 Spectinomycin sulfate.

(a) *Specifications.* Each milliliter of solution contains spectinomycin sulfate tetrahydrate equivalent to 100 milligrams (mg) spectinomycin.

(b) *Sponsor.* See No. 000009 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.600 of this chapter.

(d) *Conditions of use in cattle—(1) Amount.* 10 to 15 mg per kilogram of body weight at 24-hour intervals for 3 to 5 consecutive days.

(2) *Indications for use.* For the treatment of bovine respiratory disease (pneumonia) associated with *Mannheimia haemolytica*, *Pasteurella multocida*, and *Histophilus somni*.

(3) *Limitations.* Do not slaughter within 11 days of last treatment. Do not use in female dairy cattle 20 months of age or older. Use in this class of cattle may cause residues in milk. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: May 24, 2007.

Bernadette Dunham,
Deputy Director, Center for Veterinary Medicine.

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DEPARTMENT OF JUSTICE**Bureau of Prisons****28 CFR Part 511**

[BOP-1128]

RIN 1120-AB28

Searching and Detaining or Arresting Non-Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) finalizes regulations on searching and detaining or arresting non-inmates. This revision reorganizes current regulations and makes changes that subject non-inmates to pat searches, either as random searches or based upon reasonable suspicion, as a condition of entry to a Bureau facility.

DATES: This rule is effective July 6, 2007.

FOR FURTHER INFORMATION CONTACT:

Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

SUPPLEMENTARY INFORMATION: In this document, the Bureau finalizes regulations on searching and detaining or arresting non-inmates. A proposed rule on this subject was published in the **Federal Register** on January 31, 2006 (71 FR 5026). We received four comments during the comment period. One was supportive of the rule. We respond to issues raised by the other three commenters below.

Comment: Bureau staff should receive equivalent testing/scanning as the regulation requires for visitors. Two commenters expressed the opinion that Bureau staff should be subject to the same potential searches required for others seeking to enter Bureau facilities.

In fact, Bureau employees are subject to search using the same search devices, methods, and technology employed to search other non-inmates seeking to enter Bureau facilities. Current Bureau policy regarding searching non-inmates states that, in accord with Bureau standards of employee conduct, the Bureau retains the right to conduct searches of employees when such a search is believed necessary to ensure institution security and good order.

Also, at the beginning of their employment, every Bureau employee receives, and signs for, a copy of the Bureau's Program Statement on Standards of Employee Conduct and Responsibility. This policy, along with signs posted at the entrances to each Bureau facility, notifies employees that they may be subject to any of the types of searches described above.

Further, policy states that an employee's refusal to undergo a search (including test) procedure is a basis for disciplinary action, including removal. The range of disciplinary actions that might be taken against an employee determined to be using illegal drugs, or introducing drugs or other forms of contraband, includes dismissal and criminal prosecution.

Comment: There are problems with the Bureau's use of ion spectrometers to perform searches. Two commenters raised issues surrounding the Bureau's use of ion spectrometers. Essentially, both commenters raised issues regarding the accuracy of such devices with regard to detecting illegal substances.

Bureau's response: At the outset, we note that the use of an ion spectrometry device is not the sole method of searching non-inmates, and may not be applied to search all non-inmates entering Bureau facilities. As the regulation explains, many types of searches may be conducted, including electronic searches, visual searches, pat searches, and urine surveillance testing, all with the primary goal of ensuring the safety, security and good order of Bureau facilities by reducing the introduction of contraband.

Ion spectrometry technology is designed to detect the presence of microscopic traces of illegal drugs on non-inmates and their clothing and belongings. Beginning in 1997, the Bureau conducted extensive testing of ion spectrometry technology to scan non-inmates for drugs as they enter Bureau facilities. Based on the results of this program, the Bureau concluded that using ion spectrometry devices contributed to reducing the amount of contraband on Bureau grounds.

Ion spectrometry technology is grounded in the well-established scientific principles of mass spectrometry and gas chromatography. Ion spectrometry devices are a minimally invasive method for screening people, packages, and cargo for traces of illegal substances. Although capable of identifying trace illegal substances within approximately the 1–5 nanogram range (one nanogram equals one billionth of a gram), the Bureau's machines are calibrated to register positive readings only at levels greater than those which may be casually encountered, for example by handling contaminated currency, using a public telephone, or shaking hands. The manufacturer of the Bureau's ion spectrometry devices claims a less than 1% rate of false positive results.

We have found that delivery of illicit substances while visiting is a common method for such substances to be introduced into institutions. Such methods include non-inmates swallowing small balloons full of illicit substances before entering the facility, then excreting and delivering the contents once inside. When done by this method, the ion spectrometry device may indicate handling of the illicit substance, while a further visual search of the individual would fail to disclose

its presence. Even if not directly transferred to the inmate while visiting, illicit substances can be secreted within the institution for later retrieval by inmates or others.

With regard to non-inmates who test positive for the presence of illegal substances and are denied admission into a Bureau facility, under current policy on the ion spectrometry testing program, staff are required to give the non-inmate a written notice describing the reasons for denial of admission and the appeal process. All non-inmates may appeal denial of admission using the process set forth in the notice.

Comment: Searches/random searches are intrusive and unfair. Two commenters expressed similar sentiments regarding the general concept of searching non-inmates wishing to enter Bureau facilities. One commenter stated that searches were unfair, and therefore discriminatory against non-inmates. The other commenter indicated that random searches were intrusive for non-inmates, and expressed particular concern regarding children.

Bureau's response: First, we note that both commenters referred to random searches, and not searches based upon reasonable suspicion. Section 511.15(a)(1) requires that random searches be impartial and not discriminate among non-inmates on the basis of age, race, religion, national origin, or sex. Further, Bureau staff are held to the highest standards of professionalism and discretion when conducting searches. With regard to the commenter's concern regarding children, staff would exercise caution and compassion if it becomes necessary to search a child, to ensure that none of the child's rights are violated.

However, instituting procedures requiring searches of non-inmates seeking to enter Bureau facilities is a necessity, originating from the need to prevent the introduction of contraband. The possibility of being searched (and the obvious notices so stating) acts as a minimally invasive deterrent to non-inmates seeking to introduce contraband, without unnecessarily or extremely burdening staff resources.

Non-inmates are a significant source of contraband introduction into Bureau facilities. 18 U.S.C. 1791 prohibits providing an inmate a prohibited object in violation of a statute or rule issued under statute. Although other search methods, such as visual searches and electronic detection devices, enable us to search non-inmates before they enter Bureau facilities, a 2003 report by the Office of Inspector General found that non-inmates often found unique ways of

introducing contraband that may have easily been detected or prevented by random pat searches of non-inmates entering Bureau facilities.

We therefore must tighten security measures by instituting a system of random pat searches of non-inmates entering Bureau facilities. This will serve the dual purpose of preventing the introduction of contraband by its detection, and deterring non-inmates who may attempt to introduce contraband. The Bureau's overriding need to prevent introduction of contraband and/or confiscate contraband necessitates searches.

In particular, random searches, (without reasonable suspicion) are permissible, especially if the non-inmate is given prior notice of the search, which therefore lowers the non-inmate's reasonable expectation of privacy when seeking entry to the prison facility, and consents to the search. *See Spear v. Sowders*, 71 F.3d 626 (6th Cir. 1995); *U.S. v. Johnson*, 27 F.3d 564 (unpublished) (4th Cir. 1994); *El v. Williams*, 1990 WL 65717 (unpublished) (E.D.Pa. 1990).

In addition, we note that the more detailed searches, such as visual searches of the person, would only be performed based on the Warden's reasonable suspicion, as noted in § 511.16(c)(1)(B). Random visual searches of the person are prohibited.

Comment: It is not always possible to provide same-sex pat searches or visual searches, as indicated in the proposed rule. One commenter was concerned that "although common law enforcement practice is to provide for same sex searches, in some cases this is not possible * * * [Requiring same sex searches] places the public at risk and undermines the professionalism of the Bureau of Prisons." The commenter also expressed concern regarding situations where a staff member of the same sex cannot be located quickly enough to do a pat search or visual search, or when exigent circumstances necessitate searches by staff who are not the same sex as the non-inmate.

Bureau's response: We agree with the commenter, and therefore clarify that pat searches, visual searches, and urine surveillance testing will be conducted by staff members of the same sex as the non-inmate being searched whenever possible. This concept is carried forth from the previous rule, § 511.12(f), which states that "[a] pat search, visual search, or urine surveillance test is to be conducted by a person of the same sex as the visitor." We further strengthen this provision by also requiring that pat searches, visual searches, and urine surveillance testing will only be

conducted by staff members of the opposite sex in emergency situations with the Warden's authorization.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB.

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. Therefore, in accordance with Executive Order 13132, it is determined 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, 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 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 were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This regulation is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. 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 511

Prisoners.

Harley G. Lappin,

Director, 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 in 28 CFR 0.96, we amend 28 CFR part 511 as follows.

Subchapter A—General Management and Administration

PART 511—GENERAL MANAGEMENT POLICY

■ 1. Revise the authority citation for 28 CFR part 511 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 752, 1791, 1792, 1793, 3050, 3621, 3622, 3624, 4001, 4012, 4042, 4081, 4082 (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.

■ 2. Subpart B is revised as follows:

Subpart B—Searching and Detaining or Arresting Non-Inmates

Sec.

511.10 Purpose and scope.

511.11 Prohibited activities.

511.12 Prohibited objects.

511.13 Searches before entering, or while inside, a Bureau facility or Bureau grounds.

511.14 Notification of possible search.

511.15 When searches will be conducted.

511.16 How searches will be conducted.

511.17 When a non-inmate will be denied entry to or required to leave a Bureau facility or Bureau grounds.

511.18 When Bureau staff can arrest and detain a non-inmate.

§ 511.10 Purpose and scope.

(a) This subpart facilitates our legal obligations to ensure the safety, security, and orderly operation of Bureau of Prisons (Bureau) facilities, and protect the public. These goals are furthered by carefully managing non-inmates, the objects they bring, and their activities, while inside a Bureau facility or upon the grounds of any Bureau facility (Bureau grounds).

(b) *Purpose.* This subpart covers:

(1) Searching non-inmates and their belongings (for example, bags, boxes, vehicles, containers in vehicles, jackets or coats, etc.) to prevent prohibited objects from entering a Bureau facility or Bureau grounds;

(2) Authorizing, denying, and/or terminating a non-inmate's presence

inside a Bureau facility or upon Bureau grounds; and

(3) Authorizing Bureau staff to remove from inside a Bureau facility or upon Bureau grounds, and possibly arrest and detain, non-inmates suspected of engaging in prohibited activity.

(c) *Scope/Application.* This subpart applies to all persons who wish to enter, or are present inside a Bureau facility or upon Bureau grounds, other than inmates in Bureau custody. This subpart applies at all Bureau facilities and Bureau grounds, including administrative offices.

§ 511.11 Prohibited activities.

(a) "Prohibited activities" include any activities that could jeopardize the Bureau's ability to ensure the safety, security, and orderly operation of Bureau facilities, and protect the public, whether or not such activities are criminal in nature.

(b) Examples of "prohibited activities" include, but are not limited to: Introducing, or attempting to introduce, prohibited objects into a Bureau facility or upon Bureau grounds; assisting an escape; and any other conduct that violates criminal laws or is prohibited by federal regulations or Bureau policies.

§ 511.12 Prohibited objects.

(a) "Prohibited objects," as defined in 18 U.S.C. 1791(d)(1), include any objects that could jeopardize the Bureau's ability to ensure the safety, security, and orderly operation of Bureau facilities, and protect the public.

(b) Examples of "prohibited objects" include, but are not limited to, the following items and their related paraphernalia: Weapons; explosives; drugs; intoxicants; currency; cameras of any type; recording equipment; telephones; radios; pagers; electronic devices; and any other objects that violate criminal laws or are prohibited by Federal regulations or Bureau policies.

§ 511.13 Searches before entering, or while inside, a Bureau facility or Bureau grounds.

Bureau staff may search you and your belongings (for example, bags, boxes, vehicles, containers in vehicles, jackets or coats, etc.) before entering, or while inside, any Bureau facilities or Bureau grounds, to keep out prohibited objects.

§ 511.14 Notification of possible search.

We display conspicuous notices at the entrance to all Bureau facilities, informing all non-inmates that they, and their belongings, are subject to search before entering, or while inside, Bureau facilities or grounds. Furthermore, these

regulations and Bureau national and local policies provide additional notice that you and your belongings may be searched before entering, or while inside, Bureau facilities or grounds. By entering or attempting to enter a Bureau facility or Bureau grounds, non-inmates consent to being searched in accordance with these regulations and Bureau policy.

§ 511.15 When searches will be conducted.

You and your belongings may be searched, either randomly or based on reasonable suspicion, before entering, or while inside, a Bureau facility or Bureau grounds, as follows:

(a) *Random Searches.* This type of search may occur at any time, and is not based on any particular suspicion that a non-inmate is attempting to bring a prohibited object into a Bureau facility or Bureau grounds.

(1) Random searches must be impartial and not discriminate among non-inmates on the basis of age, race, religion, national origin, or sex.

(2) Non-inmates will be given the option of either consenting to random searches as a condition of entry, or refusing such searches and leaving Bureau grounds. However, if a non-inmate refuses to submit to a random search and expresses an intent to leave Bureau grounds, he or she may still be required to be searched if "reasonable suspicion" exists as described in paragraph (b) of this section.

(b) *Reasonable Suspicion Searches.* Notwithstanding staff authority to conduct random searches, staff may also conduct *reasonable suspicion* searches to ensure the safety, security, and orderly operation of Bureau facilities, and protect the public. "Reasonable suspicion" exists if a staff member knows of facts and circumstances that warrant rational inferences by a person with correctional experience that a non-inmate may be engaged in, attempting, or about to engage in, criminal or other prohibited activity.

§ 511.16 How searches will be conducted.

You may be searched by any of the following methods before entering, or while inside, a Bureau facility or Bureau grounds:

(a) *Electronically.* (1) You and your belongings may be electronically searched for the presence of contraband, either randomly or upon reasonable suspicion.

(2) Examples of electronic searches include, but are not limited to, metal detectors and ion spectrometry devices.

(b) *Pat Search.* (1) You and your belongings may be pat searched either randomly or upon reasonable suspicion.

(2) A pat search of your person or belongings involves a staff member pressing his/her hands on your outer clothing, or the outer surface of your belongings, to determine whether prohibited objects are present.

(3) Whenever possible, pat searches of your person will be performed by staff members of the same sex. Pat searches may be conducted by staff members of the opposite sex only in emergency situations with the Warden's authorization.

(c) *Visual Search.* You and your belongings may be visually searched as follows:

(1) *Person.* (i) A visual search of your person involves removing all articles of clothing, including religious headwear, to allow a visual (non-tactile) inspection of your body surfaces and cavities.

(ii) Visual searches of your person must always be authorized by the Warden or his/her designee and based on reasonable suspicion; random visual searches are prohibited.

(iii) When authorized, visual searches will be performed discreetly, in a private area away from others, and by staff members of the same sex as the non-inmate being searched. Visual searches may be conducted by staff members of the opposite sex in emergency situations with the Warden's authorization.

(iv) Body cavity (tactile) searches of non-inmates are prohibited.

(2) *Belongings.* A visual search of your belongings involves opening and exposing all contents for visual and manual inspection, and may be done either as part of a random search or with reasonable suspicion.

(d) *Drug Testing.* (1) You may be tested for use of intoxicating substances by any currently reliable testing method, including, but not limited to, breathalyzers and urinalysis.

(2) Drug testing must always be authorized by the Warden or his/her designee and must be based on reasonable suspicion that you are under the influence of an intoxicating substance upon entering, or while inside, a Bureau facility or Bureau grounds.

(3) Searches of this type will always be performed discreetly, in a private area away from others, and by staff members adequately trained to perform the test. Whenever possible, urinalysis tests will be conducted by staff members of the same sex as the non-inmate being tested. Urinalysis tests may be conducted by staff members of the opposite sex only in emergency situations with the Warden's authorization.

§ 511.17 When a non-inmate will be denied entry to or required to leave a Bureau facility or Bureau grounds.

At the Warden's, or his/her designee's, discretion, and based on this subpart, you may be denied entry to, or required to leave, a Bureau facility or Bureau grounds if:

(a) You refuse to be searched under this subpart; or

(b) There is reasonable suspicion that you may be engaged in, attempting, or about to engage in, prohibited activity that jeopardizes the Bureau's ability to ensure the safety, security, and orderly operation of its facilities, or protect the public. "Reasonable suspicion," for this purpose, may be based on the results of a search conducted under this subpart, or any other reliable information.

§ 511.18 When Bureau staff can arrest and detain a non-inmate.

(a) You may be arrested and detained by Bureau staff anytime there is probable cause indicating that you have violated or attempted to violate applicable criminal laws while at a Bureau facility, as authorized by 18 U.S.C. 3050.

(b) "Probable cause" exists when specific facts and circumstances lead a reasonably cautious person (not necessarily a law enforcement officer) to believe a violation of criminal law has occurred, and warrants consideration for prosecution.

(c) Non-inmates arrested by Bureau staff under this regulation will be physically secured, using minimally necessary force and restraints, in a private area of the facility away from others. Appropriate law enforcement will be immediately summoned to investigate the incident, secure evidence, and commence criminal prosecution.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09-07-013]

RIN 1625-AA00

Safety Zone, Kenosha Harbor, Kenosha, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone

near Kenosha Harbor, Kenosha, Wisconsin. This zone is intended to control the movement of vessels on portions of Lake Michigan and Great Lakes Naval Training Center Harbor during the Spill of National Significance (SONS) exercise on June 19 and 20, 2007. This zone is necessary to protect the public from the hazards associated with ships and boats deploying oil containment equipment.

DATES: This rule is effective from June 19, 2007 through June 20, 2007.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09-07-013] and are available for inspection or copying at Coast Guard Sector Lake Michigan (spw), 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747-7154.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 23, 2007 we published a notice of proposed rulemaking (NPRM) entitled Safety Zone, Kenosha Harbor, Kenosha, WI in the **Federal Register** (72 FR 20089). We received no letters commenting on the proposed rule. No public meeting was requested and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule's effective date would be contrary to public interest. This rule is necessary in order to prevent traffic from transiting the waters during the SONS exercise and provide for the safety of life and property on navigable waters.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and people from hazards associated with numerous vessels deploying oil containment boom and conducting diving operations. Based on the experiences in other Captain of the Port zones, the Captain of the Port Lake Michigan has determined numerous vessels engaged in the deployment of oil containment boom in close proximity to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels and congested