

DEPARTMENT OF JUSTICE**Bureau of Prisons****28 CFR Part 542**

[BOP-1076-P]

RIN 1120-AA72

**Administrative Remedy Program:
Excluded Matters**

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed Rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to amend its regulations to allow staff to process any request or appeal that pertains directly or indirectly to an inmate's conditions of confinement under the Administrative Remedy Program. We intend this amendment to provide the inmate with maximum opportunity to seek review of any issue which relates to his or her confinement.

DATES: Comments are due by August 28, 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: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau proposes to amend its regulations on the Administrative Remedy Program (28 CFR part 542, subpart B, published in the **Federal Register** on January 2, 1996, at 61 FR 88).

The Bureau's Administrative Remedy Program allows inmates to seek review of issues relating to their confinement. Often, we may satisfy an inmate's grievance by explaining the relevant policy or practice. The Administrative Remedy Program also allows the Bureau to examine its policies and practices and make changes without judicial intervention.

Currently, § 542.12 specifies matters excluded from consideration under the Administrative Remedy Program. Under paragraph (b) of this section, we will not accept requests or appeals for claims with other statutorily-mandated procedures (including tort claims (see 28 CFR part 543, subpart C), Inmate Accident Compensation claims (28 CFR part 301), and Freedom of Information Act or Privacy Act requests (28 CFR part 513, subpart D) for processing under the Administrative Remedy Program. We intended these exclusions to reflect the fact that there were other procedures for

corrective action which would not be available under the Administrative Remedy Program.

We now propose to remove these exclusions. In accepting such requests or appeals under the Administrative Remedy Program, we may be able to address more quickly the full range of corrective actions available, including any that may be peripheral to issues which have other statutorily-mandated administrative procedures in place.

For example, the Administrative Remedy Program ordinarily cannot provide monetary relief. An inmate's claim for monetary relief may, however, present the basis for non-monetary relief. Under the current regulations, we would not accept the inmate's claim in the Administrative Remedy Program, even though we could provide non-monetary relief on the claim.

Under this proposed rule, however, we would accept the inmate's claim for monetary relief in the Administrative Remedy Program. We would then provide non-monetary relief on the claim, if possible, and refer the inmate to the appropriate statutorily-mandated procedure to resolve remaining issues.

Where the inmate's claim can only be addressed by another administrative procedure, we will simply respond by referring the inmate to the appropriate procedure. Bureau staff responding to the administrative remedy are not responsible for investigating such a claim.

We propose, therefore, to delete § 542.12. Sections 542.10 and 542.16 already cover statements in § 542.12 of the regulation's intent and provisions for assistance to the inmate. We also moved the previous stipulation in § 542.12 that an inmate may not submit a Request or Appeal on behalf of another inmate to § 542.10.

We propose to revise § 542.10 to allow inmates to file any claim under the Administrative Remedy Program, even those which have statutorily-mandated remedies. In our revision, we state that, if an inmate raises an issue in a request or appeal that cannot be resolved through the Administrative Remedy Program, we will refer the inmate to the appropriate statutorily-mandated procedures.

The proposed rule does not require the inmate to file under the Administrative Remedy Program before filing under statutorily-mandated procedures for tort claims (see 28 CFR part 543, subpart C), Inmate Accident Compensation claims (28 CFR part 301), and Freedom of Information Act or Privacy Act requests (28 CFR part 513, subpart D).

Of course, if an inmate has a claim that is solely governed by other statutorily-mandated administrative procedures, the inmate need not first file a claim under the administrative remedy program.

Please send written comments to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. We will consider comments we receive during the comment period before we take final action. We will try to consider comments we receive after the end of the comment period if possible. All comments we receive remain on file for public inspection at the above address. We may change the proposed rule in light of comments we receive. We do not plan to hold oral hearings.

Executive Order 12866

This rule is in a category of actions that the Office of Management and Budget (OMB) determined do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866. OMB did not, therefore, review this rule.

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, under Executive Order 13132, we determine that this rule does not have sufficient federalism implications warranting 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)), reviewed this regulation and by approving it 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 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 Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. It 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 want to make Bureau documents easier to read and understand. Our goal is to provide clear tools that are useful in daily Bureau management. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic at the address listed above.

List of Subjects in 28 CFR Part 542

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, under 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), we propose to amend part 542 in subchapter C of 28 CFR, chapter V as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 542—ADMINISTRATIVE REMEDY

1. The authority citation for 28 CFR part 542 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), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Revise § 542.10 to read as follows:

§ 542.10 Purpose and scope.

(a) *Purpose.* The purpose of the Administrative Remedy Program is to allow an inmate to seek formal review

of an issue relating to any aspect of his/her own confinement. An inmate may not submit a Request or Appeal on behalf of another inmate.

(b) *Scope.* This Program applies to all inmates in institutions operated by the Bureau of Prisons, to inmates designated to contract Community Corrections Centers (CCCs) under Bureau of Prisons responsibility, and to former inmates for issues that arose during their confinement. This Program does not apply to inmates confined in other non-federal facilities.

(c) *Statutorily-mandated procedures.* There are statutorily-mandated procedures in place for tort claims (28 CFR part 543, subpart C), Inmate Accident Compensation claims (28 CFR part 301), and Freedom of Information Act or Privacy Act requests (28 CFR part 513, subpart D). If an inmate raises an issue in a request or appeal that cannot be resolved through the Administrative Remedy Program, the Bureau will refer the inmate to the appropriate statutorily-mandated procedures.

§ 542.12 [Removed and Reserved]

3. Remove and reserve § 542.12.

[FR Doc. 00–16120 Filed 6–26–00; 8:45 am]

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