

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

[BOP-1159]

RIN 1120-AB59

**Administrative Remedy Program:
Exception to Initial Filing Procedures****AGENCY:** Bureau of Prisons, Justice.**ACTION:** Interim rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) revises current regulations on the Administrative Remedy Program to add an exception to initial filing of Administrative Remedy appeals at the institution level. The exception will state that formal administrative remedy requests regarding initial decisions that did not originate with the Warden, or his/her staff, may be initially filed with the Bureau office which made the original decision, and appealed directly to the General Counsel.

DATES: This rule is effective on June 18, 2010. Comments due by August 17, 2010.

ADDRESSES: Submit comments to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this rule at <http://www.regulations.gov>. You may also comment via the Internet by using the <http://www.regulations.gov> comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

SUPPLEMENTARY INFORMATION:**Posting of Public Comments**

Please note that all comments received are considered part of the public record and are made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate

all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains/includes so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you want to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Exception to Initial Filing Procedures

In this document, the Bureau of Prisons (Bureau) revises current regulations on the Administrative Remedy Program to add an exception to initial filing of Administrative Remedy appeals at the institution level. The exception will state that formal administrative remedy requests regarding initial decisions that did not originate with the Warden, or his/her staff, may be initially filed with the Bureau office which made the original decision, and appealed directly to the General Counsel.

Section 542.14 describes filing procedures for Administrative Remedy appeals (also called "complaints" or "requests"), including the time-frame or deadline for submitting appeals, how to request extensions in filing time, and instructions for completing and submitting the requisite appeal form. The regulation states that inmates must submit appeals to the institution staff member designated to receive such appeals at the institution where the inmate is located. The regulation also states that inmates in community confinement may mail their appeals to the appropriate Community Corrections Manager for their location.

Subparagraph (d) of § 542.14 currently lists four exceptions to initial filing at the institution where the inmate is located. For sensitive issues, Discipline

Hearing Officer (DHO) appeals, Control Unit appeals, and Controlled Housing Status appeals, inmates are permitted to bypass the institution level and raise the issue/appeal with the more appropriate authority. In each of these cases, because the initial decision was not made by institution staff, the appropriate authority to review appeals from such decisions is not at the institution level.

Proposed additional exception: Other requests for formal review of decisions not originating from the Warden. The Bureau now adds a fifth exception to the initial filing procedures: Formal administrative remedy requests regarding initial decisions that did not originate with the Warden, or his/her staff, may be initially filed with the Bureau office which made the original decision, and appealed directly to the General Counsel.

This new exception encompasses other situations similar to the currently existing exceptions, in which the institution level is not the appropriate or controlling authority to review an appeal because the decision being appealed was not decided at that level.

The exception is a technical change to the regulation to accommodate internal redistribution of Bureau functions. For example, in 2005, the Bureau centralized its designation and sentence computation functions in a new Bureau branch, the Designation and Sentence Computation Center (DSCC), to streamline the Bureau's administrative functions and reduce operational costs. DSCC staff, not institution staff, make determinations on initial designation and sentence computation issues. Inmate requests for formal review of these types of issues are therefore appropriately considered by the DSCC instead of institution staff.

With regard to initial determinations made by the DSCC and any other decisions not made at the institution level, Bureau policy on sentence computation and designation will direct staff to notify inmates of the alternative administrative remedy filing procedures. It is important to note, however, that if inmates mistakenly file a grievance at the institution level, they will not be penalized for that filing, but will rather be re-directed to the correct Bureau office.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553) allows exceptions to notice-and-comment rulemaking for "(A) interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (B) when the agency for good cause finds * * * that

notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”

This rulemaking is exempt from normal notice-and-comment procedures because it is a technical change intended to reflect restructuring of Bureau of Prisons functions within the agency. We are also modifying our rule to permit inmates a more direct and efficient route of appeal of decisions/determinations made by Bureau entities other than institution-level staff.

Because the regulations still reflect current Bureau policy, and because the regulations are being changed only to accommodate a restructuring of Bureau functions, we find that normal notice-and-comment rulemaking is unnecessary. We are, however, allowing the public to comment on this rule change by publishing it as an interim final rule.

Executive Order 12866

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

The Bureau has assessed the costs and benefits of this rule as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this rule justify its costs. This rule will have the benefit of eliminating confusion in the courts that has been caused by the changes in the Bureau’s statutory interpretation, while allowing us to continue to operate in compliance with the revised statute. There will be no new costs associated with this rulemaking.

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 to warrant the preparation of 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 and by approving it certifies that it 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.

List of Subjects in 28 CFR Part 542

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 542 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.

■ 2. Add a new paragraph (d)(5) to § 542.14 to read as follows:

§ 542.14 Initial filing.

* * * * *

(d) * * *

(5) *Other requests for formal review of decisions not originating from the Warden.* Other than the exceptions listed above, formal administrative remedy requests regarding initial decisions that did not originate with the Warden, or his/her staff, may be initially filed with the Bureau office which made the original decision, and appealed directly to the General Counsel.

[FR Doc. 2010–14715 Filed 6–17–10; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2578

Rules and Regulations for Abandoned Individual Account Plans

CFR Correction

In Title 29 of the Code of Federal Regulations, Part 1927 to End, revised as of July 1, 2009, on pages 664 and 665, remove the second Appendix C; and on page 661, correct Appendix B to read as follows: