

**DEPARTMENT OF JUSTICE****Bureau of Prisons****28 CFR Part 542****[BOP-1014-F]****RIN 1120-AA20****Administrative Remedy Program****AGENCY:** Federal Bureau of Prisons, Justice.**ACTION:** Final rule.

**SUMMARY:** In this document, the Bureau of Prisons is revising its regulations on the Administrative Remedy Program. These regulations describe the process through which inmates may seek formal review of any issue related to their confinement. The changes are deemed necessary in order to attend to increased numbers of remedy requests occasioned by the continued growth of the inmate population. Specific procedural changes include increases in the time limits set for inmate filing of requests and for Bureau responses; additional specifications for the provision of assistance to inmates; and increased access to Administrative Remedy indexes.

**EFFECTIVE DATE:** February 5, 1996.**ADDRESSES:** 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 of Prisons (Bureau) is amending its regulations on the Administrative Remedy Procedure for Inmates. A proposed rule on this subject was published in the Federal Register on October 3, 1994 (59 FR 50179). The Bureau received comment from six individuals. In general, the comments expressed dissatisfaction in varying degrees on the following points: informal resolution, time limits, handling of appeals and responses by staff, and administrative matters (such as the posting of the proposed rule at the institution). A summary of the comments and the Bureau's responses follow.

The proposed rule had included increased time limits for submission of an initial remedy request by an inmate (20 calendar days following the date on which the basis for the request had occurred, rather than the 15 calendar days then currently specified). The proposed rule also increased the time limits for agency responses at the

institution level (20 rather than 15 calendar days) and at the Central Office level (40 rather than 30 calendar days).

There were no objections to the increased time limit for submission of an initial remedy request by an inmate. Several commenters, however, objected to the extension of the time limits for Bureau response, stating these were too long, or were "slanted completely in favor of the BOP."

Commenters recommended a variety of procedural changes intended to extend the effective filing time for submission of inmate appeals by linking the filing time to an event other than the date of the Bureau's response. For example, commenters suggested that the filing time should exclude any time past the date the appeal is handed over to the institution mailroom, or the filing time for an appeal should not begin until the inmate has actually received a Bureau response.

The Bureau believes it is not currently practicable to date stamp outgoing mail or to verify the date inmates receive Bureau responses. The proposed filing times include adequate adjustment for mail time. The Bureau also believes that the extended response times for its staff are realistic and reasonable. Good reason exists for the different filing time limits. While the inmate is responsible for preparing his or her individual request(s) or appeal(s), Bureau staff must prepare responses to whatever requests or appeals have been submitted from the inmate population.

Furthermore, in those instances where staff need more time to respond to an appeal, staff may currently claim an extension as allowed by the regulations (see § 542.14). In claiming the extension, staff notify the inmate in writing. Increasing the initial time limit for response should reduce the necessity for claiming extensions. In either case, the actual time taken to respond would likely be the same. With the increased time limit, staff would spend less time completing the administrative paperwork necessary for claiming extensions.

Some commenters expressed the belief that the mandatory filing of a complaint initially at the institutional level was cumbersome and unnecessary. One commenter recommended that an inmate be allowed to make an appeal "directly to the level of management that has jurisdiction and the authority to make the decision."

The Bureau believes that such amendment is not necessary. The principle underlying the administrative remedy procedure is that the resolution of problems can be remedied at the lowest possible level. If informal

resolution is successful, the formal administrative remedy procedure would not be necessary. Moreover, those few issues that can only be remedied at certain levels are permitted, per policy, to go directly to that level. Similarly, responses to emergency appeals are expedited. The administrative remedy procedure typically is used to address questions regarding the application of policy to individual inmates. Provisions for appeal help ensure consistency in application and can also serve to measure the adequacy of policy. The primary vehicle for inmate participation in the general formulation of Bureau policy remains through the rulemaking process (for example, through comment on the October 3, 1994 proposed rule).

Some commenters recommended that either a receipt for a filed complaint be given by the correctional counselor who "accepts" the complaint or that the inmate be allowed to file the initial request with the institution's administrative remedy coordinator. These commenters expressed the concern that extensive delays may occur before the counselor forwards the administrative remedy to the institution's administrative remedy coordinator. The Bureau believes that no change is necessary, as the counselor is responsible for forwarding the administrative remedy to the appropriate staff in a timely manner and internal instructions to staff require that this occur ordinarily no later than the next business day.

Two commenters objected to the form of receipt acknowledgements or responses returned to the inmate. One of these commenters expressed concern that because the receipt acknowledgements are not signed, these receipts do not prove that the appeals ever left the institution. In response, the Bureau notes that receipts from the regional and central offices are generated electronically from those offices. Therefore, a receipt acknowledgement indicates that the administrative remedy reached its intended destination.

The second commenter objected to the provisions in § 542.11(a)(4) relating to the delegation of signatory authority, which had been previously issued as an administrative amendment. This commenter stated that, at a minimum, the regulation should require that the name and title of the person signing the response be typed below the signature rather than have the person sign "for" the official as is the Bureau's practice in this administrative detail. The commenter presumably believes this change is important in the pursuit of further judicial action involving an

inmate's complaint. The Bureau believes its standard procedures for the exercise of delegated authority is adequate and no further amendment is necessary in this matter.

One commenter objected to the omission of a requirement that staff responses be in good faith, honest, and straightforward, as is required for inmate submissions (see § 542.11(b)). There is no necessity to address this matter in these regulations because Bureau staff are trained professionals governed by the Standards of Conduct for Bureau employees, which are sufficient to support the integrity of staff responses.

One commenter objected to a variety of specific administrative procedures. Section 542.14(c)(2) states that the inmate shall place a single complaint or a reasonable number of closely related issues on the appropriate form. This is intended to facilitate indexing of remedy requests and to simplify the resolution process by presenting remedy requests as discrete matters. The commenter claimed that inmate access to forms at one institution was limited by requiring one form to be filled out and submitted before staff would issue another to the same inmate. We note that this institution practice does not necessarily limit access (i.e., it merely requires the inmate to follow through on one complaint before starting another). Nevertheless, because the Bureau does not wish to encourage such a perception, the Bureau is issuing internal instructions to staff advising against such institutional administrative practice.

This same commenter also objected to limiting the length of inmate complaints by only allowing one additional page per form. The Bureau believes that limiting additions to one page is useful and reasonable. This emphasis on brevity along with the above-mentioned requirement limiting the inmate to the presentation of a single complaint or a reasonable number of closely related issues is intended to encourage inmates to submit their concerns in a straightforward manner. The commenter also objected to requirements in § 542.14(c)(3) regarding the submission of exhibits with a request. The commenter suggested that the provision was ambiguous as to the number of required copies at different stages of the remedy appeals process. The Bureau's procedure is to require only one copy of an exhibit with the request. If the inmate appeals a response, the inmate is responsible for furnishing a copy of the exhibit with the appeal along with copies of the previously-submitted complaints.

One commentator objected to the provision in § 542.17 allowing the administrative remedy coordinator at any level to reject a request or appeal. This commenter, presumably focusing on an example at the institution level, stated that only the Warden may sign responses and consequently should be the only one to reject the request or appeal. The Bureau wishes to note that the very purpose of § 542.17 is to provide the administrative remedy coordinator with this authority. Paragraph (b) of this section provides the inmate with the opportunity to correct the defects, when possible, so that the matter can be resubmitted.

Three commenters raised questions about the lack of detail provided in these regulations for the informal resolution of complaints. Two commenters objected to the lack of a specified time limit for informal resolution. One commenter recommended 48 hours as a reasonable time period for that purpose. Another commenter stated that paperwork associated with informal resolution at one particular institution appeared to be duplicative of the paperwork generated for an initial request submitted after an adverse decision on the informal resolution.

In response, the Bureau notes that by its very definition, procedures for informal resolution should not be formalized. The informal resolution policy is not explicitly detailed in these regulations in order to preserve maximum flexibility for institution staff in attempting to resolve complaints. As for the particular informal resolution procedures at particular institutions, the Bureau wishes to preserve the Warden's discretion in formulating these procedures and adds language to the rule providing for the exercise of the Warden's discretion.

In response to the concerns over the lack of a specified time limit for informal resolution, the Bureau has revised the provisions in § 542.14(a) to include informal resolution under the deadline for the submission of an initial filing. This is intended to encourage quick informal resolution. Because a lengthy period of time for attempted informal resolution constitutes a valid reason for the granting of an extension in filing time, including informal resolution under this deadline should not unduly impair the inmate's ability to file the initial request in instances where the informal resolution attempt has failed.

Two commenters raised concerns about the posting of the proposed rule changes at one particular Bureau institution, stating that their access to

the proposed rule, and consequently their ability to timely comment on it, were intentionally hindered. We have been assured by institution staff that pursuant to Bureau policy, the proposed rule was posted in the inmate law library and was also maintained by unit case managers. Inmates at this institution were advised through postings in their housing units that they could review the proposed rule either in the inmate law library or through a request to the case manager. The two commenters stated that their requests to review the proposed rule were not answered in a timely fashion. The Bureau believes that the institution's posting procedures do not constitute intentional hinderance to public comment. The two requests in question came from inmates in the same housing areas, which suggests that any problem was of a local, not systemic, nature. In addition, the proposed rule was also available at the institution's law library. In any event, the Bureau has considered these comments in finalizing these regulations.

One commenter, expressing general dissatisfaction with Bureau regulations, stated that Bureau regulations were so poorly written that two different institutions would interpret them differently on the same day to fit their particular desire. It is the Bureau's intent that the Administrative Remedy Program helps to ensure the consistent application of Bureau rules and policies by allowing for hierarchical review of inmate complaints.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

#### List of Subjects in 28 CFR Part 542

##### Prisoners.

Kathleen M. Hawk,  
*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(p), it is proposed to amend part 542 in subchapter C of 28 CFR, chapter V as set forth below.

#### **SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**

1. 28 CFR part 542 is revised to read as follows:

## PART 542—ADMINISTRATIVE REMEDY

### Subpart A—[Reserved]

### Subpart B—Administrative Remedy Program

Sec.

- 542.10 Purpose and scope.
- 542.11 Responsibility.
- 542.12 Excluded matters.
- 542.13 Informal resolution.
- 542.14 Initial filing.
- 542.15 Appeals.
- 542.16 Assistance.
- 542.17 Resubmission.
- 542.18 Response time.
- 542.19 Access to indexes and responses.

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.

### Subpart A—[Reserved]

### Subpart B—Administrative Remedy Program

#### § 542.10 Purpose and scope.

The Administrative Remedy Program is a process through which inmates may seek formal review of an issue which relates to any aspect of their confinement, except as excluded in § 542.12, if less formal procedures have not resolved the matter. This Program applies to all inmates confined 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, but does not apply to inmates confined in other non-federal facilities.

#### § 542.11 Responsibility.

(a) The Community Corrections Manager (CCM), Warden, Regional Director, and General Counsel are responsible for the implementation and operation of the Administrative Remedy Program at the Community Corrections Center (CCC), institution, regional and Central Office levels, respectively, and shall:

- (1) Establish procedures for receiving, recording, reviewing, investigating, and responding to Administrative Remedy Requests (Requests) or Appeals (Appeals) submitted by an inmate;
- (2) Acknowledge receipt of a Request or Appeal by returning a receipt to the inmate;
- (3) Conduct an investigation into each Request or Appeal;
- (4) Respond to and sign all Requests or Appeals filed at their levels. At the

regional level, signatory authority may be delegated to the Deputy Regional Director. At the Central Office level, signatory authority may be delegated to the National Inmate Appeals Administrator. Signatory authority extends to staff designated as acting in the capacities specified in this § 542.11, but may not be further delegated without the written approval of the General Counsel.

(b) Inmates have the responsibility to use this Program in good faith and in an honest and straightforward manner.

#### § 542.12 Excluded matters.

(a) An inmate may not use this Program to submit a Request or Appeal on behalf of another inmate. This program is intended to address concerns that are personal to the inmate making the Request or Appeal, but shall not prevent an inmate from obtaining assistance in preparing a Request or Appeal, as provided in § 542.16 of this part.

(b) Requests or Appeals will not be accepted under the Administrative Remedy Program for claims for which other administrative procedures have been established, including tort claims, Inmate Accident Compensation claims, and Freedom of Information or Privacy Act requests. Staff shall inform the inmate in writing of the appropriate administrative procedure if the Request or Appeal is not acceptable under the Administrative Remedy Program.

#### § 542.13 Informal resolution.

(a) *Informal Resolution.* Except as provided in § 542.13(b), an inmate shall first present an issue of concern informally to staff, and staff shall attempt to informally resolve the issue before an inmate submits a Request for Administrative Remedy. Each Warden shall establish procedures to allow for the informal resolution of inmate complaints.

(b) *Exceptions.* Inmates in CCCs are not required to attempt informal resolution. An informal resolution attempt is not required prior to submission to the Regional or Central Office as provided for in § 542.14(d) of this part. An informal resolution attempt may be waived in individual cases at the Warden or institution Administrative Remedy Coordinator's discretion when the inmate demonstrates an acceptable reason for bypassing informal resolution.

#### § 542.14 Initial filing.

(a) *Submission.* The deadline for completion of informal resolution and submission of a formal written Administrative Remedy Request, on the

appropriate form (BP-9), is 20 calendar days following the date on which the basis for the Request occurred.

(b) *Extension.* Where the inmate demonstrates a valid reason for delay, an extension in filing time may be allowed. In general, valid reason for delay means a situation which prevented the inmate from submitting the request within the established time frame. Valid reasons for delay include the following: an extended period in-transit during which the inmate was separated from documents needed to prepare the Request or Appeal; an extended period of time during which the inmate was physically incapable of preparing a Request or Appeal; an unusually long period taken for informal resolution attempts; indication by an inmate, verified by staff, that a response to the inmate's request for copies of dispositions requested under § 542.19 of this part was delayed.

#### (c) Form.

(1) The inmate shall obtain the appropriate form from CCC staff or institution staff (ordinarily, the correctional counselor).

(2) The inmate shall place a single complaint or a reasonable number of closely related issues on the form. If the inmate includes on a single form multiple unrelated issues, the submission shall be rejected and returned without response, and the inmate shall be advised to use a separate form for each unrelated issue. For DHO and UDC appeals, each separate incident report number must be appealed on a separate form.

(3) The inmate shall complete the form with all requested identifying information and shall state the complaint in the space provided on the form. If more space is needed, the inmate may use up to one letter-size (8½" by 11") continuation page. The inmate must provide an additional copy of any continuation page. The inmate must submit one copy of supporting exhibits. Exhibits will not be returned with the response. Because copies of exhibits must be filed for any appeal (see § 542.15(b)(3)), the inmate is encouraged to retain a copy of all exhibits for his or her personal records.

(4) The inmate shall date and sign the Request and submit it to the institution staff member designated to receive such Requests (ordinarily a correctional counselor). CCC inmates may mail their Requests to the CCM.

#### (d) Exceptions to Initial Filing at Institution.

(1) Sensitive Issues. If the inmate reasonably believes the issue is sensitive and the inmate's safety or well-being would be placed in danger if the

Request became known at the institution, the inmate may submit the Request directly to the appropriate Regional Director. The inmate shall clearly mark "Sensitive" upon the Request and explain, in writing, the reason for not submitting the Request at the institution. If the Regional Administrative Remedy Coordinator agrees that the Request is sensitive, the Request shall be accepted. Otherwise, the Request will not be accepted, and the inmate shall be advised in writing of that determination, without a return of the Request. The inmate may pursue the matter by submitting an Administrative Remedy Request locally to the Warden. The Warden shall allow a reasonable extension of time for such a resubmission.

(2) DHO Appeals. DHO appeals shall be submitted initially to the Regional Director for the region where the inmate is currently located.

(3) Control Unit Appeals. Appeals related to Executive Panel Reviews of Control Unit placement shall be submitted directly to the General Counsel.

(4) Controlled Housing Status Appeals. Appeals related to the Regional Director's review of controlled housing status placement may be filed directly with the General Counsel.

#### **§ 542.15 Appeals.**

(a) *Submission.* An inmate who is not satisfied with the Warden's response may submit an Appeal on the appropriate form (BP-10) to the appropriate Regional Director within 20 calendar days of the date the Warden signed the response. An inmate who is not satisfied with the Regional Director's response may submit an Appeal on the appropriate form (BP-11) to the General Counsel within 30 calendar days of the date the Regional Director signed the response. When the inmate demonstrates a valid reason for delay, these time limits may be extended. Valid reasons for delay include those situations described in § 542.14(b) of this part. Appeal to the General Counsel is the final administrative appeal.

(b) *Form.*

(1) Appeals to the Regional Director shall be submitted on the form designed for regional Appeals (BP-10) and accompanied by one complete copy or duplicate original of the institution Request and response. Appeals to the General Counsel shall be submitted on the form designed for Central Office Appeals (BP-11) and accompanied by one complete copy or duplicate original of the institution and regional filings

and their responses. Appeals shall state specifically the reason for appeal.

(2) An inmate may not raise in an Appeal issues not raised in the lower level filings. An inmate may not combine Appeals of separate lower level responses (different case numbers) into a single Appeal.

(3) An inmate shall complete the appropriate form with all requested identifying information and shall state the reasons for the Appeal in the space provided on the form. If more space is needed, the inmate may use up to one letter-size (8½" x 11") continuation page. The inmate shall provide two additional copies of any continuation page and exhibits with the regional Appeal, and three additional copies with an Appeal to the Central Office (the inmate is also to provide copies of exhibits used at the prior level(s) of appeal). The inmate shall date and sign the Appeal and mail it to the appropriate Regional Director, if a Regional Appeal, or to the National Inmate Appeals Administrator, Office of General Counsel, if a Central Office Appeal (see 28 CFR part 503 for addresses of the Central Office and Regional Offices).

#### **§ 542.16 Assistance.**

(a) An inmate may obtain assistance from another inmate or from institution staff in preparing a Request or an Appeal. An inmate may also obtain assistance from outside sources, such as family members or attorneys. However, no person may submit a Request or Appeal on the inmate's behalf, and obtaining assistance will not be considered a valid reason for exceeding a time limit for submission unless the delay was caused by staff.

(b) Wardens shall ensure that assistance is available for inmates who are illiterate, disabled, or who are not functionally literate in English. Such assistance includes provision of reasonable accommodation in order for an inmate with a disability to prepare and process a Request or an Appeal.

#### **§ 542.17 Resubmission.**

(a) *Rejections.* The Coordinator at any level (CCM, institution, region, Central Office) may reject and return to the inmate without response a Request or an Appeal that is written by an inmate in a manner that is obscene or abusive, or does not meet any other requirement of this part.

(b) *Notice.* When a submission is rejected, the inmate shall be provided a written notice, signed by the Administrative Remedy Coordinator, explaining the reason for rejection. If the defect on which the rejection is based is

correctable, the notice shall inform the inmate of a reasonable time extension within which to correct the defect and resubmit the Request or Appeal.

(c) *Appeal of Rejections.* When a Request or Appeal is rejected and the inmate is not given an opportunity to correct the defect and resubmit, the inmate may appeal the rejection, including a rejection on the basis of an exception as described in § 542.14(d), to the next appeal level. The Coordinator at that level may affirm the rejection, may direct that the submission be accepted at the lower level (either upon the inmate's resubmission or direct return to that lower level), or may accept the submission for filing. The inmate shall be informed of the decision by delivery of either a receipt or rejection notice.

#### **§ 542.18 Response time.**

If accepted, a Request or Appeal is considered filed on the date it is logged into the Administrative Remedy Index as received. Once filed, response shall be made by the Warden or CCM within 20 calendar days; by the Regional Director within 30 calendar days; and by the General Counsel within 40 calendar days. If the Request is determined to be of an emergency nature which threatens the inmate's immediate health or welfare, the Warden shall respond not later than the third calendar day after filing. If the time period for response to a Request or Appeal is insufficient to make an appropriate decision, the time for response may be extended once by 20 days at the institution level, 30 days at the regional level, or 20 days at the Central Office level. Staff shall inform the inmate of this extension in writing. Staff shall respond in writing to all filed Requests or Appeals. If the inmate does not receive a response within the time allotted for reply, including extension, the inmate may consider the absence of a response to be a denial at that level.

#### **§ 542.19 Access to indexes and responses.**

Inmates and members of the public may request access to Administrative Remedy indexes and responses, for which inmate names and Register Numbers have been removed, as indicated below. Each institution shall make available its index, and the indexes of its regional office and the Central Office. Each regional office shall make available its index, the indexes of all institutions in its region, and the index of the Central Office. The Central Office shall make available its index and the indexes of all institutions and regional offices. Responses may be

requested from the location where they are maintained and must be identified by Remedy ID number as indicated on an index. Copies of indexes or responses may be inspected during regular office hours at the locations indicated above, or may be purchased in accordance with the regular fees established for copies furnished under the Freedom of Information Act (FOIA).

[FR Doc. 95-31496 Filed 12-29-95; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Bureau of Prisons

#### 28 CFR Parts 540 and 545

[BOP-1049-I]

RIN 1120-AA39

#### Telephone Regulations and Inmate Financial Responsibility

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

**ACTION:** Interim Rule With Request for Comments, and Withdrawal of Effective Date-Delayed Provisions.

**SUMMARY:** In this document, the Bureau of Prisons (Bureau) is withdrawing the provisions in its regulations relating to limitations on telephone privileges for inmates who have refused participation in the inmate financial responsibility program, (IFRP) which were to become effective January 4, 1996. In addition, the Bureau is increasing to \$75.00 the amount of money to be excluded from assessment in an inmate's financial responsibility plan. These actions are made pursuant to the terms of a settlement approved by the District Court in a nationwide federal prisoner class action, *Washington v. Reno*, Nos. 93-217, 93-290 (E.D.KY.).

**DATES:** The withdrawal of 28 CFR 540.105(c) and 545.11(d)(10), and the amendment to 28 CFR 540.100(a) is effective January 2, 1996; the amendment to 28 CFR 545.11(b) introductory text is effective January 3, 1996. Comments on 28 CFR 545.11(b) are due on March 4, 1996.

**ADDRESSES:** 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, telephone (202) 514-6655.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons (Bureau) is withdrawing certain provisions in its rules on telephone regulations and on

the inmate financial responsibility program (IFRP) which were published in the Federal Register on April 4, 1994 (59 FR 15812).

In the April 4, 1994, revision of its rules on telephone regulations and on the IFRP, the Bureau delayed the effective date for provisions in §§ 540.105(c) and 545.11(d)(10) which imposed limitations on the telephone privileges of inmates refusing to participate in the IFRP. These provisions were to become effective January 3, 1995. Due to ongoing litigation in *Washington v. Reno*, the effective date for these provisions was further delayed until January 4, 1996 (60 FR 240). In accordance with the Court-approved settlement in *Washington v. Reno*, the Bureau is withdrawing these provisions and the reference to the IFRP telephone restrictions contained in 28 CFR 540.100(a), and is publishing elsewhere in today's Federal Register a new proposed rule to impose a different restriction on the telephone privileges of inmates who refuse to participate in the IFRP.

In accordance with the settlement in *Washington v. Reno*, the Bureau is also amending, on an interim basis with request for comments, the provision in 28 CFR 545.11(b) which relates to the exclusion of certain funds from an inmate's financial responsibility plan. Under this provision, unit team staff currently exclude \$50.00 per month from assessment in developing the inmate's payment plan in the IFRP. This provision is revised to raise the exclusion to \$75.00 per month, per the terms of the settlement in *Washington v. Reno* and, for clarification purposes, the third and fourth sentences of this paragraph are being combined into one sentence.

Because the revisions to 28 CFR 545.11(b) are made pursuant to the court-approved settlement in *Washington v. Reno*, the Bureau is issuing the revisions as an interim rule pursuant to the "good cause" exemption of 5 U.S.C. 553(d)(3). Interested persons may participate in this rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received on the interim rule provisions during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule has not been reviewed by the Office of

Management and Budget pursuant to E.O. 12866. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Parts 540 and 545

Prisoners.

Kathleen M. Hawk,

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(p), parts 540 and 545 in subchapter C of 28 CFR, chapter V are amended as set forth below.

#### SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

#### PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 continues to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3013, 3571, 3572, 3621, 3622, 3624, 3663, 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. In § 540.100, paragraph (a) is amended by revising the fifth sentence to read as follows:

#### § 540.100 Purpose and scope.

\* \* \* \* \*

(a) \* \* \* In addition to the procedures set forth in this subpart, inmate telephone use is subject to those limitations which the Warden determines are necessary to ensure the security or good order, including discipline, of the institution or to protect the public. \* \* \*

#### § 540.105 [Amended]

3. In § 540.105, paragraph (c), which was previously to become effective January 4, 1996, (59 FR 15824, 60 FR 240) is removed and reserved.

#### PART 545—WORK AND COMPENSATION

4. The authority citation for 28 CFR part 545 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 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.