

(4) The reports required to be filed pursuant to paragraphs (a)(1) and (a)(2) of this section shall be considered filed when received by the regional office of the Commission with whom the futures commission files financial reports pursuant to § 1.10.

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Issued in Washington, D.C. on March 8, 1995, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 95-6212 Filed 3-14-95; 8:45 am]

BILLING CODE 6351-01-P

## DEPARTMENT OF JUSTICE

### Office of the Attorney General

#### 28 CFR Part 40

[AG Order No. 1955-95]

#### Standards for Inmate Grievance Procedures

**AGENCY:** Department of Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule modifies the standards for state prison inmate grievance procedures to allow for certification of a procedure which, if not in substantial compliance with minimum standards promulgated by the Attorney General, nevertheless is found by the Attorney General to be otherwise fair and effective. This interim rule also adjusts the time limits for processing grievances to help ensure final disposition within the period of time allowed for judicial continuance. These amendments are necessary to implement new statutory authority.

**DATES:** This interim rule is effective March 15, 1995; comments must be submitted on or before May 15, 1995.

**ADDRESSES:** Please submit comments to Office of General Counsel, Bureau of Prisons, HOLC room 709, 320 First Street NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** John Megathlin, Administrator, National Inmate Appeals, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534, telephone (202) 514-6165.

#### SUPPLEMENTARY INFORMATION:

##### Background

In an effort to reduce unnecessary prisoner litigation, Congress enacted the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997). Section 7 of the Act, 42 U.S.C. 1997e, adopted a qualified exhaustion requirement for civil rights actions filed by state

prisoners in federal district court under 42 U.S.C. 1983. That section allowed the court, if appropriate and in the interests of justice, to continue proceedings for a period of 90 days in order to compel prisoners to exhaust local administrative prison grievance procedures. Exhaustion could not be required unless the Attorney General had certified or the court had determined that such administrative grievance procedure was in substantial compliance with the minimum standards promulgated by the Attorney General pursuant to 42 U.S.C. 1997e(b).

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103-322) amended 42 U.S.C. 1997e. As amended, 42 U.S.C. 1997e now allows the court to continue proceedings for up to 180 days. In addition, exhaustion may be required if the Attorney General certifies or the court determines that the administrative grievance procedure in question, even if it is not in compliance with the minimum standards promulgated by the Attorney General, is "otherwise fair and effective."

This interim rule accordingly revises § 40.11 in 28 CFR part 40 in order to address the evaluation of an applicant's submission under the "otherwise fair and effective" standard as well as under the existing standards. Sections 40.14, 40.15, 40.16, 40.18 (a) and (b), 40.19(a), and 40.22 are amended to include reference to determination that a grievance procedure is otherwise fair and effective.

In addition, § 40.7(e) is amended to specify that in all instances grievances must be processed from initiation to final disposition within 180 days, including any extensions. Formerly, paragraph (e) had required final disposition within 90 days, excluding any extension of time agreed to in writing by the grievant. This amendment is intended to provide applicants the flexibility to set time limits for the final disposition of grievances within the extended period of time allowed under newly revised 42 U.S.C. 1997e(a)(1). As revised, paragraph (e) no longer requires written consent from the grievant for an extension of time on a response. However, notification to the grievant of an extension of time for a response at any stage of the process remains necessary in order to require exhaustion of that stage.

##### Regulatory Process Matters

The Department of Justice's implementation of this rule as an interim rule, with provisions for post-promulgation public comment, is based on the "good cause" exception of 5

U.S.C. 553(d)(3). This rule is necessary to conform existing regulations to recent statutory amendments. Immediate implementation will allow the Attorney General to use without undue delay the statutory "otherwise fair and effective" standard in consideration of current applications by States or local jurisdictions for certification, and consequently reduce regulatory burdens on these government entities.

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order 12866, section 3(f), and accordingly this rule was not reviewed by the Office of Management and Budget. This rule does not have federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of Executive Order 12612. The Attorney General, 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 on a substantial number of small entities.

##### List of Subjects in 28 CFR Part 40

Administrative practice and procedure, Civil rights, Inmate grievance procedures, Prisoners.

Accordingly, by virtue of the authority vested in the Attorney General by law, including 5 U.S.C. 301, 28 U.S.C. 509, and 42 U.S.C. 1997e, part 40 of Chapter I of title 28 of the Code of Federal Regulations is amended as follows:

#### PART 40—STANDARDS FOR INMATE GRIEVANCE PROCEDURES

1. The authority citation for part 40 continues to read as follows:

**Authority:** 42 U.S.C. 1997e.

2. In § 40.7, paragraph (e) is revised to read as follows:

##### § 40.7 Operation and decision.

\* \* \* \* \*

(e) *Fixed time limits.* Responses shall be made within fixed time limits at each level of decision. Time limits may vary between institutions, but expeditious processing of grievances at each level of decision is essential to prevent grievance from becoming moot. Unless the grievant has been notified of an extension of time for a response, expiration of a time limit at any stage of the process shall entitle the grievant to move to the next stage of the process. In all instances grievances must be processed from initiation to final

disposition within 180 days, inclusive of any extensions.

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3. Section 40.11 is revised to read as follows:

**§ 40.11 Submissions by applicant.**

(a) *Written statement.* An application for certification of a grievance procedure under the Act shall be submitted to the Office of the Attorney General, U.S. Department of Justice, Main Justice Building, Washington, DC 20530, and shall include a written statement describing the grievance procedure, a brief description of the institution or institutions covered by the procedure, and accompanying plans for or evidence of implementation in each institution.

(b) *Evidence of compliance with established standards.* An applicant seeking certification of a grievance procedure as being in substantial compliance with the standards promulgated herein should submit evidence of compliance with those standards, including the following information:

(1) *Instructional materials.* A copy of the instructional materials for inmates and employees regarding use of the grievance procedure together with a description of the manner in which such materials are distributed, a description of the oral explanation of the grievance procedure, including the circumstances under which it is delivered, and a description of the training, if any, provided to employees and inmates in the skills necessary to operate the grievance procedure.

(2) *Form.* A copy of the form used by inmates to initiate a grievance and to obtain review of the disposition of a grievance.

(3) *Information regarding past compliance.* For a grievance procedure that has operated for more than one year at the time of the application, the applicant shall submit information regarding the number and types of grievances filed over the preceding year, the disposition of the grievances with sample responses from each level of decision, the remedies granted, evidence of compliance with time limits at each level of decision, and a description of the role of inmates and employees in the formulation, implementation, and operation of the grievance procedure.

(4) *Plan for collecting information.* For a grievance procedure that has operated for less than one year at the time of the application, the applicant shall submit a plan for collecting the information described in paragraph (b)(3) of this section.

(5) *Assurance of confidentiality.* A description of the steps taken to ensure the confidentiality of records of individual use of or participation in the grievance procedure.

(6) *Evaluation.* A description of the plans for periodic evaluation of the grievance procedure, including identification of the group, individuals or individual who will conduct the evaluation and identification of the person or entity not under the control of supervision of the institution who will review the evaluation, together with two copies of the most recent evaluation, if one has been performed.

(c) *Fair and effective procedures.* The Attorney General shall also certify a grievance procedure under the Act, even if the procedure is not in substantial compliance with the standards promulgated herein, if the Attorney General determines that the procedure is otherwise fair and effective for the consideration and disposition of grievances filed by inmates. If a grievance procedure is not in substantial compliance with all standards herein, the applicant shall identify the aspects in which the procedure is in substantial compliance and those in which it is not, describe the other relevant features of the procedure, and explain why the procedure is otherwise fair and effective.

4. Section 40.14 is revised to read as follows:

**§ 40.14 Conditional certification.**

If, in the judgment of the Attorney General, a grievance procedure that has been in existence less than one year is at the time of application in substantial compliance with the standards promulgated herein or is otherwise fair and effective, the Attorney General shall grant conditional certification for one year or until the applicant satisfies the requirements of § 40.15, whichever period is shorter.

5. Section 40.15 is revised to read as follows:

**§ 40.15 Full certification.**

If, in the judgment of the Attorney General, a grievance procedure that has been in existence longer than one year at the time of application is in substantial compliance with the standards promulgated herein or is otherwise fair and effective, the Attorney General shall grant full certification. Such certification shall remain in effect unless and until the Attorney General finds reasonable cause to believe that the grievance procedure is no longer in substantial compliance with the minimum standards or is no

longer fair and effective, and so notifies the applicant in writing.

6. Section 40.16 is revised to read as follows:

**§ 40.16 Denial of certification.**

If the Attorney General finds that the grievance procedure is not in substantial compliance with the standards promulgated herein or is no longer fair and effective, the Attorney General shall deny certification and inform the applicant in writing of the area or areas in which the grievance procedure or the application is deemed inadequate.

7. In § 40.18, paragraphs (a) and (b) are revised to read as follows:

**§ 40.18 Suspension of certification.**

(a) *Reasonable belief of non-compliance.* If the Attorney General has reasonable grounds to believe that a previously certified grievance procedure may no longer be in substantial compliance with the minimum standards or may no longer be fair and effective, the Attorney General shall suspend certification. The suspension shall continue until such time as the deficiency is corrected, in which case certification shall be reinstated, or until the Attorney General determines that substantial compliance no longer exists or that the procedure is no longer fair and effective, in which case, except as provided in paragraph (b) of this section, the Attorney General shall withdraw certification pursuant to § 40.19 of this part.

(b) *Defect may be readily remedied; good faith effort.* If the Attorney General determines that a grievance procedure is no longer in substantial compliance with the minimum standards or is no longer fair and effective, but has reason to believe that the defect may be readily corrected and that good faith efforts are underway to correct it, the Attorney General may suspend certification until the grievance procedure returns to compliance with the minimum standards or is otherwise fair and effective.

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8. In § 40.19, paragraph (a) is revised to read as follows:

**§ 40.19 Withdrawal of certification.**

(a) *Finding of non-compliance.* If the Attorney General finds that a grievance procedure is no longer in substantial compliance with the minimum standards or is no longer otherwise fair and effective, the Attorney General shall withdraw certification, unless the Attorney General concludes that suspension of certification under § 40.18(b) of this part is appropriate.

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9. Section 40.22 is revised to read as follows:

**§ 40.22 Significance of certification.**

Certification of a grievance procedure by the Attorney General shall signify only that on the basis of the information submitted, the Attorney General believes the grievance procedure is in substantial compliance with the minimum standards or is otherwise fair and effective. Certification shall not indicate approval of the use or application of the grievance procedure in a particular case.

Dated: March 3, 1995.

**Janet Reno,**

*Attorney General.*

[FR Doc. 95-6287 Filed 3-14-95; 8:45 am]

BILLING CODE 4410-01-M

**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Parts 2619 and 2676**

**Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Pension Benefit Guaranty Corporation's regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in April 1995, and to multiemployer plans with valuation dates in April 1995. The effect of these amendments is to advise the public of the adoption of these assumptions.

**EFFECTIVE DATE:** April 1, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024 (202-326-4179 for TTY and TDD).

**SUPPLEMENTARY INFORMATION:** This rule adopts the April 1995 interest

assumptions to be used under the Pension Benefit Guaranty Corporation's regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended. Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities," *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 set forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during April 1995 and multiemployer plans that have undergone mass withdrawal and have valuation dates during April 1995.

For annuity benefits, the interests rates will be 7.10% for the first 20 years following the valuation date and 5.75% thereafter. For benefits to be paid as lump sums, the interest assumptions to

be used by the PBGC will be 5.75% for the period during which benefits are in pay status, 5.00% during the seven-year period directly preceding the benefit's placement in pay status, and 4.0% during any other years preceding the benefit's placement in pay status. The above annuity interest assumptions represent a decrease (from those in effect for March 1995) of .20 percent for the first 20 years following the valuation date are otherwise unchanged. The lump sum interest assumptions represent a decrease (from those in effect for March 1995) of .25 percent for the period during which benefits are in pay status and the seven years directly preceding that period; they are otherwise unchanged.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the Federal Register by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during April 1995, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during April 1995, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy