

§ 40.8

28 CFR Ch. I (7-1-07 Edition)

administrators or employees of the institution and such review shall be conducted without influence or interference by administrators or employees of the institution.

[Order No. 957-81, 46 FR 48186, Oct. 1, 1981, as amended by Order No. 1618-92, 57 FR 38773, Aug. 27, 1992; Order No. 1955-95, 60 FR 13902, Mar. 15, 1995]

§ 40.8 Emergency procedure.

The grievance procedure shall contain special provision for responding to grievances of an emergency nature. Emergency grievances shall be defined, at a minimum, as matters regarding which disposition according to the regular time limits would subject the inmate to a substantial risk of personal injury, or cause other serious and irreparable harm to the inmate. Emergency grievances shall be forwarded immediately, without substantive review, to the level at which corrective action can be taken. The procedure for resolving emergency grievances shall provide for expedited responses at every level of decision. The emergency procedure shall also include review by a person or entity not under the supervision or control of the institution.

§ 40.9 Reprisals.

The grievance procedure shall prohibit reprisals. "Reprisal" means any action or threat of action against anyone for the good faith use of or good faith participation in the grievance procedure. The written procedure shall include assurance that good faith use of or good faith participation in the grievance mechanism will not result in formal or informal reprisal. An inmate shall be entitled to pursue through the grievance procedure a complaint that a reprisal occurred.

§ 40.10 Records—nature; confidentiality.

(a) *Nature.* Records regarding the filing and disposition of grievances shall be collected and maintained systematically by the institution. Such records shall be preserved for at least three years following final disposition of the grievance. At a minimum, such records shall include aggregate information regarding the numbers, types and dispositions of grievances, as well as indi-

vidual records of the date of and the reasons for each disposition at each stage of the procedure.

(b) *Confidentiality.* Records regarding the participation of an individual in the grievance proceedings shall be considered confidential and shall be handled under the same procedures used to protect other confidential case records. Consistent with ensuring confidentiality, staff who are participating in the disposition of a grievance shall have access to records essential to the resolution of the grievance.

Subpart B—Procedures for Obtaining Certification of a Grievance Procedure

§ 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.