SUPPLEMENTARY INFORMATION:

Background

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883) (the "Act"), provides generally that no merchandise shall be transported by water, or by land and water, between points in the United States except in vessels built in and documented under the laws of the United States and owned by U.S. citizens. However, the Act, as amended by Pub. L. 90–474 (82 Stat. 700; T.D. 68–227), provides that upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the United States, reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the United States will not apply to its vessels.

Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), lists those nations found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks. Section 4.93(b)(2), Customs Regulations (19 CFR 4.93(b)(2)), lists those nations found to grant reciprocal privileges to vessels of the United States for the transportation of equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and certain equipment for use with such barges; certain empty instruments of international traffic; and certain stevedoring equipment and material.

Greece is included in the list in § 4.93(b)(1), Customs Regulations, of those nations found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks.

On June 12, 1981, the Department of State advised the Secretary of the Treasury that Greece places no restrictions on the transportation of the other articles listed in the Act by vessels of the United States between ports in Greece.

Finding

On the basis of the information received from the Secretary of State, as described above, I find that the Government of Greece places no restrictions on the transportation of the other articles specified in section 27 of the Merchant Marine Act of 1920, as amended, by vessels of the United States between ports in Greece. Therefore, reciprocal privileges are accorded to vessels registered in Greece as of June 12, 1981.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Amendment to the Regulations

§ 4.93 [Amended]

To reflect the reciprocal privileges granted to vessels registered in Greece, § 4.93(b)(2), Customs Regulations (19 CFR 4.93(b)(2)), is amended by inserting "Greece" in appropriate alphabetical order in the list of nations under this section.

(Sec. 27, 41 Stat. 999, as amended, sec. 14, 67 Stat. 516, Pub. L. 90–474, 82 Stat. 700 (5 U.S.C. 301, 19 U.S.C. 1322(a), 46 U.S.C. 883))

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this is a minor amendment in which the public is not particularly interested and there is a statutory basis for the described extension of reciprocal privileges, notice and public procedure pursuant to 5 U.S.C. 553(b)(B) are unnecessary. In accordance with 5 U.S.C. 553(d)(1), a delayed effective date is not required because this amendment grants an exemption.

Inapplicability of Regulatory Flexibility Act

This document is not subject to the provisions of sections 603 and 604 of Title 5, United States Code, as added by section 3 of Pub. L. 96–354, the "Regulatory Flexibility Act." That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Barbara E. Whiting, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service and the Departments of State and the Treasury participated in its development.

Dated: September 3, 1981.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 81-28591 Filed 9-30-81; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF JUSTICE

Attorney General

28 CFR Part 40

[Order No. 957-81]

Standards for Inmate Grievance Procedures

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The "Civil Rights of Institutionalized Persons Act," Pub. L. 96–247, requires that the Attorney General promulgate minimum standards for inmate grievance procedures and establish a method of certifying such procedures. The following document fulfills these requirements. Specifically, this document amends Part 40 of Title 28, Code of Federal Regulations by revising Subpart A ("Minimum Standards for Inmate Grievance Procedures") and by adding a new Subpart B ("Procedures for Obtaining Certification of a Grievance Procedure"). This document is intended to provide the public with notice of the rule in this area, not just changes from prior policy.

EFFECTIVE DATE: November 1, 1981.

ADDRESS: Office of General Counsel, Room 760, 320 1st Street NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street, NW., Washington, D.C. 20534 (202) 724–3062.

SUPPLEMENTARY INFORMATION: The Civil Rights of Institutionalized Persons Act, Pub. L. 96–247, 94 Stat. 349 (the "Act"), grants the Attorney General of the United States authority to initiate and to intervene in civil actions against states and their political subdivisions to protect the federal rights of institutionalized persons. It also

promotes the protection of constitutional rights of adults in correctional facilities by encouraging the development and implementation of administrative mechanisms for the resolution of prisoner grievances within institutions.

The Act requires that the Attorney General develop standards for prisoner grievance mechanisms in adult correctional and detention facilities and procedures to certify grievance mechanisms which meet those standards. States and their political subdivisions voluntarily may submit plans for grievance mechanisms to the Attorney General for such certification. A court may continue, for a period of up to 90 days, a case filed pursuant to 42 U.S.C. 1983 by an adult confined in a correctional or detention facility in order to require that adult to exhaust administrative remedies that the Attorney General or the court determines are in substantial compliance with the standards promulgated by the Attorney General. Such continuances should only occur if the issues raised in the action pursuant to 42 U.S.C. 1983 reasonably can be expected to be resolved by the grievance mechanism.

Section 7 of the Act, to be codified at 42 U.S.C. 1997e, requires that the standards for grievance mechanisms provide for an advisory role for employees and inmates in the formulation, implementation, and operation of the mechanism; specific time limits for written replies to grievances including explanations of decisions; priority processing of emergency grievances; safeguards to prevent reprisals against grievants; and independent review of grievance decisions "by a person or other entity not under the direct supervision or direct control of the institution."

Proposed standards on this rule were initially published November 28, 1980 (45 FR 79095 et seq.). Following receipt of comments, a final rule was published January 16, 1981 (46 FR 3843 et seq.). Pursuant to the provisions of the Act, the standards set forth in the final rule became effective March 9, 1981, thirty legislative days after final publication. By Order dated March 6, 1981 (46 FR 16100), however, the effective date of those parts of the rule that established methods of certification of inmate grievance procedures and an Office of Inmate Grievance Procedure Certification were deferred until March 30, 1981. In the same Order, the Attorney General gave notice of his intent to review and, if necessary, to revise the part of the rule that became effective March 9, 1981. Subsequently, by Order dated March 30, 1981 (46 FR 19935), the Attorney General again deferred, until June 30, 1981, the effective date of both Subpart B, which established methods of certification, and 0.18 which established an Office of Inmate Grievance Procedure Certification.

Following further review, the Attorney General, as stated in his March 6, 1981 Order, determined that the rule on Standards for Inmate Grievance Procedures should be republished as a proposed rule. Accordingly, by Order dated July 10, 1981 (46 FR 36843), the Attorney General removed 28 CFR Part 40, Subpart B and § 0.18 to Part 0 of Title 28, Code of Federal Regulations. This action was taken to prevent the confusion which would result from permitting the Department's regulations on methods of certification to go into effect while new procedures were simultaneously being proposed.

The Department of Justice republished its proposed Standards for Inmate Grievance Procedures July 16, 1981 (46 FR 36865 et seq.). That document contained a revision of Subpart A (Minimum Standards for Inmate Grievance Procedures) and a new Subpart B (Procedures for Obtaining Certification of a Grievance Procedure). Interested persons were invited to submit comments on the propose rule and public comments were received from various sources. On the basis of comments received, some changes have been made in the final rule. Members of the public may submit further comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no further response in the **Federal Register.**

After review of the law and regulations, the Attorney General certifies that this final rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), will not have a significant impact on a substantial number of small entities. Further, the Attorney General has determined that the proposed standards do not constitute a "major rule" within the meaning of Executive Order 12291.

Summary of Changes/Comments

1. § *40.1*—Proposed § 40.17 is renumbered § 40.1. Comments requested clarification on whether the rule applies to pretrial inmates, as the definition of "inmate" in § 40.1(e) states "who has been convicted of a crime", while the definition of "institution" includes "pretrial detention facility". A comment favored including pretrial inmates within the scope of this rule; however, section 7 of the Act, specifies "an adult convicted of a crime confined in any jail, prison, or other correctional facility". To clarify this, the definition of "institution" is revised to specify that the Standards apply to institutions which house adult inmates. "Inmate" is defined in § 40.1(e) as "an individual confined in an institution for adults, who has been convicted of a crime". Any state, at its option, may elect to apply the standards to persons in pretrial status whether they are detained in a separate institution or in the same institution as adult inmates.

2. § *40.2*—Comments on this section objected to the provision that inmates be afforded an advisory role in the formulation and implementation of a grievance procedure. One comment stated that prisoners in county jails are in custody for short periods of time and are poor advisors because they are "inexperienced and unaware of the problems of the jail". Another commenter suggests the use of ex-offenders as advisors. Another commenter believed that the system itself provides an advisory role in both the implementation and reviewing phases of the procedure, as the inmate can call attention to procedural shortcomings through use of the system itself. Another commenter suggested that the rule lends a greater level of specificity to inmate advisory roles than is desirable or practicable. The commenter favors inmate/employee advisory roles through regular monthly "forum" meetings, which focus on numerous subjects, including the grievance procedure. Section 7(b)(2)(A) of the Act requires that employees and inmates have an advisory role in the formulation, implementation, and operation of the system. Correctional authorities have latitude in selecting a method to ensure that the advisory role is provided. This method may include periodic "forum" meetings, written notices with solicitation of comments, advisory committees, etc. While jail prisoners may be inexperienced and unaware of the problems of the jail, the Act requires an "advisory role" only, and gives correctional authorities latitude to determine the method of participation and the feasibility of suggestions.

3. § *40.3*—Comments objected to the provision that the written grievance procedure be distributed to all employees and inmates in the institution. One commenter stated that implementation of this provision would require "large expenditures of precious few dollars and staff time to make available to each and every new employe and inmate a copy of the entire and, presumbly, lengthy procedure."

Another commenter stated that some institutional employees have no direct contact with or responsibility for inmates and therefore would have no substantive need for an individual copy of the procedure.

Although it is essential that all inmates and staff know that the procedure exists, the value of individual copies for every person is not clear. The cost factor and the administrative burden are not inconsequential, especially in facilities where large numbers of inmates are detained for relatively short periods of time. Accordingly, the final rule is revised to require the written grievance procedure to be "available" to all employees and inmates of the institution. This provision may be met by posting copies of the written procedure on inmate and staff bulletin boards, in inmate law libraries, ect. The rule also requires that each new inmate and employee receive both a written notification (possibly as part of an institution handbook) and an oral explanation (possibly as part of the institution orientation program) of the procedure.

We do not agree with a comment that this section needs to recognize that participating employees and inmates equally need training. Section 40.11(b) of the certification procedure clearly states that staff and inmates are to be afforded instructional materials.

4. § *40.5*—A commenter suggests that it would be unwise to allow a staff/inmate committee to review *all* complaints against staff and inmates since some complaints require absolute confidentiality, while other complaints result in the head of the institution having his actions or decisions reviewed by a group of subordinates. This section does not establish one required method for review of grievances, but only requires that the grievance procedure apply to a broad range of complaints and state specifically the type of complaints covered and excluded. There is no requirement that grievances be reviewed by a committee, as suggested by the commenter. An applicant may exclude from review by inmates participating in an advisory role, a grievance which is not against general policy and which poses a threat to institution security (for example, a serious allegation against an employee which may affect the security of the institution). As to the comment that the head of the institution may have his actions or decisions reviewed by subordinates, we point out that inmate/staff participation is advisory only, but this review can be useful in assessing how policy is perceived.

5. § *40.7*—A commenter suggests that § 40.7(a) encourage attempts at informal resolution of a grievance before formal filing to ensure that an inmate makes an initial effort to solve the problem with the appropriate person(s). Prior to the commenter's initiation of an informal resolution procedure, inmates "were ignoring the usual way of doing business which resulted in an extraordinarily high volume of appeals entering the system". An informal resolution process is highly desirable, and § 40.7(a) is revised accordingly.

The majority of all comments received related to § 40.7(b) and concerned the provision for inmate and employee participation in the operation of the system. The words "and use" were removed from the first sentence because inmate and employee participation is intended to promote the credibility of the system, but not to promote the use of the procedure. In response to concern that the third sentence of proposed § 40.7(b) was vague and difficult to understand, that sentence was redrafted to more clearly state its intent. Most comments opposed the concept of inmate participation. Commenters stated that such a provision creates a specific hardship on management, that the matter should be left to the discretion of prison officials (dependent on the situation at a given institution), that it may potentially impact on institution security, that it may subject inmate participants to exertion of pressure, criticisms and perhaps retaliatory actions from others, and that inmates may be perceived by other inmates to exercise a leadership role (thereby constituting a security risk). Several commenters pointed out specific problems which would be encountered with a jail population. One commenter said that inmates in their jail have an average stay of 62 days, and that the longer term inmates are "hard core, repeat offenders," with "no real interest in the efficient lawful operation of the jail". Another commenter pointed out that the short stay would make selection and evaluation of inmates for an advisory position "difficult and meaningless".

Several commenters favored inmate participation but believe that the proposed rule fails to accurately meet the Act's requirement for employees and inmates to be afforded an advisory role in the formulation, implementation, and operation of the system. One commenter suggests that the proposed rule "permits prisoner participation far short of that required under any reasonable interpretation of the statutory language." Another commenter objects to the limitation of inmate participation to general policy matters, as distinguished from specific actions or incidents relating to individual inmates.

The Act and its legislative history require an advisory role for employees and inmates in the formulation, implementation, and operation of the system. The Act also recognizes the need to solicit and incorporate the suggestions of correctional experts, as it requires that the Attorney General shall "after consultation with persons, State and local agencies, and organizations with background and expertise in the area of corrections, promulgate minimum standards * * *". The rule as written accommodates the legitimate security concerns of correctional persons and complies with the minimum requirements of the Act. One commenter believed the language is insufficient, that the rule should provide guidance more specific than the statute. The rule is considerably more detailed than the statute. The rule language sets the framework and the tone for what is expected, and the applicant has discretion to determine how best to fulfill the requirement. Different approaches may be considered. If the method chosen is not sufficient, the Attorney General will not award certification.

In respect to comments that there is no support in the Act or its legislative history for limiting inmate participation to grievances on general policy matters, the Act does not require that inmates and staff advise on all grievances, and it calls for the establishment of minimum standards after consultation with corrections authorities. Because some commenters believe the inmates' advisory role in resolution should be restricted to no more than general policy matters, and because most commenters believe it is unwise and even dangerous to place one inmate in an apparent or quasi decision-making role in the specific grievance of another, we believe it is unwise to require as a minimum standard a more extensive advisory role for inmates than required in the present rule. These rules set minimum standards which applicants may then expand if they wish. For example, inmate participation may be solicited in a grievance concerning an institution's administrative detention policy. For reasons addressed by most correctional authorities, however, inmate participation in a grievance concerning another inmate's placement in detention is considered inappropriate, as it may permit one inmate to unreasonably intrude on the privacy of another, it may affect institution security, it may subject

inmate participants to undue pressure and retaliation, and it may invite corruption. While two commenters believe that limiting inmate participation to grievances of general policy would diminish the inmates' perception of the system's credibility, the majority of comments on that issue are best described by one comment that inmate trust and inmate belief in the credibility of the system are not a function of inmate participation, since that participation in any event is advisory, but depend on how well correctional officials, who are and must be the final decision-makers, operate the system.

We disagree with a comment that this section conflicts with Standard 1.11 (which requires "an advisory role for inmates and staff in the formulation, implementation and general policy operation of the system") of the Department of Justice Federal Standards for Prisons and Jails. Section 40.7(b) clearly reflects the same principle, that the advisory role on operation need only relate to general policy questions.

Several commenters addressed the method of inmate participation and many were under the impression that grievance hearings or some form of inmate-employee grievance resolution committee are required. To resolve this misconception, a new sentence has been added to make it clear that these methods of resolving grievances are permitted but not required. The method of participation is intentionally left unspecified so that correctional authorities may consider the applicable constraints and factors which exist at their institutions. The need for this latitude is demonstrated by one state correctional official who reported that while several institutions in his state have been able to operate inmate councils in "an effective and non-disruptive manner", at least two institutions "have recently experienced disruptions caused by misguided and pressured inmate council members". In addition to inmate councils, other examples of inmate participation include the solicitation of written comments on the posted abstract of policy grievances, advisory committee discussions, and inmate/staff town meetings.

We disagree with a comment that inmate review of the effectiveness and credibility of the grievance procedure be at the discretion of the institution if inmates and employees are allowed to actively participate in disposition of grievances challenging policy and practices. Inmate assessment of the procedure, regardless of their participation in the system, is beneficial in both learning how the system is perceived, and in making the effort to strengthen the effectiveness and credibility of the mechanics of the system. Inmate participation "before the adjudication of the grievance" in § 40.7(b) means before the first formal level of adjudication, and is amended accordingly.

No change is contemplated in response to a comment that § 40.7(c) should specifically state that the institution establish a procedure for investigating the allegations and establishing the facts of each grievance. The title of § 40.7(c), "Investigation and consideration", clearly indicates an investigation is to occur, and such a rule would simply belabor the obvious. Nor do we believe it necessary to revise this section to specify that no direct party to the grievance should be involved. The existing language is intended to exclude persons who, although not directly involved, may have been indirectly involved in the subject of the grievance (for example, a witness to an act which is the subject of the grievance). It is not intended, as suggested by a commenter, to preclude the Warden from responding to a grievance about an institutional policy promulgated by the Warden.

We disagree with a comment to § 40.7(d) that the rule should require that the grievant file a reasoned, written statement as to why he wishes to appeal further. The commenter objected to a common practice whereby a grievant appeals, stating only "appeal further". While some states may wish to require further specificity, as to the exact substance of an appeal, this is a matter better left to the applicant's discretion than to this rule. Another comment to this section states that the rule does not identify decision levels. This is intentional to give each applicant latitude to establish its own levels of decision and review in compliance with § 40.7(f). With respect to a comment that suggests deletion of the phrase "if available", we note that administrative appeal is not available after the final stage.

Comments on § 40.7(e) objected to the requirement that grievances must be processed from initiation to final disposition in less than 90 days, unless the grievant agrees in writing to an extension. While some grievances may require in excess of 90 days, for resolution (for example, on a policy issue), the Act in § 7(a)(1), permits continuance for exhaustion for no more than 90 days. To clarify, § 40.7(e) substitutes the phrase "within 90 days" for "in less than 90 days".

Two commenters to § 40.7(f) favored the provision that the required review be conducted by a person or other entity not under the supervision or control of the correctional agency. Such a requirement, however, would clearly go beyond the provision of the Act which requires "independent review * * * by a person or other entity not under the direct supervision or direct control of the institution". Further, there are strong arguments for not having review outside of the agency. The existing rule language does not prohibit review by an authority outside the correctional agency but leaves this determination to individual applicants.

We do not agree with another comment to § 40.7(f) that inmates will always exercise this review provision or that the correctional system itself cannot effectively serves as an objective third party. Experience with, and knowledge of existing grievance procedures clearly indicate that inmates don't automatically exercise their right to appeal nor do appeal responses within the correctional system routinely show a lack of objectivity.

A commenter to both § 40.7(f) and § 40.8 asked who had responsibility to select or appoint a person or persons outside of the institution to serve as the reviewing official. Such a selection is presumed to be made by the applicant.

6. § *40.8*—Several commenters to § 40.8 objected to the need for an emergency procedure. One commenter believed that the use "of multi-level grievance procedure requiring inmate, employee and outside participation is inefficient for this purpose." The commenter favored the development of an alternative approach, for example, directing the grievance to the appropriate administrator. Another commenter believes that an emergency provision "unnecessarily complicates the entire process", stating that failure to act promptly will undermine the validity of the system and be detrimental to the correctional institution. The language of the Act requires the development of a procedure for "priority processing of grievances which are of an emergency nature". While an individual is encouraged to go to the "appropriate administrator" prior to filing a grievance, the rule does provide an inmate an alternative course of action in the event that the emergency situation is not expeditiously handled. Another comment assumes the need to initially refer the emergency complaint to a grievance committee, but there is nothing in the Act which requires that a committee exist for any reason in the grievance procedure. The rule allows for

an emergency appeal directly to the decision level of the grievance process. In the event that the grievance does not warrant an emergency review, it may be returned to the inmate for routine submission.

There is merit to comments that the grievance procedure needs to provide guidance in determining emergency matters to be reviewed. The proposed language requiring specificity, however, is unnecessary and may result in applicants inadvertently omitting subjects which may constitute an emergency. The basis for emergency review is described in the existing rule language as a matter which could "subject the inmate to a substantial risk of personal injury, or cause other serious and irreparable harm to the inmate." Accordingly, the final rule deletes language requiring that the grievance procedure state specifically the matters to be reviewed.

7. § *40.9*—In response to comments, § 40.9 is revised. The final rule is expanded to prohibit reprisals against anyone for their good faith use of or good faith participation in the grievance procedure. This revision satisfies public comments that employees be included within the provisions of this section. The "good faith" condition is added as a result of comments, and changes the rule so that appropriate disciplinary action is not precluded in cases of deliberate, malicious filings. We consider it impractical and unnecessary to adopt a suggestion that the rule require an applicant to specify steps that will be taken to prevent and redress reprisals, and the penalties for engaging in reprisals, though individual applicants are free to do so. Reprisals are a form of employee misconduct which is governed, as to procedures and sanctions, by provisions other than the grievance procedure.

8. § *40.10*—We do not agree with a comment to § 40.10(a) that the minimal reporting and recording system for grievance matters is meaningless. The requested information can be provided in a single-line log, card, or data entry per case, which easily provides a general overview of the system's operation.

Commenters to § 40.10(b) opposed the provisions on confidentiality. One commenter stated that staff may need to review grievances for many non-clerical reasons, including certain transfer decisions (a grievance could have been filed against placement in a particular institution), to determine whether an inmate has exhausted administrative remedies, etc. Another commenter stated that § 40.9, by prohibiting reprisals, clearly prohibits misuse of the grievance information. Recognizing these concerns, the final rule incorporates the substance of a comment that the records regarding the participation of an inmate in the grievance procedures shall be considered confidential and shall be handled under the same procedures used to protect other confidential case records.

9. § *40.11 (Proposed)*—Several commenters objected to the annual comprehensive evaluation required by § 40.11. Commenters believed that it places an unjustified burden upon small entities and that the necessary resources (staff and hardware) will not be available. Another commenter believes that it is impossible to report accurately the costs generated or saved by compliance with 42 U.S.C. 1997e "due to the myriad of other factors affecting the cost associated with the correctional system."

In assessing these comments and after a review of the Act, it has been determined that inclusion of § 40.11 is neither necessary nor cost-effective, and that it would be of questionable value. Accordingly, proposed § 40.11 is deleted from the final rule. Section 40.10(a) requires maintenance of records and establishes the minimum information that is to be retained. Additional information and/or evaluation may be maintained at the discretion of the applicant.

One commenter to this section indicates that there is a need to continually monitor the program, preferably by a person or entity within the agency that is outside the chain of command of the institution. While an applicant may wish to establish a separate monitoring procedure, we believe that the appeal process can be adequately monitored by that entity designated to be the final level of appeal. We do not believe it necessary for the rule to require a separate provision for monitoring.

Based on the deletion of proposed § 40.11, proposed §§ 40.12–23 become final §§ 40.11–22.

10. § *40.11*—We do not believe, as suggested by a commenter, that the absence of a separate office for grievance certification will adversely affect the certification process. While a separate office might have some useful aspects, administrative costs do not warrant its establishment now. If the need exists at some future date, consideration can then be given to the establishment of a separate office for certification.

There is no requirement in the proposed rule that each inmate or employee receive training in the operation of the grievance system. As specified in § 40.3, each inmate and employee is to be afforded written notification of and is to be orally advised of the existence of the procedure. The training required in the latter part of final § 40.11(b) is only for those persons who are directly involved in the operation of the system. "If any" was added to recognize that special training for inmates may not be necessary for some methods of advisory inmate participation.

11. § *40.12*—A commenter objected to proposed § 40.13 (now final § 40.12), stating that the published notice requirement is a waste of tax dollars and that it is vague in respect to what is required. In response to this comment, the publication requirement has been replaced by a requirement that an applicant post notice of its intent to apply for certification in prominent places in each affected institution and provide a similar notice to the U.S. District Court(s) with jurisdiction over the institution(s). Proposed § 40.12(h) has been deleted because its requirements are not applicable under the terms of the final rule.

12. § *40.13*—A commenter believes that proposed § 40.14 (now final § 40.13) is vague and, in conjunction with the notice provision, that it creates a situation whereby the applicant is placed in the "middle of a political controversy with those 'groups and persons' which have developed and attempted to promulgate philosophies of corrections for and against the rights of incarcerated persons". The commenter believes that the net effect of these requirements is to discourage rather than encourage state applicants. A final objection is based on the view that since the Federal District Court with jurisdiction over 42 U.S.C. 1983 actions can determine if a 90-day continuation is in order, the requirements of final § 40.12 are cumbersome and that the requirements of final § 40.13 are subjecting the state applicant to political pressures.

It is not the intent of the proposed rule to create the situation identified by this commenter. The posting of the notice and inviting of comments provide interested persons with the knowledge that an application for certification is to be filed. The Attorney General's review of the comments received is limited to the certification process, and is not intended, nor expected, to create a "political controversy".

A commenter requests clarification on what constitutes a reasonable amount of time for a response by the Attorney General. The rule requires that a

response be prepared as promptly as the circumstances permit. It is not now possible to set a specific time frame, since the number and complexity of the applications and the volume of information to be reviewed are unknown.

13. § *40.20*—The word "whether" is changed to "if" in the last sentence of § 40.20 to make it clear that the Attorney General need notify an applicant only if a proposed change would result in suspension of certification.

14. § *40.22*—It is not appropriate to add the phrase, as suggested by a commenter, that "these standards create no legally enforceable rights or expectations of any kind." In suggesting this language the commenter refers to the revised Preamble (see 46 FR 39515–16) to the Federal Standards for Prisons and Jails. The Federal Standards for Prisons and Jails were not statutorily created as is the case with this present publication. As for this grievance procedure, certification of the procedure will give a U.S. Court the authority to continue an inmate's claim under 42 U.S.C. 1983 for 90 days in order to exhaust these administrative remedies.

15. *Additional comments*—Several commenters objected to the grievance procedures in their entirety. One commenter believed that the proposed procedure "is a series of mistakes", that it is "far too burdensome on a jail administration". Other comments suggested that the Commission on Accreditation for Corrections Standards serve as the definitive set of standards for jails, with one commenter stating that imposing additional standards only serves to impose an additional level of regulations that is unnecessary. We believe these Standards, as revised, are adaptable to jail situations (with frequent turnover of population) if an applicant chooses to apply them to jails. We concur with the statements supporting definitive standards for corrections; we do not believe that these standards for grievance procedures conflict with those published by the Commission on Accreditation for Corrections. Rather, the rule deals with a certification process for the grievance procedure, and describes what the system should include in order for the Attorney General to award certification.

Another comment suggested that the grievance standards need to retain flexibility to accommodate the "healthy diversity" that exists among various states. We agree, and believe that this is accomplished in the existing standards, which set guidelines, but leave specific procedures to each applicant. These revised standards recognize, as suggested in a comment, the "assumption that state correction officials by and large seek to discharge their duties with the utmost good faith * * *".

A suggestion that the Commentary published in the January 1981 final rule be retained is not adopted, as this information is believed extraneous to the substance of the rule. Another commenter suggested that the implementation of this grievance procedure would be better served if federal assistance were granted. Federal assistance is a separate issue, not required to be addressed by the Act in these standards. These rules have been adopted on the basic assumption that each state should develop its own grievance procedure. Federal assistance in the form of consultation, as opposed to monetary support, is available upon request. In response to a final comment, the rule does not require periodic review by the Attorney General. It is expected that reviews will be conducted as the need arises, based on specific requests or information.

For the reasons set forth in the preamble and under the authority of Pub. L. 96–247, 94 Stat. 349 (42 U.S.C. 1997) the Attorney General amends Part 40 of Title 28, Code of Federal Regulations by revising Subpart A and by adding a new Subpart B.

40 CFR is amended by revising Subpart A and by adding a new Subpart B to read as follows:

PART 40—STANDARDS FOR INMATE GRIEVANCE PROCEDURES

Subpart A—Minimum Standards for Inmate Grievance Procedures

Sec.

Subpart B—Procedures for Obtaining Certification of a Grievance Procedure

Authority: Pub. L. 96–247, 94 Stat. 349 (42 U.S.C. 1997).

Subpart A—Minimum Standards for Inmate Grievance Procedures

§ 40.1 Definitions.

For the purposes of this part—

(a) "Act" means the Civil Rights of Institutionalized Persons Act, Pub. L. 96–247, 94 Stat. 349 (42 U.S.C. 1997).

(b) "Applicant" means a state or political subdivision of a state that submits to the Attorney General a request for certification of a grievance procedure.

(c) "Attorney General" means the Attorney General of the United States or the Attorney General's designees.

(d) "Grievance" means a written complaint by an inmate on the inmate's own behalf regarding a policy applicable within an institution, a condition in an institution, an action involving an inmate of an institution, or an incident occurring within an institution. The term "grievance" does not include a complaint relating to a parole decision.

(e) "Inmate" means an individual confined in an institution for adults, who has been convicted of a crime.

(f) "Institution" means a jail, prison, or other correctional facility, or pretrial detention facility that houses adult inmates and is owned, operated, or managed by or provides services on behalf of a State or political subdivision of a State.

(g) "State" means a State of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) "Substantial compliance" means that there is no omission of any essential part from compliance, that any omission consists only of an unimportant defect or omission, and that there has been a firm effort to comply fully with the standards.

§ 40.2 Adoption of procedures.

Each applicant seeking certification of its grievance procedure for purposes of the Act shall adopt a written grievance procedure. Inmates and employees shall be afforded an advisory role in the formulation and implementation of a grievance procedure adopted after the effective date of these regulations, and shall be afforded an advisory role in reviewing the compliance with the standards set forth herein of a grievance procedure adopted prior to the effective date of these regulations.

§ 40.3 Communication of procedures.

The written grievance procedure shall be readily available to all employees and inmates of the institution. Additionally, each inmate and employee shall, upon arrival at the institution, receive written notification and an oral explanation of the procedure, including the opportunity to have questions regarding the procedure answered orally. The written procedure shall be available in any language spoken by a significant portion of the institution's population, and appropriate provisions shall be made for those not speaking those languages, as well as for the impaired and the handicapped.

§ 40.4 Accessibility.

Each inmate shall be entitled to invoke the grievance procedure regardless of any disciplinary, classification, or other administrative or legislative decision to which the inmate may be subject. The institution shall ensure that the procedure is accessible to impaired and handicapped inmates.

§ 40.5 Applicability.

The grievance procedure shall be applicable to a broad range of complaints and shall state specifically the types of complaints covered and excluded. At a minimum, the grievance procedure shall permit complaints by inmates regarding policies and conditions within the jurisdiction of the institution or the correctional agency that affect them personally, as well as actions by employees and inmates, and incidents occurring within the institution that affect them personally. The grievance procedure shall not be used as a disciplinary procedure.

§ 40.6 Remedies.

The grievance procedure shall afford a successful grievant a meaningful remedy. Although available remedies may vary among institutions, a reasonable range of meaningful remedies in each institution is necessary.

§ 40.7 Operation and decision.

(a) *Initiation.* The institution may require an inmate to attempt informal resolution before the inmate files a grievance under this procedure. The procedure for initiating a grievance shall be simple and include the use of a standard form. Necessary materials shall be freely available to all inmates and assistance shall be readily available for inmates who cannot complete the forms themselves. Forms shall not demand unnecessary technical compliance with formal structure or detail, but shall encourage a simple and straightforward statement of the inmate's grievance.

(b) *Inmate and employee participation.* The institution shall provide a role for employees and inmates in the operation of the system in such a manner as to promote the credibility of the grievance procedure. At a minimum, some employees and inmates shall be permitted to participate in an advisory capacity in the disposition of grievances challenging general policy and practices and to review the effectiveness and credibility of the grievance procedure. In any instance in which inmates and employees are afforded an advisory role in the disposition of an individual grievance, the opportunity for such participation shall occur before the initial adjudication of the grievance. Such participation may be limited to advisory comment on policy questions which are raised or implicated in a grievance, without identification of individual names or specific facts. No inmate shall participate in the resolution of any other inmate's grievance over the objection of the grievant. In-person hearings and formally established inmate-employee committees are permitted, but are not required as part of the grievance procedure.

(c) *Investigation and consideration.* No inmate or employee who appears to be involved in the matter shall participate in any capacity in the resolution of the grievance.

(d) *Reasoned, written responses.* Each grievance shall be answered in writing at each level of decision and review. The response shall state the reasons for the decision reached and shall include a statement that the inmate is entitled to further review, if such is available, and shall contain simple directions for obtaining such review.

(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 grievances from becoming moot. In all instances grievances must be processed from initiation to final disposition within 90 days, unless the grievant agrees in writing to an extension for a fixed period. Expiration of a time limit at any stage of the process shall entitle the grievant to move to the next stage of the process, unless the grievant has agreed in writing to an extension of the time for a response.

(f) *Review.* The grievant shall be entitled to review by a person or other entity, not under the institution's supervision or control, of the disposition of all grievances, including alleged reprisals by an employee against an inmate. A request for review shall be allowed automatically without interference by administrators or employees of the institution and such review shall be conducted without influence or interference by administrators or employees of the institution.

§ 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 evey 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 asurance 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 individual 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.

An application for certification shall be submitted to the Office of the Associate Attorney General, Department of Justice, Main Justice Building, Washington, D.C. 20530, and shall contain the following:

(a) *Written statement.* A written statement describing the grievance procedure, including a brief description of the institution or institutions covered by the procedure, with accompanying plans for or evidence of implementation in each institution.

(b) *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.

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

(d) *Information regarding past performance.* For a 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.

(e) *Plan for collecting information.* For a 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 (d) of this section.

(f) *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.

(g) *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 or supervision of the institution who will review the evaluation, together with two copies of the most recent evaluation, if one has been performed.

§ 40.12 Notice of intent to apply for certification.

The applicant shall post notice of its intent to request certification in prominent places in each institution to be covered by the procedure and shall provide similar written notice to the U.S. District Court(s) having jurisdiction over each institution to be covered by the procedure. The notices shall invite comments regarding the grievance procedure and direct them to the Attorney General.

§ 40.13 Review by the Attorney General.

The Attorney General shall review and respond to each application as promptly as the circumstances, including the need for independent investigation and consideration of the comments of agencies, and interested groups and persons, permit.

§ 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, the Attorney General shall grant conditional certification for one year or until the applicant satisfies the requirements of § 40.15, whichever period is shorter.

§ 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, full certification shall be granted. 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 and so notifies the applicant in writing.

§ 40.16 Denial of certification.

If the Attorney General finds that the grievance procedure is not in substantial compliance with the standards promulgated herein, 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.

§ 40.17 Reapplication after denial of certification.

An applicant denied certification may resubmit an application for certification at any time after the inadequacy in the application or the grievance procedure is corrected.

§ 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, 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, 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, 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.

(c) *Recertification after suspension pursuant to paragraph (a).* The Attorney General shall reinstate the certification of an appliant whose certification was suspended pursuant to paragraph (a) of this section upon a demonstration in writing by the applicant that the specific deficiency on which the suspension was based has been corrected or that the information that caused the Attorney General to suspend certification was erroneous.

(d) *Recertification after suspension pursuant to paragraph (b).* The Attorney General shall reinstate the certification of an applicant whose certification has been suspended pursuant to paragraph (b) upon a demonstration in writing that the deficiency on which the suspension was based has been corrected.

(e) *Notification in writing of suspension or reinstatement.* The Attorney General shall notify an applicant in writing that certification

has been suspended or reinstated and state the reasons for the action.

§ 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, the Attorney General shall withdraw certification, unless the Attorney General concludes that suspension of certification under § 40.18(b) of this part is appropriate.

(b) *Notification in writing of withdrawal of certification.* The Attorney General shall notify an applicant in writing that certification has been withdrawn and state the reasons for the action.

(c) *Recertification after withdrawal.* An applicant whose certification has been withdrawn and who wishes to receive recertification shall submit a new application for certification.

§ 40.20 Contemplated change in certified procedure.

A proposed change in a certified procedure must be submitted to the Attorney General thirty days in advance of its proposed effective date. The Attorney General shall review such proposed change and notify the applicant in writing before the effective date of the proposed change if such change will result in suspension or withdrawal of the certification of the grievance procedure.

§ 40.21 Notification of court.

The Attorney General shall notify in writing the Chief Judges of the United States Court of Appeals and of the United States District Court(s) within whose jurisdiction the applicant is located of the certification, suspension of certification, withdrawal of certification and recertification of the applicant's grievance procedure. The Attorney General shall also notify the court of the certification status of any grievance procedure at the request of the court or any party in an action by an adult inmate pursuant to 42 U.S.C. 1983.

§ 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. Certification shall not indicate approval of the use or application of the grievance procedure in a particular case.

Dated: September 25, 1981.

William French Smith,

Attorney General.

[FR Doc. 81-28587 Filed 9-30-81; 8:45 am]

BILLING CODE 4410-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Procedural Regulations on Filing and Deferral of Charges of Discrimination; Correction

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects two typographical errors contained in the final regulation on filing and deferral of charges of discrimination which was published August 26, 1981 (46 FR 43037).

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, (202) 653-5490, Legal Counsel Division, EEOC, 2401 E Street, N.W., Washington, D.C. 20506.

Signed at Washington, D.C. this 22d day of September 1981.

For the Commission.

J. Clay Smith, Jr.,

Acting Chairman, Equal Employment Opportunity Commission.

In FR Doc. 81-24877, appearing at page 43037 in the August 26, 1981 issue of the **Federal Register**, the word "and" and the figure "30" should be "an" and "300" respectively in sections 1601.13(a)(2) and 1601.13(b)(2)(ii). Accordingly, the Equal Employment Opportunity Commission is correcting 29 CFR 1601.13(a)(2) and 1601.13(b)(2)(ii) to read as follows:

§ 1601.13 Filing; deferrals to State and local agencies.

* * * * *

(a) * * *

(2) A jurisdiction having a 706 Agency without subject matter jurisdiction over a charge (e.g., an agency which does not cover sex discrimination or does not cover nonprofit organizations) * * *

(b) * * *

(2) * * *

(ii) If the 706 Agency proceedings have terminated, the charge may be timely filed with the Commission within 30 days of receipt of notice that the 706 Agency proceedings have been terminated or within 300 days from the date of the alleged violation, whichever is earlier.

* * * * *

[FR Doc. 81-28553 Filed 9-30-81; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 185

[DoD Directive 3025.10] [1]

Military Support of Civil Defense

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This rule is being reissued to incorporate relevant provisions of Executive Order 12148, "Federal Emergency Management," July 20, 1979, as amended, and to provide guidance to all DoD components for DoD support of the national civil defense program under the proponency of the Federal Emergency Management Agency (FEMA). The reissuance establishes revised DoD policies and responsibilities for military support of civil defense under a national emergency involving an attack, or a condition that might precede an attack, on the United States.

EFFECTIVE DATE: July 22, 1981.

FOR FURTHER INFORMATION CONTACT: Colonel Conrad C. Gonzales, USAF, Office of the Deputy Under Secretary of Defense (Policy), Directorate for Emergency Planning, Washington, D.C. 20301, telephone 202-694-4534.

SUPPLEMENTARY INFORMATION: In FR Doc. 65-3852, appearing in the **Federal Register** (30 FR 4753) on April 14, 1965, the Secretary of Defense published this rule under Part 220 of this title, which was later redesignated Part 185 (33 FR 6913, May 8, 1968). The source document of this revised Part 185, DoD Directive 3025.10, July 22, 1981, was signed by Frank C. Carlucci, Deputy Secretary of Defense.

Accordingly, 32 CFR is being amended by revising Part 185, reading as follows:

PART 185—MILITARY SUPPORT OF CIVIL DEFENSE

Sec.

Authority: The Federal Civil Defense Act of 1950 (64 Stat. 1245-1257), as amended; E.O. 12148, July 20, 1979, as amended.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

§ 185.1 Reissuance and purpose.

This Part is reissued to establish DoD policies and responsibilities for DoD support of the national civil defense program under the proponency of the Federal Emergency Management Agency (FEMA), in compliance with the Federal Civil Defense Act of 1950, as amended and Executive Order 12148, "Federal Emergency Management," July 20, 1979, as amended; and defines policy for the military support of civil defense under a national emergency involving an attack, or a condition that might precede an attack, on the United States.

§ 185.2 Applicability and scope.

(a) The provisions of this Part apply to the Office of the Secretary of Defense, the Military Departments and their Reserve and National Guard components, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter called "DoD Components"). The term "Military Service," as used herein, refers to the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) The provisions of this Part shall govern military support of civil defense actions by all DoD Components in the 50 states, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

§ 185.3 Definitions.

(a) *Military Support of Civil Defense.* Those military activities and measures taken by DoD Components to assist the civilian population and designed to minimize the effects upon the civilian population caused or which would be caused by an enemy attack upon the United States, its terrritories and possessions; deal with the immediate emergency conditions which would be created by any such attack; and effect emergency repairs to or the emergency restoration of vital utilities and facilities destroyed or damaged by any such attack. When directed by the Secretary of Defense to implement military support of civil defense plans, military support of civil defense actions shall encompass those responsibilities and functions identified in DoD Directives 3025.1[1], "Use of Military Resources During Peacetime Civil Emergencies within the United States, its Territories and Possessions," May 23, 1980 and 32 CFR Part 215.

(b) *Military Resources.* Military and civilian personnel of the active and reserve components, facilities, equipment and supplies under the control of DoD Components, and services performed by DoD Components, to include airlift and other transportation services.

(c) *Civil Defense Emergency.* A national emergency resulting from devastation created by an enemy attack and requiring emergency operations during and following an attack. This emergency may also be proclaimed by appropriate authority in anticipation of an attack.

Note.—This is distinct from "Civil Emergency" and "Civil Disturbance," as defined in DoD directives 3025.1[1], and 32 CFR Part 215.

(d) *Automatic Response.* Actions taken independently by a military commander before implementation of military support of civil defense plans and in anticipation of or during a civil defense emergency and to save lives or prevent human suffering.

(e) *Crisis Relocation.* The orderly relocation of the population of metropolitan and other risk areas during a period of acute international crisis to low risk areas to reduce vulnerability to the effect of nuclear, biological, chemical or conventional weapons attack. For the commander of a military installation or facility, a similar relocation of military forces and other personnel from the installation or facility.

§ 185.4 Policy.

(a) The national civil defense program is an intergral part of national security and is an essential element of the deterrent posture of the United States. Accordingly, subject to the priorities prescribed in § 185.4(b) military support of civil defense is an appropriate mission for DoD Components. The JCS shall have overall responsibility for providing military support of civil defense. In performing this mission, the JCS are authorized to call upon the Military Services and the Defense Agencies to make available military resoures needed for the performance of this mission.

(b) In event of nuclear, biological, chemical, or conventional weapon attack on the United States, its territories and possessions, the degree of military involvement in military support of civil defense will depend upon the commitment of military resources to military operations, the extent of damage sustained in the civilian community, and the status and disposition of active and reserve component forces. In all cases, however, military operations shall have first priority. Other missions that will have precedence over military support of civil defense include continuity of Federal Government operations, military personnel and property survival, and rehabilitation of military facilities that support the war-waging capacity of the armed forces.

(c) Accomplishment of the military support of civil defense misssion requires coordination between the Department of Defense and the Federal Emergency Management Agency at the national and regional levels. DoD commanders charged with planning and execution responsibilities shall coordinate plans and procedures with FEMA regional offices. In the event of conflicting demands on DoD resources, appropriate DoD Components shall seek clarification through military command channels.

(d) Subject to JCS approval, the Military Services and Defense Agencies shall make available to state or local authorities during a civil defense emergency those resources not otherwise committed to current or planned military operations or to other priority missions cited in § 185.4(b) in accordance with the policies enumerated below.

(1) Planning for military support of civil defense shall contain provisions for emergency preparations in crisis situations and be directed toward the most disastrous damage anticipated from an attack under minimum warning.

(2) The executive agent functions assigned to the Secretary of the Army by DoD Directive 3025.1[1] and 23 CFR Part 215 shall be suspended or terminated in accordance with procedures established by the Secretary of Defense for enemy attack situations. In such a case, responsibility for these functions shall be transferred to the JCS for accomplishment by commanders responsive to the JCS.

(3) Military support of civil defense shall complement and not be a substitute for civil participation in civil defense operations. Military plans and plans developed by civil authority shall recognize that civil resources must be the first used to support civil requirements and that military resources must be used only when available and within resource capability to supplement the civil resources. DoD-expendable materials used by the Military Services and Defense Agencies for military support of civil defense missions shall be resupplied through civil resource claimancy procedures and channels in accordance with DoD Directive 5030.45[1], "Department of Defense Representation of Federal Emergency Management Agency (FEMA) Regional Preparedness Committees," (Under Revision).

[1] See footnote page 1.

(4) Subject to the priorities prescribed in § 185.4(b), military forces, active and reserve, and the National Guard when federalized, shall be considered potentially available to provide military support of civil defense to civil authorities during a civil defense emergency. The actual use of military resources will also be determined by casualties and damage incurred by the military during an attack.

(5) The Commander-in-Chief, U.S. Readiness Command (USCINCRED) has military support of civil defense planning and execution responsibilities for the continental United States (CONUS). Within the 48 contiguous states and the District of Columbia, each Military Department shall periodically or upon request provide to USCINCRED, through appropriate headquarters designated by the parent Military Service, listings of all military forces and DoD Components located in CONUS. Forces shall be listed in order of priority of probable availability to provide military support of civil defense based on their military missions, their locations, and their capabilities as follows:

(i) *Priority I.* Those forces with a high probability of availability.

(ii) *Priority II.* Those forces with a lower probability of availability.

(iii) *Priority III.* Those forces least likely to be available because of high priority combat and combat support missions.

(6) For Alaska, Hawaii, Puerto Rico, and U.S. territories and possessions, the commander of the appropriate Unified Command or the commander designated by the JCS has military support of civil defense planning and execution responsibility for his respective areas. These commanders shall maintain a listing of forces as described in § 185.4(d)(5).

(7) Priorities of availability of forces shall be reflected in appropriate military support of civil defense plans. All forces listed shall be prepared and ready to execute the tasks contemplated. Those forces furnished to perform military support of civil defense in CONUS may be withdrawn by the military commanders of the parent Military Service for operational missions contingent upon notification of USCINCRED. For other areas, similar notification is required with the commander of the appropriate Unified Command or other commander designated by the JCS.

(8) A military commander, in making military resources available to civil authorities for military support of civil defense, is subject to no authority other than that established in the military chain of command.

(e) Military support of civil defense includes the following:

(1) Coordination with FEMA of plans and procedures for providing military support of civil defense to the civil sector.

(2) Use, under the direction of USCINCRED, of the existing military command structure in CONUS to plan for and execute military support of civil defense, using the Adjutants General and their headquarters.

(3) Use of appropriate commands in Alaska, Hawaii, Puerto Rico, and U.S. territories and possessions, as designated by JCS, to plan for and conduct military support of civil defense using the Adjutants General and their headquarters.

(4) Designation and training of personnel of alternate headquarters in conformity with continuity of operations plans, to assume responsibility in the event the principal headquarters is inoperative.

(5) Allocating time to the training of military forces in the basic functions of military support of civil defense, consistent with the need for those forces first to achieve an adequate level of readiness to perform their primary wartime mission. The present emergency-related DoD and FEMA facilities and courses shall be used to accomplish that training.

(6) Law enforcement:

(i) In those areas in which martial law has been proclaimed, military resources may be used for local law enforcement. Normally a state of martial law will be proclaimed by the President. However, in the absence of such action by the President, a senior military commander may impose martial law in an area of his command where there has been a complete breakdown in the exercise of government functions by local civilian authorities. Military assumption of judicial, law enforcement, and administrative functions of local government will be based on necessity that is actual and present, and the performance of these functions will continue only so long as necessity of that extreme nature requires interim military intervention. Civil administration will be restored as soon as civil authorities are able to resume their local government roles.

(ii) In the absence of martial law the performance of law enforcement functions by the military will be limited to those actions that are necessary to prevent loss of life and the wanton destruction of property. Intervention by the military for these purposes is permissible only when a serious breakdown in law and order has occurred or is imminent and only when appropriate civilian authorities have requested military assistance. Such assistance will be terminated as soon as civilian authorities are able to resume their responsibilities in these respects.

(7) Making provisions for commanders at appropriate echelons to provide within the commander's capability immediate and independent automatic response support to requests from civil authorities. This include developing and maintaining plans and capabilities to assist civilian authorities in restoring federal, state and local civil operations. Such interim emergency assistance shall be in coordination with and supplementary to the capabilities of state and local governments and other nonmilitary organizations, and shall be concerned with assistance which includes but is not limited to:

(i) Restoration of facilities and utilities, including transportation, communications, power, fuel, water, and other essential facilities.

(ii) Emergency clearance of debris and rubble, including explosive ordnance from streets, highways, rail centers, dock facilities, airports, shelters, and other areas, to permit rescue or movement of people, access to and recovery of critical resources, and emergency repair or reconstruction of facilities.

(iii) Fire protection.

(iv) Rescue, evacuation, and emergency medical treatment or hospitalization of casualties, recovery of critical medical supplies, and safeguarding of public health. This may involve sorting and treating casualties and preventive measures to control the incidence and spread of infectious diseases.

(v) Recovery, identification, registration, and disposition of deceased personnel.

(vi) Radiation monitoring and decontamination, as well as chemical and biological monitoring, to include identifying contaminated areas, and reporting information through the national warning system. Initial decontamination will be directed primarily at personnel and vital facilities.

(vii) Movement control, to include plans and procedures for essential movements.

(viii) Issue of food, essential supplies, and materiel, to include collection, safeguarding, and issue of critical items.

(ix) Emergency provision of personnel, equipment, and facilities for food preparation, should mass or community subsistence support be required.

(x) Damage assessment.

(xi) Provision of interim communications, using available mobile military equipment to provide command and control.

§ 185.5 Responsibilities.

(a) On behalf of the Secretary of Defense, the *Under Secretary of Defense for Policy* shall provide policy guidance on matters associated with military support of civil defense.

(b) The *Joint Chiefs of Staff* shall:

(1) Advise the Secretary of Defense and Under Secretary of Defense for Policy on policies, responsibilities, and programs relating to military support of civil defense as a contingency mission of all military forces, and provide recommendations on allocating military resources for military support of civil defense as numerated in § 185.4(e).

(2) In consultation with the Director, FEMA, and the Military Services, issue instructions for the conduct of military support of civil defense to Commanders of Unified Commands and other designated commanders. Such instructions shall provide for establishment of liaison with FEMA.

(3) Ensure compatibility of military support of civil defense plans with other military plans.

(c) The *Secretary of the Army* shall:

(1) Provide for the execution of the tasks in § 185.4(e) in accordance with approved guidance.

(2) Provide for a reporting system to USCINCRED to identify all Department of the Army forces by CONUS Army area according to priority of probable availability, in accordance with § 185.4 (c) through (e); determine specific availability of forces following an actual attack; and, for CONUS, designate commands to assist in preattack planning and provide for control of Department of the Army forces made available for military support to civil defense. The reporting system shall be developed in accordance with the provisions of DoD Directive 5000.11 [1], "Data Elements and Data Codes Standardization Program," December 7, 1964, and DoD Directive 500.19 [1], "Policies for the Management and Control of Information Requirements," March 12, 1976. Data elements and codes shall be registered with the Office of the Assistant Secretary of Defense (Comptroller) (OASD)(C)), Attention: Director for Management Information Control and Administration (DMIC&A).

(3) Assure readiness of active and reserve units of the Army to execute plans for military support of civil defense.

(4) Provide explosive ordnance disposal service and planning assistance to civil authorities in the development and operation of any military support of civil defense explosive ordnance disposal program.

(5) Assist the Department of the Air Force, to the extent that conditions and resources available permit, in executing postattack aerial reconaissance within the CONUS for nuclear damage assessment purposes.

(d) The *Secretary of the Navy* shall:

(1) Provide for the execution of tasks enumerated in § 185.4(e), in accordance with approved guidance.

(2) Provide for a reporting system to USCINCRED to identify all Department of the Navy forces by CONUS Army area according to priority of probable availability, in accordance with § 185.4 (c) through (e), determine specific availability of forces following an actual attack; and, for CONUS, designate commands to assist in preattack planning and provide for control of Department of the Navy forces made available for military support of civil defense. The reporting system shall be developed in accordance with the provisions of DoD Directive 5000.11 [1], and DoD Directive 5000.19 [1]. Data elements and codes shall be registered with DMIC&A, OASD(C).

(3) Assure readiness of active and reserve units of the Navy and Marine Corps to execute plans for military support of civil defense.

(4) Assist the Department of the Air Force, to the extent that conditions and available resources permit, in executing postattack aerial reconnaissance within the CONUS for nuclear damage assessment purposes.

(5) Maintain liaison and coordinate planning with the U.S. Coast Guard regarding the participation of Coast Guard forces in military support of civil defense.

(6) Furnish technical training in explosive ordnance disposal, and provide underwater explosive ordnance and nuclear material disposal service for coastal areas to and including the high water mark for enclosed bodies of water and for rivers or canals and at all Navy and Marine Corps installations; provide for disposal of explosive ordnance or nuclear materials aboard naval aircraft.

(e) The *Secretary of the Air Force* shall:

(1) Provide for the execution of the tasks enumerated in § 185.4(e) in accordance with approved guidance.

(2) Provide for a reporting system to USCINCRED to identify all Department of the Air Force forces by CONUS Army area according to priority of probable availability, in accordance with § 185.4 (c) through (e); determine specific availability of forces following an actual attack; and, for CONUS, designate commands to assist in preattack planning and to provide for control of Department of the Air Force forces made available for military support of civil defense. The reporting system shall be developed in accordance with the provisions of DoD Directive 5000.11 [1], and DoD Directive 5000.19 [1]. Data elements and codes shall be registered with DMIC&A, OASD(C).

(3) Assure readiness of active and reserve units of the Air Force to execute plans for military support of civil defense.

(4) Furnish appropriate assistance to units of Civil Air Patrol engaged in missions related to military support of civil defense.

(5) Conduct postattack aerial photo reconnaissance missions for damage assessment purposes. Information derived therefrom shall be made available to civil defense authorities as expeditiously as possible, in accordance with standing arrangements and procedures.

(6) Provide explosive ordnance disposal service on Air Force installations for disposal of explosive ordnance or nuclear materials in the physical possession of the Air Force at the time of any incidents or accidents.

(f) The *Directors of the Defense Agencies* shall provide advice and assistance on matters within their spheres of competence to the JCS in the discharge of the responsibilities enumerated in § 185.5(b), provide advice and assistance and make available resources not otherwise committed to the Military Departments in the discharge of their responsibilities enumerated in § 185.5 (c) through (e).

§ 185.6 Financing.

Financial planning under this Directive shall assume that in the event of a declared civil defense emergency, actions will be taken by military authorities on the basis of the President's constitutional war powers.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

September 25, 1981.

[FR Doc. 81-28535 Filed 9-30-81; 8:45 am]

BILLING CODE 3810-01-M

[1] See footnote page 1.

[1] See footnote page 1.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD3-80-4A]

Anchorage Regulations; New London Harbor, Connecticut

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule implements the request of the Commander, U.S. Navy Submarine Squadron Two and the Southeastern Connecticut Chamber of Commerce to eliminate the naval anchorage restriction applying to Anchorage A in New London Harbor, New London, Connecticut. The anchorage is no longer needed as a designated naval anchorage. The effect of this rule will be an increase in the availability of general anchorage grounds in New London Harbor, thereby relieving crowding in general anchorages adjacent to Anchorage A. Editorial changes are also being made to appropriately designate descriptive latitudes and longitudes as "north" and "west" respectively.

EFFECTIVE DATE: This amendment becomes effective on November 2, 1981.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Michael S. Macie, Project Officer, Port Safety Branch, Third Coast Guard District (mps), Building 108, Room 106, Governors Island, New York, NY 10004 (Tel: 212-668-7179).

SUPPLEMENTARY INFORMATION: On January 29, 1981 the Coast Guard published a notice of proposed rulemaking for these regulations in the **Federal Register** (46 FR 9659-9660). Interested persons were requested to submit comments and no comments were received.

In addition, the **Federal Register** notice of January 29, 1981 contained two minor errors as follows. (1) Two different docket numbers were given, one in the heading (CGD81-012) and another in the text (CCGD3-80-4A). The correct docket number (CGD3-80-4A) appears at the beginning of this notice of the final rule. (2) AT § 110.147(a)(2), line 7, of the proposed rule, the distance of "2,480" yards following the bearing of 009° was omitted. It has been placed within this final rule. Neither of these errors substantially affected the proposal or this final rule.

DRAFTING INFORMATION: The principal persons involved in drafting this final rule are Lieutenant Commander Michael S. Macie, Project Officer, Port Safety Branch, Third Coast Guard District, and Lieutenant Robert Bruce, Project Attorney, Third Coast Guard District Legal Office.

SUMMARY OF FINAL EVALUATION: The proposed change of this anchorage from naval to general use was reviewed by the Third Coast Guard District Planning Staff under the provisions of the "Procedures for Considering Environmental Impacts" (COMDTINST 16475.1) and was found not to require an environmental assessment.

The proposed regulation was also found to be nonsignificant in accordance with the guidelines set forth in the "Policies and Procedures for Simplification, Analysis and Review of Regulations" (DOT Order 2100.5 of 22 May 1980). An economic evaluation of the proposal has not been conducted since its impact is expected to be minimal. The change in designated use of this anchorage is not a matter on which there is substantial public interest or controversy, nor does it involve impacts on competition, business, State or local government, or the regulations of other programs and agencies.

Moreover, this rule is not a major rule as defined by Executive Order 12291 of February 17, 1981. This rule, once implemented, will not affect the economy to any measurable degree, result in any increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or result in any adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Finally, it is hereby certified that this rule will not have any economic impact on a substantial number of small entities, as described in the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601, et seq.). This certification is made in accordance with section 605 of Title 5 of the United States Code.

PART 110—ANCHORAGE REGULATIONS

Final Regulations: In consideration of the foregoing, § 110.147 of Title 33, Code of Federal Regulations, is amended to read as follows:

§ 110.147 New London Harbor, Conn.

(a) *The anchorage grounds—(1) Anchorage A.* In the Thames River east of Shaw Cove, bounded by lines connecting points which are the following bearings and distances from Monument, Groton (latitude 41°21'18" N., longitude 72°04'48" W.): 243°, 1,400 yards; 246°, 925 yards; 217°, 1,380 yards; and 235°, 1,450 yards.

(2) *Anchorage B.* In the Thames River southward of New London, bounded by lines connecting points which are the following bearings and distances from New London Harbor Light (latitude 41°18'59" N., longitude 72°05'25" W.): 002°, 2,460 yards; 009°, 2,480 yards; 026°, 1,175 yards; and 008°, 1,075 yards.

(3) *Anchorage C.* In the Thames River southward of New London Harbor, bounded by lines connecting a point bearing 100°, 450 yards from New London Harbor Light, a point bearing 270°, 575 yards from New London Ledge Light (latitude 41°18'21" N., longitude 72°04'41" W.), and a point bearing 270°, 1,450 yards from New London Ledge Light.

(4) *Anchorage D.* In Long Island Sound approximately two miles west-southwest of New London Ledge Light, bounded by lines connecting points which are the following bearings and distances from New London Ledge Light: 246°, 2.6 miles; 247°, 2.1 miles; 233°, 2.1 miles; and 235°, 2.6 miles.

(b) *The regulations.*—(1) Anchorage A is for barges and small vessels drawing less than 12 feet.

(2) Except in emergencies, vessels shall not anchor in New London Harbor or the approaches thereto outside the anchorages defined in paragraph (a) of this section unless authorized to do so by the Captain of the Port.

(33 U.S.C. 471; 49 U.S.C. 1655(g)(1); 49 CFR 1.46(c)(1); 33 CFR 1.05-1(g)(1))

Dated: June 26, 1981.

R. I. Price,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 81-28611 Filed 9-30-81; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 110

[CGD3-80-5A]

Special Anchorage Area, Manhasset Bay, New York

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Manhasset Isle Civic Association, Inc., Manhasset Isle, Port Washington, New York, the Coast Guard is expanding the special anchorage described in 33 CFR 110.60(h) in Manhasset Bay at Manorhaven, New York. This expansion of the special anchorage is needed to accommodate vessels now anchoring for extended periods of time within the area to be added. The expansion will enhance navigational safety by alerting,