

Notice of Proposed Rule

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-210.101 Routine Mail

PURPOSE AND EFFECT: To increase the safety and security of inmates and staff, the Department is developing a system through a third-party vendor to allow for the receipt, processing, and delivery of routine mail in correctional institutions. Rulemaking is necessary to establish the protocols for processing routine mail electronically and to update the regular routine mail process to make it consistent with the electronic routine mail process.

SUMMARY: The proposed rule establishes the protocols for processing routine mail electronically and updates the regular routine mail process to make it consistent with the electronic routine mail process.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The Department used an itemized checklist to conduct an economic analysis and determine if there is an adverse impact or regulatory cost associated with this rule that exceeds the criteria. Upon review of the proposed changes to the rule, the Department has determined that the amendments will not exceed any one of the economic analysis criteria in a SERC as set forth in s. 120.541(2)(a), F.S.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 20.315, 944.09 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Lauren Sanchez, Paralegal Specialist, 501 S. Calhoun Street, Tallahassee, FL 32399 (850)717-3610, lauren.sanchez@fdc.myflorida.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jason Holman, Assistant General Counsel, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, Jason.Holman@fdc.myflorida.com.

THE FULL TEXT OF THE PROPOSED RULE IS:

Substantial rewording of Rule 33-210.101, F.A.C., follows. See Florida Administrative Code for present text.

33-210.101 Routine Mail.

(1) The provisions of this rule apply to all incoming and outgoing routine mail. "Routine mail" is all incoming and outgoing inmate mail, except legal mail as defined in Rule 33-210.102, F.A.C., privileged mail as defined in Rule 33-210.103, F.A.C., and publications as defined in Rule 33-501.401, F.A.C. "Electronic mail processing," where used herein, refers to the process of electronically scanning routine mail to digitize the documents received.

(2) Except as provided in this rule, an inmate may receive mail from any person or group.

(3) Inmates are responsible for informing correspondents of the regulations concerning incoming routine mail.

(4) Inmates are permitted to receive only the following items through incoming routine mail:

(a) Correspondence that requires no more than a single first-class postage stamp to be delivered by the U.S. Postal Service.

(b) Written correspondence that is written in English, Spanish, or Creole. Inmates who cannot read and write in English, Spanish, or Creole may request approval from the warden to correspond and receive correspondence in the language that the inmate can read and write using Form DC6-236, Inmate Request. The warden shall approve such requests when there is Department staff who can translate the correspondence or when it is otherwise possible to obtain translation services to translate the correspondence at a de minimus cost to the Department. Correspondence may be written on greeting cards, but greeting cards containing electronic or other non-paper parts, cards that are constructed in such a way as to permit concealment of contraband, or cards that are larger than 8" x 10" will not be permitted. Form DC6-236 is incorporated by reference in Rule 33-103.005, F.A.C.

(c) Written material on paper that is no larger than 8 1/2" x 14". Written material can be on both sides of a page. This does not include publications, which shall be handled pursuant to Rule 33-501.401, F.A.C. Individual articles or clippings from publications, the content of which is otherwise admissible, are permissible. No item can be glued, taped, stapled, or otherwise affixed to a page.

(d) Photographs that are no larger than 8" x 10" in size. Nude photographs or photographs that reveal genitalia, buttocks, or the female breast will not be permitted. Polaroid photographs and commercial photographs will not be permitted. Commercial photographs are those produced in bulk that are not actual photographs but are computer or printer copies usually produced for sale or purchase.

(5) Except for items that are illegal, if an impermissible item is received by the Department or a Department contractor, the entire correspondence will be returned to the sender pursuant to subsection (9) of this rule. For example, the following items may not be included with or attached to incoming routine mail:

(a) non-paper items;

(b) items of a non-communicative nature such as lottery tickets or matchbooks;

(c) stickers or stamps (other than postage stamps affixed to the outside of the mailing envelope, postal service attachments, and address labels affixed to the outside of the mailing envelope);

(d) address labels (other than those affixed to the outside of the mailing envelope);

(e) laminated cards or other laminated materials; or

(f) greeting cards.

(6) Any incoming routine mail received by the Department or a Department contractor for electronic mail processing shall be opened and examined and is subject to being read by designated Department employees and by the Department contractor. If the warden has approved an inmate to receive correspondence written in a language other than English, Spanish, or Creole, the correspondence may be translated to confirm that it complies with all applicable Department rules. If the correspondence cannot be translated by a Department employee where an inmate is housed or by the Department contractor, the correspondence will be processed, and a copy will be sent to another institution or the central office for translation. Incoming routine mail that is properly addressed and otherwise in compliance with applicable Department rules shall not be held for processing for more than 72 hours after receipt by the Department or a Department contractor, excluding weekends and holidays. Except for inmates in certain housing assignments identified in paragraph (7) below, mail processed electronically will be available to inmates through kiosk and tablet services pursuant to Rule 33-602.900, F.A.C. All original incoming routine mail that is received for electronic mail processing shall be retained for 90 days by the Department contractor from the date of receipt, after which it will be shredded. The sender of incoming routine mail that is to be or that is processed electronically may request that the original correspondence and contents be returned by sending a written request with a self-addressed stamped envelope to the Department contractor any time prior to the expiration of the 90-day retention period.

(7) Inmates housed in Administrative Confinement, Disciplinary Confinement, Close Management I and II, Maximum Management, or are otherwise not permitted to access kiosks, kiosk services, or tablet services as provided for in Rule 33-602.900, F.A.C., will have their scanned mail printed and delivered at no cost to the inmate.

(8) Outgoing or incoming mail shall be disapproved for mailing by or delivery to the inmate if any part of it:

(a) depicts or describes procedures for the construction of or use of weapons, ammunitions, bombs, chemical agents, or incendiary devices;

(b) depicts, encourages, or describes methods of escape from any correctional institution or facility, contains blueprints, drawings, or similar depictions of any Department institution or facility, or includes road maps that can facilitate escape from any Department institution or facility;

(c) depicts or describes procedures for the brewing of alcoholic beverages or the manufacture of drugs or other

intoxicants;

(d) is written in code or is otherwise written in a manner that is not reasonably subject to interpretation as to meaning or intent by Department staff or the Department contractor;

(e) depicts, describes, or encourages activities that may lead to the use of physical violence or group disruption;

(f) encourages or instructs in the commission of criminal activity;

(g) is dangerously inflammatory in that it advocates or encourages riot, insurrection, disruption of the institution, or violation of Department or institution rules;

(h) threatens physical harm, blackmail, or extortion;

(i) pictorially depicts sexual conduct as defined by Section 847.001, F.S., as follows:

1. actual or simulated sexual intercourse;

2. sexual bestiality;

3. masturbation;

4. sadomasochistic abuse;

5. actual contact with a person's unclad genitals, pubic area, buttocks, or, if such person is a female, breast;

6. any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed;

(j) presents nudity in such a way as to create the appearance that sexual conduct is imminent (i.e., the display of contact or intended contact with genitals, pubic area, buttocks, or female breasts orally, digitally, or by a foreign object, or the display of sexual organs in an aroused state);

(k) contains photographs that depict nudity;

(l) contains criminal history, offender registration, or other personal information about another inmate or offender which, in the hands of an inmate, presents a threat to the security, order, or rehabilitative objectives of the correctional system or to the safety of any person;

(m) contains an advertisement promoting any of the following where the advertisement is the focus of, rather than incidental to, the publication, or the advertising is prominent or prevalent throughout the publication:

1. three-way calling services;

2. pen-pal services;

3. the purchase of products or services with postage stamps; or

4. conducting a business or profession while incarcerated.

(n) is not in compliance with the incoming mail regulations set forth in subsections (4) and (5) of this rule;

(o) contains or appears to contain unknown or unidentifiable substances; or

(p) otherwise presents a threat to the security, order, or rehabilitative objectives of the correctional system or to the safety of any person.

(9)(a) When an inmate is prohibited from receiving incoming routine mail, the inmate and the sender will be given notice in writing on Form DC2-521, Unauthorized Mail Return Receipt, that the correspondence has been disapproved for delivery and stating at least one of the authorized reasons for disapproval. One copy of Form DC2-521 will be given to the inmate and one copy will be placed in the original envelope with the correspondence and returned to the sender. However, if incoming correspondence is rejected by the Department or a Department contractor because it does not comply with the requirements of subsections (16) or (21) of this rule, Form DC2-521 will not be prepared. Instead, Department staff or the Department contractor shall write or stamp the reason for rejection on the correspondence and it shall be returned unopened to the sender by the U.S. Postal Service. Form DC2-521 is hereby incorporated by reference. Copies of the form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, <https://www.flrules.org/Gateway/reference.asp?No=Ref-06806>. The effective date of this form is 05/16.

(b) If the incoming routine mail is disapproved for one of the reasons listed in subsections (10), (11), or (12), paragraphs (8)(a) through (l) or (o), or subsection (14) or (15) of this rule, Department staff or the Department contractor shall make a copy of the correspondence before returning the original to the sender along with Form DC2-521, Unauthorized Mail Return Receipt. If the Department or the Department contractor receives identical correspondence from the same individual or entity that is addressed to more than 10 different inmates and the correspondence is disapproved for one of the reasons stated above, Department staff or the Department contractor shall make only one copy of the correspondence before returning the originals to the sender along with one Form

DC2-521. The originals may be returned together in a single package.

(c) The copies of returned correspondence shall be retained by the Department or the Department contractor for 30 days, not including any time that a grievance appeal is pending, provided the inmate has initiated the process by filing a formal grievance within 15 days of notice of the delivery disapproval. The inmate is not required to file an informal grievance regarding the delivery disapproval.

(d) If unauthorized items are discovered in incoming routine mail (other than items of an illegal nature), the unauthorized item and the correspondence will be returned to the sender along with Form DC2-521, Unauthorized Mail Return Receipt.

(10) Correspondence between inmates at different institutions or facilities is subject to the prior approval of the warden of each institution or facility. Either warden shall withhold approval if he or she finds that the intended correspondence would present a substantial threat of interference with the security, order, or rehabilitative objectives of his or her institution or facility.

(11) Correspondence with individuals under civil commitment as sexually violent predators is subject to the prior approval of the warden. The warden shall withhold approval if he or she finds that the intended correspondence would present a substantial threat of interference with the security, order, or rehabilitative objectives of his or her institution.

(12) Inmates shall not use correspondence privileges to solicit or otherwise commercially advertise for money, goods, or services. For the purposes of this rule, this includes the placing of ads soliciting pen-pals. Inmates who post ads or have ads posted with the assistance of another person shall be subject to disciplinary action. If an inmate alleges that an ad was posted by another person without his or her permission or that the ad was placed before the restriction on soliciting pen-pals became effective, it is the responsibility of the inmate to request that the ad be removed by submitting a written request to the owner, operator, or administrator of the forum in which the ad is located if it is reasonably possible for the Department to identify the physical address of such entity. No inmate shall be subject to discipline if the ad is not removed subsequent to submission of the written request. If it is not reasonably possible for the Department to identify the physical address of the owner, operator, or administrator of the forum in which the ad is located, the inmate must submit Form DC6-236, Inmate Request, to the warden indicating that the ad was placed without the inmate's knowledge or consent or that it was placed prior to the restriction on solicitation of pen-pals. In such case, the inmate shall be subject to disciplinary action only if it is discovered that the inmate posted the ad or requested that the ad be posted and, when applicable, that the ad was posted subsequent to the restriction on solicitation of pen-pals.

(13) Inmates may not send mail to any person who has advised the warden that he or she does not wish to receive mail from the inmate. The parents or legal guardians of a person under the age of 18 may advise that mail is not to be sent to such person. Upon receipt of such advisement, the warden will cause to be prepared an acknowledgment specifying that the inmate will not be permitted to send mail to the person requesting the correspondence restriction and that such person should return any further mail received from the inmate and notify the warden of the attempt to correspond. After the inmate is notified of the correspondence restriction, any further attempt to correspond will be considered a violation of this rule and of section 9-14 of the Rules of Prohibited Conduct set forth in Rule 33-601.314, F.A.C., and will subject the inmate to disciplinary action. This restriction does not apply to civil pleadings or other legal documents pertaining to a civil case in which both the inmate and the receiver are parties, and no inmate shall be subject to disciplinary action for mailing such items.

(14) Inmates shall not establish or conduct a business through the mail while incarcerated.

(15) Inmates are prohibited from entering contests or sweepstakes through the mail while incarcerated.

(16) Incoming and outgoing routine mail shall be delivered to and picked up from the institution or facility by the U.S. Postal Service only. Incoming routine mail that is to be processed electronically shall be sent via the U.S. Postal Service to a centralized address designated by the Department that is posted on the Department's public website. All such mail will be picked up for electronic mail processing by the Department contractor. All legal mail as defined in Rule 33-210.102, F.A.C., or privileged mail as defined in Rule 33-210.103, F.A.C., received at the centralized address designated by the Department shall be returned to the U.S. Postal Service for disposition.

(a) The address on all incoming routine mail must contain the inmate's committed name, identification number, and institutional address or centralized address designated by the Department. The inmate's dorm and bunk

locations are not required. All incoming routine mail shall contain the return address of the sender, which is subject to verification. All incoming routine mail shall be rejected if the recipient or sender cannot be verified.

(b) The return address of all outgoing routine mail shall contain the inmate's committed name, identification number, and institutional name, and institutional address. The inmate's dorm and bunk locations are not required. No prefix other than inmate, Mr., Ms., Miss, or Mrs., nor any suffix other than Jr., Sr., or Roman numeral such as II or III may be included as part of the committed name in the return address. The institutional name in the return address must be spelled out completely with no abbreviations. All outgoing routine mail will be stamped "mailed from a state correctional institution" by mail room staff.

(c) Third party mailing services.

1. An inmate shall not utilize any third-party mailing services or engage in any activities that would enable the inmate to engage in correspondence without revealing his or her status as an inmate. Examples of prohibited activities include the following:

a. placement of ads in magazines, newspapers, or other publications;

b. posting of ads or other information on Internet sites;

c. use of any mailing service that allows the inmate to utilize a non-institutional address and engage in correspondence without revealing his or her status as an inmate; or

d. any activity or service that does not reveal to potential correspondents the inmate's status as an inmate.

e. Any inmate who is discovered to be participating in any of the above-prohibited activities shall be subject to disciplinary action in accordance with Rules 33-601.301-.314, F.A.C.

2. A person sending correspondence to an inmate shall not utilize any third-party mailing services or engage in any activities that would enable the sender to engage in correspondence without revealing his or her identity or return address.

(17) When an inmate is transferred or released, incoming routine mail addressed to the inmate shall be treated as follows:

(a) For 30 days after a transfer or release, all first-class and second-class periodicals will be returned to the U.S. Postal Service within 10 working days of receipt with a forwarding address, if available, and a request to postal authorities to forward the periodicals to the inmate. All postage due is the responsibility of the inmate and must be paid in accordance with postage regulations. At the end of the 30-day period, all first-class and second-class routine periodicals will be returned to the U.S. Postal Service with no attempt to have mail forwarded.

(b) From the date of transfer or release, all incoming routine mail other than first-class and second-class periodicals will be returned to the U.S. Postal Service for disposition.

(18) No postage or writing materials shall be provided to inmates for routine mail except as provided in this subsection. Postage and writing materials shall be provided to any inmate with insufficient funds to allow the inmate to mail one first class letter weighing one ounce or less each month, which must be used for mailing one first class letter weighing one ounce or less each month. Local procedures may be established to require the inmate to request the free postage and writing materials or to establish a specific day of the month for the free letters to be processed.

(19) Inmates shall not utilize hand-made packages or envelopes to send out routine mail. Mail enclosed in such materials will be returned to the inmate without processing.

(20) Outgoing packages and envelopes will not bear any artwork, additional lettering, or designs other than the required mailing address and return address.

(21) No packaging other than standard envelopes shall be given to inmates. Incoming mail that includes the following types of packaging shall be rejected and returned to the sender unopened: envelopes that have metal parts, boxes, padded envelopes, plastic bags, card stock type envelopes (e.g., U.S. Mail Priority or U.S. Mail Express cardboard envelopes), multi-layer packaging, bubble wrap, packing peanuts, and similar packaging.

(22) Inmates shall not use postage stamps as currency to pay for products or services. Postage stamps placed in outgoing mail for this purpose will be deemed contraband. Incoming mail that solicits inmates to purchase products or services and allows payment with postage stamps will be rejected.

Rulemaking Authority 944.09 FS. Law Implemented 20.315, 944.09 FS. History—New 10-8-76, Amended 10-11-77, 4-19-79, 11-19-81, 3-12-84, 10-15-84, Formerly 33-3.04, Amended 7-8-86, 9-4-88, 3-9-89, 9-1-93, 9-30-96, 5-25-97, 6-1-97, 10-7-97, 5-10-98, Formerly 33-3.004, Amended 12-20-99, Formerly 33-602.401, Amended 12-4-02, 8-5-03, 10-27-03, 9-20-04, 3-23-08, 7-2-09, 5-9-10, 12-5-12, 4-1-13, 7-8-14, 5-25-16,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Richard Comerford, Assistant Deputy Secretary of Institutions

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Mark S. Inch, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 6, 2021

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: December 14, 2020