

**DEPARTMENT OF JUSTICE****Bureau of Prisons****28 CFR Part 540**

[BOP-1048-P]

RIN 1120-AA48

**Correspondence: Restricted Special Mail Procedures**

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

**SUMMARY:** In this document, the Bureau of Prisons is proposing to amend its regulations on correspondence to provide for restricted special mail procedures in instances where the Warden has reason to believe that the special mail either has posed a threat or may pose a threat of physical harm to the intended recipient. Under these procedures, special mail addressed to Federal court officials, members of Congress, or, if requested, by other intended special mail recipients would be subject to inspection, in the presence of the inmate, for contraband or the threat of physical harm. These amendments are intended to provide for the continued efficient and secure operation of the institution and to protect the public.

**DATES:** Comments must be received by April 15, 1996.

**ADDRESSES:** Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is proposing to amend its regulations on correspondence (28 CFR part 540, subpart B). Current regulations on this subject were published in the Federal Register on October 1, 1985 (50 FR 40109) and were amended on February 1, 1991 (56 FR 4159).

Current provisions in § 540.18(c) state that outgoing special mail may be sealed by the inmate and is not subject to inspection. The Bureau is revising paragraph (c) to allow for restricted special mail procedures for special mail addressed to Federal court officials and members of Congress, and, if so requested, to other intended recipients. These restricted special mail procedures apply in cases where the Warden (with the concurrence of the Regional Counsel) documents in writing that the inmate's special mail either has posed a threat or may pose a threat of physical

harm to the intended recipient. Any inmate placed on restricted special mail status would be notified in writing by the Warden of the reason for being so placed. The Warden is required to review an inmate's restricted special mail status at least once every 180 days and to notify the inmate in writing of the results of that review. The inmate may be removed from restricted special mail status if the Warden (with the concurrence of the Regional Counsel) determines that the inmate's special mail does not threaten or pose a threat of physical harm to the intended recipient.

An example of a case in which the inmate's special mail may pose a threat of physical harm is when an inmate's past criminal activity or current behavior suggests a propensity to harm others through use of the mail. Even though confined in an institution, an inmate convicted of sending explosives through the mail may be capable of assembling a device to be included in special mail, which poses a danger to the intended recipient.

Procedures for restricted special mail allow staff to inspect special mail material and then to observe the inmate sealing the material. This procedure is not dissimilar to the Bureau's procedures for the receipt of incoming special mail under which special mail addressed to an inmate is opened in the presence of the inmate for inspection for physical contraband and the qualification of any enclosures as special mail.

The intent of this amendment is to apply the status of restricted special mail only when the inmate's conduct warrants it. The Bureau estimates that the vast majority of outgoing inmate special mail will be unaffected by the amendment. An inmate who is so affected may appeal the action through the administrative remedy procedure which is available to inmates for the formal review of a complaint which relates to the inmate's imprisonment.

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

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street NW., HOLC Room 754, Washington, DC

20534. Comments received during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

**List of Subjects in 28 CFR Part 540**

Prisoners.

Kathleen M. Hawk,

*Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 540 in subchapter C of 28 CFR, chapter V is proposed to be amended as set forth below.

**SUBCHAPTER C—INSTITUTIONAL MANAGEMENT****PART 540—CONTACT WITH PERSONS IN THE COMMUNITY**

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

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. In § 540.18, paragraphs (c) and (d) are revised to read as follows:

**§ 540.18 Special mail.**

\* \* \* \* \*

(c) (1) Except as provided for in paragraph (c)(2) of this section, outgoing special mail may be sealed by the inmate and is not subject to inspection.

(2) Special mail shall be screened in accordance with the provisions of paragraph (c)(2)(iii) of this section when the special mail is being sent by an inmate who has been placed on restricted special mail status and the special mail is addressed to a Federal court official, a member of Congress, or to any other intended recipient when that other intended recipient has requested such treatment.

(i) An inmate may be placed on restricted special mail status if the Warden, with the concurrence of the Regional Counsel, documents in writing that the special mail either has posed a threat or may pose a threat of physical harm to the recipient (e.g., the inmate has previously used special mail to threaten physical harm to a recipient).

(ii) The Warden shall notify the inmate in writing of the reason the inmate is being placed on restricted special mail status.

(iii) An inmate on restricted special mail status must present all materials and packaging intended to be sent as special mail to staff for inspection. Staff shall inspect the special mail material and packaging, in the presence of the inmate, for contraband or the threat of physical harm. Upon completion of the inspection, staff shall return the special mail material to the inmate if the material does not contain contraband, or pose a threat of physical harm to the intended recipient. The inmate must then seal the special mail material in the presence of staff. Special mail determined to pose a threat to the intended recipient shall be forwarded to the appropriate law enforcement entity. Staff shall send a copy of the material,

minus the contraband, to the intended recipient along with notification that the original of the material was forwarded to the appropriate law enforcement entity.

(iv) The Warden shall review an inmate's restricted special mail status at least once every 180 days. The inmate is to be notified of the results of this review. An inmate may be removed from restricted special mail status if the Warden determines, with the concurrence of the Regional Counsel, that the special mail does not threaten or pose a threat of physical harm to the intended recipient.

(v) An inmate on restricted mail status may seek review of the restriction through the Administrative Remedy Procedure.

(d) Except for special mail processed in accordance with paragraph (c)(2) of this section, staff shall stamp the following statement directly on the back side of the inmate's outgoing special mail: "The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has neither been opened nor inspected. If the writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to another addressee, please return the enclosure to the above address."

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