

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP-1054-P]

RIN 1120-AA52

Correspondence: Pretrial Inmates

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 require that general mail from pretrial inmates may not be sealed and may be read and inspected by staff. This amendment is intended to provide for the continued efficient and secure operation of the institution and to protect the public.

DATES: Comments must be received by February 7, 1997.

ADDRESSES: Rules Unit, 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) and on December 18, 1995 (60 FR 65204).

Current provisions on general correspondence in § 540.14 (b) and (c) specify that outgoing general mail from pretrial inmates may be sealed by the inmate and are not subject to inspection by staff. The Bureau is proposing to require that general mail from pretrial inmates be sent out unsealed and subject to inspection. This requirement matches the requirement for general mail from sentenced inmates in medium, high, and administrative facilities. Ordinarily, pretrial inmates are housed in administrative facilities. Because pretrial inmates are not classified as to levels of security (as sentenced inmates are), the proposed requirement will apply to pretrial inmates even if they happen to be housed in minimum or low facilities. Special mail, whether from pretrial inmates or sentenced inmates, would be unaffected by this amendment.

The Bureau believes that inspection of outgoing mail from pretrial inmates is

consistent with the application of other Bureau policies pertaining to contacts with the public. For example, general correspondence sent to pretrial inmates is already subject to inspection and telephone calls for pretrial inmates are treated the same as calls for sentenced inmates with respect to monitoring. This amendment also serves to ensure the secure operation of institutions by reducing the potential for inmates to use sealed mail to plan escape attempts. Pretrial inmates are ordinarily confined in Bureau facilities after a motion for detention by an Assistant United States Attorney (18 U.S.C. 3142(a)) and a detention hearing conducted by a U.S. Magistrate Judge. Often, the detention order reflected a finding by the Judge that the pretrial inmate is a flight risk and/or a threat to the community and requires confinement in order to ensure the pretrial inmate's presence at all court hearings and trial. While pretrial inmates retain the presumption of innocence, the unsettled nature of their status may lead to misuse of the correspondence privilege. Further, treating outgoing mail from pretrial inmates the same as outgoing mail from sentenced inmates simplifies mailroom procedures at those institutions which currently house a mix of pretrial and sentenced inmates.

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 (5 U.S.C. 601 et seq.), does not have a significant impact on a substantial number of small entities. Because this rule pertains to the correctional management of persons committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, 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. Comment received after the expiration of the comment period will be considered to the extent practicable. 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 continues 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 § 540.14, paragraphs (b) and (c) are revised to read as follows:

§ 540.14 General correspondence.

* * * * *

(b) Except for "special mail," outgoing mail from a pretrial inmate may not be sealed by the inmate and may be read and inspected by staff.

(c)(1) Outgoing mail from a sentenced inmate in a minimum or low security level institution may be sealed by the inmate and, except as provided for in paragraphs (c)(1) (i) through (iv) of this section, is sent out unopened and uninspected. Staff may open a sentenced inmate's outgoing general correspondence:

(i) If there is reason to believe it would interfere with the orderly running of the institution, that it would be threatening to the recipient, or that it would facilitate criminal activity;

(ii) If the inmate is on a restricted correspondence list;

(iii) If the correspondence is between inmates (see § 540.17); or

(iv) If the envelope has an incomplete return address.

(2) Except for "special mail," outgoing mail from a sentenced inmate in a medium or high security level institution, or an administrative institution may not be sealed by the inmate and may be read and inspected by staff.

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