

February 17, 2014

## NOTICE OF PROPOSED RULE

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-103.005 Informal Grievance.

33-103.006 Formal Grievance – Institution or Facility Level.

33-103.007 Appeals and Direct Grievances to the Office of the Secretary.

33-103.011 Time Frames for Inmate Grievances.

**PURPOSE AND EFFECT:** The purpose and effect of the proposed rule is to clarify that informal grievances are to be picked up and forwarded by the institutions daily Monday through Friday, to cite to the correct subsection in Rule 33-103.002, to eliminate the requirement that an inmate notify the Bureau of Policy Management and Inmate Appeals when they transfer institutions, and to include a timeframe for response to an emergency grievance alleging a substantial risk of imminent sexual abuse.

**SUMMARY:** To clarify when informal grievances are collected, to correct a citation, to eliminate the need for an inmate to notify the Department when they transfer institutions, and to include a timeframe for response for a certain type of grievance.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** The agency has determined that this rule will not have an adverse impact on small business and is not expected to directly or indirectly increase regulatory costs more than \$200,000 within a year of taking effect. 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: upon review of the proposed changes to these rules, 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), FS. Any person who wishes to provide information regarding the statement of estimated regulatory costs or to 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:** 944.09 FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR. THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: LaDawna Fleckenstein, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE FULL TEXT OF THE PROPOSED RULE IS:

33-103.005 Informal Grievance.

(1) Inmates shall utilize the informal grievance process prior to initiating a formal grievance. Inmates may skip this step and initiate the process at the formal institutional level for issues pertaining to the following: grievance of an emergency nature, grievance of reprisal, grievance alleging violations of the Americans with Disabilities Act, medical grievance, grievance involving gain time governed by Rule 33-601.101, F.A.C. Incentive Gain Time, grievance challenging placement in close management or subsequent reviews, grievances regarding the return of incoming mail governed by subsection 33-210.101(14), F.A.C., grievances regarding disciplinary action (does not include corrective consultations) governed by Rules 33-601.301-.314, F.A.C., and grievances regarding allegations of sexual abuse as defined in subsection 33-103.002(17), F.A.C. Inmates may proceed directly to the Office of the Secretary on the following issues as governed by subsection 33-103.007(6), F.A.C.: grievance of emergency nature, grievance of reprisal, protective management, admissible reading material, sentence structure issues (release date calculations), and inmate banking issues. Grievances alleging a violation of the Health Insurance Portability and Accountability Act (HIPAA) must be filed directly with the Office of the Secretary using the Request for Administrative Appeal, Form DC1-303, Request for Administrative Remedy or Appeal. Form DC1-303 is incorporated by reference in Rule 33-103.006, F.A.C.

(a) An informal grievance shall be submitted to the designated staff by placing the informal grievance in a locked grievance box. Locked boxes shall be available to inmates in open population and special housing units. A staff person from classification, the grievance coordinator's office, or the assistant warden's office shall be responsible for the key. If the staff member collecting the grievances is from classification or the assistant warden's office, he or she shall retrieve the grievances and appeals and deliver them to the institutional grievance coordinator in a locked container. The warden shall designate one (1) staff member who shall log all informal grievances and distribute to the appropriate department or staff. Grievances shall be picked up and forwarded by the institutions daily Monday through Friday.

(b) – (c) No change.

(2) – (5) No change.

Rulemaking Authority 944.09 FS. Law Implemented 944.09 FS. History–New 10-12-89, Amended 1-15-92, 12-22-92, 3-30-94, 4-17-94, 4-10-95, 8-10-97, 12-7-97, 2-17-99, Formerly 33-29.005, Amended 8-1-00, 2-9-05, 3-25-08, 1-31-10, 5-27-12, 11-7-12, 11-24-13,\_\_\_\_\_.

33-103.006 Formal Grievance – Institution or Facility Level.

(1) When an inmate decides to file a formal grievance, he or she shall do so by completing Form DC1-303, Request for Administrative Remedy or Appeal, and filing within the time limits set forth in Rule 33-103.011, F.A.C. Form DC1-303 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

<http://www.flrules.org/Gateway/reference.asp?No=Ref-03315>. The effective date of the form is 11-13.

(a) In institutions and private correctional facilities, inmates shall direct this form to the warden or assistant warden or deputy warden as defined in paragraph 33-103.002(15) ~~33-103.002(14)(b)~~, F.A.C.

(b) No change.

(2) No change.

(3) The following types of grievances may be filed directly with the reviewing authority as defined in subsection 33-103.002(15), F.A.C., by-passing the informal grievance step, and may be sent in a sealed envelope through routine institutional mail channels:

(a) Emergency Grievance – Upon receipt, the reviewing authority as defined in paragraph 33-103.002(15) ~~33-103.002(14)(b)~~, F.A.C., shall take the following action as soon as possible, but no later than two calendar days following receipt:

1. – 4. No change.

(b) – (j) No change.

(4) No change.

(5) Upon receipt of the formal grievance, the recipient [reviewing authority as defined in paragraph 33-103.002(15) ~~33-103.002(14)(b)~~, F.A.C.] shall cause the following to occur:

(a) - (d) No change.

(6) Following investigation and evaluation by the reviewing authority as defined in paragraph 33-103.002(15)

~~33-103.002(14)(b)~~, F.A.C., a response shall be provided to the inmate within 20 calendar days of receipt of the grievance as required by paragraph 33-103.011(3)(b), F.A.C. The degree of investigation is determined by the complexity of the issue and the content of the grievance. The response shall state whether the grievance is approved, denied, or being returned and shall also state the reasons for the approval, denial or return.

(a) – (b) No change.

(c) The reviewing authority as defined in paragraph 33-103.002(15) ~~33-103.002(14)(b)~~, F.A.C., shall retain a complete copy of the grievance on file.

(d) No change.

(7) No change.

(8) Mailing Procedures. The warden or person designated in Rule 33-103.002, F.A.C., shall establish a procedure in the institution or facility under his supervision for processing those grievances that require mailing. Inmates who are filing grievances that require mailing shall be required to utilize the procedure set forth in this rule when processing their grievances or appeals to the reviewing authority of community facilities or the Bureau of Policy Management and Inmate Appeals in central office. The institution or facility shall provide postage for grievances submitted through this process. Procedures implemented shall include, at a minimum, the following:

(a) – (e) No change.

(f) Upon receipt of a mailed grievance by the reviewing authority as defined in paragraph 33-103.002(15) ~~33-103.002(14)(d)~~, F.A.C., the following shall occur:

1. – 3. No change.

(9) – (10) No change.

Rulemaking Authority 944.09 FS. Law Implemented 944.09 FS. History–New 10-12-89, Amended 1-15-92, 12-22-92, 4-10-95, 8-10-97, 12-7-97, 5-10-98, 2-17-99, Formerly 33-29.006, Amended 8-1-00, 10-11-00, 2-9-05, 10-28-07, 3-25-08, 5-27-12, 11-7-12, 11-24-13, \_\_\_\_.

33-103.007 Appeals and Direct Grievances to the Office of the Secretary.

(1) – (7) No change.

(8) Copies.

(a) The original copy of the grievance shall be returned to the inmate. The response shall be stamped “MAILED/FILED WITH AGENCY CLERK” along with the date mailed; the response shall be mailed on the same

date that it is stamped. The response is deemed filed with the agency clerk on the date that it is stamped and mailed.

The time period for appeal begins to run on the date that the response is stamped and mailed. ~~If the inmate is transferred, it is his or her responsibility to notify the Bureau of Policy Management and Inmate Appeals.~~

(b) – (d) No change.

Rulemaking Authority 944.09 FS. Law Implemented 944.09 FS. History–New 10-12-89, Amended 1-15-92, 12-22-92, 4-10-95, 8-10-97, 12-7-97, 10-7-98, 2-17-99, Formerly 33-29.007, Amended 8-1-00, 6-29-03, 2-9-05, 8-21-06, 3-25-08, 6-13-12, 11-7-12, 11-24-13,\_\_\_\_\_.

33-103.011 Time Frames for Inmate Grievances.

When determining the time frames for grievances in all cases, the specified time frame shall commence on the day following the date of the incident or response to the grievance at the previous level. For example, if an incident occurred on December 1, fifteen days from that date would be December 16.

(1) – (2) No change.

(3) Responding to Grievances.

(a) – (d) No change.

(e) Emergency Grievances Alleging Substantial Risk of Imminent Sexual Abuse – corrective action shall be conducted within 48 hours and a response must be provided within 5 calendar days.

(4) – (5) No change.

Rulemaking Authority 944.09 FS. Law Implemented 944.09 FS. History–New 10-12-89, Amended 1-15-92, 12-22-92, 4-10-95, 12-7-97, Formerly 33-29.011, Amended 2-9-05, 3-25-08, 5-27-12, 11-7-12, 11-24-13,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Alan McManus, Chief of the Bureau of Policy Management and Inmate Appeals

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Michael D. Crews, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 21, 2014

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: January 31, 2014