

September 12, 2018

Notice of Change

DEPARTMENT OF CORRECTIONS

RULE NOS.:RULE TITLES:

- 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
- 33-103.008 Grievances of Medical Nature
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- 33-103.014 Reasons for Return of Grievance or Appeal Without Processing
- 33-103.016 Follow Through on Approved Grievances

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 44 No. 136, July 13, 2018 issue of the Florida Administrative Register.

Changes to the rule are made in response to written comments provided by the Joint Administrative Procedures Committee in their correspondence dated July 27, 2018.

33-103.005 Informal Grievance.

(1) No change.

(2) When submitting an informal grievance, the inmate shall use Form DC6-236, Inmate Request, and shall:

(a) No change.

(b) On the line reading "Request," the inmate shall check the box to indicate that Form DC6-236 is being used as an "Informal Grievance." Failure to do this will cause the request to be handled routinely and it will not be considered an informal grievance. This will also cause the form to be unacceptable as documentation of having met the informal step if it is attached to a formal grievance submitted at the next step.

1. The act of asking questions or seeking information, guidance, or assistance is not considered to be a grievance. Answers to inmate requests of this nature shall not be considered as documentation of having met the informal step if they are attached to a formal grievance submitted at the next step. Inmate requests improperly submitted as informal grievances shall be treated as inmate requests and the inmate shall be advised that he cannot appeal the response.

2. When completing the inmate request form for submission as an informal grievance, the inmate shall ensure that the form is legible, that included facts are accurately stated, and that only one issue or complaint is addressed. The inmate must limit all grievance narrative to Form DC6-236, and only two additional pages of narrative will be allowed. The inmate shall sign and date the form and write in his Department of Corrections number and forward the informal grievance to the designated staff person. If an inmate fails to sign his grievance, it shall result in a delay in addressing the grievance until it can be verified that it is that inmate's grievance. Form DC6-236 is 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-04803>. The effective date of the form is 12/14.

(3) through (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, 4-20-14, 12-30-14,_____.

33-103.006 Formal Grievance – Institution or Facility Level.

(1) No change.

(2) Procedural Requirements.

(a) through (f) No change.

(g) The inmate shall attach a copy of the informal grievance and the response to the informal grievance to Form DC1-303, unless the grievance is a direct formal grievance that is one of the types identified in subsection (3)(a) - (j)

~~of this rule the following: an emergency grievance; a grievance of reprisal; a medical grievance; a grievance alleging violation of the Americans with Disabilities Act; a grievance involving gain time governed by Rule 33-601.101, F.A.C.; Incentive Gain Time; a grievance challenging placement in close management and subsequent reviews; a grievance regarding the return of incoming mail governed by subsection 33-210.101(14), F.A.C.; or a grievance of disciplinary action (excluding corrective consultations). Any other pertinent documentation shall be attached also. Informal grievances as described in subparagraph 33-103.005(2)(b)1., F.A.C., shall not be accepted as documentation of having met the requirements of the informal grievance step.~~

(h) through (k) No change.

(3) through (4) No change.

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

(6) through (8) No change.

~~(9) During site visits staff from the Bureau of Policy Management and Inmate Appeals will review video from cameras that monitor those housing units in which inmates rely on a grievance box being brought to them in order for such inmates to submit their grievance. Such housing units include, but are not limited to, disciplinary confinement, close management, maximum management, and death row.~~

~~(10) Renumbered only~~ - 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, 4-20-14,_____.

Substantial rewording of Rule 33-103.007 follows. See Florida Administrative Code for present text.

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

(1) No change.

(2) Grievance appeals – If the grievance appeal is not a direct grievance to the Office of the Secretary, the inmate shall:

(a) No change.

(b) Attach a copy of his informal grievance and response, except when appealing issues regarding one of the types identified in subsection (3)(a) - (j) of this rule ~~medical, Americans with Disabilities Act, gain time governed by Rule 33-601.101, F.A.C. Incentive Gain Time, placement in close management and subsequent reviews, return of incoming mail governed by subsection 33-210.101(14), F.A.C., disciplinary action (does not include corrective consultations) governed by Rule 33-601.314, F.A.C.~~

(c) Attach any other documentation that the inmate has that is pertinent to the review and that the inmate wants reviewed. ~~Attachments as required by the rule that do not meet the requirements of this rule may result in the grievance being returned to the inmate.~~

(d) Submit the complete form with attachments to the Office of the Secretary in accordance with Rule subsection 33-103.007(5) ~~33-103.006(8)~~, F.A.C. Failure to submit a complete grievance shall result in the grievance being returned to the inmate without action.

(e) through (f) No change.

(3) No change.

(4) Procedural Requirements.

(a) through (g) No change.

(h) If the inmate is filing an amendment to a previously filed grievance or appeal, the inmate shall clearly state this at the beginning of PART A of Form DC1-303, Request for Administrative Remedy or Appeal. Amendments are to be filed only regarding issues unknown or unavailable to the inmate at the time of filing the original grievance and must be submitted within twenty days of the date reflected on the department's response to the appeal a reasonable time frame of knowledge of the new information.

(i) through (k) No change.

(5) No change.

(6) Processing of Grievance Appeals and Direct Grievances by Central Office Staff.

(a) Upon receipt of a mailed grievance or appeal by the Bureau of Policy Management and Inmate Appeals, the Bureau of Policy Management and Inmate Appeals shall cause the following to occur:

1. The grievance or appeal shall be examined for compliance with Chapter 33-103, F.A.C.

2. Regarding any grievance or appeal that arrives in a sealed envelope, the envelope shall be opened and then attached to the grievance or appeal. The envelope shall not be discarded.

3. Staff shall date the receipt portion of the grievance or appeal. For those ~~grievances~~ ~~grievance~~ that were placed in the grievance box by the inmate, the date on the receipt shall be the same date that the grievance or appeal was taken out of the grievance box, whether or not the grievance is in a sealed envelope. As to any grievance or appeal that was placed directly into privileged mail by an inmate, the date on the receipt shall be the same date placed on the back of the envelope at the moment when the inmate released the grievance or appeal to the mail collection representative. –This date shall be placed in the lower left hand corner of the form.

4. The receiving office shall review the grievance or appeal and determine the classification of the grievance or appeal and enter the same on the receipt that is returned to the inmate. The subject matter of the grievance shall be indicated on the receipt according to the classification of the grievance, as specified in Rule 33-103.013, F.A.C. A receipt shall be provided to the inmate.

5. In addition to dating the receipt portion of the grievance or appeal, as mentioned above, staff shall date-stamp the grievance or appeal with the current day's date in the upper right corner of the form.

~~(b)6-~~ Staff shall determine whether the grievance or appeal has been timely filed. The decision of whether or not the grievance or appeal has been timely filed by the inmate shall be made based upon the following comparisons:

~~1.(a)~~ In the case of an appeal being filed with the central office, by comparing the receipt date that institutional staff placed on the DC1-303 form or the outside of the envelope in accordance with rule ~~33-103.007(5)(e)1~~ ~~33-103.007(3)(d)~~, F.A.C., to the return date of the formal grievance (the date the grievance leaves the recipient's office).

~~2.(b)~~ In the case of a grievance being filed directly at the central office level, by comparing the receipt date on the DC1-303 form to the date of the incident or situation giving rise to the complaint.

~~(c)7-~~ The receiving office shall then process the grievance or appeal filed by the inmate in ~~accordance~~ ~~accord~~ with the provisions of this rule, as appropriate.

~~(d)8-~~ A grievance appeal or direct grievance may be returned to the inmate for any one or more of the reasons stated in Rule 33-103.014, F.A.C., without further processing.

~~(e)9-~~ Following appropriate investigation and evaluation by staff of the Bureau of Policy Management and Inmate Appeals, a response shall be provided to the inmate. The degree of investigation is determined by the complexity of the issue and the content of the grievance.

~~(f)10-~~ The response shall state whether the appeal or direct grievance is approved, denied, or being returned and shall also state the reasons for the approval, denial, or return. The criteria considered in approving, denying, or returning an appeal or direct grievance will vary with the facts of the grievance.

(7) through (9) 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, 4-20-14,_____.

33-103.008 Grievances of Medical Nature.

(1) through (2) 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 33-29.008, Amended 6-29-03, 2-9-05, 3-25-08, 5-27-12, 6-23-13,_____.

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) Filing of Grievances.

(a) No change.

(b) Formal Grievances – Must be received no later than 15 calendar days from:

1. The date on which the informal grievance was responded to; or
2. The date on which the incident or action being grieved occurred if an informal grievance was not filed pursuant to the circumstances specified in subsection 33-103.006(3), F.A.C., unless the grievance is an issue related to sexual abuse.

3. In instances when an inmate places his or her grievance into the grievance box on the 15th day after the date of such response or such alleged incident/action, but after the grievances ~~grievance box~~ were retrieved for that day, it shall be treated as timely.

4. Pursuant to sub-subparagraph 33-103.006(3)(j)1. a., F.A.C., and notwithstanding the above provisions, sexual abuse grievances filed either by the inmate or a third party may be filed at any time after the incident is alleged to have occurred. After the initial filing, all other applicable timeframes shall apply.

5. If the grievance is filed by an inmate who is visually impaired that requires accomodation, as provided in Rule 33-210.201, F.A.C., the formal grievance must be received within 20 calendar days from the date the informal grievance was responded to or the date on which the incident or action being grieved occurred.

(c) through (d) No change.

(2) through (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, 4-20-14,_____.

33-103.014 Reasons for Return of Grievance or Appeal Without Processing.

(1) No change.

(2) An inmate who has a grievance returned to him for reasons stated in subsection (1) above [excluding paragraphs (1)(d), (e), (h), (i), (m), (n), (p), (q), (r), (u), (v) or (w)] may refile utilizing the proper procedure or correct the stated deficiency and refile, but only if:

(a) the refiled grievance is refiled within the applicable time frame, or

(b) the inmate was granted permission to refile outside of the applicable time frame, and refiles within the extended time frame granted to the inmate as set forth in Rule 33-103.011(2), F.A.C. When a grievance is returned to an inmate for being improperly filed, the inmate shall be told why the grievance was returned and told that in order to receive administrative review of his complaint he must correct the defects and re-submit the grievance within the time frames set forth in Rule 33-103.011, F.A.C., unless instructed otherwise in the grievance response. Instructions to resubmit are not necessary if a grievance is returned for reasons stated in paragraphs (1)(d), (e), (h), (i), (m), (n), (p), (q), (r), (u), (v) or (w).

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, 5-10-98, Formerly 33-29.014, Amended 6-29-03, 2-9-05, 6-13-12, 11-7-12, 11-24-13,_____.

33-103.016 Follow Through on Approved Grievances.

(1) through (2) No change.

Rulemaking Authority 944.09 FS. Law Implemented 944.09 FS. History–New 4-10-95, Amended 12-7-97, Formerly 33-29.0155, Amended 8-1-00, 1-1-01, 8-21-06, 3-25-08, 6-13-12, 11-7-12,_____.