

MARYLAND REGISTER

Emergency Action on Regulations

TO BE COMPLETED BY AELR COMMITTEE	EMERGENCY Transmittal Sheet	TO BE COMPLETED BY DSD
Date Received by AELR Committee		Date Filed with Division of State Documents
06/21/2016		
Emergency Status Approved		Document Number
_ -Yes _ -No		Date of Publication in MD Register
Emergency Status Begins On		
Emergency Status Ends On		
Name of AELR Committee Counsel		

1. COMAR Codification

Title Subtitle Chapter Regulation

12 02 20 01 - .08

2. Name of Promulgating Authority

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**Title 12
DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONAL SERVICES**

Subtitle 02 DIVISION OF CORRECTION

12.02.20 Inmate Mail

Authority: Correctional Services Article, §2-109(c), Annotated Code of Maryland

Notice of Emergency Action

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The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to REgulations .01 - .08 under COMAR 12.02.20 - Inmate Mail.

Emergency status began:

Emergency status expires:

Comparison to Federal Standards

There is no corresponding federal standard to this emergency action.

Estimate of Economic Impact

The emergency action has no economic impact.

Economic Impact on Small Businesses

The emergency action has minimal or no economic impact on small businesses.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2017

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

General

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

These are administrative changes to procedures for inmates to receive personal correspondence and photographs and require no additional resources to implement or maintain.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

These regulations affect the Department of Public Safety and Correctional Services only.

G. Response to small business worksheet:

Attached Document:

**Title 12 DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONAL SERVICES**

Subtitle 02 DIVISION OF CORRECTION

Chapter 20 Inmate Mail

Authority: Correctional Services Article, §2-109(c), Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Contraband" means:

(a) An article which an inmate is not permitted to trade, loan, give away, or possess by Division of Correction regulation or by [institutional] *facility* or unit rules; or

(b) Material which poses a threat to the safety and security of a person, persons, or [an institution] *a facility*.

[(2) General Mail.

(a) "General mail" means correspondence, written materials, publications including but not limited to letters, books, newspapers, magazines, and other publications, addressed to or from an inmate, and leaving or entering the institution by the United States Postal Service or by a recognized courier system.

(b) "General mail" does not mean written communication among inmates within the institution.]

[(3)] (2) Indigent Inmate.

(a) "Indigent inmate" means an inmate who, within the previous 2 weeks, has not received pay for an assignment in work or school, and who has less than \$2 in [his or her] *the inmate's* spending account, or an inmate received within the previous 2 weeks who has not had \$2 in [his or her] *the inmate's* spending account.

(b) (text unchanged)

[(4)] (3) "Legal mail" means mail [either] addressed by an inmate to, or received on official stationery *for an inmate* from[, any of the following individuals or agencies]:

(a) — (c) (text unchanged)

(d) An attorney *at law*;

(e) The *following organizations*:

(i) *The American Civil Liberties Union*;

(ii) *The Prisoner Rights Information System of Maryland, Inc.*; or

(iii) *Community service providers and victim advocate groups that provide inmates with emotional support services and information related to sexual abuse*;

(f) [The Legal Aid Bureau;] *An elected or appointed official*;

(g) The [Secretary] *Department of Public Safety and Correctional Services*;

(h) The [Commissioner] *Division of Correction*;

(i) [Director,] *The Patuxent Institution*;

[(j) Elected or appointed public officials]

(j) *The Division of Pretrial Detention and Services*;

(k) *The Maryland Parole Commission*;

(l) *A federal, State, city, or local government agency*; and

(m) *a law enforcement agency*.

(4) Mail.

(a) "Mail" means correspondence, written materials, publications, photographs, or packages, including, but not limited to, postcards, letters, books, newspapers, and magazines addressed from or to an inmate and leaving or entering a facility, via the U.S. Postal Service or a recognized courier system.

(b) "Mail," unless the inmate has written authorization from the managing official, does not include written communication between inmates at the same facility.

(c) "Mail" includes items sent by an inmate and marked "Return to Sender," for example because of insufficient funds or because the item is otherwise undeliverable.

(5) "May not" means an absolute prohibition.

(6) "Personal correspondence" means mail as defined in this regulation, except for:

(a) Legal mail;

(b) Books;

(c) Magazines;

(d) Newspapers;

(e) Photographs; and

(f) Authorized packages sent by a family member.

(7) "Postcard" means a rectangular piece of paper used for writing and mailing without an envelope.

[(5)] (8) (text unchanged)

.02 General Policy.

A. The Commissioner of Correction, Commissioner of Pretrial Detention and Services, and the Director of the Patuxent Institution shall handle inmate mail in accordance with provisions of this chapter.

[A.] — [G.] B. — H. (text unchanged)

I. At a Department of Public Safety and Correctional Services correctional facility, only personal correspondence received in the form of a postcard may be delivered to an inmate.

J. Money Orders.

(1) An inmate may receive a money order sent via the U.S. Postal Service or a recognized courier system.

(2) A money order may not be sent to an inmate in an envelope that includes personal correspondence.

(3) A money order may be sent to a correctional facility for delivery to an inmate in an envelope according to the following:

(a) Only the money order shall be in the envelope;

(b) If an envelope contains a money order and other items, the money order and all items in the envelope shall be returned to the sender.

(c) The inmate's name and identification number and purchaser's name or signature shall be written on the money order;

(d) The outside of the envelope shall display the:

(i) Name and identification number of the inmate; and

(ii) Name and return address of the sender;

(e) The envelope shall be opened by mailroom staff who shall:

(i) Log receipt of the money order according to procedures for logging legal mail;

(ii) Prepare a receipt for the money order and arrange for delivery of the receipt to the inmate; and

(iii) Process the money order according to procedures for processing inmate funds.

K. Photographs.

(1) An inmate may receive a photograph sent via the U.S. Postal Service or a recognized courier system.

(2) A photograph may not be sent to an inmate in an envelope that includes personal correspondence.

(3) A photograph may be sent to a correctional facility for delivery to an inmate in an envelope according to the following:

(a) Only photographs shall be in the envelope:

(i) A maximum of five photographs may be in a single envelope;

(ii) A photograph may not be larger than 5 inches by 7 inches;

(iii) A photograph shall be on photograph paper;

(iv) A photograph may not be on Polaroid or other self-developing film; and

(v) A photograph may not be an identification card or plastic coated;

(b) If an envelope contains a photograph and other items, the photograph and all items in the envelope shall be returned to the sender;

(c) The outside of the envelope shall:

(i) Contain the name and identification number of the inmate;

(ii) Contain the name and return address of the sender; and

(iii) Be marked "PHOTOGRAPHS"; and

(d) The envelope shall be opened by mailroom staff who shall:

(i) Make a copy of the original envelope for delivery with the authorized photographs;

(ii) Destroy the original envelope, and;

(iii) Arrange for delivery of the photocopy of the envelope and authorized photograph to the inmate.

(4) If mailroom staff determine reasonable suspicion exists to believe a photograph is used to distribute contraband, but may require a more specific examination in order to detect the presence of contraband, mailroom staff shall comply with provisions established under §D(4) of Regulation .05 of this chapter.

(5) If it is determined that a photograph contains contraband, mailroom staff shall comply with procedures established for postcards determined to contain contraband.

.03 Indigent Inmate's Mail.

A (text unchanged)

B. If an inmate requires additional materials or postage for legal correspondence, the inmate may request these through the inmate's [classification counselor. The classification counselor] *case manager* who shall grant the request unless [it is determined] *the case manager determines* that the postage provision is being abused, in which case the [classification counselor] *case manager* shall refer the request and findings to the [assistant warden] *managing official, or a designee*, for disposition.

C. (text unchanged)

.04 Outgoing Mail.

A. The [warden] *managing official, or a designee*, shall ensure that [all] outgoing mail is date-stamped *by mailroom staff* on the date the mail is received by *mailroom staff* who are assigned to forward mail to the United States Postal Service or courier.

B. Outgoing mail may not be held for more than 24 hours excluding weekends and holidays, except as provided in [§ E(1) and (2)] *§§E and F of this regulation*.

C. The inmate shall include the inmate's name, [commitment] *identification* number, and the return address of the [institution] *facility* on outgoing mail.

D. (text unchanged)

E. Outgoing mail may not be opened unless clear evidence exists to warrant inspection. The [warden] *managing official, or a designee*, shall:

(1) Make the decision to open and inspect outgoing mail; and

- (2) [shall ensure] *Ensure* that the reasons for and results of the inspection are documented[.];
- [(2)]F. [Withhold] *A managing official, or a designee, may withhold outgoing mail only when [it] the mail is:*
- [(a)] (1) Found to contain contraband[.];
 - [(b)] (2) Evidence of a violation of a rule or regulation[.]; or
 - [(c)] (3) A basis for requesting an investigation by the Department's [investigative unit] *Internal Investigative Division* or a law enforcement agency.

.05 Incoming Mail.

- A. (text unchanged)
- B. Inspection of Incoming Mail.
 - (1) Staff shall open incoming mail before delivery to the inmate, and inspect [it] *the mail* only for:
 - (a) — (e) (text unchanged)
 - (2) [Institutional] *Facility* staff shall follow established procedure in handling money orders, cash, stamps, checks, and contraband received in the mail.
- C. Contraband may include but is not limited to material which:
 - (1) — (3) (text unchanged)
 - (4) [Is] *Contains correspondence that appears to be written in code;*
 - (5) (text unchanged)
 - (6) Is sexually explicit as defined in Regulation .01B(5)(a)(i), (ii), or (iii) and poses a threat to the security of the [institution] *facility;*
 - (7) *Incites or advocates criminal activity;*
 - (8) *Incites or advocates illegal gang activity;*
 - [(7)] (9) (text unchanged)
 - [(8)] (10) Instructs in the commission of violations of [Division] *laws or regulations* that will produce a breach of security or order in the [institution] *facility;*
 - [(9)] (11) (text unchanged)
 - [(10)] (12) Poses a direct and immediate danger of violence or physical harm to a person or persons, based upon the current circumstances within the [institution] *facility.*
- D. *Postcard.*
 - (1) *In order for a postcard to be delivered to an inmate the postcard shall:*
 - (a) *Use postage that is applied by a postage meter or pre-stamped (stamps shall be removed before being delivered to an inmate);*
 - (b) *Contain correspondence written using an ink pen with blue or black ink;*
 - (c) *Contain the name and identification number of the inmate;*
 - (d) *Contain the name and return address of the sender;*
 - (e) *Be plain or may display an image that was part of the original printing;*
 - (f) *Be, in accordance with the United States Postal Service's definition of a post card:*
 - (i) *Rectangular in shape; and*
 - (ii) *A minimum size of 3.5 inches high by 5 inches long by 0.007 of an inch thick; or*
 - (iii) *A maximum size of 4.25 inches high by 6 inches long by 0.016 of an inch thick.*
 - (2) *A postcard may not be delivered to an inmate if the postcard:*
 - (a) *Does not meet conditions established under §D(1) of this regulation;*
 - (b) *Other than postage markings and a written message, has been intentionally altered or defaced;*
 - (c) *Is wrapped or coated with plastic;*
 - (d) *Has items glued, taped or otherwise attached;*
 - (e) *Has aftermarket alterations, such as paint, crayon, marker ink, glitter, cloth, or string;*
 - (f) *Except for a postage stamp, has labels or stickers (including address labels);*
 - (g) *Has a substance, scent, or lipstick on the postcard; or*
 - (h) *Has stains from liquids.*
 - (3) *A postcard may not be delivered to an inmate if the postcard displays or contains information described under Regulation .05C of this chapter.*
 - (4) *If mailroom staff determine reasonable suspicion exists to believe a postcard is used to distribute contraband, but may require a more specific examination in order to detect the presence of contraband, mailroom staff shall:*
 - (a) *Photocopy the postcard and deliver the photocopy of the postcard to the inmate; and*
 - (b) *Notify the managing official, or a designee, to have the original postcard processed as evidence for use in accordance with the inmate discipline process.*
 - (5) *If under provisions of §D(4) of this regulation an original postcard:*
 - (a) *Does not to contain contraband, mailroom staff shall arrange for the original postcard to be delivered to the inmate.*
 - (b) *Contains contraband, the managing official, or a designee, shall ensure appropriate action is taken in accordance with the inmate discipline process and notification of the Internal Investigative Division.*
- [D.] E. (text unchanged)

F. Mail determined to be undeliverable because the mail does not meet requirements established under this regulation that:

(a) Displays a return address, shall be marked "Return to Sender" for return to the address provided on the item.

(b) Does not display a return address as required, shall be held in the facility's "dead letter" file and after 30 calendar days, if a return address cannot be determined, destroyed.

.06 Withholding Mail.

A. The [warden, assistant warden, or the facility administrator] *managing official* or [their designees] *a designee*, [shall make the decision] *may decide* to withhold mail.

B. — E. (text unchanged)

F. If the rejected portion can be reasonably severed before excision of any portion of the mail, staff shall give the inmate to whom the item is addressed the choice of:

(1) — (3) (text unchanged)

(4) Appealing to the [warden] *managing official*, or *a designee*.

G. (text unchanged)

H. The [warden] *managing official*, or *a designee*, shall respond within 5 working days to the inmate or sender.

I. Staff shall inform the inmate and sender that if either or both [of them] object to the decision of the [warden] *managing official*, or *a designee*, or if the [warden] *managing official*, or *a designee*, fails to respond within 5 working days, either or both [of them] may appeal the decision to the Commissioner of Correction.

J. The inmate or sender may appeal to the Commissioner of Correction *for Division of the Correction (DOC) facilities, Commissioner of Pretrial Detention and Services (DPDS) for DPDS facilities, or the Director, Patuxent Institution (PATX) for PATX for a PATX facility* in writing, stating the reasons for the appeal, not more than 5 working days after receipt of the withholding decision or not more than 5 working days after the [warden's] *managing official's*, or *a designee's*, failure to respond.

K. The *appropriate* Commissioner, or *the Director* shall affirm, reverse, or modify the decision of the [warden] *managing official*, or *a designee*, within 5 working days of the date of receipt of the appeal of the [warden's] *managing official's*, or *a designee's* decision.

L. The inmate may appeal the Commissioner's or *Director's* response to the Inmate Grievance [Commission] *Office*.

M. If the decision of the [warden] *managing official*, or *a designee*, or of the Commissioner or *Director*, in cases when an appeal is taken, is that mail as a whole shall be withheld from the inmate, staff shall dispose of the mail by:

(1) (text unchanged)

(2) Disposing of the mail in a manner specified by the inmate and approved by the [warden] *managing official*, or *a designee*,.

N. — O. (text unchanged)

P. *The requirements of this regulation do not apply to incoming mail rejected solely for failure to comply with requirements established under:*

(1) §§I — K. of Regulation .02 of this chapter; or

(2) §§D(1) and (2) of Regulation .05 of this chapter.

.07 Undeliverable Mail.

A. (text unchanged)

B. Unless the postal endorsement requires forwarding or return to sender, staff shall discard second and third class mail addressed to an inmate not assigned to the [institution] *facility*.

.08 Additional Requirements of the Warden.

Each [warden] *managing official* shall ensure that employees who handle inmate mail are familiar with the requirements of this chapter.

Stephen T. Moyer
Secretary
Department of

Public Safety and Correctional Services