

1/27/16 DOJ COMMENTS ON PROPOSED REGULATIONS ON INMATE EMAIL:

OFFICE FOR ACCESS TO JUSTICE (DOJ) COMMENTS:

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Given these efficiencies, it would appear to be in everyone's – the prison's, the client's, and the lawyer's -- interest to (b)(5)

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email would actually reduce staff time and increase security, that policy choice and those savings should be reflected in lower rates.

Lisa Foster, Director, **Office for Access to Justice**, Department of Justice

950 Pennsylvania Ave., NW, Room (b)(6); Washington, DC 20530

(b)(6); (b)(7)(C) (Direct)

OFFICE OF LEGAL POLICY COMMENTS:

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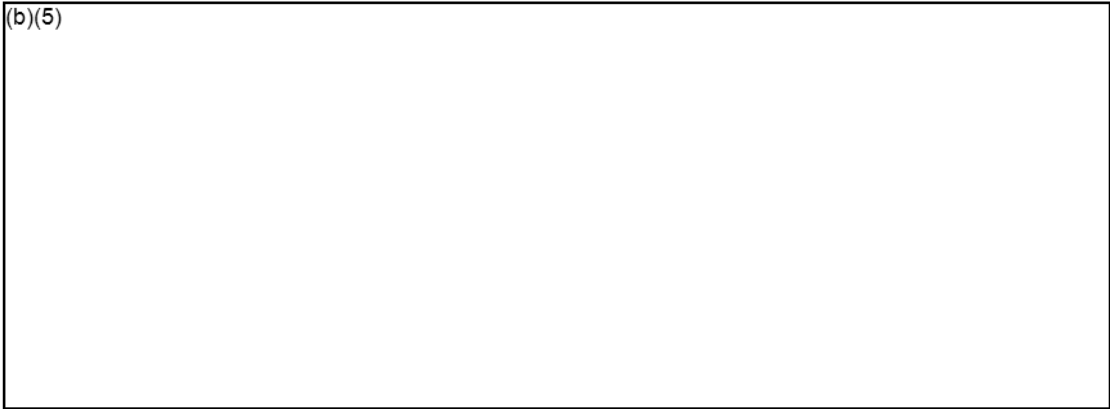
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BOP RESPONSE:

BUREAU OF PRISONS TRUST FUND:

OAG indicates that "We are confident that there are (b)(5) (b)(5) One possibility would be to (b)(5) (b)(5) (b)(5)

In 1930, Department of Justice Circular No. 2126, titled **Rules Governing the Control of Prisoner's Funds at the Several Penal and Correctional Institutions** (August 1, 1930), authorized and established a Commissary at each institution. The Commissary was created to provide a bank-type account for inmate monies and "for the procurement of articles not regularly issued as part of the institution administration." Circular 2244, **Rules Governing the Control of Prisoners Funds at Several Penal and Correctional Institutions** (January 1, 1932), superseded Circular No. 2126 and established separate U.S. Treasury accounts for the "Prisoners Trust Fund" and the "Commissary and Welfare Funds."

The existence and operation of the prison Commissaries was approved by Congress in 1932 in the Department of Justice's 1933 appropriation bill. In 1934, Congress designated the "funds of federal prisoners" and "Commissary funds" as "trust funds" (31 U.S.C. 1321). Monies accruing to these funds were appropriated and dispersed in compliance with the terms of the trust.

Section 108 of the Department of Justice, General Provisions, Department of Justice, Public Law 104-134 (April 26, 1996), provided that in Fiscal Year 1996 and thereafter, amounts in the Federal Prison Systems Commissary Fund that are not needed for operations are kept on deposit or invested in obligations of, or guaranteed by, the United States. *Earnings on investments are deposited in the Commissary Fund.*

Section 108 of the Department of Justice, General Provisions in the Fiscal Year 1999 and thereafter Omnibus Bill and Conference Report Language, Public Law 105-277 (October 21, 1998), clarified authority for expenditures from the Commissary Fund for an Inmate Telephone System and for other purposes, regardless of whether such an expenditure is security-related, for programs, goods, and services for the benefit of inmates (not otherwise prohibited by law), including installation, operation, and maintenance of the Inmate Telephone System.

The "Commissary Fund" is generally referred to as the "Trust Fund" and the "funds of federal prisoners" as the "Inmate Deposit Fund." The Trust Fund's purposes remain essentially the same as when created: To maintain inmates' monies (Deposit Fund) while they are incarcerated; and ***to provide inmates the privilege of obtaining merchandise and services (such as the Inmate Telephone System and the Inmate Email System) either not provided by the Bureau or of a different quality than that provided by the Bureau.***

The management of inmate funds and the operation of the Trust Fund are designed primarily for the benefit of inmates. Use of Trust Fund services is, however, ***a privilege***; the Warden or an authorized representative may limit or deny the privilege of a particular inmate. *The funds collected by inmates go towards maintenance of the services provided to inmates by the Trust Fund.*

The Trust Fund operates the inmate email program (TRULINCS) under the Bureau's authority found in 18 U.S.C. 4042, which authorizes the Bureau to provide for the safekeeping, care, and subsistence of Federal prisoners. The operation of the system may be prohibited or discontinued, or individual inmate's participation suspended, whenever it is determined to jeopardize the safety, security, or orderly operation of the correctional facility, or the protection of the public and staff.

The Chief of the Trust Fund Branch, with the concurrence of the Assistant Director of the Administration Division, sets all program fees. By participating in the program, the inmate consents to have the Bureau withdraw program fees directly from their Deposit Fund account.

Inmates, therefore, pay fees for using the inmate email system, and those fees go towards maintenance of that email system and the technology used by the Trust Fund to provide it.

The Bureau provides each inmate with several methods to maintain confidential contact with his or her attorney. For example:

- inmate-attorney correspondence is covered under the special mail provisions;
- private inmate-attorney visits are provided; and,

- the inmate is afforded the opportunity to place an occasional unmonitored call to his or her attorney using a dedicated unmonitored telephone in their facilities that is *not* part of the Trust Fund telephone system.

Generally, inmates are responsible for the expense of unmonitored attorney telephone calls and special mail correspondence (postage expenses). When possible, it is preferred that inmates place unmonitored legal calls collect. However, if indigent, inmates are permitted “at least one collect call per month” (see 28 CFR § 540.105(b)) and if seeking to mail legal mail, are given “postage stamps for such mailing” at the government’s expense (see 28 CFR § 540.21(d)).

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OPERATION OF THE INMATE EMAIL PROGRAM:

ATJ also commented that: “Deleting all attachments is also unnecessary from a security standpoint. The attorney can certify, just as they do in court (or when e-filing) that the attachment is a legal document and not prohibited for other reasons.”

(b)(5)

The Trust Fund Limited Inmate Computer System (TRULINCS) provides inmates with a computer system that does not jeopardize the safety, security, orderly operation of the correctional facility, or the protection of the public or staff. Inmates participating in the program must accept rules identified in the TRULINCS Electronic Messaging Warning/Responsibility/Acknowledgment Statement prior to accessing the system. Inmates do not have access to the Internet.

Inmate computers and printers must clearly be labelled as "INMATE ACCESS." Ordinarily, workstations are located in the housing units and law library. Workstations located in the housing units ordinarily are multi-purpose, offering various services with the exception of the Electronic Law Library (ELL) and Print Services. Workstations located in the institution Law Library ordinarily offer access to only the ELL Service and limited supporting services (e.g., TRU-Unit Management and Bulletin Board Services). TRULINCS ELL workstations are located in the Law Library due to the sensitivity of information and supervision within the area. Ordinarily each institution will have two print stations available on the main compound and one in a satellite camp.

TRULINCS inmate accounts are established and maintained automatically through the TRUFACS nightly process. Inmates access their accounts using their eight-digit register number; nine-digit phone access code (PAC); and fingerprint identification or four-digit Commissary personal identification number (PIN). It is the inmate's responsibility to maintain possession of his/her login information. Inmates will not disclose passwords (login criteria) to anyone and will log off the system when leaving the TRULINCS terminal.

It is important that staff ensure inmates are only restricted from using TRULINCS, or individual TRULINCS services, when absolutely necessary to protect the safety, security, or orderly operation of the correctional facility, or the protection of the public or staff.

Inmates excluded from participation under this section are notified of the specific reason(s) by a written explanation of the decision, unless possessing such written information would threaten the safety of the inmate or other legitimate penological interest(s). An inmate's exclusion from participation must be based on their individual history of behavior that could jeopardize the legitimate penological interests listed above. Inmates must not be excluded from participation based on general categorizations of previous conduct.

Inmates may only communicate with approved persons on their contact lists for the purpose of postal mail, TRUFONE, Public Messaging, and/or any person to whom they want to send funds. It is the inmate's responsibility to maintain their own list with accurate contact information, to include legal first name; legal last name; relationship; language; and postal address. Inmates are subject to disciplinary action for lying and/or providing false or fictitious information regarding a contact (e.g., when complete name is not used; when information is altered to hide the identity of the contact; and any/all other attempts to mislead reviewing and monitoring staff as to the true identity and contact information).

Likewise, inmates request that telephone numbers be added to their TRUFONE lists by creating a contact with a telephone number. Ordinarily, inmates are limited to having 30 active telephone numbers on their phone list.

Inmates request to exchange emails with a person in the community by creating a contact with an email address. Ordinarily, inmates are limited to having 30 active messaging contacts on their list. Inmates may only exchange emails with contacts who have accepted the inmate's request to communicate. Inmates may not exchange emails with any unauthorized contacts including, but not limited to, victims, witnesses, other persons connected with the inmate's criminal history,

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Inmates may place attorneys, "special mail" recipients, or other legal representatives on their public email contact list, with the acknowledgment that public emails exchanged with such individuals will not be treated as privileged communications and will be subject to monitoring.

The maximum number of consecutive minutes an inmate may use the Public Messaging Service is 60 minutes; the interval between sessions is 15 minutes. The Warden may adjust time parameters to ensure the secure and orderly running of the institution. Emails may not contain attachments and may not exceed 13,000 characters. Inmates are able to access incoming, outgoing, draft, deleted, and rejected emails for 180 days. Emails older than 180 days are automatically purged from the system.

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Inmates are charged a per-minute fee while in the Public Messaging Service. Inmates may print their emails for an additional fee. (b)(5)

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ALTERNATE AVENUES OF PRIVILEGED COMMUNICATION:

As stated earlier, inmate email is not privileged correspondence because there are other unmonitored avenues of communication between attorneys and client inmates, such as mail correspondence and unmonitored telephone calls. As we state in the preamble to the proposed rule,

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