

## Notice of Proposed Rule

### DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-401.401 Use of Tobacco Products

PURPOSE AND EFFECT: The proposed rule is intended to clarify protocols relating to the use of tobacco products at institutions, including the prohibition of vapor products

SUMMARY: Rulemaking is necessary to amend an existing rule to change its name and to establish protocols for the use and possession of vapor products and vapor-generating electronic devices in or on Department property in accordance with the Florida Clean Indoor Air Act as amended by the Florida Legislature in 2019 and § 944.47, F.S., as amended by the Florida Legislature in 2020.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. 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: The Department used an itemized checklist to conduct an economic analysis and determine if there is an adverse impact or regulatory cost associated with this rule that exceeds the criteria. Upon review of the proposed changes to the rule, 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), F.S.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 944.09, 944.115 FS.

LAW IMPLEMENTED: 386.201, 386.202, 386.203, 386.204, 386.205, 386.206, 944.09, 944.115, 944.47 FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Lauren Sanchez, Paralegal Specialist, 501 S. Calhoun Street, Tallahassee, FL 32399 (850)717-3610, lauren.sanchez@fdc.myflorida.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jason Holman, Assistant General Counsel, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, Jason.Holman@fdc.myflorida.com

THE FULL TEXT OF THE PROPOSED RULE IS:

33-401.401 Use of Tobacco and Vapor Products.

(1) This rule establishes the tobacco and vapor products use policy for the Department of Corrections. For the purposes of this rule, “tobacco products” means items such as cigars, cigarettes, snuff, loose tobacco, or similar goods made with any part of the tobacco plant, which are prepared or used for smoking, chewing, dipping, sniffing, or other personal use. “Vapor products” means aerosolized or vaporized nicotine or other aerosolized or vaporized substance produced by a vapor-generating electronic device or exhaled by the person using such a device, or the vapor-generating electronic device itself.

(2)(a) Pursuant to Section 944.115, F.S., use of any tobacco products shall be prohibited in all indoor areas of any building or office within a state correctional facility except for employee housing on department grounds and inmate maximum security (death row) housing areas. Only unlighted tobacco product use shall be permitted in death row housing.

(b) Pursuant to Section 386.204, F.S., smoking and vaping are is prohibited in all enclosed indoor workplaces as defined in Section 386.203, F.S.

(c) Pursuant to Section 947.47, F.S., a vapor-generating electronic device as defined in s. 386.203, F.S. shall not be intentionally and unlawfully introduced inside the secure perimeter of any state correctional institution.

(3) Should Department of Corrections' offices be located in buildings not totally in the control of the department, smoking and vaping shall be prohibited in all enclosed indoor workplaces occupied or controlled by the department. Employees may not smoke or vape in areas which do not fully meet the requirements of the Florida Indoor Clean Air Act, Sections 386.201-.209, F.S.

(4) Outdoor areas owned or leased by the Department of Corrections may be designated by the secretary or the secretary's designee as areas where tobacco and/or vapor products may be used ~~by inmates, staff, or visitors~~. Tobacco waste receptacles shall be provided in all areas where tobacco products use is permitted.

(5) Use of tobacco and vapor products shall be prohibited in all vehicles owned or leased by the department.

(6) All inmates at all state correctional facilities, with the exception of those participating in a community release program under Rule 33-601.602, F.A.C., or as otherwise provided in subsection ~~(8)(7)~~ of this rule shall not be allowed to possess any tobacco products or lighters.

(7) All inmates at all state correctional facilities shall not be allowed to possess any vapor products or vapor-generating electronic device.

~~(8)(7)~~ Inmates on death row shall not purchase more than two (2) packages of smokeless tobacco products per week and shall not exceed the possession limit of two (2) packages. Inmates assigned to a Community Release Program in accordance with "Community Release Programs," Rule 33-601.602, F.A.C., shall not possess more than ten (10) packs of cigarettes, or ten (10) packages of smokeless tobacco products, or twenty (20) individual cigars, and one (1) non Bic-style disposable lighter at any time while on the property of a state correctional facility.

~~(9)(8)~~ Tobacco cessation assistance shall be available to inmates to assist them in making a successful tobacco-free transition.

~~(10)(9)~~ Violation of this rule shall be grounds for disciplinary action against employees and inmates. Visitors found in violation of this rule shall be subject to having their approval for access to the department facility withdrawn.

*Rulemaking Authority 944.09, 944.115 FS. Law Implemented 386.201, 386.202, 386.203, 386.204, 386.205, 386.206, 944.09, 944.115, 944.47 FS. History—New 12-31-80, Formerly 33-20.01, Amended 3-12-86, 2-24-92, 1-4-94, Formerly 33-20.001, Amended 2-3-00, 10-1-03, 6-18-08, 10-1-11, 6-18-13, 9-11-13, \_\_\_\_\_.*

NAME OF PERSON ORIGINATING PROPOSED RULE: Richard Comerford, Assistant Deputy Secretary of Institutions

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Mark S. Inch, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 08, 2021

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: October 27, 2020