

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	09/18/2017	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 10/13/2017

2. COMAR Codification

Title Subtitle Chapter Regulation

12 02 28 01 - .20

3. Name of Promulgating Authority

Department of Public Safety and Correctional Services

4. Name of Regulations Coordinator Telephone Number
Elizabeth J Bartholomew 410-585-3604

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5. Name of Person to Call About this Document Telephone No.
David Greene, Chief of Case Management 410-585-3435

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6. Check applicable items:
 New Regulations
 Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: .
 Repeal of Existing Regulations
 Recodification
 Incorporation by Reference of Documents Requiring DSD Approval
 Reproposal of Substantively Different Text:
: Md. R
(vol.) (issue) (page nos) (date)
Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

8. Incorporation by Reference

Check if applicable:
Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code

of Maryland.
_ OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

_ Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Michael O. Doyle, Assistant Attorney General, (telephone #410-339-5000) on 9/15/2017. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Stephen T. Moyer

Title

Secretary

Telephone No.

410-339-5000

Date

9/18/2017

Title 12
DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONAL SERVICES
Subtitle 02 DIVISION OF CORRECTION
12.02.28 Administrative Remedy Procedures to Resolve Inmate Complaints

Authority: Correctional Services Article, §§2-109, 3-205, 3-209, and 3-211 Annotated Code of Maryland

Notice of Proposed Action

□

The Secretary of Public Safety and Correctional Services in cooperation with the Commissioner of Correct proposes to adopt new Regulations .01 — .20 under New COMAR 12.02.28 — Administrative Remedy Procedures to Resolve Inmate Complaints.

Statement of Purpose

The purpose of this action is to adopt regulations setting out procedures for the resolution of complaints by inmates within the custody of the Division of Correction. The Administrative Review Process is currently established through internal administrative documents.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to David Greene, Chief - Case Management, Division of Correction, 6776 Reisterstown Road, Ste. 300, or call 410585-3300, or email to , or fax to . Comments will be accepted through 30 days following publishing. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2018

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 Funds will be used

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:
The proposed action codifies current administrative procedures for processing and resolving complaints filed by inmates under the authority of the Department.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.
The proposed amendments are administrative requirements affecting the Department only.

G. Small Business Worksheet:

Attached Document:

Title 12 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Subtitle 02 DIVISION OF CORRECTION

Chapter 28 Administrative Remedy Procedures to Resolve Inmate Complaints

Authority: Correctional Services Article, §§ 2-103, 2-109, 3-205, 3- 209, and 3-211, Annotated Code of Maryland

.01 Purpose.

A. Under the authority granted the Secretary of Public Safety and Correctional Services under Correctional Services Article, §2-103, Annotated Code of Maryland and concurrence of the Commissioner of Correction and Director of Patuxent Institution:

(1) These regulations apply to an inmate in the custody of the Division of Correction (Division) and the Patuxent Institution; and

(2) Responsibilities previously assigned under the Administrative Remedy Procedures to the Director of Patuxent Institution, such as reviewing, approving, and reporting are now the responsibility of the Commissioner of Correction.

B. These regulations establish procedures for an inmate to seek resolution of a complaint through:

(1) Informal resolution with facility staff;

(2) The Administrative Remedy Procedure, which is a formal process consisting of:

(a) Presentation of the complaint to the managing official for investigation and resolution; and

(b) An appeal to the Commissioner of Correction.

C. Except as permitted by the Inmate Grievance Office under COMAR 12.07.01, an inmate shall exhaust the remedies available under this chapter before submitting a complaint to the Inmate Grievance Office.

.02 Definitions.

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

B. Terms Defined.

(1) "Administrative Remedy Procedure (ARP)" means a formal process established by the Commissioner of Correction to address inmate complaints concerning conditions of confinement.

- (2) “Administrative Remedy Coordinator (ARC)” means an employee designated by the Commissioner of Correction or Managing Official to receive, acknowledge, and direct the investigation of ARP complaints and to maintain all records relating to the complaints according to procedures set forth in this chapter.
- (3) “Appeal” means the process by which an inmate seeks review by the Commissioner of Correction of a decision regarding a complaint submitted under the ARP at the correctional facility level.
- (4) “Closely related issues” means matters that are the result of single incident or condition.
- (5) “Commissioner” means the Commissioner of Correction.
- (6) “Conditions of confinement” means any circumstances, situations, or events that involve an inmate’s custody, transportation, incarceration, or supervision.
- (7) “Correctional facility” means a facility within the Division of Correction or Patuxent Institution that is operated for the purpose of confining an individual who is committed to the custody of the Commissioner.
- (8) “Department” means the Department of Public Safety and Correctional Services.
- (9) “Formal resolution” means a written decision and, if appropriate, relief from the managing official or Commissioner regarding an inmate complaint filed under the ARP.
- (10) “Frivolous” means a complaint that:
- (a) Is not serious or practical; or
 - (b) Shows on its face a complete lack of substance or merit.
- (11) “Informal resolution” means the process by which an inmate seeks relief for a complaint from facility staff under this chapter other than through the ARP.
- (12) “Inmate” means an individual committed to the custody of the Commissioner and housed in a Division or Patuxent Institution correctional facility.
- (13) “Malicious” means an act that is spiteful, shows ill will, or demonstrates intent to cause harm.
- (14) “Managing official” means the warden or other individual responsible for the management of a correctional facility.
- (15) “May not” means an absolute prohibition and does not imply discretion.
- (16) “Procedural dismissal on preliminary review” means the administrative refusal to accept, investigate, or process an inmate complaint under the ARP, because the inmate’s complaint:
- (a) Exceeds time limits for filing the complaint;
 - (b) Does not provide required or sufficient information;
 - (c) Is incomplete; or
 - (d) Is determined to be frivolous or malicious.
- (17) “Remedy” means an action to resolve conditions or circumstances that resulted in an inmate complaint under this chapter.
- (18) “Working day” means a day of the week excluding weekend days, State holidays, or days on which State offices are closed.

.03 Organization and Responsibilities.

- A. The Commissioner, or a designee, is responsible for:
- (1) Oversight of the ARP;
 - (2) Ensuring that a managing official properly applies ARP policy and procedures authorized under this chapter;
 - (3) Designating a Headquarters ARC;
 - (4) Designating Headquarters staff to investigate or delegate ARP investigative responsibilities authorized under this chapter;
 - (5) Responding to appeals within the established time frame; and
 - (6) Reviewing ARP decisions on appeal from the correctional facility level.
- B. The Headquarters ARC is responsible for:
- (1) Managing ARP duties at the Headquarters level;
 - (2) Ensuring that Headquarters staff perform and complete ARP assignments according to requirements under this chapter;
 - (3) Reporting to the Commissioner, or a designee, compliance issues related to the ARP;
 - (4) Processing ARP appeals within the established time frame;
 - (5) Receiving, acknowledging and directing investigations related to an ARP appeal;
 - (6) Maintaining documents and records related to the ARP;
 - (7) Developing and implementing training programs for investigators and ARCs structured to facilitate the ARP;
- and
- (8) Ensuring facility compliance with requirements of this chapter by auditing correctional facility activities related to inmate complaints.
- C. A managing official, or a designee, is responsible for:
- (1) Oversight of and compliance with procedures to resolve inmate complaints at the managing official’s correctional facility;
 - (2) Designating a facility ARC and an alternate facility ARC from the following positions:
 - (a) Case management specialist; or

- (b) Correctional officer;
 - (3) Ensuring that facility staff are aware of the ARP by:
 - (a) Providing each new employee with an Administrative Remedy Procedure Fact Sheet for new employees;
 - (b) Having the new employee sign a receipt for the Administrative Remedy Procedure Fact Sheet for New Employees; and
 - (c) Having the signed receipt placed in the employee's facility personnel file;
 - (4) Ensuring that staff attempt to resolve inmate complaints at the lowest possible level;
 - (5) Responding to inmate complaints within the established time frame; and
 - (6) Ensuring that the Introduction to the Administrative Remedy Procedure form is read to the inmate as part of inmate orientation and included in the inmate handbook.
- D. A facility ARC is responsible for:
- (1) Processing ARP complaints at the ARC's facility in accordance with established procedures and within the required time frame;
 - (2) Ensuring that facility staff complete ARP related duties in accordance with established procedures;
 - (3) Maintaining documents and records related to resolving inmate complaints under this chapter;
 - (4) Reporting ARP non-compliance issues to the managing official;
 - (5) Ensuring that ARP forms are available from case management, housing unit officers, and the inmate library;
- and
- (6) Ensuring that appropriate accommodations are made for an inmate with limited English proficiency or a disability that affects the inmate's ability to file a complaint under the ARP in accordance with Department procedures.
- E. A unit liaison:
- (1) Is an employee assigned by the managing official, or a designee, to be the ARC's point of contact in the unit investigating an ARP complaint.
 - (2) When assigned an ARP investigation, shall conduct or re-assign the investigation to an employee in the same unit.
- F. An individual designated to investigate an ARP complaint under this chapter shall:
- (1) Thoroughly investigate the complaint using the Administrative Remedy Procedure Case Summary form; and
 - (2) Complete the assigned investigation and forward documentation to the ARC assigning the investigation within the time limit established for the investigation.
- G. The managing official, or a designee, shall ensure that:
- (1) Forms required by an inmate to request resolution of a complaint under this chapter are available to the inmate; and
 - (2) If requested, the inmate is provided appropriate assistance with reading and completing the form.

.04 Conditions of Confinement Subject to the ARP.

- A. An inmate may use the ARP to resolve a complaint related to:
- (1) Correctional facility policy and procedures;
 - (2) Medical and mental health services;
 - (3) Access to a court;
 - (4) Religious liberties;
 - (5) Inmate property that is:
 - (a) Lost;
 - (b) Damaged;
 - (c) Stolen;
 - (d) Destroyed; or
 - (e) Confiscated;
 - (6) Complaints against staff;
 - (7) Use of force;
 - (8) Sentence computation and diminution of confinement;
 - (9) Correctional facility conditions affecting inmate:
 - (a) Health;
 - (b) Safety; or
 - (c) Welfare;
 - (10) Retaliation for seeking to resolve a complaint through the ARP;
 - (11) Management and application of the procedures under this chapter for resolving an inmate complaint;
 - (12) Commissary; and
 - (13) Inmate telephone system.
- B. An inmate may not use the ARP to resolve a complaint concerning:
- (1) Case management recommendations and decisions;
 - (2) Parole Commission procedures and decisions;
 - (3) Inmate disciplinary hearing procedures and decisions;
 - (4) Appeals of a decision to withhold inmate mail; or

(5) The following acts by staff or another inmate, which shall be addressed according to Department procedures for addressing complaints under the Prison Rape Elimination Act (PREA):

- (a) Rape;
- (b) Sexual assault, sexual harassment, sexual abuse; and
- (c) Other sexual misconduct.

.05 Inmate Complaint Resolution — Overview.

A. An employee who is assigned to investigate and respond to an inmate complaint under this chapter shall work with the inmate to attempt to resolve the inmate's complaint at the lowest level of inmate supervision.

B. The process for resolving an inmate complaint consists of two components:

- (1) Informal resolution; and
- (2) Formal resolution through the ARP.

C. Informal Resolution.

(1) An inmate may attempt to resolve a complaint informally by working with appropriate staff to reach a remedy to the conditions resulting in the inmate complaint.

(2) An inmate may initiate a formal request to resolve the complaint if:

- (a) The inmate and staff are unable to remedy the inmate complaint; or
- (b) Staff does not respond to the inmate's informal complaint.

(3) An inmate is not required to exhaust the informal resolution procedure in order to file a request for formal resolution through the ARP.

D. Formal resolution of an inmate complaint consists of utilizing the ARP to file:

- (1) A request for administrative remedy with the managing official; and
- (2) An appeal to the Commissioner, if the inmate is not satisfied with the managing official's response to the request for an administrative remedy.

E. If the inmate's complaint is not resolved after an appeal under the ARP, the inmate may file a grievance with the Inmate Grievance Office according to procedures under COMAR 12.07.01.

F. An inmate may not file a request to resolve a complaint under this chapter:

- (1) On behalf of another inmate, staff, or other third person, such as a visitor; or
- (2) Brought as a class action.

G. The transfer of an inmate to another facility in the Department does not terminate the ARP, although the transfer of an inmate may be relevant to a determination whether the request is moot or whether relief is available.

H. Filing a complaint with the Department's Intelligence and Investigative Division does not:

- (1) Constitute an administrative remedy; and
- (2) Excuse the inmate from the requirement of pursuing an administrative remedy under this chapter.

I. An inmate is responsible for:

- (1) Using the ARP for the intended purpose; and
- (2) Being honest and straightforward throughout the process.

J. An inmate may not be subject to retaliation because the inmate used the procedures established under this chapter to resolve an issue and:

(1) An inmate may use the ARP or an informal resolution to resolve a complaint of retaliation for using the procedures established under this chapter.

(2) If the inmate's complaint of retaliation is confirmed, the managing official shall ensure that the appropriate action is taken in accordance with the Department's Standards of Conduct.

.06 Limiting Requests for Formal Resolution of Inmate Complaints under ARP.

A. The Commissioner, based on a recommendation from a managing official, may limit the number of inmate complaints for which an inmate may request formal resolution under the ARP.

B. The Commissioner shall base a decision to limit an inmate's requests for formal resolution under the ARP on the inmate's history of complaints under the ARP considering, at a minimum:

(1) The number of formal resolution requests filed by the inmate during the 6 months immediately preceding the date of the most recent request for formal resolution;

(2) Of the number of requests under §B(1) of this regulation, the number that were:

- (a) Substantiated; and
- (b) Procedurally dismissed on preliminary review based on a finding that the inmate's complaint was frivolous or malicious; and

(3) Information provided by the managing official supporting a recommendation to limit the inmate's requests for formal resolution under the ARP.

C. A managing official seeking to limit the number of requests for formal resolution under the ARP that an inmate may submit shall:

- (1) Submit the request to the Commissioner in writing in a format and on forms approved by the Commissioner;
- (2) Include in the written request the information required under §§B(1) — (3) of this regulation; and
- (3) Recommend to the Commissioner:

- (a) The number of requests an inmate may submit for formal resolution under ARP; and

- (b) The period for which the proposed limit remains in effect.
- D. The Commissioner shall:
 - (1) Review a request to limit an inmate's use of the formal resolution process under the ARP; and
 - (2) Respond to the managing official in writing:
 - (a) Approving or denying the request; or
 - (b) Indicating a different:
 - (i) Number of requests an inmate may submit for formal resolution under the ARP; or
 - (ii) Period for which the limit remains in effect.
- E. If the Commissioner denies the request, the Commissioner shall include in the written response to the managing official the reason for the denial.

.07 Withdrawing an ARP Request or ARP Appeal.

- A. An inmate filing an ARP request or appeal may withdraw the request or appeal at any time prior to the issuance of a decision on the request or appeal.
- B. An inmate withdrawing a request or appeal shall submit the request to withdraw the request or appeal:
 - (1) In writing using an Administrative Remedy Procedure Withdrawal form (Withdrawal form); and
 - (2) To the facility ARC receiving the original ARP request or the Headquarters ARC receiving the appeal.
- C. An ARC receiving a properly completed Withdrawal form shall:
 - (1) Take steps to stop any action taking place related to the inmate complaint;
 - (2) Appropriately record action taken in response to the withdrawal request;
 - (3) File the original Withdrawal form in the appropriate ARP file; and
 - (4) Provide the inmate with a copy of the finalized Withdrawal form.

.08 Informal Resolution of an Inmate Complaint.

- A. As soon as possible after the incident resulting in the complaint occurred or the date the inmate first had knowledge of the incident, an inmate seeking informal resolution of a complaint under this chapter, shall:
 - (1) Document the request in writing on an Informal Inmate Complaint form; and
 - (2) Forward the completed form to the appropriate unit head or shift commander.
- B. An inmate may file as many forms as necessary to address the incident; however, only one complaint may be on a single form.
- C. When completing the Informal Inmate Complaint form, the inmate shall:
 - (1) Provide:
 - (a) The subject of the complaint;
 - (b) The date the incident occurred or the inmate first had knowledge of the incident;
 - (c) The names of other individuals involved;
 - (d) A brief description of the incident or complaint; and
 - (2) Date and sign the completed form.
- D. Filing a request for informal resolution of an inmate complaint does not extend the period for filing a request for formal resolution under Regulation .09 of this chapter.
- E. A unit head or shift commander receiving an Informal Inmate Complaint form shall:
 - (1) Record on the form the date received and the initials of the individual receiving the form;
 - (2) Provide a copy of the receipted form to the inmate;
 - (3) Assign an individual, if possible familiar with the subject matter area involved in the complaint, to, within 15 calendar days of the date recorded on the request indicating receipt by the unit head or shift commander:
 - (a) Review the form to establish the basis of the complaint;
 - (b) Research and review appropriate reports, records, policies, procedures and other documents;
 - (c) Assess merit of the complaint in light of items under §E(3)(b) of this regulation;
 - (d) If applicable, recommend a remedy to resolve the complaint; and
 - (e) Draft and submit a response, with or without consultation with the unit head or shift commander, on the form to the individual assigning the case for review.
- F. A unit head or shift commander receiving a report under §E(3)(e) of this regulation shall:
 - (1) Review and, if the report is properly completed in accordance with provisions established under this chapter, sign and date the form;
 - (2) Ensure that a copy of the form is provided to the inmate filing the request; and
 - (3) If appropriate, ensure that the approved steps are taken to grant the approved remedy.

.09 Formal Resolution of an Inmate Complaint — Requests.

- A. A request for formal resolution of a complaint under this chapter may be filed only by an inmate.
- B. An inmate seeking formal resolution of a complaint under this chapter, as soon as possible, but no later than 30 days after the date of the incident resulting in the complaint or the date the inmate first had knowledge of the incident, whichever is later, shall:
 - (1) Document the request in writing using an Administrative Remedy Procedure Request for Administrative Remedy form (Request form); and

- (2) Submit the completed Request form in accordance with the managing official's written instructions.
- C. A staff member receiving a Request form under §B(2) of this regulation shall:
 - (1) Date and sign the Request form;
 - (2) Provide the inmate with a copy of the dated and signed Request form; and
 - (3) Forward the Request form for processing in accordance with written procedures established by the managing official.
- D. When completing the Request form, the inmate shall:
 - (1) Use a typewriter or a black or blue ink pen;
 - (2) Provide:
 - (a) The subject of the complaint;
 - (b) The date the incident occurred or the inmate first had knowledge of the incident;
 - (c) The names of other individuals involved;
 - (d) A brief description of the incident or complaint;
 - (e) Steps, if any, taken toward an informal resolution of the complaint; and
 - (f) Relief requested to resolve the complaint; and
 - (3) Date and sign the completed Request form.

.10 Formal Resolution of an Inmate Complaint — Preliminary Review.

- A. Facility Preliminary Review of a Request Form.
 - (1) Within 5 working days of the date of receipt of a Request form by the managing official, the facility ARC shall:
 - (a) Assign a case number to the request according to requirements established in Regulation .19 of this chapter;
 - (b) Index the request according to requirements established in Regulation .19 of this chapter; and
 - (c) Review the request to determine if the request:
 - (i) Is frivolous or malicious;
 - (ii) Is complete and submitted according to requirements under this chapter;
 - (iii) Is eligible for resolution under this chapter; and
 - (iv) Has been submitted within established time requirements; and
 - (d) Take action required under §A(2) or (3) of this regulation.
 - (2) If the request is determined to be frivolous or malicious, the managing official, or a facility ARC, shall:
 - (a) Properly complete the appropriate part of the Request form; and
 - (b) Record that the request is procedurally dismissed as being frivolous or malicious, or both.
 - (3) If the Request form is determined to be incomplete and the missing information is necessary to review the inmate's complaint, the managing official or facility ARC shall:
 - (a) Properly complete the appropriate part of the Request form;
 - (b) Record that the request is procedurally dismissed as being incomplete;
 - (c) Provide specific direction to resolve the noted issue;
 - (d) Establish a due date for the resubmission that is the later of:
 - (i) 15 calendar days from the date of the procedural dismissal; or
 - (ii) 30 calendar days of the date of the original submission of the Request form;
 - (e) Return the completed Request form and a blank Request form to the inmate; and
 - (f) File a copy of the completed Request form in the appropriate ARP file.
 - (4) A Request form may not be determined incomplete and therefore procedurally dismissed pending resubmission under §A(3) of this regulation solely because the inmate did not include information concerning actions taken to informally resolve the complaint.
 - (5) After the managing official or a facility ARC reviews a Request form, the facility ARC shall:
 - (a) Appropriately process the request based on the action resulting from the preliminary review;
 - (b) Ensure that the affected individuals are notified of the result of the preliminary review;
 - (c) If the Request form is not subject to procedural dismissal on preliminary review on the date the case is indexed:
 - (i) Review the request to determine the nature of the case and assign the case for investigation by an individual familiar with the nature of the case; and
 - (ii) Return the receipt portion of the Request form to the inmate filing the request; and
 - (d) Appropriately file the ARP documents.
- B. Headquarters Preliminary Review of a Request Form. If a Request form is submitted directly to the Commissioner without being submitted first to the inmate's managing official, the Commissioner, or a designee, shall:
 - (1) Refer the Request form to the appropriate managing official including the date that the request was received by the Commissioner;
 - (2) Record the Request form in the Headquarters index without a case number; and
 - (3) Notify the inmate submitting the Request form, in writing, of the request being referred to the managing official.

C. A managing official who receives a Request form from the Commissioner shall process the Request form in accordance with provisions under §A of this regulation.

.11 Procedural Dismissal on Preliminary Review — Resubmission.

A. Incomplete Request — Eligible for Resubmission.

(1) A dismissal on preliminary review of a Request form may be resubmitted if the procedural dismissal on preliminary review is based on:

- (a) An incomplete request form; or
- (b) A requirement for more information than that provided on the Request form.

(2) Upon receipt of a Request form from a managing official indicating the request is to be procedurally dismissed on preliminary review because of reasons under §A(1) of this regulation, the facility ARC, within 5 working days of the date of receipt of the request by the managing official, shall:

(a) Sign, date, and return the Request form to the inmate submitting the request including written notification of the procedural dismissal on preliminary review;

(b) Provide instructions for resubmitting the request that include:

- (i) Completing a new Request form;
- (ii) Complying with instructions provided; and
- (iii) Submitting the request to the facility ARC by the date specified in the notice;

(c) Provide notice that:

(i) If the resubmission does not correct issues noted by the facility ARC, the procedural dismissal on preliminary review is final; and

(ii) If the resubmission is not received by the date established by the facility ARC indicated in the notice provided under §A(2) of this regulation, the procedural dismissal on preliminary review is final.

(3) An inmate may appeal a dismissal in accordance with the procedures set forth in Regulation .14 of this chapter.

B. Procedural Dismissal on Preliminary Review — Ineligible for Resubmission.

(1) A procedural dismissal on preliminary review of a Request form may not be resubmitted if the procedural dismissal on preliminary review is based on a finding by the facility ARC that the:

- (a) Inmate complaint is frivolous or malicious;
- (b) Inmate complaint is not eligible for resolution under Regulation .04 of this chapter;
- (c) Except for provisions under §B(3) of this regulation, request was not submitted within established time requirements;

(d) Inmate complaint has previously been resolved outside the formal resolution process;

(e) Inmate complaint has previously been resolved through the formal resolution process;

(f) Inmate complaint is repetitive of a request previously filed by the inmate through the formal resolution process, and a response was issued as a result of the previous request;

(g) Request is in excess of an authorized limit on the number of requests the inmate may submit; or

(h) Incident in the Request is determined by the facility ARC to be the basis of an investigation being conducted by the Department's Intelligence and Investigative Division.

(2) Upon receipt of a Request form from a managing official, indicating the request is to be procedurally dismissed on preliminary review for reasons under §B(1) of this regulation, the facility ARC, within 5 working days of the date of receipt of the request by the managing official, shall:

(a) Sign, date, and return the Request form to the inmate submitting the request including written notification of the procedural dismissal on preliminary review;

(b) Include information as to the reason for the procedural dismissal on preliminary review;

(c) Include a statement that the procedural dismissal on preliminary review is final; and

(d) Notify the inmate that the decision may be appealed to the Commissioner if the procedural dismissal is based on §B(1)(h) of this regulation and include in the notification the following statement:

“The request is procedurally dismissed at this level. It has been determined that the subject matter of your Request is under investigation by the Department's Intelligence and Investigative Division under case number [insert case number here] and no further action will be taken under the Administrative Remedy Procedures at this level. You may appeal this decision to the Commissioner of Correction.”

(3) If the managing official or the facility ARC receives a Request form after the permitted time frame for submitting a Request form, the managing official or facility ARC may:

(a) Accept and process the Request form if the managing official or the facility ARC determines that the inmate has demonstrated that extraordinary circumstances prevented the inmate from submitting the Request form within the required time frame; or

(b) Procedurally dismiss the untimely Request form on preliminary review, with or without referring the untimely Request form to the appropriate facility for follow up independent of the ARP and notify the inmate that the decision may be appealed to the Commissioner.

C. When a Request form is procedurally dismissed on preliminary review, the facility ARC, on the date the request is indexed, shall:

- (1) Return the original and one copy of the request form to the inmate filing the request; and
- (2) Place a copy in the ARP file maintained by the facility ARC.

D. A procedural dismissal on preliminary review by a managing official, or a designee, may be appealed to the Commissioner according to Regulation .14 of this chapter.

.12 Formal Resolution of an Inmate Complaint — Investigation.

A. If a Request form is not procedurally dismissed under this chapter, a facility ARC:

- (1) On the date the Request form is indexed, shall:
 - (a) Complete and send the receipt portion of the Request form to the inmate; and
 - (b) Review the request to determine the nature of the Request form in order to assign the investigation to the unit liaison familiar with the area or subject matter that is the basis of the Request form.
- (2) May not assign the request for investigation to an employee if that assignment is to an employee who is the subject of the complaint.

B. If a Request form is received at the inmate's current facility, but the complaint is based on an incident occurring at the inmate's previous facility, the managing official, or facility ARC at the inmate's:

- (1) Current facility shall:
 - (a) Index the Request form at the current facility;
 - (b) Forward the Request form to the managing official of the facility where the incident occurred; and
 - (c) Maintain a copy of the Request form at the inmate's current facility.
- (2) Previous facility shall:
 - (a) Respond to the Request form as though the Request form was originally received at that facility;
 - (b) Complete all requirements of the ARP as established under this chapter;
 - (c) Forward a copy of the resulting ARP documentation to the current facility for:
 - (i) Notification to the inmate;
 - (ii) Updating the index; and
 - (iii) Filing in the current facility's ARP file; and
 - (d) Maintain the original documentation in the current facility's ARP files.

C. A unit liaison assigned to conduct an investigation of a Request form under this chapter is responsible for ensuring that the investigation is completed and may:

- (1) Personally conduct the assigned investigation; or
- (2) Re-assign the investigation to another employee in the unit.

D. An investigation of a Request form shall, absent good cause for not conducting an interview include an interview with:

- (1) The inmate filing the Request form;
- (2) A relevant witness named by the inmate; and
- (3) A relevant employee, including a health care provider, involved in or able to provide relevant information related to the complaint and who, unless good cause exists, shall submit a written report of the information provided to the assigned investigator.

E. If interviewing an inmate or multiple inmates involved in the complaint would pose a threat to safety or security at the facility, the interviews may not be required and the justification for not conducting the interview shall be included in the Administrative Remedy Procedure Case Summary form.

F. At the North Branch Correctional Institution, interviews of relevant inmates may be conducted using the facility intercom system to accommodate security requirements; however, personal interviews shall be conducted, absent good cause, if the intercom system is inoperable at the time of the interviews or if privacy concerns prevent use of the system.

G. An investigation of a Request form shall:

- (1) In addition to interviews under §D of this regulation, include a:
 - (a) Review of records, reports, policy and procedures, and other documents relevant to the inmate complaint;
 - (b) Finding of facts that chronologically identifies the events related to the inmate complaint; and
 - (c) Recommendation and written justification determining the inmate complaint is considered:
 - (i) Meritorious;
 - (ii) Meritorious in part; or
 - (iii) Dismissed;
- (2) Be completed within the period determined by the facility ARC;
- (3) Documented using an Administrative Remedy Procedure Case Summary form that:
 - (a) Includes:
 - (i) Information obtained from interviews and, if applicable, justification for not conducting a required interview;
 - (ii) Information obtained by reviewing documents;
 - (iii) Findings of fact; and
 - (iv) A recommendation and justification for the recommendation as to the disposition of the case; and

(b) Is submitted to the managing official or facility ARC assigning the case for investigation within the time frame established by the managing official or facility ARC.

H. A managing official or facility ARC receiving a report and related documents under §G of this regulation shall review the report and related documents to ensure that the investigative actions and related documentation meet requirements of this chapter, and:

(1) If the managing official's or facility ARC's review determines that the Administrative Remedy Procedure Case Summary is deficient or incomplete shall:

- (a) Return the documents to the investigator responsible for the investigation;
- (b) Provide instruction as to correcting the identified deficiencies; and
- (c) Establish a date for the investigator to return the documents with deficiencies resolved; or

(2) If the managing official's or facility ARC's review determines the report and related documents are sufficient, shall prepare a response using the Administrative Remedy Request form, for the managing official's signature or the Commissioner's signature to the inmate submitting the Request form that is based on:

- (a) The case summary;
- (b) Attached documentation and reports; and
- (c) The investigator's recommendation;

(3) The response required under §H(2) of this regulation shall:

(a) Be provided to the inmate within 30 calendar days of the date the inmate filed a formal complaint using the ARP, unless an extension is authorized under § .12K of this regulation;

(b) In the first sentence of the response appropriately state that the complaint is:

- (i) Meritorious;
- (ii) Meritorious in part; or
- (iii) Dismissed;

(c) Address each element and allegation of the complaint;

(d) Be easy to understand;

(e) Clearly state the facts upon which the decision is based;

(f) Provide an explanation of any remedy resulting from the findings;

(g) Notify the inmate that the decision may be appealed to the Commissioner; and

(h) Be forwarded to the managing official for review.

I. A managing official receiving documents under §H(3)(g) of this regulation shall review the information and if the action related to resolving the inmate complaint is determined:

(1) Unsatisfactory, return the documents to the ARC with instructions directing additional action or information and resubmittal for review; or

(2) Satisfactory, sign and date the appropriate documents and return all documents to the ARC.

J. An ARC receiving:

(1) An unsatisfactory finding under §I(1) of this regulation shall ensure steps are taken to address any deficiencies and return the document so that notification to the inmate filing the request is made within the established time frame; or

(2) A satisfactory finding under §I(2) of this regulation shall, within the established time frame, distribute:

(a) The original and one copy of the completed Request form to the inmate filing the Request form; and

(b) A copy of the Request form signed by the inmate and originals of related documents to the ARP file.

K. Extension of 30 Calendar Day Processing Requirement.

(1) If apparent that conditions beyond the correctional facility's control exist, making 30 calendar days insufficient to complete processing a Request form, the managing official is permitted one extension of 15 days.

(2) If the managing official, or a designee, extends the time for responding to a Request form, the ARC, before expiration of the original 30 calendar day period, shall:

(a) Complete an Administrative Remedy Process Extension form;

(b) Forward the completed Administrative Remedy Process Extension form to the inmate filing the Request form whose approval of the extension is not required.

(3) The ARC shall include the Administrative Remedy Process Extension form in the documents related to the Request form.

L. An inmate may appeal a decision made under this regulation in accordance with provisions under Regulation .14 of this chapter.

.13 Request for Formal Resolution of an Inmate Complaint — Remedy.

A. If an inmate complaint is meritorious or meritorious in part, the response by the managing official shall include a remedy.

B. A remedy to resolve an inmate complaint may include:

(1) If the nature of the inmate complaint relates to substance of policy, rule, or procedure:

- (a) Appropriate amendments that are communicated effectively and promptly to appropriate individuals; and
- (b) Instructions for implementing change.

(2) If the nature of the inmate complaint relates to interpreting policy, rule, or procedure:

- (a) Written explanation of the questioned policy, rule, or procedure that is communicated effectively and promptly to appropriate individuals; and
 - (b) Instructions for implementing change.
 - (3) If the nature of the inmate complaint relates to application of policy, rule, or procedure:
 - (a) Written direction to the appropriate employee to properly apply the policy, rule, or procedure correctly; and
 - (b) Instructions for implementing change.
 - (4) If the nature of the inmate complaint relates to individual inmate actions:
 - (a) Protection of the inmate who filed the Request form that may include reassignment of one or more of the inmates involved;
 - (b) Safeguards to prevent retaliation against the inmate; or
 - (c) Remedy to make the inmate “whole” again, such as returning property.
 - (5) If the nature of the inmate complaint relates to the computation of the term of confinement or diminution of confinement credits:
 - (a) Prompt re-computing; and
 - (b) If appropriate, expedited processing of any privileges or change in status based on the new computation.
 - (6) If the nature of the inmate complaint relates to loss of inmate property within the custody and control of the unit:
 - (a) Return or replacement of property of equal value at time of loss in accordance with standard practices for determining the value of depreciated property; or
 - (b) Monetary reimbursement equal to value of property at time of loss.
 - (7) If the nature of the inmate complaint relates to living conditions and facilities, prompt improvement.
- C. If the remedy includes monetary reimbursement for property:
- (1) An Inmate Property Reimbursement form shall be used to calculate the amount of reimbursement at the time of the loss.
 - (2) Except under provisions of §C(3) of this regulation, the ARC shall ensure that the inmate is presented with a completed Request for Inmate Personal Property Reimbursement form indicating the reimbursement value and if the inmate:
 - (a) Accepts the value:
 - (i) The inmate shall indicate acceptance on the form;
 - (ii) The inmate shall sign the form;
 - (iii) The managing official shall ensure that the agreed to monetary reimbursement is deposited in the inmate’s facility account;
 - (iv) The ARC shall ensure that Request form documents are appropriately filed; and
 - (v) The matter is considered closed and finally resolved.
 - (b) Refuses to accept the value:
 - (i) The inmate’s refusal shall be indicated on the form;
 - (ii) The inmate shall sign the form indicating refusal to accept the reimbursement;
 - (iii) The form shall be filed in the appropriate ARP file;
 - (iv) No monetary reimbursement is to be deposited in the inmate’s facility account; and
 - (v) The matter is considered to be closed at the applicable level of the ARP.
 - (3) If an inmate refuses settlement under §C(1)(b) of this regulation, before the managing official’s response to the inmate’s complaint, the managing official’s response shall:
 - (a) State that the Request form is meritorious in part;
 - (b) List the property that was lost or damaged;
 - (c) State the amount of reimbursement offered to the inmate;
 - (d) State that the inmate refused the reimbursement offered and that no monetary reimbursement is to be deposited in the inmate’s facility account; and
 - (e) Ensure that Request form documentation is filed in the appropriate ARP file.
- D. If appropriate, a managing official may include, as a remedy, a recommendation to change policy or procedures that relate to the nature of the inmate complaint.
- E. Facility staff shall fully comply with a remedy in the managing official’s response to an inmate complaint under this chapter as soon as possible, but no later than 30 calendar days after the date of the response.
- (1) An ARC receiving a response from the managing official containing a remedy shall:
 - (a) Notify appropriate staff of the remedy;
 - (b) Monitor action taken to implement the remedy to ensure the remedy is fully implemented no later than 30 calendar days after the date of the response by:
 - (i) Maintaining a separate chronological file of incomplete remedies;
 - (ii) Reviewing the file at least weekly to ensure implementation; and
 - (iii) Notifying the managing official issuing the response to an inmate complaint when the remedy is not fully implemented within the required period;

(2) After full implementation of a remedy, the ARC shall file the response according to procedures under this chapter.

.14 Appeal — Requesting.

- A. An inmate filing a request for formal resolution of an inmate complaint may appeal to the Commissioner:
- (1) A procedural dismissal on preliminary review of the Request form;
 - (2) The managing official's failure to provide a response within established time requirements; and
 - (3) A decision by the managing official contained in the response to the Request form.
- B. An inmate filing an appeal under this regulation shall:
- (1) Submit the request in writing in a format and on a form approved by the Commissioner;
 - (2) Include all of the following in the appeal:
 - (a) The name of the inmate filing the appeal;
 - (b) The name of the correctional facility housing the inmate filing the appeal;
 - (c) A statement describing the reason for the appeal;
 - (d) The original case number;
 - (e) The date the appeal is submitted;
 - (f) The signature of the inmate submitting the appeal;
 - (g) A copy of the original complaint with all supporting documentation; and
 - (h) A copy of the procedural dismissal on preliminary review or managing official's decision; and
 - (3) Include one of the following in the statement required under § B(2)(c) of this regulation as the grounds for the appeal:
 - (a) The basis for disagreement with the Facility ARC's decision or reason for procedural dismissal on preliminary review;
 - (b) The basis for disagreement with the Managing Official's decision, remedy, or response; or
 - (c) A failure by Managing Official to respond within the established time frame;
 - (4) Limit the basis of the appeal to the areas identified under §B(2)(c) of this regulation without introducing a new inmate complaint; and
 - (5) Except for provisions under §C of this regulation, file the appeal with the Commissioner as indicated in the notice provided in accordance with Regulation .11 of this chapter so that the Headquarters ARC receives the appeal within 30 calendar days of:
 - (a) For an appeal of a procedural dismissal on preliminary review, the date the inmate received notice of the procedural dismissal on preliminary review;
 - (b) For an appeal of a managing official's decision or remedy in a response to a Request form, the date the inmate received the response; or
 - (c) For an appeal of a Managing Official's failure to respond within the established time frame, the date the managing official's response was due to the inmate.
- C. If the inmate demonstrates that extraordinary circumstances exist that prevented submitting an appeal within the established time frame, the Commissioner may accept a late filing of an appeal.
- D. When submitting an appeal under this section, the inmate:
- (1) Is encouraged to submit the Request form to the Commissioner using the U.S. Postal Service.
 - (2) May submit the Request form using the Department courier system knowing that the Department is not responsible if the appeal is not received within the time frame established for submitting an appeal under this chapter.
- E. Within 5 working days of the date the appeal is received by the Commissioner, the Headquarters ARC shall:
- (1) Index the appeal according to the originally assigned case number; and
 - (2) Conduct a preliminary review of the appeal and determine to:
 - (a) Accept and process the appeal within the established time frame; or
 - (b) Procedurally dismiss the appeal on preliminary review.

.15 Appeals — Preliminary Review.

A. The Headquarters ARC shall conduct a preliminary review of an appeal submitted in accordance with this chapter following the applicable procedures established under Regulation .10 of this chapter for a preliminary review of a Request form received by a managing official.

B. If the Headquarters ARC procedurally dismisses on preliminary review an appeal under §A of this regulation, the Headquarters ARC shall comply with applicable requirements established under Regulations .10 and .11 of this chapter for procedurally dismissing on preliminary review a Request form received by a managing official.

C. The Headquarters ARC shall procedurally dismiss on preliminary review, without the opportunity for re-submission, a properly submitted appeal challenging a managing official's procedural dismissal on preliminary review of a Request form if, after reviewing the managing official's rationale, the Headquarters ARC agrees with the managing official's decision.

.16 Appeals — Investigation.

A. An appeal accepted by the Headquarters ARC shall be investigated.

(1) Except for a Request form dismissed in accordance with Regulation .11 of this chapter, an investigation of an appeal under this chapter shall be limited to the issues identified in the initial Request form.

(2) On the date the Headquarters ARC indexes the appeal, the Headquarters ARC shall process the appeal for investigation using appeal related forms and documents according to applicable requirements under Regulation .12 of this chapter for investigating a Request form received by a managing official.

B. The results of an investigation of an appeal shall be recorded and communicated using appeal related forms and documents according to applicable requirements under Regulation .12 of this chapter for recording, reporting and communicating results of an investigation of a Request form received by a managing official.

.17 Appeals — Remedy.

A. The Commissioner, or a designee, shall respond in writing to an appeal within 30 calendar days of the date the inmate files the appeal.

B. If an appeal is found to be meritorious or meritorious in part, the response by the Commissioner shall include a remedy.

C. A remedy for an appeal may include:

- (1) Actions identified under Regulation .13 of this chapter for a Request form received by a managing official; or
- (2) Other action consistent with the purpose of the ARP.

D. Monitoring implementation of a remedy, required notification, and filing resulting from an appeal under this chapter are performed using appeal-related forms and documents according to applicable requirements under Regulation .13 of this chapter for remedies for a Request form received by a managing official.

.18 Appeals — Inmate Grievance Office.

An inmate may seek review by the Inmate Grievance Office according to procedures under COMAR 12.07.01 of a decision by the Commissioner or the failure of the Commissioner to file a response to an appeal within the time frame established under §A of Regulation .17 of this chapter.

.19 Documentation — Filing — Reports.

A. Case Indexing.

(1) The Headquarters ARC and each facility ARC shall maintain an index of Request forms and, at Headquarters, appeals.

(2) The Commissioner shall determine the format and content of the index.

(3) The Headquarters ARC and each facility ARC shall establish a new index for each calendar month to record information concerning Request forms received at either level and appeals received by Headquarters.

(4) The Headquarters ARC and a facility ARC shall index each Request form received at either level and an appeal received by Headquarters within 5 working days of the date recorded on the Request form or appeal.

(5) The index shall record for each case:

(a) The name of the inmate filing the request and the inmate's identification number;

(b) The case number that consists of:

(i) The correctional facility's acronym in upper case followed by a dash;

(ii) A four digit sequential number beginning with 0001 on January 1st of each calendar year followed by a

dash; and

(iii) The last 2 digits representing the calendar year;

(c) The date that the case is indexed;

(d) If appropriate, information concerning procedural dismissal on preliminary review;

(e) If appropriate the date a re-submission or non-concurrence decision is indexed;

(f) The most appropriate subject codes indicating the nature of the complaint (only 2 codes may be used);

(g) If the case is accepted for processing, an abstract of the complaint;

(h) The date the managing official or Commissioner:

(i) Signed the response to the inmate complaint; or

(ii) Procedurally dismissed the complaint;

(i) The date the inmate signed the response indicating receipt of the response from the managing official;

(j) The final disposition of the inmate complaint; and

(k) Other information related to the case, such as:

(i) A brief description of the complaint;

(ii) Justification for a procedural dismissal; and

(iii) The date a resubmittal is due.

(6) The Headquarters ARC and a facility ARC shall update the index at the time new information is received concerning a case.

(7) A facility ARC shall:

(a) By the tenth working day of each month, forward a copy of the index for the previous month to the Headquarters ARC; and

(b) When dispositions have been recorded for all cases on a monthly index, forward a copy of the completed index to the Headquarters ARC.

B. Filing — Case Records.

(1) Each facility ARC and the Headquarters ARC shall establish and maintain a system for filing documents related to requests for formal resolution of an inmate complaint and related appeals.

(2) A facility ARC and the Headquarters ARC shall maintain documents related to an ARP case and related appeals for a minimum of 5 years from the date of a final disposition of the case and then dispose of the documents in accordance with the applicable document retention schedule.

C. Program Reports.

(1) An ARC shall complete reports in a format and on forms approved by the Commissioner containing data that may be used to analyze the ARP.

(2) Quarterly, during each calendar year, each facility ARC shall forward to the Headquarters ARC a copy of reports required by the Commissioner related to the ARP.

.20 Audits.

A. The Commissioner, or a designee, shall establish:

(1) A system to audit the ARP at each correctional facility; and

(2) A schedule for audits authorized under this chapter.

B. An audit team consists of:

(1) The Headquarters ARC, or a designee; and

(2) At least one facility ARC selected by the Headquarters ARC from a correctional facility other than the correctional facility subject to the current audit.

C. An audit, at a minimum, consists of:

(1) An entrance interview with the managing official of the correctional facility being audited to:

(a) Explain the purpose of the audit; and

(b) Provide an overview of the audit process;

(2) Examining:

(a) Required files and documents related to the correctional facility's use of the ARP;

(b) Documents related to investigations of inmate complaints under this chapter; and

(c) Actions taken related to implementing remedies resulting from meritorious or meritorious-in-part inmate complaints;

(3) Conducting interviews with inmates and staff to assess the effectiveness of the ARP;

(4) Interviews with correctional facility staff to determine necessary amendments to the ARP; and

(5) An exit interview with the managing official to provide an overview of findings.

D. Audit Report.

(1) Within 30 calendar days of the date an audit is completed, the Headquarters ARC shall prepare and submit to the Commissioner, or a designee, and to the respective managing official a written report summarizing:

(a) The results of the audit; and

(b) If appropriate, compliance issues that need to be addressed.

(2) Within 30 calendar days of the date a managing official receives an audit report from the Headquarters ARC, the managing official shall:

(a) Acknowledge receipt of the report; and

(b) If appropriate, provide a plan of action to correct compliance issues identified by the audit.

(3) If appropriate, the Headquarters ARC shall monitor a managing official's progress to correct noted compliance issues.

(4) A correctional facility may be subject to a non-scheduled audit or follow-up audit to determine progress on corrective action specified in a managing official's plan of action to correct compliance issues identified in an audit report.

Public Safety and
Services

Stephen T. Moyer
Secretary
Department of
Correctional