

March 20, 2020

NOTICE OF PROPOSED RULE

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-501.401

RULE TITLE: Admissible Reading Material

PURPOSE AND EFFECT: To update and amend the rule related to the admissibility of publications in state correctional institutions.

SUMMARY: Rulemaking is necessary to reorganize and amend the rule text for clarification and to improve implementation, to add definitions, to implement a re-review process by the Literature Review Committee to determine whether previously rejected publications should be admitted into correctional institutions, and to revise Form DC5-101.

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 SERC or, if no SERC was required, the information expressly relied upon and described herein: The Department used an itemized checklist to conduct an economic analysis and determine if there would be any adverse impact or regulatory cost associated with this rule that exceeds the stated criteria. Upon review of the proposed rulemaking, the Department 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, 944.11 F.S.

LAW IMPLEMENTED: 944.11 F.S.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Paul A. Vazquez, Assistant General Counsel, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE FULL TEXT OF THE PROPOSED RULE IS:

Substantial rewording of Rule 33-501.401, F.A.C., follows. See Florida Administrative Code for present text.

33-501.401 Admissible Reading Material.

(1) This rule applies to all publications addressed to a specific inmate or found in the personal property of an inmate.

(2) Definitions.

(a) Binding – the mechanism by which a publication is held together.

(b) Hardcover – a rigid, pressboard or cardboard cover, also referred to as hardback.

(c) Impoundment – an action taken by authorized Department staff to withhold an inmate’s incoming publication or a publication found in an inmate’s personal property pending review of its admissibility by the Literature Review Committee (LRC).

(d) Inmate grievance appeal – the process described in Chapter 33-103, F.A.C., whereby an inmate can request the review of a decision to reject or impound a publication.

(e) Mail order distributors and bookstores – businesses that offer publications to the public for sale or by gratuitous distribution.

(f) Non-print media – any publication that is published in a format other than on paper.

(g) Periodical – any publication issued under the same title and published at regular intervals of more than once a year.

(h) Print media – any publication that is printed or written on paper.

(i) Publication – any book, periodical, journal, diary, calendar, brochure, or any other printed material offered to the public by sale or by gratuitous distribution. Personal correspondence and photographs are not publications. The receipt of personal correspondence and photographs by inmates is governed by Rule 33-210.101, F.A.C.

(j) Publisher – a corporation, a governmental agency, a private or public educational institution, a church or other religious organization, or a professional, business or fraternal organization or association that makes publications available to the public.

(k) Rejection – an act or procedure whereby a publication is determined to be contraband.

(l) Secretary – the Secretary of the Department of Corrections.

(m) Security Threat Group – a formal or informal group consisting of three or more individuals who have a common name or common identifying signs, colors, or symbols; members or associates who individually or collectively engage in or have engaged in a pattern of gang activity, criminal activity, or Department rule violations; or the potential to act in concert to pose a threat or potential threat to the public, staff, visitors, other inmates, or the secure and orderly operation of an institution, Department activity, or Department function.

(n) Softcover – a flexible cover, also referred to as paperback.

(3) Bindings.

(a) With the exception of staples, metal bindings on publications are not permitted. Metal bindings include: paperclips, binder clips, or other metal fasteners. Staples are not permitted in the following types of housing units: death row, administrative and disciplinary confinement, close management, maximum management, and mental health in-patient housing, including transitional care units, crisis stabilization units, and correctional mental health treatment facilities.

(b) Spiral bindings are not permitted.

(c) If a publication is only available with a prohibited metal or spiral binding and no alternative exists, an inmate may receive the publication only after the metal or spiral binding has been removed. The inmate must make the decision whether to return the publication to the sender or to receive it after the institution has removed the metal or spiral binding.

(d) An inmate may appeal an institution's determination that a publication must be returned or have its metal or spiral binding removed. In such case, the institution must not return the publication to the sender or take any action to remove the metal or spiral binding until the inmate's appeal is concluded or the time for appeal has passed.

(e) Documentation that an inmate agrees to the removal of the metal or spiral binding must be obtained prior to removal of the binding. This documentation must be filed in the inmate's property file. If the inmate does not agree or does not provide documentation that he or she wants to have the metal or spiral binding removed, the publication will be returned to the publisher or sender.

(4) Covers.

(a) Covers may only be made of paper or leather materials. Covers cannot be made of metal or contain metal.

(b) Due to security concerns, inmates at Florida State Prison Main Unit, inmates on death row, and inmates in

close management status in any institution are not permitted to receive hardcover publications. However, if a publication is unavailable in softcover and no alternative exists, an inmate may receive the publication after the hardcover has been removed. The inmate must make the decision whether to return the publication to the sender or to receive it after the institution has removed the hardcover.

(c) An inmate may appeal an institution's determination that a hardcover publication must be returned or have its hardcover removed. In such case, the institution must not return the publication to the sender or take any action to remove the hardcover until the inmate's appeal is concluded or the time for appeal has passed.

(d) Documentation that an inmate agrees to the removal of the hardcover must be obtained prior to removal of the hardcover. This documentation must be filed in the inmate's property file. If the inmate does not agree or does not provide documentation that he or she wants to have the hardcover removed, the publication will be returned to the publisher or sender.

(5) Product Samples.

(a) Whenever an otherwise admissible publication sent to an inmate includes product samples or advertising with product samples attached, the inmate must mail the entire publication out of the institution or the product samples must be removed before the publication will be given to the inmate.

(b) Any inmate who objects to the removal of product samples from his or her publication may submit a written request to the warden on Form DC6-236, Inmate Request, asking that product samples not be removed. Thereafter, any publication sent to the requestor that contains product samples must be held by the institution for 30 days or for 30 days following an unsuccessful grievance appeal. Form DC6-236 is incorporated by reference in Rule 33-103.005, F.A.C.

(c) If an inmate chooses to have a publication containing product samples mailed out of the institution, it is the inmate's responsibility to arrange for the mailing at the inmate's expense. Any publication not mailed out within 30 days of receipt or within 30 days following an unsuccessful grievance appeal will be destroyed.

(6) Publications must be sent directly from a publisher, mail order distributor, or bookstore to an inmate unless otherwise authorized by the warden. Any publication received without a return address identifying the sender will not be given to the inmate.

(7) Publications sent to an inmate must be sent through the United States Postal Service. Any publication received from another source will be returned to the sender if known.

(8) The address of all incoming publications must contain the inmate's committed name, Department identification number, and institutional address. Any publication received without this information will be returned to the sender if known.

(9) No packaging materials other than standard envelopes will be given to an inmate. The following types of packaging materials must be removed by Department staff before providing any contents to an inmate: boxes, padded envelopes, envelopes that include metal parts, multilayer packaging, bubble wrap, packing peanuts, or other forms of packaging other than standard envelopes.

(10) Inmates are prohibited from posting or otherwise displaying any pictures from or portions of any publication. Such activity will subject the inmate to disciplinary action and the posted or displayed material will be confiscated as contraband.

(11) Ordering, Receiving, and Possessing Publications.

(a) Except as otherwise provided in Rule 33-601.800, F.A.C., an inmate may subscribe to, purchase, or receive no more than one periodical that is printed and distributed more frequently than weekly and four other periodicals that are printed and distributed weekly or less frequently than weekly. Religious publications as defined in Rule 33-503.001, F.A.C., will not be counted against these limits.

(b) Except as otherwise provided in Rule 33-601.800, F.A.C., an inmate may possess no more than two single issues of a periodical that is printed and distributed more frequently than weekly and eight single issues of a periodical that is printed and distributed weekly or less frequently than weekly.

(c) Inmates are not permitted to receive or possess more than one copy of any volume, issue, or edition of any publication. For example, an inmate is permitted to keep the January and February 1994 issues of the same magazine, but is not permitted to keep two copies of the January 1994 issue.

(d) Inmates are permitted to order single issues of periodicals from publishers, mail-order distributors, and bookstores in lieu of purchasing a subscription. However, the possession limits referenced in this subsection will apply.

(e) An inmate subscribes to or purchases periodicals and other publications at his or her own risk and expense. An inmate will not be reimbursed by the Department for any publication that is rejected or for any expense associated with mailing rejected items to an authorized person or entity.

(f) An inmate who subscribes to a periodical must notify mailroom staff on Form DC6-236, Inmate Request, if he or she wants to discontinue receiving the periodical. Requests to discontinue receipt of a periodical title will not be approved more often than once every 90 days unless the inmate presents evidence that the subscription has expired and will not be renewed.

(g) Except as otherwise provided in Rule 33-601.800, F.A.C., an inmate may possess no more than four personal books. Religious publications as defined in Rule 33-503.001, F.A.C., correspondence study materials, and law books not available in the institution's law library collection will not be counted against this limit.

(h) Inmates may only receive and possess print media publications. Incoming publications published on non-print media or print media publications that include non-print media that are an integral part of the publication will be rejected and returned to the sender along with an explanation as to why the material is being rejected. However, unsolicited promotional computer disks and CDs that are mailed with a publication will be processed as set forth in subsection (5) of this rule.

(i) All publications must be stored in an inmate's personal living area without creating a fire, safety, or sanitation hazard. If an inmate's possession of a publication would create such a hazard, the institution is authorized to not issue the publication to the inmate or to impound the publication if previously issued until the inmate disposes of other personal property to create storage space for the publication.

(j) An inmate must not order a publication from any source on a "Bill Me Later" basis. Any publication purchase initiated by an inmate must include a Form DC2-304, Inmate Trust Fund Special Withdrawal, that covers the complete cost of the purchase and postage, if necessary, and must include an envelope that is properly addressed to the seller. The purchase request must be submitted to the warden or his or her designee for approval. If approved, the warden or his or her designee will forward the purchase request to the Bureau of Finance and Accounting, Inmate Trust Fund Section, for processing. Any purchase request that does not comply with these requirements will be returned to the inmate. Form DC2-304 is incorporated by reference in Rule 33-203.201, F.A.C.

(k) Inmates in maximum management are not permitted to receive or possess publications except as provided in Rule 33-601.820, F.A.C.

(12) Training Materials and Correspondence Study Programs.

(a) All publications selected for use in an authorized program of the Department, any privately-operated facility housing inmates committed to the custody of the Department, PRIDE, or the Corrections Medical Authority will be

reviewed by the department head or person designated by the warden to ensure that the subject matter contained in the publication is not inadmissible pursuant to the criteria set forth in subsection (15) of this rule.

(b) Institutions will permit an inmate to enroll in correspondence study programs if the subject matter of the course materials is not inadmissible pursuant to the criteria set forth in subsection (15) of this rule. The warden will designate one or more department heads to inspect all materials received pursuant to an inmate's participation in a correspondence study program. Each item received and inspected will either be approved and issued to the inmate, or rejected and processed as contraband pursuant to Rules 33-602.201 and 33-602.203, F.A.C.

1. Inmates must secure prior approval from the warden or his or her designee to receive any item not listed on the Appendix One of Rule 33-602.201, F.A.C. Any item not approved by the warden or his or her designee in advance of receipt by the institution will be rejected and processed as contraband pursuant to Rules 33-602.201 and 33-602.203, F.A.C.

2. All educational correspondence study program materials must be mailed directly from the course provider to the institution's education department via U.S. Postal Service mail.

(13) Calendars.

(a) The following restrictions apply to an inmate's receipt and possession of a calendar:

1. Quantity – limited to one per inmate;

2. Size – if single paged, 12 inches by 12 inches or smaller; if multi-paged, 12 inches by 12 inches or smaller when closed, and no greater than 24 inches by 12 inches when opened;

3. Medium – paper only; and

4. Must not contain any audio or electronic components.

(b) Authorized sources:

1. A calendar that complies with the requirements of this rule will be sold in the canteens at each institution.

2. Inmates may receive and possess calendars only from publishers, mail order distributors, bookstores, and the canteen.

3. Chaplaincy services and other authorized programs of the Department may accept donations of calendars for distribution to inmates if the calendars comply with the requirements of this rule.

(c) Calendars that contain written or pictorial material that is inadmissible pursuant to subsection (15) of this rule will be rejected and will not be issued to inmates.

(d) Inmates are prohibited from posting or otherwise displaying calendars. Such activity will subject the inmate to disciplinary action and will cause the posted or displayed calendar to be confiscated as contraband.

(14) Blank journals or diaries.

(a) The following restrictions apply to an inmate's receipt and possession of blank journals and diaries:

1. Quantity – see possession limits set forth in subsection (11);

2. Size – limited to 9" x 12" or smaller when closed;

3. Medium – paper only;

4. Must not contain any audio or electronic components.

(b) Authorized sources:

1. Inmates may receive and possess diaries or journals only from publishers, mail order distributors, and bookstores.

2. Chaplaincy services and other authorized programs of the Department may accept donations of diaries and journals for distribution to inmates if the diaries and journals comply with the requirements of this rule.

(c) Diaries or journals that contain written or pictorial material that is inadmissible pursuant to subsection (15) of this rule will be rejected and will not be issued to inmates.

(15) Rejection of Publications. An inmate can possess a publication that is not detrimental to the security, order, or disciplinary or rehabilitative interests of any institution of the Department or any privately-operated facility housing inmates committed to the custody of the Department. A publication will be rejected if:

(a) The publication depicts or describes procedures for the construction of or use of weapons, ammunition, bombs, chemical agents, or incendiary devices;

(b) The publication depicts, encourages, or describes methods of escape from any correctional institution or facility, contains blueprints, drawings, or similar descriptions of any Department institution or facility, or includes road maps that can facilitate escape from a correctional institution or facility;

(c) The publication depicts or describes procedures for the brewing of alcoholic beverages or the manufacture of drugs or other intoxicants;

(d) The publication depicts how to make an instrument to apply a tattoo, describes how to make or secure ink or other supplies needed to make tattoos, describes tattooing techniques, or contains a tattoo pattern or photograph that is large and distinctive enough to be used as a tattoo pattern;

(e) The publication encourages, provides instructions on, or facilitates gambling;

(f) The publication is written in code or is otherwise written in a manner that is not reasonably subject to interpretation by Department staff as to meaning or intent; however, an inmate who is a foreign national will be permitted to receive a publication in his or her native language that is mailed directly from a government agency, diplomatic mission, or consular office of his or her country of citizenship;

(g) The publication encourages, provides instruction on, or facilitates the commission of a crime;

(h) The publication depicts, describes, or encourages activities that may lead to the use of physical violence on another person;

(i) The publication is dangerously inflammatory in that it advocates or encourages riot, insurrection, rebellion, organized prison protest, disruption of the institution, or the violation of federal law, state law, or Department rules;

(j) The publication includes signs, symbols, or other identifiers of a security threat group, or otherwise promotes the gang culture or lifestyle;

(k) The publication threatens physical harm, blackmail, or extortion;

(l) The publication depicts any of the following sexual conduct:

1. Actual or simulated sexual intercourse;

2. Sexual bestiality;

3. Masturbation;

4. Sadomasochistic abuse;

5. Actual lewd exhibition of the genitals;

6. Actual physical contact with a person's unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party;

7. Any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.

(m) The publication depicts nudity in such a way as to create the appearance that sexual conduct is occurring or is imminent such as the display of physical contact or intended physical contact with a person's unclothed genitals, pubic area, buttocks, or female breasts orally, digitally, or with a foreign object, or the display of sexual organs in an aroused state.

(n) The publication contains criminal history, offender registration, or other personal information about another

inmate or offender, which, in the hands of an inmate, presents a threat to the security, order, or rehabilitative objectives of the correctional system or to the safety of any person;

(o) The publication contains an advertisement promoting any of the following where the advertisement is the focus of, rather than being incidental to, the publication, or the advertising is prominent or prevalent throughout the publication:

1. Three-way calling services;
2. Pen pal services;
3. The purchase of products or services with postage stamps; or
4. Conducting a business or profession while incarcerated.

(p) The publication otherwise presents a threat to the security, order, or rehabilitative objectives of the correctional system or the safety of any person.

(16) Incoming Publications Not Previously Rejected by the LRC.

(a) The warden or assistant warden will impound any publication that he or she finds to be inadmissible pursuant to the criteria set forth in subsection (15) of this rule within 15 calendar days of receipt of the publication at the institution. If only a portion of a publication violates one or more criteria set forth in subsection (15), the entire publication will be impounded. Each issue of a subscription to a periodical must be reviewed independently in light of the criteria established in subsection (15).

(b) The warden or assistant warden will advise the inmate in writing on Form DC5-101, Notice of Rejection or Impoundment of Publications, of the specific reasons for the impoundment within 15 calendar days of receipt of the publication at the institution. The inmate will be provided two copies of the form. The warden or assistant warden will also provide a copy of the completed form to the publisher, mail order distributor, bookstore, or sender, and the LRC. The copy of Form DC5-101 that is sent to the LRC must include as attachments a copy of the publication's front cover or title page and a copy of all pages identified in the form as including inadmissible subject matter. The date that Form DC5-101 is mailed to the publisher, mail order distributor, bookstore, or sender will be documented by date stamp on all copies of the form. Form DC5-101 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXXX>. The effective date of this form is XX/XX.

(c) The initial impoundment of a publication by a warden or assistant warden at any institution or facility will

result in that publication being impounded by the warden or the mailroom supervisor at all institutions and facilities until the LRC reviews the impoundment decision. Inmates at other institutions who receive the impounded publication will be provided a Form DC5-101 explaining that the publication has been impounded pending review by the LRC. The form must state why the publication was impounded.

(d) Due to the Department's need to secure outside translation assistance, the time frames for review of admissible reading material specified in this subsection do not apply to publications in languages other than English or Spanish.

(17) Incoming Publications Previously Rejected by the LRC. When a rejected publication is received at an institution, it will be impounded and will not be issued to inmates. The warden or designee must notify each inmate in writing on Form DC5-101, Notice of Rejection or Impoundment of Publications, within 15 calendar days of receipt that the publication has been rejected by the LRC and cannot be received. Form DC5-101 must address only one publication. If a single mailing includes more than one rejected publication, a Form DC5-101 must be prepared for each publication.

(18) Reading Material in an Inmate's Property.

(a) The review criteria established in subsection (15) of this rule also apply to publications found in an inmate's personal property.

(b) If correctional staff find a publication in an inmate's personal property that has been previously rejected by the Department, the publication will be taken from the inmate and Form DC6-220, Inmate Impounded Personal Property List, will be completed as required by Rules 33-602.201 and 33-602.203, F.A.C. Form DC6-220 is incorporated by reference in Rule 33-602.201, F.A.C.

(c) If Department staff determine that a publication found in an inmate's personal property may be inadmissible pursuant to subsection (15) of this rule, it will be impounded and Form DC6-220 will be completed as required by Rules 33-602.201 and 33-602.203, F.A.C. The publication will be forwarded to the warden or assistant warden for review. The warden or assistant warden must review the publication within 15 days of impoundment. If the publication is found to be inadmissible, the warden or assistant warden will prepare Form DC5-101, Notice of Rejection or Impoundment of Publications, to advise the inmate of the specific reasons for impoundment. The inmate will be provided two copies of the form. Publications that are impounded pursuant to this paragraph will be processed as set forth in subsections (15) and (16) of this rule.

(19) Impoundment of Publications for Certain Inmates.

(a) Publications addressed to a specific inmate or found in the property of an inmate will be impounded when circumstances detailed in the inmate's current or prior criminal conviction or detailed in departmental disciplinary reports indicates it would be a threat to the security, order, or rehabilitative objectives of the correctional system or the safety of any person to permit the inmate access to subject matter in the publication.

(b) When a warden or assistant warden determines that an inmate should be denied access to a publication because its receipt would be a threat to the security, order, or rehabilitative objectives of the correctional system or the safety of any person, he or she will forward the publication to a Department health or mental health services professional for review and evaluation. If the health or mental health services professional agrees that the inmate should be denied access to the publication, the warden or assistant warden will impound the publication. The warden or assistant warden will provide the LRC with a copy of the opinion prepared by the health or mental health services professional and any other information that justifies denying the inmate access to the publication.

(c) Within 15 calendar days of receipt of the publication at the institution, the warden or his or her designee must advise the inmate in writing on Form DC5-101, Notice of Rejection or Impoundment of Publications, of the specific subject matter that is the cause for the impoundment pursuant to this subsection, including the page number(s) in the publication where the information is found and the specific security, safety, or rehabilitation concerns that justify denying the inmate access to the publication. The inmate will be provided two copies of the form. The warden or his or her designee will provide a copy of the completed Form DC5-101 to the publisher, mail order distributor, bookstore, or sender. The actual date that Form DC5-101 is mailed to the publisher, mail order distributor, bookstore, or sender will be documented by date stamp on all copies of the form.

(d) Regarding publications found in an inmate's personal property, Department staff will impound the publication and complete Form DC6-220, Inmate Impounded Personal Property List, as required by Rules 33-602.201 and 33-602.203, F.A.C. Department staff will forward the publication to the warden or his or her designee for review. The warden or his or her designee must review the publication within 15 days of impoundment. If the warden or his or her designee determines that the publication should be impounded, he or she must advise the inmate in writing on Form DC5-101 of the specific subject matter that is the cause for the impoundment pursuant to this subsection, including the page number(s) in the publication where this information is found and the specific security, safety, or rehabilitation concerns that justify denying the inmate access to the publication. The inmate will

be provided with two copies of the form. Each Form DC5-101 must address only one publication. A copy of the completed Form DC5-101 must be sent to the LRC together with any information that the warden or his or her designee believes justifies the decision to deny the inmate access to the publication.

(e) Publications that are impounded pursuant to this subsection will be processed as set forth in subsections (16) and (18) of this rule.

(f) Inmates may appeal impoundment decisions made pursuant to this subsection by utilizing the inmate grievance procedure as set forth in subsection (21) and paragraph (22)(c) of this rule and Chapter 33-103, F.A.C.

1. If the impoundment decision is overturned, the institution will give the publication to the inmate.

2. If the impoundment decision is upheld, the institution will advise the inmate that he or she has 30 days from date of receipt of notice that the grievance appeal has been denied to arrange to have the publication picked up by an approved visitor, or mailed to a relative, friend, or the sender at the inmate's expense. If the publication is not picked up or mailed out within 30 days, the institution will destroy it.

(g) Impoundment decisions made pursuant to this subsection are individualized in nature and do not impact any other inmate's access to a publication. However, if Department staff determine that a publication should be rejected pursuant to the criteria set forth in subsection (15) of this rule and should be denied to all inmates, they must follow the impoundment procedure set forth in subsection (16) or (18) of this rule.

(h) An inmate who possesses a publication that he or she was prohibited from having access to pursuant to this subsection are subject to formal disciplinary action as provided for in Rules 33-601.300-.314, F.A.C. Any such publications found in the possession of the inmate will be impounded as contraband and may be destroyed upon conclusion of any disciplinary proceedings and related grievance or legal appeals.

(20) Storage and Disposal of Impounded and Rejected Publications.

(a) Institutions must store impounded or rejected publications in a secure location that is inaccessible by inmates. A copy of the completed Form DC5-101, Notice of Rejection or Impoundment of Publications, must be kept with the impounded or rejected publication.

(b) Impounded and rejected publications will be held at the institution for 30 days. Upon receipt of Form DC5-101, an inmate has 30 days to have the publication picked up by an approved visitor, or mailed to a relative, friend, or the sender at the inmate's expense. If the publication is not picked up or mailed out within 30 days, the institution will destroy it.

(c) The 30-day deadline does not include any time that a grievance is pending if:

1. The grievance is timely filed as described in Chapter 33-103, F.A.C.; and

2. Regarding grievances challenging the impoundment or rejection of a publication pursuant to the criteria set forth in subsections (15) and (19) of this rule, the inmate has provided the warden with written notice of his or her intent to file a grievance with the Office of the Secretary as described in paragraph (21)(b) of this rule.

(d) At any time during the 30 days following receipt of Form DC5-101, an inmate may have an impounded or rejected publication picked up by an approved visitor, relative, or friend, pay to have the publication mailed to one of these approved individuals, or have the publication disposed of or destroyed. If an inmate authorizes the institution to have the publication disposed of or destroyed before the 30-day time period runs or while a grievance appeal is known to be pending, the authorization must be secured in writing.

(21) Inmate Grievance Appeals.

(a) Inmates may appeal the impoundment or rejection of reading material through the inmate grievance procedure, Chapter 33-103, F.A.C.

(b) When a publication is impounded or rejected for a reason not related to subject matter, inmates may file an informal grievance as described in Rule 33-103.005, F.A.C.

1. Only one impounded or rejected publication can be addressed in each grievance;

2. A copy of Form DC5-101, Notice of Rejection or Impoundment of Publications, that documents the impoundment or rejection must be attached to the grievance; and

3. The grievance must be filed within 15 days from the date of the impoundment or rejection being appealed.

(b) When a publication is impounded or rejected pursuant to the criteria set forth in subsection (15) or (19) of this rule, an inmate must bypass the informal and formal institutional levels of review, and file a grievance directly with the Office of the Secretary as described in Rule 33-103.007, F.A.C.

1. Only one impounded or rejected publication can be addressed in each grievance;

2. The inmate must identify the grievance as being related to admissible reading material by writing the words “Admissible Reading Material” at the top of the grievance;

3. A copy of the Form DC5-101 that documents the impoundment or rejection, must be attached to the grievance;

4. The grievance must be filed within 15 days from the date of the impoundment or rejection being appealed;

5. The grievance must be addressed to the Office of the Secretary; and

6. The inmate must provide written notice to the warden on Form DC6-236, Inmate Request, that he intends to appeal the impoundment or rejection to the Office of the Secretary in order to have the disposal of the publication stayed while the grievance is pending. The written notice must include a statement that the inmate intends to appeal the impoundment or rejection of admissible reading material and must specifically identify the publications on which the appeal is to be based.

(22) Literature Review Committee.

(a) A Literature Review Committee (LRC) will act as the final reviewing authority for appeals regarding publications rejected or impounded pursuant this rule. The committee will be composed of the following individuals:

1. Bureau Chief of Security Operations or his or her designee;
2. Bureau Chief of Policy Management and Inmate Appeals or his or her designee;
3. Bureau Chief of Programs or his or her designee.

(b) The Bureau Chief of Programs or his or her designee will serve as the chairperson of the LRC and will be responsible for coordinating all activities of the committee.

(c) Within 30 days of receipt of a Form DC5-101, Notice of Rejection or Impoundment of Publications, from an institution or facility or receipt of an inmate grievance appeal forwarded by the Bureau of Inmate Grievance Appeals, the Bureau Chief of Programs or his or her designee will schedule a meeting of the LRC to review the decision to reject or impound a publication or the appeal. The committee will consider the appeal (if filed), the rule authority and reasons for the rejection or impoundment cited in Form DC5-101, the portions of the publication that have been cited as cause for the rejection or impoundment, and any other relevant material relating to the decision to reject or impound the publication or the appeal. The committee will affirm or overturn the decision to reject or impound the publication or approve or deny the appeal based upon the criteria set forth in this rule. Decisions of the committee will be by majority vote. Except as otherwise provided in this rule, the decision of the committee is final.

(d) LRC decisions based on the review of rejected or impounded publications will be communicated to all institutions of the Department and any privately-operated facilities housing inmates committed to the custody of the Department. When a rejection or impoundment decision is overturned, institutions will issue the publication at issue to all affected inmates as soon as possible. Decisions relating to inmate grievance appeals will be communicated to

the Chief of the Bureau of Inmate Grievance Appeals or his or her designee who will then approve or deny the grievance in light of the LRC's decision.

(e) If the LRC notifies institutions that the rejection or impoundment of a publication has been overturned or if an inmate's grievance appeal is approved, the following guidelines must be followed when the institutions issue the publication to affected inmates.

1. The publication will be retrieved from secure storage and turned over to security or service center staff authorized by the warden or his or her designee to issue rejected or impounded publications to inmates.

2. A copy of the completed Form DC5-101 must be attached to the publication.

3. The stamped Form DC5-101 will be presented to affected inmates. The affected inmates will be required to sign and date the form. An affected inmate will only be issued the publication after he or she has signed and dated the form.

4. The signed Form DC5-101 must be retained by institutional or service center staff as documentation evidencing that the inmate was issued the publication.

(f) The department must maintain a record of all publications reviewed by the LRC. The record of reviewed publications must be updated after every meeting of the LRC. All institutions and facilities must maintain a current copy of the record of reviewed publications in every institutional mailroom and at a location accessible by inmates.

(23) Review of Decision to Impound a Publication.

(a) The publisher, mail order distributor, or bookstore may obtain an independent review of a warden's decision to impound a publication by writing to the library services administrator at 501 South Calhoun, Tallahassee, Florida 32399-2500 within 15 days following receipt of Form DC5-101, Notice of Rejection or Impoundment of Publications. The request for review must be accompanied by:

1. A copy of the completed Form DC5-101; and

2. A copy of the impounded publication.

(b) The library services administrator will forward this information to the LRC for review. The chief of institutional programs or designee must provide the publisher, mail order distributor, bookstore or sender written notification of the LRC's decision. The decision will also be communicated to all correctional facilities.

(24) Review by the LRC

(a) The publisher of a publication rejected by the LRC may request reconsideration of the rejection if the

publisher can:

1. Provide proof to the LRC that the publication has been revised and the material resulting in the rejection has been removed; or

2. Demonstrate that the LRC's decision to reject the publication was not based on any of the criteria set forth in subsection (15) of this rule.

(b) A publisher may request reconsideration by writing to the library services administrator at 501 South Calhoun, Tallahassee, Florida 32399-2500. The request must be accompanied by a copy of the rejected publication, any revised version of the publication, and any other relevant information the publisher wants to have considered by the Department.

(c) The library services administrator will forward all information submitted by the publisher to the LRC for review at the next regularly scheduled LRC meeting. The Bureau Chief of Programs or his or her designee will provide the publisher written notification of the LRC's decision. The decision will also be communicated to all correctional institutions and facilities. A publisher may request reconsideration of a publication pursuant to subparagraph (24)(a)1. at any time.

(25) Special Meeting of the LRC.

(a) In addition to the review process set forth in subsection (24) of this rule, the Secretary or a publisher may request a special meeting of the LRC to reconsider the LRC's rejection of a publication.

(b) The Secretary may request a special meeting of the LRC by contacting the Director of the Office of Programs and Reentry or his or her designee. When a special meeting of the LRC is requested by the Secretary, the library services administrator will notify the publisher, if known, and request a copy of the rejected publication, any revised version of the publication, and any other relevant information the publisher wants to have considered by the Department.

(c) A publisher may request a special meeting of the LRC by writing to the library services administrator at 501 South Calhoun, Tallahassee, Florida 32399-2500. The request must be accompanied by a copy of the rejected publication, any revised version of the publication, and any other relevant information the publisher wants to have considered by the Department.

(d) The library services administrator will forward all information submitted by the publisher to the Bureau Chief of Programs who will schedule a special meeting of the LRC to consider the request.

(e) A special meeting of the LRC will not be scheduled more frequently than once each quarter. The LRC for a special meeting will be composed of the bureau chiefs identified in paragraph (22)(a). No designees are permitted.

(f) At a special meeting of the LRC, the LRC will review all available and relevant information relating to the publication at issue pursuant to the criteria set forth in subsection (15) this rule.

(g) The Bureau Chief of Programs or his or her designee will provide the publisher written notification of the LRC's decision. The decision will also be communicated to all correctional institutions and facilities.

(f) If a publication is rejected at a special meeting of the LRC, the publisher may not request reconsideration at a special meeting of the LRC for a period of five calendar years from the date of the rejection.

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NAME OF PERSON ORIGINATING PROPOSED RULE: Patrick Mahoney, Director of the Office of Programs and Reentry

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

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