The Department of Corrections scheduled a public hearing on December 10, 2019, to obtain public comments on the proposed revision of the above stated rule. (The hearing had been rescheduled from December 3, 2019 due to a winter storm closing State offices.) No members of the public attended. Written comments were accepted through December 20, 2019 (a deadline which was extended from December 13, 2019, due to the rescheduling of the hearing date). Only one set of written comments was received. This document sets out those comments in summary form and responds to those comments.

The Department thanks Foster Bates, MDOC # 52366, President of the Maine State Prison Chapter of the NAACP, for sending written comments.

Comments and Responses:

1. **Comment:** The Expended (sic) Funds Availability Act requires that funds deposited by check be made available no later than the second business day following the banking day of deposit and Regulation CC requires that funds deposited by a treasury check, postal money order, government check, or cashiers check be made available no later than the the first business day following the banking day of deposit. Procedure B. of this rule violates this statute and regulation by placing funds from these types of checks on hold for 14 calendar days. These funds should be placed on hold for no longer than 72 hours.

   **Response:** The Department of Corrections declines to adopt this suggestion. The Expedited Funds Availability Act, Title 12 USC chapter 41, and Regulation CC, 12 CFR part 229, do not apply to the Department. The statute and regulation apply only to a “bank” as defined therein. In the parts of the statute and regulation that concern the availability of funds from deposited checks, the definition of “bank” does not include a state government agency. This is in contrast to other parts of the statute and regulation, where a state government agency is mentioned in the definition of “bank.” Although, even then, a state government agency is defined as a “bank” only if it cashes checks, which the Department does not do. In other words, a person may not present to the Department, in person or otherwise, a check and have it cashed.

   The Department is keeping the 14 day hold for all types of checks (including treasury checks, postal money orders, government checks, and cashiers checks) because of past experience with checks that have bounced, been forged, and/or been obtained fraudulently. A lengthier hold time reduces the likelihood that a prisoner or resident will expend funds before such an issue is discovered and leave the Department with the loss. In addition, it would be too expensive to change the Department’s electronic prisoner and resident account system to reduce the hold time.

2. **Comment:** The U.S. Constitution, Maine Constitution, and state statutes require that participation in the prisoner savings plan, found in Procedure F. of this rule, be entirely voluntary. Also, anyone who uses money from his or her prisoner savings account should have a percentage deducted from earned wages only to pay it back, not from money received from families. Finally, if a prisoner would reach retirement age (approximately 65) at the time of his or her possible release, the prisoner should be able to opt out of the savings plan.
Response: The Department declines to adopt the suggestion that the prisoner savings plan be made entirely voluntary. The primary purpose of requiring that a small percentage (10%) be taken from prisoner earnings until $1000 is accumulated is to ensure that a prisoner being released has sufficient funds to support himself or herself (and, if applicable, his or her family) upon release. It also allows a prisoner to have funds from which to borrow prior to release for a family or educational need. Experience has shown that many prisoners do not save voluntarily, and so the plan is mandatory (with certain exceptions, such as for a prisoner with a life sentence or who is terminally ill). Because there is litigation currently making its way through the Maine courts on whether or not constitutional or statutory law requires that participation in this savings plan be voluntary, the Department will not respond in detail to the commenter’s legal arguments but just state that it does not agree with them.

However, the Department does agree with the suggestion that if a prisoner borrows money from his or savings plan account (called in the rule “personal savings escrow account”), it should be paid back from earnings only and, in fact, the proposed rule had already made that change from the current rule.

As for the suggestion of using 65 years old at time of earliest possible release as an exception to the mandatory savings plan (as opposed to 90 years old in the current rule), the Department had already put into the proposed rule 75 years old. The purpose of this exception is to not require participation in the savings plan for those prisoners with no realistic expectation of release. Retirement age is not when there is an expectation of death. The Department chose 75 years of age as that is the current approximate normal life expectancy and will be keeping with this.

3. Comment: Procedure E. should be changed so that in addition to other funds from which a prisoner may make deposits to an outside savings account or may make an investment, a prisoner would be able to use the funds in his or her prisoner savings plan account for these purposes.

Response: The Department will adopt this suggestion in part. If the amount in a prisoner savings plan account exceeds $1000, the prisoner will be able to deposit funds in an outside savings account or use them for an investment, so long as this does not result in a balance of less than $1000 in the prisoner’s savings plan account. This is already implicit in Procedure F.11. of the proposed rule, but will be made clear in Procedure E. as well. The requirement that there still remain at least $1000 in the prisoner’s savings plan account is necessary or else a prisoner would be able to remove all or most of the funds in his or her outside savings account or investment and spend them prior to release, defeating the purpose of the mandatory savings plan.

4. Comment: Procedure C.10. requires that any funds in a prisoner’s account at death be used to pay for funeral expenses. Since prisoners are wards of the State, the State should pay these expenses. Since 95% of prisoners are indigent, requiring this violates Maine law and statute.

Response: This procedure actually states that, upon death, prisoner funds shall be handled in accordance with Title 34-A section 3040-A. That statute sets out when prisoner funds may be used for funeral expenses. Obviously, there is no violation of Maine law and statute by including in a rule a provision that says to follow Maine statute.

In addition to the above noted changes made in response to the public comments, two minor changes were made to the proposed rule. The professional standards listed at the end of the policy, which had been included due to an oversight, were removed in accordance with recent DOC rulemaking practice. Professional standards do not need to be made part of a rule and making them part of a rule would require the policy to be revised every time there was a change in wording in a standard made by an outside organization, no matter how minor. Also, the reference in Procedure E.2. to Title 34-A section 3039 was deleted as unnecessary as this statutory provision is referenced as the “Authority” for this rule.