

REGULATORY ANALYSIS FORM

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(1) Agency: Department of Corrections

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(2) I.D. Number (Governor's Office Use)
19-4

IRRC Numbers

2011

(3) Short Title

County Prisons

(4) 37 Pa. Code §95.220, et seq.

(5) Agency Contacts & Telephone Numbers

Primary Contact: William M. Reznor, Deputy
Secretary for Intergovernmental Relations (717) 975-4876
Secondary Contact: Jill C. Fluck (717) 731-0444

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No.
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and non-technical language.

The regulations are designed to update outdated text currently within the regulations, to eliminate many technical requirements of the regulations and to afford county prison administrators with sufficient flexibility to address prison management problems that are strictly local in nature. However, the amendments also establish basic minimum requirements for counties to operate their county prisons in a manner consistent with recognized professional standards. The amendments to Chapter 95 are under the authority of Section 506 of the Administrative Code of 1929, the Department is empowered to prescribe rules and regulations for the performance of the Department's business. A portion of the Department's business includes establishing standards for county jails and prisons, including physical facilities and standards for correctional programs of treatment, education and rehabilitation of inmates. See Section 3 of the Act of October 16, 1972 (P.L. 913, No. 218) (61 P.S. §460.13[3]).

(9) State the statutory authority for the regulation and any relevant state or federal court decisions:

Section 3 of the Act of October 16, 1972 (P.L. 913, No. 218) (61 P.S. §460.13[13]).

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Under Section 3 of the Act of October 16, 1972 (P.L. 913 No. 218) (61 P.S. §460.13[3]), the Department is mandated to establish standards for county jails and prisons, including physical facilities and standards for correctional programs of treatment, education and rehabilitation of inmates.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The amendments are justified by the compelling public interest in the safe and secure operations of county prisons. The amendments establish minimum standards that the Department believes will ensure that county prisons are operated in a safe and secure manner.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

The public health, safety and general welfare risks associated with non-regulation include the operation of unhealthy, unsafe and unsecured county correctional facilities. The amendments are designed to ensure that county prison staff, inmates and visitors work, live and visit facilities which do not pose a danger to their health and safety. In addition, the amendments seek to protect the general welfare by ensuring that county prisons are managed and operated in the most secure manner possible.

13. Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

All persons associated with county prisons including staff, inmates and visitors will benefit from the amendments in that county prisons will be required to meet minimum professional standards in regard to their operations. In addition, the public will benefit in that the county prisons will be operated in the most secure manner possible.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The Department does not anticipate that anyone will be adversely affected by the amendments.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply).

The persons, groups or entities that will be required to comply with the amendments include county prison administrators and staff and inmates incarcerated in county prisons.

(16) Describe the communications with the input from the public in the development and drafting of the regulation. List the persons and/or groups who are involved, if applicable.

The Department solicited and received significant input from county prisons administrators and county commissioners from across the Commonwealth in the development and drafting of the amendments.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The Department cannot provide a specific estimate of the cost and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. The regulations are designed to give county officials discretion in meeting the minimum requirements that the amendments mandate. Therefore, the Department is unable to quantify any costs and/or savings associated with the amendments. However, the Department designed the amendments to enable county officials to meet minimum requirements with due consideration being given to budgetary constraints.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The Department cannot provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. The regulations are designed to give county officials discretion in meeting the minimum requirements that the amendments mandate. Therefore, the Department is unable to quantify any costs and/or savings associated with the amendments. However, the Department designed the amendments to enable county officials to meet minimum requirements with due consideration being given to budgetary constraints.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The Department does not expect the state government to incur any costs and/or savings associated with the amendments.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	CURRENT FY YEAR	FY + 1 YEAR	FY + 2 YEAR	FY + 3 YEAR	FY + 4 YEAR	FY + 5 YEAR
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

As stated previously, the Department cannot estimate what costs will be incurred by counties in implementing the amendments. However, the amendments were designed to give county officials sufficient discretion to meet the minimum requirements in the most cost effective manner possible.

(20b) Provide the past three year expenditure history for programs affected by the regulation.

PROGRAM	FY - 3	FY - 2	FY - 1	Current FY
	\$	\$	\$	\$

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Since the Department is unable to provide any costs/benefit information, it is unable to explain how the benefits of the regulation outweigh the adverse effects and costs. However, the Department does not believe that the amendments will have any adverse effects on the regulated community.

(22) Describe the non-regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The Department did not consider any non-regulatory alternatives in the costs associated with any such alternatives.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

The Department did not consider any alternative regulatory schemes or any costs associated with such schemes.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The Department did not compare the amendments with the regulations of any other states regarding county prisons. The Department does not believe that the amendments will put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The Department does not believe that the regulations will effect any existing or proposed regulations of the promulgating agency or other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Department does not anticipate to hold any public hearings or informational meetings concerning the amendments.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The amendments will not significantly change existing reporting, record keeping or other paper work requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The amendments do not contain any special provisions which have been developed to meet the particular needs of the effective groups or persons including, but not limited to, minorities, elderly persons, small business and farmers.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The Department anticipates that the amendments will become effective in 1999. Compliance will be expected within one year of the anticipated effective date of the amendments.

(31) Provide the schedule for continual review of the regulation.

The amendments, once effective, will be reviewed on an annual basis.

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Copy below is hereby approved as to
form and legality. Attorney General

(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct copy
of a document issued, prescribed or promulgated by:

Department of Corrections
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 19-11

DATE OF ADOPTION: 8/24/99

BY: *[Signature]*

TITLE: Martin F. Horn, Secretary
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to
form and legality. Executive or Independent
Agencies.

BY: *[Signature]*

DATE OF APPROVAL: 10/18/99

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney Gen-
eral approval or objection within 30
days after submission.

**TITLE 37 LAW
DEPARTMENT OF CORRECTIONS
[37 PA. CODE CH. 95]
County Correctional Institutions**

The Department of Corrections (Department) hereby amends Chapter 95 (relating to county correctional institutions), to read as set forth in Annex A. The Department is acting under the authority of section 506 of The Administrative Code of 1929 (act) (71 P.S. § 186).

A. Contact Person

Interested persons are invited to submit in writing any questions regarding the amendments to Deputy Secretary for Intergovernmental Relations William M. Reznor, 2520 Lisburn Road, P.O. Box 598, Camp Hill, PA 17001-0598, (717) 975-4876.

B. Statutory Authority.

The Department is amending Chapter 95 under the authority of section 506 of the act. Under section 506 of the act, the Department is empowered to prescribe rules and regulations for the performance of the Department's business. A portion of the Department's business includes establishing standards for county jails and prisons, including physical facilities, and standards for correctional programs of treatment, education and rehabilitation of inmates. See section 3 of the act of December 27, 1965 (P. L. 1237) (61 P.S. § 460.3(3)).

C. Purpose and Background

Under the authority of Executive Order 1996-1 the Department undertook a review of its regulations relating to county correctional institutions. Based on that review, the Department found that many of the regulations are outdated, too technical and do not afford county prison administrators with sufficient flexibility to address prison management problems that are strictly local in nature. While the Department still wants to ensure that county prisons maintain minimum professional standards for prison operations, it wants to provide county prison administrators with the flexibility they need to address strictly local issues in the manner the counties deem most appropriate and cost efficient. Therefore, the Department is amending Chapter 95 to read as set forth in Annex A.

D. Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

Prior to drafting the proposed amendments contained in Annex A, the Department sought and received input from county prison wardens from across this Commonwealth. In May of 1997, the Department mailed a preliminary survey to the wardens of all 63 counties which have county prisons asking them to rate the individual sections contained within Chapter 95 and to identify specific areas of concern. The overall response rate to the survey was 59%. The results from the survey were compiled by the Department's Planning and Research Division to develop a standard agenda for regional work sessions that the Department planned to conduct with county prison officials. The survey revealed that 12 sections of

Chapter 95 were deemed most worthy of revision by the county wardens that responded to the survey. During the months of July and August 1997, five regional work sessions were conducted with county prison officials to discuss the 12 sections targeted for revision.

The five work sessions were held for the Northwest, Northeast, Southwest and Southeast regions of this Commonwealth and Philadelphia County. The work sessions were held in centralized locations in an effort to maximize warden participation by minimizing travel inconveniences. A team from the Department, which included representation from the Office of Chief Counsel, Bureau of Operations, Office of Grants and Special Projects, Bureau of Health Care and the Deputy Secretary for Intergovernmental Relations, was assembled to facilitate warden input at each of the work sessions and to develop recommendations for a reduction in the regulations of the targeted sections.

After the work sessions, and with due consideration being given to the input of the county prison officials, the Department drafted proposed amendments to the 12 regulatory sections that were targeted for revision. Those amendments were then submitted to a Warden's Committee representing the Pennsylvania Prison Wardens Association and the Courts and Corrections Committee representing the County Commissioners Association of Pennsylvania for final review and comment. After reviewing the comments submitted by the County Commissioners Association and the Warden's Committee the Department drafted the amendments as set forth in Annex A.

E. Summary of Amendments

An introductory statement appears in § 95.220 (relating to purpose). The introductory statement is intended to impress upon county prison officials the need to develop, utilize and maintain local policies and procedures that are consistent with Pennsylvania law and recognized professional standards. The introductory statement also exempts compliance with the regulations if a county prison achieves American Correctional Association accreditation using Adult Local Detention Facilities standards. These are the same standards endorsed by the American Jailers Association. In addition, all Chapter 95 regulations governing medical and health care services will be waived if a county prison achieves accreditation from the National Commission on Correctional Health Care.

Twelve sections have been revised based on input from county wardens and prison administrators concerning the most burdensome regulations. Those sections include §95.221, Personnel; §95.222, Admissions; §95.225, Classification; §95.226, Housing; §95.228, Clothing; §95.231, Personal Hygiene; §95.232, Medical and Health Services; §95.234, Correspondence; §95.236, Library; §95.238, Recreation; §96.239, Commissary; and §95.240, Discipline and Punishment. The amendments are designed to reduce the number of technical, burdensome and mandatory requirements that are currently imposed on county prison administrators. The amendments are also designed to provide county prison administrators with sufficient flexibility to address purely local operational concerns within the confines of local budgetary constraints. At the same time, the amendments establish for county prison administrators the minimum general professional standards that should govern county prison operations.

F. Fiscal Impact

The amendments are not expected to have any negative fiscal impact upon the Commonwealth, its political subdivisions or the general public.

G. Paperwork Requirements

The amendments are not expected to have any significant effect on the paperwork requirements of the Commonwealth, its political subdivisions or the public.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act, on March 4, 1999, the Department submitted a copy of its notice of proposed rulemaking published at 29 Pa.B. 1504 (March 20, 1999) to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Judiciary Committees.

The Department submitted a copy of the final-form amendments to IRRC and the Chairpersons of the House and Senate Judiciary Committees on (INSERT DATE). In addition to submitting the proposed amendments, the Department provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Improving Government Regulations." A copy of this material is available to the public upon request. In preparing these final-form regulations the Department has considered the comments received from IRRC. The Department did not receive any comments from the public. The only comment received from the House and Senate Judiciary Committee addressed a section of the regulation which was being deleted.

The final-form regulations were deemed approved by the House and Senate Judiciary Committees on (INSERT DATE). IRRC met on (INSERT DATE) and approved the regulations in accordance with Section 5.1(e) of the Regulatory Review Act. The Office of General Counsel and the Office of Attorney General approved the final-form regulations on (INSERT DATES) respectively.

I. Effective Date

The amendments shall take effect upon completion of the regulatory review process and final publication in the *Pennsylvania Bulletin*.

The Department of Corrections finds that:

- (1) Notice of proposed rule making was published at 29 Pa.B. 1504 as required by §§201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202) and the regulations thereunder, 1 Pa. Code §§7.1 and 7.2.
- (2) A public comment period was provided as required by law and no public comments were received by the Department for consideration.

- (3) The adoption of these amendments in the manner provided by this order is necessary and appropriate for the administration of the Department of Corrections.

Order

- a. The regulations of the Department of Corrections, 37 Pa. Code Chapter 95, are amended to read as set forth in Annex A.
- b. The Department shall submit this order, 29 Pa.B. 1504 and Annex A to the Office of General Counsel and to the Office of Attorney General for approval as required by law.
- c. The Secretary of Corrections shall certify this order, 29 Pa.B. 1504 and Annex A and deposit them with the Legislative Reference Bureau for publication in the Pennsylvania Bulletin as required by law.
- d. This order shall take effect upon publication in the Pennsylvania Bulletin.

MARTIN F. HORN,
Secretary

Fiscal Note: 19-4.

Annex A

TITLE 37. LAW

PART M. AGENCIES AND OFFICES

Subpart B. DEPARTMENT OF CORRECTIONS

CHAPTER 95. COUNTY CORRECTIONAL

**Subchapter B. ADMINISTRATIVE STANDARDS,
REGULATIONS AND FACILITIES**

COUNTY [JAILS] PRISONS

§ 95.220. Purpose.

This subchapter is designed to encourage county prisons to develop and utilize local policies and procedures that are in keeping with existing State law and recognized professional standards for all sections addressed in this chapter.

§ 95.220a. Definitions

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

Department – The Department of Corrections of the Commonwealth of Pennsylvania

Health Care Professional – A medical doctor, doctor of osteopathy, physician's assistant, registered nurse or licensed practical nurse licensed by the appropriate licensing board of the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs.

Health Care Provider – An employee or contractor of the prison who is responsible for ensuring that adequate health care is provided to inmates.

Health Care Screening – A process developed by the prison's health care provider to assess inmates upon admission as set forth in written local policy.

Health Care Training – Such training as is required by the county prison's health care provider as part of the prison's health care delivery system as set forth in written local policy.

Written Local Policy – Local policy that clearly explains practices and procedures to be followed, requires compliance therewith, and provides for enforcement thereof. The Department shall review such policies when inspecting county prisons.

§ 95.220b. Scope.

Each section sets forth minimum requirements, which are mandatory. For those counties achieving American Correctional Association accreditation using Adult Local Detention Facilities standards, Subchapter B will be waived in its entirety. Section 95.232 pertaining to medical and health services will be waived for those counties which achieve National Commission on Correctional Health Care accreditation.

§ 95.221. Personnel.

[(a) Minimum requirements.] The following are the minimum requirements applicable to personnel at county [jails] prisons:

[(1) An education and training program shall seek to impress upon personnel and the public at large that this work is a public service of great importance.]

(1) [2] Before [duty] being assigned duties, all corrections personnel shall be given [a course of] training in their general and specific responsibilities, including the use of force, prohibition on the seeking and dispensing of favors to and from the inmate population and instruction in the facility's code of conduct and ethics.

(2) [(3) After entering on duty, and at regular times during their career, personnel shall improve their knowledge and professional capacity by attending inservice training courses.] Full time corrections personnel shall receive basic training from a training program approved by the Department within 12 months of assuming their duties.

(3) [(4) The seeking and dispensing of favors or the unwarranted use of force, whether physical or psychological, shall never be condoned.] Part-time corrections personnel shall be provided training required under (1) above. Part-time corrections personnel who have not completed an approved training program under (2) above may not be permitted to work without close supervisory direction by a person who has received such training.

(4) [(5) All persons shall be enrolled within 6 months of the date they entered on duty in the Bureau of Correction Training School.] Written local policy shall provide for training and staff development as described in sections (1), (2) and (3).

[(b) Recommended guidelines.] The following are the recommended guidelines applicable to personnel:

- (1) The governing body in control of the jail should provide for careful selection of all levels of personnel.
- (2) Personnel should be appointed on a full-time basis as career jail officers.
- (3) Personnel should have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness.
- (4) Salaries should be adequate to attract and retain suitable men and women.

- (5) Employment benefits and conditions of service should be favorable and in line with state employes and other civil servants.
- (6) Personnel should, be at all times, conduct themselves and perform their duties in a manner which shall help prisoners form sound attitudes toward productive living in a free society.
- (7) The administrator of the jail should be qualified by character, administrative ability, suitable training and experience.
- (8) The administrator of the jail should be appointed on a full-time basis.
- (9) Prison officers should be given special physical training.
- (10) Professional stature should be the goal of all jail personnel.
- (11) Respect for the dignity of one's fellow man is absolutely essential for all personnel who work with prisoners.]

§ 95.222. Admission.

[(a) *Minimum requirements.*] The following are the minimum requirements applicable to [admission procedures] admissions:

(1) [The officer assigned to the admissions desk shall determine that each prisoner being admitted has been committed] With all admissions to the prison, commitment under proper legal authority and completeness of paperwork shall be verified. [The commitment papers shall be carefully examined for completeness and signature by authorized officials. The identity of the person being admitted should be verified as the person named in the commitment papers.]

(2) [An injured, sick or unconscious prisoner may not be admitted to the jail until medical treatment has been provided and arresting officers produce verification from a medical doctor that the prisoner is not in need of emergency hospitalization. If an injured, sick or unconscious prisoner is admitted to the jail then he shall receive immediate medical attention by a medical doctor.] An inmate may not be admitted into the prison when it is determined that the inmate is in need of medical treatment that cannot be provided by the prison. In those cases, a written verification of treatment from a medical doctor shall be provided by the transporting authority prior to admission.

(3) [The clothing of the prisoner shall be carefully searched for contraband.] Admission procedures relating to contraband searches, property disposition, notification and medical assessments and personal hygiene shall be specified in written local policy.

(4) [Personal property removed from the prisoner shall be listed and described in detail, item by item, in the presence of the prisoner. The admission officer and the prisoner shall both check the listing together, and each sign a duplicate receipt form. One copy of the

receipt shall be given to the prisoner and the original filed in the property records.] As part of the admission process, basic personal information shall be obtained for identification and classification purposes. This basic information shall include:

- (i) The name of the inmate.
- (ii) Date of birth.
- (iii) Race.
- (iv) Gender.
- (v) Social security number.
- (vi) State identification number (SID).
- (vii) Country of birth.
- (viii) Citizenship.
- (ix) Any aliases.
- (x) The previous address of the inmate.
- (xi) A physical description of the inmate, including height, weight, hair, eye color and any scars or tattoos.
- (xii) The occupation of the inmate.
- (xiii) Education.
- (xiv) Offense committed and a summary of the facts of the crime committed.
- (xv) Religious affiliation.
- (xvi) The date of commitment.
- (xvii) Committing county.
- (xviii) The authority for the commitment.
- (ixx) Previous criminal record and any detainers.
- (xx) The name and address of the person to be contacted in event of an emergency.
- (xxi) Marital status and any children.
- (xxii) Medical history, including any substance abuse.
- (xxiii) The name and address of the inmate's attorney.

(5) [Personal property of the prisoner shall be stored in a safe place until the prisoner is released or until he releases his property to persons designated in writing by them. Personal property released to persons designated by the prisoner shall be transferred only when the prisoner is present.] Upon admission, a copy of the rules of the prison shall be provided to each inmate.

(6) [A telephone should be available within the receiving area. The prisoner shall be permitted to contact an attorney, a bondsman or a family member. If without funds, a phone call shall be provided.] Written local policy shall specify how an inmate can notify a relative of the inmate's location.

[(7) If it is not possible for a doctor to be in attendance during the admission process, the admission officer should look for injuries, medical tags and question the prisoner to determine if he has any medical problems which need attention. This should include information concerning drug or alcohol abuse.

(8) If a prisoner has any medication on his person at the time of admission, the medical doctor shall decide what use is to be made of the medication.

(9) Prisoners upon admission shall take a shower and be deloused if necessary.

(10) During the receiving process, certain personal history information shall be obtained from the prisoner for identification and classification purposes and so that relatives may be notified in case of emergency. The basic information shall include: name of prisoner, aliases, address, description, occupation, education, offense, religious affiliation, date of commitment, authority for the commitment, previous criminal record, name and address of attorney.

(b) *Recommended guidelines.* The following are the recommended guidelines concerning the admission process:

(1) Each prisoner admitted shall be stripped and searched for weapons and contraband. The search should also include a check for body vermin, and for cuts, bruises, needle scars and other injuries. The strip search should be conducted in a professional nonhumiliating manner, and for security and privacy reasons, the search should be conducted in an area where the prisoner is in view of only those officers in charge of the search.

(2) A matron shall be present when female prisoners are admitted, and the strip search area shall be supervised by female staff members in a private portion of the jail.

(3) Prisoners newly committed to the jail shall be fingerprinted and photographed as soon as possible. Copies of the fingerprint record should be forwarded to the proper State authorities and to the Federal Bureau of Investigation.

(4) Each prisoner shall be provided with clean clothing if his is inappropriate.

(5) If possible, the admission procedure should include a screening interview with a counselor to assist the prisoner with any immediate family or personal problems.

(6) Any serious wounds existing at the time of admission should be photographed, and immediately attended by a medical doctor.

(7) Until the medical doctor is able to verify that the prisoner is free of any communicable disease, the prisoner shall be housed in quarantine area separate from the general population for the safety of staff and other prisoners. If possible, the quarantine should consist of separate cells.

(8) Inmates entering the quarantine area shall receive a copy of the rules and regulations of the jail.]

§ 95.225. Classification.

(a) [*Generally.* Every jail in the Commonwealth should use a classification process to coordinate all information about the prisoner so that the decisions concerning security, housing and treatment programs may be made on a basis of knowledge instead of guess.

Classification may be an uncomplicated or a very complex process depending upon the size, physical facilities and staff of the jail. The purpose of classification is to help the jail administrator as follows.] The following minimum requirements apply to classification:

[(1) Assure the security of the jail.]

(1) An inmate classification plan shall be documented in written local policy.

(2) This plan shall establish classification based on the degree of security risk and need for supervision. The classification plan shall specify:

- (i) how the classification process is accomplished;
- (ii) what process of appeals exist;
- (iii) the review mechanism utilized; and
- (iv) explicit procedures for reclassification.

[(2) Assure the welfare of the inmates.

(3) Assure the protection of the community by preventing escapes.

(4) Assure the most effective use of the jail, within its limitations, as an instrument of correction and rehabilitation.

(b) Minimum requirements. The minimum requirements as regards classification of prisoners in county jails are as follows:

(1) To implement a classification process, the jail administrator in counties of the first through fifth class shall form a classification committee composed of representatives of administration, security and treatment. A citizen member of the community may also be of great benefit to the committee.

(2) In determining each prisoner's degree of security needed, housing assignment, job assignment and overall treatment plan, the following items should be considered through the classification process.

- (i) Sex.
- (ii) Age.
- (iii) Crime.
- (iv) Sentence.
- (v) Past criminal history.
- (vi) Medical condition and needs.
- (vii) Mental condition and needs.
- (viii) Educational and vocational needs.
- (ix) Special services and program needs.
- (x) Other pertinent information.
- (xi) The thinking and feeling of the prisoner about his life and future plans.

(3) If possible, each prisoner should appear before the classification committee to discuss his case and future life goals.

(4) Each prisoner should be informed of the decision and the reason for the decision of the classification committee.

(5) Classification is an ongoing process and a procedure for reclassification shall be developed and each prisoner shall be informed under what conditions classification is possible.

(c) *Recommended guidelines.* Jails of the sixth, seventh and eighth class counties may find that it is unwieldy to have a formal classification committee. In such cases, the administrator should use the classification process himself as a guideline for operating the jail.]

§ 95.226. Housing.

[(a) *Generally.* The immediate problem of housing the new prisoner shall be solved when he enters the jail. Some housing arrangements are required by Pennsylvania law. Few jails have a formal procedure for evaluating new inmates. However, an immediate decision shall be made as to which housing unit he is to be assigned. The housing assignment of a prisoner may have serious consequences for him and for the jail. For example, a violent prisoner may be placed in a double cell with a weaker and older person whom he may assault. Or the youthful prisoner may be placed in a cell with an aggressive homosexual and be raped. The jail administration shall carefully assess the need for segregating prisoners who should be segregated and assure that the housing arrangements required by law are followed, and that all prisoners are handled according to good jail management standards.]

[(b) *Minimum requirements.* The minimum requirements for housing are as follows:] The following are the minimum requirements applicable to housing:

(1) Written local policy shall specify the process for segregation, removal or transfer of inmates requiring medical attention.

(2) An inmate who is mentally ill or known to have a contagious disease shall be separated from the general population.

(3) Female inmates shall be completely separated from male inmates. This does not preclude rehabilitative projects and food service assignments where male and female inmates could participate together with proper supervision.

(4) In determining housing adequacy, the following factors shall be considered:

- (i) Climatic conditions.
- (ii) Minimum floor space.
- (iii) Heating.
- (iv) Ventilation. Each room shall allow the entrance of fresh air.
- (v) Lighting. Artificial light sufficient for inmates to read or work without injury to eyesight shall be provided.
- (vi) Sufficient toilet facilities are required.

- (vii) Bathing facilities shall be provided so that every inmate may use them as frequently as necessary for personal hygiene.

(5) All parts of the prison used by inmates shall be properly maintained and kept clean at all times.

[(1) Some housing arrangements are mandatory. Under the provisions of the act of May 10, 1921 (P.L. 433) (61 P.S. §1-4), the following is required:

- (i) Prisoners whose physical condition is not considered good or who are suffering from any disease shall be segregated from prisoners considered to be in good physical condition.
- (ii) Prisoners who are found to be mentally weak shall be segregated.
- (iii) Prisoners considered to be habitual criminals shall be segregated.

(2) The act of January 26, 1965 (P.L. 356) (61 P.S. §81) provides that a seriously ill prisoner may be removed from any prison by the court for confinement in some other suitable institution where proper treatment may be administered.

(3) Women prisoners shall be completely separated from male prisoners. This does not preclude possible rehabilitative projects and food service where male and female residents could participate together with proper supervision.

(4) Accommodations for prisoners shall meet all requirements of the State Health Department. In determining adequacy, climatic conditions, minimum floor space, lighting, heating and ventilation shall be considered. In addition, the following shall also be considered:

- (i) Each room shall allow the entrance of fresh air
- (ii) Artificial light sufficient for prisoners to read or work without injury to eyesight shall be provided.
- (iii) Modern toilet facilities are required.
- (iv) Bathing facilities shall be provided so that every prisoner may use them as frequently as necessary for personal hygiene.
- (v) All parts of the prison used by prisoners shall be properly maintained and kept clean at all times.

(a) *Recommended guidelines.* The recommended guidelines for housing are as follows:

- (1) Prisoners should be housed in single occupancy cells.
- (2) If dormitories are used, they should be occupied by prisoners who are carefully selected. The jail staff should determine if prisoners to be assigned for dormitory housing are able to associate with one another in close living arrangements.
- (3) Sentenced prisoners should be housed separately from those who are only accused of having committed a crime.
- (4) If possible, trustees should not be housed with other prisoners.

- (5) Work releases should be housed in separate quarters.
- (6) Elderly and infirm prisoners should be housed away from more youthful and aggressive prisoners. They should be located in an area close to the dining room and the place where sick call is held. If at all possible, they should not be required to climb stairs.]

§ 95.228. Clothing.

[(a) *Generally.* Whether or not the jail supplies prisoner clothing is left to county policy. Jail clothing, if provided by the county administration, may be cover-alls, two-piece shirt and trouser outfits, surplus military fatigue trousers and T-shirts, rented uniforms or other suitable clothing. Regardless of the policy, jail inmates should be returned to the community wearing clean clothes. Therefore, if the prisoner has street clothes in need of fumigation and laundering, arrangements should be made to have this done in the jail before the prisoner is discharged.] The following are the minimum requirements applicable to clothing:

(1) Written local policy shall provide for each inmate to receive suitable clean clothing including adequate footwear and underwear.

(2) Whether inmates may possess personal clothing shall be stipulated in written local policy.

(3) Whether a prison elects to store personal clothing shall be determined in written local policy. Personal clothing, if stored, shall be stored in a sanitary manner.

[(b) *Minimum requirements.* The following minimum requirements are applicable for clothing.

(1) Prisoners shall be provided footwear, an outfit of clothing, and underwear suitable for the climate and adequate to his good health if they do not provide their own. Jail clothing shall in no manner be degrading or humiliating.

(2) Clothing shall be changed and washed as often as necessary and kept in proper condition for the maintenance of hygiene.

(c) *Recommended guidelines.* Any prisoner who wishes to provide his own clothing should be able to do so, providing it meets the specification of the jail administrator.]

§ 95.231. Personal hygiene.

[(a) *Minimum requirements.*] The following are the minimum requirements applicable [for] to personal hygiene:

(1) [Prisoners shall bathe no less than twice a week and preferably daily if the physical facilities allow.] Inmates shall be required to maintain proper hygiene standards.

(2) [The jail shall provide all prisoners with soap, clean towels, razor, toothbrush and hot and cold water for bathing and shaving.] Inmates shall bathe at least twice a week.

(3) [Jail administrators and staff may not enforce their hair styles on prisoners provided that the hair of the prisoner is clean and well groomed, unless there is a definite health hazard.] An inmate determined to be indigent shall be provided with articles to attain satisfactory personal hygiene.

(4) [Female prisoners shall be provided articles for feminine hygiene when needed.] Inmate hair styles shall comply with sanitation and security policies of the prison.

(5) [The jail shall furnish laundry facilities for personal clothing, with capacity to provide laundry services on a weekly basis for the personal garments of each inmate.] Female inmates shall be provided articles for feminine hygiene when needed.

(6) Written local policy shall provide a means for inmates to obtain clean clothing on a weekly basis.

§ 95.232. Medical and health services.

[(a) Minimum requirements.] The following are the minimum requirements applicable [for] to medical and health services:

(1) [Persons admitted to jail shall, within 48 hours after his admission, be examined as to his physical condition and also as to his mental condition.] Written local policy shall specify that all inmates admitted to the prison receive a health care screening performed and recorded by a person with health care training within 24 hours of admission. A record of the result of the examination shall be kept as a part of the permanent [jail] prison document. [Reference should be made to act of May 10, 1921 (P.L. 433) (61 P.S. §§1-4).

(2) [A competent physician shall be available to take care of the medical needs of the prisoners. The arrangements for medical services shall vary greatly with the size of the prisoner population and the community. Therefore, it is suggested that the jail should have one of the following arrangements for medical services:] An inmate determined upon admission not to be in good health shall be assessed by a health care professional within 24 hours.

- [(i) A contract with a local physician for full time coverage on specified hours and for emergencies.
- (ii) A contract with a local physician to be on call to conduct sick call, for emergencies and to examine newly received prisoners.
- (iii) Arrangements with a local hospital to provide all medical services needed.]

(3) [Jails having an average daily prisoner population of over 125 shall have a registered nurse or licensed practical nurse or a medically trained technician to provide adequate medical services.] Following review of the initial commitment screening by a health care

professional, a medical history and physical shall be performed by the prison health care provider within 14 days following admission.

(4) [Any medical supplies kept in the jail should be stored in a locked cabinet and dispensed only by the jail physician or by jail staff in accordance with the advice of the doctor.] Written local policy shall specify routine screening procedures utilized for infectious diseases, acute illness and suicide risk.

(5) [Medication should be given to the inmate one dose at a time and he or she should be required to take each dose in the presence of the doctor or jail staff.] Written local policy shall designate a health care provider responsible for control of the delivery of health care services including mental health services. A health care provider or professional shall have sole province on matters involving medical judgment.

(6) [The most stringent controls should be placed on all dangerous drugs.] Written local policy shall provide that the health care provider report in writing on the health care delivery system to the prison providing information sufficient to demonstrate that adequate health care is being provided to inmates and review findings with prison administrators annually.

(7) [As a minimum requirement, all jails shall provide dental service for extractions and other work of an emergency nature. Jails housing long term inmates should provide all remedial services as needed.] Written local policy shall provide for an annual documented review of a prison's health care delivery system by the prison and when necessary, revisions shall be made to each health care procedure and program by the prison.

(8) [An individual medical record should be kept for each prisoner showing his condition at the time of admission, as much of his prior medical history as can be obtained, any illness or injury occurring during confinement and any medical treatment provided, and his condition at time of discharge.] Written local policy shall provide for access to emergency care 24 hours a day for all inmates. A written plan shall outline onsite treatment, evacuation, transportation and security procedures and designate emergency facilities to be utilized.

(9) [Jails involved in medical research shall comply with existing Commonwealth and Federal law and follow standards developed by the American Correctional Association for the safety and well being of the jail population.] Written local policy shall provide for the management of pharmaceuticals.

(10) [Unless the jail maintains its own hospital, there shall be a standing arrangement with some local hospital whereby prisoners may be admitted without delay.] Written local policy shall provide for a suicide prevention and intervention program and shall outline the program review mechanisms utilized and staff training procedures for program implementation.

[(b) Recommended guidelines. The following are the recommended guidelines for medical and health services:

- (1) Jails having an average daily prisoner population of 75 to 124 should have a registered nurse, licensed practical nurse or medically trained technician to provide adequate medical services.

- (2) Jails should have an infirmary for sick prisoners not requiring hospitalization, and equipment for the jail physician to use in examining and treating prisoners.
- (3) Psychiatric services should be provided on a contractual basis where full-time psychiatrists are impractical or in case they are not attracted to full-time duty.]

§ 95.234. [Correspondence] Inmate mail privileges.

[(a) Minimum requirements.] The following are the minimum requirements [shall apply to correspondence] applicable to inmate mail privileges:

(1) [Soon after being admitted to the jail, all prisoners shall be given a free letter if they desire to notify the immediate family or other close relative of their whereabouts and to instruct them on how they may write or visit .] Inmates shall be permitted to send and receive mail consistent with the following:

- (i) Incoming and outgoing mail may be examined for contraband.
- (ii) Incoming and outgoing mail to and from public officials, courts and attorneys will not be opened for purposes of examining for contraband unless the interested inmate is present.
- (iii) Incoming and outgoing mail to a person or entity may be read by the prison warden if reasonable grounds exist to believe that receipt of the mail is likely to jeopardize prison security or public safety and welfare, or both.
- (iv) The sending and receipt of mail shall be restricted or prohibited for valid penological reasons such as introduction of contraband, threats to security or the public, or when requested by intended recipients.

[(2) Prisoners shall be able to correspond with his family members and approved friends as often as desired.

(3) Prisoners shall receive all letters sent to them.

(4) Incoming packages shall be carefully examined for contraband.

(5) Inmates shall be permitted to seal letters addressed to county commissioners, the Commissioner of Correction, other government officials and attorneys.

(6) Incoming and outgoing letters, with the exception of those outgoing letters addressed to public officials and therefore sealed, may be opened and examined for contraband. They may not be read.

(7) Incoming mail from attorneys, courts, Department of Corrections personnel, and other public officials shall be opened and examined for contraband in the presence of the addressee.

(8) There may not be limit placed on the number of incoming or outgoing letters.

(b) *Recommended guidelines.* Good jail administration requires that a record be kept of all outgoing mail.]

§ 95.236. [Library] Access to legal resources.

[(a) *Minimum requirements.* Every jail shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books. The library should be open during the prisoner's idle hours.] The following are the minimum requirements applicable to access to legal resources:

(1) To enable inmates to exercise their right of access to the courts, inmates shall be permitted access to adequate legal resources. Written local policy shall provide a means of assistance for an inmate that does not speak English.

(2) County wardens shall have discretion in determining the type of legal resources to be made available to ensure inmates can exercise their right to access to the courts.

[(b) *Recommended guidelines.* The following are the recommended guidelines for the library.

- (1) All jails should have a copy of Purdon's Titles 12, 17, 18, 19, 60 and 61 in the library, and other additional legal research materials as may be required.
- (2) The jail administrator should actively seek community help in developing a library from the state and local library, colleges, civic groups, bookstores, publishers, interested citizens, Goodwill Industries, Salvation Army and the Volunteers of America.
- (3) For guidelines in developing a jail library, the jail administrator should consult the Manual of Correctional Standards published by the American Correctional Association.]

§ 95.238. Recreation.

[Minimum requirements.] The following are the minimum requirements [are] applicable [for] to recreation:

(1) Jails shall provide all prisoners at least 2 hours daily, physical exercise in the open, weather permitting, if the weather is inclement, each inmate shall have 2 hours physical exercise daily indoors.

(2) [Jail administrators shall develop an organized recreational program to meet the needs of all prisoners, regardless of age and sex.] Written local policy shall describe the prison's recreational programming for inmates.

(3) Physical exercise schedules for males, females and juveniles shall have to be arranged so as to provide segregation. Jail administrators may separate inmates further based on age, vulnerability and other appropriate security criteria.

(4) [The jail administrator should refer to the Manual of Correctional Standards published by the American Correctional Association for guidelines in developing an organized recreational program.] Inmates under disciplinary status or segregation shall receive 1 hour of outdoor activity 5 days a week.

[(5) The jail administrator should actively seek help from responsible citizens in the community to help develop an ongoing recreational program in the jail.]

§ 95.239. Commissary.

[*Minimum requirements.*] The following are the minimum requirements [applies] that apply to commissaries:

(1) [The jail administrator shall establish, maintain and operate a commissary in conjunction with the jail. For this purpose, the jail administrator should purchase confectionery, tobacco, postage and writing materials, and toilet articles and supplies. The jail administrator should sell the goods, articles and supplies to the prisoners in the jail.] County prisons may provide commissary services if the county so chooses.

(2) [The sale prices of articles offered in the commissary shall be fixed at amounts that make the commissary self-supporting and, in addition, may provide a small margin of profit.] Funds associated with commissary services shall be audited and reported on an annual basis by an independent party using generally accepted accounting principles.

[(3) The margin of profit from the sale of commissary items may not be excessive.

(4) Any profit from the sale of commissary items shall be deposited in a prisoner welfare fund. The money in the prisoner welfare fund shall be spent solely for the benefit and welfare of the prisoners.

(5) Records of the commissary shall be audited annually by the county controller or a recognized public or private agency qualified to do so.]

§ 95.240. [Discipline and punishment] Inmate disciplinary procedures.

[(a) *Minimum requirements.*] The following are the minimum requirements [applies] applicable to [discipline and punishment] inmate disciplinary procedures:

(1) [A formal report shall be written if the infraction jeopardizes the security of the jail, threatens the safety of staff or prisoners, or is a violation of State law.] County prisons shall operate a disciplinary process that provides clear notice of prohibited behavior and consistently applied sanctions for violations of prison rules.

(2) [The disposition of a disciplinary report, whatever the action taken, shall be documented.] Violation of prison rules may result in the imposition of discipline. Discipline may not be imposed unless the prisoner has been informed of the offense charged in writing, has had an opportunity to present a defense and has been found guilty of the charge by an impartial party or board designated by the prison administrator.

(3) [Confinement is punishment, therefore no further punishment is permitted unless the prisoner violates the rules and regulations of the prison or violate State law.] Findings of guilt or innocence shall be made by an impartial party to be designated by the prison administrator. Findings shall be expressed in writing and based on information presented. Written findings of guilt shall state the reasons for the finding.

(4) [The objectives of jail discipline are as follows:] Disciplinary charges and written findings shall be recorded and made a permanent part of an inmate's prison file.

- [(i) To achieve order in the jail.
- (ii) To assist prisoners in achieving self-control.
- (iii) To provide personnel with guidelines for judging the behavior of prisoners.
- (iv) To achieve fairness in the administration of discipline.]

(5) [In a jail having an average daily inmate population of more than ten, the administrator shall appoint a board, consisting of a minimum of three persons to hear and dispose of disciplinary cases.] Disciplinary sanctions imposed after a finding of guilt may include loss of privileges, segregation or other sanctions as set forth in written local policy.

(6) [In a Jail having an average daily inmate population of less than ten, the administrator may determine guilt and decide the disciplinary action to be taken.] The imposition of discipline may not violate an inmate's right to be free from cruel and unusual punishment.

[(7) A prisoner may not be punished unless he has been informed of the offense alleged against him and given an opportunity to present his defense. In addition, the following shall apply:

- (i) The hearing shall be staffed by an impartial tribunal.
- (ii) The hearing shall be preceded by notice to the prisoner, in writing, of the charges against him.
- (iii) The decision reached shall be based upon evidence raised at the hearing.
- (iv) The decision-makers shall state the reason for their determination of guilt if that is the decision reached.

(8) All disciplinary actions shall be recorded and made a part of the permanent files of the jail.

(9) Punishment may fall into the two following categories:

- (i) Loss of privileges.
- (ii) Segregation.

(10) Conditions in segregation shall be as follows:

- (i) The cell shall be clean, well lighted, heated, ventilated and sanitary.
- (ii) The cell shall be furnished with a mattress, bedding and toilet facilities.
- (iii) Except in special circumstances, as for example, a suspected suicide threat, the prisoner shall be allowed to wear regular clothing.
- (iv) Three meals a day shall be provided identical with meals provided the remainder of the jail population.
- (v) A bathing and shaving schedule shall be maintained including the minimum of twice weekly opportunities.
- (vi) Toilet tissue and drinking water shall be provided.
- (vii) The prisoner shall have an opportunity to exercise.
- (viii) A regular review of segregated prisoners shall be practiced. The time interval should not exceed 5 days.
- (ix) The segregation unit shall be adequately supervised.
- (x) Writing privileges shall not be denied to prisoners in segregation.
- (xi) The chaplain shall be permitted to visit regularly.

(11) The medical officer shall visit all prisoners in segregation on his regularly scheduled visit to the prison.

(12) Corporal punishment, punishment by placing in a dark cell and cruel, inhuman or degrading punishments shall be completely prohibited.

(13) If a serious criminal offense is committed in a jail, the two main considerations should be the following:

- (i) Identify and isolate the offender as a matter of internal security, discipline and morale.
- (ii) With due regard to constitutional protection of the prisoner's rights, once a suspect is identified and isolated, no further questioning by jail staff shall be permitted. The suspect shall be isolated until the arrival of police investigators.]

[(b) *Recommended guidelines.* Visiting privileges should not be denied to prisoners in segregation.]

**DEPARTMENT OF CORRECTIONS' RESPONSES TO MAY 20, 1999
COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION
ON DEPARTMENT OF CORRECTIONS
REGULATION NO. 19-4 COUNTY CORRECTIONAL INSTITUTIONS**

The following responses are submitted to the numbered paragraphs of the Commission's comments which have been reproduced below.

Comment:

1. Recommended Guidelines - Need for the Regulation and Clarity.

Sections 95.220, 95.221(b), 95.222(b), and 95.226(b) of the regulation set forth recommended guidelines which are not mandatory. It is not clear why recommended guidelines are needed in regulation, since the Department does not intend to enforce them.

A regulation has the force of law and is binding on the agency and anyone affected by the regulation. An announcement that provides guidance to regulated entities, but does not constitute a binding norm, is not a regulation. The recommended guidelines would be appropriate as a statement of policy or as a guidance document, but not as a regulation,

The Department should identify the recommended guidelines which it intends to enforce as binding norms and include those as minimum requirements in the regulation. Recommended guidelines which are not mandatory should be deleted from the regulation. More specific comment is included with the comments on Sections 95.220, 95.221(b), 95.222(b), and 95.226(b).

Response:

The Department has revised the regulation to delete the recommended guidelines. The Department plans to publish the recommended guidelines as a statement of policy rather than regulation.

Comment:

2. Written local policy - Clarity.

The terms "written local policy" and "local policy" are used repeatedly in the regulation. However, these terms are not defined or used consistently in the regulation. We understand that because of differences in facilities and prisoners there is a need for written policies which are specific to each institution. For clarity, the Department should define one of the terms and use that term throughout the regulation.

The regulation is also not clear on the significance of the written local policy. The Department should state in the regulation how the written local policy for each institution will be reviewed and enforced by the Department.

Response:

The Department has revised the regulations to refer consistently to "written local policy." The term "written local policy" has been defined in the definition section. The definition of "written local policy" clearly states that the Department will review these policies.

Comment:

3. Section 95.220. Purpose - Clarity

Recommended guidelines

The phrase "and recommended guidelines, which are not mandatory" should be deleted from Section 95.220.

Response:

This phrase has been deleted.

Comment:

Scope of the regulation

The last two sentences of Section 95.220 describe waivers of the regulations for counties which are accredited by other bodies. These waivers describe the scope of the regulation rather than the purpose. The Department should delete these sentences from Section 95.220 and add them to a new Section which states the scope of the regulation.

Response:

The recommendations in this paragraph have been followed.

Comment:

American Correctional Association accreditation

The waiver for counties achieving American Correctional Association accreditation states this "chapter" will be waived in its entirety. Since the rulemaking is limited to Subchapter B, the Department should clarify whether the waiver applies to other subchapters within Chapter 95, or just to Subchapter B.

Response:

The regulation has been revised to make it clear that it applies only to subchapter B.

Comment:

National Commission on Correctional Healthcare accreditation

For counties achieving National Commission on Correctional Healthcare accreditation, the Department is waiving "regulations pertaining to medical and health services." It is not clear which specific regulations will be waived. The Department should specify in the regulation which medical and health service regulations will be waived.

Response:

The Department has revised the regulation to specify that the medical and health service regulations in Section 95.232 will be waived.

Comment:

4. Section 95.221. Personnel. - Need and Clarity.

Paragraph (a)(1)

It is not clear why Paragraph (a)(1) is needed or how it can be fulfilled as a minimum personnel requirement. The Department should explain the need for Paragraph (a)(1), and how it would be enforced, or delete it.

Response:

Paragraph (a)(1) has been deleted.

Comment:

Paragraphs (a)(2), (a)(3), and (a)(4)

We have four concerns with the training requirements in Paragraphs (a)(2), (a)(3), and (a)(4). First, Paragraph (a)(2) requires all personnel to have "a course of training" before being assigned duties. Paragraph (3) requires full-time personnel to receive training within 12 months of assuming duties. Paragraph (4) allows part-time personnel to work who have not completed training. The regulation is not clear regarding whether these are different types of training programs. The Department should amend the personnel training requirements in Paragraphs (a)(2), (a)(3), and (a)(4) to specify the type and amount of training required before each category of personnel can be assigned duties.

Second, Paragraph (a)(3) does not require any supervision of full-time personnel who have not completed a training program. Whereas, Paragraph (a)(4) requires close supervisory direction of part-time personnel who have not completed a training program. Both part-time and full-time personnel may perform the same duties and encounter the same situations. Consequently, the regulation should clearly state the supervision requirement for full-time and part-time personnel who have not completed training programs.

Third, Paragraph (a)(4) allows the part-time personnel who have not completed training to work under "close supervisory direction." The regulation does not specify what training the person providing "close supervisory direction" must have. The Department should specify that the person providing supervision must have completed their training.

Finally, full-time personnel must complete training within 12 months of assuming their duties. There is no commensurate time requirement for part-time personnel in Paragraph (a)(4). We recognize that part-time personnel will spend less time in the prisons than full-time personnel. However, both part-time and full-time personnel may perform the same duties and encounter the same situations. The Department should specify in Paragraph (a)(4) when part-time personnel training is required to be completed.

Response:

The regulation has been revised in response to these comments as follows:

[(a) *Minimum requirements.*] The following are the minimum requirements applicable to personnel at county [jails] prisons:

[(1) An education and training program shall seek to impress upon personnel and the public at large that this work is a public service of great importance.]

(1) [2] Before [duty] being assigned duties, all corrections personnel shall be given [a course of] training in their general and specific responsibilities, including the use of force, prohibition on the seeking and dispensing of favors to and from the inmate population and instruction in the facility's code of conduct and ethics.

(2) [(3) After entering on duty, and at regular times during their career, personnel shall improve their knowledge and professional capacity by attending inservice training courses.] Full time corrections personnel shall receive basic training from a training program approved by the Department within 12 months of assuming their duties.

(3) [(4) The seeking and dispensing of favors or the unwarranted use of force, whether physical or psychological, shall never be condoned.] Part-time corrections personnel shall be provided training required under (1) above. Part-time corrections personnel who have not completed an approved training program under (2) above may not be permitted to work without close supervisory direction by a person who has received such training.

(4) [(5) All persons shall be enrolled within 6 months of the date they entered on duty in the Bureau of Correction Training School.] Written local policy shall provide for training and staff development as described in sections (1), (2) and (3).

Comment:

Paragraph (a) (3)

Paragraph (a)(3) contains a reference to the "Department of Corrections (Department)." Since "Department" is used throughout the regulation, the Department should add a new section to the regulation entitled "Definitions" and include the definition of "Department" in the new section.

Response:

The regulation has been revised as recommended.

Comment:

Subsection (b) recommended guidelines

The paragraphs in Subsection (b) contain vague standards such as "careful selection," "adequate to attract and retain competent and professional men and women," "in a professional manner," and "good physical condition." If the Department includes any of the paragraphs in Subsection (b) as minimum requirements, the Department should amend those paragraphs for clarity; and explain why the paragraph is needed (i.e., elevated from not mandatory to mandatory); how the standard would be determined; and how the paragraph would be enforced.

Response:

This portion of the regulation has been deleted, therefore, this recommendation has not been followed.

Comment:

5. Section 95.222- Admission. - Duplication of existing regulations and Clarity.

Subsection (a) Minimum requirements

The Department's intent in the last sentence of Paragraph (2) is not clear. As drafted, a written verification of treatment from a medical doctor would be required with all admissions. Verification of treatment would only be needed for new inmates who may require medical attention that cannot be provided at the prison. The Department should revise this

paragraph to require verification of treatment only where it is necessary or explain the need for verification of treatment for all admissions.

Response:

The Department has revised this paragraph to require verification of treatment **only** when necessary.

Comment:

Paragraph (a)(3)

We have three clarity concerns with Paragraph (a)(3). First, the paragraph begins with the phrase "intake procedures." The Department should use the term "admission procedures" to be consistent with the title of Section 95.222.

Second, Paragraph (a)(3) states the procedures "should be described" in local policy. This language gives the impression that compliance with this paragraph may be optional. The Department should change the word "should" to the word "shall." To improve clarity, the Department should also change "described" to "specified."

Third, the concluding phrase "developed from recognized professional standards" is vague. The Department should either delete this phrase or directly reference the required standards.

Response:

The recommendations in these paragraphs have been followed.

Comment:

Paragraph (a) (4)

The beginning of Paragraph (a)(4) is confusing because it requires basic personal information for admissions, but the list of information is conditioned on "the event of a transfer." It does not appear that the information required for a transfer differs from the information required for an admission. Therefore, the Department should delete the phrase "In the event of a transfer" and directly specify the information required to be obtained upon admission.

Some of the subparagraphs under Paragraph (a)(4) lack clarity as follow:

- Subparagraph (iii) should specify what address of the inmate is sought, such as previous address or prison address.
- Subparagraph (iv) should specify the information needed to satisfy the requirement for the description of the inmate, such as "a description of the inmate including height, weight, eye color,...."
- Subparagraph (xii) should be combined with Subparagraph (vii) and should specify what facts are required.

Response:

The recommendations in these paragraphs have been followed.

Comment:

Paragraph (a) (5)

Paragraph (a)(5) duplicates existing requirements in Sections 95.223 and 95.224(3) The Department should delete Paragraph (a)(5), or explain why it is needed.

Response:

The reason for the apparent duplication is to make it clear that an inmate must be provided with a copy of the rules upon admission to the prison. Orientation may not occur right away, or at all, if inmates are only detained for short periods of time. It is essential that inmates receive a copy of the rules immediately; therefore, the requirement that they receive them upon admission is necessary.

Comment:

Paragraph (a) (6)

Paragraph (a)(6) should be written in clear language. It may be clearer if it stated "Written local policy shall specify how an inmate can notify a relative of the inmate's location,"

Response:

The recommendation in this paragraph has been followed.

Comment:

Subsection (b) recommended guidelines

The paragraphs in Subsection (b) contain vague standards such as "coincide with prevailing laws and statutes," "conducted in a professional fashion," and "serious wounds." A minimum requirement also should use the word "shall" rather than "should." If the Department includes any of the paragraphs in Subsection (b) as minimum requirements, the Department should amend those Paragraphs for clarity; and explain why the paragraph is needed (i.e., elevated from not mandatory to mandatory); how the standard would be determined; and how the paragraph would be enforced.

Response:

This portion of the regulation has been deleted; therefore, this recommendation has not been followed.

Comment:

Paragraph (b) (1)

Paragraph (b)(1) is a recommended guideline for strip searches. It is directly related to Paragraph (a)(3) in regard to contraband searches. If the Department chooses to make Paragraph (b)(1) a minimum requirement, we have five concerns with this paragraph. First the search is described as an "unclothed search" and as a "strip search." For clarity, the Department should use one term or the other consistently in the regulation.

Second, the second sentence regarding laws and statutes is vague. The Department should either state the specific laws and statutes governing strip searches, or delete this sentence.

Third, the requirement that a strip search be "conducted in a professional fashion" lacks clarity. Conducting a search in a professional fashion could be widely interpreted. The Department should specify in the regulation the standards a strip search must meet.

Fourth, the Department is deleting the requirement that a strip search be conducted in an area where the prisoner is in view of only those officers in charge of the search. Why is this requirement no longer needed?

Finally, Paragraph (b)(1) requires the strip search to be "supervised" by staff of the same sex. Why isn't it required that the search be "conducted and supervised" by staff of the same sex?

Response:

This portion of the regulation has been deleted; therefore, this recommendation has not been followed.

Comment:

6. Section 95.225. Classification. - Need and Clarity.

Paragraph (a)(1)

We have identified a typographical error in Subsection (a) as printed in the *Pennsylvania Bulletin*. There are two paragraphs labeled "(1)." This error should be corrected in the final-form regulation.

Response:

This recommendation has been followed.

Comment:

Paragraph (a) (2)

Paragraph (a)(2) provides the following:

(2) In keeping with recognized professional standards, this plan shall establish categories based on the degree of security risk and need for supervision and specify how the classification process is accomplished, what process of appeals exist, the review mechanism utilized and explicit procedures for reclassification.

We have several concerns related to the clarity of this provision. First, the phrase "In keeping with professional standards," is vague because it does not identify the specific standards or require compliance with those standards. This phrase should be deleted or clarified.

Second, since this section of the regulation refers to classification of prisoners, the word "categories" should be changed to "classifications."

Finally, this paragraph includes several items that are required in the classification plan. To improve the clarity of the regulation, we suggest the Department include these items as a list of new subparagraphs under Paragraph (a)(2).

Response:

The recommendations in these paragraphs have been followed.

Comment:

Existing Paragraphs (a) (1), (2), and (3)

The Department is proposing to delete these paragraphs which address jail security, inmate welfare, and community protection. It is not clear that these subjects are adequately addressed in the new proposed Subsection (a). We request the Department explain why it is proposing to delete these provisions.

Response:

These provisions deal primarily with treatment issues. In the prison context, treatment refers to what is commonly known as a rehabilitation program. Because the makeup of the inmate population in county prisons has changed significantly since the regulations were first adopted, reference to treatment issues is no longer appropriate. Currently county jails primarily house detainees. There is no opportunity or need for treatment programs for detainees who are usually only incarcerated in the jail for a very short period. Fewer county inmates are sentenced to terms where treatment becomes an issue. Also, treatment programs differ widely from jail to jail.

The issue of jail security has been addressed in the revised regulation in that the regulation requires that security risks and the need for supervision be reviewed when classification decisions are made. This emphasis on security also addresses the concern of community protection. Furthermore, because urban jails differ significantly from rural jails, the population of inmates will differ significantly. The Department will review the written local policy of each jail regarding classification and will determine whether they are sufficient to address security and community protection issues.

Comment:

7. Section 95.226. Housing. -Need and Clarity.

Paragraph (a) (1)

This paragraph states the following:

Decisions involving housing segregation or removal and transfer of seriously ill inmates shall be in keeping with existing laws and National standards.

To improve the clarity of this provision, the Department should include citations to the applicable laws and standards. Also, the Department should define "seriously ill."

Response:

This paragraph has been revised to improve the clarity of the provisions as follows:

(1) Written local policy shall specify the process for segregation, removal or transfer of inmates requiring medical attention.

Comment:

Paragraph (a) (2)

The word "possible" is unnecessary, The Department should delete "possible."

Response:

This recommendation has been followed.

Comment:

Paragraph (a) (4)

This paragraph contains a general reference to requirements of the Department of Health. To improve the clarity of the regulation, the Department should cite the specific requirements that apply.

In addition, Paragraph (4) lists items to consider in determining housing adequacy. A further list appears in Subparagraphs (4)(i) through (iv). To improve the clarity of the regulation, these lists should be combined into a single list.

Response:

The recommendations in these paragraphs have been followed. The reference to other laws has been deleted to improve clarity.

Comment:

Subsection (b) - Recommended guidelines

It appears the recommended guidelines in Subsection (b) are duplicative of the minimum requirements in Subsection (a). Consequently, Subsection (b) should be deleted in the final-form regulation.

Response:

This portion of the regulation has been deleted; therefore, this recommendation has not been followed.

Comment:

8. Section 95.228. Clothing. - Need and Clarity.

The Department is deleting existing Subsection (b)(2) relating to changing and washing clothing to maintain hygiene. It does not appear that this provision is addressed elsewhere in the proposed regulation. Therefore, we request the Department explain why it is deleting Subsection (b)(2).

Response:

A revision has been made to (a) 95.228(a)(1) to address the requirement that clean clothing be issued. County jails handle clothing for inmates differently. Some allow clothing to be brought in from outside the jail, others require inmates to wash their own clothing and others provide laundry services at the prison. The Department of Corrections does not believe it is appropriate to dictate how clean clothing is provided so long as it is provided.

Comment:

9. Section 95.231. Personal hygiene. – Need Reasonableness and Clarity.

Subsection (1) requires inmates to maintain "proper hygiene standards." We question the need for this vague requirement. Other sections of the regulation contain specific requirements related to bathing and clothing. Why is this additional requirement necessary?

Response:

The additional requirement is necessary because hygiene concerns involving inmates are not limited to simply bathing and maintaining clean hair. Inmates often use hygiene as a way to get attention or special privileges. The county wardens expressed a preference for a catchall provision which requires inmates to maintain proper hygiene.

Comment:

10. Section 95.232. Medical and health services. – Reasonableness and Clarity.

Subsection (1)

This subsection requires that an inmate receive a "a health care screening performed and recorded by a person with health care training within 24 hours of admission." We have two concerns related to the clarity of this provision. First, it is unclear what is included in the health care screening. The final-form regulation should specify the components of the screening.

Second, it is unclear what level of training is required to comply with the requirement that the person conducting the screening have "health care training." The final-form regulation should specify the components of the required training.

Response:

The terms "health care screening" and "health care training" have been defined in the definition section.

Comment:

Subsection (2)

This subsection requires an inmate who is not in good health to be assessed by a "health care professional" within 24 hours of admission. It is unclear what the required credentials are for the "health care professional." For example, is a registered nurse, physician's assistant, or physician required to perform the screening? The Department should specify these requirements in the final-form regulation.

Response:

The term "health care professional" has been defined in the definition section.

Comment:

Subsection (5)

This subsection and Subsection (6) use the term "health provider/authority," but the term is not defined in the regulation. We request the Department explain the difference between a "health provider" and a "health authority" and define these terms in the final-form regulation.

Subsection (5) also provides that "This authority shall have sole province on matters involving medical judgment." Subsection (9) requires "A written plan shall outline management of treatment by appropriate credentialed professionals." It is unclear if, or how, these two provisions are interrelated. We request the Department explain the meaning of these provisions.

Response:

The regulation has been revised to refer only to the health provider and that term has been defined in the definition section. The Department believes that each jail should have a plan, reviewed by jail officials, which sets forth how health care services will be delivered. Nonetheless, medical professionals rather than the jail officials must make medical decisions.

Comment:

Subsection (6)

This subsection requires the following:

(6) Written local policy shall provide that the health provider/authority report on the health care delivery system in writing and review findings with prison administrators on a routine basis.

We have two concerns related to the clarity of this provision. First, it is unclear what information is to be contained in the report. The final-form regulation should specify the subjects to be included in the report.

Second, it is unclear how often a report must be submitted. "On a routine basis" is vague. The Department should specify if the report is due annually, monthly, or at some other interval.

Response:

The recommendations in these paragraphs have been followed.

Comment:

Subsection (7)

This subsection requires an annual documented review of a prison's health care delivery system. It is unclear how this requirement differs from the report required by Subsection (6). We request that the Department clarify the distinction between Subsections (6) and (7) in the final-form regulation.

In addition, this provision is vague because it does not specify who is responsible for conducting the annual review. Furthermore, the regulation does not identify who is responsible for evaluating the annual review and implementing changes as necessary in the prison's health care procedures and program. The Department needs to clarify these issues in the final-form regulation.

Response:

This section has been clarified by the addition of the definition of health care provider and the addition of the word prison in subsection (7). The health care provider must report to the prison annually. The prison must also review its policies annually and require changes as necessary.

Comment:

Subsection (9)

Subsection (9) requires written local policy to outline mental health care treatment by "appropriate credentialed professionals." It is unclear what credentials would meet the Department's standard of "appropriate credentialed professionals." The Department should clarify this standard in the final-form regulation,

Response:

This portion of the regulation has been deleted. Mental health care has been addressed in subsection (5).

Comment:

Subsections (9) and (10)

Subsection (9) requires that a written plan "specify management of treatment by appropriate credentialed professionals." Subsection (10) requires that a written plan "outline management of treatment." It is unclear what the Department means by "specify management" and "outline management of treatment." We note that Subsection (5) gives the health provider/authority "sole province on matters involving medical judgement." We request the Department clarify the intent of Subsections (9) and (10) and explain how these provisions are consistent with Subsection (5).

Response:

Subsections 9 and 10 have been deleted. It is believed that subsection (5) as revised is adequate.

Comment:

Subsection (11)

This subsection references "existing Federal and State laws relating to pharmaceuticals." To improve the clarity of the regulation, the Department should include citations for the specific laws it is referencing,

Response:

This regulation has been revised to delete the reference to other laws.

Comment:

11. Section 95.234. Inmate mail privileges. - Clarity.

Subsection (a)(1)(iv) permits an inmate's mail to be restricted for valid "penological reasons." To improve the clarity of the regulation, the Department should include specific reasons an inmate would be restricted or prohibited from sending or receiving mail.

Response:

The regulation has been revised to add examples of valid penological reasons.

Comment:

12. Section 95.236. Access to legal resources. - Reasonableness and Clarity.

Paragraph (a)(1) permits inmates to have access to "adequate legal resources" to enable them to exercise their right of access to the courts. Paragraph (a)(2) gives county wardens the discretion to determine the type of legal resources that shall be made available. If access to the courts is a right of all inmates, we question the reasonableness of giving county wardens the discretion to determine the type of legal resource to be made available. The result of granting such broad discretion to county wardens will be inconsistent availability of legal resources throughout the county prisons. The Department should specify what type of legal resources should be made available.

Response:

The Department does not feel that it is appropriate or reasonable to specify what type of legal resources should be made available. Pursuant to the recent Supreme Court decision in *Lewis v. Casey*, 518 U.S. 343 (1996), there are a number of ways that a County may choose to meet this legal requirement. The Department believes that the counties may decide how to provide access to Court in their county. The Department does not believe that it should dictate how the counties are to achieve this constitutional requirement.

Comment:

13. Section 95.238. Recreation. - Reasonableness and Clarity.

Subsection (2)

This subsection requires that inmates have at least one hour of access to "out of cell activity" daily. The existing regulation requires two hours of "physical exercise in the open, weather permitting." In the case of inclement weather, two hours of daily exercise are required indoors. It is unclear why the Department has reduced the time period from two hours to one hour. It is also unclear if "out of cell activity" refers to exercise or to any activity out of the inmate's cell, such as reading in the library. We request the Department clarify these points in the final-form regulation.

Response:

This subsection has been amended to comply with 61 P.S. §101 which requires that two hours daily of physical exercise be provided.

Comment:

Subsection (4)

This subsection provides the following,

Inmates under disciplinary status (segregation), shall receive 1 hour of outdoor activity 5 days a week, weather permitting. (Emphasis added.)

It is unclear why "(segregation)" appears after "disciplinary status." If this provision applies only to inmates in segregation, the Department should delete "disciplinary status" and replace it with "segregation."

Response:

In order to be consistent with 61 P.S. 101, this section has been revised to state segregation or disciplinary custody. Disciplinary custody is only one form of segregation.

Comment:

14. Section 95.239. Commissary. - Clarity.

Subsection (2) refers to generally accepted accounting "procedures." To improve clarity and to be consistent with standard accounting terminology, we suggest the Department replace "procedures" with "principles."

Response:

This recommendation has been followed.

Comment:

15. Section 95.240. Inmate Disciplinary procedures. - Reasonableness.

The Department is proposing to delete existing Subsections (10) and (11) which address conditions for prisoners in segregation. It is unclear why the Department is deleting these subsections, since these provisions are not included elsewhere in the proposed regulation. We request the Department explain the reasonableness of deleting Subsections (10) and (11).

Response:

The Department feels that it is unnecessary to specify the housing conditions for disciplinary custody because the counties are constitutionally required to house inmates in disciplinary custody in conditions which do not violate their right to be free from cruel and unusual punishment. Furthermore, the provisions set forth in Section 95.226 regarding housing and Section 95.232 regarding medical care apply equally to inmates in disciplinary custody. Therefore, minimum requirements will be met.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P. O. BOX 598
CAMP HILL, PENNSYLVANIA 17001-0598

OFFICE OF THE
SECRETARY OF CORRECTIONS

December 15, 1999

VIA HAND DELIVERY

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, Pa 17101

Re: *Resubmission After Tolling of Amendments to County Correctional Institutions Regulations*
37 Pa. Code Ch. 95

Dear Director Nyce:

I am pleased to present for final review and approval the Pennsylvania Department of Corrections' amendments to its County Correctional Institutions Regulations. The amendments are promulgated under the authority of Section 506 of the Administrative Code of 1929, Act of April 29, 1929, P.L. 177, art. V, §506, 71 P.S. §186. These regulations were previously submitted to you on November 16, 1999. The regulations were tolled on December 6, 1999.

The regulations have been slightly revised to respond to comments made by your staff. The only section that is substantially changed is §95.221 Personnel. The revisions do not change the meaning of the regulations. Rather, language has been moved around to clarify the type of training received at the county level and distinguish between it and training received at the Department's Training Academy or from a training program approved by the Department. §95.220a Definitions has been revised to correct a typographical error in the definition of Department of Corrections.

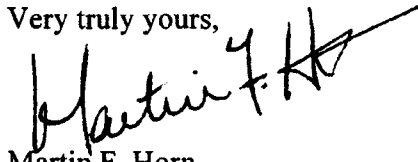
As I previously informed you, the amendments are intended to update existing regulations and to make them less technical so as to afford county prison administrators sufficient flexibility to address prison management problems that are strictly local in nature. Although the Department still wishes to ensure that county prisons maintain minimum professional standards for prison operations, it wishes to provide county prison administrators with the flexibility they need to address strictly local issues in the manner the counties deem most appropriate and cost efficient.

Prior to drafting the amendments, the Department sought and received input from county prison wardens from across the Commonwealth. The amendments have been drafted with input from a Wardens' Committee representing the Pennsylvania Prison Wardens' Association and a Courts and Corrections Committee representing the County Commissioners' Association of Pennsylvania.

The amendments contain an introductory statement intended to impress upon county prison officials the need to develop, utilize and maintain local policies and procedures that are consistent with Pennsylvania law and recognize professional standards. Twelve sections of the regulations have been selected for revision, including personnel, admissions, classification, housing, clothing, personal hygiene, medical and health services, correspondence, library, recreation, commissary and discipline and punishment. The amendments are designed to reduce the number of technical, burdensome and mandatory requirements that are currently imposed on county prison administrators. The amendments are not expected to have any negative fiscal impact upon the Commonwealth, its subdivisions or the general public.

Of course, I am available at your convenience to answer any questions or concerns that you may have regarding the regulations.

Very truly yours,



Martin F. Horn
Secretary

JCF/jls

cc: Syndi L. Guido, Deputy General Counsel
William Reznor, Deputy Secretary for Intergovernmental Relations
Sarah B. Vandenbraak, Chief Counsel
Mary Beth Marschik, Director, Office of Legislative Affairs
Jill C. Fluck, Assistant Counsel
Jane M. Demko, Office Administrator, Office of General Counsel
Karen Mitchell, Administrative Assistant, Governor's Policy Office
Lois M. Hein, Director, Bureau of Legislative & Regulatory Analysis, Office of the Budget
File

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

RECEIVED
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INDEPENDENT REGULATORY
REVIEW COMMISSION

I.D. NUMBER: 19-4
SUBJECT: County Correctional Institution Regulations
AGENCY: DEPARTMENT OF CORRECTIONS

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. X With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
12/15	<i>Spit Rhoads</i>	HOUSE COMMITTEE ON JUDICIARY
12/15	<i>Susan Thomas</i>	
12/15	<i>Paula Roberts</i>	SENATE COMMITTEE ON JUDICIARY
12/15	<i>Judy Metz Eagle</i>	
12/15/99	<i>J. H. Smith</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
_____	_____	LEGISLATIVE REFERENCE BUREAU

December 14, 1999