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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

July 12, 2001

Honorable Jeffrey A. Beard, Ph.D., Secretary
Department of Corrections
2520 Lisburn Road
P.O. Box 598
Camp Hill, PA 17011

Re: Regulation #19-5 (IRRC #2196)
Department of Corrections
Administration and State Correctional Institutions and Facilities

Dear Secretary Beard:

Enclosed are our Comments. They will soon be available on our website at www.irrc.state.pa.us.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

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Enclosure

cc: Honorable Thomas P. Gannon, Majority Chairman, House Judiciary Committee
Honorable Kevin Blaum, Democratic Chairman, House Judiciary Committee
Honorable Stewart J. Greenleaf, Chairman, Senate Judiciary Committee
Honorable Jay Costa, Jr., Minority Chairman, Senate Judiciary Committee

Comments of the Independent Regulatory Review Commission

on

Department of Corrections Regulation No. 19-5

Administration and State Correctional Institutions and Facilities

July 12, 2001

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Department of Corrections (Department) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by June 11, 2003, the regulation will be deemed withdrawn.

1. Section 91.1. Definitions. - Clarity.

Department

This defined term is not used consistently in Chapter 93. For example, Section 93.6(a) contains three references and Section 93.9(a) contains two references to the "Department of Corrections." Section 93.10(a) and Section 93.11(b) also refer to the "Department of Corrections." These references should be replaced with the defined term "Department."

Facility and Institution

The distinction between these two terms is not clear from the definitions. The Department should determine which term will be retained and delete the other term from this section.

Further, the retained term should be used consistently throughout Chapters 91 and 93. For example, Section 93.2(c)(1)(i)(B) as printed in the *Pennsylvania Bulletin*, refers to "State correctional institution." This reference should be changed to the defined term of "institution" or "facility." Also, Sections 93.2(c)(1)(i)(D) and 93.2(c)(1)(ii) should refer to "facility" (the defined term) rather than "State correctional facility."

Facility manager

This term is also not used consistently in Chapter 93. For example, Sections 93.3(a), (d) and (h)(7) and Section 93.6(b)(1) all refer to "superintendent" instead of the defined term "facility manager." This should be corrected in the final-form regulation.

Regional director

As printed in the *Pennsylvania Bulletin*, this definition uses the term “corrections centers” rather than the defined term “community corrections centers.” This should be corrected in the final-form regulation.

2. Section 91.3. Reception and discharge of inmates. - Clarity.

The last sentence states, “To ensure compliance with State and Federal laws, it is expected the discharge process can be completed within 2 business days.” We have two concerns.

First, it is unclear which state and federal laws must be complied with. Specific citations should be added.

Second, is compliance with these laws required, rather than expected? If compliance is required, then it would be appropriate to state, “...the discharge process shall be completed within 2 business days.”

3. Section 91.4. Catchment areas. - Clarity.

In Subsections (a) and (b), how will a person know what facilities are specifically designated? Does the Department publish a list?

In Subsection (c), the words “of the Department” should be deleted since the defined term is “Secretary.”

4. Section 93.2. Inmate correspondence. - Clarity.

Subsection (c) Incoming mail

This subsection is unclear. We have four concerns.

First, the opening paragraph discusses both “all incoming mail” and “sealed documents.” Since the standards for opening these documents differ, their respective requirements should be placed in separate subsections or paragraphs.

Second, the order of the sentences is confusing. A sentence in the middle of the subsection references the requirements listed in Paragraphs (c)(1) to (3). Whereas, the concluding sentence references Subsection (e) relating to “Scrutiny of correspondence.”

Third, the last sentence states “They may be read only as set forth in Subsection (e).” Does “they” refer to “sealed” or “retained” documents?

Fourth, the last sentence does not specify who is reading the documents. This could be interpreted to also require the inmate readers of documents to comply with Subsection (e) rather than just the institution as specified in Subsection (e). Also, who in the institution is authorized to read the inmates’ mail? This should be clarified in the regulation.

Subsection (c)(2)

This subsection defines “contraband” by stating “Coins, currency or other negotiable instruments concealed in correspondence are contraband....” This language should be removed from this section and the term “contraband” should be defined in Section 91.1.

Subsection (c)(3)

This subsection states “Other contraband will be returned to the sender, destroyed or transferred....” What qualifies as “other contraband”? Further, it is not clear under what circumstances the contraband will be returned, destroyed or transferred.

Subsection (e) Scrutiny of correspondence

Subsections (1) and (2) are vague. We have three questions.

First, under what circumstances “may” the institution read the mail in Subsection (1)?

Second, and similar to the comment on Section 93.2(c), who in the institution does the Department permit to read the inmates’ mail?

Third, do these subsections refer to outgoing or incoming correspondence or mail or both?

Subsection (f) Incoming publications

Paragraph (1) defines “publications.” This term should be defined in Section 91.1.

Paragraph (2) provides that “all publications must be received from the original source.” Since a magazine is included in the definition of “publications,” the sentence in Paragraph (3) that states that “magazines shall be mailed directly from the original source” is redundant and should be deleted.

Paragraph (5) states publications “sent directly ... will *usually be deemed* to have come from the original source.” We have two questions. First, who is responsible when this section states “will usually be deemed”? Deemed by whom? Second, under what circumstances would a publication not “be deemed” to be from the original source?

Paragraph (6) states that newsletters “shall be delivered to the inmate even if mailed at less tha[t] (sic) first or second-class mail rates.” The phrase in Paragraph (6) is redundant and should be deleted because Paragraph (1) provides for newsletters “regardless of the postal rate....”

We have two questions relating to Paragraph (7). First, the paragraph states “publications containing *potentially prohibited material* or *questionable content*....” The language in this sentence is vague as it is not clear what is meant by “potentially prohibited material” or “questionable content.” Second, Paragraph (7) refers to an “incoming publication review committee (IPRC).” Who are the members of this committee and to whom does it report?

For clarity, Paragraph (12) should be merged with Paragraph (9).

Paragraph (13) allows for appeal of an IPRC decision. It appears the right to appeal applies to IPRC decisions regarding all inmate correspondence. Therefore, this provision should be a separate subsection and a specific reference to Department policy or regulations relating to grievances should be included.

Subsection (g)

We have three concerns relating to this section. First, as printed in the *Pennsylvania Bulletin*, this subsection does not have a heading.

Second, how did the Department determine that it is reasonable to retain a rejected letter for “at least 7 days” as opposed to 10 days or 30 days? Is it seven business or calendar days?

Third, how soon must a protest be filed?

5. Section 93.7. Telephone calls. - Clarity.

This section contains the phrase, “in accordance with applicable law.” What is the applicable law? If there are none, this phrase should be deleted. Otherwise, to facilitate compliance and improve clarity, this phrase should be replaced with a specific reference to the applicable laws and regulations.