

REGULATORY ANALYSIS FORM

This space for use by IRRC

(1) Agency: Department of Corrections

2004 JUN -2

REVIEW COMMISSION

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

19-6

IRRC Numbers

2403

(3) Short Title

Administration, State Correctional Institutions and Facilities, Release and Prerelease Programs

(4) 37 Pa. Code §91.1, et seq.
Part III. Agencies and Offices
Subpart B. Department of Corrections
Chapter 91 Administration, State Correctional
Institutions and Facilities and Chapter 94
Release and Prerelease Programs

(5) Agency Contacts & Telephone Numbers

Primary Contact: John S. Shaffer, Ph.D (717) 975-4868

Secondary Contact: Jill C. Fluck (717) 975-4860

(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 govern the administration and operation of the state correctional institutions and facilities. The amendments will revise outdated material.

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

Section 506 of the Administrative Code of 1929 (71 P.S. §186).

(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.

No.

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

The revisions will update outdated language to better inform the public of Department policies.

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

The Department believes that the revisions will enhance public understanding of Department procedures. Non-regulation would not derive that benefit.

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

The general public will benefit by having a clear understanding of Department policy.

(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 expect anyone to be adversely affected by the revisions.

(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 general public seeking to contact state correctional inmates and state correctional inmates.

(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 did not solicit input from the public in the development and drafting of the regulations.

(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 does not expect the revisions to have any significant fiscal impact on the regulated community. The only fiscal impact is the incremental increase in medical co-payments.

(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 revisions do not require compliance by local governments; therefore, the Department does not expect the regulations to have any fiscal impact on them.

(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.

There are no costs or savings associated with these revisions.

(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.

None expected.

| | 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.

Not applicable.

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

Not applicable.

| 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.

The Department does not expect any adverse effects or costs.

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

The Department does not believe that non-regulatory alternatives exist to inform the public of its policies that have an affect on the public.

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

Not applicable.

(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 has not specifically compared these regulations with other states but the Department believes that there is no competitive disadvantage.

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

No, except to the extent that these revisions amend existing regulations.

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

No.

(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.

No.

(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.

Not applicable.

(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 revisions will become effective upon completion of the regulatory review process and publication in the Pennsylvania Bulletin. Compliance with the revisions will be required upon the effective date and such notice to inmates as is required by law.

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

The Department plans to review the regulations annually.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

SECTION - 2

REVIEW

2403

DO NOT WRITE IN THIS SPACE

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

Amy M. Elliott

(DEPUTY ATTORNEY GENERAL)

MAY 19 2004

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. 19-6

DATE OF ADOPTION

Jeffrey A. Beard

BY: Jeffrey A. Beard, Ph.D.

TITLE: Secretary of Corrections
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

Dwight J. Durb
3/9/04

DATE OF APPROVAL

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

Check if applicable. No Attorney General approval or objection within 30 days after submission.

Proposed Rulemaking
Department of Corrections
37 Pa. Code, Chs. 91, 93, 94
Administration, State Correctional Institutions & Facilities
And Release and Prerelease Programs

PROPOSED RULEMAKING

Title 37 – Law

DEPARTMENT OF CORRECTIONS [37 PA. CODE CH. 91, 93, 94]

Administration, State Correctional Institutions and Facilities and Release and Prerelease Programs

The Department of Corrections (Department) gives public notice of its intention to amend regulations in Chapter 91 (relating to administration) and Chapter 93 (relating to State correctional institutions and facilities) and Chapter 94 (relating to release and prerelease programs) to read as set forth in Annex A. The Department is acting under the authority of Section 506 of the Administrative Code of 1929 (71 P.S. §186). The regulations will be amended to revise outdated material.

Purpose

The proposed regulations will amend Chapter 91 to update the section on use of force and restraints. Chapter 93 will be amended to revise the section on inmate correspondence to provide alternative procedures for privileged correspondence. The sections on inmate visiting privileges and religious activities will be updated. The section on inmate discipline will be revised to change the procedures for inmate hearings. The section on prison medical services will be revised to clarify examination procedures and increase medical co-pay fees. Chapter 94 will be updated to clarify pre-release procedures.

Compliance with Executive Order 1996-1

The Department has reviewed the proposed regulations and has considered their purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1 (relating to regulatory review and promulgation). The proposed regulations comply with Executive Order 1996-1.

Fiscal Impact and Paperwork Requirements

Since the Department currently operates the state prison system in accordance with the proposed regulations, it does not expect the regulations to have a fiscal impact on, or to create new paperwork requirements for, the Commonwealth, its political subdivisions or the private sector.

Effective Date

The proposed regulations shall be effective upon closure of the public comment period, the regulatory review process and final publication in the *Pennsylvania Bulletin*.

Sunset Date

No sunset date has been assigned; however, every facet of these proposed regulations will be continuously reviewed for effectiveness, clarity and whether they are serving the greater interests of citizens of this Commonwealth.

Public Comment Period/Contact Person

Written comments concerning the Department's proposed regulations shall be submitted to John S. Shaffer, Ph.D., Deputy Secretary for Administration, 2520 Lisburn Road, P.O. Box 598, Camp Hill, PA 17001-0598. Written comments must be received within 30 days of the publication of this notice of proposed rulemaking in the Pennsylvania Bulletin and must include the name, address and telephone number of the interested party.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 2, 2004, the Department submitted a copy of the proposed regulations to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Judiciary Committees (Committees). In addition to submitting the proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulations, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by that portion of the proposed regulations. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Department, the General Assembly and the Governor of objections raised.

Jeffrey A. Beard, Ph.D.
Secretary of Corrections

May 5, 2004

ANNEX A

TITLE 37. LAW

PART III. AGENCIES AND OFFICES

SUBPART B. DEPARTMENT OF CORRECTIONS

CHAPTER 91 ADMINISTRATION,

CHAPTER 93 STATE CORRECTIONAL INSTITUTIONS AND FACILITIES

AND

CHAPTER 94 RELEASE AND PRERELEASE PROGRAMS

§ 91.1. Definitions.

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

Board - Pennsylvania Board of Probation and Parole.

Community corrections center - A minimum security community-oriented facility operated or contracted by the Department for the purpose of facilitating special programs.

Contraband - Material listed as contraband in 18 Pa.C.S. §§ 5122 and 5123 (relating to weapons or implements for escape; and contraband), the Commonwealth of Pennsylvania *Department of Corrections Inmate Handbook*, or any Department document that is [disseminated] available to inmates, such as material that an inmate is prohibited from

possessing or material that an inmate is permitted to possess that has been altered or is being used for something other than its intended purpose.

Department - The Department of Corrections.

Diagnostic and classification center - Facilities designated to receive and classify persons who have been committed to the custody of the Department.

Facility - An institution, motivational boot camp or community corrections center operated or contracted by the Department.

Facility manager - The chief administrator of a facility, that is, the superintendent of an institution, the commander of a motivational boot camp or the director of a community corrections center.

Inmate - A person committed to the custody of or confined by the Department.

Resident - An inmate assigned to a community corrections center.

Secretary - The Secretary of the Department.

§ 91.2. Agency purpose.

It is the goal of the Department to operate its institutions and programs to provide protection to the community, a safe and humane environment and opportunities for rehabilitation for the inmates.

§ 91.3. Reception of inmates.

The Department will accept and confine those persons committed to it under lawful court orders which conform to 42 Pa.C.S. § 9762 (relating to sentencing proceeding; place of confinement) when information has been provided to the Department as required by 42 Pa.C.S. § 9764 (relating to information required upon commitment and subsequent disposition). The Department will also accept persons for whom transfer from other correctional facilities has been approved in advance by the Secretary or a designee, under section 1 of the act of July 11, 1923 (P. L. 1044, No. 425) (61 P. S. § 72). Commitments and transfers will be accepted only during the facility's normal business hours, except upon prior approval of the facility manager or a designee.

§ 91.4. Catchment areas.

Male inmates committed to the custody of the Department will be received at male diagnostic and classification centers and female inmates will be received at female diagnostic and classification centers unless granted other permission in advance by the Secretary or a designee.

§ 91.6. Use of force and restraints.

(a) Force and restraints will be used by corrections personnel only to accomplish legitimate [peneological] penological and law enforcement objectives.

(1) A staff member may not use any greater force against an inmate than is necessary to protect himself or others from bodily harm or to protect property from damage or destruction or to prevent a criminal act or to effect compliance with rules when other methods of control are ineffective.

(2) A staff member may only use deadly force against an inmate when such force is necessary to prevent death, serious bodily harm to himself or others, or a) to prevent an escape from a correctional facility or while in immediate pursuit of an inmate escaping from a correctional facility and b) to prevent an escape from a work detail, transport or other approved temporary absence when deadly force is necessary to prevent the escape and the inmate has been convicted of a forcible felony.

(3) A staff member may use force against an inmate when he reasonably believes such force is necessary to prevent the escape of an inmate or to recapture an escaped inmate.

(4) Instruments of restraint will only be used as a precaution against escape, as protection against an inmate injuring himself or others, or on medical grounds at a doctor's direction.

(b) Neither force nor restraints will be used for punishment or revenge.

(c) Use of [mace] chemical munitions will be closely controlled. Appropriate medical attention will be provided for any person involved in an incident where [mace was] chemical munitions were used. Staff will follow the procedures set forth in Administrative Directives as to the availability and storage, method of use, training, medical staff role, and reporting of the use of [mace] chemical munitions.

§ 93.1. General.

Those portions of some Department directives and policy statements which concern the interaction of Department inmates and employees with the community at large are published. The full text of the directives and other policy statements are maintained in all Department facilities.

§ 93.2. Inmate correspondence.

(a) *Permitted correspondence.* Inmates are permitted to correspond with friends, family members, attorneys, news media, legitimate business contacts and public officials. There may be no limit to the number of correspondents.

(b) *Restrictions.* The following restrictions apply:

(1) Correspondence with inmates of other facilities, former inmates, probationers or victims of the criminal acts of the inmate will not be permitted except upon [special] approval of the facility manager or his designee.

(2) Correspondence containing threatening or obscene material, as well as correspondence containing criminal solicitation or furthering a criminal plan or institution misconduct is prohibited.

(3) An inmate shall refrain from writing to persons who have stated in writing that they do not wish to receive mail from the inmate. This will not be interpreted to restrict the right of inmates to correspond with public officials with respect to the official duties of the latter.

(4) Correspondence with prohibited parties through a third party is also prohibited.

(5) Mail addressed to an inmate organization will not be accepted unless the facility manager and Secretary [has] have approved the organization and it is addressed to the staff coordinator of the organization.

(c) *Incoming mail.* All mail sent to a facility will be opened and examined for contraband in the facility's mailroom or designated area except when permitted under paragraph (1).

(1) The Department may permit sealed mail to be opened in the presence of an inmate under the following conditions:

(i) An attorney or authorized representative/designee may hand-deliver a sealed confidential client communication to an inmate if the attorney is unable to communicate through alternative means, if the following conditions are met:

(A) The person making the delivery does so during normal business hours unless granted permission in advance by the Secretary or a designee.

(B) The person making the delivery shall provide valid identification and information sufficient to verify that the person is the inmate's attorney or authorized representative of the attorney.

(C) The person making delivery shall present the documents for inspection for contraband, unsealed and unbound.

(D) Upon inspection, the documents will be sealed and delivered to the inmate where they will be unsealed and searched again for contraband.

(ii) An attorney may obtain a control number from the Department's Office of Chief Counsel if he wishes to have correspondence addressed to an inmate client opened in the presence of the inmate.

(A) An attorney must submit a written request for a control number to the Office of Chief Counsel. The request shall include the attorney's name, address, telephone and facsimile numbers, state attorney identification number and a verification subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities that all mail sent to inmates using the control number will contain only essential, confidential, attorney-client communication and will

contain no contraband.

(B) The attorney shall place the control number on each envelope that the attorney wishes to have opened in an inmate's presence. The number is confidential. It shall only be placed on the outside of the envelope so that it can be obliterated before it is delivered to an inmate client.

(C) If a control number does not appear on the envelope, the mail will be treated as regular mail and opened in the mailroom unless the procedures set forth in paragraph (i) were followed.

(D) The Department may change the control number for any reason upon notice to the attorney who requested it.

(iii) A court may direct delivery of court documents sealed from public disclosure to an inmate by specific order. The court's representative shall deliver the sealed documents and the specific court order to the facility. Under no circumstances will documents filed in a court of public record be delivered sealed to an inmate.

(2) Contraband in the form of money orders, certified checks, cash or other negotiable instruments will be recorded indicating the nature of the receipt, the sender, the amount received and the date. Personal checks, unless certified, will be returned to the sender. The facility is not responsible for cash sent through the mails. Confiscated coins and currency will be deposited in the Inmate General Welfare Fund. Contraband not specifically addressed in this section will be returned to the sender or destroyed [at the inmate's option unless it is transferred to appropriate criminal justice agencies at the discretion of the mailroom or security staff].

(d) *Outgoing mail.* Sealed outgoing mail from an inmate will not be examined except as set forth

in subsection (e).

(e) Scrutiny of correspondence.

(1) The facility manager or a designee may read incoming or outgoing mail, except mail sealed in accordance with subsection (c)(1), when there is reason to believe that it may reveal or discuss illegal or unauthorized activity or for reasons set forth in any Department document that is [disseminated] available to inmates.

(2) The facility manager or a designee may read mail sealed in accordance with subsection (c)(1), only upon the written order of the facility manager with the written approval of the Secretary when there is reason to believe that there is a threat to facility security or criminal activity.

(f) Rejection of correspondence. An item of correspondence which appears to violate subsection (b) may be rejected by facility mailroom staff. The inmate and the sender, in cases when the inmate is not the sender, will be notified when the letter is rejected. The letter may be held for at least 7 business days after mailing of the notification to permit reasonable opportunity to protest the decision. If the letter is rejected, it will be returned to the sender.

(g) Incoming publications.

(1) A[n incoming] publication review committee [(IPRC)] consisting of staff designated by and

reporting to the facility manager or a designee shall determine whether an inmate may receive a publication.

(2) All publications shall be received directly from a publisher, bookstore, book club, distributor or department store. Newspapers shall be mailed directly from the publisher.

(3) Publications may not be received by an inmate if they:

(i) Contain information regarding the manufacture of explosives, incendiaries, weapons, escape devices, poisons, drugs or intoxicating beverages or other contraband.

(ii) Advocate, assist or are evidence of criminal activity, inmate misconduct, violence, insurrection or guerrilla warfare against the government.

(iii) Threaten the security of a facility.

(iv) Contain obscene material as defined in 18 Pa.C.S. § 5903 (relating to obscene and other sexual materials and performances).

(v) Constitute a bulk mailing specifically intended for the purpose of advertising or selling merchandise.

(4) An inmate under 18 years of age may not receive explicit sexual materials as defined in 18

Pa.C.S. § 5903.

(5) A publication will not be prohibited solely on the basis that the publication is critical of penal institutions in general, of a particular facility, staff member, or official of the Department, or of a correctional or penological practice in this or any other jurisdiction.

(6) An inmate may receive only one copy of any publication unless granted permission by the [IPRC] publication review committee.

(7) Small letter sized pamphlets may be received in regular correspondence.

(8) Covers of hardbound publications may be damaged or removed during inspection in the discretion of mailroom staff.

§ 93.3. Inmate visiting privileges.

(a) *Approved list of visitors.* A list of approved visitors may contain [up to] at least 20 names or more if permitted by the Department. Inmates who can show that they have more than [20 regular visitors] the number of visitors permitted by the Department may be permitted to add additional names to their approved lists. [Members of a family living at the same address may be counted as one name.] Except for members of an inmate's immediate family, a minor's name may be placed on the approved list only with permission of the minor's parents or guardian. Children under [12] 18 years of age may visit only when accompanied by [an adult and need not be placed

separately on the official list] a parent, legal guardian or county children/youth services agency staff. A person may not be on more than one inmate's visiting list except in cases when the person is part of the immediate family of more than one inmate, unless special permission is granted by the facility manager. Changes or additions to the approved list may be made in accordance with established procedures. The name of a visitor may be removed [for good cause] upon authorization by the facility manager.

(b) *Religious advisor*. Designation by an inmate of a religious advisor as defined in § 93.6 (relating to religious activities) may be made at any time. The designation shall be in addition to the names on the approved list and will not be counted against the total [of 20] designated by the Department.

(c) *Attorneys*. An inmate may designate attorneys for whom the inmate desires visiting privileges at any time. The designation shall be in addition to the names on the approved list and will not be counted against the total [of 20] designated by the Department.

(1) The confidentiality of the attorney-client relationship will be honored. Personnel will not be stationed in a manner as to be able to overhear normal conversation.

(2) An attorney who has been designated by an inmate as the inmate's legal advisor may permit persons, such as law students or investigators to visit the inmate to act as the attorney's agents.

Each person shall present to the facility at the time of the visit a written statement signed by the attorney on the letterhead of the firm of the attorney identifying each person as the attorney's

agent and attesting that the visit is for the purpose of a legal consultation.

(3) Attorneys and their agents are subject to the same rules and regulations as other visitors.

(d) *Former inmates.* A former inmate may visit only with special permission of the facility manager.

(e) *Prerelease inmates.* Inmates in prerelease status may visit other inmates only with the approval of the Secretary or a designee. Application for permission to visit shall be made by both inmates through their respective facility managers.

(f) *Registering of visitors.* Visitors shall register in and out of the facility.

(g) *Initial [visits] visits.* The inmate's first visit after admission should be scheduled following the medical quarantine period and may be held in the presence of a staff caseworker.

(h) *Number, time and place of visits.* Inmates shall be permitted to have visits as often as the situation at the facility will allow.

(1) *Visiting days.* Visits may be permitted every day of the year at the discretion of the facility manager.

(2) *Visiting hours.* Morning and afternoon visiting hours will be maintained at the discretion of

the facility manager. Evening visits may be maintained at the discretion of the facility manager.

(3) *Length of visits.* Visits should be at least 1 hour in duration. The length of a visit depends on the inmate's program status and available space.

(4) *Frequency of visits.* One visit per inmate per week will be permitted. Additional visits may be permitted.

(5) *Number of visitors at one time.* The number of visitors an inmate may have at any one time may be limited depending upon the available space.

(6) *Place.* Inmates in the general population will be permitted contact visits in a relaxed setting, under official supervision unless otherwise restricted as set forth in the Commonwealth of Pennsylvania Department of Corrections Inmate Handbook, or any Department document that is available to inmates.

(7) *Special visit.* Provisions will be made for the approval of a special visit by persons who may not be on the approved list who have come a substantial distance and of a family visit to a seriously ill or injured inmate. Special visits will be approved only by the facility manager or a designee. Absent this approval, only those persons on the approved visiting list may visit.

(i) *Restriction of visitation privileges.*

(1) If a visit is a threat to the security and order of the facility, the visit may be terminated or disallowed.

(2) Outside visitors are subject to search before and after visiting.

(3) A visitor who cannot produce identification or who falsifies identifying information will not be allowed in the facility.

(4) Visitation may be restricted or suspended or special security precautions imposed for violation of visiting rules or as warranted by the temperament of the inmate involved.

(5) Restriction of visiting privileges will not be used as a disciplinary measure for an unrelated facility rule infraction. However, visiting privileges may be restricted as a result of changes in housing or program status made as a result of unrelated infractions.

(6) Normal visitation will be suspended during a state of emergency.

(j) *Media representatives.* Media representatives will have the same visiting privileges as visitors on an inmate's approved list of visitors as described in Department policy concerning inmate visitation. A media representative will not be in addition to the names on the approved list and will be counted against the total [of 20] designated by the Department.

(1) [Upon request, media] Media representatives [will be provided with] may obtain a copy of

the Department's policy regarding inmate visitation on the Department's website
(www.cor.state.pa.us).

(2) Media representatives and inmates will abide by all applicable rules, regulations and policies of the Department while on facility property. Violations of any rules, regulations or policies of the Department may result in the visit being denied, termination of the visit, suspension of visiting privileges or revocation of visiting privileges.

(3) Visits with a media representative shall be subject to the frequency of visit limitations contained in subsection (h)(4).

(4) For inmates under a sentence of death and prior to the Governor's warrant being issued, media representatives will only be permitted to have noncontact visits with the inmate. After the Governor's warrant has been issued, noncontact visits will only be entertained if the media representative has obtained an order of court of competent jurisdiction granting the relief and has properly served the Department with the court documents seeking or requesting the relief prior to obtaining the order.

(5) Media representatives for the purpose of this section include: representatives of general circulation newspapers; magazines of general circulation sold through newsstands or mail subscriptions to the general public; and National/international news services or radio/television stations holding a Federal Communications Commission license.

(6) Media representatives are not permitted to use any type of recording device in the visiting room. They are, however, permitted to take a tablet and writing instrument into the visiting room during the visit, as long as they identify themselves as a media representative upon arrival for the visit.

§ 93.4. Purchase for inmates by family and friends.

(a) Family and friends, who are on the inmate's approved visiting list, may purchase approved items for inmates under this section. The facility may disapprove and decline to accept any purchase which does not meet this section.

(b) Only those items listed on the current Approved Master Commissary List may be purchased from approved vendors. Copies of the list are provided to the inmates. Publications may be purchased by means of this procedure, but shall be subject to § 93.2 (relating to inmate correspondence).

(c) Purchases shall be approved prior to the time the item is received by the facility.

(d) Only those items shipped directly from the vendor to the facility will be accepted.

(e) Unauthorized or disapproved items will be returned to the sender at the expense of the inmate or destroyed.

§ 93.6. Religious activities.

(a) [*Policy.* It is the policy of the Department to permit each inmate to satisfy the needs of his religious life, consistent with the security needs and orderly administration of the facility. The Department will provide chapel facilities at each facility. The Department will also permit inmates to possess approved religious items and make reasonable accommodation for dietary restrictions.] The Department will provide chapel facilities at each facility and will permit inmates to request religious accommodations not already being permitted.

(b) *Religious advisors.*

(1) [If the facility contains a sufficient number of inmates of the same faith, a qualified representative of that faith from the outside community will be appointed or approved by the facility manager and will be permitted to hold regular services in the facility. Qualified representative means a person from the outside community who has received endorsement from his faith group authority.] Staff or volunteers will be permitted to hold services that are consistent with the security needs and orderly administration of the facility.

(2) Each inmate will be permitted to select a religious advisor from the outside community [who has received endorsement from the faith group authority] subject to security needs and orderly administration of the facility. This person will be permitted to visit the inmate on an individual basis in accordance with general rules governing visitation.

[(c) *Accommodation of faiths.* Requests for accommodation of faiths will be handled as follows:

(1) Facility officials will secure written information from the outside faith group authority, including publications which describe the goals, beliefs and practices of the group.

(2) Information material will be forwarded to the Director of Chaplaincy Services for the Department for evaluation.]

§ 93.7. Telephone calls.

(a) Inmates in general population may make phone calls in accordance with 66 Pa.C.S. § 2907 (relating to state correctional institutions) and the Commonwealth of Pennsylvania Department of Corrections Inmate Handbook. Phone calls, except confidential communications between attorneys and inmates, shall be subject to monitoring in accordance with 18 Pa.C.S. Chapter 57 (relating to wiretapping and electronic surveillance).

(b) Phone calls to inmates will be permitted only if approved in advance by the facility manager or a designee.

§ 93.8. Access to notary service and legal reference materials.

Reasonable access to notary services and the following legal reference materials will be

afforded to all inmates:

- (1) United States and Pennsylvania Constitution.
- (2) Federal and Pennsylvania Rules of Civil and Appellate Procedure and local rules of Federal district courts.
- (3) Law dictionary.
- (4) Case law reporters containing Federal district and circuit court decisions and Pennsylvania appellate court decisions.
- (5) Title 18 U.S.C., 28 U.S.C.A. §§ 2241 - 2255 and 42 U.S.C.A. §§ 1981 - 1985.
- (6) Titles 18 and 42 of the *Pennsylvania Consolidated Statutes* and Titles 35 and 61, *Purdon's Pennsylvania Statutes*.
- (7) Digest of Pennsylvania cases including volumes relating to criminal law and the table of cases.
- (8) Other materials which may assist inmates to prepare their own legal documents.

§ 93.9. Inmate complaints.

(a) The Department will maintain an inmate grievance system which will permit any inmate to seek review of problems which the inmate experiences during the course of confinement.

The system will provide for review and resolution of inmate grievances at the most decentralized level possible. It will also provide for review of the initial decisionmaking and for possible appeal to the Central Office of the Department. An inmate will not be disciplined for the good faith use of the grievance systems. However, an inmate who submits a grievance for review which is false, frivolous or malicious may be subject to appropriate disciplinary procedures. Copies of the directive governing grievance procedures will be made available to the inmates.

(b) Inmates may also pursue available remedies in State and Federal court.

§ 93.10. Inmate discipline.

(a) Rules which define expectations and prohibitions for inmate behavior will be established by the Department and [distributed] made available to the inmate population. There shall be two classes of misconduct charges, Class I and Class II.

(1) Inmates found guilty of Class I misconduct charges may be subjected to one or more of the following sanctions:

(i) Reduction of the classification of the misconduct to a Class II and any sanction permitted for Class II misconducts.

(ii) A sanction permitted for Class II misconducts, without change in class of misconduct.

(iii) Change of cell assignment, including placement in the restricted housing unit or restrictive confinement in a general population cell for a period not to exceed [6 months] 90 days for any one misconduct charge.

(iv) Change of program level.

(2) Inmates found guilty of Class II misconducts may be subjected to one or more of the following sanctions:

(i) Reprimand.

(ii) Suspension of privileges for a specified period of time.

(iii) Payment of the fair value of property lost or destroyed or for expenses incurred as a result of the misconduct.

(iv) Change of cell assignment excluding placement in the restricted housing unit.

(v) Change, suspension or removal from job.

(b) Written procedures which conform to established principles of law for inmate discipline including the following will be maintained by the Department and [distributed] made available to the inmate population:

(1) Written notice of charges.

(2) Hearing before an impartial hearing [body] examiner or an informal resolution process for charges specified by the Department in the Commonwealth of Pennsylvania Department of Corrections Inmate Handbook, or any Department document that is made available to inmates.

(3) Opportunity for the inmate to tell his story and to present relevant evidence.

(4) Assistance from an inmate or staff member at the hearing if the inmate is unable to collect and present evidence effectively.

(5) Written statement of the decision and reasoning of the hearing body, based upon [the preponderance of the] some evidence.

(6) Opportunities to appeal the misconduct decision [of the hearing body] in accordance with procedures in the Commonwealth of Pennsylvania Department of Corrections Inmate Handbook.

§ 93.11. Housing.

(a) An inmate does not have a right to be housed in a particular facility or in a particular area within a facility.

(b) Confinement in a restricted housing unit (RHU) other than under procedures established for inmate discipline will not be done for punitive purposes. The Department will maintain written procedures which describe the reasons for housing an inmate in the RHU and require due process in accordance and with established principles of law for an inmate who is housed in the RHU. Inmates confined in the RHU will be reviewed periodically by facility staff.

§ 93.12. Prison Medical Services Program.

(a) Every institution will establish procedures to permit inmates to have access to health care professionals, prescribed treatment for serious medical needs, appropriate nutrition, exercise and personal hygiene items.

(b) The following words and phrases, when used in this section, have the following meanings unless the context clearly indicates otherwise:

Department - The Department of Corrections of the Commonwealth.

Fee - The portion of the actual cost of a medical service provided to an inmate which the Department has determined shall be charged to the inmate.

Health care professional - Any physician, physician assistant, nurse, dentist, optometric professional or other person licensed to provide health care under the laws of the Commonwealth. The term does not include a corrections health care administrator performing the administrative duties of that position.

Inmate - A person confined to a correctional institution, motivational boot camp, community corrections center or other facility operated by the Department, its agent or contractor.

Medical service - The diagnosis, evaluation, treatment or preservation of the health of the human body, including its organs, structures and systems. The term includes diagnostic testing, prescribing and administering medication, surgical procedures, dental care, eye care, the furnishing of prosthetics and any other type of treatment or preventative care, whether performed on an inpatient or outpatient basis.

(c) The Department will charge a fee to an inmate for any of the following:

- (1) Nonemergency medical service provided to an inmate at the inmate's request.
- (2) Medical service provided to the inmate as the result of a self-inflicted injury or illness, including emergency medical service provided to the inmate as the result of a self-inflicted injury or illness.

(3) Initial medication prescription except as provided in subsection (d)(2), (14), (16) and (17).

(4) Medical service provided to another inmate as a result of assaultive conduct engaged in by an inmate to be charged the fee.

(5) Medical service provided to an inmate as a result of an injury or illness arising from the inmate's participation in a sport.

(6) Medical service provided to an inmate to determine whether his physical condition is suitable for participation in a sport unless the medical service is provided as part of an inmate's [initial, annual or biennial] physical examination scheduled by the Department.

(d) The Department will not charge a fee to an inmate for any of the following:

(1) Physical, dental or mental health screening provided to an inmate upon intake.

(2) Immunization, tuberculosis test, Hepatitis B vaccination or other treatment initiated by the Department for public health reasons.

(3) Institution transfer screening.

(4) [Annual and biennial physical] Physical and dental examination scheduled by the Department.

(5) Medical service provided to an inmate during a follow-up appointment scheduled by a health care professional employed by the Department or its contractors.

(6) Mental health treatment.

(7) Medical treatment for a chronic or intermittent disease or illness.

(8) Infirmity care in a Department [of Corrections] facility excluding organ transplantation.

(9) Hospitalization outside of a Department [of Corrections] facility.

(10) Long-term care to an inmate not in need of hospitalization, but whose needs are such that they can only be met on a long-term basis or through personal or skilled care [and who needs the care] because of age, illness, disease, injury, convalescence or physical or mental infirmity.

(11) Medical referral ordered by a health care professional employed by the Department or its contractors.

(12) Medical service provided to an inmate during a medical emergency unless the medical emergency resulted from a self-inflicted injury or illness as determined by the health care professional providing the medical service.

(13) Laboratory test, electrocardiogram, dressing change or other treatment ordered by a health care professional employed by the Department or its contractors.

(14) Prenatal care.

(15) Medical service provided as a result of an injury or illness arising from an inmate's institutional work assignment.

(16) Medication prescription subsequent to the initial medication prescription provided to an inmate for the same illness or condition.

(17) Social service program including, but not limited to, substance abuse groups and counseling.

(18) Psychotropic medication.

(19) Medication prescribed for an inmate for public health reasons.

(20) Physical, dental and mental health screening performed at the request of the Department.

(21) Medical service provided to an inmate to determine whether his physical condition is suitable for an institutional work assignment.

(22) Eyeglass prescription.

(23) Dentures.

(24) Prosthetic devices excluding customized items.

(e) The fee for any medical service in subsection (c) is \$[2] 3, this amount will be increased to \$4 on July 1, 2005 and \$5 on July 1, 2007, except that an inmate is required to pay a fee equivalent to [two-thirds of] the total cost of medical services provided to another inmate as a result of the inmate's assaultive conduct.

(1) The fee will be assessed each time a medical service in subsection (c) is provided to an inmate, except when multiple services are performed at one visit at the discretion of the health care professional.

(2) Each inmate shall receive 60 days written notice of the implementation of the Prison Medical Services Program.

(3) Each inmate shall receive written notice of any changes in medical service fees and payment procedures at least 60 days after the effective date of a regulation that modifies the fee for medical services and payment procedures.

(f) Payment for any medical service in subsection (c) shall be accomplished according to the following procedures:

(1) At the time any medical service is to be provided to an inmate, the inmate will be informed by the Department or a health care professional contracted by the Department whether a fee will be charged for the medical service and will be provided with an authorization form. The authorization form will describe the medical service to be provided and authorize the institution to deduct the fee from the inmate's account.

(2) An inmate who wishes to receive a medical service after being advised that a fee will be charged for the medical service, shall sign the authorization form acknowledging that his inmate account will be debited for the fee. [A nonemergency medical service will not be provided to an inmate who refuses to sign the authorization form after having been advised that a fee will be charged for the medical service.] An inmate who refuses to sign the authorization, who does not sign a refusal of treatment form, and who accepts medical treatment will receive the services and his account will be debited. An inmate will not be denied access to medical services because of an inability to pay the required fee. If an inmate lacks sufficient funds to pay a medical service fee, the inmate's account will be debited and the fee recouped as soon as sufficient funds are deposited in the inmate's account.

(3) The Department may seek to recover any amount owed for medical services fees by an inmate upon release under section 5 of the Prisoner Medical Services Act (61 P. S. § 1015).

(g) An inmate who has medical insurance shall pay for his own medical needs through that insurance by cooperating with the Department in submitting the proper paperwork to the

insurance carrier.

(h) The Department will include an explanation of the program in the Inmate Handbook.

§ 93.13. Procedure in the event of an inmate death.

(a) Every inmate will designate a next of kin or friend to be notified and to whom his property may be delivered for safekeeping in the event of his death.

(b) Inmate deaths, except those which occur under medical supervision and as a result of natural causes, shall be promptly investigated by the State Police.

§ 93.301. Definitions.

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

Act - The Motivational Boot Camp Act (61 P. S. §§ 1121 - 1129).

Secretary - The Secretary of the Department.

Three-tiered approach - A three-step disciplinary process in which an inmate first receives a demerit or demerits. Upon receiving ten or more demerits in a 7-day period, the inmate shall

appear before the deputy commander's review board and may receive restrictions or additional duties. The final step is the commander's committee at which point an inmate may be removed from the motivational boot camp.

Ventilation therapy - A group session led by a counselor during which inmates are encouraged to discuss problems, stressful matters or pressures they are currently experiencing. The objective of the discussion is to help inmates identify, explore and ultimately either resolve or better cope with the stressors.

§ 93.302. Selection criteria.

(a) An eligible inmate, as that term is defined in section 3 of the act (61 P. S. § 1123), may be selected by the Department for participation in a motivational boot camp. In selecting inmates for participation in a motivational boot camp, the selection committee will consider all information relevant to whether the inmate is eligible for placement in a motivational boot camp and likely to perform competently while in the motivational boot camp. Selection criteria will include the following:

- (1) The written application submitted by the inmate.
- (2) Whether the inmate's participation in a motivational boot camp is consistent with the safety of the community.

(3) Whether the inmate's participation in a motivational boot camp is consistent with the welfare of the inmate.

(4) Whether the inmate's participation in a motivational boot camp is consistent with the objectives of the Department.

(5) The health and physical condition of the inmate.

(6) The inmate's criminal history.

(7) The inmate's escape history.

(8) The inmate's institutional adjustment during current and prior incarcerations.

(9) Outstanding detainers or parole warrants, or both, for the inmate.

(10) The inmate's psychological profile.

(11) The submittal of a signed memorandum of understanding as required by section 6(c) of the act (61 P. S. § 1126(c)).

(b) An inmate will not be guaranteed acceptance into a motivational boot camp even if the inmate is eligible and likely to successfully graduate from a motivational boot camp.

(c) Successful completion of the boot camp program requires completion of three phases.

(1) The first phase consists of orientation and introduction to discipline, physical training and treatment.

(2) The second phase consists of discipline, physical training and treatment.

(3) The third phase consists of preparing the inmates for life in society and striving for perfection in the aspects of the second phase of the program.

§ 93.303. Selection committee.

(a) There shall be a motivational boot camp selection committee in each diagnostic and classification center operated by the Department.

(b) Each selection committee shall be composed of the following individuals:

(1) The diagnostic center director or a corrections counselor supervisor, or both.

(2) A lieutenant or corrections counselor, or both.

(c) The selection committee is only responsible for recommending inmates for participation in a motivational boot camp.

(d) The facility manager of a diagnostic and classification center shall make the final decision as to inmate participation in a motivational boot camp.

[(d) The superintendent of the State correctional institution in which a diagnostic and classification center is operated shall make the final decision as to inmate participation in a motivational boot camp.]

§ 93.304. Administration.

(a) The Department will administer motivational boot camps at sites to be determined by the Department.

(b) Each motivational boot camp will operate under the administrative supervision of the Secretary or a designee.

§ 93.305. Supervision/organizational structure.

(a) Each motivational boot camp will be organized as a paramilitary unit with a supervisory structure consisting of a camp commander, a deputy commander and area commanders.

(b) The inmates will be organized into platoons consisting of no more than 50 inmates per platoon.

(c) Each platoon shall have at least two Department drill instructors.

§ 93.306. Curriculum.

Each motivational boot camp shall consist of the following curriculum:

- (1) Rigorous physical activity.
- (2) Intensive regimentation and discipline.
- (3) Work on public and community projects.
- (4) Substance abuse treatment.
- (5) Continuing education.
- (6) Vocational training.
- (7) Prerelease counseling.
- (8) Ventilation therapy.

§ 93.307. Inmate discipline.

(a) A list of the rules to be followed by inmates participating in a motivational boot camp will be provided to an inmate during orientation to the motivational boot camp.

(b) Serious rule infractions which constitute Class I misconducts listed in DC-ADM 801 - *Inmate [Disciplinary and Restricted Housing Procedures] Discipline* - may result in an inmate's expulsion from a motivational boot camp.

(c) Minor rule infractions which constitute Class II misconducts listed in the DC-ADM 801 - *Inmate [Disciplinary and Restricted Housing Procedures] Discipline* - will be dealt with according to a three-tiered approach.

(d) Inmates can be suspended or removed from a motivational boot camp for reasons other than violations of disciplinary rules, such as receipt by the Department of additional detainers or changes which make the inmate ineligible for the program or reasons which in the opinion of the commander make the inmate unsuitable for the motivational boot camp or detrimental to the motivational boot camp.

§ 93.308. Staff training.

Staff directly involved with a motivational boot camp shall undergo a minimum of 4 weeks of

intensive training in addition to training required of all Department employes.

(1) This training shall include instruction on the boot camp's programs including the drug and alcohol program, drill and ceremony, the role model concept and physical training.

(2) Training shall also include instruction on the goals and philosophy of the boot camp as well as basic security.

(3) Drill instructors shall receive the training along with a 5-month on-the-job training program including a 2-week training assignment at a training center for Department drill instructors.

(4) Training for drill instructors shall include physical training of groups, drill and ceremony, leadership development and assessment, professional sensitivity and awareness, counseling techniques and instructional methods.

(5) Employes will not work as drill instructors until they have received this training and a certificate from the Secretary.

§ 94.1. Purpose.

It is the goal of the Department to administer its facilities and design programs to provide protection to society through the control and rehabilitation of offenders. In furtherance of that

objective and the authority granted to the Department by the act of July 16, 1968 (P. L. 351, No. 173) (61 P. S. §§ 1051 - 1054), prerelease programs have been established. These programs are designed to provide opportunities for qualified inmates to have access to community resources, to demonstrate self-control and individual responsibility and to begin reintegration into the community. Criteria for participation in prerelease programs are designed to insure that the inmates who are selected to participate are those who will present the least risk to the community, and benefit most from the program, and to offer the opportunities to as many inmates as possible.

§ 94.2. Prerelease programs.

(a) Work/educational/vocational training release.

(1) *Work release.* This is a program which enables an inmate to leave the facility and work in the community. The inmate is required to return to the facility at a designated time after the work day.

(2) *Educational/vocational training release.* This is a program which enables an inmate to leave the facility and participate in educational or vocational-technical training. The inmate is required to return to the facility at a designated time after completion of training for the day.

(b) Temporary home furlough. This is the authorized leave for an inmate from a facility for a period not to exceed 7-consecutive days for the purpose of furthering an inmate's

rehabilitative programs. The inmate is required to return to the facility at a designated time after the furlough.

(c) *Community corrections.*

(1) *Community corrections center residency.* This is a program operated as a continuum of the rehabilitative services provided in the facilities. Community corrections centers are residences in the community with custodial structure and strong emphasis on guidance and counseling. These centers serve those inmates who qualify and who should benefit from a gradual reintegration into society.

(2) *Group home residency.* This is a program which complements community corrections center residency and consists of publicly or privately owned agencies approved by the Department for use by its residents. These residences provide specialized residential treatment, for example, drug and alcohol treatment, or additional bed resources and include 24-hour supervision, living quarters and special services for selected residents, and provisions for continued jurisdiction by community corrections. An exception to this paragraph shall have prior approval by the Director, Community Corrections Division and final approval by the Secretary or a designee.

(3) *Community corrections furlough program.* This is a program which complements community corrections center residency and is permitted with the approval of the community corrections center [staff] director or contract coordinator. It is the authorized leave of an

inmate from a community corrections center or group home for a period not to exceed 7 consecutive days for the purpose of furthering the inmate's reintegration into the community. The inmate is required to return to the center or group home at a designated time.

§ 94.3. Procedures for participation in prerelease programs.

(a) The criteria for eligibility for prerelease programs are as follows:

(1) Inmates who have been sentenced to death or life imprisonment or other offenses as specified in state and federal statutes or specified by the Department in the Commonwealth of Pennsylvania *Department of Corrections Inmate Handbook* or any Department document that is available to inmates are not eligible.

(2) Time-served requirements are as follows:

(i) To be time-eligible for placement in a community corrections center or group home, the inmate shall have completed at least one-half of his minimum sentence, be within 1 year of completing his minimum sentence, have no outstanding detainers, and have served at least 9 months in a facility. Exceptions may be made with written approval of the Secretary or a designee, when early transfer is necessary to assist in the inmate's access to medical or mental health care or to provide longer period of participation for an inmate who has been confined for an unusually long period of time. A contact may not be made with the court until the approval is obtained.

(ii) For other prerelease programs, the inmate is time-eligible after the inmate has completed one-half of the inmate's minimum sentence or one-half of the period ending with anticipated release date of an indeterminate sentence and has served at least 9 months in a facility. The inmate may have no detainers lodged against him for an untried offense or for a sentence with a maximum term in excess of 2 years. Inmates who are otherwise time-eligible who have detainers lodged against them for less than 2 years can be time-eligible for a prerelease program except community corrections center or group home upon written approval of the Secretary or a designee. No contact may be made with the court until the approval is obtained.

(3) The inmate shall have favorable recommendation of the correctional facility staff - for example, counselor, work supervisor, housing officer, education/vocational supervisor and deputy facility managers for treatment and operations.

(4) The inmate may have had no Class I misconduct and no more than one Class II misconduct during the 9 months prior to application, and have sustained no Class I misconduct[s] and no more than one Class II misconduct from the time of application to the time of transfer.

(5) The inmate shall obtain a medical clearance by the facility medical officer.

(6) The inmate's application shall be approved by the facility manager and by the Secretary or Regional Director of the Department or both if an inmate is serving a sentence for an

offense specified in the Commonwealth of Pennsylvania Department of Corrections Inmate Handbook, or any Department document that is available to inmates that requires such approval.

(7) If the inmate has not completed his minimum sentence, the notice process in § 94.5 (relating to notification process) shall be followed.

(8) Applications for transfer to community corrections require evaluation and concurrence by the staff of the appropriate region of community corrections and approval by the Director of Community Corrections.

(9) The inmate shall execute a written [agreement which requires him] acknowledgement that he is required to abide by the rules and regulations of the prerelease program. In the case of community corrections placement, the written agreement shall be signed prior to transfer.

(10) After transfer into a prerelease program, the inmate may continue to participate in the program only while adequate resources are available to provide care, custody and control for the inmate within the program to which he has been admitted. The inmate's privilege to participate in prerelease programs may be suspended or revoked for administrative or disciplinary reasons. The Department will establish procedures to govern the revocation of prerelease privileges.

(b) The process of obtaining prerelease transfer is initiated when an inmate submits an

application to his counselor for participation in work/educational/vocational release, or for a temporary home furlough or for transfer to a community corrections placement. An inmate will not be granted prerelease transfer for any purpose unless the inmate satisfies all of the criteria in this section. Satisfying the eligibility criteria for prerelease transfer does not mean the inmate will automatically be permitted to participate in prerelease programs. Other considerations such as the staff's evaluation of the inmate's progress, the relevancy of the particular prerelease program to the inmate's reintegration, the safety of the community and the victim of the inmate's crime and the availability of space will be taken into consideration. Approval for participation in one prerelease program does not imply clearance for, or preclude application for participation in any other program. The application shall specify a particular prerelease program.

(c) Special exception to subsection (a) or (b), other than subsection (a)(1), (2)(ii) and (6) - (9), may be recommended in writing by a facility manager to the Secretary or a designee.

(d) Inmates serving Federal sentences in facilities shall be eligible for prerelease transfer under rules and regulations established by the United States Department of Justice, Federal Bureau of Prisons, and subject to subsections (a) and (b), and the subsequent approval of Federal and State authorities.

(e) Inmates serving sentences from other jurisdictions under the Interstate Corrections Compact (61 P. S. §§ 1061 - 1063) are eligible subject to subsections (a) and (b) and the sending state's written approval.

§ 94.4. Application process.

Application for prerelease programming shall be initiated by the inmate to his counselor, or if necessary, on the inmate's behalf by the counselor. Criteria in § 94.3(a)(1), (3) - (5), (8) and (9) (relating to the procedures for participation in prerelease programs) shall be met prior to submission to the facility manager for his approval. The process may begin a reasonable time prior to the time the inmate becomes time-eligible.

§ 94.5. Notification process.

(a) If the facility manager approves an inmate's application for prerelease transfer, the facility manager shall notify the sentencing judge or if he is unavailable, the sentencing court, and the prosecuting district attorney's office by certified mail, of the inmate's proposed prerelease program. Comments will be considered.

(b) If the inmate has not finished his minimum sentence and an objection is received from the judge or court, if the judge is unavailable, within 30 days of his receipt of the proposed prerelease plan, representatives of the Department will contact the judge or court and if necessary arrange for a meeting to attempt to resolve the disagreement. If, within 20 days of the Department's receipt of the objections, the judge or court does not withdraw the objection and the Department does not withdraw its proposal for transfer, or the judge and the Department do not agree on an alternate proposal for transfer, the Department will refer the matter to the Board for [arbitration] a hearing.

§ 94.6. Staff responsibilities.

(a) It is the primary responsibility of the inmate's counselor to process the inmate's application for participation in prerelease programs.

(1) The inmate's counselor is responsible for obtaining, integrating and coordinating the information necessary to determine the inmate's eligibility or noneligibility for participation in a prerelease program.

(2) The inmate's counselor will accept and review the inmate's application. If necessary, the counselor may help the inmate initiate this process. The inmate's counselor will also be responsible for having the housing officer, work supervisor and other appropriate staff complete relevant portions of the application and make recommendations concerning prerelease programming.

(3) The inmate's counselor shall verify, with the record officer, the necessary information with respect to the inmate's sentence and detainer status.

(4) The inmate's counselor will review and verify available information relevant to eligibility - for example, presentence investigation report, judge's sentencing notes, classification and reclassification summary records and cumulative adjustment record.

(5) The inmate's counselor will request proper psychological and psychiatric evaluations for those applicants who have a history of mental or emotional disorders, violent crimes or other situations when deemed advisable. The inmate's counselor may contact other persons and agencies to acquire additional information.

(6) When the necessary information has been obtained, the inmate's counselor will refer the application to his supervisors for review.

(b) It is the primary responsibility of the [classification and treatment manager] Corrections Classification Program Manager (CCPM) or other staff person designated by the Facility Manager to coordinate the staff evaluation and recommendation process.

(1) The [classification and treatment manager] CCPM or other staff person designated by the Facility Manager will chair a meeting of designated facility staff who shall make recommendations regarding prerelease programs. The inmate shall be present at this staff meeting for input.

(2) The staff's findings, recommendations and rationale shall be forwarded to the facility manager through both the Office of the Deputy Superintendent for [Treatment] Centralized Services and the Deputy Superintendent for [Operations] Facilities Management, with comments by both.

(c) It is the responsibility of the facility manager to give final approval or disapproval of

recommendations regarding prerelease programs. The inmate will be advised by the [classification and treatment] unit manager, in the presence of the inmate's counselor, of the final decision and its rationale. The decision and rationale will be documented in the cumulative adjustment record.

(d) Letters to judges and district attorneys shall be signed by the facility manager or designee.

(e) The inmate's counselor shall discuss with the inmate prior to the commencement of the program, the objectives, rules and regulations of the program and obtain written agreement as provided for in § 94.3(a)(9) (relating to procedures for participation in prerelease programs). The counselor shall review the program objectives on the inmate's cumulative adjustment record.

§ 94.7. Effective date.

This chapter applies to inmates who apply to participate in prerelease programs after February 18, 1984.



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

OFFICE OF THE
SECRETARY OF CORRECTIONS

June 2, 2004

VIA HAND DELIVERY

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

Re: *Proposed Amendment to Department of Corrections' Regulations on Administration, State Correctional Institutions and Facilities and Release and Prerelease Programs*

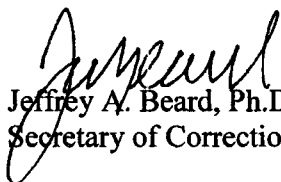
Dear Executive Director Nyce:

I am pleased to present for review and approval the Pennsylvania Department of Corrections' proposed amendments to its regulations on Administration, State Correctional Institutions and Release and Prerelease Programs. The amendments are promulgated under the Department's authority pursuant to section 506 of the Administrative Code of 1929 (71 P.S. §186).

The proposed regulations will amend Chapter 91 to update the section on the use of force and restraints. Chapter 93 will be amended to revise the section on inmate correspondence to provide alternative procedures for privileged correspondence. The section on inmate visiting privileges and religious activities will be updated. The section on inmate discipline will be revised to change the procedures for inmate hearings. The section on prison medical services will be revised to clarify examination procedures and increase medical co-pay fees. Chapter 94 will be updated to clarify prerelease procedures.

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

Sincerely,



Jeffrey A. Beard, Ph.D.
Secretary of Corrections

JAB/JCF:klk

Enclosure

cc: David J. DeVries, Executive Deputy General counsel
Donna Cooper, Director, Governor's Policy Office
Lois M. Hein, Director, Bureau of Legislative & Regulatory Analysis, Office of Budget
John S. Shaffer, Ph.D., Executive Deputy Secretary
Michael A. Farnan, Chief Counsel
Greg Rowe, Senior Policy Manager, Governor's Policy Office
John Coyne, Director, Office of Legislative Affairs
Jill C. Fluck, Special Assistant to the Secretary
Nanette Kimmel, Office of Attorney General
Judy Bailets, Governor's Policy Office
File

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

I.D. NUMBER: 19-006

SUBJECT: Administration, State Correctional Institutions & Facilities
& Release and Prerelease Programs

AGENCY: DEPARTMENT OF CORRECTIONS

2004-2
REVIEW

TYPE OF REGULATION

- Proposed Regulation
- 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. With Revisions b. Without Revisions

FILING OF REGULATION

| DATE | SIGNATURE | DESIGNATION |
|--------|------------------------|--|
| 6/2/04 | <i>Christine Crowl</i> | HOUSE COMMITTEE ON JUDICIARY |
| 6/2/04 | <i>Susan Thomas</i> | |
| 6/2/04 | <i>P. Nisler</i> | SENATE COMMITTEE ON JUDICIARY |
| 6/2/04 | <i>A. Kliff-Gray</i> | |
| 6/2/04 | <i>St. Helvert</i> | INDEPENDENT REGULATORY REVIEW COMMISSION |
| | | ATTORNEY GENERAL (for Final Omitted only) |
| 6/2/04 | <i>C. La Brown</i> | LEGISLATIVE REFERENCE BUREAU (for Proposed only) |