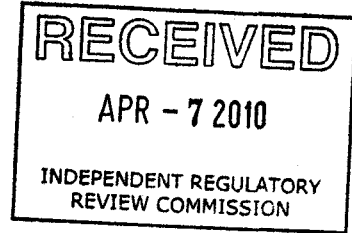


Regulatory Analysis Form

(Completed by Promulgating Agency)



SECTION I: PROFILE



(1) Agency:

Department of Corrections

(2) Agency Number: 19

Identification Number: 12

IRRC Number: 2830

(3) Short Title: Inmate Correspondence

(4) PA Code Cite: 37 Pa. Code § 93.2

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Randall N. Sears, Deputy Chief Counsel, 55 Utley Drive, Camp Hill, PA 17001
Telephone (717) 731-0444 Fax (717) 975-2217 Email RSears@State.PA.US

Secondary Contact: Kathleen Zwierzyna, Director, Standards, Practices and Security 50 Utley Drive
Camp Hill, PA 17001 Telephone (717) Fax (717) Email KZwierzyna@State.PA.US

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

X Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The regulation amends 37 Pa.Code § 93.2 to prohibit the introduction of obscene material, sexually explicit material and nudity into a state correctional institution unless the material has artistic, educational or medical value.

(9) Include a schedule for review of the regulation including:

- | | |
|---|--------------|
| A. The date by which the agency must receive public comments: | NA |
| B. The date or dates on which public meetings or hearings will be held: | NA |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | May 22, 2010 |
| D. The expected effective date of the final-form regulation: | May 22, 2010 |
| E. The date by which compliance with the final-form regulation will be required: | May 22, 2010 |
| F. The date by which required permits, licenses or other approvals must be obtained: | NA |

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

The regulation governs material permitted to be in the possession of an inmate. The Department continually reviews this type of issue.

Regulatory Analysis Form

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

The Act of April 9, 1929 (P.L. 177, No. 175), as amended.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation is necessary to address the concern raised by the Commonwealth Court of Pennsylvania in *Vance v. Beard*, No. 592 MD 2006 which held that the Department's current policy prohibiting inmates from possessing explicit sexual material and nudity was "of no effect."

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The amendment is necessary to clarify the Department's existing regulation which addresses obscene material, but is silent with respect to nudity and explicit sexual material. The Department issued an internal policy, notice of which was provided to all inmates, prohibiting correspondence containing nudity and explicit sexual material. The Commonwealth Court; however, declared the Department's internal policy to be "of no effect" because it was not promulgated through the process set forth in the Commonwealth Documents Law. The introduction of nudity and explicit sexual material into the state correctional institutions will undercut the sex offender programs, which do not allow sex offenders to view such materials because once the materials are introduced into the system there is no effective way of preventing inmates from passing them on to other inmates, including minors. Additionally, in *Brittain v. Beard* ___ Pa. ___, 974 A.2d 479 (2009), the Pennsylvania Supreme Court determined that an inmate did not prove that the Department's prohibition of nudity and explicit sexual material violated

Regulatory Analysis Form

the First Amendment.

The regulation will benefit the general public by creating a prison atmosphere that is more conducive to inmate rehabilitation thus assisting in the reduction of crime. The regulation will benefit prison staff by removing material that the Department believes can be used to harass staff.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

N/A

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

The regulation affects persons who publish and send to inmates material containing nudity, explicit sexual material or obscene material by preventing inmates from having such publications mailed to state correctional institutions. The regulation affects persons who send to inmates correspondence containing nudity, (such as nude photographs), explicit sexual material or obscene material in that such material will be confiscated in the mailrooms of the various state correctional institutions and not furnished to the inmate.

(16) 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.

Department staff, inmates, and persons who publish or send to inmates material containing nudity, explicit sexual material or obscene material will have to comply with the regulation. The Department currently houses approximately 52,000 inmates and employs approximately 16,000 staff members. The number of persons who might send material containing nudity, explicit sexual material and obscenity to inmates is unknown.

Regulatory Analysis Form

SECTION III: COST AND IMPACT ANALYSIS

(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. Explain how the dollar estimates were derived.

The regulation should be cost neutral as Department policy has prohibited obscene material, explicit sexual material and nudity for several years.

(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. Explain how the dollar estimates were derived.

The regulation does not affect local governments.

(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. Explain how the dollar estimates were derived.

The regulation should be cost neutral as Department policy has prohibited obscene material, explicit sexual material and nudity for several years. There are no costs for state government since the enforcement of this practice resides with existing mailroom staff who already are required to inspect the mail for various types of contraband.

Regulatory Analysis Form

(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	0	0	0	0	0	0
Local Government						
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community	0	0	0	0	0	0
Local Government						
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government						
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

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

Program	FY -3	FY -2	FY -1	Current FY
DOC - SCI	\$1,154,473,000	\$1,313,674,000	\$1,311,949,000	\$1,308,169,000

Regulatory Analysis Form

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The introduction of nudity and explicit sexual material into the state correctional institutions will undercut the sex offender programs, which do not allow sex offenders to view such materials because once the materials are introduced into the system there is no effective way of preventing inmates from passing them on to other inmates, including minors. Additionally, in *Brittain v. Beard* ___ Pa. ___, 974 A.2d 479 (2009), the Pennsylvania Supreme Court determined that an inmate did not prove that the Department's prohibition of nudity and explicit sexual material violated the First Amendment.

The regulation will also benefit the general public by creating a prison atmosphere that is more conducive to inmate rehabilitation thus assisting in the reduction of crime. The regulation will benefit prison staff by removing material that the Department believes can be used to harass staff.

The benefits of the regulation can be achieved without creating any additional costs.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The Department has not received input from members of the general public or any advisory council. Several inmates expressed displeasure with the Department policy that prohibited nudity, obscenity and explicit sexual material, but did not indicate specific, credible adverse impacts.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Department considered prohibiting only sex offenders and minors from possessing obscenity, explicit sexual materials; however this alternative was rejected as there is no practical way to prevent the dissemination of such material once it is admitted into a state correctional institution. The regulation is the least burdensome alternative to achieve the desired prohibition.

Regulatory Analysis Form

(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 regulations.

There are no applicable federal standards. The Federal Bureau of Prisons; however, has a similar restriction.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

A majority of states and the Federal Bureau of Prisons have similar prohibitions against obscenity, explicit sexual material and nudity. The regulation will not affect Pennsylvania's competitiveness with other states.

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

The regulation will not affect other Department of Corrections regulations.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The regulation will not create any additional legal, accounting, or consulting procedures or additional reporting, recordkeeping or other paperwork.

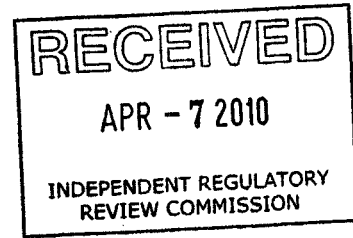
Regulatory Analysis Form

(28) 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 regulation does not contain special provisions.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)



DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>Department of Corrections _____ (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>19-12</u></p> <p>DATE OF ADOPTION: <u>2/23/10</u></p> <p>BY: <u>[Signature]</u></p> <p>TITLE: <u>Secretary</u></p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u>[Signature]</u></p> <p>Andrew C. Clark MAR 29 2010</p> <p>_____ DATE OF APPROVAL</p> <p>Deputy General (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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NOTICE OF FINAL-OMITTED RULEMAKING WITHOUT PUBLICATION AS PROPOSED

DEPARTMENT OF CORRECTIONS

37 Pa. Code Chapter 93
State Correctional Institutions and Facilities

§ 93.2 Inmate Correspondence

RULES AND REGULATIONS

DEPARTMENT OF CORRECTIONS

(37 PA. CODE § 93.2)

Inmate Correspondence

The Pennsylvania Department of Corrections (Department) amends Title 37 Pennsylvania Code by adopting the regulation set forth in Annex A pursuant to the authority conferred the Act of April 9, 1929 (P.L. 177, No. 175), as amended.

Omission of Proposed Rulemaking

Notice of proposed rulemaking is omitted in accordance with § 204 (3) of the Commonwealth Documents Law (45 P.S. § 1204 (3)) and 1 Pa. Code § 7.4 (3) because the Department has found for good cause that under the circumstances the issuance of a notice of proposed rulemaking is impracticable, unnecessary and contrary to the public interest. The regulation amends the Department's existing inmate correspondence regulation to clarify that inmates are not permitted to receive correspondence containing nudity, explicit sexual material or obscene material. The regulation provides an exception for artistic, literary, educational and scientific materials. The amendment is necessary to clarify the Department's existing regulation which addresses obscene material, but is silent with respect to nudity and explicit sexual material. The Department issued an internal policy, notice of which was provided to all inmates, prohibiting correspondence containing nudity and explicit sexual material. The Commonwealth Court; however, declared the Department's internal policy to be "of no effect" because it was not promulgated through the process set forth in the Commonwealth Documents Law.

The Department, for good cause, finds that notice of proposed rulemaking is impracticable, unnecessary and contrary to the public interest. The effect of the Commonwealth Court's decision will be to permit inmates to obtain nudity and explicit sexual material until the regulation can be amended. The Department intends to amend the regulation because it believes that allowing inmates to possess nudity and explicit sexual material is contrary to its effort to rehabilitate inmates, particularly sex offenders. Additionally, the possession of explicit sexual material by minors is a crime. The Department's inmate population includes many minors. Providing notice of proposed rulemaking also will allow nudity and explicit sexual material into state correctional institutions for a time and then require that the material be removed. This will create an extremely hazardous situation.

Both inmates and staff in Pennsylvania's prisons are experiencing a higher amount of tension than is normal largely because the Commonwealth currently is incarcerating over 52,000 inmates; the largest population in Department of Corrections' history. Inmates also are tense concerning the planned temporary relocation of 2000 inmates to Virginia and Michigan. Additionally, the economic downturn has strained the Department's budget and new personnel are not being hired at the same rate as those who leave employment, creating additional work for the remaining personnel. The increase in inmate and staff tensions, coupled with the population level, increases the risk of a prison riot. Allowing inmates to possess nudity and explicit sexual material on a temporary basis while a notice of proposed rulemaking is published, will mean that Department employees will have to sweep the prisons and confiscate all newly introduced nudity and explicit sexual material once the regulation is amended. This will further strain employee resources and morale. Further, inmate frustration will increase when what has been returned temporarily is removed giving rise to more inmate grievances and potentially resulting in aggressive actions toward and already burdened staff. Finally, permitting inmates to possess nudity, explicit sexual material and obscene material temporarily will result in some inmates expending funds for subscriptions which they will be unable to receive once the regulation is amended.

The introduction of nudity and explicit sexual material into the state correctional institutions will also undercut the sex offender programs, which do not allow sex offenders to view such materials because once the materials are introduced into the system there is no effective way of preventing inmates from passing them on to other inmates, including minors. The introduction of nudity and explicit sexual material will also cause confusion for overburdened mailroom staff that has been trained not to permit inmates to possess such material. Additionally, in *Brittain v. Beard* ___ Pa. ___, 974 A.2d 479 (2009), the Pennsylvania Supreme Court determined that an inmate did not prove that the Department's prohibition of nudity and explicit sexual material violated the First Amendment. Finally, all inmates will be given notice of the amendment to the regulation through postings placed in the libraries and housing units of state correctional institutions.

Purpose

The purpose of the regulation is to amend the Department's inmate correspondence regulation to prohibit inmates from receiving nudity and explicit sexual material. The amendment is necessary to preserve the Department's current prohibition which was found to be "of no effect" by the Commonwealth Court because it was not promulgated according to the process set forth in the Commonwealth Documents Law. The prohibition is intended to further the Department's efforts to rehabilitate inmates and reduce and prevent crime.

Affected Individuals

The regulation affects Department staff, inmates, and persons who publish or send to inmates material containing nudity, explicit sexual material or obscene material. The regulation affects Department staff and inmates by preserving the Department's existing policy which prohibits inmates from receiving or possessing nudity, explicit sexual material and obscene material. The regulation affects persons who publish and send to inmates material containing nudity, explicit sexual material or obscene material by preventing inmates from having such publications mailed to state correctional institutions. The regulations affect persons who send to inmates correspondence containing nudity, (such as nude photographs), explicit sexual material or obscene material in that such material will be confiscated in the mailrooms of the various state correctional institutions and not furnished to the inmate.

Fiscal Impact and Paperwork Estimates

The regulation will be revenue neutral as it simply preserves existing Department practice. The regulation is not expected to result in an increased amount of paperwork.

Public Comment

Although the regulation is being adopted without publication as proposed rulemaking, interested persons are invited to submit written comments, suggestions or objections regarding the regulation to the Department at the following address: Randall N. Sears, Deputy Chief Counsel, 55 Utley Drive, Camp Hill, PA 17011

Persons with a disability who require an auxiliary aid or service may submit comments by using the AT&T Relay Service at 1-800-654-5984 (TDD Users) or 1-800-654-5988 (voice users).

Effective Date

The regulation will become effective upon publication in the *Pennsylvania Bulletin*.

Sunset Date

No sunset date has been assigned.

Contact Person

The official responsible for the final form rulemaking is Randall N. Sears, Deputy Chief Counsel, 55 Utley Drive, Camp Hill, PA 17011.

Regulatory Review Act

Under § 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)) on April 7, 2010 the Department submitted a copy of this regulation, with proposed rulemaking omitted, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Judiciary Committee and the Senate Judiciary Committee. On the same date, the regulation was submitted to the Office of the Attorney General for review and approval pursuant to the Commonwealth Attorneys Act.

In accordance with § 5.1 (j.1) and (j.2) of the Regulatory Review Act, this regulation was *deemed/approved* by the Committees on . The IRRC met on and approved the regulation.

In addition to submitting the final-omitted rulemaking, the Department has provided the IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of the form is available to the public upon request.

Order

The Department finds:

(a) Notice of proposed rulemaking is omitted in accordance with § 204 (3) of the Commonwealth Documents Law (45 P.S. § 1204) and 1 Pa.Code § 7.4 (3) because the Department has made a good cause finding that, under the circumstances, the issuance of a notice of proposed rulemaking is impracticable, unnecessary and contrary to the public interest. The regulation amends the Department's existing inmate correspondence regulation to clarify that inmates are not permitted to receive correspondence containing nudity, explicit sexual material or obscene material. The regulation provides an exception for artistic, literary, educational and scientific materials. The amendment is necessary to clarify the Department's existing regulation which addresses obscene material, but is silent with respect to nudity and explicit sexual material. The Department issued an internal policy, notice of which was provided to all inmates, prohibiting correspondence containing nudity and explicit sexual material. The Commonwealth Court; however, declared the Department's internal policy to be "of no effect" because it was not promulgated through the process set forth in the Commonwealth Documents Law.

The Department, for good cause, finds that notice of proposed rulemaking is impracticable, unnecessary and contrary to the public interest. The effect of the Commonwealth Court's decision will be to permit inmates to obtain nudity and explicit sexual material until the regulation can be amended. The Department intends to amend the regulation because it believes that allowing inmates to possess nudity and explicit

sexual material is contrary to its effort to rehabilitate inmates, particularly sex offenders. Additionally, the possession of explicit sexual material by minors is a crime. The Department's inmate population includes many minors. Providing notice of proposed rulemaking also will allow nudity and explicit sexual material into state correctional institutions for a time and then require that the material be removed. This will create an extremely hazardous situation.

Both inmates and staff in Pennsylvania's prisons are experiencing a higher amount of tension than is normal largely because the Commonwealth currently is incarcerating over 52,000 inmates; the largest population in Department of Corrections' history. Inmates also are tense concerning the planned temporary relocation of 2000 inmates to Virginia and Michigan. Additionally, the economic downturn has strained the Department's budget and new personnel are not being hired at the same rate as those who leave employment, creating additional work for the remaining personnel. The increase in inmate and staff tensions, coupled with the population level, increases the risk of a prison riot. Allowing inmates to possess nudity and explicit sexual material on a temporary basis while a notice of proposed rulemaking is published, will mean that Department employees will have to sweep the prisons and confiscate all newly introduced nudity and explicit sexual material once the regulation is amended. This will further strain employee resources and morale. Further, inmate frustration will increase when what has been returned temporarily is removed giving rise to more inmate grievances and potentially resulting in aggressive actions toward and already burdened staff. Finally, permitting inmates to possess nudity, explicit sexual material and obscene material temporarily will result in some inmates expending funds for subscriptions which they will be unable to receive once the regulation is amended.

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(b) That the adoption of this regulation in the manner provided by this Order is necessary and appropriate for the administration of state correctional institutions under the jurisdiction of the Department of Corrections.

The Department acting pursuant to the Act of April 9, 1929 (P.L. 177, No. 175), as amended, orders:

(a) The regulation of the Department is amended to read as set forth in Annex A of this Order.

(b) The Secretary of the Department shall submit this Order and Annex A to the Offices of General Counsel and Attorney General for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify and deposit this Order and Annex A with the Legislative Reference Bureau as required by law.

(d) This Order shall take effect upon publication in the *Pennsylvania Bulletin*.

ANNEX A

§ 93.2. Inmate correspondence

...

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

(2) Correspondence containing threatening or OBSCENE, OR EXPLICIT SEXUAL MATERIAL, OR NUDITY as well as correspondence containing criminal solicitation or furthering a criminal plan or institution misconduct is prohibited.

...

(g) *Incoming publications*.

...

(iv) Contains NUDITY, OBSCENE MATERIAL OR EXPLICIT SEXUAL MATERIALS AS DEFINED IN PARAGRAPH (I).

...

(H) *EXCEPTION*. CORRESPONDENCE AND PUBLICATIONS CONTAINING NUDITY, EXPLICIT SEXUAL MATERIAL OR OBSCENE MATERIAL AS DEFINED IN PARAGRAPH (I), MAY BE PERMITTED IF THE MATERIAL HAS ARTISTIC, EDUCATIONAL, OR MEDICAL VALUE. THE FOLLOWING CONSIDERATIONS SHALL GUIDE THE DEPARTMENT IN DETERMINING WHETHER TO PERMIT NUDITY, EXPLICIT SEXUAL MATERIAL OR OBSCENE MATERIAL:

(I) IS THE MATERIAL IN QUESTION CONTAINED IN A PUBLICATION THAT REGULARLY FEATURES SEXUALLY EXPLICIT CONTENT INTENDED TO RAISE LEVELS OF SEXUAL AROUSAL AND/OR TO PROVIDE SEXUAL GRATIFICATION? IF SO, THEN THE PUBLICATION SHALL BE DENIED FOR INMATE POSSESSION; OR

(II) IF NOT, IS IT LIKELY THAT THE CONTENT IN QUESTION WAS PUBLISHED OR PROVIDED WITH THE PRIMARY INTENTION TO RAISE LEVELS OF SEXUAL AROUSAL AND/OR TO PROVIDE SEXUAL

GRATIFICATION? IF SO, THEN THE PUBLICATION OR CONTENT SHALL BE DENIED FOR INMATE POSSESSION.

(I) *DEFINITIONS.* THE FOLLOWING WORDS AND TERMS, WHEN USED IN THESE REGULATIONS HAVE THE FOLLOWING MEANINGS:

(J) "EXPLICIT SEXUAL MATERIAL." ANY BOOK, PHOTOGRAPH, PAMPHLET, MAGAZINE, PRINTED MATTER, SOUND RECORDING, EXPLICIT AND DETAILED VERBAL DESCRIPTION, NARRATIVE ACCOUNT OR OTHER MATERIAL OF:

(A) SEXUAL CONDUCT, WHICH MEANS ACTS OF MASTURBATION, HOMOSEXUALITY, SEXUAL INTERCOURSE, SEXUAL BESTIALITY OR PHYSICAL CONTACT WITH A PERSON'S CLOTHED OR UNCLOTHED GENITALS, PUBIC AREA, BUTTOCKS OR, IF SUCH PERSON BE A FEMALE, BREAST;

(B) SADOMASOCHISTIC ABUSE, WHICH MEANS FLAGELLATION OR TORTURE BY OR UPON A PERSON CLAD IN UNDERGARMENTS, A MASK OR BIZARRE COSTUME, OR THE CONDITION OF BEING FETTERED, BOUND OR OTHERWISE PHYSICALLY RESTRAINED ON THE PART OF ONE SO CLOTHED; OR

(C) SEXUAL EXCITEMENT, WHICH MEANS THE CONDITION OF THE HUMAN MALE OR FEMALE GENITALS WHEN IN A STATE OF SEXUAL STIMULATION OR AROUSAL.

(II) "NUDITY." THE SHOWING OF THE HUMAN MALE OR FEMALE GENITALS, PUBIC AREA, OR BUTTOCKS WITH LESS THAN A FULLY OPAQUE COVERING, OR THE SHOWING OF THE FEMALE BREAST WITH LESS THAN A FULLY OPAQUE COVERING OF ANY PORTION THEREOF BELOW THE TOP OF THE NIPPLE, OR THE DEPICTION OF COVERED MALE GENITALS IN A DISCERNIBLE TURGID STATE.

(III) "OBSCENE." ANY BOOK, PHOTOGRAPH, PAMPHLET, MAGAZINE, PRINTED MATTER, SOUND RECORDING, EXPLICIT AND DETAILED VERBAL DESCRIPTION, NARRATIVE ACCOUNT OR OTHER MATERIAL, IF:

(A) THE AVERAGE PERSON APPLYING CONTEMPORARY COMMUNITY STANDARDS WOULD FIND THAT THE SUBJECT MATTER TAKEN AS A WHOLE APPEALS TO THE PRURIENT INTEREST;

(B) THE SUBJECT MATTER DEPICTS OR DESCRIBES IN A PATENTLY OFFENSIVE WAY,

(1) ULTIMATE SEXUAL ACTS, NORMAL OR PERVERTED, ACTUAL OR SIMULATED, INCLUDING SEXUAL INTERCOURSE ANAL OR ORAL SODOMY AND SEXUAL BESTIALITY;

(2) PATENTLY OFFENSIVE REPRESENTATIONS OR DESCRIPTIONS OF MASTURBATION, EXECRATORY FUNCTIONS;

(3) IN A SEXUAL CONTEXT FLAGELLATION OR TORTURE UPON A NUDE PERSON OR ONE CLAD ONLY IN UNDERGARMENTS, A MASK OR BIZARRE COSTUME OR FETTERED, BOUND OR OTHERWISE PHYSICALLY RESTRAINED; OR

(4) LEWD EXHIBITION OF THE GENITALS.

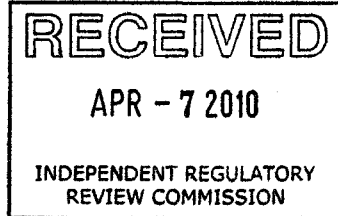
(I) CONSTRUCTION. THIS SECTION IS NOT INTENDED AND SHALL NOT BE INTERPRETED TO CREATE OR CONFER ANY RIGHTS IN ADDITION TO THOSE CREATED BY THE UNITED STATES CONSTITUTION, THE PENNSYLVANIA CONSTITUTION OR FEDERAL OR STATE STATUTES APPLICABLE TO THE DEPARTMENT OF CORRECTIONS.

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

I.D. NUMBER: 19-12
 SUBJECT: INMATE CORRESPONDENCE
 AGENCY: DEPARTMENT OF CORRECTIONS

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- X 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
4/7/10	<i>Anna Squigali</i>	HOUSE COMMITTEE ON JUDICIARY CHAIRMAN THOMAS CANTAGIRONE
4/7/10	<i>Patricia A. Tamayo</i>	
4/7/10	<i>P. Savel</i>	SENATE COMMITTEE ON JUDICIARY CHAIRMAN STEWART GREENLEAF
4/7/10	<i>Susan [unclear]</i>	
4/7/10	<i>K. Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
4-7-10	<i>M. Mummet</i>	ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)