

**State of California
Office of Administrative Law**

In re:
**Department of Corrections and
Rehabilitation**

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections:

Amend sections: 3006, 3134.1, 3135

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2015-0318-03

OAL Matter Type: Regular (S)

This action amends regulations concerning obscene materials in institutions, disallowed from institutions as contraband. It eliminates disparity among institutions regarding processing and clarify existing statutes on obscene materials in institutions. It amends the process for processing text-only publications by designating the Division of Adult Institutions (DAI) as the authority to place text-only publications on the Centralized List of Disapproved Publications. It adds language to prohibit materials and photographs indicating association with a Security Threat Group (STG).

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/30/2015.

Date: April 30, 2015



Mark Storm
Senior Attorney

For: DEBRA M. CORNEZ
Director

Original: Jeffrey Beard, Ph. D.
Copy: Timothy Lockwood

REGULAR

(See instructions on reverse)

For use by Secretary of State only.

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2014-0325-04	REGULATORY ACTION NUMBER 2015-0318-035	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

APR 30 2015

2:14 PM

2015 MAR 18 PM 1:54
OFFICE OF ADMINISTRATIVE LAW

NOTICE REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation	AGENCY FILE NUMBER (If any) 14-0011
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER 2014 142	PUBLICATION DATE 4-4-2014

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Obscene Material and Contraband	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT
AMEND 3006, 3134.1, and 3135
REPEAL
TITLE(S) <i>15 per agency request</i>

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
10/20/2014 to 11/10/2014 per agency request

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))

Effective on filing with Secretary of State

\$100 Changes Without Regulatory Effect

Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)

Fair Political Practices Commission

State Fire Marshal

Other (Specify) _____

7. CONTACT PERSON Rosie Ruiz	TELEPHONE NUMBER (916) 445-2244	FAX NUMBER (Optional) (916) 324-6075	E-MAIL ADDRESS (Optional) rosie.ruiz@cocr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Diana Toche</i>	DATE <i>3/13/15</i>
TYPED NAME AND TITLE OF SIGNATORY Diana Toche, Undersecretary (A), Administration and Offender Services	

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ENDORSED APPROVED

APR 30 2015

Office of Administrative Law

TEXT OF ADOPTED REGULATIONS

In the following, underline indicates new or additional text and ~~strikethrough~~ indicates deleted text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs and Parole

Chapter 1, Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

3006. Contraband.

Subsections 3006 – 3006(b) are unchanged.

Subsection 3006(c) is unchanged but shown as reference.

(c) Except as authorized by the institution head, inmates shall not possess or have under their control any matter which contains or concerns any of the following:

Subsection 3006(c) - 3006(c)(10) are unchanged:

Subsection 3006(c)(11) is amended to read:

(11) Catalogs, advertisements, brochures, and other commercial material ~~whose primary purpose is to sell a product(s) or service(s) and when taken as a whole, lacks serious literary, artistic, political, educational, or scientific value~~ which are obscene in nature as described in subsection (15) below.

Subsections 3006(c)(12) – 3006(c)(14) are unchanged.

Subsection 3006(c)(15) is unchanged but shown as reference.

(15) Obscene material and mail containing information concerning where, how, or from whom obscene material may be obtained.

Subsection 3006(c)(15)(A) is amended to read:

(A) Obscene material means material taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest; and is material which taken as a whole, depicts ~~or describes~~ sexual conduct; and which, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Subsection 3006(c)(15)(B) is unchanged but shown as reference.

(B) When it appears from the nature of the matter or the circumstances of its dissemination, distribution, or exhibition that it appeals to deviant sexual groups.

Subsections 3006(c)(15)(C) – 3006(c)(15)(C)(6) are amended to read:

(C) Material subject to the tests in paragraphs (A) or (B) includes, but is not limited to ~~material~~ pictures or images that depict:

(C)(1) ~~Depicts, displays, or describes~~ pPenetration of the vagina or anus, or contact between the mouth and the genitals.

(C)(2) ~~Depicts, displays, or describes~~ bBestiality, sadomasochism, or an excretory function including urination, defecation, or semen.

(C)(3) ~~Portrays the n~~ Nudity of a minor, or person who appears to be under 18 years old.

(C)(4) ~~Portrays e~~ Conduct which appears to be non-consensual behavior.

(C)(5) ~~Portrays e~~ Conduct which is or appears to be forceful, threatening, or violent.

(C)(6) ~~Portrays e~~ Conduct where one of the participants is a minor, or appears to be under 18 years old.

New subsection 3006(c)(15)(D) is adopted to read:

(D) Text-only material shall not be considered obscene unless designated by the Division of Adult Institutions (DAI). DAI shall then place the designated text-only material on the Centralized List of Disapproved Publications, subject to subsection 3134.1(e).

Subsections 3006(c)(16) – 3006(c)(17) are unchanged.

Subsection 3006(c)(17)(A) is amended to read:

Sexually explicit material shall be defined as material that shows the frontal nudity of either gender, including the fully exposed female breast(s) and/or the genitalia of either gender.

Subsections 3006(c)(17)(B) – 3006(c)(18) are unchanged.

New subsection 3006(c)(19) is adopted to read:

(19) Written materials or photographs that indicate an association with validated STG members or associates, as described in subsections 3378.2(b)(5)-(6).

Subsection 3006(d) is unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2600, 2601, 2772, 2790, 4574, 4576, 5030.1, 5054 and 5057, Penal Code.

Subchapter 2. INMATE RESOURCES

Article 4. Mail

3134.1. Processing of Publications.

Subsections 3134.1(a) – 3134.1(c) are unchanged.

Subsection 3134.1(d) is amended to read:

(d) Notifications, to Publisher, to the Inmate, and to the Division of Adult Institutions (DAI) for Disapproval of Publication. When incoming books, magazines, or publications to an inmate are withheld or disallowed on a temporary basis by the institution pending approval from DAI, a letter shall be sent by the institution to the publisher explaining why the item was denied. A book, magazine, or publication denied to an inmate(s) based on a violation of departmental regulation or policy, and that has is not previously been included on a the current eCentralized HList of banned Disapproved pPublications (Centralized List) pursuant to subsection 3134.1(e), shall only require one notification letter per institution to be sent to the publisher. At a minimum the letter must include the reason why the book, magazine, or publication was denied, the names and CDCR number for all inmates, the applicable CCR section that the publication violates, and a notice to the Publisher of their right to appeal per subsection 3137(c). The letter must be sent within 15 calendar days of the determination to disallow the book, magazine or publication, with a copy of the notification letter and supporting documents to be retained by the facility for a minimum of seven years. The institution shall also notice the Division of Adult Institutions to request inclusion of the disallowed publication on the centralized list of banned publications. W

Concurrent to the letter to the publisher, when incoming or outgoing publications addressed to or being sent by an inmate are withheld or disallowed, the inmate shall be informed institution shall also notify the inmate addressee via CDCR Form 1819 (Rev. 08/08), Notification of Disapproval-Mail/Packages/Publications (Rev. 6/98), which is incorporated by reference. The CDCR Form 1819 shall include the reason, disposition, name of official disallowing the publication, and the name of the official to whom an appeal can be directed.

The institution shall also concurrently notify DAI and request that DAI affirm or deny the withholding of the temporarily disallowed publication. DAI shall provide the decision within 30 calendar days of receiving the request. If DAI affirms the withholding of the publication, disallowance of the publication shall become permanent. If DAI denies the withholding of the publication, the institution shall deliver the publication to the inmate within 15 calendar days, upon receipt of DAI's decision.

For periodicals, as defined in subsection 3133(a)(3), the DAI may include a periodical on the Centralized List, in accordance with subsection 3134.1(e), provided that all issues of the publication for twelve consecutive months violate departmental regulation or policy. However, an institution may disallow individual issues of a periodical in accordance with this subsection. The disallowance of individual issues of a periodical shall become permanent, as to those issues only, if DAI affirms an institution's decision to temporarily withhold/disallow the individual issues. If the DAI denies the institution's decision to temporarily withhold individual issues of a periodical, the institutional shall deliver those issues to the inmate within 15 calendar days upon receipt of DAI's decision.

Subsection 3134.1(e) is amended to read:

(e) Centralized List of Disapproved Publications. The Division of Adult Institutions shall distribute to each institution a e Centralized † List of † Disapproved † Publications that are prohibited as contraband. Examples of publications that would be included on the e Centralized † List would include, but not be limited to, publications that contain ~~sexual content or nudity~~, obscene material as described in subsection 3006(c)(15), sexually explicit images that depict frontal nudity as described in subsection 3006(c)(17)(A) warfare or weaponry, bomb making instructions, or STG written materials or photographs, as described in subsections 3378.2(b)(5)-(6). etc. Publications that are enumerated on ~~this e the~~ Centralized † List are not allowed in any institution. Local institutions may not add items to the e Centralized † List. When a publication is placed on the e Centralized † List, the Division of Adult Institutions shall send a letter to the publisher explaining why the publication was excluded. At a minimum, the letter must include the reason why the publication is excluded, the applicable CCR section that the publication violates, and a notice to the Publisher of its right to appeal per CCR subsection 3137(c). The letter must be sent within 15 calendar days of the determination to disapprove the publication, with a copy of the notification letter and supporting documents to be retained by the facility for a minimum of seven years.

Note: Authority cited: section 5058, Penal Code. Reference: Sections 2601 and 4570, Penal Code; Procunier v. Martinez, 416 U.S. 396; and Bell v. Wolfish, 99 S. Ct. 1861.

3135. Disturbing or Offensive Correspondence.

Subsections 3135(a) – 3135(c)(13) are unchanged.

Subsection 3135(c) is unchanged but shown as reference.

(c) Certain correspondence, including but not limited to the following, is disallowed, regardless of values or morals, in order to ensure the safety and security of the institution/facility:

New subsection 3135(c)(14) is adopted to read:

(14) Contains written materials or photographs that indicate an association with validated STG members or associates, as described in subsections 3378.2(b)(5)-(6).

Subsection 3135(d) is amended to read:

(d) Inmates shall not possess or have under their control obscene material and/or mail containing information concerning where, how, or from whom obscene material may be obtained. Obscene material means catalogs, advertisements, brochures, and/or material taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest. It is material which taken as a whole, depicts ~~or describes~~ sexual conduct, and lacks serious literary, artistic, political, or scientific value. Additionally, material is considered obscene when it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition that it appeals to deviant sexual groups. Material subject to the test of the above includes, but is not limited to, pictures or images that depict:

Subsections 3135(d)(1) – 3135(d)(7) are amended to read:

(1) ~~Portrays~~ s Sexually explicit materials, which are defined as materials that show frontal nudity including personal photographs, drawings, and magazines and pictorials that show frontal nudity.

(2) ~~Portrays, displays, describes, or represents~~ p Penetration of the vagina or anus, or contact between the mouth and genitals.

(3) ~~Portrays, displays, describes, or represents~~ b Bestiality, sadomasochism, or an excretory function, including urination, defecation, or semen.

(4) ~~Portrays, displays, describes, or represents~~ n Nudity of a minor, or person who appears to be under 18 years old.

(5) ~~Portrays, displays, describes, or represents~~ c Conduct that appears to be non-consensual behavior.

(6) ~~Portrays, displays, describes, or represents~~ e Conduct that appears to be forceful, threatening, or violent.

(7) ~~Portrays, displays, describes, or represents~~ s Sexual conduct where one of the participants is a minor, or appears to be under 18 years old.

A sentence is added following subsection 3135(d)(7) and is adopted to read:

Text-only material shall not be considered obscene unless designated by the Division of Adult Institutions (DAI). DAI shall then place the designated text-only material on the Centralized List of Disapproved Publications, subject to subsection 3134.1(e).

Subsection 3135(e) is unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 5054, Penal Code; and Procunier v. Martinez, 416 U.S. 396.

FINAL STATEMENT OF REASONS:

The Initial Statement of Reasons (ISOR) is incorporated by reference.

UPDATES TO THE INITIAL STATEMENT OF REASONS

Notice of Change to Regulations (NCR) #14-05 was published in the California Notice Register on April 4, 2014, and mailed the same day to persons who requested to be placed on the Department's mailing list to receive notification of rulemaking actions. These documents were also posted on the California Department of Corrections and Rehabilitation (CDCR or the Department) Internet and Intranet websites. The public hearing was held on June 17, 2014, at which two speakers provided oral comment. These comments are discussed below under the heading, "*Summaries and Responses to Public Hearing Comments.*" The Department also received 47 written comments from people and/or organizations during the comment period and are discussed below under the heading, "*Summaries and Responses to Written Public Comments.*" Resulting in part from these comments, the Department recognized the need to provide additional clarification of certain provisions contained in the regulatory text. These changes and reasons for them are found below under the heading, "*Changes to the Text of Proposed Regulations.*"

A renounce of the amended text was distributed on October 20, 2014, to the commenters who provided comments during the initial public comment period and was posted on the Department's Internet and Intranet websites the same day. The Department accepted public comments from this date through November 10, 2014. The Department received comments from 49 people and/or organizations during this comment period. These comments are discussed below under the heading, "*Comments received during the 15-Day Renounce.*"

The Specific Purpose and Rationale of new subsection 3006(c)(19), as described in the ISOR, is updated in the Final Statement of Reasons (FSOR) to eliminate erroneous text and to clarify the process for determining an association with a validated member or associate of a Security Threat Group (STG). The updated description deletes references to "groups that are deviant in nature, opposed to authority and society" and provides more specifically that subsection 3006(c)(19) disallows only written materials and photographs that indicate an association with STGs. Also, consistent with new CDCR regulations concerning STGs, the citations in subsection 3006(c)(19) to STG written materials and photographs are changed from subsections 3378(c)(8)(C)-(D) to subsections 3378.2(b)(5)-(6).

Subject to the FSOR here, **Subsection 3006(c)(19) is adopted** to establish that inmates shall also not possess or have under their control written material or photographs that indicate an association with a validated member or associate of an STG, as described in subsections 3378.2(b)(5)-(6). This change is necessary to ensure the safety and security of the institutions by disallowing publications that indicate an association with STGs, which is consistent with existing regulations. References to subsections 3378.2(b)(5) and 3378.2(b)(6) are included for a description of corresponding Department regulations concerning the process for determining an association with a validated member or associate of an STG.

The Specific Purpose and Rationale of new subsection 3134.1(e), as described in the ISOR, is updated in the FSOR to eliminate erroneous text and to clarify the process for determining an association with a validated member or associate of an STG. The updated description deletes references to "groups that are deviant in nature, opposed to authority and society" and provides more specifically that subsection 3134.1(e) authorizes placement on the Centralized List of Disapproved Publications (Centralized List) of written materials and photographs that indicate an association with STGs. Also, consistent with new CDCR regulations concerning STGs, the term "recruitment material" is deleted from subsection 3134.1(e) and is replaced with the text "written materials or photographs, as described by subsections 3378.2(b)(5)-(6)." This change is needed for clarity, by specifying the exact material that will be reviewed by staff, as it pertains to STGs, for placement on the Centralized List.

Subject to the FSOR here, **Subsection 3134.1(e) is adopted** to establish that the Centralized List may list written material or photographs that indicate an association with a validated member or associate of an STG, as described in subsections 3378.2(b)(5)-(6). This change is necessary to ensure the safety and security of the institutions by authorizing a statewide disallowance of publications that indicate an association with STGs, which is consistent

with existing regulations. References to subsections 3378.2(b)(5) and 3378.2(b)(6) are included for a description of corresponding Department regulations concerning the process for determining an association with a validated member or associate of an STG.

The Specific Purpose and Rationale of new subsection 3135(c)(14), as described in the ISOR, is updated in the FSOR to eliminate erroneous text and to clarify the process for determination an associate with a validated member or associate of an STG. The updated description deletes references to “propaganda of groups that are deviant in nature, opposed to authority and society” and provides more specifically that subsection 3135(c)(14) disallows only written materials and photographs that indicate an association with STGs. Also, consistent with new CDCR regulations concerning STGs, the citations in subsection 3135(c)(14) to STG written materials and photographs are changed from subsections 3378(c)(8)(C)-(D) to subsections 3378.2(b)(5)-(6).

Subject to the FSOR here, **Subsection 3135(c)(14) is adopted** to establish that correspondence containing written material or photographs that indicate an association with a validated member or an associate of an STG, as described in subsections 3378.2(b)(5)-(6), are disallowed from the facility, per subsection 3135(c)(14). References to subsections 3378.2(b)(5) and 3378.2(b)(6) are included for a description of corresponding Department regulations concerning the process for determining an association with a validated member or associate of an STG. These changes are necessary to preserve the safety and security of the institution by disallowing publications containing STG materials, and to provide clarity to CDCR staff and inmates concerning the specific items (written material and photographs) that staff will review when making a determination about an inmate’s association with a validated member or associate of an STG.

DETERMINATION

The Department has determined that no reasonable alternatives considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected private persons, than the action proposed.

The Department has determined that this action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the CDCR’s initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

The Department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business or small businesses than the action planned.

ASSESSMENTS, MANDATES, AND FISCAL IMPACT

The Department has determined that this action will not have an impact on the creation of new or the elimination of existing jobs or businesses in the state of California as the proposed regulations affects the internal management of prisons only.

The Department determines this action has no fiscal impact on State or local government; or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses or have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states; or on housing costs.

FORMS INCORPORATED BY REFERENCE

The CDCR Form 1819 (Rev. 08/08), Notification of Disapproval-Mail/Packages/Publications, is referred to throughout the proposed regulation text and has been made available to the public throughout the rulemaking process, and will continue to be made available upon request.

The Department uses over 15,000 regulatory forms, including the CDCR Form 1819, and due to this high volume, it would be unduly cumbersome, expensive, and impractical for the Department to print all these forms in the Title 15; therefore the Department has always incorporated forms by reference into the Title 15 in their relevant subsections, except in specific circumstances which no longer apply in the case of these regulations.

CHANGES TO THE TEXT OF PROPOSED REGULATIONS

Non-substantive formatting changes and typographical errors and/or omissions are corrected throughout the document to for clarity.

Subsection 3006(c)(11) is amended to delete the descriptive phrase “whose primary purpose is to sell a product(s) or service(s) and when taken as a whole, lacks serious literary, artistic, political, educational, or scientific value” and replace with the text “other commercial” and a reference to subsection 3006(c)(15)(A) in regards to catalogs, advertisements, and brochures. This change is necessary in order to provide a complete definition of obscene material as provided for by Penal Code (PC) which may be contained within these written materials.

Subsection 3006(c)(19) is amended to update reference to subsections 3378(c)(8)(C)-(D) in regards to written materials or photographs that indicate an association with a validated STG member or associate. This change is needed as subsections 3378(c)(8)(C)-(D) were renumbered 3378.2(b)(5)-(6) in the Department’s recent regulatory action concerning STGs, Notice Register No. Z2014-0121-13.

Subsection 3134.1(d) is amended to clarify the notification process when disapproving publications. This is a three-part process involving simultaneous notification to the Publisher, the Inmate, and Division of Adult Institutions (DAI).

In regards to the temporary withholding an item, additional text “pending approval from DAI” is added to ensure understanding that the institution’s temporary withholding/disallowing of a publication is contingent upon DAI Headquarter approval as provided by the obscene material determination. In regards to the timeframe within which DAI must make this obscene material determination, the additional text “DAI shall provide the decision within 30 calendar days of receiving the request” is added to clarify that an item may not be withheld on a temporary basis for more than 30 days. Additional text is also added to ensure understanding that if DAI affirms the institution’s decision to temporarily withhold the publication, the disallowance will become permanent and the publication will be placed on the Centralized List, and that if DAI denies the institution’s decision to temporarily withhold the publication, the temporarily withheld publication must be delivered to the inmate within 15 calendar days of DAI’s determination. These changes are necessary to clarify that all decisions to temporarily disallow an item are subject to DAI Headquarters approval, and to also limit the timeframe that an item may be temporarily withheld by the institution.

In addition, new language is added to ensure understanding that an institution’s decision to temporarily withhold/disallow an individual issue of a periodical may become permanent if DAI Headquarters affirms the decision and determines the issue meets the criteria for an obscene material designation as provided for by PC. For additional clarity, new text establishes that the Department may permanently disallow a periodical if the publication has violated Department regulation, in accordance with PC, for 12 consecutive months. It is necessary to establish that a publication was in violation of PC and Department policy for 12 consecutive months in order to ensure that issues of a publication consistently contain contraband and placement on the Centralized List is accordingly appropriate.

Also for added clarity, reference to subsection 3133(a)(3) is added to provide the definition of a publication (periodical) and reference to subsection 3134.1(e) is added to identify the standards for including publications on the Centralized List.

Subsection 3134.1(e) is amended to delete the term “recruitment material” and replace it with the text “written materials or photographs, as described in subsections 3378.2(b)(5)-(6).” This change is needed for clarity, by specifying the exact material that will be reviewed by staff, as it pertains to STGs, for placement on the Centralized List.

Because subsections 3378(c)(8)(C)-(D) concerning STGs were recently renumbered in the Department’s regulatory action concerning STGs to 3378.2(b)(5)-(6), the proposed regulations are updated accordingly. In addition, for added clarity, the citation for the subsection concerning frontal nudity is corrected to read 3006(c)(17)(A) as the original Notice for these proposed regulations provided an incomplete citation of 3006(c)(17).

Subsection 3135(c)(14) is amended to update reference to subsections 3378(c)(8)(C)-(D) in regards to written materials or photographs that indicate an association with a validated STG member or associate. This change is needed as subsections 3378(c)(8)(C)-(D) were renumbered 3378.2(b)(5)-(6) in the Department’s recent regulatory action concerning STGs, Notice Register No. Z2014-0121-13.

SUMMARIES AND RESPONSES TO PUBLIC HEARING COMMENTS

Public Hearing: Held June 17, 2014, at 10:00 a.m.

Two speakers provided oral comments at the hearing.

Speaker #1 reads verbatim her previously submitted written comment, see Commenter #13 under “*Summaries and Responses to Written Public Comment*” below.

Response: See Commenter 13, Responses A through J.

Speaker #2: Speaker states that the proposed regulations should be rejected because they deny First Amendment Rights and are in conflict with Federal Law. Speaker quotes from recently filed litigation wherein the court rules the warden of a correctional institution “may not reject a publication solely because its content is religious, philosophical, political, social, or sexual, or because its content is unpopular or repugnant.”

Speaker states that it is crucial for prisoners to study, to read, and to communicate with others outside of the prison, and that it is especially important that inmates are able to read books on the history of working-class struggles, including periodicals such as *The Militant*, *Prison Legal News*, *Prison Focus*, and the *San Francisco Bay View*, as these books and newspapers speak to the conditions prisoners face including the conditions that brought them to prison, and further give inmates hope that things and society can be changed. Speaker states that this compassion is absent from CDCR’s regulations, including the proposed regulations, as well as the pending Security Threat Group regulations, which include the Step-Down program. Speaker states that what CDCR is saying through its proposed regulations is that to get privileges inmates have to actually agree with and go along, with the repressive conditions that exist within the prisons, i.e., long-term solitary confinement, and that CDCR punishes inmates who question the status quo, including those who read materials that question the status quo. Speaker states that inmates need to continue to fight against the issue of long-term solitary confinement, which was given great strength through the Hunger Strikes of 2011.

Speaker states that there a lot of Pelican Bay inmates who read her newspaper, *The Militant*, and she doesn’t want to interrupt the service with “sits and starts.” Speaker states that she and her organization are always going back to fight to have these papers come in and that the denials are ultimately shown to be unconstitutional, but that in the meantime, the prisoners have not received their paper. Speaker quotes Dr. Martin Luther King: “Justice deferred is justice denied,” and also states that the denial of the First Amendment Rights of Free Speech is an important issue for all working people.

Response: The descriptions of subsections 3006(c)(19) and 3135(c)(14) in the ISOR are changed to delete the references to “groups that are deviant in nature, opposed to authority and society.” These descriptions are narrowed within the FSOR to clarify more specifically that these subsections disallow only written materials and photographs that indicate an association with STGs.

CDCR is otherwise careful not to violate the First Amendment free speech rights of inmates or other persons. Publications are withheld from CDCR institutions only to the extent, as recognized in the law, that the publications contain contraband, are associated with STGs, or otherwise give rise to a security threat. Inmates may continue to possess the publications that Speaker lists so long as individual issues of those publications do not contain contraband.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS

COMMENTER #1:

Comment 1A: Commenter states that he is opposed to the adoption of the subsection 3135(c)(14), which establishes that correspondence containing written material or photographs that indicate an association with a validated member or an associate of a Security Threat Group are disallowed from a CDCR facility per subsection 3135(c). Commenter notes that CDCR states that this change is necessary for the safety and security of the institution by disallowing publications containing “propaganda of groups deviant in nature, opposed to authority and society.” Commenter notes that PC Section 2600 provides that a person who is sentenced to imprisonment in a state prison may be deprived of their civil rights only as is reasonably related to legitimate penological interests, and that PC Section 2601 provides that inmates have the right to “inherit, own, sell or convey real or personal property, including all written and artistic material produced or created by the person during the period of imprisonment” and to “purchase, receive, and read any and all newspapers, periodicals, and books accepted for distribution by the United States Post Office.” Commenter further adds that Government Code (GC) Section 11342.2 requires that regulations promulgated by state agencies are consistent with the statutes they are designated to implement and that if an administrative regulation alters or amends the statute or enlarges or impairs its scope, the administrative regulations are void and courts “not only may, but it is their obligation to strike down such regulations.” Commenter provides the citation: California Assn. of Psychology Providers & Rank (1990) 51 Cal.3d. 1, 11. Commenter states the Legislature has weighed and decided the issue of exclusion of publications and that CDCR may not ignore the Legislature’s determination and the requirements of PC Section 2601 simply because it wishes to expand the category of material subject to exclusion. Commenter states that by administrative directive, CDCR is nullifying this statutory mandate, banning virtually any and all publications containing “what a facility deems” to be propaganda of groups deviant in nature, opposed to authority and society.

Response 1A: The descriptions of subsections 3006(c)(19) and 3135(c)(14) in the ISOR are changed to delete the references to “groups that are deviant in nature, opposed to authority and society.” These descriptions are narrowed within the FSOR to clarify more specifically that these subsections disallow only written materials and photographs that indicate an association with STGs.

Title 15 subsections 3006(c)(19) and 3135(c)(14), which disallow written materials or photographs that indicate an association with validated STG members or associates, are otherwise fully consistent with PC and other law. Within the PC Section 2601(c)(1)(B) provides that prison authorities may exclude “any matter of a character tending to incite murder, arson, riot, violent racism, or any other form of violence.” A related statutory provision, at PC Section 2600(a), provides that a person who is confined to state prison may be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests. In accord with these PC provisions, Title 15 subsections 3006(c)(19) and 3135(c)(14) are tailored to prevent the dissemination of STG materials that might incite violence and that present a security risk in CDCR institutions.

As defined in Title 15 section 3000 within the CCR, an STG means any ongoing organization, association or group whose members or associates have engaged in two or more acts of misconduct. STGs include, but are not limited

to, prison gangs and street gangs. Title 15 subsection 3023(a) clarifies that STGs jeopardize public safety, as they promote violence and other criminal activity in prisons, jails, and communities.

STG members or associates may use STG materials to communicate with each other unlawfully. “Prison gangs are criminal organizations that must communicate with their affiliates to conduct gang business, ensure group solidarity, and recruit and train new affiliates. Indeed, one of the primary duties of a gang affiliate is to establish a line of communications between himself and other gang affiliates.” (*In re Furnace* (2010) 185 Cal.App.4th 649, 660.) Subsections 3006(c)(19) and 3135(c)(14) lawfully assist CDCR institutions to prohibit STG communications by disallowing specified written materials and photographs that are associated with STG members and associates.

COMMENTER #2:

Comment 2A: Commenter states the CDCR Form 1819 should be updated to reflect that the inmate has 30 days, instead of 15, to let staff know their choice of disposal for the disapproved item. Commenter states this change is necessary for clarity and accuracy regarding this form by correctly referencing the appeal section of California Code of Regulations (CCR) subsection 3084.8(b)(1).

Response 2A: The CDCR Form 1819 specifies that, upon receiving notice that the institution disapproved a publication or other item of mail, an inmate has a 15 day time period to inform staff about how to dispose of the publication, or whether to have it held in the institution pending an inmate appeal. This is a different action from filing an inmate appeal to challenge the disapproval itself, for which an inmate has 30 day time period subject to Title 15 subsection 3137(c). In addition, an inmate who wishes to appeal the disapproval of a publication has fifteen days to request that the institution hold the publication but retains a full thirty day period to file the appeal. The Form 1819 is thus not inconsistent with the regulations for inmate appeals and a revision to the Form 1819 is not necessary.

COMMENTER #3:

Comment 3A: Commenter asks for a clear definition of the term “deviant sexual groups” as referenced in subsections 3006(c)(15)(B) and 3135(d) and is unclear if “a bikini clad model posing in provocative poses falls under the category of “obscene material,” or if these visuals “appeals to deviant sexual groups.” Commenter states there has been a rash of arbitrary and capricious denials of the CDCR 1819s in regards to photographs and photograph catalogs as the administration at Pelican Bay have been misconstruing and over exaggerating the definition of rules 3006 and 3135, applying them loosely and unjustly.

Response 3A: The term “deviant sexual group” is long standing, existing language that was not modified during this regulatory process, and the same verbiage that is utilized in PC Section 311(a)(1). The Department does not ascribe a unique interpretation other than that intended by the Legislature.

Comment 3B: Commenter requests a clear definition of subsection 3006(c)(15)(A), which reads, “Obscene material means material taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest; and is material which taken as a whole, depicts or describes sexual conduct; and which taken as a whole, lacks serious literary, artistic, political, or scientific value.” Commenter inquires if the term “contemporary statewide standards” refers to society and its standards, or if it refers to the laws that govern the state standards. Commenter asks for the Department to explain the security threat that such material poses.

Response 3B: The term “contemporary statewide standards” in subsection 3006(c)(15)(A) is existing text was not modified during this regulatory process. It is adopted from the PC Section 311(a) definition of “obscene matter.” CDCR does not ascribe a unique interpretation of the term other than that intended by the Legislature.

COMMENTER #4:

Comment 4A: Commenter states the proposed regulations designate DAI as the Department’s sole authority to designate text-only material as obscene material and place it on the Centralized List of Disapproved Publications,

but do not provide guidelines for DAI to render this decision. Commenter states that without at least a careful description of the text or speech that will be censored, this provision seems arbitrary and over-reaching. If DAI does have guidelines for this process in-place, Commenter asks the guidelines are made public to receive the benefits of due process rights and the public comment period, to help prevent arbitrary disapprovals. Commenter asks:

- How exactly DAI determines whether or not text-only material meets the obscene material statutory criteria?
- Who sits on this committee and what is their agenda, if any exists?
- Do the guidelines extend to an “arbitrary” limit on religious or political speech and text?

Response 4A: DAI determines whether to place a text-only obscene publication or any other publication on the Centralized List based on the PC and other law. DAI is not otherwise required to maintain separate guidelines about the placement of publications on the Centralized List. DAI ensures any determinations for the placement of text-only publications on the Centralized List are not arbitrary and meet all applicable legal standards for obscenity.

COMMENTS #5:

Comment 5A: Commenter states that the vague wording of subsection 3006(c)(15)(A) leaves the subsection open to the wrong/incorrect interpretation because a Correctional Officer may lack the knowledge of what is “artistic.” Commenter states due process is needed in this subsection or in that in the alternative, all so-called “obscene material” be allowed. Further, Commenter states that images of frontal nudity that are contained in an artistic magazine are in the artistic realm and should not be misinterpreted as obscene material or sexually explicit material, for example, magazines such as “ArtNews” and “Juxtapoz” contain images that depict “obscene or sexual conduct or penetration.”

Response 5A: The proposed regulations amend subsection 3006(c)(15)(A) only to remove the text “or describes” in reference to sexual conduct as it applies to written material that is subject to the statutory definition of obscene material. The definition of obscenity in CDCR, as set out in subsection 3006(c)(15)(A) and related regulatory provisions is otherwise not vague and is consistent with PC statutes and other law regarding obscenity. Inmates may continue to possess the publications listed by the Commenter on an issue by issue basis. See also Commenter 5, Response B and Commenter 10, Response A.

Comment 5B: Commenter states that subsection 3006(c)(17)(A) should be deleted because frontal nudity of humans is normal as we are born with genitalia, and disallowing/disapproving pictures or images that show frontal nudity is ignorant to this fact. Commenter asks if CDCR would disapprove of nudists as humans if they were nude in a picture. Commenter states that nudists are only expressing their artistic, political, and human nature.

Response 5B: Subsection 3006(c)(17)(A) is a lawful implementation of obscenity law as it applies to prisons. In this proposed action, the Department adds the word “fully” into subsection 3006(c)(17)(A) to clarify that only fully exposed female breasts and/or the genitalia of either gender shall constitute sexually explicit materials. This action is designed to avoid an overbroad disallowance of sexually suggestive materials from departmental institutions.

Comment 5C: Commenter states nudity is not a taboo subject, and that we need to mature, stop being ignorant, and accept what God-given genitalia we have. Further, Commenter states that if some people like to publicly share their breasts and/or genitalia, then so be it, and advises people that don’t like this to cover up and to stop pestering those who are mature and like to view other people’s genitalia. Commenter states that inmates are not in a convent or ignorant to the fact that people are born with genitalia, and that we would not have been born with genitalia if whoever created us did not want us to look. “Quit jostling, and making petty issues.” Commenter further reminds us that it was the “snake” that caused Adam and Eve to have shame of their naked bodies, and that as part of human life, people have intercourse. In addition, Commenter state that pictures and images can be entertaining, artistic, political, or scientific and are not harmful.

Response 5C: Although the comment addresses an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to GC Section 11346.9(a)(3), it is either insufficiently related to the specific action or

actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by CDCR in refutation of or accommodation to the comment.

Comment 5D: Commenter states subsection 3134.1(e) should be amended to add more due process. Commenter provides the following language:

- “Any Publication shall be subject to the test of which taken as a whole, has ‘some’ literary, artistic, political, or scientific value and shall not be placed on the Centralized List.”

Or

- “Any publication shall not be placed on the Centralized List if it has any literary, artistic, political, or scientific value.”

Response 5D: The text of subsection 3134.1(e), as amended by the proposed regulatory action, follows all applicable legal standards. The additional language suggested by the Commenter is not required.

COMMENTER #6:

Comment 6A: Commenter states that in *In re Martinez*, the *Court* ruled that inmates had the right to receive an erotic romance novel about humans and werewolves engaging in sex acts. Using the *Miller* Three-Prong obscenity definition and PC Sections 311 and 2601 to make its determination, the *Court* ruled the novel was not obscene material as the book told a story and showed literary value when taken as a whole. Further, Commenter states the *Court* ruled that the Legislature intended to allow inmates to receive and read any material that does not qualify as “obscene” under PC Section 311, and that CDCR does not have the authority to further define obscene publications or writings. Commenter states the proposed regulations and the current Section 3006 are not clear enough to express this ruling.

Response 6A: In *In re Martinez* (2013) 216 Cal.App.4th 1141, 1163, the California Court of Appeal held that an institution could not withhold a text-only erotic novel on the basis of obscenity when the novel did not lack serious literary value. Proposed section 3006(c)(15)(D) states that text-only publications shall not be considered obscene unless designated by DAI. That decision by DAI is governed by the proposed regulatory amendment of Section 3006(c)(15)(A)-(C), which sets forth the legal definition and categories of obscene material. The amended regulations eliminate differences between institutions about whether text-only publications are obscene by referring that decision to the DAI. This action is designed to avoid erroneous disallowance of text-only material and is consistent with *Martinez*. Title 15 section 3006, as amended, fully implements all obscenity standards from PC and case law.

Comment 6B: Commenter states the proposed regulations define obscenity to include “fully frontal nudity as it pertains to the exposed female breasts or genitalia of either gender.” Commenter states this redefines “obscenity” as previously defined by PC Sections 311 and 2601, and further states that this change would exclude weightlifting magazines with bare chest men as well as “Sports Illustrated” and other fitness magazines, “National Geographic,” and “GQ.”

Response 6B: The proposed regulatory amendment does not change existing text within Title 15 subsection 3006(c)(17)(B)(2), which provides that inmates are allowed educational, medical/scientific, or artistic materials, such as National Geographic. Inmates may continue to possess the publications listed by the Commenter on an issue by issue basis.

Comment 6C: Commenter states that subsection 3006(c)(15)(C)(3), which states that material that “portrays nudity of a minor, or a person who appears to be under 18 years old” redefines “obscenity” and will now exclude “National Geographic,” including many newspapers’ pictures that show young children in water or running through sprinklers, and magazines about Africa where “most children are naked up to about age 6,” stories about South American tribes that include photographs, or ads for diapers and baby powder. *In re Martinez* made it clear that the Legislature did not intend to exclude any specific categories of descriptive words or photographs.

Response 6C: See Commenter 6, Responses A and B.

Comment 6D: Commenter states that frontal nudity is never obscene in and of itself because it is how God made man and woman and to say that our bodies are obscene is to declare God a pornographer. Further, Commenter states the current and proposed regulations need to be defined more clearly to comply with PC Section 311 and *The Miller Standard*. As it stands now under the current regulations, Commenter states that art magazines that show Michelangelo's *David* and pen outlines of a female naked body that mark the breasts only by two black dots are banned. See also Commenter 5, Response C.

Response 6D: The proposed regulations set forth the legal standards for obscene materials found within PC and other case law, including *Miller*, and otherwise provides categories of materials that have been found to meet those legal standards. Publications are withheld from CDCR institutions to the extent, as recognized in the law, that the publications qualify as obscene, contain contraband, are associated with STGs, or otherwise give rise to a security threat.

Comment 6E: Commenter states that CDCR should quote PC Section 311 in full and *Miller* and *In re Martinez* in material parts to define the term obscene material. Commenter further states that U.S. Mail adheres to this definition and therefore does not accept or deliver obscene materials as they would violate the *Miller Standard*. Alternatively, Commenter states that CDCR could also simply quote PC Section 2601(c)(1), which reads, "To purchase, receive and read any and all newspapers, periodicals, and books accepted by the United States Post Office." In addition, Commenter states that CDCR may only exclude obscene material which the post office will not deliver and has no authority to re-define the term obscene more broadly than the courts and Legislature.

Response 6E: The Commenter misinterprets PC Section 2601(c)(1) by only quoting it in part. PC Section 2601(c)(1)(A) states that prison authorities may exclude "obscene publications or writings, and mail containing where, how, or from whom this matter may be obtained." These proposed regulations seek to make this statute more specific, as contemplated by the APA. See also Commenter 4, Response A.

COMMENTER #7:

Comment 7A: In regards to subsection 3135(d)(4), which reads, "material subject to the obscene material test described in subsection 3135(d) includes pictures or images that depict nudity of a minor, or person who appears to be under 18 years old," Commenter inquires if photos of models in bathing suits can be confiscated since there is no nudity. Further, Commenter states that even though the models appear young and under the age of 18, they are in fact verified to be over the age of 18. Commenter states that if the main idea is nudity, then is it legal for the state to seize photos based only on part of subsection 3135(d)(4)?

Response 7A: See Commenter 5, Response C.

COMMENTER #8:

Comment 8A: Commenter states that under the guise of obscenity, the proposed regulations will effectively usher in political censorship of the mail. For example, Commenter notes that the proposed regulations will forbid "publications that indicate an association that are oppositional to authority and society," and asks if this includes the writings of Martin Luther King, Jr., Nelson Mandela, Tomas Paine, and the United States' Founding Fathers as they could all be said to have been "oppositional to authority and society." Commenter states that despite being in prison, inmates still have a human quality, a need for a free and open exchange of ideas, and a yearning for identity and self-realization.

Accommodation: Subsection 3134.1(e) is amended to delete the term "recruitment material" and replace it with the text "written materials or photographs, as described in subsections 3378.2(b)(5)-(6)" in regards to the material that will be reviewed by staff as it pertains to STGs for placement on the Centralized List of Disapproved

Publications. This revision was included in the Notice of Change to Text as Originally Proposed dated October 20, 2014.

Response 8A: See Commenter 1, Response A.

COMMENTER #9:

Comment 9A: Commenter does not think the proposed regulations are necessary and states that current mail regulations more already than sufficiently cover obscenity and are excessively strict as they dictate who can speak to whom; what inmates can read; and what inmates can have in their cells. Commenter believes that the proposed regulations are just a guise to further restrict prisoner voices from speaking out about their abhorrent conditions and violations of human rights. Commenter states the constant increase in CDCR rules and regulations, in an attempt to stop all uncontrolled and uncensored lines of communication, makes it seem like CDCR is afraid of the public knowing what is going on in the prisons. Further, Commenter states that if what CDCR was doing was justified, then they would not have to suppress speech about the conditions inside their prisons. Commenter states that no further restrictions should be put on inmate mail because all written material that carry inmates' voices are important and should be allowed, even if the content goes against "important" CDCR policies.

Response 9A: See Commenter 5, Response C.

COMMENTER #10:

Comment 10A: Commenter states that since the time that California changed the rules regarding sexually explicit material in 1999, (based on the "Arizona case"), there have been many problems regarding the actual definition of frontal nudity and exposed genitalia as everyone has their own definition of what constitutes "frontal nudity and exposed genitalia," especially what is obscene. Commenter states that when the "Arizona court case" was subsequently overturned, California was then obligated to restore sexually explicit material because California's regulations were concerning the ban of sexually explicit material was based on Arizona's court case.

Response 10A: *Mauro v. Arpaio* (9th Cir. 1999) 188 F.3d 1054 is a federal case from the Ninth Circuit Court of Appeals holding that a county jail in Arizona could lawfully prohibit inmates from possessing sexually explicit materials that show frontal nudity. The *Mauro* case, which was a basis for the Department to promulgate its regulation for sexually explicit material at subsection 3006(c)(17), remains valid law in California and the rest of the Ninth Circuit. See also Commenter 5, Response B.

Comment 10B: Commenter states that promulgating vague rules that custody staff is ill equipped to apply adds more confusion to an already confusing mess. In addition, Commenter states the courts have recently issued a very informative opinion, *In re Martinez*, regarding obscene material addressing CDCR's over-broad definition.

Response 10B: The proposed regulations ensure that any determinations about the placement of text-only publications on the Centralized List are not arbitrary and meet all applicable legal standards for obscenity. DAI is not otherwise required to maintain separate guidelines about the placement of publications on the Centralized List. See also Commenter 6, Response A.

Comment 10C: Commenter states the proposed regulation are not needed because the United States Post Office is already prohibited from delivering obscene material and is the authority on exactly what constitutes obscene material.

Response 10C: Although inmates retain the right under PC Section 2601(c)(1) "to purchase, receive and read any and all newspapers, periodicals, and books accepted by the United States Post Office," PC Section 2601(c)(1)(A) goes on to grant prisons the authority to exclude "obscene publications or writings, and mail containing where, how, or from whom this matter may be obtained." These proposed regulations seek to make this statute more specific, as contemplated by the APA.

Comment 10D: Comment states that as a member of the class action suit *Armstrong v. Schwarzenegger*, he was interviewed in early 2000 by attorneys from the Prison Law Office and CDCR representatives, and that at the interview, he advised that the Title 15 failed to define the phrase “frontal nudity or exposed genitalia.” Commenter states that he was then shown a memorandum, which read in part, “The nude, unclothed nipple and/or genitalia (reproductive organs). What is in fact acceptable is: nipples and/or the genitalia that are covered with lingerie, bikinis, or other sheer or semi-sheer material.” Commenter notes the anus is not a reproductive organ. Commenter provides tracking information for this memorandum: FSP-13-01432, “granted” on 12/9/13.

Response 10D: See Commenter 10, Response A.

Comment 10E: Commenter states CDCR needs to clarify subsection 3135(d) in regards to which catalogs and brochures are banned because the staff at his prison was banning all catalogs and brochures until he pointed to them out that if a blanket ban for all catalogs and brochures was intended, then hobby catalogs, office supply catalogs, medical supply catalogs, and catalogs for quarterly packages would all be included. Commenter states that prison staff finally realized that the catalog ban was only intended to ban catalogs and brochures that exclusively allow for a means to order contraband items. Further, Commenter states that for ordering or allowable property the long-standing policy has always been to either 1) provide inmates the means to order the item, or 2) provide inmates the right to possess catalogs to order the item.

Response 10E: See Commenter 5, Response C.

COMMENTER #11:

Comment 11A: Commenter states that implementation of proposed subsections 3006(c)(19) and 3135(c)(14) will lead to acts of censorship and suppression in violation of inmates’ free speech and association rights guaranteed by the Constitution and statute. Commenter states that all citizens-including inmates-have a right to associate with anyone they like, and this right can only be circumvented by Section 3139 of the Title 15. Further, Commenter points out the fact that inmates cannot further commit crimes against society, but free citizens can.

Response 11A: See Commenter 1, Response A.

Comment 11B: Commenter states the proposed regulations are an over-step of CDCR’s rulemaking power as the proposed regulations expand the scope of the exemptions of the First Amendment permitted by PC Section 2601(c)(1). Commenter states this will lead to the censorship of constitutionally protected resulting in costly litigation fees as inmates turn to the courts to protect their rights. In addition, from a moral stand point, Commenter states that American Principles will also suffer as constitutional protections are undermined.

Accommodation: See Accommodation for Commenter 8A.

Response 11B: The proposed regulations do not violate the First Amendment free speech rights of inmates or any other persons. Publications are withheld from CDCR institutions to the extent, as recognized in the law, that publications contain contraband, are associated with STGs, or otherwise give rise to a security threat. The FSOR within the rulemaking package is changed to clarify that the STG provisions disallow written materials and photographs that indicate an association with STGs. See also Commenter 1, Response A.

Also, GC Section 11342.2, part of the APA, clarifies that no regulation by a state agency is valid or effective unless the regulation is consistent and is not in conflict with statute, and the regulation is necessary to effectuate the purposes of the statute. GC Section 11342.2 and other provisions of the APA are satisfied here since the proposed regulations are consistent with the Penal Code and effectuate its purpose.

Comment 11C: Commenter objects to the language “STG recruitment material” in subsection 3134.1(e) as no guidelines are provided to assist staff in determining what constitutes STG recruitment material, and that as a result, staff is at liberty to employ inventive, arbitrary criteria based on nothing other than personal views. Commenter states this raises constitutional problems. For example, Commenter states that a prison study group could be

labeled as a STG based on factors that are unrelated to the material the group is studying, such as incidental street gang affiliation, using a series of loose and misleading connections. Then, staff will apply this material as “points” to label other inmates in possession of this material as gang members or associates. Commenter states that CDCR has always employed these types of disingenuous tactics in order to label written material and photographs as gang-related material. In addition, Commenter states that if the STG regulations are adopted, prison staff will then be allowed take the additional steps of confiscating or disapproving targeted materials. Commenter states this will violate inmates’ rights provided by PC Section 2601(c)(1).

Accommodation: See Accommodation for Commenter 8A.

Response 11C: The text in subsection 3134.1(e) for “STG recruitment material” is changed to “STG written materials or photographs, as described in subsections 3378.2(b)(5)-(6).” Written materials or photographs, as described in CDCR regulations about STGs, will therefore be listed in place of recruitment material as publications that may be included on the Centralized List. The second full sentence in subsection 3134.1(e) is revised to provide that “Examples of publications that would be included on the Centralized List would include, but not be limited to, publications that contain obscene material as described in subsection 3006(c)(15), sexually explicit images that depict frontal nudity as described in subsection 3006(c)(17), warfare or weaponry, bomb making instructions, or STG written materials or photographs as described in subsection 3378.2(b)(5)-(6).”

In addition, the descriptions of subsections 3006(c)(19) and 3135(c)(14) in the ISOR are changed to delete references to “groups that are deviant in nature, opposed to authority and society.” These descriptions are narrowed in the FSOR to clarify that the subsections bar written materials and photographs that indicate an association with STGs. See also Commenter 1, Response A.

Comment 11D: Commenter states that because there are no real guidelines in the Title 15 delineating what constitutes STG recruitment material, the proposed regulations could be used to label anything that an alleged STG member or associate reads as recruitment material. Then, the possession of similar material by other inmates will be taken as an indication that they are also STG members or associates, and so on. Commenter states that this cycle will be perpetuated endlessly, especially since CDCR is already doing this.

Accommodation: See Accommodation for Commenter 8A.

Response 11D: See Commenter 1, Response A and Commenter 11, Response C.

Comment 11E: Commenter states that under the proposed regulations combined with new STG terminology throughout the Title 15, inmates will no longer be allowed to possess any types of written material, ranging from philosophy, political works, and cultural/ethnic educational material. Basically any written material that makes CDCR uncomfortable will be targeted for censorship and used to unfairly validate and label inmates as gang members or associates. Commenter states that these erroneously labeled inmates will find themselves in the Security Housing Unit or Administrative Housing Unit, costing taxpayers approximately \$20,000 more per year per inmate over the General Population housing cost, and creating an unnecessary monetary burden on the state and tax-payers.

Accommodation: See Accommodation for Commenter 8A.

Response 11E: The proposed regulations do not unlawfully impede any communications between inmates and their family or friends. Inmates may continue to send correspondences with family and friends that do not contain contraband, as defined in section 3006(c), or violate CDCR policy. See also Commenter 1, Response A and Commenter 11, Response C.

Comment 11F: Commenter provides the case number for the recent California Courts of Appeals case, *In re Martinez* (A134400) for members of the public who wish to better understand CDCR’s obligation to promulgate regulations that are consistent with laws and statutes.

Response 11F: See Commenter 5, Response C and Commenter 6, Response A.

Comment 11G: Commenter objects to the dehumanizing language CDCR utilizes. For example, in reference to subsection 3134.1(e), the ISOR states STGs are “deviant in nature, opposed to authority and society.” Commenter states this highly generalized language is designed to appeal to people’s fears by characterizing inmates as deviant, society-preying predators. Further, Commenter states that the term is lifted directly from PC Section 311 and is then only used within the context of sexual deviance. Commenter states utilizing this term under a different context casts inmates as abnormal sub-humans and that when this new meaning is then embraced and internalized by prison staff, it causes staff to further abuse and mistreat inmates. Commenter also states the statement that STG groups are opposed to authority and society does not accurately reflect the complex reality and disregards the individual histories of inmates, including their respective ideologies or views towards authority or towards different segments of society; and discounts the various environmental and economic class factors that may have led to a life of criminal conduct or gang life.

Commenter states that although the use of such over-simplified and emotionally appealing slander may be easier to sell rather than intelligently articulately a complex problem, CDCR should refrain from making such irresponsible and dehumanizing comments that are made solely to justify their attempt to implement a repressive censorship policy, which goes beyond what is constitutionally permitted or authorized by state statute.

Accommodation: See Accommodation for Commenter 8A.

Response 11G: See Commenter 1, Response A and Commenter 11, Response C.

Comment 11H: Commenter states that proposed subsections 3006(c)(19) and 3135(c)(14) are unnecessary because CDCR is already equipped with adequate means to meet any security concerns in regards to correspondence and written material, existing Sections 3006 and 3135.

Response 11H: See Commenter 1, Response A and Commenter 1R, Response C.

COMMENTER #12:

Comment 12A: Commenter seeks confirmation that under proposed subsection 3006(c)(17)(A), inmates will now be able to have books, magazines, or pictures of scantily clad women, (such as in lingerie or swimsuits), in sexually provocative poses that are sexually symbolic/suggestive as long as the breasts or genitalia are not exposed. Commenter asks the Department to explain the limits of this amendment if these inferences are incorrect.

Response 12A: The Department believes that the proposed regulations are sufficiently clear, as written. See also Commenter 10, Response A.

Comment 12B: In regards to subsection 3134.1(d), Commenter asks that the Department define or explain the additional text “on a temporary basis.” Commenter asks on what the exact time frame is based and if the time frame will be uniform for every institution or left to the discretion of each institution.

Accommodation: Subsection 3134.1(d) is amended to clarify that the notification process for disapproving publications is a three-part process involving simultaneous notification to the Publisher, the Inmate, and DAI. New text is also added to clarify that any temporarily withholding of a publication at the institution level is contingent upon DAI Headquarter approval, and to establish that DAI must make their obscene material determination within 30 days. New language further specifies that if DAI does not find the temporarily withheld publication meets the criteria for obscene material, as provided for by PC, the institution must return the temporarily withheld material within 15 days of DAI’s obscene material determination. This revision was included in the Notice of Change to Text as Originally Proposed dated October 20, 2014.

Response 12B: The text in subsection 3134.1(d), “on a temporary basis,” regarding when an institution withholds or disallows a publication is revised to clarify that this action to disallow the publication is temporary in nature

pending approval from DAI Headquarters. The first full sentence in the first paragraph of subsection 3134.1(d) is revised to state that “When incoming books, magazines, or publications to an inmate are withheld or disallowed on a temporary basis by the institution pending approval by DAI, a letter shall be sent by the institution to the publisher explaining why the book was denied.”

In addition, subsection 3134.1(d) is further revised to clarify that DAI shall have 30 calendar days from the date of receiving a request by an institution for inclusion of a publication on the Centralized List to determine whether to approve the request for inclusion and accordingly make the disallowance of the publication permanent. The third paragraph of subsection 3134.1(d) is revised to provide in full that “The institution shall also notice the DAI to request inclusion of the temporarily disallowed publication on the Centralized List of Disapprove Publications. Disallowance of the publication shall become permanent if DAI, within 30 calendar days of receiving the request, approves the inclusion of the publication on the Centralized List. If DAI denies the request for inclusion, the institution shall deliver the publication to the inmate within 15 calendar days, upon notification from DAI.”

Comment 12C: In regards to the proposed amendment to subsection 3135(d)(7), Commenter asks what standard-case law or legal authority-DAI will use to determine text-only material as obscene?

Commenter states that according to numerous case law, including *In re Martinez*, written material is not necessarily “obscene material” if it describes sex acts; rather must be evaluated in its entirety using a three-prong analysis, which includes an assessment of literary value. Commenter asks how the Department reconciles the proposed regulations with the *Martinez* ruling.

Response 12C: The Department amended Title 15 subsection 3006(c)(15) and 3135(d)(7) to be consistent with *In re Martinez* (2013) 216 Cal.App.4th 1141 and other law pertaining to obscenity. Upon reviewing a text-only publication to determine whether it is obscene, DAI will carefully review the publication and base its determination on First Amendment concerns and all other applicable law. See also Commenter 4, Response A.

Comment 12D: Commenter states that common sense provides that words in a literary work are not pictures or images that can be easily exposed or displayed and subject others to sexual harassment or offense and can only be revealed to those who take the time to read the written material. For this reason, Commenter states that any doubt as to obscenity should be resolved in favor of the inmate and the publisher’s First Amendment Rights, and that CDCR staff should be instructed that restrictions under this subsection are the exceptions and not the rule.

Response 12D: See Commenter 4, Response A.

COMMENTS #13:

Comment 13A: Commenter states that although the Department claims the proposed regulations address concerns related to “obscene material,” they are only incidentally about that subject and appear to vastly expand the circumstances that would ban materials from the institution. For example, Commenter notes that CDCR does not distinguish between the terms “behavior” and “membership/association” in regards to STGs, and that either designation could be cause to restrict correspondence or publications which publish letters from people with those designations. In addition, Commenter assumes that under the proposed regulations, her organization’s newsletter could be permanently banned as they frequently publish research materials opposed to the Department and its practices and could be considered “oppositional to authority and society.”

Accommodation: See Accommodation for Commenter 8A.

Response 13A: See Commenter 1, Response A and Commenter 11, Response C.

Comment 13B: Commenter states that by adding STG correspondence and STG recruitment materials to the list of prison contraband, many publications will be banned from institutions, virtually silencing and further isolating anyone with an STG moniker.

Accommodation: See Accommodation for Commenter 8A.

Response 13B: See Commenter 1, Response A and Commenter 11, Response C.

Comment 13C: Commenter states that although the Department claims to clean up arbitrary censorship by individual correctional officers by giving DAI the sole authority to ban text-only material, Commenter states the temporary withholding of materials potentially renders them irrelevant if they are not timely distributed.

Accommodation: See Accommodation for Commenter 12B.

Response 13C: See Commenter 4, Response A and Commenter 12, Response B.

Comment 13D: Commenter states that although the centralization of the list of disapproved publications creates consistency in the way materials are treated, the phrase “Disallowance of the publication shall become permanent if DAI affirms the inclusion of the publication on the Centralized List” potentially expands censorship of particular publications-thereby expanding the impact of the censorship.

Response 13D: The Centralized List standardizes CDCR practices for disallowing publications from prison institutions. DAI carefully reviews publications for placement on the Centralized List based on legitimate security issues and subject to applicable law. See also Commenter 4, Response A and Commenter 12, Response B.

Comment 13E: Commenter states the addition of “STG recruitment material” to the materials that can be placed on the Centralized List may be the true reason for the proposed regulations. Commenter notes this term is barely defined and that as a result, anything written by a designated STG member or associate could be rendered as “recruitment material.” For example, Commenter asks if a persuasive argument on any topic that was written by an STG member or associate would be considered recruitment material.

Accommodation: See Accommodation for Commenter 8A.

Response 13E: See Commenter 1, Response A and Commenter 11, Response C.

Comment 13F: As subsection 3006(c)(15)(A) removes the word “describes” but keeps the word “depicts” Commenter states that the Department seems to assume that all depictions of sexual conduct are obscene, and further states that the Department has a history of exaggerating the seriousness of sexual material and has censored a wide range of literature, graphics, and other material, but turns a blind eye on depictions of violence. “What is the over-riding state interest in such limitations for adults in custody?”

Response 13F: The proposed amendment to subsection 3006(c)(15)(A) clarifies that material that is subject to the tests for obscenity includes, but is not limited to, pictures or images that depict various types of sexual misconduct. This amendment narrows the materials that institutions may determine to be obscene. Subject to the amended subsection 3006(c)(15)(A) and other Title 15 amendments in this rulemaking package, institutions may not consider text-only publications to be obscene unless designated by the DAI. See also Commenter 4, Response A; Commenter 5, Response A; Commenter 6, Response A; and Commenter 10, Response A.

Comment 13G: Commenter notes that new subsection 3006(c)(19) states that written materials or photographs that indicate an association with validated STG members or associates are subject to permanent listing on the Centralized List. Commenter states this is a huge change in Title 15 that should be stricken from the proposed regulations. Commenter states the new rule does not require actual behavior, but only the presence of written materials or photographs. For example, Commenter states that under the proposed regulations, if a so-called STG member or associate sent a picture of his/her child or of a deceased parent, the picture would be prohibited.

Response 13G: The proposed regulations are based on the content of the materials. Under proposed subsection 3006(c)(19), the written material or photograph itself that must indicate, as described in subsections 3378.2(b)(5)-(6) that it is associated with a validated STG member or associate. Whether the sender or

receiver is an STG member, as opposed to an STG associate, is irrelevant to the inquiry. See also Commenter 1, Response A; Commenter 11, Response C; and Commenter 18, Response C.

Comment 13H: Commenter states that although subsection 3134.1(d) provides that inmates shall receive their temporarily withheld publications and magazines within 15 days if the item is found not to be obscene material, there is no time line established in regards to how long DAI has to make their decision. As a result, Commenter states that this time could extend for months which could render many publications meaningless and irrelevant if enough time has passed. For example, Commenter states that during the Hunger Strikes, many materials were withheld until after the strikes ended and were then “freely” delivered.

Accommodation: See Accommodation for Commenter 12B.

Response 13H: See Commenter 12, Response B.

Comment 13I: The added paragraph in subsection 3134.1(d) appears to suggest that once a publication is officially disallowed no issues could be admitted; permanently disallowing various periodicals regardless of specific content.

Response 13I: Under the proposed regulations, the DAI may include a periodical on the Centralized List of Disapproved Publications if all issues of the periodical for twelve consecutive months violate departmental regulation or policy. However, an institution may disallow individual issues of a periodical and that disallowance of individual issues will become permanent, as to those issues only, if DAI affirms an institution’s decision to temporarily disallow the individual issues. If the DAI places a periodical on the Centralized List of Disapproved Publications, to ban that publication statewide, institutions may not admit any issues of the publication.

Comment 13J: Commenter states that because the term “STG recruitment material” is not defined, it could refer to virtually any correspondence that is generated by someone that CDCR has decided is an STG member or associate. Commenter is further concerned by subsections 3135(c) and (d) because they specifically refer to correspondence and ban all materials or photographs that indicate an association with validated STG members or associates. Commenter also asks if an inmate who has been designated an STG member or associate has violated the “disturbing or offensive correspondence” provision of the proposed regulations if he/she tells anyone about his/her life. Further, Commenter states that there is virtually no way for someone to challenge the designation once he/she has been determined to be an STG member or associate.

Accommodation: See Accommodation for Commenter 12B.

Response 13J: See Commenter 1, Responses A; Commenter 5, Response C; and Commenter 11, Response C.

COMMENTER #14:

Comment 14A: Commenter states that censoring inmates’ mail violates both the First Amendment and existing subsection 3135(b), which states, “Disagreement with the sender’s or receiver’s morals, values, attitudes, veracity or choice of words will not be cause for correctional staff to disallow mail. Correctional staff shall not challenge or confront the sender or receiver with such value judgments.” Commenter asks what outside oversight will be in place to keep CDCR from violating inmates’ First Amendment Rights as well as subsection 3135(b).

Response 14A: The proposed regulations about obscene material do not violate subsection 3135(b). They are intended only to restrict obscenity, which is recognized as contraband in prisons subject to PC Section 2601(c)(1)(A) and other law. These obscenity provisions are viewpoint neutral do not unduly restrict First Amendment free speech rights. See also Commenter 4, Response A and Commenter 6, Response A.

Comment 14B: Commenter states proposed subsection 3134.1(d) would result in month-long delays or outright denials of any mail that CDCR wants to ban and is a blatant attempt to destroy the timelines of newspapers and personal correspondence in order to make them irrelevant.

Accommodation: See Accommodation for Commenter 12B.

Response 14B: See Commenter 12, Response B.

Comment 14C: Commenter asks how CDCR will guarantee inmates' rights to peacefully organize in an effort to improve their situation and conditions if political publications are banned.

Response 14C: CDCR disallows publications containing contraband that creates a prison security risk or that is reasonably deemed to be a threat to legitimate penological interests. Political publications are otherwise not banned from CDCR institutions and CDCR ensures that inmates may possess these or any other publications, subject to the First Amendment and other law.

Comment 14D: Commenter states new subsection 3006(c)(19), which reads, "Written materials or photographs that indicate an association with validated STG members or associates, as described in subsections 3378.2(b)(5)-(6)" is not acceptable in a society in a democratic society that guarantees constitutional rights. Under this new subsection, Commenter states that a publication critically reporting on the issue of solitary confinement, for example, could be subject to political censorship and banned. Commenter asks what outside oversight will stop CDCR from violating inmates' and journalists' First Amendment Rights.

Response 14D: CDCR's policy and proposed regulations do not violate the First Amendment free speech rights of inmates, journalists, or other persons. Publications are withheld from CDCR institutions to the extent, as recognized in the law, that those publications contain contraband or otherwise give rise to a security threat. See also Commenter 1, Response A and Commenter 14, Response A.

Comment 14E: Commenter notes that subsection 3134.1(e) describes the nature of prohibited publications to include "STG recruitment material," and states that CDCR views political and historical writings, and materials relating to cultural identity as STG recruitment material. Under this provision, Commenter states inmate family members and friends could be deemed affiliates of STGs and have their visiting and mail privileges revoked. Commenter asks how outside oversight will stop CDCR from banning correspondence from these persons and also guarantee inmates' rights to mailing and visiting privileges. In addition, Commenter states these familial relationships are essential for rehabilitation-a supposed central goal of CDCR.

Accommodation: See Accommodation for Commenter 8A.

Response 14E: See Commenter 11, Responses C and E.

COMMENTER #15:

Comment 15A: Commenter states that while inmates have many freedoms taken away as a result of their crimes and convictions, their basic human rights must still be respected; however, Commenter states that the proposed regulations create an opaqueness in prisons that is unacceptable in a democratic society.

Response 15A: See Commenter 5, Response C.

Comment 15B: Commenter believes the proposed regulations are likely illegal and that the public tax dollars would pay for an unnecessary legal battle. Commenter states there are other solutions to the current prison problems that do not interfere with First Amendment Rights or that leave such a large space of unchecked abuses of power.

Response 15B: See Commenter 5, Response C; Commenter 11, Response B; Commenter 14, Response D; Commenter 17, Response C; and Commenter 25, Response B.

Comment 15C: Commenter is concerned about the welfare of those under the care of California prisons and is in support of the “Five Core Demands” being meaningfully met.

Response 15C: See Commenter 5, Response C.

COMMENTER #16:

Comment 16A: Commenter asks what is considered “artistic,” “political,” and “scientific” and who is considered the “average person” who makes this determination. Commenter states that the “average person” is a sex-obsessed, sensitive, anti-nudist, puritanical correctional officer, whose beliefs differ from other average persons and who may not know/recognize art, science, or politics. Commenter states that sex/nudity is scientific (Biology), art (paintings), and political (freedom of expression). Commenter states that the last time he checked, breasts nurture babies and vaginas produce babies. That is Biology 101. In regards to intercourse, Commenter states that people have sex as a part of evolution and to reproduce (science), and recreationally (science and art). Commenter states that in fact nudity is not intended as an aphrodisiac, but in these modern times is becoming more natural.

Response 16A: See Commenter 4, Response A; Commenter 6, Response A; and Commenter 12, Response C.

Comment 16B: Commenter states that proposed section 3006(c)(15)(A) discriminates against average tax-paying Americans. Commenter states that his family, nudists who live in a nudist colony, sent him a family photo that although did expose their genitalia, was in no way sexual or appealed to the prurient interest, but the photo was still denied delivery. Commenter states that correctional staff informed him that the only way he could receive these family photos is if the family members wear clothes. Commenter states that this is a violation of his family’s right to freedom of expression because they are practicing nudists yet CDCR is forcing his family to wear clothes in photos in order to obtain delivery of their photos. Commenter adds that being in prison should not limit prisoners to what they can view, and states that photos of genitalia do not disrespect any group in prison as everyone is born with the same genitalia and were also born of that genitalia. Commenter states that prisoners are already chastised, but that they are in a prison not in a convent and that this arbitrary censorship needs to stop.

Response 16B: See Commenter 4, Response A; Commenter 6, Response A; Commenter 11, Response E; and Commenter 12, Response C.

Comment 16C: Commenter states that sexual literature has evolved over time. For example, Commenter notes that until 1933, the novel *Ulysses* was considered obscene material, until in a decision reflecting thoughtful legal analysis and discerning literary criticism, Justice John M. Wootley ruled the novel was not obscene material. Commenter also notes that writings of Henry Miller, including the novel *Tropic of Cancer*, were banned until 1964. More recently, Commenter notes that *In re Martinez* held inmates are allowed to receive “adult” pornographic books if they have literary value. Further, Commenter states that a prison is not a convent, and therefore inmates should not be limited in regards to what they can view. Commenter states that photos of genitalia do not disrespect any group in prison as everyone is born with genitalia and were also born of genitalia, and that this arbitrary censorship needs to stop.

Response 16C: See Commenter 4, Response A; Commenter 6, Response A; and Commenter 12, Response C.

Comment 16D: Commenter states nudity is considered scientific or artistic as the nude pictures are taken with a camera by a paid photographer and that it is normal within this context. In the religious context, Commenter reminds us that it was the snake (the Devil) that made humans aware and ashamed of their nudity. Commenter asks if this is what CDCR is trying to do- make inmates ashamed of their anatomy. If this is the case, Commenter says shame on CDCR for the chastising, the puritanical, anti-nudist ideals, and for projecting their perception of “obscene” on everyone. Commenter further adds that nudity in itself is not obscene, and that is the individual perception applied to it that makes it obscene. Commenter states this is why it is unconstitutional to prohibit a mother from breast feeding her child in public. However, Commenter notes that under these proposed regulations, a photograph of a mother breastfeeding would be considered “obscene material” and denied to the inmate.

Response 16D: See Commenter 4, Response A; Commenter 6, Response A; and Commenter 12, Response C.

Comment 16E: Commenter states male transgender inmates have enormous, augmented breasts, but are still allowed to take their shirts off in the prison yard and in the shower rooms, (which run group showers). Commenter states that CDCR would be in contradiction with its own regulations if this type of exposure were considered obscene and staff started harassing transgender inmates. Commenter further states that CDCR's regulations and policies are the very essence of confusion and need a massive overhaul and relax its tense grip on censorship. In addition, Commenter states that the proposed regulations do not serve any legitimate penological interest, but rather only serves specific groups, (puritans and radicals), who wouldn't look at such pictures or photos anyway.

Response 16E: See Commenter 4, Response A; Commenter 6, Response A; and Commenter 12, Response C.

COMMENTER #17:

Comment 17A: Commenter states the proposed regulations fail to meet the stated objective and appear disingenuous as the proposed regulations purport to merely clarify existing Department regulations concerning obscene sexually explicit material as contraband, ensuring compliance with statute, but that imbedded in the proposed regulations are new prohibitions that may implicate protected political speech through the prohibition of materials or publications that indicate an association with groups that are "oppositional to authority and society."

Response 17A: See Commenter 1, Response A; Commenter 11, Response B; Commenter 14, Response D; Commenter 17, Response C; and Commenter 25, Response B.

Comment 17B: Commenter states the labeling of the proposed regulations as only affecting "obscene material" is misleading because the new regulations create new categories of contraband by prohibiting written material or photographs that indicate "an association with validated STG members or associates." For example, a broad category of "STG recruitment material" would be disallowed in the institutions and listed on the Centralized List. The proposed regulations would also disallow written materials or photographs that "indicate an association with" validated STG members or associates. In addition, Commenter states that given the lack of any clear definition of the term "publication" it is conceivable that the proposed regulations would not only be used to permanently exclude a particular issue of a newspaper, but the newspaper altogether.

Accommodation: See Accommodation for Commenter 8A.

Response 17B: See Commenter 1, Response A; Commenter 11, Response C; and Commenter 1R, Response B.

Comment 17C: Commenter states that existing subsection 3135(b) already provides for prison officials to limit and monitor inmates' communication/correspondence to detect and prevent possible criminal conduct, while still observing inmates' rights concerning their morals, values, and attitudes, veracity, or choice of words. Commenter states the Department does not explain why this subsection is not sufficient. Further, Commenter states that the proposed regulations will only limit or restrict inmate access to publications that are protected by the First Amendment.

Response 17C: The reasons and necessity for the Department's adoption of the proposed regulations is fully set out in the ISOR, as modified by the FSOR. Title 15 subsection 3135(b), within the CDCR regulation about disturbing or offensive correspondence, sets forth that "disagreement with the sender's or receiver's morals, values, attitudes, veracity, or choice of words will not be cause for correctional staff to disallow mail." The proposed STG regulations here, at Title 15 subsections 3006(c)(19) and 3135(c)(14), do not violate subsection 3135(b). They are intended only to disallow STG materials that create a security threat in CDCR institutions. These STG provisions are viewpoint neutral do not unduly restrict First Amendment free speech rights. See also Commenter 1, Response A; Commenter 11, Response B; and Commenter 14, Response A.

Comment 17D: Commenter states the proposed regulations violate the publishers' right to communicate with inmates, under the First and Fourteenth Amendments. By denying inmates' correspondence, Commenter states that

CDCR is violating the fundamental constitutional guarantee of free citizens, the innocent third-party publishers whose publications are being denied. Further, Commenter states the courts have repeatedly struck down prison regulations which limit or prohibit the distribution of publications to inmates as they are unconstitutional. Therefore, Commenter states, publishers have a constitutional right to distribute their publications to inmate-subscribers, and to challenge an action to block such distribution.

Further, Commenter states that the proposed regulations would not pass the stringent constitutional inquiry dictated by relevant case law. Rather, Commenter states that by limiting material that “indicate an association with validated STG members or associates,” the proposed regulations are both vague and overbroad.

Response 17D: See Commenter 1, Response A; Commenter 6, Response A; Commenter 10, Response A; and Commenter 14, Responses A and D.

Comment 17E: Commenter states the proposed regulations are vague and invite arbitrary, inconsistent, and discriminatory application. For example, Commenter states that the phrase “indicate an association with” contains no meaningful standard and does not give the person of ordinary intelligence a reasonable opportunity to act accordingly. Commenter states that CDCR has a history of validating inmates as STG members based on their choice of reading materials, including the possession of the writings of political activist George Jackson.

Response 17E: The full text of the cited language in proposed subsection 3135(c)(14) is “contains materials or photographs that indicate an association with validated STG members or associates, as described in subsections 3378.2(b)(5)-(6).” Subsection 3378.2(b)(5) and 3378.2(b)(6) are existing regulations that describe the standards for determining whether written materials or photographs provide evidence of STG activity.

Comment 17F: Commenter states that the proposed regulations are overbroad and will chill speech that is protected under the First Amendment’s vast and privileged sphere, and also allows for the permanent disallowance of this protected speech once a publication has been added to the Centralized List. For example, in regards to the term “publication,” Commenter states that it is unclear if a single issue could be disallowed, or if the entire publication could be permanently disallowed over a single article in a single edition of that publication. Further, Commenter states that under the proposed regulations, a publication could be permanently banned and placed on the Centralized List based on the unfounded concern that a particular article in a particular issue somehow “indicates” an association with an STG. Commenter states that the proposed regulations will almost certainly disallow far more speech than is otherwise permissible under the First Amendment.

***Accommodation:** Subsection 3134.1(e) is amended to add language to establish that a periodical may not be permanently disallowed unless the publication has violated Department regulation, in accordance with PC, for 12 consecutive months. For additional clarity, reference to subsection 3133(a)(3) is also added in order to provide the definition of a publication (periodical). This revision was included in the Notice of Change to Text as Originally Proposed dated October 20, 2014.*

Response 17F: The FSOR in the rulemaking package is changed to clarify that the STG provisions disallow written materials and photographs that indicate an association with STGs. Placement of a publication on the Centralized List of Publications precludes any issues of that publication from entering the institutions, but DAI may consider removing a publication from the Centralized List if needed. The proposed amended regulations are otherwise consistent with First Amendment free speech standards and other applicable law. See also Commenter 1, Response A; Commenter 11, Response B; Commenter 13, Response H; Commenter 14, Response C; Commenter 17, Responses C and E; and Commenter 1R, Response B.

Comment 17G: Commenter states that denial of protected speech is not a mere specter, but already a concrete reality. Commenter states the proposed regulations punish inmates for vague gang affiliation based on artwork; literature; communications; photographs; or publications, and not only severely and impermissibly burden vital constitutional rights, but also create unjust; ineffective; and expensive policies. Commenter states that punishing people for unpopular thoughts or seeking information on disfavored ideas rather than the person’s own acts of misconduct is anathema to the principles of our society, our legal system, and our Constitution, and notes that

The Bay View has recently received letters from inmates who have been long-time subscribers cancelling their subscriptions because of fear that the prison will use their possession of the publication to justify validating them as a gang or STG member or associate, or otherwise retaliating against them.

Response 17G: See Commenter 1, Response A; Commenter 11, Responses B and C; and Commenter 14, Response C.

COMMENTER # 18:

Comment 18A: Commenter states that he objects to the proposed changes to the regulations that are submitted under the guise of obscenity. Commenter states that it is wrong to ban a publication because of one article contained in one edition of the publication and states that a publication should only be banned when the publication has breached the regulations in twelve consecutive editions.

Accommodation: See *Accommodation for Commenter 17F*.

Response 18A: The proposed regulations, at section 3134.1(d), incorporates the policy that the commenter recommends for the disallowance of periodicals. The DAI may include a periodical on the Centralized List of disapproved publications if all issues of the publication for twelve consecutive months violate departmental regulation or policy. However, an institution may disallow individual issues of a periodical and that disallowance of individual issues will become permanent, as to those issues only, if DAI affirms an institution's decision to temporarily withhold/disallow the individual issues.

Comment 18B: In regards to subsection 3134.1(e), Commenter asks what constitutes "STG recruitment material." Commenter states this term must be clearly defined and should not include innocuous references to gang members or associates, such as family members who have news of relatives, (regardless of whom that family relative is or the relative's history). In addition, Commenter notes that the regulation concerning bomb making instructions are very clear. Commenter further states that if the Department has nothing to hide with these regulations, then the Department needs to show as much by clearly defining all the terms referenced in within the regulations.

Accommodation: See *Accommodation for Commenter 8A*.

Response 18B: See Commenter 11, Responses C and E.

Comment 18C: In regards to subsection 3135(c)(14), Commenter states that STG validation should not include written materials or images of family, either by blood or by marriage, because family ties should always trump STG issues. Further, Commenter also asks how this subsection would apply when an inmate has a relative who no longer is, but who was formerly an STG member, for example, under the proposed regulations, if an inmate were to receive news or images from a relative who was formerly a member of an STG, would the news or images of that family member be permanently withheld from the inmate?

Response 18C: New subsection 3135(c)(14) disallows written materials and photographs that indicate an association with STGs. This subsection lawfully assists CDCR to manage STG activity. CDCR is not aware that this subsection must include an exception for family members or friends to send written correspondences. Family members, friends, and other correspondents may continue to correspond with each other the extent that their correspondences do not contain contraband or otherwise violate CDCR policy. See also Commenter 1, Response A and Commenter 11, Response E.

Comment 18D: In regards to subsection 3135(d), Commenter asks for the current definition of the term "deviant," and also asks who determines what is deviant. Commenter states the term must be clearly defined and not left up to an individual to determine because when an individual's opinions are brought into the equation things always go wrong.

Response 18D: Commenter 3, Response A.

Comment 18E: In regards to the new sentence added in subsection 3135(d)(7), which reads, “Text-only material shall not be considered obscene unless designated by the Division of Adult Institution (DAI). DAI shall then place the designated text-only material on the Centralized List of Disapproved Publications, subject to subsection 3134.1(e).” It is not clear that letters to or from the inmate are excluded, and asks if a personal letter he (an inmate) wrote can be deemed a “disapproved publication,” and further asks if the correspondence is deemed a disapproved publication, would his subsequent correspondence also be banned? If this is the case, then Commenter states it is anathema and the proposed regulations must be changed.

Response 18E: As provided in the existing text of subsection 3134.1(e), the Centralized List of Disapproved Publication gives a list of publications that are disapproved statewide. The dictionary meaning of a “publication,” includes a communication of information to the public. Examples of publications include, but are not limited to, books, magazines, and newspapers. Personal mail, which is not made public, is not placed on the Centralized List. CDCR thus does not believe that the qualifier to subsection 3134.1(e), as suggested by the Commenter is required.

Comment 18F: Commenter is concerned with the language of subdivision 3135(d)(1), which states material that, “Portrays sexually explicit materials, which are defined as materials that show frontal nudity including personal photographs, drawings, and magazines and pictorials that show frontal nudity” will be included in the material that is subject to the “obscene material” test described within subsection 3135(d). Commenter asks if this means that a photograph, drawing, magazine or pictorial showing Michelangelo’s “David” or “Venus” could be banned. Commenter states that is the way the proposed regulations read to him, states that if the proposed regulations do mean to ban this sort of nudity in art, then the proposed regulations need to be amended because classic art should not be considered obscene or banned from inmates. Commenter further states that the inclusion of such images would mean that publications such as “The New Yorker,” that in no way incite rebellion etc., could be banned.

Response 18F: The proposed regulatory amendment does not change existing text within Title 15 subsection 3006(c)(17)(B)(2), which states that inmates are allowed educational, medical/scientific, or artistic materials that may also be sexually explicit.

Comment 18G: Commenter states the following need to be excluded from subsection 3006(c)(19), which reads, “Written materials or photographs that indicate an association with validated STG members or associates, as described in 3378.2(b)(5)-(6)”:

- Information regarding pending or resolved lawsuits involving past or present STG members
- Articles by which inmates can inform themselves or their families of their rights
- Non-prisoners/non-parolees, including family members and/or activists fighting for better conditions within a prison and groups

Commenter asks why the Department feels it is necessary to validate these people.

Response 18G: See Commenter 1, Response A and Commenter 18, Response C.

Comment 18H: Commenter states the word “association” must be clearly and narrowly defined as the Department has a history of widely and prejudicially interpreting “anything” as showing an association to an STG. Commenter states the definition must not include family members or areas/locations in general, and asks why the Department feels it is necessary to include areas/locations in the intended list of contraband items.

Further, Commenter states that every family member and friend to whom CDCR plans to apply these regulations must be given clear, fair, and adequate notice of what will now constitute contraband per the proposed regulations. Commenter asks why CDCR is trying to take away family ties as it is one of the greatest rehabilitative tools. Commenter advises that inmates will one day be released and that when these released inmates encounter CDCR staff’s loved ones they may be full of aggression, seeking vengeance for wrongs committed against them while they were incarcerated. In light of this scenario, Commenter asks if CDCR wouldn’t rather truly rehabilitate inmates so

that they can take their righteous place in society upon release. Commenter states CDCR is harming society, which includes staff's loved ones, by using these Draconian and tortuous methods.

Response 18H: See Commenter 1, Response A and Commenter 18, Response C.

Comment 18I: Commenter states that banning publications that show an opposition to society and authority curbs the First Amendment Rights of prisoners; press; family members; loved ones; and activists, and that Freedom of Speech is one of the hallmarks of America, which cannot be censored. Commenter asks why the Department is seeking to eliminate Freedom of Speech.

Response 18I: See Commenter 1, Response A and Commenter 11, Response E.

Comment 18J: In regards to subsection 3134.1(e), Commenter states that political and historical writings, especially writings from African American authors, have been unfairly targeted as being gang related. Commenter states that political and historical writings, regardless of the author or subject matter, must be excluded from these amendments. Commenter asks:

- Why are you seeking to prevent people from educating themselves and being educated?
- Why the Department is proving to society that they are preventing inmates from improving themselves and their chances for successful reintegration into society?
- Does the Department really wants to show society it would rather release dangerous people onto the streets, rather than people who have been rehabilitated and educated to the best of the Department's ability?

Response 18J: See Commenter 14, Response D.

Comment 18K: Commenter states that when a publication is deemed as contraband, it must only be the current issue that is banned, not all future issues, unless 12 consecutive issues have met the criteria. Additionally, Commenter states that the regulations must stipulate a time limit of no more than 14 days to return any problematic publications to the sender that includes clearly includes the reasons for the non-delivery of the item and the steps that can be taken to challenge the non-delivery of the item

Accommodation: See Accommodation for Commenter 12B.

Response 18K: The proposed regulations at subsection 3134.1(d) incorporate the policy that the commenter recommends for the disallowance of periodicals. The DAI may include a periodical on the Centralized List of disapproved publications if all issues of the publication for twelve consecutive months violate departmental regulation or policy. However, an institution may disallow individual issues of a periodical and that disallowance of individual issues will become permanent, as to those issues only, if DAI affirms an institution's decision to temporarily withhold/disallow the individual issues.

With regard to time frames from when an institution withholds a publication, subsection 3134.1(d) is revised to clarify that this action is temporary in nature pending approval from the DAI. If the DAI denies a request from an institution to place a temporarily withheld publication on the Centralized List, the institution must return that publication to the inmate within 15 days. An inmate retains the right to challenge an institutional action, such as the withholding of a publication, by submitting an inmate appeal in accord with subsections 3134.1(d) and 3137. See also Commenter 12, Response B.

Comment 18L: Commenter states the phrase "written materials or photographs that indicate an association with validated STG members or associates" referenced in subsection 3135(c)(14) is much too vague. Commenter states the Department must be clear in regards to what exactly they are trying to prevent inmates from seeing so that inmates' loved ones and family members can avoid sending these materials to inmates.

Additionally, Commenter states the following must be excluded from the subsection:

- Personal correspondence to and from loved ones and family members and asks why the Department is seeking to include correspondence to and from family members and loved ones on the list of excluded items.
- Writings going out of the prison. Commenter asks why the Department is trying to silence the inmates, “What are they going to say that frightens you? What is going on in there that you could not defend? Why are such practices allowed?”
- Groups or individuals who oppose solitary confinement or any other prison practice or procedure. Commenter asks why the Department is seeking to refuse entry to anything that criticizes Department practices, if they are justifiable.

Response 18L: See Commenter 1, Response A; Commenter 11, Response E; and Commenter 18, Response C.

Comment 18M: Commenter states that every banned publication must be listed on the CDCR website so that family members, advocates, lawyers, publishers and the general public can clearly see what publications are being banned. Further, Commenter states that there must also be a conspicuously marked link to this list on the Department’s home page. Commenter states that if the Department earnestly believes given publications are against the public interest and safety of the institution, then they must be prepared to justify and defend the list of banned publications and show the list openly and freely, and asks why CDCR would try to keep this list secret?”

Response 18M: The Centralized List, setting out the publications that are disallowed in CDCR adult institutions, is a public record. A family member, advocate, lawyer, publisher or other member of the public may obtain a hard copy of the Centralized List by sending a public records request for it in accord with the California Public Records Act, starting at GC section 6250. CDCR is not required to post the Centralized List on its website.

Comment 18N: Commenter states that although the Department states the proposed regulations will provide clarity to staff and inmates, they are so vague that the proposed regulations will do anything BUT provide clarity. Commenter states that it is impossible to tell what Department is trying to exclude, and asks what the Department is trying to hide with such vague proposed regulations.

Response 18N: The proposed regulations ensure that any determinations about the placement of text-only publications on the Centralized List are not arbitrary, meet all applicable legal standards for obscenity, and are applied consistently throughout all of CDCR’s institutions. The DAI is not otherwise required to maintain separate guidelines about the placement of publications on the Centralized List.

COMMENTS #19:

Comment 19A: Commenter states that ostensibly, CDCR wants to ban all gang-related materials, but that these regulations go way too far as they would make many political publications “obscene” and contraband, which would violate inmates’ First Amendment Right to read and discuss political issues from all points of view. For example, Commenter states that under the proposed regulations, political groups that oppose the status quo and want to make improvements in the county and the prison system could be deemed “oppositional.” Commenter further asks, “Isn’t that what this country is about? The freedom to speak one’s mind and express one’s opinion, even when that opinion is contradictory to the government position or the mainstream sentiment. Even prisoners have the first amendment rights of expression.” Commenter states that there are more direct ways of dealing with gang violence than eliminating free speech for all.

Response 19A: See Commenter 1, Response A; Commenter 14, Response D; Commenter 22, Response D; Commenter 30, Response B; and Commenter 31, Response A.

Comment 19B: Commenter states that she corresponds with inmates from several prisons and does not want her correspondence to be refused by CDCR. Additionally, Commenter subscribes to several magazines, including *Mother Jones*; *Prison Legal News*, and *Defenders of Wildlife*, on behalf of inmates, and wants the issues that she forwards to reach the inmates. Commenter believes that under this ill-defined category of “publications that indicate an association with groups that are oppositional to authority and society,” many publications could be

banned or held up in the review. Commenter states that even if the Department did not intend to ban such publications as those mentioned, the language is open to interpretation and believes that individuals can decide at whim to allow inmates certain correspondence and disallow others. As former chair of the Inmate Family Council and a regular visitor to local prisons, Commenter understands how important mail and publications are to inmates and families. If the proposed regulations are adopted, Commenter states that CDCR will face a barrage of legal actions which will cost the state money that would be better spent on programs or educational materials.

Accommodation: See Accommodation for Commenter 17F.

Response 19B: The descriptions of subsections 3006(c)(19) and 3135(c)(14) in the ISOR are changed to delete the references to “groups that are deviant in nature, opposed to authority and society.” These descriptions are narrowed within the Final Statement of Reasons to clarify more specifically that these subsections disallow only written materials and photographs that indicate an associations with STGs. Subject to these subsections, the publications specified by the Commenter may be disallowed only if they contain contraband as set out in subsection 3006(c) or otherwise violate departmental policy and regulations. See also Commenter 1, Response A and Commenter 14, Response D.

The Department notes that the forwarding of subscription periodicals to inmates by third parties other than a bookstore, book distributor, or the publisher is a violation of CDCR regulations at Title 15 subsection 3134.1(a). CDCR may accordingly withhold issues of any periodical that commenter, as a third party, forwards to inmates.

COMMENTER #20: Note: The comments of Commenter #20 are duplicative of Commenter #8. Therefore, please see Comments, Accommodation, and Responses for Commenter #8 in relation to Commenter #20.

COMMENTER #21:

Comment 21A: Commenter states that there is only a fine line between unconditionally guaranteed speech and that which may legitimately be regulated and that to make this distinction, “sensitive tools” are needed in order to keep from violating the First Amendment. However, Commenter states that Sections 3006 and 3134.1 omit the sensitive tools, and are therefore subject to abuse and arbitrary enforcement. Further, Commenter states that the Supreme Court already ruled that the state government is not free to adopt whatever procedures it pleases without regard to the possible consequences for constitutionally protected speech.

Response 21A: See Commenter 1, Response A; Commenter 4, Response A; Commenter 6, Response A; Commenter 14, Response D; and Commenter 17, Response C.

Comment 21B: Commenter states the proposed regulations fail to provide clear criteria and other safeguards to prevent arbitrary censorship of material designated obscene. Commenter states that without some direction about the determinative process that must be applied, the regulations suffer from constitutional infirmity. For example, notes that while Section 3134.1 purports to allow the publisher notice and an opportunity to appeal, the underlying process to determine if the material is obscene is flawed because there is no information concerning the qualifications of the staff who are making these censorship decisions, (such as how they are chosen and who will ultimately be responsible for the censorship decisions), or about the review process.

Response 21B: See Commenter 4, Response A and Commenter 6, Response A.

Comment 21C: Commenter states that the proposed regulations are inherently contradictory as new subsection 3006(c)(15)(D), which reads, “Text-only material shall not be considered obscene unless designated by the Division of Adult Institutions (DAI). DAI shall then place the designated text-only material on the Centralized List of Disapproved Publications” is contradictory to existing subsection 3135(b), which reads, “Disagreement with the sender’s or receiver’s morals, values, attitudes, veracity or choice of words will not be cause for correctional staff to disallow mail. Correctional staff shall not challenge or confront the sender or receiver with such value judgments.”

Commenter states the while obscene material is not protected under the First Amendment, the courts have made it perfectly clear that sexual expression, which is indecent but not obscene, is protected. Further, in 1997, the court ruled that publications that contain non-nude, but suggestive images are also protected by the First Amendment. Because the obscene material designation is not as readily apparent in text-only material as it is for photographs, the censorship of text-only material requires clear guidance to staff when evaluating whether an advertisement is sexually suggestive versus obscene. However, Commenter states the proposed regulations do not provide this information and must be modified to allow for this distinction.

Response 21C: See Commenter 4, Response A; Commenter 6, Response A; Commenter 14, Responses A and C; and Commenter 17, Response C.

Comment 21D: Commenter states subsection 3135(d) is overly broad in restricting prisoners from possessing materials that contain “information concerning where, how, or from whom obscene material may be obtained” because it conflates the terms “obscene material” and “sexually explicit materials.”

Commenter states that subsection 3135(d) first states, “Inmates shall not possess or have under their control obscene material and/or mail containing information concerning where, how, or from whom obscene material may be obtained,” but then states, “Material subject to the test of the above includes, but is not limited to, pictures or images that depict sexually explicit materials, which are defined as materials that show frontal nudity including personal photographs, drawings, and magazines and pictorials.

Commenter states that “sexually explicit materials” may be found in advertisements which are incidental to the overall content of the publication and further states that the subsection does not make exclusions for publications that may contain these incidental advertisements. Further, Commenter states that many publications contain advertisements for items that are prohibited from prison, (such cigarettes; alcohol; guns; and cars), but that this does not justify the unilateral censorship of the publication.

Response 21D: The provisions of subsection 3135(d) are unchanged in the proposed regulations, except for new language to specify that “pictures or images” that sexual misconduct are subject to test for obscenity. This new language, that institutions may disallow certain pictures or images (but not text-only material) based on obscenity, is consistent with *In re Martinez* (2013) 216 Cal.App.4th 1141. See also Commenter 4, Response A and Commenter 6, Response A.

Comment 21E: Commenter states that by disallowing prisoners to possess or have under their control material associated with an STG, subsection 3006(c)(19) seeks to exclude an entire class of person(s) from exercising their First Amendment right without confirming the censored speech actually threatens the safety and security of the prison.

Commenter states this subsection excludes any person from possessing material associated with an STG and notes subsection 3378(c)(4), which reads in part, “An associate is an inmate/parolee or any person who is involved periodically or regularly with members or associates of a gang,” and lists thirteen (13) different categories of source items indicative of association with validated gang affiliates, including an inmate’s admission of involvement with the gang; tattoos and symbols distinctive to the gang; written material or communications evidencing gang activity; the inmate’s association with validated gang affiliates; and offenses reflecting gang affiliation. Commenter states the provisions of the proposed regulations encompass any prisoner who possesses a publication that has even a tangential association with an STG, including the biographical works of historical figures such as, Malcolm X, regardless of intellectual curiosity or other non-threatening reasons.

Response 21E: See Commenter 1, Response A; Commenter 11, Responses B and C; and Commenter 17, Response C.

Comment 21F: Commenter states that a restriction that furthers a legitimate interest may still be unconstitutional if the restriction is an “exaggerated response.” Commenter states that it is an exaggerated response to deny a prisoner any material that includes a reference to an alleged STG absent a particularized finding that the material

poses an actual security threat. Further, Commenter states that to impose a censorship of any written materials referencing an STG is an overly broad restriction that is not constitutionally permissible. Commenter cites *Thornburgh v. Abbott*, 490 U.S. 401, 403 n.1 (1989), wherein the Court ruled that a prison censorship policy was permitted “only if it is determined detrimental to the security, good order, or discipline of the institution or if it might facilitate criminal activity.” Commenter also cites *Shakur v. Selsky*, 391 F.3d 106, 115 (2d Cir. 2004), wherein the court dismissed a case for failure to state claim in their regulations, stating, “we are not sure how a complete ban on the materials of ‘unauthorized organizations’ is rationally related to that goal [prison security].” Commenter states that, like the *Shakur* case, the proposed regulations fail to articulate a meaningful relationship between the safety and security of a prison and the ban of any material that includes a reference to an alleged STG member or associate. In addition, Commenter states that despite the claim that the regulations seek to prohibit materials or publications that “indicate an association with groups that are oppositional to authority and society,” the practical effect will be a ban on publications containing political speech and/or speech that in any way questions or criticizes the California prison system.

Accommodation: See Accommodation for Commenter 8A.

Response 21F: See Commenter 1, Response A and Commenter 11, Responses B and C; and Commenter 17, Response C.

Comment 21G: Commenter states that although the importance of suppressing gang activity in a prison is clear, the term “STG” is a loaded term. Further, Commenter states that although the courts generally defer to the judgment of prison officials on gang-related matters, prison officials cannot avoid scrutiny for restricting inmates’ constitutional rights simply by incanting the word “gang.” Prison officials must support their policies with facts. Using the term gang or STG in the proposed regulations would result in an actual constitutional deprivation—the receipt of a publication.

Response 21G: See Commenter 1, Response A.

Comment 21H: Commenter states that inmates still have a right to the protections of the Constitution, and that publishers also have a legitimate First Amendment Right to communicate with those who willingly seek their points of view. For example, Commenter states that the monthly publication, *Prison Legal News*, covers topics of great public concern, and is protected under the First Amendment; however, under the proposed regulations, *PLN* could be banned from prisons. Commenter states that despite the claim that the proposed regulations seek to prohibit materials and publications that “indicate an association with groups that are oppositional to authority and society,” the practical effect will be a ban on publications containing political speech and/or speech that in any way questions or criticizes the prison system.

Accommodation: See Accommodation for Commenter 8A.

Response 21H: See Commenter 1, Response A; Commenter 11, Responses B and C; Commenter 14, Response D; Commenter 17, Response C; and Commenter 1R, Response B.

COMMENTER #22:

Comment 22A: Commenter states the phrase “material which taken as a whole, depicts or describes sexual conduct, and lacks serious literary, artistic, political, or scientific value” is troublesome concerning the violation of the First Amendment as there is no absolute or uniform definition of “serious literary, artistic, political or scientific value,” as what an inmate or inmate family member and a correctional officer consider artistic or political may be wholly different due to individual backgrounds, education, life experiences, religious beliefs, and peer influence.

Response 22A: The proposed text of amended subsection 3135(d), regarding “material which taken as a whole, depicts sexual conduct, and lacks serious literary, artistic, political, or scientific value,” is adopted largely from PC’s Section 311(a) definition of “obscene matter.” CDCR does not ascribe a unique interpretation of the term

other than that intended by the Legislature and interpreted by the courts. See also Commenter 4, Response A; Commenter 6, Response A; Commenter 12, Response C; and Commenter 14, Responses A and C.

Comment 22B: Commenter states that although the proposed regulations claim to benefit CDCR staff and inmates by providing “clarity, fairness, and social equality,” the proposed regulations do not even touch on clarity due to the slipperiness and vagueness of the language, the issue of fairness is a moot point because not all officers interpret the standard uniformly, and that the proposed regulations do not promote social equality as they do nothing to mitigate adverse sociological conditions concerning social equality. Commenter gives the example of Aztec or African American images or literature that has been banned and states that this banning could be construed as racism or ideological discrimination. Commenter states that inmates are consistently discriminated against by correctional officers and that this discrimination is especially evident in the SHU (Security Housing Unit), which studies have proven is the mass incarceration of people of color. Commenter is unclear what the banning of publications that are considered to indicate “an association with groups that are oppositional to authority and society” has to do with any threat to staff safety and asks how reading and educating oneself is threatening to anyone as these are peaceful activities not unsafe behaviors. Commenter further states that the only reason reading and educating oneself is banned is because it is forbidden to disagree with “authority” and that this is a totalitarian, dictatorial, fascistic and disingenuous practice that must not be allowed in a democratic society.

Accommodation: See Accommodation for Commenter 8A.

Response 22B: The proposed regulations eliminate any difference between institutions about whether text-only publications are obscene by referring that determination to DAI. DAI determines whether of place a text-only obscene publication on the Centralized List based on the Penal Code and other law. See also Commenter 1, Response A.

Comment 22C: Commenter believes that the statement that the proposed changes will increase “an openness and transparency in business and government as Department regulations and Penal Code are consistent and in alignment,” has no truth or substance. Commenter states the wording is vague as the term “indicates” is used lavishly throughout the proposed regulations in reference to indicating an association with a validated STG member or associate, and that because DAI is designated as the “sole authority to designate text-only publications,” there is no oversight or additional input from external stakeholders. As a result, Commenter states there is no material change to the Department’s current obscene material and contraband regulations, which promote only arbitrary, inconsistent, and non-transparent judgments and decisions that rob human beings of a fair chance of self-improvement and true rehabilitation.

Response 22C: See Commenter 1, Response A and Commenter 14, Response D.

Comment 22D: Commenter states that the only real clarity in the proposed regulations is the definition of sexual act, but that otherwise, the proposed regulations seem like a ruse for banning materials that CDCR disagrees with politically and ideologically. Commenter states that this is a violation of every inmate and citizen’s First Amendment freedoms, and smacks of Nazi Germany tactics to keep inmates isolated in the SHU, unable to think for themselves. Commenter is appalled that in this day and age, the proposed regulations could even be considered as fair, clear, or just.

Response 22D: CDCR’s policy and proposed regulations do not violate the First Amendment free speech rights of inmates or other persons. Publications are withheld from CDCR institutions to the extent, as recognized in the law, that the publications contain contraband, are associated with STGs, or otherwise give rise to a security threat. See also Responses to Commenter 1, Response A; Commenter 6, Response A; Commenter 12, Response C; and Commenter 14, Responses A and C.

COMMENTER # 23:

Comment 23A: Commenter is opposed to the expansion of the meaning of “obscenity” in the proposed regulations to include all material to and from individuals whom the CDCR deems is connected to an STG. In addition,

Commenter states that CDCR has recently grossly expanded the net of those it will label as STG, and that this new attack on communication can only be interpreted as being aimed at completely isolating inmates, stifling their voice, and stripping them of constitutional rights. Commenter states proposed subsection 3135(c)(14) is a violation of the First Amendment rights of inmates and their families and friends, including any professionals whose services they employ, and the publishers and supporters who help to raise their voices to the public. Commenter asks what CDCR has to fear from the public hearing the truth of the lives of inmates-what is the CDCR trying to hide?

Commenter also states new subsection 3135(c)(14) is unnecessary as any content beyond what is stated in existing subsections 3135(c)(1)-(13) must be allowed under existing subsection 3135(b). Further, Commenter states that if CDCR tries to negate subsection 3135(b), it will open itself up to a myriad of law suits for the violation of the First Amendment. Commenter also states that even though the Department presented a positive outcome and benefits, if adopted, the proposed regulations will result in high legal fees and lawsuits.

Response 23A: See Commenter 1, Response A; Commenter 11, Responses B and C; Commenter 14, Response D; and Commenter 17, Response C.

COMMENTER #24:

Comment 24A: Commenter states the proposed regulations further denigrate both inmates and their families as they appear to have been intentionally contrived in order to suppress inmates' voices and the voices of those on the outside that seek to amplify the inmates' voices. Commenter states this is an outrage and a violation of the inmates' basic human rights, and states that if the proposed regulations are adopted, the immense suffering that inmates already face on a daily basis by being caged and isolated for numerous hours a day for years on end will only be exacerbated.

Response 24A: See Commenter 5, Response C.

Comment 24B: Although, the stated purpose of these "obscenity" regulations (censorship rules) is to prohibit "publications that indicate an association with groups that are oppositional to authority and society," Commenter notes that written materials or photographs going into or out of prison that indicate an association with a validated STG member or associate will also be added to the Centralized List. Commenter states this provision is extremely vague and unclear and asks:

- What exactly constitutes "groups that are oppositional to authority and society?"
- Who will be the decision-maker concerning identifying these "groups" and based on what criteria, as it appears that anyone can be labeled "STG" if they are caught with materials that indicate an "association" with validated STG members?
- Who will oversee the staff which determines a prisoner's association with a validated member or associate of an STG and how can prisoners be protected from arbitrary STG validation from staff?

Response 24B: See Commenter 1, Response A.

Comment 24C: Commenter states that the proposed regulations contradict existing subsection 3135(b), which reads, "Disagreement with the sender's or receiver's morals, values, attitudes, veracity, or choice of words will not be cause for correctional staff to disallow mail. Correctional staff shall not challenge or confront the sender or receiver with such value judgments." Commenter asks why CDCR is now so adamant in choosing to censor mail and publications, which clearly violates and contradicts its own regulations. Commenter states that inmate mail and publications are one of the few positive outlets they have to stave off boredom, and to deal with the misery of being locked up in a cage. Commenter asks that CDCR consider the indelible damage to the well-being of inmates these oppressive censorship regulations will cause. Commenter states this draconian censorship does not assist in rehabilitating the inmates, and will instead create an atmosphere that is not conducive to real rehabilitation and will only perpetuate the torture and suffering of inmates.

Response 24C: See Commenter 1, Response A and Commenter 17, Response C.

COMMENTS #25:

Comment 25A: Commenter states the proposed regulations violate the CCR and the mandates of the Administrative Procedures Act (APA). For example, the Department states the proposed regulations are necessary to ensure safety and security by targeting publications that “indicate an association with groups that are oppositional to authority and society,” and while at first blush, this language appears to be specifically directed toward sexually deviant groups, and therefore more permissive, Commenter states that using basic legal principles to interpret the regulations, it is clear that proposed regulations violate the CCR and APA.

Response 25A: The proposed regulations comply with the state APA and related rulemaking policy for CDCR, including at section 12010.5.6 of the CDCR Department Operation Manual. See also Commenter 1, Response A and Commenter 11, Response B.

Comment 25B: Commenter states the proposed regulations violate the necessity standard of the APA. Commenter notes that new subsection 3135(c)(14) is intended to ban innocuous association in First Amendment protected activity, and states there is no legitimate necessity standard for the proposed regulations. Commenter states this banned activity relates to public matters of concern both inside and outside prison that involve social, political community interests, and are necessary and appropriate to enable free members of society to make informed decisions about the operation of government, or self-government. Commenter states that by banning this activity, CDCR is directly infringing upon the public’s constitutional right to make informed decisions, and the dissemination of such information among those who have an inherent right to have a public discussion that is truthful and not controlled by private interests of unions and stakeholders in the status quo. Additionally, Commenter states the proposed regulations are not necessary because the U.S. Post Office already has regulations, similar to Federal Communications Commission, that control the same issues as those of PC Section 2601(c)(1)(A)-(C).

Response 25B: The descriptions of subsections 3006(c)(19), 3134.1(e), and 3135(c)(14) in the ISOR are changed to delete the references to “groups that are deviant in nature, opposed to authority and society.” These descriptions are deleted within the FSOR, which now clarifies more specifically that these subsections disallow only written materials and photographs that indicate an association with STGs. The proposed regulations are otherwise narrowly tailored to comply with all applicable First Amendment free speech standards and with PC Section 2601(c)(1)(A)-(C). See also Commenter 1, Response A; Commenter 10, Response C; Commenter 11, Response B; Commenter 14, Response D; Commenter 17, Response C; and Commenter 19, Response B.

Comment 25C: Commenter states the proposed regulations do not meet the duplication standard of the APA. As they are redundant and serve the same purpose of existing CCR subsections 3315(c)(1)-(8). Commenter states the only change the proposed regulations assert is that now innocuous “association” is sufficient to ban material without having to show that the publications fall into any category of existing subsections 3315(c)(1)-(8). Commenter states that this will result in many local publications, such as *The Rock*, *Prison Focus*, and *The San Francisco Bay View*, being disallowed from institutions even though they do not propagate or endorse such behavior.

In addition, as states, Commenter notes that the U.S. Post Office already employs regulations governing obscene material, the proposed regulations are duplicative of these regulations and unnecessary. Commenter notes there has not been one instance of these publications opposing legitimate government authority and societal values.

Because there is clearly no legitimate penal interest, Commenter states that the proposed regulations appear as an ulterior motive by private prison guard union stakeholders to control both the dialogue and dissemination of information concerning community support, political influence, controlling economical free falls through the usual generalized fear-mongering of safety and security without any specific examples of breeches of either. Further, Commenter states the proposed regulations are a targeted, government-sanctioned, and privately advanced suppression of the First Amendment.

Response 25C: See Commenter 1, Response A; Commenter 10, Response C; Commenter 11, Response B; Commenter 14, Response D; Commenter 17, Response C; and Commenter 25, Response B.

Comment 25D: Commenter states the proposed regulations violate the authority standard of the APA as they illegally supersede PC Section 2601, which states that inmates are entitled to read, receive, and purchase all newspapers and periodicals that are accepted for distribution by the U.S. Post Office. Commenter states that because the U.S. Post Office does not distribute material or publications that propagate or endorse “obscene matter” that incites murders, arson, riots, violent racism, or any form of violence, gambling or batteries, Commenter states that CDCR has no authority to ban such publications as we have a number of political rights under the First Amendment that includes access to the court of public opinion when the expression involves a matter of public concern. Commenter adds that this political expression is not criminal, and serves as a peaceful alternative to violence when addressing public issues, and when working towards a change that they would otherwise be unable to effect due to their “disenfranchisement and judiciary complacency.” Further, Commenter states that while PC Section 5058 gives CDCR authority to promulgate regulations, it is not free-standing authority as it is ancillary to underlying controlling law, PC Section 2601.

Response 25D: See Commenter 1, Response A; Commenter 4, Response A; Commenter 6, Response A; Commenter 10, Response C; Commenter 11, Responses B and C; Commenter 12, Response C; and Commenter 14, Responses A and C.

Comment 25E: Commenter states the proposed regulations violate the consistency standard of the APA. By reason of not having the authority to target those groups that proliferate civil-peaceful dialogue for reforms in old dogma, Commenter states that the proposed regulations are not consistent with a government by and for the people, the First Amendment which supports this government, and PC Sections 2601(c)(1)(A)-(C). Therefore, Commenter states that CDCR cannot legally adopt such regulations that disenfranchise citizens from necessary speech concerning public affairs as this communication is needed for society to make informed decisions about the operation of its government.

Response 25E: See Commenter 14, Responses C.

Comment 25F: Commenter states the proposed regulations violate the reference standard of the APA as CDCR cites PC Sections 2601 and 5050 and the court case, *In re: Martinez*. Commenter states that such reliance is misplaced as CDCR can only exercise discretion of what is allowable within the standards of the governing statute. In regards to *In re: Martinez*, Commenter states that regardless of the standards adopted in the court case, CDCR must adhere to state law and cannot invoke an interest that the Legislature did not recognize as legitimate.

Further, Commenter states that speech involving peaceful discussion of public concerns for political reform is beyond the scope of administrative employees and that the proposed regulations attempt to control the dialogue by the suppression dissemination of false propaganda. Commenter states this is not legitimate and therefore from a practical point of view could not be oppositional to authority and society. Commenter states that because for these reasons, CDCR cannot adopt such language in the proposed regulations, and that if it did, CDCR would be challenged through litigation as the proposed regulations are unconstitutional due to the blanket ban of the innocuous association in public matters, as they are matters that concern every inmate regardless of ethnicity or private ideology, and the general free public, (citizen families, voters, and policy makers), who are genuinely interested in the proper exercise of delegated powers.

Response 25F: The descriptions of subsections 3006(c)(19) and 3135(c)(14) in the ISOR are changed to delete the references to “groups that are deviant in nature, opposed to authority and society.” These descriptions are narrowed to clarify that these subsections disallow only written materials and photographs that indicate an association with STGs. The proposed regulations are otherwise narrowly tailored to comply with *In re Martinez* (2013) 216 Cal.App.4th 1141 and other law. See also Commenter 1, Response A; Commenter 4, Response A; Commenter 6, Response A; Commenter 12, Response C; and Commenter 14, Responses A and C.

COMMENTS #26:

Comment 26A: Commenter asks for a definition of the term “frontal nudity.” Commenter states any dictionary defines the term “nudity” as nakedness and being bare, and the term “frontal” as meaning “towards the front of the body.” Therefore, Commenter states that by simple logic, a definition can be formed by simply putting these two definitions together. Further, Commenter states that Centinela State Prison mailroom staff is using their own personal opinions and definitions and states that CDCR will always have a problem when there is staff that uses their own opinions and definitions.

Commenter states there is no such thing as “identifiable object” in subsection 3006(c)(17)(A), and that under the proposed regulations, a female who is wearing a shirt, but whose nipple(s) print is pushed up to the shirt would not be considered “frontal nudity” as, under the proposed regulations, the nipple(s) would have to be exposed, bare, or uncovered to be considered frontal nudity. For example, Commenter states that there is female staff in his institution whose nipple imprints can be seen through her shirt and asks if this is considered “frontal nudity.” Commenter states that it is a violation of policy to reject/disapprove mail that he is able to have, per CDCR’s own guidelines and that such a denial could be considered staff misconduct as it violates his Civil Rights and Due Process. Commenter states he has tried to communicate this information to the mailroom staff, but the problem continues, and that even the Facility Captain himself is signing off on the Form 1819s! Further, Commenter states that his own mail has been rejected even though it did not contain exposure of genitalia, anus, or nipple(s).

Response 26A: See Commenter 5, Response B and Commenter 10, Response A.

COMMENTER # 27:

Comment 27A: Commenter states that existing subsection 3135(b) protects the rights of inmates to receive and send, which are basic human and legal rights. Commenter urges CDCR not to adopt the proposed regulations and states that if they are adopted, subsection 3135(b) will be nullified, and they also violate the First Amendment. Commenter states that this will generate a many lawsuits for violating inmates’ constitutional rights and place an additional burden on California taxpayers, and states that California residents cannot afford the social or financial costs associated with the adoption of the proposed regulations.

Response 27A: See Commenter 14, Response A and Commenter 17, Response C.

COMMENTER #28:

Comment 28A: Commenter asks CDCR not to violate people’s rights through subsection 3006(c)(19), and to not prevent inmates from publishing, reading, or associating with those deemed “oppositional to authority and society.” Commenter further asks what threat CDCR perceives that makes such a denial necessary and why CDCR is advocating for placing even further limitations on suffering “incarcerated souls.” Commenter states that if the proposed regulations are adopted, they will further erode First Amendment constitutional rights.

Response 28A: See Commenter 1, Response A and Commenter 25, Response B.

COMMENTER #29:

Comment 29A: Commenter is an advocate for social justice and a contributing editor of the national publication, *Prison Health News (PHN)*, which sometimes prints articles in opposition to authorities that carry out unjust policies and practices. Commenter states that subsection 3006(c)(19) would violate her First Amendment Rights as a journalist as it disallows publications that indicate an association with “groups that are oppositional to authority and society.”

Response 29A: Subsection 3134.1(d) is amended to add a new third paragraph specifying that an institution may disapprove individual issues of a periodical. This institutional disapproval pertains to individual issues of the periodical and not to future issues. Future of issues of a periodical may be disallowed only when the DAI places the periodical on the Centralized List of Disapproved Publications, which according the new text in

subsection 3134.1(d) may occur when all issues of the publication for twelve consecutive months violate departmental regulation or policy. See also Commenter 14, Response D; Commenter 18, Response M; and Commenter 25, Response B.

Comment 29B: Commenter states subsection 3135(c)(14) violates her rights to free speech and freedom of the press as correspondence that “contains written materials or photographs that indicate an association with validated Security Threat Group members or associates” would be disallowed. Commenter states that *PHN* relies on inmates, including those in solitary confinement, to provide information to its readers on various inmate situations such as navigating the prison health care system. Commenter asks the following in regards to this subsection:

- Would a letter that an inmate writes to *PHN* describing his difficult experiences in his effort to be prescribed the most appropriate medication to treat his AIDS, and the lessons he learned be censored?
- Would *PHN* be banned if they published his letter?
- If the publication is banned and deemed a threat, would inmates who seek to read the publication be validated?

Commenter states this scenario is not far-fetched as she is aware that historical writings about African-American history have been prohibited as “Security Threat Group recruitment material” and states that it would be tragic if *PHN* were banned as it would leave inmates without the life-saving health information the publication provides. Further, Commenter asks if “disapproval” of a publication refers to the current issue, or to all the future issues as well? Commenter also asks that CDCR post the Centralized List on the CDCR website.

Accommodation: See Accommodation for Commenter 17F.

Response 29B: See Commenter 29, Response A.

COMMENTER #30:

Comment 30A: Commenter is a member of an organization that works for inmates’ constitutional, democratic, and human rights and promotes community resources, services, and alternatives to incarceration. Commenter states that he must communicate with inmates to raise awareness about jail and prison conditions as the personal experience and individual knowledge that inmates provide is invaluable to their research and advocacy. However, Commenter states the proposed regulations threaten to cut off the lines of communication between inmates and the public.

Response 30A: See Commenter 5, Response C.

Comment 30B: Commenter states the proposed regulations are a blatant attempt to censor the content of inmates’ ingoing and outgoing mail, and that an agency that is accountable to the public, CDCR should have nothing to hide. Commenter is concerned the language of the proposed regulations is too broad and rejects the claim they are necessary for purposes of “security.” For example, Commenter states that under the proposed regulations, CDCR would permanently ban any documents it defines as contraband, including political publications and correspondence. However, Commenter states that these documents are protected both by the First Amendment and by existing subsection 3135(b) which states, “Disagreement with the sender’s or receiver’s morals, values, attitudes, veracity or choice of words will not be cause for correctional staff to disallow mail. Correctional staff shall not challenge or confront the sender or receiver with such value judgments.” Commenter also states that the prisoner hunger strikes of 2011 and 2013 shed some much-needed light on the state-sanctioned torture that was occurring inside prisons, and especially in the Security Housing Units, and that even though it is internationally recognized that more than 15 days in solitary confinement is considered torture, CDCR continues to justify its draconian practices on the basis of “security.”

Commenter asks if it is a threat to the institution when inmates tell the public about the torture they have been subjected to, or when they write about their philosophical, moral, and political beliefs. Commenter asks CDCR to explain the penological interests of the institution if this is in fact a threat.

Response 30B: See Commenter 1, Response A; Commenter 17, Response C; and Commenter 25, Response B.

Comment 30C: Commenter states that “Realignment” and the prison hunger strikes has brought awareness to the fact that CDCR is operating with a dangerous lack of oversight that hinders democracy and allows abuses of human rights to go unchecked. Further, Commenter states that the proposed regulations are a step in the wrong direction. Commenter rejects CDCR’s constant attempts to silence legitimate criticism, and states that if CDCR does not want to be associated with torturous prison conditions and unconstitutional censorship, then the proposed regulations should be wholeheartedly rejected.

Response 30C: See Commenter 5, Response C.

COMMENTER #31:

Comment 31A: Commenter is disappointed that publications which look at issues concerning justice and prisons would be considered “obscene,” and states that inmates, family members, and those concerned for humane treatment of all people deserve to know the truth. Commenter states that although people have differences of opinion on some basic issues about the prison system and human rights, every American still deserves to be exposed to a discussion about such issues.

Response 31A: CDCR disallows publications that contain contraband, that create a security risk, or that are reasonably deemed to be a threat to legitimate penological interests. Political publications are otherwise not banned from CDCR institutions and CDCR ensures that inmates may possess those or other publications subject to the First Amendment and other law. Subject to Penal Code section 311 and subsection 2601(c)(1)(A), CDCR may exclude obscene publications or writings. The proposed regulations here are a lawful implementation of these Penal Code provisions and other law. See also Commenter 6, Response A; Commenter 11, Responses B and C; Commenter 18, Response N; and Commenter 22, Response A.

COMMENTER #32:

Comment 32A: Commenter states that her brother is an inmate housed in the Security Housing Unit, and that her brother’s life is already restricted as he does not receive phone calls, that his mail is constantly scrutinized by the Internal Gang Investigation Unit and delayed by the mailroom, and that visits are screened through a telephone that is constantly monitored. Commenter states that now her mail will be scrutinized and looked at as if she is a security threat. Commenter states that for CDCR to further label both the prisoners and the public is a crisis and that in addition to the Prison Hunger Strikes, the public was able to help get the word out about the tortuous conditions the prisoners were facing was because inmates were able to send out letters to family members, newspapers, lawyers, activists, and concerned individuals who then made it public knowledge.

Response 32A: See Commenter 1, Response A; Commenter 11, Response E; and Commenter 25, Response B.

Comment 32B: Commenter states that as citizens of the United States, inmates should be allowed to speak publicly without labeling them as STG members or associates. For example, Commenter states that based on CDCR’s definition of an STG, if three or more people with a name such as “Prisoner Human Rights Group” with a shared human rights cause wanted to get any information out to the public, they would be labeled an STG and locked even further down “unable to see the light of day.” Commenter states the Hunger Strikes allowed legislators to get involved, but states that this censorship will stifle any further exposure that is needed to get the word out about any misconduct of the prison guards, CDCR, and the prison system at large. Further, Commenter states that many inmates have changed their lives, but have not been given the proper chance to prove it and that the proposed regulations are insane, unfair, and extremely insensitive to the needs of every prisoner and family members.

Response 32B: See Commenter 5, Response C and Commenter 11, Response E.

COMMENTER #33:

Comment 33A: Commenter asks what specifically will be defined as “obscene materials.” In regards to this definition, Commenter asks for examples of names of publications that would be included, and for a detailed description of TV and radio station content that would be under consideration. Commenter also asks CDCR provide the names of the corporations/businesses/individuals who publish this media that will be stopped by the prison mail rooms. Commenter further asks which prisons will prohibit this media.

Response 33A: The proposed text of amended subsection 3006(15)(A) referring to “obscene material” is adopted largely from the Penal Code subsection 311(a) definition of “obscene matter.” CDCR does not ascribe a unique interpretation of the term other than that intended by the Legislature. The proposed regulations implement the legal standards for obscene material, subject to the Penal Code and other law, and otherwise set forth categories of materials that have been found to meet those legal standards. Publications are withheld from CDCR institutions to the extent, as recognized in the law, that those publications are obscene, contain contraband, are associated with STGs, or otherwise give rise to a security threat. See also Commenter 4, Response A; Commenter 6, Response A; Commenter 10, Response A; Commenter 13, Response C; and Commenter 18, Response M.

Comment 33B: Commenter asks about the educational qualifications of the committee members, review board members, and correctional officers who will be tasked with determining what materials are a threat to the security of an institution?

Response 33B: See Commenter 4, Response A; Commenter 5, Response C; and Commenter 18 N.

Comment 33C: Commenter asks what title or job qualification an officer has to have at present in order to decide whether reporters of mainstream news outlets can enter prisons to interview inmates. Commenter also asks for the regulation or law that governs this action.

Response 33C: See Commenter 5, Response C.

Comment 33D: Commenter asks how many lawsuits were filed by prisoner-plaintiffs in Pennsylvania after the corrections department took away all reading materials from inmates housed in Security Housing Unit. Additionally, Commenter asks what the cost to the Pennsylvania tax payers was as a result of settling these lawsuits, after the plaintiffs won.

Response 33D: See Commenter 5, Response C.

Comment 33E: Commenter asks exactly how materials that are classified as “obscene materials” physically threaten the safety and security of an institution. Commenter also asks for data on the physical attacks/threats on correctional officers in the Security Housing Units.

Response 33E: Penal Code section 2601(c)(1)(A) allows prison authorities to exclude “obscene publications or writings, and mail containing where, how, or from whom this matter may be obtained.” The proposed regulations make this statute more specific, subject to the APA. See Commenter 4, Response A; Commenter 5, Response C; Commenter 6, Response A; and Commenter 31, Response A.

Comment 33F: Commenter asks what legal education qualifications/degrees are required of correctional officers.

Response 33F: The proposed regulations ensure that determinations about the placement of text-only publications on the Centralized List of Disapproved Publications are not arbitrary, meet all applicable legal standards for obscenity, and are apply consistently throughout CDCR institutions. See also Commenter 4, Response A and Commenter 5, Response C.

Comment 33G: Commenter asks if the Prisoners’ Bill of Rights is considered a threat to the safety and security of California prisons.

Response 33G: See Commenter 5, Response C and Commenter 19, Response B.

Comment 33H: Commenter asks if the following will be considered obscene material under the proposed regulations:

- The article, *The Agreement to End Hostilities*
- The national Black newspaper, *The San Francisco Bay View*

Response 33H: See Commenter 5, Response C and Commenter 19, Response B.

Comment 33I: Commenter states that now under the proposed regulations, communication between prisoners can be considered a threat to the safety and security of an institution and result in convictions in some cases, and further asks if the prison staff (who conspire like gangs), will also be considered a threat and judged by the same criteria.

Response 33I: See Commenter 5, Response C.

COMMENTER #34:

Comment 34A: Commenter states the proposed regulations over reach what both federal and state law define/classify as obscene material by using quantitative phrase of deliberate vagueness, “deviant nature, opposed to authority and society.” Commenter states that this rule-change would apply to material that has nothing to do with sexual contents or anything to do with bodily harm or injury to anyone, and that what CDCR really wants to do is censor/ban progressive publications, both from the prisons and from doing business in general. Commenter states that the proposed regulations use vague phrases like “groups deviant in nature” and “opposed to authority” in regards to newspapers, newsletters, and periodicals to which prisoners subscribe.

Commenter states the proposed regulations are CDCR’s way to stop prisoners from publicizing prison conditions of confinement, and silencing those who would speak out against CDCR’s policies and practices by banning all publications that publish articles that speak out against CDCR’s actions. In addition, Commenter states that inmates will not be allowed to purchase; subscribe; or even write to these publications, including to the editors or publishers, for at least a year if it publishes such an article or story.

Response 34A: See Commenter 1, Response A; Commenter 6, Response A; Commenter 11, Response B; Commenter 13, Response F; Commenter 18, Response M; Commenter 25, Response B; and Commenter 33, Response A.

Comment 34B: If the proposed regulations are adopted, Commenter states the real question is what CDCR will do with existing subsection 3135(b) as it is in conflict with the proposed regulations.

Response 34B: See Commenter 5, Response C; Commenter 14, Response A; Commenter 17, Response C; and Commenter 30, Response B.

COMMENTER # 35:

Comment 35A: Commenter states the fact the proposed regulations were noticed as “Obscene Materials” is an indication of CDCR’s intention to fly below the radar so as to not draw attention to the fact that much of the material that would be prohibited under the proposed regulations would include newspaper articles and a multitude of other written materials that do nothing to threaten the safety and security of prison, and everything to violate and infringe on the First Amendment rights of California’s inmates. However, Commenter states fortunately, CDCR was not able to disguise from the public the politicized nature of the proposed regulations.

Further, Commenter states that it is not an accident that CDCR is trying to control the reading material of its inmates as it wants to keep prisoners isolated, ignorant, and uniformed about their rights, and does not want them to see the robust world-wide media that has been developing over the last few years. In addition, Commenter states that the proposed regulations are in response to the 2011 and 2013 hunger strikes, and the fact that prisoners had a

voice in various publications such as the *PHSS News*, *Rock*, *Prison Focus*, *SF Bay View*, *Abolitionist*, *Prison Legal News*, *Turning The Tide*, *The Final Call*, *New York Times*, *Mother Jones*, *The Nation*, and *The Los Angeles Times*.

Response 35A: Existing CDCR policy and the proposed regulations do not violate the First Amendment free speech rights of inmates or other persons. Publications are withheld from CDCR institutions to the extent, as recognized in the law, that the publications are obscene, contain contraband, are associated with STGs, or otherwise give rise to a security threat. See also Commenter 1, Response A and Commenter 25, Response B.

Comment 35B: In subsection 3134.1(e), new text is added to state that publications that include “STG recruitment material” may be placed on the Centralized List. Although the Department states the change is necessary for the safety and security of the institution by prohibiting publications of groups that are “deviant in nature, opposed to authority and society,” Commenter states this category is extraordinarily broad and vague and subject to great abuse and future lawsuits, and asks, what is material that is “oppositional to authority?”

Accommodation: See *Accommodation for Commenter 8A*.

Response 35B: See Commenter 1, Response A; Commenter 11, Response C; and Commenter 17, Response E.

Comment 35C: Commenter states that the proposed regulations are designed to not only limit what prisoners read, but also deny public communications from the prisoners as materials may be “opposed to authority.” Commenter states this type of censorship confirms that CDCR views many of its prisoners, especially those that who were involved in the prison hunger strikes, as political prisoners. Commenter states that information is power and that a well-rounded education encourages critical thinking and develops consciousness within individuals so that they can begin to fulfill their potential and also be better able to cope with the outside world when they are released to society. However, Commenter states, that the proposed regulations are an attack on the intellectual development of California’s inmates.

Response 35C: See Commenter 1, Response A; Commenter 5, Response C; and Commenter 25, Response B.

Comment 35D: Commenter states the proposed will have a “chilling effect” because prisoners will begin to self-censor their incoming publications for fear of receiving “contraband” and being placed in Security Housing Unit. Commenter states that CDCR is imposing its own ideological, subjective, and politically biased views on what inmates are allowed to see and articulate to the outside world, and would therefore bar the very kind of information and advocacy that all democratic societies allow their inmates because. For example, Commenter states that Californians would not have become educated on the negative effects on the mind and body of long-term solitary confinement had they had not been able to hear from the inmates who wrote in to various publications over the years. However, Commenter states that the proposed regulations are intended to squelch the voices of serious criticism of CDCR and its policies, such as long-term solitary confinement. Further, Commenter states that the proposed regulations take total control of the media that is available to inmates will become more disempowered than they are already.

Commenter states the act of punishing prisoners because of what they choose to read, see, learn, think and write goes to the heart of a free society and states that those rights should not be lost just because one is in prison.

Response 35D: See Commenter 1, Response A; Commenter 5, Response C; and Commenter 25, Response B.

COMMENTER #36:

Comment 36A: The intent of the proposed regulations is to enable CDCR staff to appropriately and consistently identify and disallow material classified as contraband or defined as obscene matter under Penal Code Sections 311 and 2601, however Commenter states that the proposed the regulations do not represent the most effective or least burdensome option to meet the intent as they do not offer a clear, fair, and discrete censorship policy, and violate prisoners’ First Amendment Rights. Commenter states that clarifying the proposed regulations in order to accommodate the rights of incarcerated persons would better enable CDCR to achieve its stated goals.

Response 36A: See Commenter 1, Response A; Commenter 25, Response B; and Commenter 31, Response A.

Comment 36B: Commenter states the proposed regulations should not be enacted, or in the alternative, that subsections 3006(c)(19) and 3135(c)(14) should be deleted and subsection 3134.1(d) should be amended to mandate a 15 calendar day deadline in which DAI must determine whether a publication may be permanently banned.

Accommodation: See Accommodation for Commenter 12B.

Response 36B: See Commenter 11, Response E; Commenter 12, Response B; and Commenter 18, Response K.

Comment 36C: Commenter states the proposed regulations are an exaggerated response to CDCR's stated interest, enabling staff to appropriately identify material that meets the definition of obscene or that qualifies as contraband and are therefore not a reasonable restriction on inmates' constitutional rights. Commenter states the proposed regulations infringe upon inmates' rights to speak, express themselves, and interact with other people. Commenter further states that when determining if a prison regulation is reasonable, the following factors, as established in court case, *Turner v. Safely*, must be considered:

- Whether a valid rational connection between the regulation and a legitimate governmental interest exists.
- Whether alternative means to exercise the burdened right exist to incarcerated persons.
- What impact will accommodating the constitutional right have on prisoners, guards, and prison resources?
- Whether ready alternatives to the regulation are available to the agency proposing the regulations.

Response 36C: See Commenter 1, Response A; Commenter 14, Responses A and D; and Commenter 25, Response B.

Comment 36D: Commenter states the breadth of the proposed regulations may result in a complete shutoff of a prisoner's channels of communication with the outside world, and that because alternative means for communication are not guaranteed to be available, the proposed regulations are constitutionally unreasonable.

Response 36D: See Commenter 1, Response A; Commenter 6, Response B, Commenter 10, Response A; Commenter 14, Responses A and D; and Commenter 25, Response B.

Comment 36E: Commenter states the proposed regulations are extremely broad and grant DAI authority to disallow a wide range of publications and materials for an indefinite period of time. For example, Commenter states that subsections 3006(c)(19) and 3135(c)(14) permit DAI to permanently disallow written materials or photographs that indicate an "association" with a validated STG member or associate and grant DAI extreme authority to decide what material falls into this category. Commenter states this material could range from a letter sent from a friend of a friend of a validated STG member to a photograph of a grandchild's graduation ceremony wherein a validated STG member may have been present. Commenter adds that these examples are a reality for people who grew up in low-income, high crime neighborhoods and whose children and grandchildren may still live in those neighborhoods.

Response 36E: See Commenter 1, Response A; Commenter 11, Response C; Commenter 17, Response E; and Commenter 18, Response C.

Comment 36F: Commenter states that DAI may "temporarily" disallow certain publications indefinitely as a timeline does not kick in until after DAI has made its final decision. The proposed regulations do not impose a limit on how many days, month, or years DAI may take in making its determination. In practice, Commenter states, publications that have never been determined to belong on the Centralized List of Disapproved Publications may still be permanently banned. Commenter states the proposed regulations may result in severing incarcerated

persons from contact with the outside world without any way to legitimately challenge DAI's decision or lack thereof.

Accommodation: See *Accommodation for Commenter 12B*.

Response 36F: See Commenter 11, Response E; Commenter 12, Response B; and Commenter 18, Response K.

Comment 36G: Commenter states that the impact of ensuring that incarcerated persons are able to maintain their rights to speak, express themselves, and communicate with the outside world is *de minimis*. As stated earlier, in determining whether a prison regulation that is curtailing an inmate's constitutional rights is reasonable, consideration must be given to the impact that accommodating the infringed right would have on the prison as a whole. Commenter states the proposed regulations do not offer a clear, fair, or discrete censorship policy, and further states that a system of penalty and of withholding a broad range of materials may in fact have severe and deleterious effects on inmates, their family members and attorneys, and any others with whom they correspond because it increases the inmates' isolation and their feelings of loneliness. Further, Commenter states that in many cases, this communication is the only link that inmates have to the outside world and as such it is vital to their mental and emotional health and overall stability. Commenter states that prohibiting this communication will result in a negative impact on the prison system as a whole and that clarifying the proposed regulations to accommodate the rights of inmates to receive writings; photographs; and publications from families; friends; supporters; and groups of interest would better enable CDCR to achieve its stated goals.

Response 36G: See Commenter 11, Response E; Commenter 18; and Commenter 44, Response C.

Comment 36H: Commenter states there are ready alternatives for furthering the governmental interest. Further, Commenter states that GC Section 11346.2(b)(4) requires an agency promulgating regulations to include in its ISOR document a description of reasonable alternatives to proposed regulations and the reasons for rejecting those alternatives. Commenter states that because alternative means of communication may not be available, the proposed regulations are not a reasonable restriction on inmates' First Amendment Rights.

Response 36H: The ISOR explains that no reasonable alternatives were brought to the attention of the Department. GC Section 11346.2(b)(4)(C) specifies that an agency is not required to artificially construct alternatives or describe unreasonable alternatives. Commenter does not specify reasonable alternatives for Departmental consideration. See also Commenter 5, Response C and Commenter 14, Response A.

Comment 36I: Commenter states that subsections 3006(c)(19) and 3135(c)(14) are unconstitutionally overbroad and vague and will capture a substantial portion of written material or photographs that are protected speech under Penal Code's definition of obscenity. Therefore, Commenter states the proposed regulations are unconstitutionally impermissible as they are not in compliance with statute's plainly legitimate sweep. In addition, Commenter notes the Courts have ruled that a law is facially invalid if a person of ordinary intelligence must guess at its meaning and application.

As previously mentioned, the proposed regulations give DAI almost unlimited discretion in determining which material should be permanently banned or declared contraband. The proposed regulations also expand the definition of contraband to include "written materials or photographs that indicate an association with validated STG members or associates"; however do not include anything about the nature of the writings or photographs other than they are "associated" with an STG member or associate. They do not, for example, require that the photographs or writings constitute a gang communication or criminal misconduct. So, if a proud parent-inmate was in possession of a newspaper article that featured his/her child's admittance to college on a full scholarship, if the son or daughter was incidentally associated with an STG member or associate, it would be considered contraband under the proposed regulations. In addition, Commenter states that writings about pending or resolved lawsuits brought on by or against an STG member or associate would also be contraband under the proposed regulations. Further, Commenter states that under the recently-adopted STG regulations, CDCR would be able to validate parolees and non-inmates, including inmate family members and prison activists, as the number of groups that can be validated as STG has been expanded. In addition, Commenter also states the word "association" is vague and

could be interpreted very broadly. For example, if an STG member is from the Fruitvale section of Oakland, then Commenter states that arguably any material that concerns Fruitvale is “associated” with that STG member and may be determined to be contraband. Because possession of contraband is a disciplinary violation which results in specific punishments, Commenter states more detail is needed concerning this new category of contraband.

Response 36I: See Commenter 1, Response A; Commenter 11, Responses B and C; Commenter 14, Response D; Commenter 17, Responses C and F; and Commenter 25, Response B.

COMMENTER #37:

Comments A through F are in regards to subsection 3006(c)(19)

Comment 37A: Who will evaluate/identify what written material or photographs are authored by a Security Threat Group affiliate?

Response 37A: The proposed regulations include a reference to existing regulations at subsections 3378.2(b)(5)-(6), which specify at length the written materials and photographs that are used as source items for validating STG members and associates. These subsections provide uniform and concrete statewide standards for STG materials that are not unduly susceptible to the interpretations of staff. See also Commenter 1, Response A; Commenter 11, Response C; and Commenter 17, Response E.

Comment 37B: Will an outside party (non-CDCR) be involved in identifying publications associated with groups that are oppositional to authority and society?

Response 37B: CDCR does not require an independent agency or a third party to review its administrative decisions. However, inmates have the opportunity to challenge the withholding of material through the inmate appeal process and in the courts if necessary. See also Commenter 1, Response A and Comment 37, Response A.

Comment 37C: How do you justify impeding a prisoner’s constitutional right of freedom of speech?

Response 37C: See Commenter 1, Response A; Commenter 11, Response B; Commenter 14, Responses C and D; Commenter 17, Response C; Commenter 25, Response B; and Commenter 35, Response A.

Comment 37D: Does a publication need to oppose both authority and society to be disallowed, or only one of these?

Response 37D: See Commenter 1, Response A and Commenter 11, Response C.

Comment 37E: Who’s “authority” do the proposed regulations speak of with this statement?

Accommodation: Partial. See Accommodation to Speaker #1.

Response 37E: See Commenter 1, Response A.

Comment 37F: Will CDCR make available to prisoners a list of validated members/associates of STGs, validated groups, and disallowed publications? And if not, how will a prisoner know they are not supposed to possess a particular publication or photo?

Response 37F: The Centralized List, listing the publications that are disallowed in all CDCR adult institutions, is a public record. A family member, advocate, lawyer, publisher, or other member of the public may obtain a hard copy of the Centralized List by sending a public records request for it, subject to the California Public Records Act, starting at GC Section 6250. See also Commenter 5, Response C and Commenter 37, Response A.

Comments G through I are in regards to subsection 3134.1(e) regarding “STG recruitment material.”

Comment 37G: What material are you referring to? And will a list of said material be made available to prisoners?

Accommodation: Yes.

Response 37G: See Commenter 11, Response C and Commenter 37, Response A.

Comment 37H: Who will identify said material?

Response 37H: See Commenter 11, Response C; and Commenter 37, Response A.

Comment 37I: Can publications challenge their placement on the disallowed list?

Response 37I: The DAI affords due process to publishers upon making the determination to place publications on the Centralized List. Subject to existing regulations at the CCR, Title 15 subsection 3134.1(e), the DAI sends a letter to the publisher within 15 calendar days of the determination to explain why the publication was excluded. The letter includes a notice of the publisher's right to appeal the determination, subject to Title 15 subsection 3137(c).

Comments J through Q are in regards to subsection 3135(c)(14).

Comment 37J: Will notice be given to prisoners and the correspondent that their mail is being withheld and is under review?

Response 37J: Subsection 3134.1(d) was amended to clarify that the three-part process for notification that inmate mail was withheld. Notification is sent to the publisher, to the inmate, and to the DAI.

Comment 37K: How long will correspondence be held?

Response 37K: Institutions may not admit any correspondence containing written materials or photographs that indicate an association with validated STG members or associates, as described in subsection 3378(c)(8)(C)-(D). With regard to publications, subsection 3134.1(d) is revised to clarify that, upon receipt of an institutional request to include a publication on the Centralized List, the DAI shall determine whether to approve that request within 30 calendar days. If DAI affirms the withholding, disallowance of the publication becomes permanent. If DAI denies the withholding, the institution shall deliver the publication to the inmate addressee within 15 calendar days, upon receipt of DAI's decision. See also Commenter 12, Response B.

Comment 37L: How do written material impede with the safety and security of institutions? Are there any available reports regarding this data?

Response 37L: See Commenter 5, Response C; Commenter 33, Response E; and Commenter 1R, Response C.

Comment 37M: Commenter states that by definition, propaganda is material that opposes something, and asks if, in accordance with this definition, publications like the *New York Times*, *The New Yorker*, *Democratic News*, *Republicans Now*, *San Francisco Bay View*, *the Los Angeles Times*, *The Rock*, *Prison Focus*, and *Prison Legal News* will be disallowed?

Accommodation: See Accommodation to Commenter 8A.

Response 37M: Publications are withheld from CDCR institutions to the extent, as recognized in the law that these publications contain contraband or otherwise give rise to a security threat. Political publications are otherwise not banned from CDCR institutions and CDCR ensures that inmates may possess these or any other publications, subject to the First Amendment and other law. Inmates may continue to possess the publications identified in the

comment so long as they are not obscene, contain contraband, are associated with STGs, or otherwise give rise to a security threat. See also Commenter 1, Response A; Commenter 17, Response C; Commenter 19, Response B; and Commenter 1R, Response C.

Comment 37N: How is disallowing these publications allowed under constitutionally guaranteed rights?

Response 37N: See Commenter 1, Response A; 14, Responses C and D; Commenter 17, Response C; Commenter 19, Response B; Commenter 25, Response B; and Commenter 35, Response A.

Comment 37O: Is this regulatory action being taken as a result of the prisoner hunger strikes?

Response 37O: See Commenter 5, Response C.

Comment 37P: How is this material disturbing or offensive correspondence?

Response 37P: See Commenter 5, Response C.

Comment 37Q: Inmates do have a right to freedom of speech, right?

Response 37Q: See Commenter 1, Response A; Commenter 14, Response A; Commenter 17, Response C; Commenter 25, Response B; and Commenter 35, Response A.

COMMENTER #38:

Comment 38A: Commenter states ISOR provides that the proposed regulations seem like a bait-and-switch. Commenter states the word “obscene” usually refers to sexual material such as magazines of naked people or of naked people engaged sexual activities, but that it quickly becomes clear that the intent of these regulations is to censor political speech not photographs of naked women.

Response 38A: See Commenter 1, Response A and Commenter 25, Response B.

Comment 38B: Commenter states the proposed regulations violate first amendment guarantees of free speech as well as existing section 3135(b), which reads “Disagreement with the sender’s or receiver’s morals, values, attitudes, veracity or choice of words will not be cause for correctional staff to disallow mail. Correctional staff shall not challenge or confront the sender or receiver with such value judgments.”

Response 38B: See Commenter 1, Response A; Commenter 14, Responses C and D; Commenter 17, Response C; Commenter 22, Response D; and Commenter 25, Response B.

Comment 38C: Commenter states the language, “may withhold publications as needed, and on a temporary basis only, pending this obscene material determination from DAI” is vague, subject to interpretation, and threatens to delay the delivery of mail in a timely manner.

Accommodation: *See Accommodation for Commenter 12B.*

Response 38C: See Commenter 12, Response B.

Comment 38D: Commenter states the proposed regulations threaten to prevent prisoners from communicating about their conditions, and that in these days when solitary confinement has become an important national subject of debate, it is crucial that prisoners’ voices be part of the discussion. Commenter states that the true intention of the proposed regulations is censorship and has nothing to do with “obscenity” as they seek to control what prisoners see, read, learn, and think.

Response 38D: See Commenter 5, Response C and Commenter 22, Response D.

COMMENTS #39:

Comment 39A: Commenter states the proposed regulations purport to concern “obscene materials,” but also contain unrelated and unwarranted restrictions on newspaper articles and other written materials that “indicate an association with validated STG member’s and associates.” For example, Commenter states that existing subsection 3006(c) lists contraband items, which can be confiscated, and also provides possession of these items is a punishable disciplinary offense; however, Commenter also notes that new subsection 3006(c)(19) creates a new contraband item, “Written materials or photographs that indicate an association with validated STG members or associates, as described in subsections 3378.2(b)(5)-(6).” Commenter also notes that Commenter notes that existing subsection 3135(c) lists “disturbing or offensive correspondence” disallowed from prisons, and states that new subsection 335(c)(14) creates a new category of disallowed correspondence that “contains written materials or photographs that indicate an association with validated STG members or associates, as described in subsections 3378.2(b)(5)-(6).”

Commenter states that these restrictions will not help promote prison security, but only unnecessarily infringe on the First Amendment.

Response 39A: Subsection 3006(c)(19) and subsection 3135(c)(14) have been changed to update the citation to the regulatory provision about written materials or photographs that indicate an association with validated STG members and associates. Within the new departmental regulations for STGs the regulatory provisions about written materials or photographs was relocated from subsections 3378(c)(8)(C)-(D) to subsections 3378.2(b)(5)-(6). See also Commenter 1, Response A; Commenter 11, Responses B and C; Commenter 14, Response D; Commenter 17, Response C; Commenter 25, Response B; and Commenter 37, Response A.

Comment 39B: Commenter states that since dangerous writings are already banned by existing regulations, the only thing the proposed regulations do is prohibit materials that don’t threaten prison security, but nonetheless indicate an “association” with STG members or associates, for example, articles or opinion pieces on topics such as art; literature; politics; and education written by STG members or journalists who work with STG members. Commenter states that such a ban is not necessary or appropriate and is a violation of the First Amendment.

Commenter provides the following examples of existing regulations in regards to contraband:

- Subsections 3006(c)(1) and 3135(c)(1)-prohibit documents that tend to incite “any form of violence or physical harm to any person” or group of people.
- Subsections 3006(c)(2) and 3135(c)(2)-prohibit items which concern items that concern “blackmail or extortion.”
- Subsections 3006(c)(4) and 3135(c)(4)-prohibit inmates from having within their possession or under their control, matter which contains “Plans to escape or assist in an escape.”
- Subsections 3006(c)(5) and 3135(c)(5)-prohibit inmates from having within their possession or under their control, matter which contains “Plans to disrupt the order, or breach the security, of any Facility”
- Subsections 3006(c)(6) and 3135(c)(6)-prohibit inmates from having within their possession or under their control, matter which contains “Plans for activities which violate the law, these regulations, or local procedures.”
- Subsections 3006(c)(7) and 3135(c)(7)-prohibits inmates from having within their possession or under their control matter which concerns “coded messages.”
- Subsections 3006(c)(8) and 3135(c)(8)-prohibit inmates from having within their possession or under their control, matter which contains “A description of the making of any weapon, explosive, poison or destructive device.”
- Subsection 3006(c)(9)-prohibits inmates from having within their possession or under their control, matter which contains “Illustrations, explanations, and/or descriptions of how to sabotage or disrupt computers, communications, or electronics.”
- Subsections 3006(c)(13) and 3135(c)(11)-prohibits inmates from having within their possession or under their control matter which concerns “gambling or lottery.”

- Subsection 3006(c)(16)-material that is “reasonably deemed to be a threat to legitimate penological interests” is subject to the obscene material test described in subsections 3006(c)(15)(A) and (B).

Response 39B: The proposed regulations are fully consistent with the PC and other law. Within PC Section 2601(c)(1)(B) allows prison authorities to exclude “any matter of a character tending to incite murder, arson, riot, violent racism, or any other form of violence.” Title 15 subsections 3006(c)(14) 3135(b) are tailored to prevent the dissemination of STG materials that might incite violence and that present a security risk in CDCR institutions. The proposed regulations are intended to make these subsections more specific, as contemplated in the APA. See also Commenter 1, Response A; Commenter 5, Response C; Commenter 6, Response A; Commenter 10, Response A; Commenter 11, Response B and C; and Commenter 1R, Response C.

Comment 39C: Commenter states that publishers have a First Amendment right to communicate with those who willingly seek their point of view and that inmates have a First Amendment right to receive documents, such as “op-eds” and opinion articles, which may on occasion be written by or about STG members, as long as the document does not threaten prison security. However, Commenter states that the proposed would infringe on the First Amendment rights of inmates and outside publications.

Response 39C: See Commenter 1, Response A; Commenter 6, Response A; Commenter 10, Response A; Commenter 11, Response C; Commenter 14, Response D; Commenter 17, Response C; Commenter 35, Responses A and M; Commenter 37, Response M; and Commenter 1R, Response C.

COMMENTER #40:

Comment 40A: Commenter states the proposed regulations are unreasonably overbroad and vague and would burden the First Amendment rights of inmates and the people who wish to communicate with them. Although, Commenter acknowledges that managing a prison requires a careful balance between legitimate security needs and the inmates’ right to free speech, he states that inmates have right to freedom of expression, including political speech, under the First Amendment. Commenter states that at best, the proposed regulations are vague and overbroad without serving any meaningful function as they ban “written materials or photographs that indicate an association with validated STG members or associates,” but, could also easily serve as the basis for limiting a prisoners’ access to informative news publications and books that enjoy the full protection of the First Amendment.

Response 40A: See Commenter 1, Response A; Commenter 6, Response A; Commenter 10, Response A; Commenter 11, Response C; Commenter 14, Response D; Commenter 17, Responses C and E; Commenter 22, Response D; and Commenter 25, Response B.

Comment 40B: Commenter states the language in the proposed regulations is overly broad and will chill speech that is protected under the First Amendment. Commenter states that although the proposed regulations purport to only clarify Department regulations concerning contraband as obscene material to ensure compliance with the statute concerning the established standard for obscene material, they actually create new categories of contraband material by prohibiting “written material or photographs that indicate an association with validated STG members or associates.” Commenter also notes the Department does not offer a clear definition of what this means. Commenter also states that it is unclear whether the term “publication” refers to either a single issue of a published material or to the entire series. Commenter states that this vague language would allow any publications to be banned if they are determined to “indicate” an association to STG activity, regardless of whether or not there is any actual association to an STG), and offers no cognizable standards for placing material on the Centralized List of Disapproved Publications. Further, Commenter adds that CDCR already has existing regulations that disallow correspondence to ensure the safety and security of the institution or facility, and offers no explanation why these regulations are insufficient.

Accommodation: See Accommodation for Commenters 8A and 13F.

Response 40B: See Commenter 1, Response A; Commenter 4, Response A; Commenter 6, Responses A and E; Commenter 10, Response A; Commenter 11, Response B; Commenter 13, Responses D, F, and I; Commenter 14,

Response C; Commenter 17, Responses C and E; and Commenter 18, Responses C and K; Commenter 22, Response D; Commenter 25, Response B; Commenter 29, Response A; and Commenter 1R, Responses B and C.

Comment 40C: Commenter states subsection 3006(c)(19) expands the definition of contraband to include “written materials or photographs that indicate an association with validated STG members or associates,” but fails to sufficiently define the phrase. For example, Commenter states that the phrase does not include anything about the nature of the writing or photo, (such as a requirement of gang-communication or criminal/misconduct-related communication), but only that the photo or writing is “associated” with a person who is validated as an STG member or associate. Commenter also states that the word “association” can be interpreted broadly. For example, under this vague terminology, Commenter states that a newspaper article showing that the son or daughter of an STG member or associate was admitted to college on a full-ride scholarship would be considered contraband even if the newspaper article was in possession of the proud parent. In addition, Commenter states that under this vague terminology, writings about pending or unresolved lawsuits brought on by or against an STG member/associate could also be deemed contraband. Because the possession of contraband is a disciplinary violation which results in specific punishments, and can contribute to an inmate being validated as a member or associate of an STG, Commenter states this phrase is unconstitutionally vague and overbroad.

In addition, Commenter states that under CDCR’s recently adopted Security Threat Group (STG) regulations, the number of groups that can be validated as an STG is expanded as CDCR will be able to validate non-prisoners and non-parolees (including inmate family members and activists). Commenter states that the STG regulations in combination with the proposed regulations greatly expands the number of items that can be deemed contraband

Response 40C: See Commenter 1, Response A; Commenter 11, Response C; Commenter 14, Response C; Commenter 17, Responses C and E; Commenter 22 D; Commenter 25, Response B; and Commenter 37, Response A.

Comment 40D: Commenter states that under CDCR's new STG regulations, CDCR will be able to validate non-prisoners and non-parolees, including family members and activists. This means that family members and activists are not immune from being validated as STG members/associates. Further, under those proposed regulations, the number of groups that can be validated as STGs is expanded. In combination, the STG regulations and the contraband regulations greatly expand the number of items that will be deemed contraband.

Response 40D: See Responses to Commenter 1, Response A; Commenter 11, Response C; Commenter 11, Response E; Commenter 14, Response C; Commenter 17, Response E; Commenter 22, Response D; Commenter 25, Response B; and Commenter 37, Response A.

Comment 40E: Commenter states subsection 3135(c)(14), which expands the definition of disturbing or offensive correspondence that may be disallowed to include “written materials or photographs that indicate an association with validated STG member or associates” is unconstitutionally vague and overbroad and threatens a gang validation finding against anyone in possession of such a writing and concerns writings or photos going in or out of the prison and not just publications. The ISOR states this change is needed to disallow publications containing “propaganda of groups deviant in nature, opposed to authority and society” and “to provide clarity to staff concerning the specific material that staff will review when making a determination in regards to an inmate’s association with a validated member or associate of an STG.” However, Commenter states the language is vague as to which group might be considered “opposed to authority” and asks:

- What may be considered “opposed to authority and society?”
- Is any group who opposes solitary confinement “opposed to authority?”
- Does this cover groups opposed to authority used to engage in civil rights violations? Commenter states that the vague language threatens a gang validation finding against anyone in possession of such writings.

Response 40E: See Commenter 1, Response A; Commenter 11, Response C; Commenter 17, Response E; Commenter 22, Response A; Commenter 25, Response B; and Commenter 37, Response A.

Comment 40F: Commenter states that it is unclear how the proposed regulations achieve the Department’s stated objective, which is to clarify its regulations concerning contraband as obscene material in order to ensure compliance with statute. Commenter states that imbedded in the proposed regulations are new prohibitions that implicate protected speech. The following documents related to the proposed regulations (Informative Digest/Policy Statement Overview, Initial Statement of Reasons, Consideration of Alternatives, Benefits of the Proposed Regulations, and the Text of the Proposed Regulations) all fail to explain how the creation of new categories of prohibited materials based on a perceived indicated association with a validated STG member or associate clarify regulations relating to definitions of obscene sexually explicit materials. In addition, Commenter states that CDCR fails to explain why existing regulations are insufficient in meeting those interests.

Response 40F: Commenter 1, Response A; Commenter 6, Response A; Commenter 10, Response A; Commenter 11, Response C; Commenter 14, Response C; Commenter 22, Response B; and Commenter 25, Response B.

COMMENTER #41:

Comment 41A: Commenter states the proposed regulations should be rejected because they are incomplete and do not protect the rights of inmates that are guaranteed under PC Section 2601(c). Under this Section, inmates are allowed to receive any publication that is approved by the U.S. Mail for delivery as it is not obscene or incites violence.

Response 41A: Commenter 1, Response A; Commenter 4, Response A; Commenter 6, Responses A, D, and E; Commenter 10, Responses A and C; Commenter 11, Responses B and C; and Commenter 14, Responses A and D.

Comment 41B: Commenter states existing subsection 3006(c)(11) needs to be amended in order to be compatible with the proposed regulations as this subsection also concerns the material an inmate is allowed to receive through the U.S. Mail. Commenter states that under existing regulations, inmates are being denied catalogs; brochures; and materials solely on the criteria that these materials lack “serious literary, artistic, political, educational, or scientific value,” but that the proposed regulations clearly state that catalogs and material can only be prohibited if they contain “obscene material” and meet the prong’s prohibiting material, “depicting sexual conduct” and “appealing to deviant sexual groups.”

***Accommodation:** Subsection 3006(c)(11) is amended to delete and replace the phrase “whose primary purpose is to sell a product(s) or service(s) and when taken as a whole, lacks serious literary, artistic, political, educational, or scientific value” and replace with the term “commercial” and a reference to subsection 3006(c)(15)(A). Subsection 3006(c)(15)(A) provides a complete definition of obscene material as provided for by PC. This revision was included in the Notice of Change to Text of Regulations as Originally Proposed dated October 20, 2014.*

Response 41B: Subsection 3006(c)(11) is changed to delete the clause “whose primary purpose is to sell a product(s) or service(s) and when taken as a whole, lacks serious literary, artistic, political, educational, or scientific value” and to align this subsection with the related departmental regulations about obscenity. As set out in the 15-Day Renotice text, subsection 3006(c)(11) now describes “catalogs, advertisements, brochures, and other commercial material which are obscene in nature as described in subsection (15) below” as a form on contraband.

Comment 41C: Commenter states the proposed regulations are not compatible with existing statute concerning obscene material. Specifically, Commenter states that subsections 3006(c)(17)(A) and 3135(d)(1) must be deleted as they ban publications containing “frontal nudity,” yet PC Section 2601(c) provides that inmates are allowed to receive publications unless they are obscene. Commenter states that CDCR is depriving inmates of this right by creating their own stricter and broader interpretation of what material constitutes as “obscene.”

Response 41C: See Commenter 10, Response A.

COMMENTER #42:

Comment 42A: Commenter states that while the proposed regulations purport to clarify Department regulations concerning contraband as obscene material, they create a new category of free speech content that will now be treated like obscenity in terms of the censorship rules and banning procedures. Additionally, Commenter states the new prohibition is phrased in terms so overbroad and vague that it is a significant expansion in the powers of CDCR officials to ban publications and exclude correspondence. Commenter states the vague language appears to give a “blank check” to CDCR to ban any writing or publication they believe identifies an (undefined) “association” with a gang member, or that which may further “STG recruitment.”

Accommodation: See Accommodation for Commenter 8A.

Response 42A: See Commenter 1, Response A; Commenter 11, Response C; and Commenter 25, Response B.

Comment 42B: Commenter states that by including the phrase, “written materials or photographs that indicate an association with validated STG members or associates,” new subsections 3006(c)(19) and 3135(c)(14) add to the already comprehensive lists of contraband (18 categories) and “disturbing or offensive correspondence (13 categories)

Response 42B: See Commenter 1, Response A; Commenter 11, Response B; Commenter 12, Response C; Commenter 17, Response C; and Commenter 22, Response D.

Comment 42C: Commenter states the wording of the phrase; “written materials or photographs that indicate an association with validated STG members or associates,” seems calculated to provide almost limitless discretion to prison officials. Commenter states it is hard to conjure up a more tenuous and evanescent standard for the requisite nexus between a writing and a validated STG member as the writing must only “indicate an association” with a validated STG member or associate resulting in great uncertainty in regards to what is allowed. For example, Commenter states that possession of family photos of a validated gang member would appear to violate this provision, regardless of whether or not the validated gang member was still incarcerated, as would letters from friends from the inmate’s community.

Accommodation: See Accommodation for Commenter 8A.

Response 42C: See Commenter 1, Response A; Commenter 11, Responses B, C, and E; Commenter 17, Responses C and E; Commenter 18, Response C; Commenter 25, Response B; and Commenter 37, Response A.

Comment 42D: Commenter states this regulation goes far beyond limiting communication between validated gang members as it increases the isolation of validated gang members from each other as well as from the outside world beyond the prison walls. Commenter suspects the regulations are in response to the prison hunger strikes and states that although the Department must protect safety and security during such protests, CDCR should not treat validated gang members should as “The Disappeared” and cut off all their contact with the outside world.

Response 42D: See Commenter 5, Response C.

Comment 42E: Commenter states the proposed regulations fall short of CDCR’s professed goal, “preventing discrimination and promoting fairness and social equality.” Commenter states that, instead, the regulations will do the exact opposite as they compromise the First Amendment as regulations must be specific so as to not encourage arbitrary and discriminatory enforcement by those in authority.

Accommodation: See Accommodation for Commenter 8A.

Response 42E: See Commenter 1, Response A; Commenter 6, Response A; Commenter 10, Response A; Commenter 11, Response C; Commenter 17, Responses C and E; Commenter 22, Response D; and Commenter 25, Response B.

Comment 42F: Commenter notes that subsection 3134.1(d) provides that a publication that has been temporarily disallowed can be permanently disallowed if DAI makes an affirmative obscene material determination, which is in effect a blanket ban. Commenter further states that the Courts have consistently ruled that blanket bans violate the First Amendment as the individual content of each publication must be reviewed.

Accommodation: See *Accommodation to Commenters 12B and 13F*.

Response 42F: DAI reviews all publications prior to their permanent placement on the statewide Centralized List of Disapproved Publications. Also, the individual institutions review individual issues of periodicals before the issues are temporarily denied at the institutional level. Subsection 3134.1(d) and the other regulatory provisions about obscene materials are lawful. See also Commenter 1, Response A; Commenter 4, Response; Commenter 6, Response A; Commenter 10, Response A; Commenter 13, Responses C and H; Commenter 18, Response K; and Commenter 22, Response D.

Comment 42G: Commenter states that subsection 3134.1(e), which provides that publications that contain “STG recruitment material” will be placed on the Centralized List of Disapproved Material, is an exaggerated response to prison safety concerns as it is not specified what qualifies as STG recruitment material. Commenter states the Courts have firmly established that publishers have a First Amendment right to communicate with inmates by mail, and those inmates, in turn, have a First Amendment right to receive this mail. Commenter states that banning all publications that can be perceived as “STG recruitment material” is more akin to suppression of expression than of serving a legitimate government concern.

Accommodation: See *Accommodation for Commenter 8A*.

Response 42G: See Commenter 1, Response A; Commenter 11, Response C; Commenter 17, Response E.

Comment 42H: Commenter states the fundamental principle of the First Amendment is to protect the public from regulations that use overbroad and vague terms as they increase the risk that government officials will abuse their powers of censorship not to protect legitimate safety interests, but to limit and control the content of speech punishing that which is controversial. Commenter states the proposed regulations do exactly this as CDCR makes it clear that the proposed regulations are intended to “disallow publications containing propaganda of groups deviant in nature, opposed to authority and society.” Under this vague language, Commenter states that books about the experience of African Americans’ and Chicano urban communities’ relationship with police could be considered “recruitment materials” if they are critical of the police. However, Commenter states the Courts have ruled that radical, and even revolutionary, political material cannot be banned unless it incites violence in the prison.

Accommodation: See *Accommodation for Commenter 8A*.

Response 42H: See Commenter 1, Response A; Commenter 11, Responses B and C; Commenter 14, Response C; Commenter 17, Responses C, E and F; Commenter 22, Response D; Commenter 25, Response B; and Commenter 37, Response A.

COMMENTER #43:

Comment 43A: Commenter opposes the proposed regulations because they damage the ability of members of the public/taxpayers to be informed about what is being done in the prisons: depriving prisoners of their rights.

Commenter provides the following examples to the troubles within the prison system: long-term Federal receivership and oversight based on the finding of violations of inmates’ basic rights to a minimum standard of health care; the highly publicized hunger strikes of 2013 concerning long-term placement in the Security Housing Unit; the Center for Investigative Reporting finding that female inmates are being pressured into sterilization without informed consent; and the recent ruling granting class action to status to Pelican Bay prisoners who have been in solitary confinement for more than ten years.

Commenter states the evidence is clear that the state prison system is incapable of protecting prisoners' basic human rights in other areas and that the censorship rules are motivated by the desire to deprive inmates of their basic human rights to speech and communication and keep prison mismanagement out of the public view and oversight.

Response 43A: See Commenter 1, Response A; Commenter 5, Response C; Commenter 17, Response C; Commenter 19, Response B; and Commenter 37, Response M.

COMMENTER #44:

Comment 44A: Commenter states the proposed regulations would expand the definition of "contraband" directly limiting written correspondence (therefore almost all communication) between inmates and their family members, loved ones, legal representatives, and activists. Commenter states limiting such communication is a serious threat to the First Amendment as limiting correspondence violates the free speech of inmates as well as those of non-inmates who advocate against the oppressiveness of the inhumane prison system. Commenter notes the Department deems this change necessary to ensure the safety and security of the institutions by disallowing publications that "indicate an association with groups that are oppositional to authority and society," Commenter states that because CDCR has the discretion to determine what is considered "oppositional," the proposed regulations appear to be a mere smokescreen for the flat-out censorship of political publications and the communications between inmates, activists, and legal representatives.

Response 44A: See Commenter 1, Response A; Commenter 6, Response A; Commenter 10, Response A; Commenter 11, Responses C and E; Commenter 17, Responses C and E; Commenter 22, Response D; and Commenter 25, Response B.

Comment 44B: Commenter is opposed to the limitations the proposed regulations will have on the right of inmates to legally challenge the actions of the state as they implicate their lives. Commenter is concerned that legal advocacy groups could be branded security threats as they are by definition opposed to authority. Commenter adds that, by design, prisoner rights attorneys work to ensure the accountability of the state law and to challenge prison authority. Commenter also states the organization, *Justice Now* is known for having sued CDCR, pushed for audits and has challenged several prison practices and procedures.

Response 44B: See Commenter 1, Response A; Commenter 6, Response A; Commenter 10, Response A; Commenter 11, Response C; Commenter 14, Response C; Commenter 17, Responses C and E; Commenter 22, Response D; and Commenter 25, Response B.

Comment 44C: Commenter states the ethical representation of their clients requires them to regularly provide their clients written materials, and Commenter states that these materials could be misinterpreted as "written materials or photographs that include an association with validated STG members or associates" and, therefore opposes the proposed regulations. Further, Commenter states this denial violates the inmates' right to counsel under the Sixth Amendment; their right to freedom of speech under the First Amendment; the rights of attorneys to practice their profession under the Fourteenth Amendment; and is in conflict with California's legislative intent to reduce the prison population. Commenter notes that enforcement of the proposed regulations requires staff to read attorney-client correspondence in order to determine if it is contraband. Commenter states this results in a denial of confidentiality as the kind of information that inmate-clients are able to receive is compromised, and negatively impacts their inmate-clients' ability to make informed legal decisions.

Response 44C: The proposed regulations do not affect existing law or departmental regulations for attorney-client confidentiality. Inmates retain the right to send and receive confidential mail with attorneys and other confidential correspondence, subject to Title 15 sections 3141 through 3145. See also Commenter 1, Response A and Commenter 25, Response B.

Comment 44D: Commenter states the proposed regulations are vague and overbroad, and will infringe on the First Amendment rights of imprisoned people; third parties; and outside publishers as the Courts have ruled that a regulation is unconstitutional for vagueness if it does not give the person of ordinary intelligence a reasonable opportunity to know what is prohibited so that they may act accordingly. Commenter states the term “security threat group” leaves attorneys and clients unsure if materials sent through the mail will be confiscated and permanently banned. Additionally, Commenter states that the terms “publication” and “written material” are extremely broad and unclear as to what types of materials will be considered obscene material and contraband. Commenter states these broad terms allow for any correspondence to be potentially interpreted as a violation.

Response 44D: The cited regulatory language is not quoted in its entirety; the proposed amendment includes a reference to existing regulations at subsections 3378.2(b)(5)-(6), which specify at length the written materials and photographs that are used as source items for validating STG members and associates. These subsections provide uniform and concrete statewide standards for STG materials that are not unduly subjective to the interpretations of staff. The regulatory definition of “Security Threat Group” in existing section 3000 makes clear that such a group must have engaged in “two or more acts which include planning, organizing, threatening, financing, soliciting or committing unlawful acts, or acts of misconduct. Unless there is evidence that they engaged in unlawful activity, legal offices and advocacy groups would not be included within the definition. See also Commenter 1, Response A; Commenter 11, Response C; Commenter 17, Responses C and E; Commenter 18, Response E; Commenter 22, Response D; Commenter 25, Response B; Commenter 37, Response A; and Commenter 44, Response C.

Comment 44E: Commenter states that although the Department stated the proposed regulations would not have a significant statewide adverse economic impact directly affecting business, the proposed regulations interfere with an attorney’s ability to practice law as they will chill speech between attorneys and their inmate-clients.

Commenter states clients must make legal decisions throughout a legal proceeding, (such as settlement decisions and remedies and outcomes for injunctive relief), and that in order for clients to make informed decisions, their attorneys must provide them with a broad range of information. However, Commenter states that under the proposed regulations, they are not able to correspond with their inmate-clients and their clients are unable to make these informed decisions. Commenter states this creates an unreasonable burden on an attorney’s ability to practice their profession in an ethical way, potentially leading to a great adverse economic impact on the business of the legal profession.

Response 44E: See Commenter 44, Response C.

Comment 44F: Commenter states the proposed regulations contradict California’s legislative intent to reduce the prison population and the focus on aiding in the reentry of parolees into society. Commenter states that denying inmates access to publications and information from outside sources, such as material provided by their attorneys and news publications based on the suspicion that it is associated with STGs, further distances inmates from society, making it more difficult for parolees to re-integrate back into their communities. Further, Commenter states that as California has recently been mandated to reduce its prison population, CDCR should only be creating regulations that support a reduction in the prison population anyway.

Response 44F: See Commenter 5, Response C and Commenter 44, Responses C and D.

COMMENTER #45:

Comment 45A: Commenter states that she is an advocate for inmates housed in the SHU, and is therefore, “associated” with validated STG members or associates. Commenter states that any advocates or attorneys with clients housed in the SHU unit are also “associated” as are all correctional officers who are working in the SHU. Commenter asks if CDCR intends to restrict communication between SHU inmates and their advocates or legal counsel, or with the correctional officers, on the mere basis of “association.” Commenter states that if this is the case, then the proposed regulations are constitutionally invalid.

Response 45A: See Commenter 1, Response A; Commenter 5, Response C; Commenter 11, Response C; Commenter 14, Response C; Commenter 17, Response C; Commenter 35, Responses A and M; and Commenter 44, Response C.

Comment 45B: Commenter asks if CDCR intends to restrict any communication between persons who are labeled as “STG members or associates” merely on the basis that those people are simply family members, (as in a father-son relationship), or on merely on the basis that one person is “associated” with a person who is labeled an “STG member or associate.” If so, Commenter states the proposed regulations are constitutionally invalid.

Response 45B: See Commenter 1, Response A; Commenter 11, Response C; Commenter 17, Response C; Commenter 18, Response C; Commenter 37, Response A; and Commenter 30R, Response K.

Comment 45C: Commenter asks why men who do not have contact visits and who are largely surrounded by men all day are denied access to materials displaying frontal nudity or genitalia as this denial does not help the men. Commenter states that it shouldn’t matter if the written material or publications lack serious literary, artistic, political, or scientific value if it provides some comfort to those inside, and does so in a manner that does not present any risk to any vulnerable population.

Further, Commenter states that obscenity laws have to do with the public dissemination of materials that may be deemed obscene, and not with private correspondence or materials shared between individuals, yet CDCR is hell-bent on exercising its discrimination without discrimination as such the “serious literary, artistic, political or scientific value” standard does not even apply. Further, Commenter asks if CDCR staff really want to live in a world where nobody can talk freely because somebody may deem those private communications lack “serious literary, artistic, political or scientific value?”

Response 45C: Subject to Penal Code section 311 and subsection 2601(c)(1)(A), CDCR may exclude obscene publications or writings. These Penal Code provisions incorporate the “serious literary, artistic, political, or scientific value standard” for all written material. See also Commenter 5, Responses B and C; Commenter 10, Response A; and Commenter 31, Response A.

Comment 45D: Commenter asks how CDCR defines the term “recruitment material.” Commenter asks if the definition refers to material that is sent by people that do not demonize people in solitary confinement and who do not condone torture.

Accommodation: See *Accommodation for Commenter 8A.*

Response 45D: See Commenter 11, Response C; Commenter 17, Response E; Commenter 45, Response B; and Commenter 1R, Response C.

COMMENTER #46:

Comment 46A: Commenter provides a quote from the ISOR regarding subsection 3135(c)(14), and includes his personal notes/comments concerning the statement:

These changes are necessary to preserve the safety and security of the institution by disallowing publications containing propaganda (? my question) of groups deviant (? my question) in nature, opposed to authority (? my question) and society.

Response 46A: See Commenter 1, Response A; Commenter 11, Response C; Commenter 17, Response C; Commenter 25, Response B; and Commenter 31, Response A.

Comment 46B: Commenter is concerned over the conflation of the term “obscene,” referenced in subsection 3135(d), with the publications referenced in subsection 3135(c)(14) as he does not believe the two

belong together and states that CDCR is trying to “fix in the mind of the reader a connection between the two in order to use the loaded word obscene to further its own agenda.”

Response 46B: See Commenter 1, Response A; Commenter 11, Response C; Commenter 17, Response C; Commenter 25, Response B; and Commenter 31, Response A.

Comment 45C: In regards to subsection 3006(c)(15)(D) which designates DAI as the Department’s sole authority to designate text only publications as obscene, Commenter asks:

- Who are the people in the Division of Adult Institutions referenced in this designation and how are they being selected (what are their qualifications for the job)?
- What are the specific guidelines/criteria this staff use in determining whether or not to designate text-only publications as obscene material.

Response 46C: See Commenter 4, Response A; Commenter 5, Response C; Commenter 6, Response A; Commenter 10, Response A; Commenter 22, Response A; and Commenter 31, Response A.

Comment 46D: In regards to subsection 3006(c)(19) which establishes that inmates shall also not possess or have under their control written material or photographs that indicate an association with a validated member or associate of an STG, Commenter asks that CDCR provide specific details for what constitutes an STG as the vague language of the proposed regulations gives much discretion of CDCR.

Response 46D: Subject to new CDCR regulations about STGs, the term “Security Threat Group” is defined within the CDCR regulations at Title 15 section 3000. Under this definition, an STG means “any ongoing formal or informal organization, association, or group of three or more persons which has a common name or identifying sign or symbol whose members and/or associates, individually or collectively, engage or have engaged, on behalf of that organization, association or group, in two or more acts which include, planning, organizing, threatening, financing, soliciting or committing unlawful acts, or acts of misconduct.” Additionally, the process for identifying a Security Threat Group can be found in existing regulations section 3378.1.

Comment 46E: Commenter states the Economic Impact Statement of the ISOR does not discuss the money that California tax payers will be paying for lawsuits over the violation of the First Amendment that will surely be filed if the proposed regulations are adopted.

Response 46E: See Commenter 5, Response C.

Comment 46F: Commenter states that nothing in the proposed regulations addresses the issue of the rehabilitation of inmates. Although inmates have indeed violated the law, Commenter states that they are still human beings who deserve to be treated with dignity and respect. Further, Commenter states that correctional officers receive fat paychecks, and are also likely treated with dignity and respect.

Response 46F: See Commenter 5, Response C.

COMMENTER #47:

Comment 47A: Commenter states that the “obscene material” regulations have very little to do with Security Threat Groups, and that publications and “correspondence” should not be treated as contraband. Commenter asks if under the proposed regulations, a family photograph of someone with a tattoo be confiscated and withheld, or if an accompanying letter or publication would be destroyed?

Response 47A: Publications are withheld from CDCR institutions to the extent, as recognized in the law, that the publications are obscene, contain contraband, are associated with STGs, or otherwise give rise to a security threat. As set out in the 15-Day Renotice, the proposed regulations allow inmates to correspond with family members and others, so long as their correspondences do not contain STG written materials or photographs as described in

subsections 3378.2(b)(5)-(6) or their correspondences otherwise do not contain contraband. The proposed regulations are narrowly tailored to prevent an unlawful deprivation of inmate mail or visiting privileges. See also Commenter 1, Response A; Commenter 11, Responses B and C; Commenter 17, Response C; Commenter 18, Response C; and Commenter 27, Response A.

COMMENTS RECEIVED DURING THE 15-DAY RENOTICE

Note about the Renotice Comments: *Renotice Comments are referenced with an “R” at the end of the Comment-Number, e.g., “1R.” Upon its review, CDCR does not make further accommodations for the proposed regulations in response to the Renotice Comments.*

RENOTICE COMMENTER #1R:

Comment 1R-A: I recently reviewed the revisions to the proposed regulations and to my dismay, learned the Department has failed to take into consideration concerns previously expressed by hundreds of community members despite the Department's promise that it would go back to the drawing board and its claim that the public had misunderstood its intent with the proposed regulations.

Response 1R-A: Included in the 15-Day Renotice cover letter was the directive that only those comments relating directly to the enclosed post-hearing changes that are indicated by bold face type with double underline and/or double strikethrough will be considered. It is the Department's contention that the comments provided do not specifically address any of those changes, but instead are personalized to the extent that no meaningful response to either accommodate or refute the comment will be provided.

Comment 1R-B: As evidenced by the minimally revised language around so-called obscene materials, it seems that the public understood the Department's intent quite well. For example, the text of subsections 3134(d) and (e) is unchanged except to the extent that the term "STG recruitment materials" has been swapped out for the term "STG written materials or photographs, as described in subsections 3378.2(b)(5)-(6)."

Response 1R-B: The text of subsection 3134.1(d) was amended substantially to make clear that the notification process for disapproving publications is a three part process involving notification to the publisher, to the inmate, and to the Division of Adult Institutions (DAI). New language was also added to subsection 3134.1(d) about periodicals. This language clarifies that an institution's disallowance of individual issues of a periodical shall become permanent if the DAI affirms the disallowance of those issues that the DAI may place a publication on the Centralized List of Disapproved Publications if all issues of the publication for twelve consecutive months violate departmental regulations or policy. All these revisions to the text of subsection 3134.1(d) are designed to ensure that CDCR follows the law regarding obscene materials in the prisons and other First Amendment matters.

For subsection 3134.1(e), the term "STG recruitment materials" was replaced with the term "STG written materials or photographs, as described in subsections 3378.2(b)(5)-(6). This change clarifies that STG material that will be reviewed by staff to determine whether the material may be placed on the Centralized List of Disapproved Publications. Also, this change narrows the materials that are disallowed in order to avoid overbroad censorship practices. See also Commenter 1, Response A and Commenter 17, Response E.

Comment C: The phrase, "STG written materials or photographs, as described in subsections 3378.2(b)(5)-(6)" comprises a category that is highly subjective to staffs' individual interpretation based on whim, and includes a host of innocent items that may already be found in an inmate's cell, including:

- Address or photo of a loved one or a friend who happens to be deemed an STG affiliate
- Item of cultural iconography (e.g., a jaguar, a pyramid, an image of Martin Luther King)
- Copy of the newspaper, *The San Francisco Bay View*

Response 1R-C: CDCR promulgated the term "STG written materials or photographs, as described in subsections 3378.2(b)(5)-(6)" to clarify the STGs materials that are considered to be contraband, and to link the

regulatory provisions in this rulemaking package with existing regulations about STGs. The STG regulations, at subsection 3378.2(b)(5)-(6), specify at length the written materials and photographs that are used as source items for validating STG members and associates. These subsections provide uniform and concrete statewide standards for STG materials that are not highly subjective to the interpretations of staff. The items listed here by the Commenter may be disallowed only if they meet the standards for STG written materials or photographs, if they are contraband based on section 3006(c), or if they otherwise violate CDCR policies.

The proposed amendment is fully consistent with the California Penal Code and other law. Within PC Section 2601(c)(1)(B) provides that prison authorities may exclude “any matter of a character tending to incite murder, arson, riot, violent racism, or any other form of violence.” Title 15 subsections 3006(c)(19) and 3135(c)(14) are tailored to prevent the dissemination of STG materials that might incite violence and that present a security risk in CDCR institutions.

As defined in Title 15 section 3000 within the California Code of Regulations, an STG means any ongoing organization, association or group whose members or associates have engaged in two or more acts of misconduct. STGs include, but are not limited to, prison gangs and street gangs. Title 15 subsection 3023(a) clarifies that STGs jeopardize public safety, as they promote violence and other criminal activity in prisons, jails, and communities. STG members or associates have been found to use STG materials to communicate with each other unlawfully. “Prison gangs are criminal organizations that must communicate with their affiliates to conduct gang business, ensure group solidarity, and recruit and train new affiliates. Indeed, one of the primary duties of a gang affiliate is to establish a line of communications between himself and other gang affiliates.” (*In re Furnace* (2010) 185 Cal.App.4th 649, 660.) Subsections 3006(c)(19) and 3135(c)(14) lawfully assist CDCR institutions to prohibit STG communications by disallowing specified written materials and photographs that are associated with STG members and associates.

Comment 1R-D: The Department needs to go back to the drawing board to ensure that inmates will, 1) Not be penalized for possessing materials that otherwise have nothing to do with prohibited conduct or Rules Violations, and 2) Ensure that publications will not be banned, either temporarily or permanently, merely because an inmate has chosen to publish his or her name and/or location in an editorial, or is seeking a pen-pal.

Response 1R-D: See Commenter 1R, Response A.

Comment 1R-E: To me it is incredible that you are drafting rules in this day and age that will ban publications and are likely against the law.

Response 1R-E: See Commenter 1R, Response A.

Comment 1R-F: How are people going to rehabilitate themselves if important current affairs and cultural magazines are censored, and even possibly banned, and people inside your prisons are unable to read, connect, and stay informed? How infantile is this and how dictatorial. It has nothing to do with safety and responsibility, but all to do with 24/7 punishment. It all sounds like a scared, dictatorial rule of a backward country-it reminds me of the Soviet Union. Sir, please stop these censorship rules now!

Response 1R-F: See Commenter 1R, Response A.

RENOTICE COMMENTER #2R:

Comment 2R-A: I recently reviewed the Revisions to Text as Originally Proposed, issued October 20. To my dismay, the Department has failed to meaningfully take into consideration concerns previously expressed by hundreds of community members regarding the originally proposed text. This, despite the Department's promise that it would go back to the drawing board, and its claim that the public had misunderstood its intent.

Response 2R-A: See Commenter 1R, Response A.

Comment 2R-B: If the public misunderstood the Department's intent with the proposed regulations, the minimally revised language around so-called obscene materials does not clarify the Department's intent. For example, the text of subsections 3134(d) and (e) is unchanged except to the extent that the term "STG recruitment materials" has been swapped out for the term "STG written materials or photographs, as described in subsections 3378.2(b)(5)-(6)."

Response 2R-B: See Commenter 1R, Response B.

Comment 2R-C: Duplicative of Commenter 1R, Comment C.

Response 2R-C: See Commenter 1R, Response C.

Comment 2R-D: Duplicative of Commenter 1R, Comment D.

Response 2R-D: See Commenter 1R, Response D.

RENOTICE COMMENTER #3R:

Comment 3R-A: Duplicative of Commenter 2R, Comment A.

Response 3R-A: See Commenter 2R, Response A.

Comment 3R-B: Duplicative of Commenter 2R, Comment B.

Response 3R-B: See Commenter 2R, Response B.

Comment 3R-C: Duplicative of Commenter 1R, Comment C.

Response 3R-C: See Commenter 1R, Response C.

Comment 3R-D: Duplicative of Commenter 2R, Comment D.

Response 3R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #4R:

Comment 4R-A: Duplicative of Commenter 2R, Comment A.

Response 4R-A: See Commenter 2R, Response A.

Comment 4R-B: Duplicative of Commenter 2R, Comment B.

Response 4R-B: See Commenter 2R, Response B.

Comment 4R-C: Duplicative of Commenter 1R, Comment C.

Response 4R-C: See Commenter 1R, Response C.

Comment 4R-D: Duplicative of Commenter 2R, Comment D.

Response 4R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #5R:

Comment 5R-A: Duplicative of Commenter 2R, Comment A.

Response 5R-A: See Commenter 2R, Response A.

Comment 5R-B: Duplicative of Commenter 2R, Comment B.

Response 5R-B: See Commenter 2R, Response B.

Comment 5R-C: Duplicative of Commenter 1R, Comment C.

Response 5R-C: See Commenter 1R, Response C.

Comment 5R-D: Duplicative of Commenter 1R, Comment D.

Response 5R-D: See Commenter 1R, Response D.

RENOTICE COMMENTER #6R:

Comment 6R-A: Duplicative of Commenter 2R, Comment A.

Response 6R-A: See Commenter 2R, Response A.

Comment 6R-B: Duplicative of Commenter 2R, Comment B.

Response 6R-B: See Commenter 2R, Response B.

Comment 6R-C: Duplicative of Commenter 1R, Comment C.

Response 6R-C: See Commenter 1R, Response C.

Comment 6R-D: Duplicative of Commenter 2R, Comment D.

Response 6R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #7R:

Comment 7R-A: Duplicative of Commenter 2R, Comment A.

Response 7R-A: See Commenter 2R, Response A.

Comment 7R-B: Duplicative of Commenter 2R, Comment B.

Response 7R-B: See Commenter 2R, Response B.

Comment 7R-C: Duplicative of Commenter 1R, Comment C.

Response 7R-C: See Commenter 1R, Response C.

Comment 7R-D: Duplicative of Commenter 2R, Comment D.

Response 7R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #8R:

Comment 8R-A: Duplicative of Commenter 2R, Comment A.

Response 8R-A: See Commenter 2R, Response A.

Comment 8R-B: Duplicative of Commenter 2R, Comment B.

Response 8R-B: See Commenter 2R, Response B.

Comment 8R-C: Duplicative of Commenter 1R, Comment C.

Response 8R-C: See Commenter 1R, Response C.

Comment 8R-D: Duplicative of Commenter 2R, Comment D.

Response 8R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #9R:

Comment 9R-A: Duplicative of Commenter 2R, Comment A.

Response 9R-A: See Commenter 2R, Response A.

Comment 9R-B: Duplicative of Commenter 2R, Comment B.

Response 9R-B: See Commenter 2R, Response B.

Comment 9R-C: Duplicative of Commenter 1R, Comment C.

Response 9R-C: See Commenter 1R, Response C.

Comment 9R-D: Duplicative of Commenter 2R, Comment D.

Response 9R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #10R:

Comment 10R-A: Duplicative of Commenter 2R, Comment A.

Response 10R-A: See Commenter 2R, Response A.

Comment 10R-B: Duplicative of Commenter 2R, Comment B.

Response 10R-B: See Commenter 2R, Response B.

Comment 10R-C: Duplicative of Commenter 1R, Comment C.

Response 10R-C: See Commenter 1R, Response C.

Comment 10R-D: Duplicative of Commenter 2R, Comment D.

Response 10R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #11R:

Comment 11R-A: Duplicative of Commenter 2R, Comment A.

Response 11R-A: See Commenter 2R, Response A.

Comment 11R-B: Duplicative of Commenter 2R, Comment B.

Response 11R-B: See Commenter 2R, Response B.

Comment 11R-C: Duplicative of Commenter 1R, Comment C.

Response 11R-C: See Commenter 1R, Response C.

Comment 11R-D: Duplicative of Commenter 2R, Comment D.

Response 11R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #12R:

Comment 12R-A: Duplicative of Commenter 2R, Comment A.

Response 12R-A: See Commenter 2R, Response A.

Comment 12R-B: Duplicative of Commenter 2R, Comment B.

Response 12R-B: See Commenter 2R, Response B.

Comment 12R-C: Duplicative of Commenter 1R, Comment C.

Response 12R-C: See Commenter 1R, Response C.

Comment 12R-D: Duplicative of Commenter 2R, Comment D.

Response 12R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #13R:

Comment 13R-A: Duplicative of Commenter 2R, Comment A.

Response 13R-A: See Commenter 2R, Response A.

Comment 13R-B: Duplicative of Commenter 2R, Comment B.

Response 13R-B: See Commenter 2R, Response B.

Comment 13R-C: Duplicative of Commenter 1R, Comment C.

Response 13R-C: See Commenter 1R, Response C.

Comment 13R-D: Duplicative of Commenter 2R, Comment D.

Response 13R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #14R:

Comment 14R-A: I recently read the revisions to the proposed regulations, and was disappointed that you seemed not to take into consideration concerns previously expressed by hundreds of people regarding the originally proposed text. I had understood that you promised you would go back to the drawing board and claim the public had misunderstood your purpose.

Response 14R-A: See Commenter 1R, Response A.

Comment 14R-B: Duplicative of Commenter 2R, Comment B.

Response 14R-B: See Commenter 2R, Response B.

Comment 14R-C: Duplicative of Commenter 1R, Comment C.

Response 14R-C: See Commenter 1R, Response C.

Comment 14R-D: Duplicative of Commenter 2R, Comment D.

Response 14R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #15R:

Comment 15R-A: Duplicative of Commenter 2R, Comment A.

Response 15R-A: See Commenter 2R, Response A.

Comment 15R-B: Duplicative of Commenter 2R, Comment B.

Response 15R-B: See Commenter 2R, Response B.

Comment 15R-C: Duplicative of Commenter 1R, Comment C.

Response 15R-C: See Commenter 1R, Response C.

Comment 15R-D: Duplicative of Commenter 2R, Comment D.

Response 15R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #16R:

Comment 16R-A: Duplicative of Commenter 2R, Comment A.

Response 16R-A: See Commenter 2R, Response A.

Comment 16R-B: Duplicative of Commenter 2R, Comment B.

Response 16R-B: See Commenter 2R, Response B.

Comment 16R-C: Duplicative of Commenter 1R, Comment C.

Response 16R-C: See Commenter 1R, Response C.

Comment 16R-D: Duplicative of Commenter 2R, Comment D.

Response 16R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #17R:

Comment 17R-A: I have received notice and reviewed the revisions to the proposed regulations regarding Obscene Material. To my idea, the Department has failed to meaningfully take into consideration concerns previously expressed by hundreds of community members regarding the originally proposed text despite the Department's promise that it would go back to the drawing board, and its claim that the public had misunderstood its intent.

Response 17R-A: See Commenter 1R, Response A.

Comment 17R-B: If the engaged public misunderstood the Department's intent, the minimally revised language around so-called obscene materials does not clarify what the Department's intent. For example, the text of subsections 3134(d) and(e), is not changed from the text that was originally proposed except to the extent that the term "STG recruitment materials" has been swapped out for the phrase "STG written materials or photographs, as described in 3378.2(b)(5)-(6)."

Response 17R-B: See Commenter 2R, Response B.

Comment 17R-C: Duplicative of Commenter 1R, Comment C.

Response 17R-C: See Commenter 1R, Response C.

Comment 17R-D: Duplicative of Commenter 1R, Comment D

Response 17R-D: See Commenter 1R, Response D.

Comment 17R-E: Commenter provides Internet references for two articles related to returning prisoners to communities.

Prisoners Remain Fellow Citizens and Return Back to Community Earlier or Later (Catch and Release), by Margaret Talbot, (February 1 2003), The Atlantic Monthly. [http://newamerica.net/publications/articles/2003/catch_and_release]

When Prisoner's Return to Communities: Political, Economic, and Social Consequences, Joan Petersilia, (2000), National Institute of Justice, Office of Justice Programs: Sentencing and Corrections

Response 17R-E: See Commenter 1R, Response A.

RENOTICE COMMENTER #18R:

Comment 18R-A: Get real and do what is right and humane! Commenter acknowledges Department staff is also institutionalized along with the inmates, but states that solitary confinement is in the "dark ages" and states that CDCR needs to get with the times. Commenter offers to assist with research as there is overwhelming evidence by qualified professionals that "what you are doing" is wrong. Commenter acknowledges the Department's culture is not conducive to open critical thinking as the staff members are prisoners too.

Response 18R-A: See Commenter 1R, Response A.

Comment 18R-B: Duplicative of Commenter 2R, Comment A.

Response 18R-B: See Commenter 2R, Response A.

Comment 18R-C: Duplicative of Commenter 2R, Comment B.

Response 18R-C: See Commenter 2R, Response B.

Comment 18R-D: Duplicative of Commenter 2R, Comment D.

Response 18R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #19R:

Comment 19R-A: Commenter cites the article, *Solitary in Iran Nearly Broke Me. Then I Went Inside America's Prisons*, and provides the article's web address. Commenter asks if the report is accurate with respect to CDCR.

Response 19R-A: See Commenter 1R, Response A.

Comment 19R-B: Duplicative of Commenter 2R, Comment D.

Response 19R-B: See Commenter 2R, Response D.

RENOTICE COMMENTER #20R:

Comment 20R-A: The proposed regulations would allow DAI to permanently disallow any written materials and photographs mailed to an inmate that indicate an "association" with a validated member or associate of an STG.

Response 20R-A: See Commenter 1R, Response C.

Comment 20R-B: The proposed regulations allow DAI to withhold written materials, photographs, or publications for up to two months while it determines whether that written material, photograph, or publication should be permanently disallowed, or whether an entire periodical should be disallowed. As a result of this two-month lapse in time, Commenter states the written material, photograph, or publication may become irrelevant as it is no longer current.

Accommodation: See Accommodation for Commenter 12B.

Response 20R-B: The proposed subsection 3134.1(d) provides in part that, within 15 days of its determination to temporarily disallow a publication, an institution shall notify DAI and request that DAI affirm or deny the withholding of the publication. DAI shall provide the decision within 30 calendar days of receiving the request. If DAI affirms the withholding of the publication, disallowance of the publication shall become permanent. If DAI denies the withholding of the publication, the institution shall deliver the publication to the inmate within 15 calendar days, upon receipt of the DAIs decision. All these provisions ensure that the institutions and DAI act promptly to have publications reviewed for approval or disapproval within a reasonable time period. CDCR is aware of the need to timely deliver lawful mail for inmates and works to avoid undue delays in this process.

Comment 20R-C: Commenter continues to be opposed to the proposed regulations as the revisions do not adequately address his concerns and resubmits comments B-I of his comment submitted during the initial 45-Day Comment Period, (number 36 above). Therefore, please see Commenter 36, Responses B-I.

Response 20R-C: See Commenter 1R, Response A.

RENOTICE COMMENTER #21R:

Comment 21R-A: Duplicative of Commenter 2R, Comment A.

Response 21R-A: See Commenter 2R, Response A.

Comment 21R-B: Duplicative of Commenter 2R, Comment B.

Response 21R-B: See Commenter 2R, Response B.

Comment 21R-C: Duplicative of Commenter 1R, Comment C.

Response 21R-C: See Commenter 1R, Response C.

Comment 21R-D: Duplicative of Commenter 2R, Comment D.

Response 21R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #22R:

Comment 22R-A: Duplicative of Commenter 2R, Comment A.

Response 22R-A: See Commenter 2R, Response A.

Comment 22R-B: Duplicative of Commenter 2R, Comment B.

Response 22R-B: See Commenter 2R, Response B.

Comment 22R-C: Duplicative of Commenter 1R, Comment C.

Response 22R-C: See Commenter 1R, Response C.

Comment 22R-D: Duplicative of Commenter 2R, Comment D.

Response 22R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #23R:

Comment 23R-A: I am writing to express my concern about the CDCR's revisions to the Obscene Material proposed regulations that were issued October 20, 2014. I am upset that the Department has failed to meaningfully take into consideration concerns previously expressed by hundreds of community members regarding the originally proposed text despite the Department's promise that it would go back to the drawing board and its claim that the public had misunderstood its intent.

Response 23R-A: See Commenter 1R, Response A.

Comment 23R-B: Commenter is concerned that the description of what constitutes material from a Security Threat Group consists of materials that are highly subjective to individual interpretation on the part of prison staff and includes everyday items that may be innocently possessed.

Response 23R-B: The proposed amendment includes a reference to existing regulations at subsections 3378.2(b)(5)-(6), which specify at length the written materials and photographs that are used as source items for validating STG members and associates. These subsections provide uniform and concrete statewide standards for STG materials that are not unduly subjective to the interpretations of staff. See also Commenter 1, Response A; Commenter 11, Response C; Commenter 17, Response E; and Commenter 18, Response C.

Comment 23R-C: CDCR needs to ensure that: 1) No publication will be banned—temporarily or permanently—merely because it has political or sexual content and correspondence (typically protected by First Amendment constitutional rights), or because an inmate with STG affiliation has chosen to publish his name and/or location in

an editorial, news article or pen-pal request, and 2) No inmate will be penalized simply for possessing publications that reference or include "affiliated" members of an STG.

Response 23R-C: See Commenter 1R, Response A.

RENOTICE COMMENTER #24R:

Comment 24R-A: It seems the intent with these revisions to the Obscene Material proposed regulations is to dovetail STG language into the Title 15.

Response 24R-A: See Commenter 1R, Response A.

Comment 24R-B: Some of the language of the proposed regulations oversteps basic freedoms guaranteed through the First Amendment to the U.S. Constitution.

Response 24R-B: See Commenter 1R, Response A.

Comment 24R-C: The phrase, "material deemed to be a threat to legitimate penological interests" is broad and can be interpreted in the interests of underqualified prison staff imposing the punishments. Commenter states this broad and arbitrary phrasing should only be decided to use before a court or in the presence of an attorney representing the inmate. For example, subsection 3006(c)(19) expands the definition of contraband considerably to include the phrase, "written materials or photographs that indicate an association with validated STG members or associates as described in 3378.2(b)(5)-(6)."

Response 24R-C: See Commenter 1R, Responses B and C.

Comment 24R-D: Under the proposed regulations, if a letter or newspaper is sent to a prisoner with a picture or article that Institutional Gang Investigations (IGI) would claim shows evidence of gang association, then at a future date, can that prisoner possibly be accused of being an "associate" or "active" gang member, just as a result of receiving the letter or newspaper?

Response 24R-D: Possession of a letter or newspaper may be used as evidence to show STG membership or affiliation only if the letter or newspaper meets the standards of STG written materials, based on subsection 3378.2(b)(5) or STG photographs, based on subsection 3378.2(b)(6). An inmate will not be penalized for possessing a publication that does not qualify as STG materials pursuant to these subsections. The proposed regulations are narrowly tailored to comply with all applicable First Amendment standards, with the law for the prohibition of obscenity in the prisons, and with the law for the prevention of STG activity. Inmates will not be penalized simply for possessing publications that reference or include affiliated STG members if those publications do not qualify as STG materials or other contraband as described in CDCR regulations. See also Commenter 1R, Response C.

Comment 24R-E: At the present time, personnel comprising the small Review Committees at state prisons, IGI, etc., are not required to confer with lawyers or courts before accusing, and convicting, prisoners of gang activity. Commenter states that Title XV needs to provide adequate defense for the prisoner being judged, for example, in the form of a court hearing or in the form of appointing the prisoner a lawyer who would attend the Committee hearings.

Response 24R-E: See Commenter 1R, Response A.

Comment 24R-F: Political, personal mail and newspapers should be reviewed regarding censorship, only by CDCR personnel in Sacramento and the prisoner being charged with possession, afforded a hearing outside his current prison, where the prisoner can be represented by an attorney before being censored or charged with a Rules Violation.

Response 24R-F: See Commenter 1R, Response A.

Comment 24R-G: The censorship currently in practice is based upon prison staffs' personal bias, not on the basis of threat of danger to penalogical interests of prisons.

Response 24R-G: See Commenter 1R, Response A.

RENOTICE COMMENTER #25R:

Comment 25R-A: I am writing to express my anger and unhappiness regarding the revisions to the Obscene Material proposed regulations issued on October 20, 2014. I am asking that you submit these regulations to an additional round of revisions that address widespread community concerns. The regulations as written probably violate the First Amendment rights of both incarcerated people as well as those trying to communicate with them.

Response 25R-A: See Commenter 1R, Response A.

Comment 25R-B: Communication with the outside world while incarcerated tends to have a positive effect at decreasing recidivism. However, the regulations as proposed threaten to seriously hamper individuals' ability to communicate with loved ones and supporters about any number of topics. Instead, CDCR should work to ensure the ability of all of its prisoners to communicate with the outside world through letters, as well as to receive letters, newspapers, and newsletters.

Response 25R-B: See Commenter 37, Response M and Commenter 30R, Response K.

Comment 25R-C: Commenter states that a publication or newsletter should not be prevented to enter through prison mail simply due to the inclusion of names, or writings/photographs of individuals that have been validated or associated to a STG. Commenter states that just because an individual is determined to be affiliated with a STG does not mean that everything they say or do is also a threat. People should not be defined by their past actions or limited in their ability to express themselves as that may be the path to their rehabilitation.

Response 25R-C: See Commenter 37, Response M; Commenter 1R, Response C; and Commenter 24R, Response D.

Comment 25R-D: Mere possession of a newsletter should not be enough to associate someone with a STG, or result in their punishment or placement in a SHU.

Response 25R-D: See Commenter 37, Response M; Commenter 1R, Response C; and Commenter 24R, Response D.

Comment 25R-E: Commenter states that in regards to subsection 3006(c)(19)(A), materials should not be banned simply because they lack literary, artistic, political, or scientific value, describe sexual conduct or because they do not appeal to prurient interests. Commenter states that it is not logical that such materials would inherently cause harm to the individual reading them, or would lead to any behavior that would violate social standards. This regulation potentially does more damage than good by allowing guards to subjectively punish and limit incarcerated individuals' access to reading materials that may have personal value.

Response 25R-E: See Commenter 1R, Response A.

Comment 25R-F: No person in custody should be penalized for possessing materials that in and of themselves do not cause harm, and no publication should be banned, either temporarily or permanently, merely because an inmate published his name and/or location in an editorial or newspaper, or is seeking a pen-pal.

Response 25R-F: See Commenter 37, Response M; Commenter 1R, Response C; and Commenter 24R, Response D.

Comment 25R-G: Please open these revisions up to public comment and revise them to address my concerns as well as the concerns of other community members.

Response 25R-G: See Commenter 1R, Response A.

RENOTICE COMMENTER #26R:

Comment 26R-A: Commenter previously submitted a Comment during the initial 45-Day Comment expressing his disagreement with the proposed censorship regulations, and was glad to know that CDCR agreed to review and change the proposed regulations as a result of public complaints. However, Commenter remain upset and can only envision negative consequences if these new regulations are implemented.

Response 26R-A: See Commenter 1R, Response A.

Comment 26R-B: Commenter notes that subsection 3006(c)(19) expands what is considered contraband to include written materials or photographs associated with STG, and the ability to confiscate political mail.

Response 26R-B: Subject to the 15-Day Renotice, subsection 3006(c)(19) specifies that “written materials or photographs that indicate an association with validated STG members or associates, as described in subsections 3378.2(b)(5)-(6), are a form of contraband. Subsection 3006(c)(19) is narrowly tailored to preclude the possession of STG materials, as described at length in existing STG regulations. This subsection does not unlawfully restrict political mail or otherwise give rise to any First Amendment issues. See also Commenter 20R, Response A.

Comment 26R-C: The proposed regulations will have the effect of stifling prison education and will further isolate people who are incarcerated, decreasing their chances to become part of the community when they are released. Prison education is not only intellectual education, but also motivation for people to think about their lives, their mistakes, and to have more opportunities to be reintegrated into a community.

Response 26R-C: See Commenter 1R, Response A.

Comment 26R-D: Subsection 3172(a)(3)(B) does not take false positives into account (with scanners and dogs). Commenter states that false positives can and have led to risky mistakes, as well as practices that further isolate and humiliate people who are incarcerated.

Response 26R-D: See Commenter 5, Response C.

Comment 26R-E: The proposed regulations will also discourage and intimidate visitors who will have to undergo humiliating procedures to be able to visit their loved ones.

Response 26R-E: See Commenter 5, Response C.

Comment 26R-F: There is now a strong wave of people in this country-both Democrats and Republicans-who understand the mistakes of prison policies of the past and how destructive they have been to society and have increasing demands for humane treatment inside prisons as well as for many more programs for reentry and rehabilitation. I hope CDCR takes heed and responds to what the public is saying.

Response 26R-F: See Commenter 1R, Response A.

RENOTICE COMMENTER #27R:

Comment 27R-A: Duplicate of Commenter 23R, Comment A.

Response 27R-A: See Commenter 23R, Response A.

Comment 27R-B: Duplicate of Commenter 23R, Comment B.

Response 27R-B: See Commenter 23R, Response B.

Comment 27R-C: Duplicate of Commenter 23R, Comment C.

Response 27R-C: See Commenter 23R, Response C.

RENOTICE COMMENTER #28R:

Comment 28R-A: We have reviewed the revisions to the Obscene Materials proposed regulations that were issued on October 20, and are writing to express our strong dissatisfaction with these revisions. We are particularly concerned with the inadequacies with which the revisions addressed our original concerns and demand that you submit these regulations to an additional round of revisions that address the widespread community concerns. We believe the proposed regulations are too subjective and potentially violate the First Amendment rights of both incarcerated individuals and those trying to communicate with them, as in subsection 3134.1(e).

Accommodation: See *Accommodation to Commenter 8A*.

Response 28R-A: In subsection 3134.1(e), the term “STG recruitment materials” was replaced with the term “STG written materials or photographs, as described in subsections 3378.2(b)(5)-(6). This change clarifies that STG material that will be reviewed by staff to determine whether the material may be placed on the Centralized List of Disapproved Publications. Also, this change narrows the materials that are disallowed in order to avoid overbroad censorship practices. Subsection 3134.1(e), along with the other proposed regulations in this rulemaking package, are narrowly tailored to comply with all applicable First Amendment free speech standards and other law.

Comment 28R-B: Frequent contact and communication with the outside world has a positive correlation to decreased recidivism for incarcerated people upon release, as well as improved health and wellness during the time of incarceration; therefore, CDCR should do everything in its power to increase inmates’ access to letters, newspapers, and other resources and publications from the outside, but, the proposed regulations seem to do just the opposite as they create an almost endless and indeterminate list of reasons to interfere with open communication between the inside and the outside.

Response 28R-B: See Commenter 1A, Response A.

Comment 28R-C: The proposed regulations do not create safety for anyone; it merely makes it look like CDCR is trying to censor reality, and stop people from talking honestly about human rights and abuses happening inside prisons, and further isolate those in custody.

Response 28R-C: See Commenter 1A, Response A.

Comment 28R-D: A publication or newsletter should not be banned from prisons simply due to the inclusion of the names, writing or photographs of individuals that CDCR has validated or associated to a STG. Commenter states that just because an individual is determined to be affiliated with a STG does not mean that everything they say or do is also a threat. For example, Commenter supports the wellness and rehabilitation of incarcerated LGBTQ+ individuals through connecting them to pen-pals and by distributing a monthly newsletter filled with articles by both incarcerated and non-incarcerated members, and states that

Response 28R-D: See Commenter 37, Response M; Commenter 1R, Response C; and Commenter 24R, Response D.

Comment 28R-E: Duplicative of Commenter 25R, Comment D.

Response 28R-E: See Commenter 25R, Response D.

Comment 28R-F: Duplicative of Commenter 25R, Comment E.

Response 28R-F: See Commenter 25R, Response E.

Comment 28R-G: Duplicative of Commenter 25R, Comment F.

Response 28R-G: See Commenter 25R, Response F.

Comment 28R-H: The Department needs to go back to the drawing board again to ensure that the next round of revisions do more to protect and rehabilitate, rather than punish and censor.

Response 28R-H: See Commenter 1R, Comment A.

RENOTICE COMMENTER #29R:

Comment 29R-A: Why are you still trying to censor our First Amendment rights to publications? The media portrays North Korea, Russia, Iran, and Cuba as Authoritarian counties; however, the media has not been informed, yet, of the repressive and radical censorship of CDCR practices.

Response 29R-A: See Commenter 1R, Response A.

Comment 29R-B: The proposed regulations severely and impermissibly burden the First Amendment rights of publishers who wish to communicate with prisoners, for example, the term, “written materials” is a broad and open-ended term even if it is narrowed to written materials that indicate an association with validated STG members or associates. How can I or Publishers be allowed to correspond and to publish articles that are politically motivated as they will now be censored?

Response 29R-B: See Commenter 1R, Responses B and C; 20R, Response A; Commenter 26R, Response B; and Commenter 28R, Response A.

Comment 29R-C: If an STG member does publish a political article which Title 15 regulation will override: 3006(c)(15) or 3006(c)(19)?

Response 29R-C: See Commenter 1R, Response A.

Comment 29R-D: Commenter asks that CDCR strike the term “written materials” from any regulations concerning publications as Penal Code Section 2601 allows inmates to purchase and receive newspapers, periodicals, and books that are sent by the U.S. mail. Further, Commenter states that if any publications get banned, (especially if they are not “reasonably related to legitimate penological interest), is a retaliation tactic to ban publications such as the *Bay View* from inmates.

Response 29R-D: Penal Code section 2601, when read in connection with Penal Code section 2600, provides in part that inmates have a right to purchase and receive newspapers, periodicals, and books, except when legitimate penological interests may cause inmates to be deprived of that right. Because the dissemination of STGs materials might incite violence or present a security risk in CDCR institutions, as various courts have affirmed, CDCR has a legitimate penological interest to disallow STG written materials. In the proposed regulations here, CDCR lawfully includes terms for STG “written materials” into subsections 3006(c)(19), 3134.1(e), and 3135(c)(14). These terms for STG written materials are not required to be stricken. See also Commenter 37, Response M; Commenter 1R, Responses B and C; Commenter 20R, Response A; Commenter 26R, Response B; and Commenter 28R, Response A.

Comment 29R-E: Commenter states this ban will cause more protest and will also be expensive due to lawsuits and litigation fees. Commenter asks that CDCR avoid this censorship and instead spend the money saved on rehabilitative programs.

Response 29R-E: See Commenter 1R, Response A.

Comment 29R-F: Commenter states that subsection 3006(c)(15)(A) is open to the wrong interpretation, and asks, who is the “Average Person?” Commenter states the “average person” is a sex-obsessed, sensitive puritanical correctional officer who may not be able to identify Art, Science, or Politics, and whose beliefs differ from non-law enforcement “average persons.”

Response 29R-F: See Commenter 1R, Response A.

Comment 29R-G: Commenter’s interpretation of subsection 3006(c)(15)(A) is that sex/nudity is scientific (biology), art (paintings), and political freedom of expression. Commenter makes the following statements:

- The last time I checked, breasts nurture babies, and vaginas reproduce babies-that is “Biology-101.”
- Humans have intercourse to reproduce, (which is a part of evolution), and for love and recreational reasons (sex and Art).
- Photos or paintings with nudity are not intended to be aphrodisiacs, rather, in these modern times nudity is becoming more and more natural.

Response 29R-G: See Commenter 1R, Response A.

Comment 29R-H: The third prong needs clarification of what is the definition of “lacks serious.”

Response 29R-H: See Commenter 1R, Response A.

Comment 29R-I: Commenter asks if the magazines “ArtNews” and “Juxtapoz” will be disallowed as they sometimes contain an image or painting that may show nudity, breast, or penetration? Commenter states the magazines are serious Artistic magazines accepted in Authoritarian Countries, and asks why CDCR is denying are Art Publications and censoring free speech since CDCR is a rehabilitative system that encourages inmates’ integration back into society?

Response 29R-I: See Commenter 1R, Response A.

Comment 29R-J: Transgender male inmates are allowed to take their shirts off in the showers and in the Yards, even though they have visibly large augmented breasts, yet heterosexual male inmates are not allowed to look at photos of female breasts or vaginas. I do not want to look at any males’ breasts, especially if I can’t look at women’s’ anatomy.

Response 29R-J: See Commenter 1R, Response A.

Comment 29R-K: Inmates are in a prison, not in a convent, and the photos male inmates receive of women’s vagina or breasts are private. Commenter states there is no “legitimate penological interest” in banning/disallowing these types of photos, and adds that inmates should not be getting publication and photos censored in a country that touts human rights and freedom of speech.

Response 29R-K: Courts have affirmed that prisons have a legitimate penological interest to preclude obscene material, including pornographic images of fully exposed genitalia and female breasts, from being circulated in the prisons. Penal Code section 2601(c)(1) explicitly allows prison authorities to disallow obscene publications or writings. The proposed regulations are a lawful implementation of section 2601 and other law pertaining to obscenity.

Comment 29R-L: There is a deep frustration because we inmates feel we are being censored and silenced. There are always remedies for everything:

- Do not ban publications!
- Allow inmates to receive and purchase photos with nudity with the exception that inmates would not post or display the photos on the walls, windows, or any coverings.

Response 29R-L: See Commenter 29R, Responses D and K.

Comment 29R-M: If inmates are allowed to receive and purchase photos with nudity, with the exception as stated above, a lot of issues will go away, (602-appeals, and lawsuits).

Response 29R-M: See Commenter 1R, Response A.

Comment 29R-N: Subsections 3006(c)(15)-3006(c)(17)(A) and 3006(c)(19) should be stricken period.

Response 29R-N: See Commenter 29R, Responses D and K.

Comment 29R-O: Subsections 3134.1(e) and 3135(d)(1)-3135(d)(7) should strike all underlined text.

Response 29R-O: See Commenter 29R, Responses D and K.

Comment 29R-P: Help us inmates, and we in turn will help you. Do not ban any publications or materials with nudity.

Response 29R-P: See Commenter 1R, Response A.

RENOTICE COMMENTER #30R:

Comment 30R-A: Commenter states the Renotice changes have failed to address in a meaningful way concerns expressed by hundreds of community members regarding the originally proposed text.

Response 30R-A: See Commenter 1R, Comment A.

Comment 30R-B: CDCR publicized that the purpose of these censorship rules is to forbid “publications that indicate an association with groups that are oppositional to authority and society,” but the fact that comment is limited to only text revised from the original proposals is itself a violation of democratic and constitutional rights, including First Amendment freedom of speech and expression.

Response 30R-B: See Commenter 1, Response A and Commenter 25, Response B.

Comment 30R-C: The Department claimed the public misunderstood its intent, yet the minimally revised language around so-called obscene materials does not clarify that intent. What specifically is your intent?

Response 30R-C: See Commenter 1R, Response A.

Comment 30R-D: Commenter quotes portions of the Renotice language. Commenter notes that subsection 3134.1(e), which is amended to identify the standards for including publications on the Centralized List of Disapproved Publications issued by DAI, which can include “warfare or weaponry,” and asks if this would include Aztec warriors, and other important cultural icons.

Response 30R-D: See Commenter 1R, Response A.

Comment 30R-E: Commenter states the materials in the category “STG written materials and photographs” are highly subject to individual interpretation and whim on the part of staff. CDCR has a long history of viewing political and historical writings, and materials relating to cultural identity of gangs/STGs, and of denying their cultural and political value.

Response 30R-E: See Commenter 1R, Responses B and C; Commenter 20R, Response A; Commenter 26R, Response B; and Commenter 28R, Response A.

Comment 30R-F: What outside oversight, (using what procedures), will stop CDCR from using 3378.2(b)(5)-(6) to violate First Amendment freedom of speech and expression for prisoners, journalists, rights advocates, family members, loved ones, and friends who may possess innocent items such as: an address for, or photo of, loved one(s) or friend(s) who happen(s) to be deemed an STG affiliate; an item that includes cultural icons (e.g., jaguar, pyramid, image of Martin Luther King, a copy/contact info for *The San Francisco Bay View* newspaper and other publications.

Response 30R-F: See Commenter 14, Response D; Commenter 1R, Responses B and C; Commenter 20R, Response A; Commenter 26R, Response B; and Commenter 28R, Response A.

Comment 30R-G: Publications often contain the self-disclosed names and/or addresses for persons who are validated, and are therefore subject to censorship under subsections 3006(c), 3006(c)(15), and 3378.2(b)(5)-(6).

Response 30R-G: See Commenter 24R, Response D.

Comment 30R-H: How will CDCR guarantee that they will not delay or deny any mail, newspapers, newsletters, and personal correspondence they want to ban?

Response 30R-H: See Commenter 20R, Response B.

Comment 30R-I: If political publications or personal communications are delayed or banned, what outside oversight, (using what procedures), will make CDCR guarantee prisoners’ constitutional and human rights to publicize their situation and conditions, and to peacefully organize to improve them?

Response 30R-I: See Commenter 1R, Response A.

Comment 30R-J: Commenter states that under the proposed regulations, inmates’ letters, and any publication(s) reporting critically on solitary confinement and other prison conditions, could be subjected to political censorship and banned. This is not acceptable in what is supposed to be a democracy that guarantees constitutional rights. Prisons must not be Constitution-free zones.

Response 30R-J: See Commenter 1R, Response A.

Comment 30R-K: Commenter states that under the proposed regulations, family members, and others corresponding with prisoners, (including those who write or visit more than one prisoner) can be deemed affiliates of STGs and mail and visiting privileges could be revoked. These communications are essential to supportive relationships with loved ones and communities, and for rehabilitation. Commenter asks what outside oversight and procedures will stop CDCR from denying prisoners’ rights to mail and visiting privileges.

Response 30R-K: As set out in the 15-Day Renotice, the proposed regulations allow to inmates to correspond with family members and others, so long as their correspondence do not contain STG written materials or photographs as described in subsections 3378.2(b)(5)-(6) or the correspondences otherwise do not contain contraband. The proposed regulations are narrowly tailored to prevent an unlawful deprivation of inmate mail or visiting privileges.

Comment 30R-L: Commenter states the revisions to the proposed regulations still allow mail censorship that also could violate CCR Title 15, Section 3135(b): “Disagreement with the sender’s or receiver’s morals, values,

attitudes, veracity or choice of words will not be cause for correctional staff to disallow mail. Correctional staff shall not challenge or confront the sender or receiver with such value judgments,” and asks what outside oversight and procedures will keep CDCR from violating section 3135(b)?

Response 30R-L: See Commenter 1R, Comment A.

Comment 30R-M: The Department needs to go back to the drawing board again to ensure that:

- No inmate will have letter(s) banned that explain conditions and peaceful organizing (Prisoner Hunger Strikes and Work Strikes)
- Inmates will not be penalized for sending or receiving mail with contact information for publications or for possessing materials that in and of themselves have nothing to do with prohibited conduct or any rules violation
- No publication will be banned, either temporarily or permanently, merely because a person in custody has chosen to publish her/his name and/or location in an editorial, news article, or other published material and is seeking a pen-pal, or because the publication(s) report(s) critically on solitary confinement or other prison conditions, policies, operations, programs, or procedures.

Response 30R-M: See Commenter 1R, Response A.

RENOTICE COMMENTER #31R:

Comment 31R-A: As was the case with the first draft of the proposed regulations, the revised text continues to raise serious concerns about burdens placed on the First Amendment rights of both inmates and innocent third parties who wish to communicate with them.

Response 31R-A: See Commenter 37, Response C.

Comment 31R-B: The proposed regulations, including those provisions which CDCR has not opened for comment during this renotice period, are unconstitutionally vague in that they do not contain a clear standard for prohibited written materials, publications, and correspondence.

Response 31R-B: See Commenter 1R, Responses B and C.

Comment 31R-C: Because the proposed regulations are so vague, they threaten to chill speech protected by the First Amendment as they do not provide a clear standard for publishers, correspondents, and inmates to determine what materials are banned.

Response 31R-C: Subsection 3134.1(d) is amended to provide that the Publisher, the Inmate, and the Division of Adult Institutions are all concurrently notified when an institution disallows a publication. Subject to subsection 3134.1(d), the notifications to the Publisher and the Inmate must identify the publication that was disallowed, give the reason for the disallowance, and describe how the decision to disallow the publication may be appealed. These notifications accordingly offer adequate information about what materials are banned. CDCR regulations otherwise set forth clear standards to inmates and their correspondents for what material is contraband in the prisons.

Comment 31R-D: In regards to the phrase, “[a]lthough the item[s] by [themselves] may not evidence STG activity, when considered with other STG activity/behavior...give credence to a STG nexus,” it is unclear what is meant by an “STG nexus.” The regulations do not provide guidance on what types of activities may be considered STG related and which may not.

Response 31R-D: See Commenter 1R, Response A.

Comment 31R-E: The reference to “other STG activity/behavior” seems to assume that any literature that comes into the prisons and is possessed by an inmate can be considered STG activity in itself by CDCR.

Response 31R-E: See Commenter 1R, Response A.

Comment 31R-F: The proposed regulations are unjustifiably vague because they create sweeping prohibitions but fail to give the person of ordinary intelligence a reasonable opportunity so that he may act accordingly. For example, there is no meaningful standard that would allow a publisher to ensure that its publication would not be prohibited under these regulations as the wording of the regulations prohibit materials that in and of themselves have no inherent ties to STG activity or behavior.

Response 31R-F: See Commenter 1R, Responses B and C and Commenter 31R, Response C.

Comment 31R-G: Commenter states the proposed regulations invite arbitrary, inconsistent, and discriminatory application by allowing the prohibition of written materials and documents that are not inherently related to an STG activity or behavior, “but when considered with other STG activity/behavior...give credence to a STG nexus.” This language suggests that written materials or documents which are not STG materials, may still be prohibited based on the identity of the recipient or possessor of the written materials., and copies of a widely available publication that otherwise has no ties to STG activity, may be banned for one individual due to CDCR STG concerns, while the same publication may be perfectly acceptable for another individual.

Response 31R-G: See Commenter 1R, Response A.

Comment 31R-H: The Supreme Court has long recognized that restrictions on prisoners’ communications implicate the First Amendment rights of those free persons who wish to communicate with them. The proposed regulations severely burden the *Bay View’s* right to communicate with prisoners.

Response 31R-H: See Commenter 1R, Responses B and C; Commenter 20R, Response A; Commenter 26R, Response B; Commenter 28R, Response A; and Commenter 30R, Response F.

Comment 31R-I: Existing regulations provide mechanisms for prison officials to control and limit prisoners’ correspondence and to monitor those communications to detect and prevent possible criminal activity, (subsection 3135(b)).

Response 31R-I: See Commenter 1R, Response A.

Comment 31R-J: Given the lack of any discernible benefit and the significant burdens placed on important First Amendment rights of both prisoners and those who wish to communicate with them, the proposed regulations should be withdrawn.

Response 31R-J: See Commenter 1R, Response A.

RENOTICE COMMENTER #32R:

Comment 32R-A: Commenter reviewed the revisions the proposed regulations that were issued October 20, and asks that CDCR further amend the proposed regulations.

Response 32R-A: See Commenter 5, Response C.

Comment 32R-B: Commenter is concerned about subsections 3006(c)(19), 3134.1(d), 3135(c)(14) and 3378.2(b)(5)-(6). Commenter publishes a newsletter that helps to raise up the voices of transgender, gender-variant and intersex people in prison by publishing articles, current events, and updates about her organization, as well as letters, art and opinions from our incarcerated members, and has no way of knowing if the person who is submitting a letter or piece of artwork is validated as part of a STG, and no way to prevent including them and potentially having her newsletter banned from prisons. Further, Commenter does not want her newsletter to be used to validate or associate others as an STG member or associate, as a result of publishing such reader-submittals.

Response 32R-B: See Commenter 1R, Responses B and C and Commenter 29, Response D.

Comment 32R-C: Commenter states that even if someone is validated or associated with a STG they still have valuable things to say and creative ideas to offer, and are an important part of our community. Commenter does not want their voices censored.

Response 32R-C: See Commenter 1R, Response A.

Comment 32R-D: Commenter does not condone the definition of obscene under subsection 3006(c)(15)(A) and asks that this language be removed entirely. Commenter states the LGBTQ+ Community has historically been overly targeted and oppressed by an expectation that the LGBTQ+ Community submits to "prurient interests." Commenter also states that the LGBTQ+ Community has also endured public judgment that their stories and struggles "lack serious literary, artistic, political, or scientific value."

Response 32R-D: See Commenter 1R, Response A.

Comment 32R-E: Commenter asks CDCR to remove subsection 3006(c)(15)(B), which reads, "When it appears from the nature of the matter or the circumstances of its dissemination, distribution, or exhibition that it appeals to deviant sexual groups," as this language may unfairly target LGBTQ+ publications.

Response 32R-E: See Commenter 1R, Response A.

Comment 32R-F: The proposed regulations or revisions do not move us any closer to public safety, but instead seem to be an attempt to silence our communities. You need to take the regulation back to the drawing board.

Response 32R-F: See Commenter 1R, Response A.

RENOTICE COMMENTER #33R:

Comment 33R-A: Commenter is opposed to the tightening of censorship regulations contained in the Renotice issued October 20. Commenter states the regulations continue to ban any publication, letter or photograph that includes material related to what the CDCR designates as "Security Threat Groups." According to these rules, written material containing the name of someone in an STG is termed "contraband" and can be punished.

Response 33R-A: See Commenter 1R, Responses B and C and Commenter 24R, Response D.

Comment 33R-B: Given the large number of prisoners that CDCR has already designated as members of gangs/STGs, these rules can be used to limit the First Amendment rights of prisoners as their access to publications carrying the views of prisoners, (such as *The San Francisco Bayview*, *California Prison Focus* or the *Militant*), would be jeopardized. The courts have repeatedly upheld the First Amendment rights of prisoners to receive such publications.

Response 33R-B: See Commenter 1R, Responses B and C; Commenter 20R, Response A; Commenter 26R, Response B; and Commenter 28R, Response A.

Comment 33R-C: The ability of prisoners to respond to dehumanizing prison conditions and by educating themselves through reading and study, and learn about working-class struggles, is of utmost importance. Such self-study and education helps open up the possibility for prisoners to stand up against prison conditions that corrode solidarity, dignity and a sense of self-worth.

Response 33R-C: See Commenter 1R, Response A.

Comment 33R-D: Commenter states the new regulations are a weapon against prisoners who demand rights, including the right to read and communicate about their conditions with supporters, friends and family on the outside. Commenter states that CDCR has a record of punishing prisoners who challenge prison abuse, such as solitary confinement. Commenter adds that prisoners use non-violent hunger strikes and court suits, (which organize outside support) to challenge these injustices.

Response 33R-D: See Commenter 1R, Response A.

Comment 33R-E: Commenter states that CDCR should cancel its plans to impose these new regulations which have already been protested by hundreds of people who have written to the CDCR opposing them.

Response 33R-E: See Commenter 1R, Response A.

RENOTICE COMMENTER #34R:

Comment 34R-A: Commenter states the proposed Censorship ban is a last attempt for CDCR to have ultimate control of our loved ones. This ban only justifies the wrongdoings that CDCR has inflicted on our loved ones and says, Enough is Enough!!!

Response 34R-A: See Commenter 1R, Response A.

Comment 34R-B: Duplicative of Commenter 2R, Comment A.

Response 34R-B: See Commenter 2R, Response A.

Comment 34R-C: Duplicative of Commenter 2R, Comment B.

Response 34R-C: See Commenter 2R, Response B.

Comment 34R-D: Duplicative of Commenter 1R, Comment C.

Response34R- D: See Commenter 1R, Response C.

Comment34R- E: Duplicative of Commenter 2R, Comment D.

Response 34R-E: See Commenter 2R, Response D.

RENOTICE COMMENTER #35R:

Comment 35R-A: I am very angry that the CDCR's newly revised obscene materials regulations issued October 20 has failed to meaningfully take into consideration concerns previously expressed by hundreds of community members regarding the originally proposed text despite the Department's promise that it would go back to the drawing board and its claim that the public had misunderstood its intent.

Response 35R-A: See Commenter 1R, Response A.

Comment 35R-B: Duplicate of Commenter 23R, Comment B.

Response 35R-B: See Commenter 23R, Response B.

Comment 35R-C: Duplicate of Commenter 23R, Comment C.

Response 35R-C: See Commenter 23R, Response C.

RENOTICE COMMENTER #36R:

Comment 36R-A: While I appreciate the changes you made in response to the feedback you received from me and hundreds of other concerned Californians about the originally proposed CDCR regulations for rules governing searches of visitors to California prisons for contact visits, the changes were quite minimal and still do not go far enough in addressing the abhorrent conditions these regulations will create.

Response 36R-A: See Commenter 1R, Response A.

Comment 36R-B: The text of subsections 3134(d)-(e) was changed only by the substitution of the clause “STG recruitment materials” for “STG written materials or photographs, as described in 3378.2(b)(5)-(6).”

Response 36R-B: See Commenter 1R, Responses B and C.

Comment 36R-C: Commenter states the revised proposed regulations will have a highly negative effect on contact visits and do not address contraband brought in by employees/volunteers.

Response 36R-C: See Commenter 1R, Response A.

Comment 36R-D: Commenter states the proposed regulations will not be effective in reducing contraband leaving the State open to lawsuits. As a taxpayer and voter, Commenter objects to this inhumane policy that exists for no viable purpose.

Response 36R-D: See Commenter 1R, Response A.

Comment 36R-E: Commenter asks if CDCR really believes that visitors to prisoners in California can be stripped of their constitutional rights without Due Process.

Response 36R-E: See Commenter 1R, Response A.

Comment 36R-F: Commenter asks if CDCR really intends to waste the taxpayers’ money on regulations that serve no public policy purpose and that are blatantly unconstitutional.

Response 36R-F: See Commenter 5, Response C.

Comment 36R-G: Commenter suggests CDCR deletes the revised proposed regulations as:

- Subsection 3006(c)(19) expands the definition of contraband to include “written materials or photographs that indicate an association with validated STG members or associates, as described in subsections 3378.2(b)(5)-(6)”
- Subsection 3378.2(b)(5)-(6), which includes the phrase, "STG written materials or photographs," as it is vague, subject to interpretation, and clearly a violation of Constitutional rights.

Response 36R-G: See Commenter 1R, Responses B and C; Commenter 20R, Response A; Commenter 26R, Response B; and Commenter 28R, Response A.

Comment 36R-H: Commenter states that proposed regulations must be based on protections afforded by the California and US Constitutions, which allow inmates to possess materials that do not relate to prohibited contact or rules violations and bar the banning of publications solely due to the publication of content that was submitted by an inmate.

Response 36R-H: See Commenter 1R, Response A.

Comment 36R-I: Commenter asks that CDCR rescind these plans immediately in order to protect the rights of prisoners and the community at large.

Response 36R-I: See Commenter 1R, Response A.

RENOTICE COMMENTER #37R:

Comment 37R-A: Commenter states that the Department has failed to meaningfully take into consideration concerns previously expressed by hundreds of community members regarding the originally proposed text, despite the Department's promise that it would go back to the drawing board and its claim that the public had misunderstood its intent. Commenter states that many aspects of these new regulations, as revised, remain troubling to say the least.

Response 37R-A: See Commenter 1R, Response A.

Comment 37R-B: Commenter states that under the new regulations, as revised, the numbers of items that may be considered contraband are limitless. For example, subsection 3006(c)(19) expands the definition of contraband to include “written materials or photographs that indicate an association with validated STG members or associates, as described in subsections 3378.2(b)(5)-(6).” This includes “Any material or documents evidencing STG activity such as the membership or enemy lists, roll call lists, constitutions, organizational structures, codes, training material, etc., of specific STGs, or addresses, names, identities of validated STG affiliates,” and “Individual or group photographs with STG connotations such as those which include insignia, certified symbols, or other validated STG affiliates.”

Response 37R-B: See Commenter 1R, Responses B and C; Commenter 20R, Response A; Commenter 26R, Response B; and Commenter 28R, Response A.

Comment 37R-C: Commenter states that under existing regulations, CDCR already repeatedly construes items such as greeting cards, books, artwork depicting cultural iconography, and isolated addresses or/photographs of others who happen to be validated, as material "evidencing" gang/STG activity regardless of whether or not the individual possessing any of these items has recently committed any crime or serious rules violation, or appears poised to do so. Commenter states that now, the proposed regulations, together with the recently-adopted STG, will exponentially increase the category of items that may be considered contraband.

Response 37R-C: See Commenter 1R, Responses B and C; Commenter 20R, Response A; Commenter 26R, Response B; and Commenter 28R, Response A.

Comment 37R-D: Commenter states that based on the definition in Section 3000 of an “STG suspect,” those with loved ones deemed STG members or associates, attorneys and advocates assisting those deemed STG members or associates, people who correspond as pen-pals with those deemed STG members or associates, and prison guards, are all apparently "STG suspects" Pursuant to subsection, correspondence sent by such individuals to any person deemed an STG member or associate—no matter how innocuous—is indicative of an "association" with an STG member or associate, and may be considered contraband!

Response 37R-D: See Commenter 1R, Response A.

Comment 37R-E: The new regulations appear to conflict with the apparently misnumbered subsection 3006(c)(C)(16) (or 3006(c)(16)), and reflect no standard of reasonability. Under existing subsection 3006(c)(C)(16), (or 3006(c)(16), material that is "reasonably deemed to be a threat to legitimate penalological interests " is considered contraband. However, the new regulations contradict this language as the mere fact that a person may be associated with "validated STG members or associates," or is "involved periodically or regularly with the members or associates of a STG" (validated or not), does not in and of itself constitute a "threat to legitimate penalological interests"—whatever those might be.

Response 37R-E: CDCR has legitimate penological interests to prohibit the dissemination of STG material and to otherwise prevent STG activity in the prisons. Accordingly, the proposed regulations here do not conflict with subsection 3006(c)(16), providing that contraband may include material that is reasonably deemed to be a threat to legitimate penological interests. See also Commenter 1R, Responses B and C and Commenter 23R, Response C.

Comment 37R-F: Because many inmates have one or more family members who are validated, Commenter asks if this means that under the proposed regulations inmates are not supposed to possess any type of keepsake in regard to his/her validated loved one, lest it should be used as evidence of STG association? Commenter further asks if inmates deemed an STG member or associate should expect to have all mail from family, attorneys or advocates, friends, or acquaintances to be categorically censored or withheld, as the inmates are involved with the individuals “periodically or regularly.”

Response 37R-F: The proposed regulations are narrowly tailored to comply with all applicable First Amendment free speech standards, with the law for the prohibition of obscenity in the prisons, and with the law for the prevention of STG activity. Inmates will not be penalized simply for possessing publications that reference or include affiliated STG members if those publications do not qualify as STG materials or other contraband under CDCR regulations. See also Commenter 44, Response C; Commenter 1R, Responses B and C; and Commenter 30R, Response K.

Comment 37R-G: It is unclear why any publication, with content that can be legally published and acquired by not-incarcerated persons, should be permanently disallowed at any of the CDCR's institutions in a blanket fashion. This is not in keeping with the language of subsection 3006(c)(C)(16) (or 3006(c)(16)).

Response 37R-G: See Commenter 1R, Response B; Commenter 29R, Responses D and K, and Commenter 37R, Response E.

Comment 37R-H: Commenter states that if there is a specific and concrete concern as to why a specific inmate should not have access to a particular publication at any given point in time, CDCR should be capable of addressing the issue without permanently disallowing the distribution of the publication from all inmates.

Response 37R-H: See Commenter 13, Response E; Commenter 18, Response A; Commenter 29, Response A; and Commenter 1R, Response B.

RENOTICE COMMENTER #38R:

Comment 38R-A: Duplicative of Commenter 37R, Comment A.

Response 38R-A: See Commenter 37R, Response A.

Comment 38R-B: Duplicative of Commenter 37R, Comment B.

Response 38R-B: See Commenter 37R, Response B.

Comment 38R C: Duplicative of Commenter 37R, Comment C.

Response 38R-C: See Commenter 37R, Response C.

Comment 38R-D: Duplicative of Commenter 37R, Comment D.

Response 38R-D: See Commenter 37R, Response D.

Comment 38R-E: Duplicative of Commenter 37R, Comment E.

Response 38R-E: See Commenter 37R, Response E.

Comment 38R-F: Duplicative of Commenter 37R, Comment F.

Response 38R-F: See Commenter 37R, Response F.

Comment 38R-G: Duplicative of Commenter 37R, Comment G.

Response 38R-G: See Commenter 37R, Response G.

RENOTICE COMMENTER #39R:

Comment 39R-A: Duplicative of Commenter 2R, Comment A.

Response 39R-A: See Commenter 2R, Response A.

Comment 39R-B: Duplicative of Commenter 2R, Comment B.

Response 39R-B: See Commenter 2R, Response B.

Comment 39R-C: Duplicative of Commenter 1R, Comment C.

Response 39R-C: See Commenter 1R, Response C.

Comment 39R-D: Duplicative of Commenter 2R, Comment D.

Response 39R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #40R:

Comment 40R-A: Duplicative of Commenter 2R, Comment A.

Response 40R-A: See Commenter 2R, Response A.

Comment 40R-B: Duplicative of Commenter 2R, Comment B.

Response 40R-A: See Commenter 2R, Response B.

Comment 40R-C: Duplicative of Commenter 1R, Comment C.

Response 40R-C: See Commenter 1R, Response C.

Comment 40R-D: Duplicative of Commenter 2R, Comment D.

Response 40R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #41R:

Comment 41R-A: Duplicative of Commenter 32R, Comment A.

Response 41R-A: See Commenter 32R, Response A.

Comment 41R-B: Duplicative of Commenter 32R, Comment B.

Response 41R-B: See Commenter 32R, Response B.

Comment 41R-C: Duplicative of Commenter 32R, Comment C:

Response 41R-C: See Commenter 32R, Response C.

Comment 41R-D: Duplicative of Commenter 32R, Comment D.

Response 41R-D: See Commenter 32R, Response D.

Comment 41R-E: Duplicative of Commenter 32R, Comment E.

Response 41R-E: See Commenter 32R, Response E.

Comment 41R-F: Duplicative of Commenter 32R, Comment F.

Response 41R-F: See Commenter 32R, Response F.

RENOTICE COMMENTER #42R:

Comment 42R-A: Duplicative of Commenter 2R, Comment A.

Response 42R-A: See Commenter 2R, Response A.

Comment 42R-B: Duplicative of Commenter 2R, Comment B.

Response 42R-B: See Commenter 2R, Response B.

Comment 42R-C: Duplicative of Commenter 1R, Comment C.

Response 42R-C: See Commenter 1R, Response C.

Comment 42R-D: Duplicative of Commenter 2R, Comment D.

Response 42R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #43R:

Comment 43R-A: Duplicative of Commenter 37R, Comment A.

Response 43R-A: See Commenter 37R, Response A.

Comment 43R-B: Duplicative of Commenter 37R, Comment B.

Response 43R-B: See Commenter 37R, Response B.

Comment 43R-C: Duplicative of Commenter 37R, Comment C.

Response 43R-C: See Commenter 37R, Response C.

Comment 43R-D: Duplicative of Commenter 37R, Comment D.

Response 43R-D: See Commenter 37R, Response D.

Comment 43R-E: Duplicative of Commenter 37R, Comment E.

Response 43R-E: See Commenter 37R, Response E.

Comment 43R-F: Duplicative of Commenter 37R, Comment F.

Response 43R-F: See Commenter 37R, Response F.

Comment 43R-G: Duplicative of Commenter 37R, Comment G.

Response 43R-G: See Commenter 37R, Response G.

Comment 43R-H: Duplicative of Commenter 37R, Comment H.

Response 43R-H: See Commenter 37R, Response H.

RENOTICE COMMENTER #44R:

Comment 44R-A: Duplicative of Commenter 2R, Comment A.

Response 44R-A: See Commenter 2R, Response A.

Comment 44R-B: Duplicative of Commenter 2R, Comment B.

Response 44R-B: See Commenter 2R, Response B.

Comment 44R-C: Duplicative of Commenter 1R, Comment C.

Response 44R-C: See Commenter 1R, Response C.

Comment 44R-D: Duplicative of Commenter 2R, Comment D.

Response 44R-D: See Commenter 2R, Response D.

RENOTICE COMMENTER #45R:

Comment 45R-A: Duplicative of Commenter 37R, Comment A.

Response 45R-A: See Commenter 37R, Response A.

Comment 45R-B: Duplicative of Commenter 37R, Comment B.

Response 45R-C: See Commenter 37R, Response B.

Comment 45R-C: Duplicative of Commenter 37R, Comment C.

Response 45R-C: See Commenter 37R, Response C.

Comment 45R-D: Duplicative of Commenter 37R, Comment D.

Response 45R-D: See Commenter 37R, Response D.

Comment 45R-E: Duplicative of Commenter 37R, Comment E.

Response 45R-E: See Commenter 37R, Response E.

Comment 45R-F: Duplicative of Commenter 37R, Comment F.

Response 45R-F: See Commenter 37R, Response F.

Comment 45R-G: Duplicative of Commenter 37R, Comment G.

Response 45R-G: See Commenter 37R, Response G.

Comment 45R-H: Duplicative of Commenter 37R, Comment H.

Response 45R-H: See Commenter 37R, Response H.

RENOTICE COMMENTER #46R:

Comment 46R-A: Commenter reviewed the revisions that were issued October 20 and is strongly dissatisfied as the revisions are inadequate and do not address the original concerns, and demands that CDCR submit these regulations to an additional round of revisions that address the widespread community concerns.

Response 46R-A: See Commenter 1R, Response A.

Comment 46R-B: The regulations are too subjective and potentially violate the First Amendment rights of both incarcerated individuals and those trying to communicate with them (subsection 3134.1(e)).

Response 46R-B: Existing policy and the proposed regulations do not violate the First Amendment free speech rights of inmates or other persons. Publications are withheld from CDCR institutions to the extent, as recognized in the law, that the publications qualify as obscene, contain contraband, are associated with STGs, or otherwise give rise to a security threat. See also Commenter 37, Response I and Commenter 1R, Responses B and C.

Comment 46R-C: Duplicative of Commenter 28R, Comment B.

Response 46R-C: See Commenter 28R, Response B.

Comment 46R-D: Duplicative of Commenter 28R, Comment C.

Response 46R-D: See Commenter 28R, Response C.

Comment 46R-E: Duplicative of Commenter 28R, Comment D.

Response 46R-E: See Commenter 28R, Response D.

Comment 46R-F: Duplicative of Commenter 25R, Comment E.

Response 46R-F: See Commenter 25R, Response E.

Comment 46R-G: Duplicative of Commenter 28R, Comment F.

Response 46R-G: See Commenter 28R, Response F.

Comment 46R-H: Duplicative of Commenter 28R, Comment G.

Response 46R-H: See Commenter 28R, Response G.

Comment 46R-I: Commenter states that the Department needs to go back to the drawing board and ensure that the next that the next round of revisions produce regulations that actually rehabilitate, rather than just punish and censor. CDCR needs to ensure that no publication is banned (either temporarily or permanently) merely because it has political or sexual content and correspondence that is typically protected by the First Amendment.

Response 46R-I: See Commenter 1R, Response A.

RENOTICE COMMENTER #47R:

Comment 47R-A: Duplicative of Commenter 2R, Comment A.

Response 47R-A: See Commenter 2R, Response A.

Comment 47R-B: Duplicative of Commenter 2R, Comment B.

Response 47R-B: See Commenter 2R, Response B.

Comment 47R-C: Duplicative of Commenter 1R, Comment C.

Response 47R-C: See Commenter 1R, Response C.

Comment 47R-D: Duplicative of Commenter 2R, Comment D.

Response 47R-D: See Commenter 2R, Response D.

Comment 47R-E: Commenter states that even if all materials must be sent to the Sacramento Standardization Unit for approval or disapproval for banned list statewide, there is a lot of room for violations of free speech due to “interpretation.”

Response 47R-E: See Commenter 1R, Response C and Commenter 46R, Response C.

RENOTICE COMMENTER #48R:

Comment 48R-A: Commenter opposes subsection 3135(c)(14), and feels that CDCR is just trying keep validated STG inmates from exercising their guaranteed rights as established in Penal Code Section 2601, (Inmate Bill of Rights) by limiting their access to receive information and ideas though correspondence. The *Martinez Court* ruled that the First Amendment did apply in prisons.

Response 48R-A: See Commenter 6, Response A and Commenter 1R, Responses B and C.

Comment 48R-B: Commenter states that Penal Code Section 2601 guarantees inmates the right to “inherit, own, sell, or convey real or personal property, including all written and artistic material produced or created by the person during the period of imprisonment,” and to “purchase, receive and read any and all newspapers, periodicals, and books accepted for distribution by the United States Post Office.”

Response 48R-B: See Commenter 1R, Response A.

RENOTICE COMMENTER #49R:

Comment 49R-A: Commenter states that subsection 3006(c)(19), which states that contraband includes “written materials or photographs that indicate an association with validated STG members or associates” is so broad that almost any prisoner could be considered to be in possession of contraband as most prisoners have friends or family or loved ones that are deemed STG members.

Response 49R-A: See Comment 1R, Response C and Comment 30R, Response K

Comment 49R-B: Allowing for the permanent banning of publications is also deeply concerning and ripe for abuse.

Response 49R-B: See Commenter 1R, Response A.

Comment 49R-C: Commenter states that CDCR did not properly take into account the community concerns in this revision and the proposed regulations must be reconsidered.

Response 49R-C: See Commenter 1R, Response A.

**ADDENDUM TO FINAL STATEMENT OF REASONS TO RULEMAKING FILE 2015-0318-03S
REGULATIONS CONCERNING OBSCENE MATERIAL**

DETERMINATION CONCERNING COST-EFFECTIVENESS OF THE REGULATORY ACTION

The Department has determined that no reasonable alternatives considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.