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Sacramento, CA 94283-0001



October 20, 2014

NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED

You are receiving this Notice because you provided comments or expressed an interest in receiving notice of changes to the California Department of Corrections and Rehabilitation amendments to the California Code of Regulations (CCR) concerning Obscene Material and Contraband.

Amendments to the proposed text originally noticed to the public are indicated by **double underline** for newly added text and **~~double strikethrough~~** for text deleted from the original proposed text. The single underline and strikethrough formatting from the original proposed text noticed to the public has been retained. These proposed changes are being made available for public comment.

The attached text contains the following changes:

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.” The phrase is replaced by the term “commercial” and reference to subsection 3006(c)(15)(A). The term “commercial” means the exchange or buying and selling of commodities on a large scale involving the transportation from place to place,” describing the seller-consumer relationship. A reference to subsection 3006(c)(15)(A) is added to provide a complete definition of obscene material as provided for by Penal Code. It is necessary to reorganize the subsection to increase clarity and minimize confusion by removing superfluous language and replacing with more succinct terminology.

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. Subsections 3378(c)(8)(C)-(D) were renumbered 3378.2(b)(5)-(6) in the Department’s recent regulatory action concerning Security Threat Groups, Notice Register No. Z2014-0121-13.

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

The text “pending approval from DAI” is added to ensure understanding that an institution’s temporary withholding/disallowing of a publication is contingent upon DAI headquarter approval. The text “DAI shall provide the decision within 30 calendar days of receiving the request” is added to establish the time frame in which DAI must reply either affirming or denying the institution’s request. 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 that if DAI denies the institution’s decision, the temporarily withheld publication must be delivered to the inmate within 15 calendar days of DAI’s determination.

New language is added to specifically address periodicals (publications published at least four times a year at regular, specified intervals), 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 established by Penal Code. New text also establishes that the Department may permanently disallow a periodical if the publication has violated Department regulation or policy for twelve consecutive months. It is necessary to establish a 12-month time frame in order to ensure that issues of a publication consistently contain contraband or otherwise violate CDCR policy or regulation and that placement of the periodical on the Centralized List is accordingly appropriate.

For added clarity, and for consistency within Department regulations, reference to subsection 3133(a)(3) is added to provide the definition of a periodical, and reference to subsection 3134.1(e) is added to identify the standards for including publications on the Centralized List of Disapproved Publications.

Additional non-substantive revisions are made. The short-hand reference "Centralized List" is utilized for subsequent reference to the Centralized List of Disapproved Publications, and the acronym "DAI" is added to reference the headquarters of the Division of Adult Institutions.

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 of Disapproved Publications. For clarity and consistency within Department regulations, references to subsections 3378.2(b)(5)-(6) are utilized in these regulations as existing subsections concerning STGs were recently renumbered in the Department's regulatory action concerning STGs. In addition, 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.

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. Subsections 3378(c)(8)(C)-(D) were renumbered 3378.2(b)(5)-(6) in the Department's recent regulatory action concerning Security Threat Groups, Notice Register No. Z2014-0121-13.

The comment period for these revisions will close on November 10, 2014. Please submit comments to Timothy M. Lockwood, Chief, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001; by fax to (916) 324-6075; or by e-mail at rpmb@cdcr.ca.gov before the close of the public comment period. Comments must be received or postmarked no later than 5:00 p.m. on November 10, 2014.

Only those comments relating directly to the enclosed post-hearing changes that are indicated by **bold double underline** and **~~bold double strikethrough~~** will be considered.

Original signed by:

TIMOTHY M. LOCKWOOD, Chief
Regulation and Policy Management Branch
Division of Administrative Services
Department of Corrections and Rehabilitation

Attachment