STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION **DIRECTIVE**	TITLE **Media Review**		NO. 4572 DATE 11/14/2013
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REFERENCES (Include but are not limited to)	APPROVING AUTHORITY		

I. **POLICY**: It is Departmental policy to encourage inmates to read publications from varied sources if such material does not encourage them to engage in behavior that might be disruptive to orderly facility operations. Accordingly, inmates shall be allowed to subscribe to and possess a wide range of printed matter such as books, magazines, and newspapers, subject to the provisions of this directive, as these items may promote constructive individual development.

In the event that the Superintendent, or his or her designee, believes that printed material addressed to an inmate represents a possible threat to orderly facility operations, that material will be referred to the Facility Media Review Committee (FMRC) for its assessment and disposition.

Exception: At Auburn Correctional Facility and Clinton Correctional Facility the provisions of the Dumont stipulation take precedence whenever they differ from the provisions of this directive.

II. **STANDARDS**: The Department adopts the following guidelines by which literature for inmates will be evaluated.

A. In general, the materials must be acceptable for regular mailing according to United States Postal Law and regulations.

B. Publications which contain child pornography or which promote a sexual performance of a child in violation of Penal Law Article 263 are unacceptable. Publications in which models of any age are depicted or portrayed as underage persons in sexually provocative poses or engaged in sexual activity are unacceptable. Publications depicting nude children in a non-pornographic context but, which could promote or encourage prurient interest in the sexual performance of children, are unacceptable. Publications which, taken as a whole, by the average person applying contemporary community standards, appeal to prurient interest, and which depict or describe in a patently offensive way sexual bestiality, sadism, masochism, necrophilia, or incest, and which taken as a whole, lack serious literary, artistic, political, or scientific value, are obscene and are unacceptable.

C. The publication should not incite violence based on race, religion, sex, sexual orientation, creed, or nationality. "Incite violence," for purposes of this guideline, means to advocate, expressly or by clear implication, acts of violence.

D. Any publication which advocates and presents a clear and immediate risk of lawlessness, violence, anarchy, or rebellion against Governmental authority is unacceptable.

E. The publication should not incite disobedience towards law enforcement officers or prison personnel. "Incite disobedience," for purposes of this guideline, means to advocate, expressly or by clear implication, acts of disobedience.

F. The publication should not give instruction in the use or manufacture of firearms, explosives, and other weapons, or depict or describe their manufacture. Mere depictions of the use of hunting and/or military weapons which reasonably would not affect the safety and/or security of the facility are not prohibited.

G. The publication should not provide instruction by word(s) or picture(s) regarding martial arts skills. Martial arts include, but are not limited to, aikido, jujitsu, judo, karate, kung fu, and tai chi chu'an. Publications which discuss martial arts without providing instruction are acceptable.

H. The publication should not:

1. Contain information which appears to be written in code; or
2. Depict or describe methods of lock picking; or

3. Depict or describe methods of escape from correctional facilities or which contain maps which could aid an inmate in an escape from a correctional facility (i.e., immediate area of the facility, detailed road maps, etc.); or
4. Depict or describe procedures for the brewing of alcoholic beverages or the manufacture of drugs or use of illegal drugs; or
5. Depict or describe methods or procedures for smuggling prison contraband; or
6. Depict or describe techniques or methods for rioting and/or information instructive in hostage or riot negotiation techniques; or
7. Depict or describe hand signs, insignias, graffiti, or any other identifiers depicting or pertaining to a gang, or text that describes or depicts gang or other unauthorized group activity in such a way that it would promote or instruct in the formation of such groups inside a correctional facility.

The Department reserves the right to deny the inmate publications which may be held non-inciteful or non-advocative, as the case may be, during the Media Review Process, but which actually result in violence or disobedience after entrance into a facility, as is clearly set forth in guidelines II-C and II-E above. Such items shall be referred to the FMRC, and if appealed, referred to the Central Office Media Review Committee (COMRC) for decision.

Publications which discuss different political philosophies and those dealing with criticism of Governmental and Departmental authority are acceptable as reading material provided they do not violate the above guidelines. For example, publications such as Fortune News, The Militant, The Torch/La Antorcha, Workers World, and Revolutionary Worker shall generally be approved unless matter in a specific issue is found to violate the above guidelines.

The purposes of the foregoing guidelines are to facilitate access by inmates to a wide range of literature.

Superintendents and staff of correctional facilities are urged to use whatever means they have available to provide facility libraries with literature which presents differing points of view relevant to the issues of the day.

I. Sources of Media:

1. Newspapers: Newspapers may only be received from the publisher or an approved distributor, subject to Media Review guidelines.
2. Printed or Photocopied Materials
   a. No more than five newspaper clippings or five pages of printed or photocopied materials, including materials printed off of the internet, may be received from other than the publisher within a piece of regular correspondence.
   b. The pages or clippings must not be taped, glued, or pasted together or to other papers.
3. Audio Tapes: Audio tapes (cassettes) commercially made and sealed in cellophane or similar material, may only be received from a distributor, retailer, or manufacturer, and are subject to Media Review guidelines.

   Religious tapes may be received from a bona fide religious organization. These tapes must be in clear packaging and be reviewed by the Chaplain's Office or Media Review Committee.

III. PROCEDURE: In view of the above considerations, the Department specifies the following procedures for the evaluation and approval or disapproval of literature for inmates.

A. Establishment of Facility Media Review Committee (FMRC): Each institution will establish a Media Review Committee and designate a Facility Media Review Committee Chairperson, who will be responsible for the oversight of the day to day operations of the FMRC. It is suggested that this committee consist of representatives from Program Services (for example, representatives from the Guidance Unit, Mental Health staff, Chaplains' Office, Education staff, Recreation staff, and Library staff) and representatives from Security staff. All FMRC activities will be reported monthly to the COMRC utilizing the "Special Subjects Monthly Report" form in the E-form library.

The Superintendent will inform the Deputy Commissioner for Programs, or designee, of the membership of the FMRC. The Superintendent will also inform the Deputy Commissioner for Programs, or designee, of any changes in said membership.

B. Referral of Publications to FMRC, Notice to Inmate: Publications properly received at the facility for an inmate in mail or packages shall be delivered to the inmate in the ordinary course of mail or package delivery, unless referred to the FMRC upon a reasonable good faith belief that the publication violates one or more of the Media Review guidelines listed in Section II of this directive.

When there is a good faith belief that a publication already belonging to or in possession of an inmate violates one or more of the Media Review guidelines, said publication shall be confiscated and referred to the FMRC for review and decision.

Publications referred to the FMRC shall be delivered promptly to the FMRC. Notice to the inmate is made by using Form #4572A, "Inmate Referral Notice," which must be placed in the institutional mail at the same time as the publication is referred.

C. Facility Media Review Committee Operations

1. The FMRC shall meet at least once weekly unless there are no publications for review.
2. A decision regarding a publication shall be rendered by the FMRC within ten working days of the publication's receipt at the facility. In the event that an FMRC does not respond to the inmate within ten working days, said inmate can appeal such lack of decision, in writing, to the COMRC.
3. Should the FMRC approve a publication, said publication shall be forwarded promptly to the inmate.
4. Should the FMRC disapprove a publication, such decision shall be set forth in Form #4572B, "Inmate Disposition Notice," and include a brief statement of reasons explaining why the publication is deemed to violate one or more of the Media Review guidelines and identifying by page number, article title, and location on the page, the contents objected to. (The FMRC shall not state that a publication is unacceptable in its entirety.) An example concerning such brief statement of reasons is set forth below:

   - The following is an acceptable statement of reasons:

     "This publication incites inmates to commit assaults on correctional officers in the Article 'Prison Rebellion Now' on page 10, near the bottom."

   - The following is not an acceptable statement of reasons:

     "This publication incites disobedience towards law enforcement personnel on page 10."

5. Notice to Inmate: When the FMRC disapproves a publication, or any portion thereof, a copy of the "Inmate Disposition Notice" (see Section III-C-4 above) shall be sent promptly to the inmate.
6. Notice to Sender: When the FMRC disapproves a publication, or any portion thereof, a copy of the "Inmate Disposition Notice," together with a copy of Form #4572C, "Sender Disapproval Notice," notifying the sender of the right to appeal, shall be sent to the sender at the same time that the "Inmate Disposition Notice" is sent to the inmate. No notice to the sender is required if the FMRC previously provided notice to the same sender of an identical FMRC decision regarding the same publication, notwithstanding that the intended inmate recipient is not the same. For purposes of this directive, the term "sender" shall refer to the person or entity that sent the inmate the publication, if known, or if that person or entity is unknown, then the publisher, if known.

D. Inmate Options Regarding Appeal or Other Disposition When Notified That a Publication Has Been Disapproved by Facility Media Review Committee: When the FMRC disapproves a publication, the inmate shall be permitted to select one of the following options (see also Form #4572B):

1. Appeal to the COMRC. The inmate shall not be entitled to appeal unless he chooses this option within 30 days of the FMRC decision.

2. Receive the publication with the objectionable matter removed or blotted out. This option shall be available only if the objectionable portions of the publication constitute eight or fewer individual pages or if they constitute a single chapter, article, or section of any length. This option need not be made available if the publication is in a form other than a book, magazine, or newspaper, and if removing or blotting out portions would present physical difficulties. The decision to blot or remove objectionable material is made at the discretion of the facility.

3. Have the publication sent, at the inmate's expense, to a person of the inmate's choice, not another inmate or a Department of Corrections and Community Supervision official, after 30 days.

   Note: Authorized Advance: In all instances where an inmate elects to send out a denied publication at the inmate's expense, the procedures in Directive #4911, "Packages & Articles Sent or Brought to Facilities," and Directive #4913, "Inmate Property," are to be followed. The facility will encumber the funds from the inmate's account to permit the inmate to send the denied material out of the facility within the time frame required by the Media Review guidelines.

4. Have the publication destroyed after 30 days. If the inmate does not make a choice among these options within 30 days of the FMRC decision, the facility may dispose of the publication in any manner.

Note: If the inmate chooses not to appeal, the publication with the objectionable portions cut out, shall be forwarded to the inmate immediately. The cut out portions will be attached to the signed copy of the "Exhibit B" form that has been returned from the inmate, and secured by the FMRC for 30 days while waiting for the sender's appeal. This option is available only if the objectionable portion is eight pages or less, or a single chapter, article, or section of any length.

If the sender then submits an appeal, the FMRC shall submit the cut out portions of the publication, along with the sender's appeal, to the COMRC for review.

If neither the inmate nor the sender submits a timely appeal and the inmate has not made a choice among disposal options, disposal of the material(s) will be at the discretion of the Superintendent or his or her designee.

E. Appeals to COMRC: When an inmate elects to appeal the FMRC's disapproval of a publication, the inmate shall check the appropriate box on Form #4572B, "Inmate Disposition Notice." The inmate may also, at his or her option, include an appeal letter.

When the sender elects to appeal the FMRC's disapproval of a publication, the sender shall provide a written statement in support of the appeal, a copy of the "Inmate Disposition Notice," and if available a copy of the issue of the publication found to be unacceptable.

An appeal by the inmate or sender must be submitted to the FMRC within 30 days of the date of the "Inmate Disposition Notice." After 30 days from the date of the "Inmate Disposition Notice," the FMRC shall forward any appeal received from the inmate and/or sender, along with the "Inmate Disposition Notice" and the publication in question, to the COMRC. Appeals shall be forwarded at facility expense by first class mail or equally prompt means.

F. Action by the FMRC on Held Items Approved by the COMRC: The chairman of each FMRC shall determine whether the name of any publication previously disapproved by the FMRC appears on the list, and whether said publication is being held pursuant to inmate's choice. Should any such publication be in the possession of the FMRC, it shall immediately be forwarded to the inmate.

G. Subscriptions: Inmates will not be prohibited from subscribing to newspapers, magazines, and periodicals, but shall be informed that individual issues may be withheld if material contained therein is confirmed to be in violation of the guidelines set forth in this directive. If, after being advised of these conditions, inmates wish to subscribe to newspapers, magazines, and periodicals, they will be allowed to do so.

H. Sources of Media

1. Books, Magazines, and Periodicals: Books, magazines, and periodicals received from other than the publisher may be delayed through the Package Room up to six days while being subject to Media Review guidelines. All material is subject to Media Review guidelines.

2. Newspapers: Newspapers may only be received from the publisher or an approved distributor, subject to Media Review guidelines.

3. Printed or Photocopied Materials

   a. No more than five newspaper clippings or five pages of printed or photocopied materials, including materials printed off of the internet, may be received from other than the publisher within a piece of regular correspondence.

Note: The inmate may choose to return the photocopied materials to the sender at the inmate's expense or have the photocopied materials destroyed. Only printed or photocopied materials of less than five pages from other than the publisher are subject to review by the FMRC.

   b. The pages or clippings must not be taped, glued, or pasted together or to other papers.

   c. Correspondence which includes printed or photocopied materials may be delayed through the Correspondence Unit up to six days while subject to Media Review guidelines.

4. Audio Tapes: Audio tapes (cassettes) commercially made and sealed in cellophane or similar material, may only be received from a distributor, retailer, or manufacturer, and are subject to Media Review guidelines.

Religious tapes may be received from a bona fide religious organization. These tapes must be in clear packaging and be reviewed by the Chaplain's Office or Media Review Committee.

I. Re-Review: A re-review of a publication which has been disapproved by a FMRC will be conducted by the FMRC upon the request of an inmate no less than 18 months subsequent to the previous disapproval.

Nothing contained herein shall prevent review of such publications by the FMRC or COMRC prior to 18 months after disapproval, where conditions warrant.

J. Publications that do not violate the above listed Media Review Standards, but include advertisements that violate Department rules: (i.e., use of postage stamps as legal tender) will be sent to the inmate with the following warning attached:

WARNING

This publication may contain advertisements that offer various goods and services to you, including a subscription to the publication itself in exchange for your postage stamps, in violation of Rule 113.5 of the Standards of Inmate Behavior that governs the sale or exchange of personally owned articles. A response by you to these advertisements or any other advertisements that violate the Standards of Inmate Behavior will subject you to disciplinary action. This warning constitutes a Direct Order, the violation of which will also subject you to a Rule 106.10 disciplinary charge.

IV. ESTABLISMENT OF COMRC: The COMRC will consist of representatives of Program Services, Security Services, Counsel's Office, and Administrative Services. The Committee will be chaired by the Deputy Commissioner for Programs or his or her designee.

A. COMRC Operations:

1. The COMRC shall meet at least bi-weekly unless there are no publications awaiting review.

2. All publications appealed to the COMRC will be reviewed and a decision rendered thereon within three weeks of the date the appeal was received by the COMRC.

3. The COMRC, in deciding whether to approve or disapprove a publication, shall consider any statements submitted in a timely manner.

4. If the inmate has appealed, he or she shall receive Form #4572D, "Inmate Appeal Determination," which will set forth the COMRC appeal determination along with the reason for the determination. If both the sender and the inmate have appealed the FMRC determination, the sender will be notified by attaching a copy of Form #4572D, "Inmate Appeal Determination," to Form #4572E, "Sender Appeal Determination." If only the sender has appealed, then the COMRC will notify the sender of its determination via Form #4572E, "Sender Appeal Determination," and set forth the reason for the determination on the form. The COMRC will notify the FMRC Chairperson, in addition to the inmate and/or sender. The COMRC shall return its appeal determination (Form #4572D, Form #4572E, or both), and the publication in question to the FMRC chairperson. The inmate will receive a copy of the "Inmate Appeal Determination" only.

   Note: In cases where the COMRC has approved a publication the FMRC shall return material directly to the inmate.

5. When the COMRC disapproves a publication, the inmate shall have the following options:

   a. Receive the publication with the objectionable portions blotted or cut out. This option is available only if the objectionable portion is eight pages or less, or a single chapter, article, or section of any length.

   b. Have the publication sent, at the inmate's expense, to a person of the inmate's choice, not another inmate or a Department of Corrections and Community Supervision official, either immediately or after 30 days.

   c. Have the publication destroyed.

   If a choice is not made within 30 days, disposal of the material will be at the discretion of the Superintendent or his or her designee.

B. List of Publications Approved by the COMRC: On a monthly basis the COMRC shall prepare a list of all the publications it has approved and forward a copy of that list to each Deputy Superintendent for Programs. Each Deputy Superintendent for Programs will be expected to share that list with the respective FMRC Chairperson.