

**State of California  
Office of Administrative Law**

In re:

**Department of Corrections and  
Rehabilitation**

**Regulatory Action:**

**Title 15, California Code of Regulations**

**Adopt sections: 3620, 3621, 3622, 3623,  
3624, 3625, 3626**

**Amend sections: 3000, 3521.1, 3521.2, 3545,  
3800.2**

**Repeal sections: 3620, 3625**

**NOTICE OF APPROVAL OF CERTIFICATE OF  
COMPLIANCE**

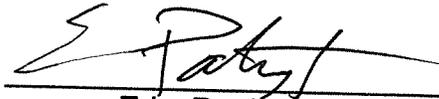
**Government Code Section 11349.1 and  
11349.6(d)**

**OAL File No. 2014-1107-04 C**

This action by the California Department of Corrections and Rehabilitation is a certification of emergency rulemaking number 2014-0702-01EON, which amended Title 15 of the California Code of Regulations to provide a new statewide Urinalysis (UA) Testing Program based on the successful Urinalysis Testing Pilot Program (DAPO). The pilot program was repealed in the emergency action but is not part of this certification, as the program would have expired by operation of law on October 25, 2014. The UA Testing Program provides parolees with opportunities for long-term recovery from addiction, assists their reintegration back into the community, and increases public safety by reducing drug use and holding individuals accountable for their actions.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

Date: 12/22/2014



Eric Partridge  
Attorney

For: DEBRA M. CORNEZ  
Director

Original: Jeffrey Beard  
Copy: Sarah Pollock



STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2014-0721-01</b>	REGULATORY ACTION NUMBER <b>2014-1107-04C</b>	EMERGENCY NUMBER
------------------	---	--	------------------

For use by Office of Administrative Law (OAL) only

ENDORSED FILED IN THE OFFICE OF

2014 DEC 22 PM 2:02

2014 NOV -7 AM 10:47

OFFICE OF ADMINISTRATIVE LAW

Debra Bowen  
DEBRA BOWEN  
SECRETARY OF STATE

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)  
13-0220

**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)
<b>OAL USE ONLY</b>	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER <b>2014 312</b>	PUBLICATION DATE <b>8/1/2014</b>	

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Urinalysis Testing Program for Parolees	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2014-0702-01EON
---	---

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT 3620, 3621, 3622, 3623, 3624, 3625, 3626
	AMEND 3000, 3521.1, 3521.2, 3545, 3800.2
TITLE(S) 15	REPEAL 3620, 3625

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" 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)  
October 15, 2014 through October 30, 2014

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

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
---	---	--	--

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

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Sarah Pollock	TELEPHONE NUMBER 916 445-2308	FAX NUMBER (Optional) 916 324-6075	E-MAIL ADDRESS (Optional) Sarah.Pollock@cdcr.ca.gov
------------------------------------	----------------------------------	---------------------------------------	--

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 11/6/14
TYPED NAME AND TITLE OF SIGNATORY DIANA TOCHE, UNDERSECRETARY (A), Administration & Offender Services	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 22 2014

Office of Administrative Law



STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2014-0721-01</b>	REGULATORY ACTION NUMBER <b>2014-1107-04C</b>	EMERGENCY NUMBER
------------------	---	--	------------------

For use by Office of Administrative Law (OAL) only

ENDORSED FILED IN THE OFFICE OF

2014 DEC 22 PM 2:02

2014 NOV -7 AM 10:47

OFFICE OF ADMINISTRATIVE LAW

Debra Bowen  
DEBRA BOWEN  
SECRETARY OF STATE

NOTICE	REGULATIONS
--------	-------------

AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation	AGENCY FILE NUMBER (if any) 13-0220
---	--

**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)
<b>OAL USE ONLY</b> <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER <b>2014 312</b>	PUBLICATION DATE <b>8/1/2014</b>

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Urinalysis Testing Program for Parolees	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2014-0702-01EON
---	---

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)						
<table border="1"> <tr> <td><b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b></td> <td>ADOPT 3620, 3621, 3622, 3623, 3624, 3625, 3626</td> </tr> <tr> <td></td> <td>AMEND 3000, 3521.1, 3521.2, 3545, 3800.2</td> </tr> <tr> <td>TITLE(S) 15</td> <td>REPEAL 3620, 3625</td> </tr> </table>	<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT 3620, 3621, 3622, 3623, 3624, 3625, 3626		AMEND 3000, 3521.1, 3521.2, 3545, 3800.2	TITLE(S) 15	REPEAL 3620, 3625
<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT 3620, 3621, 3622, 3623, 3624, 3625, 3626					
	AMEND 3000, 3521.1, 3521.2, 3545, 3800.2					
TITLE(S) 15	REPEAL 3620, 3625					

3. TYPE OF FILING
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input checked="" 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"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

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) October 15, 2014 through October 30, 2014
---

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____

7. CONTACT PERSON Sarah Pollock	TELEPHONE NUMBER 916 445-2308	FAX NUMBER (Optional) 916 324-6075	E-MAIL ADDRESS (Optional) Sarah.Pollock@cdcr.ca.gov
------------------------------------	----------------------------------	---------------------------------------	--

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 11/6/14
TYPED NAME AND TITLE OF SIGNATORY DIANA TOCHE, UNDERSECRETARY (A), Administration & Offender Services	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 22 2014

Office of Administrative Law

## FINAL TEXT OF ADOPTED REGULATIONS

In the following, underline indicates additional text and ~~strikethrough~~ indicates deleted text, to the originally proposed text.

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

**TABLE OF CONTENTS, Subchapter 6. ADULT PAROLE, Article 10, title heading is adopted.**

Article 10. Urinalysis Testing Program

**TABLE OF CONTENTS, Subchapter 6. ADULT PAROLE, Article 10, Sections 3620 through 3626 title headings are adopted.**

3620 Urinalysis Testing Program Policy

3621 Instant Test Kit

3622 Tracking of Urinalysis Sample and Documentation

3623 Locked Urinalysis Sample Storage Container

3624 Transfer to Vendor Process

3625 Documentation of Laboratory Test Results

3626 Adjudication of a Parole Violation as a Result of Positive Test

### **Chapter 1, Rules and Regulations of Adult Operations and Programs**

#### **Article 1. Behavior**

##### **3000. Definitions.**

**Section 3000 is amended to alphabetically merge the definitions below with those that exist in the regulations.**

\*  
\*  
\*

Urinalysis Testing (previously referred to as Anti-Narcotic Testing) is a process to detect the presence of prohibited substances used by parolees.

\*  
\*  
\*

Note: Authority cited: Sections 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq. and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108,

10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; and *Madrid v. Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH).

## **SUBCHAPTER 6. ADULT PAROLE**

### **Article 2. Preventing Parolee Crime Program**

#### **3521.1 Parolee Service Center Program.**

**Section 3521.1 is unchanged.**

**Subsection 3521.1(a) is amended to read:**

a) PSC facilities are used for residential placement of eligible parolees on a non-sanctioned basis, meaning that the placement was not the result of an adjudicated parole violation. PSC facilities may be used for residential placement of eligible parolees on a sanctioned basis, meaning that the placement was the result of an adjudicated parole violation at the parole unit level, or as a result of an action and referral by the parole authority. PSC facilities provide services to newly paroled inmates that do not have available resources, as well as homeless parolees and parolees seeking a positive change to their current situation.

**Subsection 3521.1(b) is unchanged.**

**Subsections 3521.1(c) through 3521.1(c)(2) are unchanged but shown for reference.**

(c) The following parolees will be considered on a case-by-case basis for participation in the PSC Program:

- (1) Parolees who have a past or current violent felony conviction pursuant to PC section 667.5(c).
- (2) Parolees who have a current felony conviction pursuant to PC section 1192.7(c) and/or 1192.8.

**Subsections 3521.1(c)(3)-(7) are amended and renumbered to read:**

- (3) Parolees with a misdemeanor hold.
- (4) Parolees who are designated high notoriety.
- (5) Parolees who have a restraining order/court order and/or victim notification in the county of the PSC facility.
- (6) Street gang members.
- (7) Validated prison gang members.

**Subsections 3521.1(d) through 3521.1(e) are unchanged.**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 3000.03, 3068 and 5054, Penal Code.

**3521.2 Residential Multi-Service Center Program.**

**Subsections 3521.2(a) through 3521.2(c)(7) are unchanged.**

**Subsections 3521.2(d) through 3521.2(d)(2) are unchanged but shown for reference.**

(d) The following parolees will be considered on a case-by-case basis for participation in the RMSC Program:

- (1) Parolees who have a past or current violent felony conviction pursuant to PC section 667.5(c).
- (2) Parolees who have a current felony conviction pursuant to PC section 1192.7(c) and/or 1192.8.

**Subsections 3521.2(d)(3)-(8) are amended and renumbered to read:**

- (3) Parolees with a misdemeanor hold.
- (4) Parolees who are designated as a Public Interest Case.
- (5) Parolees who have a restraining order/court order and/or victim notification in the county of the RMSC facility.
- (6) Street gang members.
- (7) Validated prison gang members.

**Subsection 3521.2(e) is unchanged.**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 3000.03, 3068 and 5054, Penal Code.

**Article 3. Electronic Monitoring**

**3545. Persons to Participate in Continuous Electronic Monitoring.**

**Subsections 3545(a) through 3545(b) are unchanged.**

**Subsections 3545(c) through 3545(c)(2) are unchanged but shown for reference.**

(c) The following target population may be eligible for continuous electronic monitoring:

- (1) Parolees classified with a risk number value of 1, 2, 3, 4, or 5, as described in section 3768.1.
- (2) Parolees who commit minor violations of the law.

**Subsections 3545(c)(3)-(7) are amended and renumbered to read:**

- (3) Interstate cases.
- (4) STG-I ~~Gang~~ members.
- (5) Serious and/or violent offenders.
- (6) Any offenders not already subject to Global Positioning System (GPS) supervision.

**Subsection 3545(d) is unchanged.**

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3004, 3010, 3010.1, 3010.2, 3010.3, 3010.4, 3010.5, 3010.6, 3010.7, 3010.8, 3010.9 and 5054, Penal Code.

**New Article 10 title is adopted.**

Article 10. Urinalysis Testing Program

**New Sections 3620 through 3626 title headings and contents are adopted to read:**

**3620. Urinalysis Testing Program Policy.**

All parolees may be subject to Urinalysis (UA) Testing for prohibited substances, pursuant to section 3504. All confirmed positive UA test results must be addressed by intervention and/or sanctions to promote positive lifestyle changes.

(a) Parolees with a narcotic-related conviction within five years of incarceration for their current offense, or who have a history of alcohol or substance abuse, may have a special condition of parole imposed requiring UA testing at the direction of the Parole Agent (PA). Upon approval by the field Parole Unit Supervisor (US), the special condition of parole to participate in UA testing shall be imposed and documented on the CDCR Form 1515 Addendum (Rev. 04/13), Special Conditions of Parole. If reasonable ~~belief~~ suspicion exists that a prohibited substance was recently used, the CDCR Form 1515 Addendum is not required for the PA to instruct the parolee to provide a UA specimen for testing.

(1) The frequency in which UA testing is administered shall be determined by the supervision requirements, pursuant to Section 3504, and/or any imposed special conditions of parole set by the parole US, the court authority, or the Board of Parole Hearings (BPH).

(2) The UA test is conducted when the PA obtains a random, unscheduled urine sample from the parolee.

(b) Prior to collecting the urine sample, the PA shall inquire of the parolee whether the parolee is taking any prescription or over-the-counter medications which may result in a positive UA test result. The PA shall document the parolee's response to the inquiry on the CDCR Form 1650-D (Rev. 06/12), Record of Supervision, which is incorporated by reference, only when the parolee declares that he or she is taking prescription medication. If the parolee admits to taking prescription medication, and/or the PA suspects that the type of medication may indicate a positive UA test result for a prohibited substance, the PA shall instruct the parolee to provide proof of the current and valid prescription. This information shall be documented on the CDCR Form 1502 (Rev. 10/06), Activity Report, and a copy shall be placed in the parolee's field file.

(c) The UA sample shall be taken under direct observation of the PA whenever possible, where he or she can clearly observe the flow of urine into the approved specimen bottle. During the collection of the UA sample, the PA shall adhere to the following:

(1) Check the restroom for contraband and conduct a visual search of the parolee's person prior to administering the test.

(2) Conduct a pat down search when necessary to ensure parolee is not in possession of any contraband, only when safe to do so (e.g., in the parole office, or when in the community in the presence of another law enforcement officer).

(3) Prohibit the parolee from taking anything other than the test kit into the restroom, and note the temperature and color of the sample immediately following the test.

(4) In the event that direct observation is not possible, further steps may be taken to reduce the chance of manipulation (e.g., no running water or flushing the toilet).

(5) Documentation and placement of the sample into the locked UA sample storage container pursuant to section 3623.

(d) The UA samples being sent to the laboratory for confirmation must include the security labels provided by the contracted laboratory, and must be completed by the PA who collected the UA sample. The PA must clearly indicate the type of UA tests to be completed. The security label shall be placed on the sample bottle, and shall include the following:

(1) The date the sample was obtained.

(2) The parolee's CDC number.

(3) The parole unit's identification or billing number.

(4) The name or initials of the PA who collected the UA sample.

Note: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068, and 5054, Penal Code.

### **3621. Instant Test Kit.**

Collection of the UA test sample shall first be obtained by utilizing an onsite testing device which is an instant test kit. A positive or negative test result shall determine the next course of action.

(a) In the event of a negative instant test result, the PA shall have the parolee discard the sample and the test kit.

(1) No further laboratory confirmation is required.

(2) The negative test result shall be recorded on the CDCR Form 2249 (~~06/12~~ REV. 08/14), Urinalysis Sample Control Log, which is incorporated by reference, and shall also be documented on the CDCR Form 1650-D (Rev. 06/12), Record of Supervision.

(b) In the event of an undisputed presumptive positive instant test, the PA shall record the instant test result on the CDCR Form 2249 and obtain a signed CDCR Form 1527 (Rev. 06/12), Voluntary Statement of Admission, which is incorporated by reference.

(1) The PA shall have the parolee discard the sample and the test kit.

(2) No further laboratory confirmation is required.

(3) The PA shall adjudicate the presumptive positive test utilizing swift and certain interventions which may include immediate community drug treatment.

(c) In the event of a disputed positive instant test result, the PA shall record the instant test results on the CDCR Form 2249. The PA shall adhere to the following steps to preserve the chain of custody of the UA sample:

(1) Process the sample in the contract laboratory-approved specimen bottle.

(2) Process the identification label and instruct the parolee to place the label on the specimen bottle in the PA's presence.

(3) Ensure that the bottle shall be sealed by the parolee and placed into the individual specimen bag.

(4) Secure the sample in accordance with section 3623(b).

(d) Upon laboratory confirmation, the PA shall ensure that the positive test result shall be adjudicated to include immediate interventions.

(e) If the parolee admits to use of a prohibited substance, the PA shall obtain a CDCR Form 1527, signed by the parolee indicating a voluntary admission for the use of a prohibited substance.

Note: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068, and 5054, Penal Code.

### **3622. Tracking of Urinalysis Sample and Documentation.**

(a) In order to maintain the integrity of the chain of custody from point of receipt of the sample, the PA shall log every sample received by the parolee, and take the following steps:

(1) Enter the UA test sample on the CDCR Form 2249 (~~06/12~~ REV. 08/14), Urinalysis Sample Control Log, to include the parolee's name, parolee's signature, CDC number, PA's initials, collection date and time, and UA test results.

(2) For disputed positive test results requiring laboratory confirmation, the PA shall deposit the sample into the locked UA sample storage container pursuant to section 3623, and make an indication on the CDCR Form 2249 verifying that the sample was sent to the contract laboratory.

(3) Enter the sample collection event, the test result, and the outcome on the CDCR Form 1650-D (Rev. 06/12), Record of Supervision.

(4) ~~Submit the CDCR Form 2249 to the US for processing~~ Retain the CDCR Form 2249 within the parolee field book or parole Field File.

(b) The PA shall deposit collected UA samples into the locked UA sample storage container upon returning to the parole unit, prior to the end of his or her shift, but no later than close of business the next business day.

Note: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068, and 5054, Penal Code.

### **3623. Locked Urinalysis Sample Storage Container.**

(a) To ensure the integrity of the UA sample is not compromised in temporary storage, the US or designee must maintain security of the UA sample from the point of collection and storage to the subsequent transfer to the contract courier.

(1) Each parole unit shall maintain the locked UA sample storage container in a fixed location. This is to be an area where parolees are not allowed unattended access.

(2) Only the US or designee shall be granted access to the locked UA sample storage container to retrieve the UA samples for transfer to the courier service employee.

(3) The US or designee shall maintain the storage container key.

(b) The UA sample, in the labeled bottle and individually sealed in the bag, shall be secured in the locked UA sample storage container; this shall serve to maintain the chain of custody of the UA sample.

(1) The transportation bag shall be maintained inside the locked UA sample storage container until the transportation bag/s (to include the UA samples) are transferred to the courier service employee by the US or designee.

Note: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068, and 5054, Penal Code.

### **3624. Transfer to Vendor Process.**

(a) Upon arrival of the laboratory courier, the US or designee shall:

(1) Unlock the locked UA sample storage container and remove the plastic transportation bag containing the individually packaged UA samples.

(2) Secure the bag and transfer the sealed bag to the vendor courier service employee.

(3) Print his or her name and sign the CDCR Form 2250 (06/12), Urinalysis Sample Transfer Log, which is incorporated by reference.

(4) Obtain the vendor courier service employee printed name and signature documenting the date and time of pick-up on the CDCR Form 2250.

(5) Place a new plastic transportation bag in the locked UA sample storage container and lock the container.

Note: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068, and 5054, Penal Code.

### **3625. Documentation of Laboratory Test Results.**

(a) The laboratory responsible for analyzing the UA samples shall provide each parole unit with the test results for all submitted UA samples. Typically, the test results are sent to the parole unit via facsimile. Laboratory test results shall be logged, maintained, and processed by designated parole unit support staff. A legible copy of each individual test result shall be kept in the parolee's field file for use at a later date, if needed. The parole unit support staff shall:

(1) Maintain one copy of all test results for the parole unit in a central location, accessible to all staff.

(2) Provide the US with one copy of the test results.

(3) Verify the Parole Agent of Record (AOR) assignment for each parolee with a positive UA test result, and provide that AOR with a copy of the test results of the affected parolee.

Note: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068, and 5054, Penal Code.

### **3626. Adjudication of a Parole Violation as a Result of Positive Test.**

In the event of a positive test result, the PA shall case conference the violation with the US or PAII (Supervisor) to determine the appropriate interventions and/or sanctions based on the case factors and available resources. The PA shall document the results on the CDCR Form 1650-D (Rev. 06/12), Record of Supervision, and complete a CDCR Form 1500 (05/13), Parole Violation Decision Making Instrument, identifying appropriate resources and/or interventions based on identified criminogenic needs. The US or PA II (Supervisor) must verify that all positive test results have been adjudicated pursuant to section 3768.

Note: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068, and 5054, Penal Code.

## **Article 21. PC 3050 Residential Aftercare Program**

### **3800.2. Treatment Incentive Program Exclusionary Criteria.**

**Subsections 3800.2(a) through 3800.2(a)(2) are unchanged but shown for reference.**

(a) An inmate is excluded from Treatment Incentive Program participation if any of the following conditions exist:

(1) The inmate is currently serving time as a parole violator who has been returned to custody.

(2) The inmate was convicted on or after January 1, 1997 of Corporal Injury pursuant to PC section 273.5; Violation of a Protective Order pursuant to PC section 273.6; or Stalking pursuant to PC section 646.9, where they are required to complete a 52-week batterer's program as outlined in PC Section 3053.2.

**Subsections 3800.2(a)(3)-(5) are amended and renumbered to read:**

(3) The inmate is currently serving or has served a prior indeterminate sentence or a sentence for:

(A) A violent felony of any of the crimes listed as a violent felony in PC section 667.5(c).

(B) A serious felony of any of the crimes listed as a serious felony in PC sections 1192.7(c) and 1192.8.

(C) A crime that requires him or her to register as a sex offender pursuant to PC section 290.

(4) The inmate is eligible to participate in non-revocable parole status pursuant to Institution Classification action and as noted on CDC Form 128-B (Rev. 04/74), General Chrono.

**Subsection 3800.2(b) is unchanged.**

**Note Section is amended to read:**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 273.5, 273.6, 290, 646.9, 667.5(c), 667.59(c), 1192.7(c), 1192.8, 3050, 3053.2 and 5054, Penal Code.

## **FINAL STATEMENT OF REASONS**

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

## **UPDATES TO THE INITIAL STATEMENT OF REASONS**

On August 1, 2014 the Notice of Proposed Regulations for “Urinalysis Testing Program for Parolees” was published which began the public comment period. The Department’s Notice of Change to Regulations #14-08 was also mailed the same day to individuals who had requested to be on the Department’s mailing list for regulation changes. In addition they were posted on the California Department of Corrections and Rehabilitation (CDCR) internet and intranet websites, and copies posted in CDCR institutions. The Department received two written comments which are included below under *Summaries and Responses to the Written Public Comments Received During the Initial Comment Period*. A public hearing was held on September 24, 2014 with no individuals providing verbal comments.

After publication of the Notice of Proposed Regulations, it was determined that additional changes were necessary. The CDCR Form 2249, Urinalysis Sample Control Log, was revised for better accuracy; and two other minor language changes were needed for correction purposes.

The changes were presented to the public by issuance of a 15-Day Re-notice, and an effective comment period from October 15, 2014 to October 30, 2014. The 15-Day Re-notice was posted to the CDCR internet and intranet websites, and mailed to the two written commenters. The changes to the text and the reasons for them can be found below under the heading *Changes to the Proposed Text of Regulations (15-Day Re-notice)*. There were no commenters during the 15-Day Re-notice period.

After issuance of the 15-Day Re-notice, due to the adoption of the Security Threat Group regulations on October 17, 2014, a change was made to Section 3545(c)(4) for correction purposes, which re-named the word “Gang” member to “STG-I” member. This change is reflected in the final text for these “Urinalysis Testing Program for Parolees” regulations.

The following statement was inadvertently left out of the ISOR, but should have been included:

### **Significant Adverse Economic Impact on Business**

The Department has made an initial determination that the proposed regulations for the Urinalysis Testing Program for Parolees will not have a significant adverse impact on business in the State of California because these regulations apply to urinalysis testing of parolees, and any impact to businesses for less laboratory testing would be offset by the procuring from those same businesses of instant test kits. Therefore, no significant adverse economic impact on business exists.

## **DETERMINATION**

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. This determination was reached by a consensus of the Division of Adult Parole Operations.

### **CHANGES TO THE TEXT OF PROPOSED REGULATIONS (15-DAY RE-NOTICE)**

**Subsection 3620(a)** was amended to replace the wording “reasonable belief” with “reasonable suspicion” to provide consistency with the Department’s already established definition.

**Subsection 3621(a)(2)** was amended to reflect the revision date of CDCR Form 2249; the date of “(06/12)” has been deleted and replaced with “(REV. 08/14).”

**Subsection 3622(a)(1)** was amended to reflect the revision date of CDCR Form 2249; the date of “(06/12)” has been deleted and replaced with “(REV. 08/14).”

**Subsection 3622(a)(4)** was amended to correct language regarding processing of the CDCR Form 2249, as the form is not processed by the Unit Supervisor, but rather placed in the parolee field book or parole Field File.

### **INCORPORATED BY REFERENCE**

The CDCR Forms 2249, 2250, 1527, and 1650-D were made available to the public throughout the rulemaking, and will continue to be made available upon request. To publish these documents into the California Code of Regulations would be cumbersome and impractical, and would increase costs to the Department.

### **LOCAL MANDATES**

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

### **SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS RECEIVED DURING THE INITIAL COMMENT PERIOD**

#### **Commenter #1**

**Comment 1A:** Commenter feels providing instant test kits/on-site testing is a great idea, however, there must be some protocol as to deciphering between prescription drugs and illegal drugs. Commenter states inmates at CSP Solano are being written up when their results are “dirty” whether the results are from drugs prescribed by the inmate’s physician or illegal drugs. Commenter states it would be a shame if parolees had their parole revoked because CDCR did not come up with a procedure to deal with positive urine tests due to an inmate taking a

prescription drug. In addition this would cause the use of more time and effort from parole officers by having to write up more reports and arrest the parolees. The recidivism statistics would be incorrect because innocent parolees will be violated. It would also take months for the parolees to appeal the decision.

**Accommodation:** None

**Response 1A:** Section 3620(b) specifies the process for addressing parolees taking prescription or over-the-counter medications which may result in a positive UA test result.

### **Commenter #2**

**Comment 2A:** Commenter challenges the statement in the Initial Statement of Reasons (ISOR), that states the “instant test kit provides accurate, fast, results.” Commenter asks by whose estimation are the results accurate, and to what standard is the alleged accuracy held? Commenter states the Department offers no evidentiary support for this statement.

**Accommodation:** None

**Response 2A:** The Department utilizes a legally-defensible on-site drug test device with Gas Chromatography/Mass Spectrometry (GC/MS) confirmation which is certified by Substance Abuse and Mental Health Services Administration (SAMHSA). The fully integrated on-site drug test device offers instant drug screening results with the scientific and legal certainty of traditional laboratory procedures.

**Comment 2B:** In regards to storage of urinalysis (UA) samples, Commenter states no length of time is suggested for this storage, nor the conditions under which the samples will be maintained, again leaving no specific information as to whether this process meets industry standards, or whether industry standards have been considered.

**Accommodation:** None

**Response 2B:** The chain of custody requires that the specimen be taken by an authorized person utilizing proper procedures for maintaining security. The urine shall be stored at room temperature within a locked storage container protecting the samples from direct light exposure. The individual parole units have the ability to schedule courier pick-up based on need, not to exceed 72 hours. All of this is in consideration of the industry standards.

**Comment 2C:** Commenter asks about the purity of the sample, and asks “Given that the same sample produced the alleged positive result, is this same sample not contaminated? Additionally, any substance that could produce a false positive result would continue to be present in the existing sample.”

**Accommodation:** None

**Response 2C:** If the sample produces a positive result, it does not contaminate the sample. There are no additives combined with the sample following the results. The GC/MS confirmation identifies individual drugs or metabolites in a urine sample, eliminating the concern for a false positive. Additionally, the fully integrated on-site drug test device is designed to keep the active component of the device safe from tampering.

**Comment 2D:** Commenter states “no cost figures” were given to compare the savings vs. cost differentials for less laboratory costs vs. costs for procuring the instant test kits, thus depriving citizens of information needed to realistically compare costs and economic impact. Commenter mentions that if UA testing is trending downward due to the on-going decrease in overall parolee population, as the ISOR states, costs should be a minor factor in the consideration.

**Accommodation:** None

**Response 2D:** During the pilot program, and as stated in the ISOR, it was determined that any costs would be offset by the savings. Aside from an economic impact, a key component of the Urinalysis (UA) Program is to promote honesty and build rapport between parole agents and the individuals under their supervision to assist in successful reintegration. The increased honesty promotes voluntary admission in lieu of providing a drug test. Voluntary admissions reduce the use of the on-site test cups and subsequent laboratory testing, as well as afford the parole agents the ability to provide immediate programming options as an alternative to custody. This provides for optimal efficiency in producing the desired results for the State, and long term recovery from addiction for parolees.

**Comment 2E:** In the ISOR section “Materials Relied Upon,” Commenter takes issue that the Department states it “... has not relied upon any technical, theoretical, or empirical study, report, or similar document.” Commenter states citizens as well as parolees are entitled to know from where these proposed changes were promulgated and under what guidelines they were created and thus supported. Commenter adds, that it appears that, having admitted to having relied on no factual or empirical evidence of the need for these changes, the Department is simply ‘winging it,’ making up changes and reasons to fit the wishes of itself.

**Accommodation:** None

**Response 2E:** The Department disagrees with Commenter. While no materials were relied upon in drafting the proposed regulations, the Department did research current industry standards/best practices, and review related reports prior to implementing the pilot program which proved a successful endeavor. The experience gained from the pilot program that was done in selected counties under the authorization of Penal Code 5058.1, showed a 19% reduction in positive UA test results from June 2013 to August 2013, and a 56% increase in referrals for treatment programming in lieu of incarceration. Finally, the pilot sites realized a reduction of cases referred for parole revocation of 88%.

**Comment 2F:** Commenter states that by not considering information from experts in the field, the Department fails to provide information to the public/parolees on the rate of “false-positives,” and what measures can be done to improve the problem. In addition, there is no

specific language in the proposed regulations for allowed medication, which can produce positive test results. Commenter states there may be as many as 250 over-the-counter (OTC) medications that can produce positive UA test results for substances such as codeine, morphine, and marijuana. Such common OTC remedies as ibuprofen, cough and cold remedies, allergy, and asthma medications have been verified as producing false positive results. The proposed regulations fail to address in any way what provisions the Department has considered for instances where non-prescription, legal OTC drugs may produce false-positive results. Additionally there are medical conditions such as kidney, liver disease, and diabetes, which can create a false positive UA test result. Commenter feels this can open the door for abuse of discretion by the Parole Agent. Parolees may be subject to sanctions for positive UAs and have no recourse under the provisions of the proposed regulatory change.

**Accommodation:** None

**Response 2F:** GC/MS testing identifies individual drugs or metabolites in a urine sample. In some cases, initial screening drug tests may cause false positives (infrequently); however, GC/MS testing greatly reduces this occurrence making the risk close to zero. See also, Response to Comment 1A.

**Comment 2G:** In Section 3620(a) which states “If reasonable belief exists that a prohibited substance was recently used, the CDCR Form 1515 Addendum is not required for the PA to instruct the parolee to provide a UA specimen for testing” Commenter states the statement and section fails to establish what constitutes ‘reasonable belief,’ and by whom this belief is to be held, or in what manner this belief is to be documented. Such lax language leaves open the possibility for abuse of discretion by Parole Agents and/or ‘confidential informants’ who may have ulterior motives for believing an individual is engaging in prohibited behavior.

**Accommodation:** None

**Response 2G:** Reasonable belief is a subjective standard used to validate warrantless searches and seizure. With that, if an officer acts on personal knowledge of facts and circumstances which are reasonably trustworthy, then reasonable belief exists. For example, if the parolee displays the objective signs and symptoms of being under the influence of a controlled substance, and/or admits to the use of either one, then the parole agent may conduct a drug test. Note: As noted in the 15-Day Re-notice, the language “reasonable belief” was changed to “reasonable suspicion” to be consistent with existing policy definitions, however both terms have the same definition.

**Comment 2H:** In regards to Section 3620(b), regarding prescribed medication, language states the PA instruct the parolee to provide “proof of the current and valid prescription” but Commenter states it fails to provide clarity on what the ‘proof’ must consist of (script from doctor, verification from pharmacy, pill bottle, etc.) and further does not define ‘current.’

**Accommodation:** None

**Response 2H:** A current valid prescription may be the prescription from the licensed physician, verification from the pharmacy, or the prescription bottle label. Any of these provide as proof for the “current” time period in question.

**Comment 2I:** Commenter states that by nature of their relationship, Parole Agents are inherently intimidating, and for a parolee to refuse to sign the Form 1527, Statement of Admission, could put them at greater risk for retaliation or harassment, and ultimately result in more severe sanctions for minor infractions.

**Accommodation:** None

**Response 2I:** The CDCR Form 1527 affords parolees the ability to admit to the use of alcohol and/or controlled substances in lieu of drug testing, as well as after the positive on-site drug test result prior to laboratory confirmation. This allows for the parolee to have the ability to immediately engage in programming options to address their criminogenic needs.