



Department of Corrections and Rehabilitation

**NOTICE OF CHANGE TO
REGULATIONS**

Title 15

Sections: 3349, 3349.1, 3349.2, 3349.3, 3349.4,
3349.5, 3349.6, 3349.7, 3349.8, and 3349.9

Number:

15-10

Publication Date:

November 6, 2015

Effective Date:

To Be Determined

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the amendment of Section 3349 and the adoption of Sections 3349.1, 3349.2, 3349.3, 3349.4, 3349.5, 3349.6, 3349.7, 3349.8, and 3349.9 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into the CCR provisions concerning the administration of the death penalty by lethal injection.

IMPLEMENTATION: TO BE DETERMINED

PUBLIC COMMENT PERIOD

Any person may submit written comments about the proposed regulations to the California Department of Corrections and Rehabilitation, Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, by fax to (916) 324-6075, or by e-mail to LI.comments@cdcr.ca.gov. All written comments must be received by the close of the public comment period **January 22, 2016, at 5:00 p.m.**

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held Friday, January 22, 2016, from 10:00 a.m. to 3:00 p.m. in the Auditorium, Department of Health Services, East End Complex, located at 1500 Capitol Ave., Sacramento, CA 95814. The purpose of the hearing is to receive oral comments about this action. It is not a forum to debate the proposed regulations. Pursuant to Government Code Section 11346.8(a), CDCR may impose reasonable limitations on oral presentations at this hearing. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written or facsimile comments submitted during the prescribed comment period are given the same significance and weight as oral comments presented at the hearing. This hearing site is accessible to the mobility impaired.

POSTING

This notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each Department facility and field office, not later than five calendar days after receipt. Also, facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. Certification of Posting, CDCR Form 621-A, shall be returned to the RPMB electronically, by fax, or by mail. See Department Operations Manual sections 12010.12.1 and 12010.12.2 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this notice should be directed to Timothy M. Lockwood, Chief, RPMB, California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2269 or e-mail at LI.comments@cdcr.ca.gov. In the event the contact person is unavailable, inquiries should be directed to Joshua Jugum, RPMB, at (916) 445-2228.

Original Signed By:

SCOTT KERNAN

Undersecretary, Operations

California Department of Corrections and Rehabilitation

Attachments

NOTICE OF PROPOSED REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR) proposes to amend Section 3349 and adopt new Sections 3349.1 through 3349.9 under Subchapter 4, Article 7.5 in the California Code of Regulations, Title 15, concerning administration of the death penalty by lethal injection, pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, in order to implement, interpret and make specific PC Sections 3600 through 3607, inclusive, and 5054.

PUBLIC HEARING:

Date and Time: **January 22, 2016 - 10:00 a.m. to 3:00 p.m.**

Place: Department of Health Care Services
East End Complex - The Auditorium
1500 Capitol Avenue
Sacramento, CA 95814

Purpose: To receive comments about this action.

Pursuant to Government Code Section 11346.8(a), CDCR may impose reasonable limitations on oral presentations at this hearing.

PUBLIC COMMENT PERIOD:

The public comment period will close **January 22, 2016, at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or e-mail at LI.comments@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 445-2269

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

Joshua Jugum
Regulation and Policy Management Branch
Telephone (916) 445-2228

AUTHORITY AND REFERENCE:

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW:

California Penal Code Sections 3600 - 3607 provide for capital punishment by lethal injection or lethal gas at San Quentin State Prison. Under these statutes, CDCR is responsible for developing procedures to carry out executions.

The last execution in California took place in January 2006. Since that time, various legal challenges have prevented further executions.

In the December 2006 *Morales v Tilton* ruling, the court found that CDCR operational procedures (OP 770) created an impermissible risk of an Eighth Amendment violation. In response, CDCR issued revised procedures (also designated OP 770) in May 2007.

In October 2007, the Marin County Superior Court determined that the operational procedures were required to be promulgated as regulations pursuant to the Administrative Procedure Act, and invalidated the procedures.

In 2010, CDCR promulgated regulations which used a three-drug protocol to carry out executions. After these regulations were adopted, the Marin County Superior Court, in *Sims v CDCR*, invalidated these regulations. CDCR repealed the invalidated regulations in 2015.

This rulemaking action will adopt a one-drug protocol to carry out executions by lethal injection. The proposed regulations shall promulgate lethal injection execution protocols as regulations pursuant to the Administrative Procedure Act and include safeguards to ensure the execution comports with the Eighth Amendment of the United States Constitution.

This action will:

- Amend Section 3349 and adopt new Sections 3349.1 through 3349.9 governing the Administration of the Death Penalty in California, as authorized by Article I, Section 27 of the California Constitution, and mandated by Penal Code Section 3604.
- Establish a lethal injection protocol commensurate with the *Morales v. Tilton* ruling, to ensure California's execution protocols comport with the Eighth Amendment, and the *Sims v. CDCR* ruling, to satisfy the procedural requirements of the Administrative Procedure Act.
- Adopt definitions, specific to this Article, of terms to be used in the lethal injection process.
- Establish criteria for the selection and recruitment of Lethal Injection Team members.

- Establish training requirements for the Lethal Injection Team members.
- Establish procedures to guarantee the security of the Lethal Injection Facility.
- Establish the responsibilities of CDCR staff upon receipt of the Execution Warrant.
- Establish procedures and timeframes for the movement and observation of condemned inmates once the execution warrant has been served to the inmate.
- Establish procedures and timeframes to move condemned inmates housed at institutions other than San Quentin to San Quentin.
- Establish procedures to assess the condemned inmate's sanity pursuant to Penal Code 3701.
- Establish a one-drug protocol as the method for administering capital punishment by lethal injection.
- Establish that any one of four barbiturates listed in the regulations, in a 7.5 gram dose, may be selected as the chemical which will be used in the execution.
- Establish procedures for the administration of the Lethal Injection Chemical through a pre-selected primary infusion site, and, if necessary, through pre-selected backup and alternate backup infusion sites.
- Establish post execution procedures for CDCR staff.
- Establish record keeping procedures to ensure thorough documentation of all steps of the process.
- Amend and/or adopt forms used in the execution process that are incorporated by reference into the regulation text.

FORMS INCORPORATED BY REFERENCE:

CDC Form 128-B (Rev. 4/74) General Chrono.

CDCR Form 1801 (Rev. 10/15) Notification of Execution Date and Choice of Execution Method.

CDCR Form 1801-A (Rev. 10/15) Choice of Execution Method.

CDCR Form 1801-B (Rev. 10/15) Service of Execution Warrant, Warden's Initial Interview.

CDCR Form 1801-C (10/15) Request For Approval of Witness.

CDCR Form 1801-D (10/15) Last Meal Request.

CDCR Form 1801-E (10/15) Disposition of Personal Property.

CDCR Form 1801-F (10/15) Release of Remains and Burial Arrangements.

CDCR Form 2173 (10/15) 20 Day Pre-Execution Report.

CDCR Form 2174 (10/15) Notification By Warden To District Attorney Concerning Sanity of Condemned Inmate.

CDCR Form 2175 (10/15) 7 Day Pre-Execution Report.

CDCR Form 2176 (10/15) Lethal Injection Chain of Custody –San Quentin State Prison

CDCR Form 2177 (10/15) San Quentin State Prison Lethal Injection Infusion Sub-Team Execution Log.

CDCR Form 2178 (10/15) Return on Execution Warrant.

CDCR Form 2179 (10/15) San Quentin State Prison Lethal Injection Intravenous Sub-Team Execution Log.

CDCR Form 2181 (10/15) San Quentin State Prison Lethal Injection Team Administrator/Team Supervisor Execution Log.

CDCR 2182 (10/15) San Quentin State Prison Team Supervisor Execution Report.

CDCR 2183 (10/15) San Quentin State Prison Team Member Execution Report.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The proposed regulatory action will enable CDCR to carry out its statutory duty to execute inmates who have been sentenced to death by a court of law, and includes safeguards to ensure the execution comports with the Eighth Amendment.

EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING LAWS AND REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the Department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review, the Department has concluded these are the only regulations that concern lethal injection within the California Code of Regulations.

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.

FISCAL IMPACT STATEMENT:

- Cost or savings to any state agency: Potential future costs if an execution is scheduled:

CDCR projects the following cost estimates:

Total Combined Costs of a Single Scheduled Execution: \$186,886

This combined cost consists of:

1. CDCR Training, Staff, and Ancillary Costs: Total: \$85,200
2. Cost of Lethal Injection Chemical (based on a previous purchase of Thiopental): Total: \$4193
3. Contracts with Outside Law Enforcement Agencies (California Highway Patrol and Marin County Sheriff) to provide crowd control outside of San Quentin State Prison (based on the cost of these contracts in 2005): Total: \$97,492

Total Annual Training Cost for Lethal Injection Team members: \$ 66,740

- Cost to any local agency or school district that is required to be reimbursed: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations relate strictly to internal management of state prisons.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT:

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or effect the expansion of businesses currently doing business in California. The Department has determined that the proposed regulations will have no effect on the health and welfare of California residents, worker safety, or the state's environment, because they relate strictly to carrying out lawful executions, which is part of the internal management of CDCR institutions.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department 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 the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website: www.cdcr.ca.gov.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the Department adopts, amends or repeals the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

TEXT OF PROPOSED REGULATIONS

In the following, underline indicates added text, and ~~striketrough~~ indicates deleted text.

Subchapter 4. GENERAL INSTITUTION REGULATIONS

Title to Article 7.5 is amended to read:

Article 7.5. ~~Execution~~ Administration of Death Penalty

3349. Method of Execution.

Subsections 3349(a) through 3349(d) are amended to read:

(a) Inmates sentenced to death shall have the opportunity to elect to have the punishment imposed by lethal gas or lethal injection. Upon being served with the warrant of execution, the inmate shall be served with ~~CDC Form 1801-B (4/98), Service of Execution Warrant, Warden's Initial Interview.~~ CDCR Form 1801-B (Rev. 10/15), Service of Execution Warrant, Warden's Initial Interview, which is incorporated by reference. The completed CDCR Form 1801-B shall be transmitted to the San Quentin Warden.

(b) The inmate shall be notified of the opportunity ~~for such selection~~ to elect lethal gas or lethal injection and that, if the inmate does not choose either lethal gas or lethal injection within ten calendar days after being served with the execution warrant, the penalty of death shall be imposed by lethal injection. The inmate's attestation to this service and notification shall be made in writing and witnessed utilizing the CDCR Form 1801 (Rev. 4/98/10/15), Notification of Execution Date and Choice of Execution Method, which is incorporated by reference. The completed CDCR Form 1801 shall be transmitted to the San Quentin Warden.

(c) The inmate's selection shall be made in writing and witnessed utilizing the CDCR Form 1801-A (Rev. 4/98/10/15), Choice of Execution Method, which is incorporated by reference. The completed CDCR Form 1801-A shall be transmitted to the San Quentin Warden.

(d) The inmate's selection shall be irrevocable, with the exception that, if the inmate sentenced to death is not executed on the date set for execution and a new execution date is subsequently set, the ~~person~~ inmate again shall have the opportunity to elect to have the punishment imposed by lethal gas or lethal injection, according to the procedures set forth in Sections (a), (b), and (c).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 1227, 3603, 3604, and 5054, Penal Code.

New Section Title 3349.1 is adopted to read:

3349.1 Definitions

New 3349.1 Presentence is adopted to read:

For the purpose of Subchapter 4, Article 7.5, the following definitions shall apply:

New Subsections 3349.1(a) through 3349.1(s) are adopted to read:

- (a) *Administrative Assistant - Public Information Officer* means the staff member or members responsible for responding to media inquiries and other duties as assigned.
- (b) *Alienists* means the psychiatrists, all of whom must be from the medical staff of the California Department of Corrections and Rehabilitation, who treat mental disorders and who specialize in related legal matters.
- (c) *Designated Security Housing* means the location at San Quentin where a condemned male inmate shall be housed approximately 5 calendar days prior to a scheduled execution to include: Adjustment Center, East Block, North Segregation, or any other area designated by the San Quentin Warden.
- (d) *Execution Report* means the documents the Team Administrator routes through the San Quentin Chief Deputy Warden for the San Quentin Warden's review and signature after an execution. The Execution Report shall include: a CDCR Form 2177 San Quentin State Prison Lethal Injection Infusion Sub-Team Execution Log, CDCR Form 2179 San Quentin State Prison Lethal Injection Intravenous Sub-Team Execution Log, CDCR Form 2181 Lethal Injection Team Administrator/Team Supervisor Execution Log, CDCR Form 2182 Lethal Injection Team Supervisor Execution Report, CDCR Forms 2183 Execution Report Team Member from all Lethal Injection Team members, and any documented use of force in accordance with Section 3268.1, Reporting and Investigating the Use of Force for Institution/Facility Staff. In addition, the Execution Report shall include all appropriate supplemental reports.
- (e) *Infusion Control Room* means the space allocated for the Lethal Injection Chemical preparation area and is the room designed to accommodate the Infusion Sub-Team, designated members of the Intravenous Sub-Team, the Team Administrator, Team Supervisor, designated members of the Record Keeping Sub-Team, San Quentin Litigation Coordinator, and one representative each from the Governor's Office, the Inspector General's Office, and the Attorney General's Office.
- (f) *Infusion Sub-Team* means the Lethal Injection Team members who are responsible for receiving the Lethal Injection Chemical, preparation of the Lethal Injection Chemical, drawing the Lethal Injection Chemical into syringes, labeling and color coding the syringes and infusing the Lethal Injection Chemical.
- (g) *Intravenous Sub-Team* means the Lethal Injection Team members who are responsible for: placing electrocardiogram leads, insertion of the intravenous catheters, attaching and monitoring the intravenous lines, performing consciousness checks, and crimping, uncoupling, and detaching the intravenous lines.
- (h) *Lethal Injection Chemical* means a substance used to perform an execution.
- (i) *Lethal Injection Facility* means the dedicated structure at San Quentin consisting of three witness viewing rooms, an Infusion Control Room, the Lethal Injection Facility Holding Area, restrooms and the Lethal Injection Room.
- (j) *Lethal Injection Facility Holding Area* means the cell and associated area where the inmate is held prior to an execution.
- (k) *Lethal Injection Room* means the room where the inmate is executed.
- (l) *Lethal Injection Team* means the individuals that comprise the three sub-teams described in this Article.

(m) Master Execution File means the permanent record of all documents related to an execution that is maintained in the San Quentin Warden's office complex.

(n) Pre-Execution Logbook means a record of documentation of the condemned inmate's activities, requests, conduct and behavior, which shall commence upon receipt of the execution warrant.

(o) Record Keeping Sub-Team means the Lethal Injection Team members who are responsible for documenting each element of the execution and for assembling those documents for inclusion in the Master Execution File.

(p) Selection Panel means the Associate Director – Reception Centers, the San Quentin Warden, and the Team Administrator who recruit and select the Team Supervisor and Team members.

(q) Spiritual Advisor means a person who, by profession or practice, provides spiritual advice, assistance, or guidance.

(r) Team Administrator means the Associate Warden who is responsible for providing managerial oversight of the Lethal Injection Team's training, preparation and the performance of assigned duties during an execution.

(s) Team Supervisor means the Captain who is responsible for providing direct supervision of the Lethal Injection Team's training, preparation and performance of assigned duties during an execution.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections, 190, 3600, 3601, 3602, 3603, 3605, 3607, 3700, 3700.5, 3701, 3702, 3703, 3704 and 5054, Penal Code; *Baze v. Rees* (2008) 553 U.S. 35 and *Towery v. Brewer* (2012) 672 F.3d 650.

New Section Title 3349.2 is adopted to read:

3349.2 Recruitment, Selection and Annual Review of Lethal Injection Team Members.

New Subsections 3349.2(a) through 3349.2(a)(2)(E) are adopted to read:

(a) Recruitment and Selection Process.

(1) The Director - Division of Adult Institutions, or designee, and the San Quentin Warden shall recruit and select an Associate Warden to serve as the Team Administrator. The Team Administrator is not a member of the Lethal Injection Team, but the screening criteria set forth in subsections (b)(2) and (3) and (c)(1)-(8) shall apply.

(2) The Director - Division of Adult Institutions, or designee, with the Selection Panel, shall recruit and select the Team Supervisor and the Lethal Injection Team members. The Team Supervisor is not a member of the Lethal Injection Team, but the screening criteria set forth in subsections (b)(2) and (3) and (c)(1)-(8) shall apply. The Lethal Injection Team shall consist of CDCR employees, or contracted medical personnel, or a combination of both, and shall comprise a minimum of 12 members who shall be assigned to one of three sub-teams and who shall serve at the will of the Director – Division of Adult Institutions. The Team Administrator shall assist the Director – Division of Adult Institutions, or designee, with coordinating the recruitment and selection of prospective candidates for the Team Supervisor and the Lethal Injection Team members.

(A) The Selection Panel shall review qualifications, interview prospective candidates, and select the Team Supervisor and Lethal Injection Team members. The Associate Director – Reception Centers shall

chair the Selection Panel and ensure the Team Supervisor and Lethal Injection Team members are selected consistent with the criteria established in this section. After the Panel selects the Lethal Injection Team members, the Team Administrator shall assign each member to one of the following Sub-Teams: Intravenous Sub-Team, Infusion Sub-Team, or Record keeping Sub-Team pursuant to the criteria as set forth in subsection (d) below. Each sub-team shall have a minimum of four members.

(B) The Team Administrator shall select an Intravenous Sub-Team leader from among the four Intravenous Sub-Team members. The Intravenous Sub-Team leader shall be qualified in his or her profession to supervise medically trained personnel. The Intravenous Sub-Team leader shall be responsible for determining training curriculum for duties identified in subsection (d)(1) for the Intravenous Sub-Team, assessing performance of each Intravenous Sub-Team member during training and executions, and reporting any concerns about any Intravenous Sub-Team member to the Team Administrator and the Team Supervisor.

(C) The Team Administrator shall select an Infusion Sub-Team leader from among the four Infusion Sub-Team members. The Infusion Sub-Team leader shall be qualified in his or her profession to supervise medically trained personnel. The Infusion Sub-Team leader shall be responsible for determining training curriculum for duties identified in subsection (d)(2) for the Infusion Sub-Team, assessing performance of each Infusion Sub-Team member during training and executions, and reporting any concerns about any Infusion Sub-Team member to the Team Administrator and the Team Supervisor.

(D) The CDCR may contract with medical personnel or a pharmacist to be members of the Lethal Injection Team. The CDCR may also contract with a physician to serve as the physician attending the execution to declare death. Contracting is permitted so long as the contract does not displace a qualified state civil service employee who is available and willing to perform the prescribed duties. Contract personnel shall meet all the criteria set forth in subsections (b), (c), and (d)(1)-(3).

(E) Names and identities of the Lethal Injection Team members shall remain confidential.

New Subsections 3349.2(b) through 3349.2(b)(3)(B)2. are adopted to read:

(b) Screening of Lethal Injection Team Candidates.

(1) The Selection Panel shall screen and ensure each candidate meets the criteria established for membership on one of the three designated sub-teams as set forth in subsection (d) below.

(2) The Selection Panel screening process shall include:

(A) Review of all the candidates available performance evaluations.

(B) Review of the candidate's official personnel, supervisory, and training files.

(C) Review of the candidate's current Criminal Identification and Information Report from the California Department of Justice.

(3) As part of the screening process, the Selection Panel shall interview each candidate to determine the following:

(A) Personal history and background.

(B) Professional experience, including the following:

1. Professional experiences that would aid the candidate in performing Lethal Injection Team member duties.

2. Knowledge, composure, training, related skill and ability.

New Subsections 3349.2(c) through 3349.2(c)(8) are adopted to read:

(c) Criteria for Lethal Injection Team membership. Each Lethal Injection Team member shall be selected based on general qualifications and specific expertise necessary to effectively carry out the duties of one of the specialized sub-team functions. The following general criteria shall be utilized in the selection of all Lethal Injection Team members:

(1) Permanent full time CDCR employee or contracted employee.

(2) History of reliable job performance and professional demeanor.

(3) Reliable attendance record.

(4) No corrective action.

(5) No sustained adverse action as reflected in the CDCR Official Personnel File or State Personnel Board records.

(6) Most recent annual employee performance evaluation or comparable private sector performance evaluation shall meet or exceed expected standards in all rated areas.

(7) Shall not be on probation in the candidate's current classification. This does not apply to promotions made subsequent to initial placement on the Lethal Injection Team.

(8) A member of the Lethal Injection Team must agree to not work or be assigned to any condemned housing unit. This includes any overtime.

New Subsections 3349.2(d) through 3349.2(d)(3)(B) are adopted to read:

(d) In addition to the general selection criteria described in subsection 3349.2(c), each candidate for a specific Lethal Injection Team Sub-Team shall meet the following criteria:

(1) All members of the Intravenous Sub-Team shall be medically trained personnel: physician, physician assistant, registered nurse, emergency medical technician, paramedic, or medic.

(A) Intravenous Sub-Team members shall provide current certification and licensure to verify the ability to perform the following:

1. Insertion and maintenance of intravenous catheters into peripheral or appropriate veins.

2. Placement of the electrocardiogram leads used during the lethal injection process.

(B) Intravenous Sub-Team members shall have experience setting up intravenous lines in the last twelve months in the performance of their job duties, unrelated to their duties as a Lethal Injection Team member.

(2) Infusion Sub-Team shall have at least one member who is a physician, physician assistant, pharmacist, registered nurse, emergency medical technician, paramedic, or medic. All Infusion Sub-Team members shall:

(A) Be able to follow the directions provided by the manufacturer in preparing the Lethal Injection Chemical.

(B) Possess the organizational skills to appropriately label and color code the chemical used during the lethal injection process.

(3) Neither CDCR nor any of its employees shall take any action against an employee or contractor solely because of his or her participation in an execution, as it is a legal activity. If a member of the Lethal Injection Team is licensed by a board or department neither CDCR nor any of its employees shall refer the employee or contractor to any licensing body solely based on participation in an execution for the purpose of having action taken against their license. Furthermore, no doctor, nurse, pharmacist, pharmacy, medical, professional, or other business entity licensed by a board or department shall be referred to their licensing body by CDCR or any of its employees solely because of participating, assisting, aiding, facilitating or otherwise being involved with an execution or one of the associated, ancillary, auxiliary, supplemental, or supportive related activities, as an execution is a legal activity.

(4) Record Keeping Sub-Team members shall:

(A) Understand the need to keep accurate records during the lethal injection process.

(B) Demonstrate proficiency in report writing and record keeping.

New Subsections 3349.2(e) through 3349.2(e)(4) are adopted to read:

(e) Annual Review of the Lethal Injection Team members shall be conducted in order to ensure continued compliance with selection criteria. The annual review shall be conducted by the Team Administrator during the month of June. This shall include review of the following:

(1) Official personnel, supervisory and training files.

(2) Most recent performance evaluation.

(3) Criminal Identification and Information Report from the California Department of Justice.

(4) All related certifications and licensure to ensure they are current.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27.

New Section Title 3349.3 is adopted to read:

3349.3. Lethal Injection Team Training.

New Subsection 3349.3(a) is adopted to read:

(a) The Team Administrator shall ensure training on the lethal injection process is provided to each Lethal Injection Team member.

New Subsection 3349.3(b) is adopted to read:

(b) Each Lethal Injection Team member shall undergo training specific to their assigned duties during an execution.

New Subsections 3349.3(c) through 3349.3(c)(5) are adopted to read:

(c) Lethal Injection Training Session Requirements.

(1) Training shall be conducted at least once per month for a minimum of eight hours for all Lethal Injection Team members. Training dates will be scheduled by the Team Supervisor and approved by the Team Administrator and the San Quentin Warden. The Team Supervisor shall determine training curriculum for the Record Keeping Sub-Team and training for the Intravenous Sub-Team and Infusion Sub-Team other than that set forth in Section 3349.2(a)(2)(B) and (C). All Lethal Injection Team members must participate in all scheduled training, as specified, unless on approved leave. The Team Supervisor shall attend all Lethal Injection Team training, unless on approved leave.

(2) When an execution warrant has been served on an inmate, the Team Administrator shall ensure the Team Supervisor schedules training in the 30 calendar days immediately preceding the scheduled execution date.

(3) The Lethal Injection Team shall train for the three consecutive calendar days immediately preceding an execution.

(4) The Lethal Injection Team members must participate in at least six training sessions prior to being assigned duties during an execution which includes each of the three daily training sessions immediately preceding the scheduled execution.

(5) Any medical personnel who serves as the physician attending the execution, including one contracted pursuant to subsection 3349.2(a)(2)(D) must participate in at least one training session in the six months immediately preceding a scheduled execution and participate in each of the three daily training sessions immediately preceding the scheduled execution.

New Subsections 3349.3(d) through 3349.3(d)(2) are adopted to read:

(d) Training for all Lethal Injection Team members shall include the following:

(1) A simulation of an execution by lethal injection.

(2) Identification of potential problems and recommendations for avoidance or resolution.

New Subsections 3349.3(e) through 3349.3(e)(6) are adopted to read:

(e) Training specific to the Intravenous Sub-Team shall include the following:

(1) Use of an electrocardiogram for vital signs.

(2) Setting up intravenous lines and intravenous drip.

(3) The different sizes of intravenous catheters and determination of the proper size of the catheter(s) to be used, dependent on the size and condition of the vein.

(4) Performance of consciousness checks in accordance with Subsection 3349.7(c)(4)(A).

(5) Monitoring intravenous lines to ensure patency.

(6) Crimping, uncoupling, and detaching intravenous lines.

New Subsections 3349.3(f) through 3349.3(f)(5) are adopted to read:

(f) Training specific to the Infusion Sub-Team shall include the following:

(1) Preparation of the Lethal Injection Chemical used in the lethal injection process.

(2) Level and rate of infusion of the Lethal Injection Chemical into the intravenous lines.

(3) Numbering and color coding of the syringes used in the lethal injection process.

(4) Sequence of syringes used in the lethal injection process and the physical effects the Lethal Injection Chemical can have on the inmate as it is administered.

(5) Handling and accountability of the Lethal Injection Chemical.

New Subsections 3349.3(g) through 3349.3(g)(3) are adopted to read:

(g) Training specific to the Record Keeping Sub-Team shall include the following:

(1) Accurate record keeping.

(2) Report writing.

(3) Preparation of specific records used to document an execution.

New Subsections 3349.3(h) through 3349.3(h)(2) are adopted to read:

(h) Training Documentation and Records.

(1) The Team Supervisor shall maintain a lethal injection training file. This training file shall contain a record of all lethal injection training sessions and shall be maintained in the Lethal Injection Facility. A copy of the records for training conducted the three calendar days immediately preceding an execution shall be included in the Master Execution File.

(2) During each training session, the designated Record Keeping Sub-Team member shall document the training on the following CDCR Forms, which are hereby incorporated by reference: CDCR Form 2177 (Rev. 10/15), San Quentin State Prison Execution Log-Lethal Injection Infusion Sub-Team, CDCR Form 2179 (Rev. 10/15), San Quentin State Prison Execution Log-Lethal Injection Intravenous Sub-Team and CDCR Form 2181 (Rev. 10/15), San Quentin State Prison Execution Log-Lethal Injection Team Administrator/Team Supervisor.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27.

New Section Title 3349.4 is adopted to read:

3349.4 Execution Site Operation.

New Subsection 3349.4(a) is adopted to read:

(a) Security. All persons entering the Lethal Injection Facility shall have prior oral or written approval by the San Quentin Warden, or designee in the Warden's absence. This approval shall be documented by the San Quentin Warden, San Quentin Chief Deputy Warden, Team Administrator or Team Supervisor in the key control log. The San Quentin Warden shall maintain a record of all individuals approved to enter the Lethal Injection Facility.

New Subsection 3349.4(b) is adopted to read:

(b) The Infusion Control Room shall include the Lethal Injection Chemical preparation area and shall accommodate the Infusion Sub-Team and designated members of the Intravenous Sub-Team, the Team Administrator, the Team Supervisor, designated members of the Record Keeping Sub-Team, the San Quentin Litigation Coordinator, and one representative each from the Governor's Office, the Inspector General's Office, and the Attorney General's Office.

New Subsections 3349.4(c) through 3349.4(c)(2) are adopted to read:

(c) The Lethal Injection Facility safe shall be permanently mounted within the Infusion Control Room.

(1) The combination to the Infusion Control Room safe shall be known only by the San Quentin Warden, the San Quentin Chief Deputy Warden, and the Team Administrator.

(2) The combination to the Infusion Control Room safe shall be changed after each execution to maintain quality control, accountability, and security of Lethal Injection Chemical.

New Subsections 3349.4(d) through 3349.4(d)(4) are adopted to read:

(d) Key Procedure.

(1) The keys for the Lethal Injection Facility shall be located in the San Quentin key control area in a locked box secured under glass. All access must be approved by the San Quentin Warden or designee.

(2) The key allowing access to the locked box shall only be issued to the San Quentin Warden, the Chief Deputy Warden, the Team Administrator or the Team Supervisor.

(3) Each person authorized to draw the key to the locked box shall be required to sign the key control log noting the time at key check out, reason for entry into the Lethal Injection Facility, and time of key return.

(4) Each person authorized to draw the keys to the Lethal Injection Facility shall personally return the keys and secure them in the locked box under glass.

New Subsection 3349.4(e) is adopted to read:

(e) The Team Supervisor shall conduct and document monthly security and operational inspections of the Lethal Injection Facility.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604, 3605 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27.

New Section Title 3349.5 is adopted to read:

3349.5 Responsibilities and Tasks Upon Receipt and Service of the Execution Warrant.

New Section 3349.5 Presentence is adopted to read:

Upon CDCR's receipt of the execution warrant, the following shall occur:

New Subsection 3349.5(a) is adopted to read:

(a) The Litigation Coordinator where the inmate is housed shall identify any pending litigation regarding the inmate or the scheduled execution and advise the Warden of the institution where the inmate is housed and the San Quentin Warden.

New Subsection 3349.5(b) is adopted to read:

(b) The San Quentin Litigation Coordinator shall create a Master Execution File and insert a copy of all documents transmitted between San Quentin State Prison and the California Department of Corrections and Rehabilitation headquarters, the institution where the inmate is housed if other than San Quentin, or any other agency or organization, pertaining to a scheduled execution.

New Subsection 3349.5(c) is adopted to read:

(c) The San Quentin Warden or the Warden where the inmate is housed shall notify the Director - Division of Adult Institutions, and other appropriate officials as necessary, within 24 hours of receipt of the execution warrant. The Director - Division of Adult Institutions shall notify the CDCR Secretary. The CDCR Secretary shall notify the Governor's Legal Affairs Secretary. A copy of the execution warrant shall be delivered to the Governor's Legal Affairs Secretary within 24 hours of receipt of the execution warrant.

New Subsection 3349.5(d) is adopted to read:

(d) The Director - Division of Adult Institutions shall, upon notification of the execution warrant, select and appoint three Alienists, as defined in Section 3349.1, to interview and evaluate the inmate to determine his/her sanity pursuant to Penal Code Section 3700.5. The Director shall maintain a list of Alienists with a minimum of six names.

New Subsections 3349.5(e) through 3349.5(e)(8) are adopted to read:

(e) The San Quentin Warden, in conjunction with the Warden of the institution where the inmate is housed, shall:

(1) Coordinate transfer of the condemned male inmate to San Quentin State Prison.

(2) In the presence of an Associate Warden and the Litigation Coordinator of the institution where the inmate is housed, serve the execution warrant on the inmate to be executed, interview the inmate, and document the interview on a CDCR Form 1801-B (Rev. 10/15), Service of Execution Warrant -Warden's Initial Interview.

(3) If there is good reason to believe that a condemned female inmate may be pregnant, notify the District Attorney, the attorney for the inmate, and the court pursuant to Penal Code Sections 3705 and 3706.

(4) Inform the inmate of the choices of execution method, either lethal injection or lethal gas, and document on the CDCR Form 1801 (Rev. 10/15), Notification of Execution Date and Choice of Execution Method.

(5) Instruct the inmate to indicate his/her election of execution method within ten calendar days of the inmate's receipt of the CDCR Form 1801-A (Rev. 10/15), Choice of Execution Method, with the explanation that if no election is made, lethal injection will be the method of execution.

(6) Provide the inmate a copy of CDCR Forms 1801-C (10/15), Request For Approval of Witnesses, 1801-D (10/15), Last Meal Request, 1801-E (10/15), Disposition of Personal Property, and 1801-F (10/15), Release of Remains and Burial Arrangements which are hereby incorporated by reference.

(7) Ensure the inmate has a copy of the current California Code of Regulations, Title 15, Division 3, for review of general rules and procedures that shall be utilized during the days leading up to the date of execution.

(8) Ensure the appointed Alienists have access to interview and evaluate the inmate pursuant to Penal Code Section 3700.5.

(9) Ensure any information received which may be relevant to the inmate's sanity is immediately made available to the Alienists Panel pursuant to Penal Code Section 3700.5.

New Subsections 3349.5(f) through 3349.5(f)(1)(E) are adopted to read:

(f) The San Quentin Warden shall:

(1) Select the Lethal Injection Chemical.

(A) Lethal Injection Chemical selection shall be done on a case-by-case basis, taking into account changing factors such as the availability of a supply of chemical. The San Quentin Warden shall make the selection in consultation with medical personnel and notify the CDCR Secretary of the selection.

(B) CDCR may contract with medical personnel to assist with chemical selection, so long as the contract does not displace a qualified state civil service employee who is available and willing to participate. Medical personnel shall be a medical doctor, clinical toxicologist, pharmacologist, anesthesiologist, or other appropriate expert.

(C) The San Quentin Warden shall determine which chemical shall be utilized to perform the execution and document the selection on the CDCR Form 1801-A (10/15), Designation of Lethal Injection Chemical. CDCR considers the listed chemicals to be equally effective in carrying out the purpose of the regulations. The San Quentin Warden shall select one chemical from the following (or any name that they may be known or sold by including their pharmaceutical name, foreign name, generic name, trade name or brand name):

Barbiturates:

- Amobarbital
- Pentobarbital
- Secobarbital
- Thiopental

(D) The San Quentin Warden shall ensure that the Lethal Injection Chemical is obtained from a licensed pharmaceutical facility or distributor.

(E) If any chemical described in Subsection 3349.5(f)(1)(C) is declared unconstitutional for purposes of execution by a court with jurisdiction, the chemical shall not be considered for selection.

New Subsections 3349.5(f)(2) through 3349.5(f)(8) are adopted to read:

(2) Inform the Warden of the institution where the inmate is housed of the Lethal Injection Chemical selection.

(3) Inform the inmate that he/she shall be executed by lethal injection, the Lethal Injection Chemical and amount to be used, and document this information on the CDCR Form 1801-A (Rev. 10/15), Choice Of Execution Method.

(4) Meet with the Team Administrator, who shall notify the Team Supervisor and the Lethal Injection Team members of the execution warrant.

(5) Ensure the Team Administrator, the Team Supervisor and all Lethal Injection Team members involved in the lethal injection process understand their roles in the scheduled execution.

(6) Refer the inmate to the Intravenous Sub-Team for a vein assessment to determine the size, location, and resilience of the veins. The vein assessment shall identify the primary, backup, and alternate backup locations. Vein assessment shall take into account individualized medical history and information including age, physical condition of vein site, scarring, body size, body weight, dehydration, skin texture, rolling veins, hardening of veins, bruising, vein or bone trauma. The alternate backup location may be a vein or a percutaneous portal vein access, if necessary. Upon completion of the vein assessment, the Warden shall obtain a copy of the results report and ensure it is placed in the Master Execution File.

(7) Ensure all institution staff members with specific lethal injection responsibilities are notified of the execution warrant.

(8) Select witnesses pursuant to Penal Code Section 3605.

New Subsections 3349.5(g) through 3349.5(g)(1)(C) are adopted to read:

(g) Upon service of the execution warrant, the Warden of the institution where the inmate is housed shall ensure the following occur by the designated staff:

(1) The Associate Warden of the unit where the inmate is housed shall:

(A) Ensure the condemned unit staff create a Pre-Execution Logbook and at a minimum, conduct hourly checks and document the inmate's activities, requests, conduct and behavior in the inmate's Pre-Execution Logbook.

(B) Immediately report the type of conduct or behavior identified in Section 3317 in writing on CDCR Form 128-B (4/74), General Chrono, which is incorporated by reference, to the Warden of the institution where the inmate is housed, the San Quentin Warden, and the Alienists.

(C) Visit the inmate's housing unit daily and sign in on the inmate's Pre-Execution Logbook with each visit.

New Subsections 3349.5(g)(2) through 3349.5(g)(2)(F) are adopted to read:

(2) The Correctional Counselor II – Condemned Unit at the institution where the inmate is housed shall:

(A) Maintain daily contact with the inmate and document the inmate’s conduct and behavior in the inmate’s Pre-Execution Logbook. Immediately report any conduct or behavior of the type identified in Section 3317 in writing to the Associate Warden of the institution where the inmate is housed, the Warden of the institution where the inmate is housed, the San Quentin Warden, and the Alienists.

(B) Ensure effective communication, as defined in Section 3000, is established with the inmate.

(C) Update the inmate’s Notification In Case Of Inmate Death, Serious Injury Or Serious Illness in the Strategic Offender Management System as defined in Section 3000.

(D) Submit a report to the San Quentin Warden via the Warden of the institution where the inmate is housed consisting of a review of the inmate’s case factors and any observations of the inmate documented by the assigned Correctional Counselor I and/or custody staff to determine the inmate’s past and present conduct and behavior for inclusion in the CDCR Form 2173 (10/15), 20-Day Pre-Execution Report, which is hereby incorporated by reference.

(E) Collect the completed CDCR Forms 1801-C (10/15), Request For Approval of Witnesses, 1801-D (10/15), Last Meal Request, 1801-E (10/15), Disposition of Personal Property and 1801-F (10/15), Release of Remains and Burial Arrangements, within ten calendar days of providing the forms to the inmate and forward them to the Litigation Coordinator at the institution where the inmate is housed.

(F) Ensure all non-legal telephone calls made by the inmate on an institutional telephone are monitored. Legal calls shall not be monitored but shall be facilitated by staff. All calls shall be logged in the inmate’s Pre-Execution Logbook.

New Subsections 3349.5(g)(3) through 3349.5(g)(3)(B) are adopted to read:

(3) The Litigation Coordinator at the institution where the inmate is housed shall:

(A) Ensure approval for visiting is on file for the inmate’s attorney(s) and notify the Visiting Lieutenant.

(B) Notwithstanding Section 3178, schedule attorney visits expeditiously upon request of the inmate’s attorney(s).

New Subsection 3349.5 (g)(4) is adopted to read:

(4) The Warden’s Administrative Assistant-Public Information Officer at the institution where the inmate is housed shall act as liaison between the inmate’s family and the Warden of the institution where the inmate is housed.

New Subsections 3349.5(g)(5) through 3349.5(g)(5)(B) are adopted to read:

(5) The Visiting Lieutenant at the institution where the inmate is housed shall:

(A) Ensure that the attorney(s) for the inmate is afforded expeditious access to the inmate. This may include facilitating attorney visits during weekends and holidays as necessary.

(B) Arrange for visiting pursuant to California Code of Regulations, Title 15, Division 3, Subchapter 2, Article 7, Visiting.

New Subsections 3349.5(h) through 3349.5(h)(5) are adopted to read:

(h) Sanity Review pursuant to Penal Code Section 3701.

(1) Attorneys may submit in writing any current information they believe may have a bearing on evaluating the sanity of an inmate with a scheduled execution date at any time prior to the scheduled execution. This information shall be submitted to the San Quentin Warden who shall forward it to the Alienists.

(2) The Warden where the inmate is housed shall have available for review all psychiatric information pertaining to the inmate known to psychiatric staff. This information shall be submitted to the San Quentin Warden who shall forward it to the Alienists.

(3) The information in Subsection (h)(1) and (h)(2), together with any information forwarded to the Warden of the institution where the inmate is housed or the San Quentin Warden regarding the inmate's conduct or behavior, shall be used to determine if there is a good reason to believe the inmate has become insane, pursuant to Penal Code Section 3701. The Warden of the institution where the inmate is housed shall notify the inmate's attorney in writing of the results of any sanity review. Should the San Quentin Warden, in consultation with the Alienists, find there is a good reason to believe the inmate has become insane, the San Quentin Warden shall notify the District Attorney pursuant to Penal Code Section 3701, via a CDCR Form 2174 (10/15), Notification By Warden To The District Attorney Concerning Sanity of Condemned Inmate, which is hereby incorporated by reference.

(4) The Warden where the inmate is housed and the San Quentin Warden shall notify the Director – Division of Adult Institutions and the Secretary of CDCR of any notification to the District Attorney concerning the sanity of the condemned inmate.

(5) The Secretary of CDCR shall notify the Governor's Legal Affairs Secretary in writing of all referrals to the District Attorney's office pursuant to Penal Code Section 3701.

NOTE: Authority cited: Sections 3604, subd. (a); 3605; 3700.5; 5058, Penal Code, Capital punishment is an authorized sentence under the law and is constitutional *Glossip v. Gross* (June 29, 2015, No. 14-7955) 576 U.S. [135 S.Ct. 2726, 2732] The Legislature has authorized physician participation in executions. *Thorburn et al. v. Depart. of Corrections et al.* (1998) 66 Cal.App. 4th 1284; "An execution is not a medical procedure, and its purpose is not to keep the inmate alive but rather to end the inmate's life..." *Morales v. Tilton* (2006) 465 F.Supp.2d 972, 983. See also *Heckler v. Chaney* (1985) 470 U.S. 821; *O'Bryan v. McKaskle*, (5th Cir. 1984) 729 F.2d 991; *Abdur'Rahman v. Bredesen*, 181 S.W.3d 292 (Tenn. 2005), cert. denied, 126 S.Ct. 2288, 164 L.Ed.2d 813 (U.S. 2006); *State v. Deputy*, (Del. Super. Ct. 1994) 644 A.2d 411. *Morales v. Hickman*, Case Nos. C 06 219 JF and C 06 926 FJ RS, Document No. 78 (February 21, 2006 Order on Defendant's Motion to Proceed with Execution Under Alternative Condition to Order Denying Preliminary Injunction). Reference: Sections 190, 1227, 3600, 3601, 3602, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704, 3705, 3706 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27, *Towery v. Brewer* (2012) 672 F.3d 650.

New Section Title 3349.6 is adopted to read:

3349.6 Chronology of events after Execution Warrant has been served.

New Section 3349.6 Presentence is adopted to read:

Once the execution warrant has been served on the inmate the following shall occur leading up to the scheduled execution date.

New Subsections 3349.6(a) through 3349.6(a)(2)(C) are adopted to read:

(a) No later than 20 calendar days prior to the scheduled execution:

(1) The San Quentin Warden and the Warden of the institution where the inmate is housed shall ensure the three Alienists each complete the CDCR Form 2173 (10/15), 20-Day Pre-Execution Report pursuant to Penal Code section 3700.5.

(2) Each Alienist shall complete the CDCR Form 2173, attach his or her independent psychiatric report regarding the inmate, and submit it to the San Quentin Warden and the Warden of the institution where the inmate is housed.

(3) The Alienists panel shall submit to the Governor, the San Quentin Warden, and the Warden of the institution where the inmate is housed a copy of the completed CDCR Form 2173 (10/15), 20-Day Pre-Execution Report, and shall include a summary of the examinations, interviews, and history stated in plain language.

(4) The San Quentin Warden and the Warden of the institution where the inmate is housed shall submit the completed CDCR Form 2173 (10/15), 20-Day Pre-Execution Report with a cover letter, and the summary of the inmate's conduct and behavior, submitted by a Correctional Counselor II – Condemned Unit, to the Director – Division of Adult Institutions and the CDCR Secretary. If the San Quentin Warden and the Warden at the institution where the inmate is housed have good reason to believe the inmate has become insane after reviewing the 20-Day Pre-Execution Report, the San Quentin Warden shall notify the District Attorney pursuant to Penal Code Section 3701. The notification shall be via a CDCR Form 2174 (10/15), Notification By Warden To The District Attorney Concerning Sanity of Condemned Inmate, which is hereby incorporated by reference.

New Subsections 3349.6(b) through 3349.6(b)(3) are adopted to read:

(b) Approximately ten calendar days prior to the scheduled execution:

(1) Each Alienist shall conduct a second interview and evaluate the inmate in preparation for the CDCR Form 2175 (10/15), 7-Day Pre-Execution Report, which is hereby incorporated by reference.

(2) Each Alienist shall submit a CDCR Form 2175 (10/15), 7-Day Pre-Execution Report to the San Quentin Warden and the Warden of the institution where the inmate is housed. The report shall include a comparison of the inmate's current mental health status to the previous findings noted in the 20-Day Pre-Execution Report to determine if there is any change in the inmate's mental condition. Observations must be current and pertain to the inmate's mental state.

(3) The San Quentin Warden and the Warden of the institution where the inmate is housed shall submit the completed CDCR Form 2175 (10/15), 7-Day Pre-Execution Report with a cover letter, and the summary of the inmate's conduct and behavior, submitted by a Correctional Counselor II – Condemned Unit, to the Director – Division of Adult Institutions and the CDCR Secretary. The CDCR Form 2175 (10/15), 7-Day Pre-Execution Report shall be routed in sufficient time for forwarding to the Secretary of the CDCR whose office shall then forward the report in accordance with (c) of this section. If the San Quentin Warden and the Warden at the institution where the inmate is housed have good reason to believe the inmate has become insane after reviewing the 7-Day Pre-Execution Report, the San Quentin Warden shall notify the District Attorney pursuant to Penal Code Section 3701. The notification shall be via a

CDCR Form 2174 (10/15), Notification By Warden To The District Attorney Concerning Sanity of Condemned Inmate, which is hereby incorporated by reference.

New Subsections 3349.6(c) is adopted to read:

(c) Seven calendar days prior to the scheduled execution the CDCR Form 2175 (10/15), 7-Day Pre-Execution Report shall be delivered to the Governor's Legal Affairs Secretary.

New Subsections 3349.6(d) through 3349.6(d)(6)(B) are adopted to read:

(d) Approximately five calendar days prior to the scheduled execution, the following shall occur:

(1) The San Quentin Warden shall ensure the condemned male inmate has been moved to the Designated Security Housing area. Pursuant to Penal Code Section 3602, a condemned female inmate shall not be transferred to San Quentin until three days prior to a scheduled execution.

(2) The Warden of the institution where the inmate is housed shall ensure the condemned inmate will be under observation 24 hours a day by an officer assigned for that purpose.

(3) The Associate Warden where the inmate is housed shall ensure monitoring of the inmate's behavior is continued by unit staff with documentation completed every hour in the inmate's Pre-Execution Logbook.

(A) Should the inmate display any conduct or behavior of the type identified in Section 3317, the Warden of the institution where the inmate is housed and the San Quentin Warden shall be notified by institutional staff.

(B) The Warden of the institution where the inmate is housed and the San Quentin Warden shall monitor any reported changes in the inmate's behavior utilizing the provisions of Penal Code section 3701. If there is good reason to believe that the inmate has become insane it shall be reported to the Secretary of the CDCR in writing via the Director – Division of Adult Institutions in addition to reporting it to the District Attorney.

(4) The Correctional Counselor II – Condemned Unit shall begin daily briefings for the Warden of the institution where the inmate is housed regarding the inmate's needs, requests, and behavior.

(5) The inmate shall have 24-hour access to a telephone for attorney contact. Legal calls will not be monitored but shall be facilitated by staff. All calls shall be logged in the inmate's Pre-Execution Logbook.

(6) Religious accommodations.

(A) State employed Chaplains and Spiritual Advisors selected by the inmate shall be allowed to perform their spiritual functions at the inmate's cell front on either second or third watch and by telephone at any time.

(B) Pre-approved non-state employed Chaplains and Spiritual Advisors may visit the inmate utilizing the visitor process and shall be allowed to perform their spiritual functions at the inmate's cell front on either second or third watch or by telephone at any time.

(7) The Team Administrator along with the Food Manager shall interview the inmate to confirm what request, if any, the inmate may have for a last meal as noted on the CDCR Form 1801-D (10/15), Last Meal Request.

(A) Accommodations for the last meal shall be reasonable and not exceed a fifty dollar (\$50.00) limit.

(B) The Food Manager shall determine if food services can fulfill the request or make arrangements to obtain the requested menu items.

New Subsections 3349.6(e) through 3349.6(e)(4) are adopted to read:

(e) Approximately three calendar days prior to the scheduled execution:

(1) Pursuant to Penal Code Section 3602, condemned female inmates shall be transported to San Quentin no sooner than 72 hours prior to the scheduled execution. A condemned female inmate shall be transported no later than 12 hours prior to the scheduled execution. The female inmate shall be secured in the Lethal Injection Facility Holding Area.

(2) The Team Administrator shall ensure that Lethal Injection Team members assigned to specific functions begin daily training on their assignments. All Lethal Injection Team members designated as backups shall be involved in training for their specified backup functions.

(3) The Team Supervisor shall schedule and conduct required training for the Lethal Injection Team. The Intravenous Sub-Team leader or the Infusion Sub-Team leader shall conduct any training that requires medical knowledge.

(4) The Intravenous Sub-Team leader, Infusion Sub-Team leader, and the Team Supervisor shall assess the Lethal Injection Team members to ensure readiness for their assigned duties. If at any time the Intravenous Sub-Team leader, Infusion Sub-Team leader, or Team Supervisor believes a Lethal Injection Team member may be unable to complete the assigned duties, the Team Administrator shall be notified, and the Lethal Injection Team member shall be excused from participation in the scheduled execution.

New Subsections 3349.6(f) through 3349.6(f)(2)(C) are adopted to read:

(f) Approximately 24 hours prior to the scheduled execution:

(1) The San Quentin Warden shall confirm that all Lethal Injection Team members are fully prepared and ready to perform their assigned duties.

(2) The Team Administrator shall:

(A) Accompany the Team Supervisor and a Lethal Injection Team member to obtain the Lethal Injection Chemical and complete the CDCR Form 2176 (10/15), Lethal Injection Chain of Custody-San Quentin State Prison, which is hereby incorporated by reference, to acknowledge receipt of the Lethal Injection Chemical.

(B) Ensure the Lethal Injection Chemical is properly controlled and secured in the Lethal Injection Facility.

(C) Ensure the CDCR Form 2176 (10/15), Lethal Injection Chain of Custody-San Quentin State Prison, is completed upon any movement of the Lethal Injection Chemical. The original CDCR Form 2176 shall remain with the Lethal Injection Chemical. A copy of the form shall be distributed to the San Quentin Warden, the San Quentin Chief Deputy Warden, and forwarded to the San Quentin Litigation Coordinator for placement in the Master Execution File.

New Subsections 3349.6(g) through 3349.6(g)(2) are adopted to read:

(g) Approximately six hours prior to the scheduled execution:

(1) The Team Supervisor shall:

(A) Brief the inmate on execution procedures.

(B) Supervise the movement of the male inmate from the Designated Security Housing area to the Lethal Injection Facility Holding Area cell.

(C) Secure the inmate in the Lethal Injection Facility Holding Area cell.

(D) Ensure assigned custody staff provide direct and constant observation of the inmate in the Lethal Injection Facility Holding Area and document all of the inmate's activities, requests, conduct, and behavior in the inmate's Pre-Execution Logbook with entries made every 15 minutes.

(E) Ensure the last meal is delivered to the Lethal Injection Facility, inspected for contraband and served to the inmate in the Lethal Injection Facility Holding Area cell.

(F) Inform the inmate they may request additional food items, coffee, juice and soft drinks, programs on the radio or television, phone calls and mailing of letters.

(2) Visiting, with the exception of an Attorney and a state employed or pre-approved non-state employed Chaplain or Spiritual Advisor shall cease. Due to direct and constant observation of the inmate, attorney-client confidentiality cannot be guaranteed in the Lethal Injection Facility Holding Area during cell front visits. Accordingly, if attorney-client confidentiality is needed, attorneys shall have access to their client by phone as requested either by the attorney or the inmate. No visitation shall occur on first watch.

New Subsections 3349.6(h) through 3349.6(h)(2)(B) are adopted to read:

(h) Approximately three hours prior to the scheduled execution:

(1) The Team Supervisor shall:

(A) Ensure that all visiting shall cease. Attorneys, Chaplains, and Spiritual Advisors may have access to the inmate by phone as requested by either the Attorney, Chaplain, Spiritual Advisor, or the inmate.

(B) Ensure the Record Keeping Sub-Team member assigned to the Team Administrator/Team Supervisor initiates documentation on the CDCR Form 2181 (10/15), San Quentin State Prison Execution Log Lethal Injection Team Administrator/Team Supervisor.

(C) Remove the Lethal Injection Chemical from the Lethal Injection Facility safe and immediately transfer custody of the Lethal Injection Chemical to two members of the Infusion Sub-Team.

(D) Ensure accountability of the Lethal Injection Chemical. A minimum of two members of the Infusion Sub-Team shall verify receipt of the designated Lethal Injection Chemical at the time of transfer, and sign the CDCR Form 2176 (10/15), Lethal Injection Chain of Custody-San Quentin State Prison.

(E) A Record Keeping Sub-Team member shall initiate documentation on the CDCR Form 2177 (10/15), San Quentin State Prison Execution Log-Lethal Injection Infusion Sub-Team, upon receipt of the Lethal Injection Chemical by the Infusion Sub-Team members and continue observation and documentation throughout the execution.

(2) The San Quentin Warden and Team Administrator shall meet with the inmate in the Lethal Injection Facility Holding Area and shall advise the inmate of the following:

(A) A written last statement may be prepared by the inmate which will be made available after the execution.

(B) A sedative is available upon request. If requested by the inmate, the sedative shall be administered under the direction and approval of a physician.

New Subsections 3349.6(h)(3) through 3349.6(h)(3)(E) are adopted to read:

(3) Preparation of the Lethal Injection Chemical shall be as follows:

(A) The Lethal Injection Chemical that has been designated pursuant to Subsection 3349.5(f)(1)(C) shall be prepared for administration by means of five syringes. Each syringe shall contain 1.5 grams of the designated Lethal Injection Chemical for a total of 7.5 grams. A sixth syringe shall be prepared with a saline flush.

(B) The Infusion Sub-Team shall prepare the Lethal Injection Chemical as follows:

1. Three Identical trays shall be prepared. Each tray shall contain a total of 7.5 grams of the Lethal Injection Chemical.

2. Tray A shall be color-coded red and shall be the primary tray used for the lethal injection process.

3. Tray B shall be colored-coded blue and shall be the backup tray.

4. Tray C shall be color-coded yellow and shall be the alternate backup tray.

(C) Trays A and B and C shall have six color-coded syringes each to match the tray and be labeled by content and sequence of administration as follows:

1 60cc syringe containing the specified amount of designated Lethal Injection Chemical.

2 60cc syringe containing the specified amount of designated Lethal Injection Chemical.

3 60cc syringe containing the specified amount of designated Lethal Injection Chemical.

4 60cc syringe containing the specified amount of designated Lethal Injection Chemical.

5 60cc syringe containing the specified amount of designated Lethal Injection Chemical.

6 60cc syringe containing saline flush.

(D) The Lethal Injection Chemical shall be mixed according to the manufacturer's instructions.

(E) A medically trained Infusion Sub-Team member shall prepare the syringes for Tray A, Tray B and Tray C. A separate medically trained Infusion Sub-Team member or Intravenous Sub-Team member shall verify proper preparation of the syringes for Tray A, Tray B and Tray C.

New Subsections 3349.6(i) through 3349.6(i)(1)(B) are adopted to read:

(i) Approximately two hours prior to the scheduled execution:

(1) The San Quentin Warden shall:

(A) Ensure the curtain is open on the viewing windows prior to the witnesses' arrival. The curtain shall remain open throughout the execution process until the inmate is pronounced dead.

(B) Ensure all witnesses are escorted to the designated witness rooms in the Lethal Injection Facility.

New Subsections 3349.6(j) through 3349.6(j)(3)(C) are adopted to read:

(j) Approximately one hour prior to the scheduled execution:

(1) The Team Supervisor shall ensure that open dedicated phone lines with the Governor's Office, the Office of the Attorney General, California State Supreme Court and the San Quentin Warden's office complex are established in the Infusion Control Room and staffed at least 15 minutes prior to the scheduled execution.

(2) Approximately 45 minutes before a scheduled execution, the San Quentin Warden shall order the inmate to be prepared for the execution.

(3) Upon direction of the San Quentin Warden to prepare the inmate, the Team Supervisor shall:

(A) Order the inmate placed in restraints and removed from the Lethal Injection Facility Holding Area cell.

(B) Ensure a Record Keeping Sub-Team member initiates documentation on the CDCR Form 2179 (10/15), San Quentin State Prison Execution Log-Lethal Injection Intravenous Sub-Team.

(C) Observe the Intravenous Sub-Team place the electrocardiogram leads on the inmate.

New Subsections 3349.6(j)(4) through 3349.6(a)(4)(D) are adopted to read:

(4) Resistive inmates.

(A) In the event that an inmate refuses to comply with a direct order to be placed in restraints or to exit any area, the Team Supervisor shall advise the Team Administrator and the San Quentin Warden.

(B) The Team Supervisor shall speak to the inmate in an attempt to gain the inmate's compliance.

(C) If the inmate continues to refuse to comply with a direct order, force may be used in accordance with Section 3268, Use of Force.

(D) Any use of force shall be documented in accordance with Section 3268.1, Reporting and Investigating the Use of Force for Institution/Facility Staff, and a copy placed in the Master Execution File.

New Subsections 3349.6(j)(5) through 3349.6(j)(5)(C) are adopted to read:

(5) Approximately 15 minutes before a scheduled execution, the San Quentin Warden shall:

(A) Order the inmate escorted to the Lethal Injection Room.

(B) Order the inmate to be secured to the gurney with restraints.

(C) Order the inmate's hands to be secured to the arm rests on the gurney with medical tape.

New Subsection 3349.6(j)(6) is adopted to read:

(6) The Team Administrator and Team Supervisor shall take a position in the Infusion Control Room. The Team Supervisor shall directly supervise infusion of the Lethal Injection Chemical and saline during the execution.

New Subsection 3349.6(j)(7) is adopted to read:

(7) The San Quentin Litigation Coordinator shall take a position at the Lethal Injection Facility telephones at least 15 minutes prior to a scheduled execution to ensure constant communication with the Governor's Office, the Office of the Attorney General, California Supreme Court and the San Quentin Warden's office complex. The San Quentin Litigation Coordinator shall communicate all calls to the San Quentin Warden, the Team Administrator and the Team Supervisor.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3601, 3602, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704, and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27; *Baze v. Rees* (2008) 553 U.S.35, *Towery v. Brewer* (2012) 672 F.3d 650.

New Section Title 3349.7 is adopted to read:

3349.7 Administration of the Lethal Injection Chemical.

New Subsections 3349.7(a) through 3349.7(a)(8) are adopted to read:

(a) After the inmate is secured in the Lethal Injection Room, the Intravenous Sub-Team members shall:

(1) Take their designated positions in the Lethal Injection Room.

(2) Inspect the restraints to ensure that they do not restrict the inmate's circulation or interfere with the insertion of the catheters.

(3) Attach the intravenous lines to the catheters and insert two catheters into pre-designated veins.

(4) As each catheter is inserted, inform the Intravenous Sub-Team member in the Infusion Control Room to initiate the intravenous saline drip into the intravenous lines attached to the catheters.

(5) Designate primary and backup intravenous lines.

(6) Inform the San Quentin Warden when the intravenous lines have been successfully established.

(7) One Intravenous Sub-Team member shall exit the Lethal Injection Room and report to the Infusion Control Room to continuously monitor the saline drips.

(8) One Intravenous Sub-Team member shall remain in the Lethal Injection Room to continuously monitor the intravenous lines. This Intravenous Sub-Team member shall stand next to the inmate and assess the consciousness of the inmate throughout the execution in accordance with subsection (c)(4)(A).

New Subsections 3349.7(b) through 3349.7(b)(5) are adopted to read:

(b) After the inmate's intravenous lines are successfully established, the San Quentin Warden shall:

- (1) Take a position in the Lethal Injection Room in close proximity to the inmate.
- (2) Confirm there is no matter pending before any court that precludes the execution from proceeding via the California Supreme Court, the Governor's Office, and the Office of the Attorney General.
- (3) Ensure a statement detailing the court order mandating the execution is read aloud over the public address system.
- (4) Provide an opportunity for the inmate to make a brief final statement on the public address system.
- (5) Direct the Infusion Sub-Team to administer the Lethal Injection Chemical.

New Subsections 3349.7(c) through 3349.7(c)(10) are adopted to read:

(c) Infusion.

- (1) The infusion of the Lethal Injection Chemical shall begin with Tray A using the intravenous catheter designated as primary.
- (2) The saline drip for the intravenous catheter that was designated as the primary infusion site shall be stopped prior to the infusion of the first syringe. The saline drip in the backup intravenous line shall be continually maintained.
- (3) A Record Keeping Sub-Team member in the Infusion Control Room shall initiate a ten minute count down at the start of the infusion of syringe #1.
- (4) Beginning with Tray A and using the primary intravenous catheter, the Lethal Injection Chemical shall be administered as follows:
 - (A) #1-60cc syringe containing the specified amount of the designated Lethal Injection Chemical shall be administered, followed by a consciousness assessment of the inmate; the Intravenous Sub-Team Member shall brush the back of his/her hand over the inmate's eyelashes, and speak to and gently shake the inmate. Observations shall be documented. If the inmate is unresponsive, it will demonstrate that the inmate is unconscious. The process shall continue as follows:
 - (B) #2-60cc syringe containing the specified amount of the designated Lethal Injection Chemical shall be administered.
 - (C) #3-60cc syringe containing the specified amount of the designated Lethal Injection Chemical shall be administered.
 - (D) #4-60cc syringe containing the specified amount of the designated Lethal Injection Chemical shall be administered.
 - (E) #5-60cc syringe containing the specified amount of the designated Lethal Injection Chemical shall be administered.
 - (F) #6-60cc syringe containing the saline flush.

(5) If, following the administration of syringe #1 the assessment indicates the inmate is not unconscious, the Intravenous Sub-Team member shall check the catheter for patency. After checking for patency, syringe #2 shall be administered followed by a second consciousness assessment of the inmate in the same manner as described in subsection (c)(4)(A). If the assessment indicates the inmate is not unconscious, the San Quentin Warden shall direct that the injection through the primary intravenous catheter be discontinued and the entire sequence re-initiated with the Lethal Injection Chemical on Tray B using the designated backup intravenous catheter.

(6) If, at any time during the infusion of the Lethal Injection Chemical the primary intravenous catheter fails, the San Quentin Warden shall:

(A) Direct the lethal injection process using the primary intravenous catheter and the chemical on Tray A be discontinued.

(B) Direct the Lethal Injection Chemical administration process set forth in subsections (4) and (5) begin again, but using the backup intravenous catheter and the Lethal Injection Chemical on Tray B.

(7) The inmate's heart activity shall be monitored by an electrocardiogram.

(8) The attending physician shall monitor the electrocardiogram. Death shall be determined and declared by a physician. Once death is declared, infusion of any remaining Lethal Injection Chemical shall cease.

(9) In the event all six syringes from Tray A have been administered, ten minutes has elapsed and death has not been declared, the Record Keeping Sub-Team member shall advise the Team Supervisor, who shall then advise the Team Administrator and the San Quentin Warden. The San Quentin Warden shall direct the Lethal Injection Chemical administration process set forth in subsections (4) - (8) be repeated, but using the backup intravenous catheter and the six syringes from Tray B.

(10) In the event all six syringes from Tray B have been administered, ten minutes has elapsed and death has not been declared, or an intravenous site cannot be established or maintained at either the primary or backup site, the Record Keeping Sub-Team member shall advise the Team Supervisor, who shall then advise the Team Administrator and the San Quentin Warden. The San Quentin Warden shall direct the Lethal Injection Chemical administration process set forth in subsections (4) and (5) be repeated, but using the alternate backup site and Tray C.

New Subsections 3349.7(d) through 3349.7(d)(6) are adopted to read:

(d) If the alternate backup site, as determined by the Intravenous Sub-Team vein assessment in accordance with Subsection 3349.5(f)(6), is to proceed, the following shall occur:

(1) An Intravenous Sub-Team member shall insert a catheter into the alternate backup pre-designated vein.

(2) After the catheter is inserted, inform the Intravenous Sub-Team member in the Infusion Control Room to initiate the intravenous drip.

(3) Inform the San Quentin Warden when the intravenous line has been successfully established.

(4) Once access is established, an Infusion Sub-Team member shall administer the six syringes from Tray C utilizing the intravenous line.

(5) In the event all six syringes from Tray C have been administered, ten minutes has elapsed and death has not been declared, the San Quentin Warden shall direct the Infusion Sub-Team to prepare a set of five additional syringes of Lethal Injection Chemical, each containing 1.5 grams of Lethal Injection Chemical. The Lethal Injection Chemical shall be mixed according to the manufacturer's instructions. A medically trained Infusion Sub-Team member shall prepare the syringes. A separate medically trained Infusion Sub-Team member or Intravenous Sub-Team member shall verify proper preparation of each syringe. The Warden shall direct the Infusion Sub-Team to administer a syringe containing 1.5 grams of the Lethal Injection Chemical in the alternate backup intravenous line, and wait for ten minutes. If the inmate's death has not been declared by the end of that ten-minute period, the San Quentin Warden shall direct the Infusion Sub-Team to administer another syringe containing 1.5 grams of Lethal Injection Chemical in the alternate backup intravenous line and wait ten minutes. The same process shall be followed until the five syringes have been administered. If at any time during this process the inmate is declared dead, the administration of Lethal Injection Chemical shall stop.

In the event all five syringes have been administered, ten minutes has elapsed and death has not been declared, the San Quentin Warden shall direct the Infusion Sub-Team to prepare a second set of five additional syringes of Lethal Injection Chemical, each containing 1.5 grams of Lethal Injection Chemical. The Lethal Injection Chemical shall be mixed according to the manufacturer's instructions. A medically trained Infusion Sub-Team member shall prepare the syringes. A separate medically trained Infusion Sub-Team member or Intravenous Sub-Team member shall verify proper preparation of each syringe. The Warden shall direct the Infusion Sub-Team to administer a syringe containing 1.5 grams of the Lethal Injection Chemical in the alternate backup intravenous line, and wait for ten minutes. If the inmate's death has not been declared by the end of that ten-minute period, the San Quentin Warden shall direct the Infusion Sub-Team to administer another syringe containing 1.5 grams of Lethal Injection Chemical in the alternate backup intravenous line and wait ten minutes. The same process shall be followed until the five syringes have been administered. If at any time during this process the inmate is declared dead, the administration of Lethal Injection Chemical shall stop.

(6) In the event that all ten syringes of Lethal Injection Chemical referred to in subsection (5) have been administered, ten minutes has elapsed, and death has not been declared, the San Quentin Warden shall stop the execution and summon medical assistance for the inmate as set forth in subsection (e).

New Subsection 3349.7(e) are adopted to read:

(e) Should the execution be stayed or stopped for any reason after administration of the Lethal Injection Chemical has commenced, the Team Administrator shall immediately request San Quentin medical personnel, or contracted medical personnel if there is no state civil service employee who is available and willing to perform the prescribed duties, respond to the Lethal Injection Facility to provide any medical care that is deemed necessary. The curtains on the viewing windows for witnesses shall be closed. The San Quentin Warden shall immediately go to the Infusion Control Room and ensure an announcement is made via the public address system notifying the witnesses the execution has been stayed or stopped. Immediately after the announcement, the public address system shall be turned off. The San Quentin Warden shall direct staff to escort the witnesses from the Lethal Injection Facility to the media center or off grounds.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27; *Baze v. Rees* (2008) 553 U.S.35, *Towery v. Brewer* (2012) 672 F.3d 650.

New Section Title 3349.8 is adopted to read:

3349.8 Post Execution Procedure.

New Subsections 3349.8(a) through 3349.8(a)(3) are adopted to read:

(a) Immediately following the declaration of death of the inmate, the San Quentin Warden shall:

(1) Ensure a prepared statement is read aloud via the public address system notifying the witnesses the execution is complete.

(2) Ensure the curtains on the viewing windows for witnesses are closed.

(3) Direct staff to escort the witnesses from the Lethal Injection Facility to the media center or off grounds.

New Subsection 3349.8(b) is adopted to read:

(b) The Intravenous Sub-Team shall crimp closed and disconnect all intravenous lines. The catheter or needle shall not be removed from the inmate to allow for review by the Marin County Coroner.

New Subsection 3349.8(c) is adopted to read:

(c) The Team Supervisor shall ensure the inmate's body is placed with care and dignity into a post-mortem bag pending removal as pre-arranged with the contract mortuary.

New Subsections 3349.8(d) through 3349.8(d)(2) are adopted to read:

(d) Approximately one hour after the execution, the San Quentin Warden shall ensure:

(1) A statement to the media is issued advising the sentence has been carried out and announcing the time of death.

(2) The inmate's written statement is made available if applicable.

New Subsection 3349.8(e) is adopted to read:

(e) It is the responsibility of the Lethal Injection Team and assigned custody staff to clean each area of the Lethal Injection Facility after the inmate's body has been removed.

New Subsection 3349.8(f) is adopted to read:

(f) Any unused Lethal Injection Chemical and the reason why it was unused shall be documented on the CDCR Form 2176 (10/15), Lethal Injection Chain of Custody-San Quentin State Prison. The Infusion Sub-Team shall transfer the unused Lethal Injection Chemical to the Team Supervisor who shall place it in the Lethal Injection Facility safe to await disposal. The Lethal Injection Chemical transfer shall be documented on the CDCR Form 2176 (10/15), Lethal Injection Chain of Custody-San Quentin State Prison, and the final signature block signed by the Team Supervisor. The signed form shall remain with the Lethal Injection Chemical.

New Subsection 3349.8(g) is adopted to read:

(g) The Intravenous Sub-Team shall complete a post-execution inventory of all supplies and equipment that were used during the execution. The Intravenous Sub-Team shall give the inventory to the Team Supervisor, who shall arrange for replacement and replenishment of supplies.

New Subsections 3349.8(h) through 3349.8(h)(6) are adopted to read:

(h) Lethal Injection Reporting requirements:

(1) Immediately following the execution, the Team Supervisor shall complete a CDCR Form 2182 (10/15), San Quentin State Prison Execution Report – Team Supervisor, which is hereby incorporated by reference.

(2) Immediately following the execution, each Lethal Injection Team member shall complete a CDCR Form 2183 (10/15), San Quentin State Prison Execution Report – Team member, which is hereby incorporated by reference, documenting their actions and observations during the execution. The Lethal Injection Team members shall use identifiers assigned to their specific position (duties), rather than their names and/or classifications, when they submit their reports.

(3) Any use of force shall be documented and reviewed in accordance with Section 3268.1, Reporting and Investigating the Use of Force for Institution/Facility Staff.

(4) The Team Administrator shall review the completed Execution Report. The Execution Report shall be routed through the San Quentin Chief Deputy Warden for the San Quentin Warden's review and signature.

(5) A copy of the completed Execution Report shall be delivered to the Director – Division of Adult Institutions and the CDCR Secretary for review and follow up as needed.

(6) The original Execution Report shall be retained at San Quentin as part of the Master Execution File.

New Subsection 3349.8(i) is adopted to read:

(i) Assigned custody staff shall conduct a security inspection of the Lethal Injection Facility to ensure all doors are secured and no items were left behind.

New Subsection 3349.8(j) is adopted to read:

(j) The Team Supervisor shall secure the Lethal Injection Facility, return the keys and report directly to the Team Administrator and the San Quentin Warden that the Lethal Injection Facility has been secured.

New Subsections 3349.8(k) through 3349.8(k)(3) are adopted to read:

(k) Debriefing.

(1) The Team Administrator along with the Team Supervisor shall hold a debriefing with all Lethal Injection Team members prior to leaving the Lethal Injection Facility. All documents and records concerning the execution shall be collected by the Team Administrator for review and inclusion in the Execution Report.

(2) The Team Administrator along with the Team Supervisor shall offer the Lethal Injection Team members post trauma counseling.

(3) As soon as possible but no later than 24 hours after the execution, the San Quentin Warden shall arrange for a confidential individual debriefing by appropriate staff with the Team Administrator, the Team Supervisor, and each Lethal Injection Team member. Each individual may be accompanied by a person of his or her choosing to the individual debriefing. The San Quentin Warden shall offer the Team Administrator and Team Supervisor post trauma counseling

New Subsection 3349.8(l) is adopted to read:

(l) The San Quentin Litigation Coordinator shall assemble all appropriate reports, place them into the Master Execution File, and maintain the Master Execution File.

New Subsection 3349.8(m) is adopted to read:

(m) The San Quentin Warden shall ensure the CDCR Form 2178 (10/15), Return on Execution Warrant, which is hereby incorporated by reference, is completed and forward it and a copy of the Certificate of Death to the Clerk of the Court from which the inmate was under sentence of death pursuant to Penal Code Section 3607.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704, and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27.; *Baze v. Rees* (2008) 553 U.S.35 *Towery v. Brewer* (2012) 672 F.3d 650.

New Section Title 3349.9 is adopted to read:

3349.9 Lethal Injection Record Keeping and Documentation.

New Subsection 3349.9(a) is adopted to read:

(a) Upon receipt of the execution warrant, the Litigation Coordinator at the institution where the inmate is housed shall be responsible for the security of all documents generated to be included in the Master Execution File prior to transfer of the inmate to the Lethal Injection Facility. Upon transfer the San Quentin Litigation Coordinator shall assume responsibility.

New Subsection 3349.9(b) is adopted to read:

(b) The Warden of the institution where the inmate is housed is responsible to ensure that all documents generated by staff associated with the inmate to be executed are accurate, completed in a timely manner, and forwarded to the Litigation Coordinator who shall retain a copy and send the original document to the San Quentin Warden.

New Subsection 3349.9(c) is adopted to read:

(c) The Team Supervisor shall ensure that all documents generated by the Lethal Injection Team are accurate, completed in a timely manner, and forwarded to the Team Administrator for review. Upon completion of review, the Team Administrator shall forward the documents to the San Quentin Litigation Coordinator for inclusion in the Master Execution File.

New Subsection 3349.9(d) is adopted to read:

(d) The San Quentin Litigation Coordinator shall maintain the Master Execution File in the San Quentin Warden's office complex. The Master Execution File shall serve as a permanent record of all documents related to the execution and shall be archived in the San Quentin Warden's office complex.

New Subsections 3349.9(e) through 3349.9(e)(28) are adopted to read:

(e) The Master Execution File shall include the following documents:

(1) People's Application for Appointment of Execution Date.

- (2) Execution Warrant.
- (3) CDCR Form 1801 (Rev. 10/15), Notification of Execution Date and Choice of Execution Method.
- (4) CDCR Form 1801-B (Rev. 10/15), Service of Execution Warrant -Warden's Initial Interview.
- (5) Notice of execution warrant to Director, Division of Adult Institutions.
- (6) Notice of execution warrant to Governor's Legal Affairs Secretary.
- (7) Memorandum identifying Alienist Panel.
- (8) CDCR Form 1801-A (Rev. 10/15), Choice of Execution Method.
- (9) CDCR Form 1801-C (10/15), Request For Approval of Witnesses.
- (10) CDCR Form 1801-D (10/15), Last Meal Request.
- (11) CDCR Form 1801-E (10/15), Disposition of Personal Property.
- (12) CDCR Form 1801-F (10/15), Release of Remains and Burial Arrangements.
- (13) CDCR Form 2173 (10/15), 20 Day Pre-Execution Report, pursuant to Penal Code 3700.5.
- (14) CDCR Form 2174 (10/15), Notification By Warden To The District Attorney Concerning Sanity of Condemned Inmate.
- (15) CDCR Form 2175 (10/15), 7 Day Pre-Execution Report.
- (16) CDCR Form 2176 (10/15), Lethal Injection Chain of Custody-San Quentin.
- (17) CDCR Form 2177 (10/15), San Quentin State Prison Execution Log-Lethal Injection Infusion Sub-Team.
- (18) CDCR Form 2178 (10/15), Return on Execution Warrant.
- (19) CDCR Form 2179 (10/15), San Quentin State Prison Execution Log-Lethal Injection Intravenous Sub-Team.
- (20) CDCR Form 2181 (10/15), San Quentin State Prison Execution Log-Lethal Injection Team Administrator/Team Supervisor.
- (21) CDCR Form 2182 (10/15), San Quentin State Prison Execution Report-Team Supervisor.
- (22) CDCR Form 2183 (10/15), San Quentin State Prison Execution Report – Team member.
- (23) Condemned inmate's Pre-Execution Logbook.
- (24) Copies of Lethal Injection Team training documentation for the three calendar days immediately preceding the execution.
- (25) Copies of Inmate Visiting Records.
- (26) If force was utilized at any point during the lethal injection process, CDCR Form 2182 (10/15), San Quentin State Prison Execution Report-Team Supervisor, shall be forwarded to the Executive Use of Force Review Committee to include in its review. When the Committee has completed their review of the

Use of Force, the Executive Use of Force Review Committee findings and all associated documentation shall be added to the Master Execution File.

(27) The Execution Report

(28) Any and all other documents relative to the execution.

New Subsection 3349.9(f) is adopted to read:

(f) After an execution has concluded, the Team Administrator shall review the Master Execution File to ensure that all documents are accounted for and appropriately categorized.

New Subsection 3349.9(g) is adopted to read:

(g) In the event the execution is stayed, the Master Execution File shall be closed and remain in the San Quentin Warden's Office complex indefinitely.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3601, 3602, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704, 3705, 3706 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27.; *Baze v. Rees* (2008) 553 U.S.35 and *Towery v. Brewer* (2012) 672 F.3d 650.

NAME and NUMBER

CDC 128-B (Rev. 4/74)

DATE

GENERAL CHRONO

NAME and NUMBER

CDC 128-B (Rev. 4/74)

DATE

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NAME and NUMBER

CDC 128-B (Rev. 4/74)

DATE

GENERAL CHRONO

DISTRIBUTION:
WARDEN (ORIGINAL)
CENTRAL FILE - COPY
INMATE - COPY



On _____, I, _____,
MONTH, DATE, AND YEAR PRINT OR TYPE FULL NAME
was served Execution Warrant number _____ issued by
_____ County Superior Court on _____.
NAME OF COUNTY MONTH, DATE, YEAR

It was explained to me that I have an execution date of _____
MONTH, DATE, YEAR
and that I may choose either lethal gas or lethal injection as the method of execution. I understand that I have ten days from the date of the service of the warrant, or until _____ to make this choice in writing to the
MONTH, DATE, YEAR
Warden.

I also understand that if I do not make a choice, lethal injection will be the method of execution.

INMATE'S SIGNATURE	CDCR NUMBER	DATE SIGNED
SIGNATURE OF WITNESS		DATE SIGNED
COMMENTS OF WITNESS		

DISTRIBUTION:
WARDEN (ORIGINAL)
CENTRAL FILE – COPY
INMATE - COPY



On _____, I, _____,
MONTH, DATE, YEAR ORDER WAS SERVED PRINT OR TYPE FULL NAME
was served Execution Warrant number _____ issued by the
_____ County Superior Court on _____.
NAME OF COUNTY MONTH, DATE, YEAR

I have been notified that my execution date will be _____
MONTH, DATE, YEAR
and that I may choose either lethal gas or lethal injection as the method of execution.
I understand that I had ten days from the date the warrant was served, or
until _____ to make this choice in writing to the
MONTH, DATE, YEAR
Warden.

I also understand that if I do not make a choice, lethal injection will be the method of execution.

This is to notify the Warden that my choice is _____
LETHAL GAS OR LETHAL INJECTION

The chemical utilized for the lethal injection shall be _____
in the amount of _____.

INMATE'S SIGNATURE	CDCR NUMBER	DATE SIGNED
SIGNATURE OF WITNESS		DATE SIGNED

COMMENTS OF WITNESS

I, _____, have received a copy of the Execution Warrant
PRINT OR TYPE FULL NAME
number _____ issued by _____ County Superior Court on _____.
NAME OF COUNTY MONTH, DAY, YEAR

I have had an opportunity to discuss its ramifications and other related issues with a prison administrator on _____. I understand that I am entitled to elect either lethal gas or lethal injection as the method of execution. I further understand I must make my choice in writing on a CDCR Form 1801-A to the Warden. If I do not choose either lethal gas or lethal injection within ten days after the service of this execution warrant, I understand the method of execution will be lethal injection. I further understand if I receive a stay of execution, I will again have the opportunity to choose the method of execution when I am served with another execution date. I understand I have an execution date of _____.
MONTH, DAY, YEAR

X _____
INMATE'S SIGNATURE

() Inmate has received a copy of the Execution Warrant but refuses to sign for it.

X _____
WARDEN'S SIGNATURE

Initial the following, if applicable:

- () Inmate understands he may choose either lethal gas or lethal injection as the method of execution.
- () Inmate understands he must make his choice in writing to the Warden within ten days after service of execution warrant. This ten day period expires on _____.
MONTH, DAY, YEAR
- () Inmate understands he will be recontacted on the above date if the Warden has not received his written notice of choice.
- () Inmate understands if he makes no choice, execution will be imposed by lethal injection.
- () Inmate understands the nature of the document and the possible ramifications.
- () Inmate has been in contact with legal counsel regarding this matter.
- () Inmate understands he will be interviewed by psychiatric staff and a report of their findings will be filed.
- () Inmate claims to be of the _____ faith.
- () Inmate understands he will be interviewed by a chaplain and a nonspecific report will be filed.
- () Inmate has had an explanation of the course of events set in motion by the Warrant of Execution.
- () Effective communication established: see comment section.

INTERVIEWER'S OBSERVATION AND COMMENTS

WARDEN PRINTED NAME	WARDEN SIGNATURE	DATE SIGNED
WITNESS' PRINTED NAME/ (Litigation Coordinator)	WITNESS' SIGNATURE	DATE SIGNED

REQUEST FOR APPROVAL OF WITNESSES

Per Penal Code Section 3605, I am requesting that the following person(s) be permitted to witness the execution. I understand that all requested witnesses must meet all guidelines applied to normal visiting. All persons not meeting these guidelines will not be approved. No witnesses under the age of 18 will be permitted.

FAMILY AND LOVED ONES			
NAME & AGE	ADDRESS	TELEPHONE #	RELATIONSHIP

SPIRITUAL ADVISORS		
NAME	ADDRESS	TELEPHONE #

Inmate Name

Inmate Signature

CDCR #

- Witnesses contacted to obtain information needed to perform CLETS check
- CLETS check completed by Administrative Assistant (Attach reports)

APPROVED/DISAPPROVED

Warden
California State Prison at San Quentin

Date

LAST MEAL REQUEST

I am requesting that the following food be provided for my last meal. I understand that all requests must be approved by the Food Manager and the Warden. Unreasonable requests shall not be accommodated. Last meal cost shall not exceed \$50.00.

Meal Items Requested

Inmate Name

Inmate Signature

CDCR #

APPROVED/DISAPPROVED

Food Manager

Date

APPROVED/DISAPPROVED

Warden
California State Prison at San Quentin

Date

DISPOSITION OF PERSONAL PROPERTY

I am requesting that any and all of my personal property and effects, as well as any funds remaining in the trust account maintained by the Department of Corrections and Rehabilitation in my name be distributed to the person(s) listed below in accordance with Penal Code Section 5061 and California Code of Regulations, Title 15, Section 3191.

PERSONAL PROPERTY

NAME	ADDRESS	TELEPHONE #

FUNDS IN TRUST ACCOUNT

NAME	ADDRESS	TELEPHONE #

LEGAL MATERIAL

NAME	ADDRESS	TELEPHONE #

Inmate Name

Inmate Signature

CDCR #

APPROVED/DISAPPROVED

Warden
California State Prison at San Quentin

Date

RELEASE OF REMAINS AND BURIAL ARRANGEMENTS

I am requesting that my remains be released to the person or organization identified herein. I understand that the state of California does not accept financial responsibility for the disposition of my remains. I have designated the person who will accept that responsibility. If I do not designate these arrangements, the State will process my remains in accordance with Penal Code Section 5061 and California Code of Regulations, Title 15, Section 3357.

Funeral Home _____
Address _____

Telephone _____
Contact Person _____

Person financially responsible for the disposition of remains:

Name _____
Address _____

Telephone _____
Relationship _____

Inmate Name Inmate Signature CDCR #

Warden
California State Prison at San Quentin

Date

Memorandum

Date :
To : WARDEN
From : San Quentin State Prison, San Quentin, CA 94964
Subject : **20-DAY PRE-EXECUTION REPORT**
_____ (NAME AND NUMBER OF INMATE)

This report of a competency evaluation is prepared pursuant to Title 15, Article 7.5 and Section 3700.5 of the California Penal Code. Inmate _____ (name), CDCR# _____ is scheduled for execution of his/her death sentence on _____ (date).

Inmate _____ (name) was advised that I was a psychiatrist and the purpose of the interview was to evaluate his/her legal competency to undergo execution. I advised that I was not his/her treating physician and that the results of the interview were not confidential but would be shared with others. The inmate said he/she understood/did not understand (circle one) the information above.

Inmate _____ (name)[describe: grooming, demeanor, orientation, speech, mood and any other features relevant to the documentation of the inmate's competency on a separate report and attach to this form.]

Inmate _____ (name), CDCR# _____ understood his/her circumstances and that he/she

Understood the nature of the death penalty and why it was imposed.

Did not understand the nature of the death penalty and why it was imposed.

It is my opinion that Inmate _____ (name) is legally competent/not legally competent (circle one) to undergo execution.

Staff Psychiatrist (Print Name of Alienist)

Staff Psychiatrist (Signature of Alienist) _____
Date

**NOTIFICATION BY WARDEN TO
DISTRICT ATTORNEY CONCERNING SANITY OF
CONDEMNED INMATE (PC § 3700)**

To: _____, District Attorney, County of Marin

From: _____, Warden, San Quentin State Prison

Re: Condemned Inmate _____, CDCR # _____

Pursuant to Penal Code § 3701, There is good reason to believe that the above named inmate/defendant, who is under sentence of death, has become insane.

This is based on the following:

A. Information concerning the inmate:

1. County from which the inmate is under sentence of death: _____
2. Charges convicted of: _____
3. Date set for execution: _____

B. Enclosed with this memorandum are the following:

- ____ 1. Copies of the reports of the three alienists who examined the Inmate/defendant per PC § 3700.5;
- ____ 2. A copy of the inmate's psychiatric file;
- ____ 3. Other _____

_____, Warden
California State Prison at San Quentin

Date: _____

Memorandum

Date :
To : WARDEN
From : San Quentin State Prison, San Quentin, CA 94964
Subject : **7-DAY PRE-EXECUTION REPORT**

This report of a competency evaluation is prepared pursuant to Title 15, Article 7.5. Inmate _____ (name) is scheduled for execution of his/her death sentence on _____ (date).

Inmate (name) was evaluated by Drs. _____ (name or names of alienists) on _____ (Date of Exam). Their reports will be provided separately. The inmate is housed in _____ (location).

Inmate _____ (name) was advised that I was a psychiatrist and the purpose of the interview was to evaluate his/her legal competency to undergo execution. I advised that I was not his/her treating physician and that the results of the interview were not confidential but would be shared with others. The inmate said he/she understood/did not understand (circle one) the information above.

Inmate _____ (name) [describe: grooming, demeanor, orientation, speech, mood and any other features relevant to the documentation of the inmate's competency on a separate report and attach to this form.]

In conclusion, inmate _____ (name), CDCR# _____ is considered not mentally competent/considered mentally competent and meets the criteria for execution of his/her death sentence as scheduled (circle one).

Staff Psychiatrist (Print Name of alienist)

Staff Psychiatrist (Signature of alienist) _____
Date

LETHAL INJECTION CHAIN OF CUSTODY
SAN QUENTIN STATE PRISON

This form is the chain of custody that accompanies the Lethal Injection Protocol chemical scheduled for the execution of _____ at _____.
Inmate name CDCR # Time Date

STEP 1. Procurement of Chemical from Pharmacy or Distributor

_____	_____	_____
-------	-------	-------

Chemical name Lot # Expiration Date

_____	_____	_____
-------	-------	-------

Number of vials Volume per vial Total amount

-------	--	--

Name of pharmacy or distributor

Received by _____ Date _____ Time _____
Team Supervisor

Verified by _____ Date _____ Time _____
Team Administrator

Verified by _____ Date _____ Time _____

STEP 2. Transfer from lethal injection facility safe to infusion sub-team

_____	_____	_____
-------	-------	-------

Chemical name Lot # Expiration Date

_____	_____	_____
-------	-------	-------

Number of vials Volume per vial Total amount

Received by _____ Date _____ Time _____
Infusion Team Member

Verified by _____ Date _____ Time _____
Team Supervisor

Verified by _____ Date _____ Time _____
Infusion Team Member

STEP 3. Transfer of unused chemical from Infusion Sub-Team to lethal injection facility safe (if necessary)

--	--	--

Chemical name

Lot #

Expiration Date

--	--	--

Number of vials

Volume per vial

Total amount

--

Reason

Received by _____ Date _____ Time _____
Team Supervisor

Verified by _____ Date _____ Time _____
Infusion Team Member

STEP 4. Final signature after completion of the lethal injection protocol.
(Original signed form to remain with lethal injection chemical)

Team Administrator: _____ Date ____/____/____
Print Name Date Time

Signature

Team Supervisor: _____ Date ____/____/____
Print Name Date Time

Signature

San Quentin State Prison Lethal Injection Infusion Sub-Team Execution Log

Inmate Name	CDCR #	Date of Execution

Record Keeping Team Member Identification #: _____

Lethal Injection Chemical _____

Total Dose _____

Dose per syringe _____

Step	Task	Time	Comments
1.	Infusion Sub-Team Members arrive at the Lethal Injection Facility.		
2.	Transfer of chemicals to Infusion Sub-Team; (chain of custody).		
3.	Mix Lethal Injection Chemical according to manufacturer's instructions (if necessary).		
TRAY A – Primary - Red			
4.	Draw the specified amount of the designated Lethal Injection Chemical into a 60cc syringe.		
5.	Label this syringe in red; [Lethal Injection Chemical name] A-1		
6.	Repeat step 4 and label this syringe in red; A-2		
7.	Repeat step 4 and label this syringe in red; A-3		
8.	Repeat step 4 and label this syringe in red; A-4		
9.	Repeat step 4 and label this syringe in red; A-5		
10.	Draw 50cc of normal saline into a 60cc syringe and label in red; A-6 Saline.		
TRAY B – Backup - Blue			
11.	Draw the specified amount of the designated Lethal Injection Chemical into 60cc syringe.		
12.	Label this syringe in blue; [Lethal Injection Chemical name] B-1		
13.	Repeat step 11 and label this syringe in blue; B-2		
14.	Repeat step 11 and label this syringe in blue; B-3		
15.	Repeat step 11 and label this syringe in blue; B-4		
16.	Repeat step 11 and label this syringe in blue; B-5		
17.	Draw 50cc of normal saline into a 60cc syringe and label in blue; B-6 Saline.		
TRAY C – Alternate Backup - Yellow			
18.	Draw the specified amount of the designated Lethal Injection Chemical into a 60cc syringe.		
19.	Label this syringe in yellow; [Lethal Injection Chemical name] C-1		

Step	Task	Time	Comments
20.	Repeat step 18 and label this syringe in yellow; C-2		
21.	Repeat step 18 and label this syringe in yellow; C-3		
22.	Repeat step 18 and label this syringe in yellow; C-4		
23.	Repeat step 18 and label this syringe in yellow; C-5		
24.	Draw 50cc of normal saline into a 60cc syringe and labeled in yellow: C-6 Saline.		
25.	Infusion Sub-Team or Intravenous Sub-Team member verifies proper preparation of Trays A, B and C.		
INFUSION. Once death is declared, infusion of any remaining chemical shall cease.			
26.	Inject syringe #A-1		
27.	Consciousness check. If the inmate is not unconscious, check the catheter for patency. Continue to step 28.		
28.	Inject syringe #A-2		
29.	Consciousness check (if necessary). If the inmate is unconscious, continue to step 30. If the inmate remains conscious, discontinue Tray A and initiate Tray B in backup intravenous catheter (step 35).		
30.	Inject syringe #A-3		
31.	Inject syringe #A-4		
32.	Inject syringe #A-5		
33.	Inject syringe #A-6 Saline Flush.		
34.	Backup. If all six syringes in Tray A have been administered and death has not been pronounced after 10 minutes, or if at any time during infusion the primary catheter has failed, continue to Tray B.		
35.	Inject syringe # B-1		
36.	Inject syringe # B-2		
37.	Inject syringe # B-3		
38.	Inject syringe # B-4		
39.	Inject syringe # B-5		
40.	Inject syringe # B-6 Saline Flush.		
41.	Alternate Backup. If all six syringes in Tray B have been administered and death has not been pronounced after 10 minutes, continue to Tray C.		
42.	Inject syringe # C-1		
43.	Inject syringe # C-2		
44.	Inject syringe # C-3		
45.	Inject syringe # C-4		
46.	Inject syringe # C-5		
47.	Inject syringe # C-6 Saline Flush.		
48.	Additional Syringes. If all six syringes in Tray C have been administered and death has not been pronounced after 10 minutes, prepare five additional syringes for administration through the alternate backup IV line.		

Step	Task	Time	Comments
49.	Mix Lethal Injection Chemical according to manufacturer's instructions (if necessary).		
50.	Infusion Sub-Team or Intravenous Sub-Team member verifies proper preparation of five additional syringes.		
51.	Inject first additional syringe. Wait 10 minutes. If death has not been pronounced, continue to step 52.		
52.	Inject second additional syringe. Wait 10 minutes. If death has not been pronounced, continue to step 53.		
53.	Inject third additional syringe. Wait 10 minutes. If death has not been pronounced, continue to step 54.		
54.	Inject fourth additional syringe. Wait 10 minutes. If death has not been pronounced, continue to step 55.		
55.	Inject fifth additional syringe. Wait 10 minutes. If death has not been pronounced, continue to step 56.		
56.	Additional Syringes. If all five syringes have been administered and death has not been pronounced after 10 minutes, prepare five additional syringes for administration through the alternate backup IV line.		
57.	Mix Lethal Injection Chemical according to manufacturer's instructions (if necessary).		
58.	Infusion Sub-Team or Intravenous Sub-Team member verifies proper preparation of five additional syringes.		
59.	Inject first additional syringe. Wait 10 minutes. If death has not been pronounced, continue to step 60.		
60.	Inject second additional syringe. Wait 10 minutes. If death has not been pronounced, continue to step 61.		
61.	Inject third additional syringe. Wait 10 minutes. If death has not been pronounced, continue to step 62.		
62.	Inject fourth additional syringe. Wait 10 minutes. If death has not been pronounced, continue to step 63.		
63.	Inject fifth additional syringe.		

Physician pronounces the inmate dead.		
--	--	--

Lethal Injection Team Administrator

Date

San Quentin State Prison Lethal Injection Intravenous Sub-Team Execution Log

Inmate Name	CDCR#	Date of Execution

Record Team Member Identification # _____

Step	Task	Time	Comments
1.	IV tubing and needles given final check.		
2.	ECG pads are placed on inmate's chest.		
3.	ECG leads attached to monitor.		
4.	Inspect inmate restraints to ensure circulation.		
5.	Insert intravenous catheter – Primary.		
6.	Primary catheter patency confirmed.		
7.	Intravenous drip initiated – Primary.		
8.	Insert intravenous catheter - Secondary		
9.	Secondary catheter patency confirmed.		
10.	Intravenous drip initiated – Secondary.		
11.	One Intravenous Sub-Team Member exits Lethal Injection Room and goes to Infusion Room to record infusion of chemicals on ECG graph paper.		
12.	One Intravenous Sub-Team Member takes position next to inmate to monitor Intravenous lines and assess the consciousness of the inmate.		
INFUSION. Once death is declared, infusion shall cease.			
13.	Saline drip in primary arm is stopped.		
14.	Syringe #A-1 administered; mark ECG graph paper #A-1.		
15.	Sub-Team Member in Lethal Injection Room checks inmate for consciousness.		
16.	Syringe #A-2 administered; mark ECG graph paper #A-2.		
17.	Sub-Team Member in Lethal Injection Room checks inmate for consciousness (if necessary).		
18.	Syringe #A-3 administered; mark ECG graph paper #A-3.		
19.	Syringe #A-4 administered; mark ECG graph paper #A-4.		
20.	Syringe #A-5 administered; mark ECG graph paper #A-5.		
21.	Syringe #A-6 administered; mark ECG graph paper #A-6.		
If chemicals on Tray B are used the backup catheter will be used.			
22.	Syringe #B-1 administered; mark ECG graph paper #B-1.		
23.	Syringe #B-2 administered; mark ECG graph paper #B-2.		
24.	Syringe #B-3 administered; mark ECG graph paper #B-3.		
25.	Syringe #B-4 administered; mark ECG graph paper #B-4.		
26.	Syringe #B-5 administered; mark ECG graph paper #B-5.		
27.	Syringe #B-6 administered; mark ECG graph paper #B-6.		

Step	Task	Time	Comments
If chemicals on Tray C are used the alternate backup catheter will be used.			
28.	Insert intravenous catheter - Alternate backup.		
29.	Alternate backup catheter patency confirmed.		
30.	Intravenous drip initiated - Alternate backup.		
31.	Syringe #C-1 administered; mark ECG graph paper #C-1.		
32.	Syringe #C-2 administered; mark ECG graph paper #C-2.		
33.	Syringe #C-3 administered; mark ECG graph paper #C-3.		
34.	Syringe #C-4 administered; mark ECG graph paper #C-4.		
35.	Syringe #C-5 administered; mark ECG graph paper #C-5.		
36.	Syringe #C-6 administered; mark ECG graph paper #C-6.		
If additional syringes are used the alternate backup catheter will be used.			
37.	Syringe #1 administered; mark ECG graph paper #X-1.		
38.	Syringe #2 administered; mark ECG graph paper #X-2.		
39.	Syringe #3 administered; mark ECG graph paper #X-3.		
40.	Syringe #4 administered; mark ECG graph paper #X-4.		
41.	Syringe #5 administered; mark ECG graph paper #X-5.		
If additional syringes are used the alternate backup catheter will be used.			
42.	Syringe #6 administered; mark ECG graph paper #X-6.		
43.	Syringe #7 administered; mark ECG graph paper #X-7.		
44.	Syringe #8 administered; mark ECG graph paper #X-8.		
45.	Syringe #9 administered; mark ECG graph paper #X-9.		
46.	Syringe #10 administered; mark ECG graph paper #X-10.		
47.	Mark ECG graph paper when death is pronounced.		
48.	Prepare final report.		

Lethal Injection Team Administrator

Date

**San Quentin State Prison
Lethal Injection Team Administrator/Team Supervisor
Execution Log**

Inmate Name	CDCR #	Date of Execution

Record Team Member Identification # _____

Step	Task	Time	Comments
1.	3 hours prior: Assemble Sub-Team and make assignments.		
Record Keeping Sub-Team activated; Execution Logs begin.			
2.	The Lethal Injection Team will remove the lethal injection chemicals from the Lethal Injection Facility safe.		
3.	The Lethal Injection Team will transfer custody of the lethal injection chemicals to two members of the Lethal Injection Infusion Sub-Team and complete the Chain of Custody form.		
4.	The Team Administrator along with the Warden of San Quentin will meet with the condemned inmate in the Lethal Injection Facility holding cell area. <ul style="list-style-type: none"> • Ask if the inmate wishes to write a last statement to be read after the execution. • Inform the inmate that a sedative is available. Valium or its equivalent will be administered under the direction and approval of a clinician. 		
5.	The Lethal Injection Team Administrator and Team Supervisor will take positions in the Infusion Control room.		
6.	Infusion of lethal chemicals is initiated.		
7.	Flat line noted on ECG.		
8.	Death pronounced.		
9.	Witnesses notified that inmate has expired.		
10.	Curtains drawn on viewing windows.		
11.	Inmate's body prepared for Coroner/Mortuary.		
If chemicals on Tray B are used the backup catheter will be used.			
12.	Repeat protocol.		
13.	Flat line noted on ECG.		
14.	Death pronounced.		
15.	Witnesses notified that inmate has expired.		
16.	Curtains drawn on viewing windows.		
17.	Inmate's body prepared for Coroner/Mortuary.		
If chemicals on Tray C are used the alternate backup catheter will be used.			
18.	Repeat protocol.		
19.	Flat line noted on ECG.		
20.	Death pronounced.		
21.	Witnesses notified that inmate has expired.		

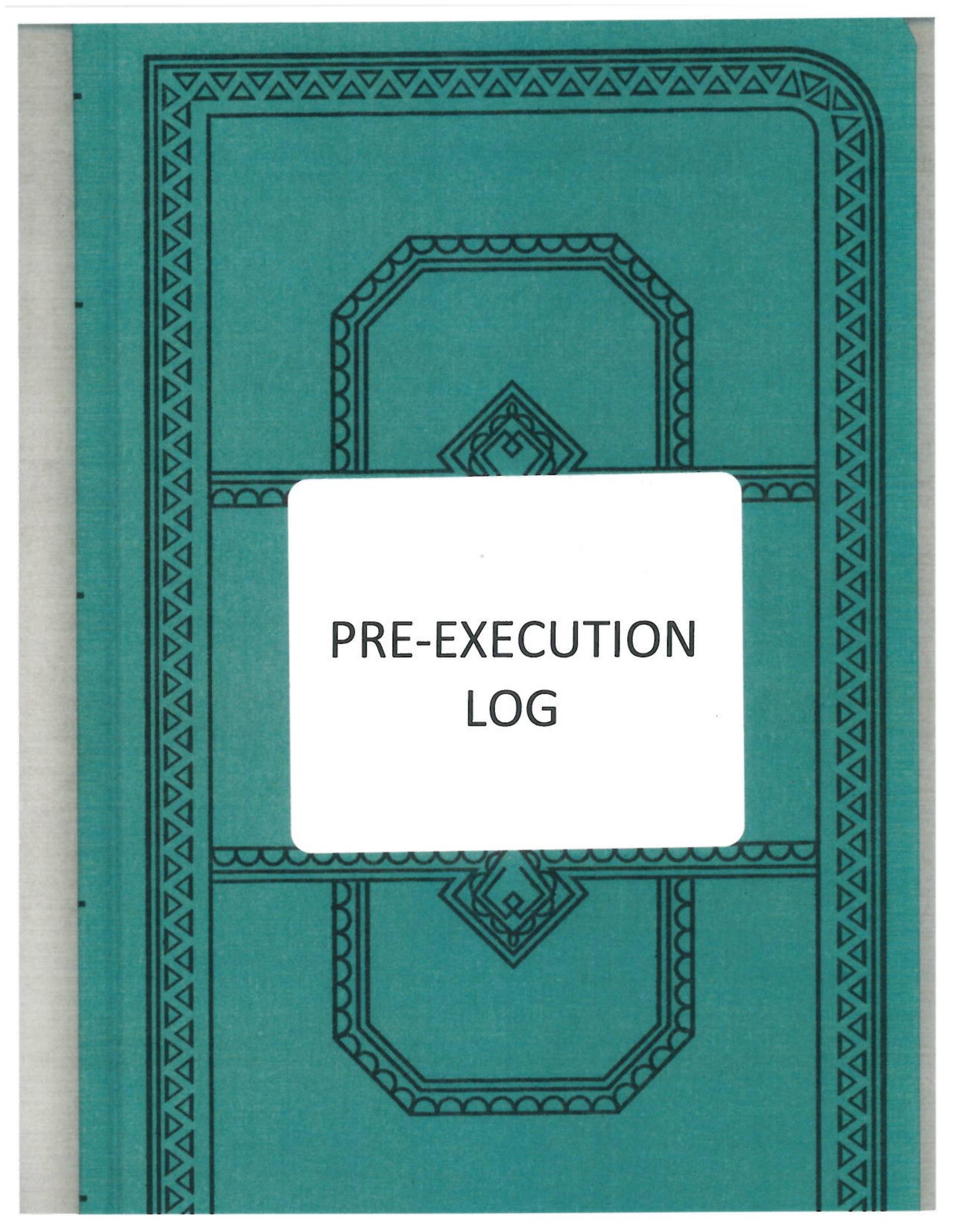
**SAN QUENTIN STATE PRISON LETHAL INJECTION
TEAM ADMINISTRATOR/TEAM LEADER EXECUTION LOG
CDCR 2181 (10/15)**

Page 2 of 2

Step	Task	Time	Comments
22.	Curtains drawn on viewing windows.		
23.	Inmate's body prepared for Coroner/Mortuary.		
If additional syringes are used the alternate backup catheter will be used.			
24.	Repeat protocol.		
25.	Flat line noted on ECG.		
26.	Death pronounced.		
27.	Witnesses notified that inmate has expired.		
28.	Curtains drawn on viewing windows.		
29.	Inmate's body prepared for Coroner/Mortuary.		
If additional syringes are used the alternate backup catheter will be used.			
30.	Repeat protocol.		
31.	Flat line noted on ECG.		
32.	Death pronounced.		
33.	Witnesses notified that inmate has expired.		
34.	Curtains drawn on viewing windows.		
35.	Inmate's body prepared for Coroner/Mortuary.		

Lethal Injection Team Administrator: _____

Date: _____

The image shows the front cover of a book. The cover is a solid teal color and features a complex, symmetrical geometric pattern in black ink. The pattern consists of a wide border made of small triangles, an inner frame with a scalloped edge, and a central diamond-shaped motif with nested lines. A white, rounded rectangular label is centered on the cover, containing the text "PRE-EXECUTION LOG" in a bold, black, sans-serif font.

**PRE-EXECUTION
LOG**

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Section 3349 and adopt new Sections 3349.1 through 3349.9 in the California Code of Regulations (CCR), Title 15, Division 3, Subchapter 4, Article 7.5, governing the Administration of the Death Penalty in California, as authorized by Article I, Section 27 of the California Constitution and by Penal Code Section 3604.

California law provides for capital punishment and provides inmates a choice between lethal injection and lethal gas. (California Constitution, Article I, Section 27; Penal Code Sections 190 & 3604, subdivision (b).) CDCR is responsible for developing procedures for lethal injection. (Penal Code Section 3604, subdivision (a).) Penal Code Section 3603 requires that the judgment of death be carried out at the California State Prison at San Quentin.

The proposed regulations establish a one-chemical protocol as the procedure for administering capital punishment by lethal injection. The procedures detailed in this new rulemaking fulfill CDCR's statutory mandate, pursuant to Penal Code section 3604, to establish standards for "an intravenous injection of a substance or substances in a lethal quantity sufficient to cause death."

While CDCR considered several single and multi-chemical combination methods of execution, it elected to use a single-chemical method because it reduces the risk of pain and possible complications, and addresses constitutional concerns. Under the proposed single-chemical protocol, the chemical utilized to produce unconsciousness is also the chemical which will cause death.

This marks a change from the three-chemical protocol, which was adopted in 2010 and established the procedures for execution by the intravenous injection of three chemicals:

- Sodium Thiopental – a barbiturate sedative, to induce unconsciousness.
- Pancuronium Bromide – a neuromuscular blocking agent, to induce paralysis, and cause breathing to cease.
- Potassium Chloride – to induce cardiac arrest.

The purpose of the proposed regulations is to develop a humane and dignified execution that provides safeguards that include a consistent and reliable screening process for Lethal Injection Team members; training, supervision, and oversight of the Lethal Injection Team; preparation and administration of the selected Lethal Injection Chemical; consistent and reliable record-keeping; and use of well-designed facilities in which the Lethal Injection Team performs the designated tasks and the execution takes place.

Brief History

Prior to promulgating regulations, CDCR referred to its lethal injection procedure as Operational Procedure 770. Operational Procedure 770 was reviewed by the court in *Morales v. Tilton* (N.D. Cal. 2006) 465 F.Supp.2d 972. In December 2006, the *Morales* court issued a memorandum of intended decision and found that the March 2006 version of Operational Procedure 770 created an impermissible risk of an Eighth Amendment violation. However, the court also found that, while “Defendants’ implementation of the lethal injection is broken, it can be fixed.”

In response, CDCR prepared a new protocol that substantially differed from the Operational Procedure considered by the *Morales* court. The new protocol, also called Operational Procedure 770, was issued in May 2007. However, before the new May 2007 version of Operational Procedure 770 could be evaluated by the federal court, condemned inmates Michael Morales and Mitchell Sims initiated a complaint for declaratory and injunctive relief against the CDCR in the Marin County Superior Court (No. Civ-061436).

On October, 31, 2007, the Marin County Superior Court invalidated Operational Procedure 770 finding that the Operational Procedure should be promulgated as a regulation under the Administrative Procedure Act as a rule of general application that did not fall under the exception for protocols affecting a single prison. The court enjoined CDCR from proceeding with any execution until its lethal injection protocol was adopted as a regulation through the Administrative Procedure Act process. (*Morales v. CDCR* (2007) 168 Cal.App.4th 732.) The First District Court of Appeal upheld the Marin Superior Court decision on November 21, 2008. *Morales v. California Department of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 729.

In 2010, regulations with a three-chemical protocol were promulgated and adopted under Title 15, Subchapter 4, Article 7.5. (OAL file number 2010-0706-02SR). The regulations were subsequently invalidated by the Marin County Superior Court in *Sims v. CDCR* (Super. Ct. Marin County, 2011, No. Civ1004019). These regulations were repealed by CDCR in 2015.

The proposed regulations permit CDCR to determine which chemical will be used in the execution from a specified list of barbiturates. CDCR determined that it is necessary to provide alternative chemical options to contend with potential issues complicated by the shifting availability of the chemicals. This is consistent with the Penal Code Section 3604 requirement that CDCR establish the standards for the administration of “an intravenous injection of a substance or substances in a lethal quantity sufficient to cause death.” The proposed one-chemical protocol in these regulations is also consistent with the court’s observations in *Morales v. Tilton*, that an “execution accomplished solely by an anesthetic, such as sodium pentobarbital, would eliminate any constitutional concerns, subject only to the implementation of adequate, verifiable procedures to ensure that the inmate actually receives a fatal dose of the anesthetic.” (*Morales v. Tilton*, 465 F.Supp.2d at 983.) The proposed regulations are consistent with

testimony of the plaintiff's expert in the *Morales v. Tilton* 2006 evidentiary hearing that use of a 5-gram barbiturate bolus dose is lethal. (Transcript of Proceedings, *Morales v. Tilton* (N.D. Cal., Sept. 27, 2006, No. C-06-0219-JF) pp. 542-543) The CDCR considered the court's concerns about screening, training, supervision, and oversight of Lethal Injection Team members, record keeping, mixing, preparation, and administration of the Lethal Injection Chemical.

Consideration of Alternatives:

CDCR considered alternatives to the lethal substance or combination of substances to be used to administer capital punishment by lethal injection including: a single-chemical execution using various different substance options; a two-chemical execution using different substance combination options; and, a three-chemical execution using different substance combination options. Two-chemical and three-chemical methods were rejected because CDCR determined risks of pain and constitutional concerns could be reduced or avoided by using a single-chemical barbiturate method. In addition, CDCR considered using a non-collapsible entry point into the systemic venous system if vein accessibility was compromised or problematic due to the inmate's vein condition or weight. However, this was rejected because the procedure requires bone penetration which could cause pain. Finally, due to changing chemical availability, it is necessary to provide alternative chemical options. Therefore, the proposed regulations permit the use of any one of these specified barbiturates: Pentobarbital, Secobarbital, Amobarbital, or Thiopental.

Alternatives Rejected

1. Multi-chemical combinations

Two-and three-chemical protocols were considered. Other states use two-and three-chemical protocols for executions and California has done so in the past. (Vol VII, Documents 2-9.) Some of the chemicals CDCR considered were chemicals previously used in three-chemical methods of execution whose properties were well known to CDCR: pancuronium bromide and potassium chloride. Different barbiturates were considered as substitutes for thiopental in a three-chemical method. Vecuronium bromide was considered as an alternative to pancuronium bromide in a three-chemical method. In addition, CDCR considered using benzodiazepines in conjunction with either an opioid or a barbiturate in a two-chemical method. However, CDCR determined that a single chemical protocol provided the least risk of pain and potential complications. Therefore, CDCR elects to utilize a single chemical barbiturate method of execution.

CDCR considered using the following barbiturates, opioids and benzodiazepines in two-chemical or three-chemical combination methods: Alfentanil, Alfenta, Amobarbital, Anisotropine Methylbromide, Atropine, Avertin, Tribromoethanol, Benztropine, Benztropine, Bromazepam, Bupivacaine, Diazepam, Fentanyl, Fludiazepam, Flumazenil, Glutethimide, Homatropine Methylbromide, Hydromorphone, Hyoscyamine, Ipratropium Bromide, Lorazepam, Meperidine, Meperidine hydrochloride, Methohexital, Midazolam, Morphine, Oxymorphone, Pentobarbital, Pethidine, Phenytoin, Remifentanil,

Secobarbital, Sufentanil, and Thiopental. (Other names barbiturates are known by and listed in documents relied upon in the Rulemaking file are: Amytal Sodium, Nembutal, Nembutal Sodium, Nesdonal, Seconal Sodium, and Quinalbarbitone (Seconal).)

Rulemaking File documents relied upon

Volume I, Document 1-7, 10-11, 12 (pp. 135-137, 140-142, 310-312), 13 -31, 33-36, 40-44, 49

Volume II, Document 2-6, 10-12, 14, 17-28, 29-46, 51-63, 65-67, 69-70, 73-74, 84-85, 98-110

Volume III, Document 2, 5-7, 9-10, 20-23, 25-30, 33-42, 43-45, 47-51, 54, 70-85, 89-92

Volume V, Document 1-21

Volume VII, Document 1

2. Single Chemical Options Rejected

A. Ketamine

Ketamine is an Arylcyclohexylamine class chemical which acts as a dissociative agent. Dissociative agents can produce hallucinogenic effects that distort perceptions of sight, sound, and may produce euphoria. As an anesthetic, Ketamine is used for sedation and pain. It is very effective when used in conjunction with an opioid. Ketamine is excellent in starting and maintaining anesthesia. However, when given in high doses, Ketamine can cause extreme dissociation accompanied with visual and auditory hallucinations. Because of these hallucinogenic side effects, Ketamine was rejected.

Rulemaking File documents relied upon

Volume III, Document 11-12

B. Alkylphenols

CDCR considered two chemicals falling under the Alkylphenols category. Fospropofol and Propofol (also known as Diprivan) are short-acting hypnotic agents whose actions are not well understood. These agents have short duration of action and incidents of pain have been reported by patients upon injection. Therefore, CDCR rejected Propofol. Fospropofol was ultimately rejected due to concerns with nausea.

Alkylphenols considered and rejected were: Fospropofol, and Propofol (Diprivan).

Rulemaking File documents relied upon

Volume I, Document 2, 5-6, 14-16, 18-21, 25, 40

Volume II, Document 4, 111-114

Volume III, Document 55-69

C. Opioids or derivatives

Opioids are naturally occurring compounds derived from the poppy *Papaver Somniferum*. Opioids relieve pain and are classified as analgesics. Many opioids have numerous side effects such as seizures, nausea and vomiting. In addition, many are weak, requiring larger doses to achieve lethal effect.

Opioids considered and rejected for these reasons were: Alphameprodine, Atropine, Benzoylcegonine, Betameprodine, Betaprodine, Butabarbital, Butethal, Carfentanil, Cocaine, Ecgonine, Ecgonine Methyl Ester, Etorphine, Etorphine hydrochloride, Fentanyl, Levomethadyl Acetate, Levorphanol, Lofentanil, Nalbuphine, and Pentazocine.

Rulemaking File documents relied upon

Volume I, Document 2, 5-6, 11, 12 (p. 310-312) -16, 18-22, 24, 29, 31, 33, 35-36, 40
Volume II, Document 26, 29-32, 47, 62, 68, 71-72, 75-77, 79-81, 89-90, 93-94, 99
Volume III, Document 13-19, 31-32, 46

Most Opioids are classified by the federal Drug Enforcement Administration as Schedule I and II narcotics. This schedule classification requires enhanced Drug Enforcement Administration oversight and storage conditions for accountability. In addition, the federal Food and Drug Administration has elevated concerns about diversion of opioids. While CDCR considered a subset of opioids and derivatives that it deemed effective in carrying out the purpose of the proposed regulations, CDCR ultimately rejected their use because the Food and Drug Administration has identified heightened concerns about diversion of opioids.

Opioids and derivatives considered but ultimately rejected due to concerns about diversion of opioids were: Alfentanil, Alfenta, Atropine, Fentanyl, Hydromorphone, Meperidine, Meperidine hydrochloride, Pethidine, Morphine, Oxymorphone, Remifentanil, and Sufentanil.

Rulemaking File documents relied upon

Volume I, Document 2, 5-6, 11, 12 (p. 310-312) -16, 18-22, 24, 29, 31, 33-36, 40, 49
Volume II, Document 2-6, 26-27, 29-46, 62, 84, 98-108
Volume III, Document 6-7, 21-23, 29-30, 43-45, 70-72, 84-85

D. Benzodiazepines or derivatives

Sedative-hypnotics are a group of chemicals that cause central nervous system depression. Benzodiazepines and barbiturates are the most commonly used agents in this class.

Benzodiazepines are a class of chemicals that include many compounds having a wide variance in potency, duration of effect, and clinical use. Death from these chemicals from overdose is rare unless the chemicals are combined with other central nervous system depressants like Opioids or Barbiturates. For this reason, Benzodiazepines were eliminated.

Benzodiazepines or derivatives considered and rejected were: Bromazepam, Diazepam, Fludiazepam, Flumazenil, Lorazepam, and Midazolam.

Rulemaking File documents relied upon

Volume I, Document 2, 5-6, 10, 12 (p. 140-142), 14-16, 18-22, 25-26, 29, 40

Volume II, Document 4, 10-11, 17, 21-28, 73, 85, 109-110

Volume III, Document 20, 27-28

E. Barbiturates Subgroup

Barbiturates are synthetic substances manufactured by pharmaceutical companies to depress the central nervous system. Barbiturates were widely used as sedative/hypnotics to control pain, but are now also used for the treatment of epilepsy and general anesthesia. They are divided into four major groups (ultra-short; short; intermediate; and long-acting) based on how quickly they act and how long their effects last. Many barbiturates are fast-acting, but have very short duration and side effects such as vomiting and nausea. Lethal doses varied from as low as 1 gram to as high as 10 grams. For reasons associated with unwanted side effects, duration or low strength, CDCR rejected a subgroup of barbiturates.

The barbiturates rejected for these reasons were: Aprobarbital, Evipan, Gamma-Aminobutyric Acid, Heptabarbital, Hexobarbital, Phenobarbital, Tabutal, Thiamylal, and Thiamylal Sodium.

Rulemaking File documents relied upon

Volume I, Document 2, 5-6, 12 (p. 135-137), 14-16, 18-23, 26, 29, 31, 40

Volume II, Document 10-12, 14, 17-21, 64, 95-97

Volume III, Document 1, 3-4, 52-53, 86-88

Methohexital is a barbiturate that CDCR considers effective for carrying out the purpose of these regulations. However, the only reference regarding lethality in humans that CDCR could locate contained a single data point indicating that the lethal blood concentration necessary for Methohexital is 98 ug/ml. The dosage required to achieve that blood concentration is 35 grams. Therefore, due to the dosage size necessary to achieve lethal blood concentrations, CDCR rejected Methohexital.

Rulemaking File documents relied upon

Volume VI, Document 34 (p. 9)

F. Bone Injection Gun

This option, which involves a procedure requiring penetrating bone, was considered as an alternative if a vein was not accessible to provide a non-collapsible entry point into the systemic venous system. It has been used on infants and by the United States Military in the field. However, there have been individuals who reported pain associated with use of

the equipment. For these reasons, CDCR rejected this as an option for injection when an inmate has compromised veins complicating access.

Local anesthetics or derivatives considered were: Chloroprocaine, Dibucane, Droperidol (Inapsine), Etomidate, and Mepivacaine.

Rulemaking File documents relied upon

Volume I, Document 2, 37-39

Volume II, Document 15, 78, 86-88, 91-92

Volume III, Document 24

Volume IV, Document 1-70

3. Alternatives Selected (Barbiturate Subgroup Selected)

While the above barbiturates were rejected, CDCR looked at other barbiturates that might be effective for the purpose of the proposed regulation. Single-chemical protocols using barbiturates alone have been used in 22 executions in the United States during 2014. Single-chemical protocols using barbiturates alone have been used in 18 executions during 2015 between January 13, 2015 and September 1, 2015. The United States District Court for the Northern District of California, San Jose Division issued an order on February 14, 2006 permitting a Thiopental-only or other barbiturate or combination of barbiturates method because the Court said that it eliminated any Eighth Amendment issue (*Morales v. Hickman*, p. 13). Based on the overall number of executions done by using a single-chemical barbiturate during 2014-2015, the expert testimony of the plaintiffs' expert in *Morales v. Tilton*, and the *Morales* Court February 14, 2006 court order, CDCR elected to use the Barbiturates chosen in a single-chemical method of execution. Thiopental is a barbiturate that has been vetted by the *Morales* Plaintiffs' expert and it has been determined that a 5-gram dose is lethal. (Transcript of Proceedings, *Morales v. Tilton* (N.D. Cal., Sept. 27, 2006, No. C-06-0219-JF) pp. 542-543) The proposed regulations comprise a 7.5-gram single-chemical barbiturate. The single-chemical method was chosen over a barbiturate-combination method because it simplified procurement and decreased possible difficulties, should there be availability issues with any of the selected barbiturate options. All named barbiturates contained in the proposed regulations are equal to, or greater than, Thiopental in strength. (Rulemaking File documents relied upon: Vol. I, Document 26 (pp 29, 50); Vol. III, Document 26 (p 692); Vol. VI, Document 12 (1652), Document 32 (pp 413, 430, 433, 434), Document 33, Document 34 (pp 1, 12,14, 15), Document 35 (pp 6, 11, 30).) The proposed regulations call for a 7.5-gram barbiturate single-chemical dose to address variations in the inmate's Lethal Injection Chemical tolerance, size or weight to ensure that the dose will be lethal even if one or more of these factors exist. Therefore, the 7.5 gram barbiturate option is confirmed lethal.

For the above reasons, Barbiturates considered and selected were: Amobarbital, Pentobarbital, Secobarbital, and Thiopental. (These chemicals are also known by other names and listed in the documents relied upon as: Amytal Sodium, Nembutal, Nembutal Sodium, Nesdonal, Seconal Sodium, Quinalbarbitone (Seconal).)

Rulemaking File documents relied upon

Volume I, Document 2, 4-7, 12 (p. 135-137), 14-23, 26-31, 40-44

Volume II, Document 2, 10-10, 14, 17-21, 51-61

Volume III, Document 25-26, 33-42, 47-51, 73-83, 89-92

Volume V, Document 1-21

Volume VI, Document 5 (pp. 542-543)

Volume VII, Document 1

Cost Estimates of the Execution Process

The California Department of Corrections and Rehabilitation (CDCR) anticipates that no executions will be carried out during Fiscal Year 2015/16 due to the time needed to promulgate these regulations. Therefore, CDCR expects no fiscal or economic impact as a result of the adoption of these regulations during this fiscal year. As of the date of publication of these proposed regulations in the Office of Administrative Law Notice Register, 18 inmates have exhausted their appeals and may be scheduled for execution by a court with jurisdiction. CDCR shall request additional funds through the state budget process, which is subject to Legislative review and the Governor's approval, if existing budgeted funds will be insufficient to carry out the number of executions scheduled during any future fiscal year.

The average annual cost to CDCR for this fiscal year to keep an inmate in custody is approximately \$64,000 per inmate. Inmates housed in high security housing, including condemned inmates, have higher housing costs due to the need for greater supervision. Costs associated with an inmate's conviction and sentencing litigation, including the appellate process, are separate from the cost to house the inmate. Litigation of inmate post-conviction proceedings is handled by the California Attorney General's Office.

In the interest of transparency, CDCR has developed the following estimate of projected costs involved in the execution process.

The proposed regulations require a total of 12 Lethal Injection Team members: four Intravenous Sub-Team members; four Infusion Sub-Team members, at least one of whom is a physician, physician assistant, pharmacist, registered nurse, emergency medical technician, paramedic, or medic (for purposes of this estimate CDCR has used a physician as this is the highest paid classification); and four Record Keeping Sub-Team members. In addition, the regulations require a physician to pronounce death. The physician pronouncing death is not part of the Lethal Injection Team and is not required to participate in mandatory training. Staff costs are necessarily an estimate because, as the team is composed of staff volunteers, specific classification and pay scales of team members cannot be known in advance (e.g. a position on a sub-team

may be filled by a Correctional Officer, Sergeant, or Lieutenant, all of whom are on different pay scales). For purposes of this estimate, CDCR has projected anticipated team members, and used top-of-the-range civil service employee salaries to project Lethal Injection Team staffing costs.

The cost estimate is separated into two categories: Annual training costs, and the cost of a single execution. Annual training costs for the Lethal Injection Team members are based on the requirement of the team to train at least eight hours per month throughout the year (as required by Section 3349.3(c)(1) of the proposed regulations). This estimated annual cost for mandatory training is not subject to change based on the number of executions scheduled.

The projection of the cost of an execution is necessarily an estimate, as several of the costs are subject to change based on a variety of factors including the market cost of the Lethal Injection Chemical and contracts with local law enforcement, which may vary based on the notoriety of the inmate or public interest. For purposes of this estimate, CDCR elected not to rely on historical execution costs prior to 2005 to arrive at an average cost because CDCR believes that this data is outdated and may produce an artificially low estimate. Additionally, CDCR elected not to take into account one outlier among the 13 executions since the reinstatement of the death penalty in California, which had an unusually high cost. The execution of Stanley “Tookie” Williams in 2005 was the most costly execution in CDCR’s history due to Williams’ status as a founder of the “Crips” gang. All state prisons were placed on lockdown alert status and extra security measures were implemented. While it is possible that the circumstances of a future execution could again require this level of cost, it is not indicative of the average cost associated with an execution.

The single execution estimate includes the cost of mandatory training of the Lethal Injection Team members in the three days immediately preceding the execution (as required by Section 3349.3(c)(3) of the proposed regulations), projected overtime costs incurred by team members, procurement of the Lethal Injection Chemical, mutual aid (firefighting entities from other CDCR institutions to provide fire suppression if needed), payments to other law enforcement agencies (California Highway Patrol and Marin County Sheriff Department) outside of CDCR facilities to provide security and crowd control, a Special Emergency Response Team, ancillary custody staff to provide additional perimeter and other security, and ancillary miscellaneous administrative staff.

Staff costs are based on the number of staff required by the proposed regulations, or, in the case of ancillary staff and mutual aid, costs provided by San Quentin state prison based on previous executions.

Estimated chemical costs are based on a total of 60 grams. This includes the 37.5 grams required by the regulations for carrying out the execution plus 22.5 grams used during training. Because chemical costs are driven by market factors, it is not possible to know what future costs will be. California law requires that state resources be utilized when available before contracting with private sources for goods or services is permitted. CDCR has compounding pharmacies. If for any reason CDCR is unable to utilize CDCR or other state resources to compound the Lethal Injection Chemical, CDCR is permitted to contract with a private non-state compound pharmacy. Drug costs may be affected by whether CDCR purchases the Lethal Injection Chemical from a distributor, compounds the Lethal Injection Chemical using state resources, or contracts with a private compounding pharmacy to compound the Lethal Injection Chemical. CDCR utilized known costs from the prior purchase and testing of the CDCR supply of a Lethal Injection Chemical (Thiopental) to provide an estimate for the cost of Lethal Injection Chemical needed to conduct a single execution.

Itemized Estimate of Costs of the Execution Process

This estimate is based on an assumption that the Lethal Injection Team will be composed of six Correctional Officers, one Correctional Sergeant, three Correctional Nurses, one Supervising Nurse, and one Physician (CDCR believes these are the highest classifications likely to comprise the team). The actual composition of the team cannot be known in advance because the team is comprised of staff volunteers.

CDCR projects the following cost estimates:

Total Combined Costs of a Single Scheduled Execution: **\$186,886**

This combined cost consists of:

1. CDCR Training, Staff, and Ancillary Costs:
Total: \$85,200
2. Cost of Lethal Injection Chemical (based on a previous purchase of Thiopental):
Total: \$4193
3. Contracts with Outside Law Enforcement Agencies (California Highway Patrol and Marin County Sheriff) to provide crowd control outside of San Quentin State Prison (based on the cost of these contracts in 2005):
Total: \$97,492

Total Annual Training Cost for Lethal Injection Team members: **\$ 66,740**

Cost Breakdown of a Scheduled Execution:

Training Costs. Infusion Sub-Team, Intravenous Sub-Team, and Record Keeping Sub-Team members, as well as the physician to pronounce death, must train the three days immediately preceding the scheduled execution: Total: \$20,073.84

	<u>Regular Pay</u>
Infusion Sub-Team	
CORRECTIONAL OFFICER (3):	\$2989.44
PHYSICIAN (1):	\$3388.80
Intravenous Sub-Team	
CORRECTIONAL NURSE (3):	\$4505.04
SUPERVISING NURSE II: (1):	\$1694.16
Record-Keeping Sub-Team	
CORRECTIONAL OFFICER (3):	\$2989.44
CORRECTIONAL SERGEANT (1):	\$1118.16
PHYSICIAN (to pronounce death) (1):	\$3388.80

Overtime Costs. The CDCR projects the Lethal Injection Team will be needed to work approximately four hours of overtime on the day of the scheduled execution (some classifications may not be eligible for overtime pay): Total: \$5018.40

	<u>Overtime</u>
Infusion Sub-Team	
CORRECTIONAL OFFICER (3):	\$747.36
PHYSICIAN (1):	\$847.20
Intravenous Sub-Team	
CORRECTIONAL NURSE (3):	\$1126.20
SUPERVISING NURSE II: (1):	\$423.56
Record-Keeping Sub-Team	
CORRECTIONAL OFFICER (3):	\$747.36
CORRECTIONAL SERGEANT (1):	\$279.52
PHYSICIAN (to pronounce death) (1):	\$847.20

Security Staff. The following custody staff will provide security for the San Quentin Lethal Injection facility for the three days immediately preceding the execution and are projected to work four hours of overtime on the day of the scheduled execution:
Total: \$10,445.36

	<u>Regular Pay</u>	<u>Overtime</u>
CORRECTIONAL LIEUTENANT (1):	\$1259.28	\$314.80
CORRECTIONAL SERGEANT (1):	\$1118.16	\$279.52
CORRECTIONAL OFFICER (6):	\$5978.88	\$1494.72
<u>Subtotal:</u>	\$8356.32	\$2089.04

The following Office of Correctional Safety staff provide various security functions for eight hours on the day of the scheduled execution: Total: \$2656.88

Regular Pay

CORRECTIONAL SERGEANT (6): \$2236.32
 CORRECTIONAL LIEUTENANT (1): \$420.56

Additional Staff – Day of Execution. Additional staff required the day of the scheduled execution (based on information from prior executions provided by San Quentin State Prison): Total: \$12,022.47

Overtime

PART TIME FIREFIGHTERS/CORRECTIONAL OFFICERS (8): 8 hours	\$3985.92
CRISIS RESPONSE TEAM (mixed staff positions) (15): 8 hours	\$7500
ASSISTANT FOOD MANAGER (1): 3 hours	\$142.44
CORRECTIONAL SUPERVISING COOK (3): 3 hours	\$394.11

Miscellaneous Ancillary Staff - Day of Execution. (Based on information from prior executions provided by San Quentin State Prison): Total: \$34,934.00

Overtime

Warden's Office (7 mixed staff positions) 8 hours	\$1600.00
Custody Ancillary (50): (Additional security assignments throughout San Quentin) 8-hours	\$25,000.00

Mutual Aid/Fire Suppression Staff:

FIRE CHIEF (1) 8 hours	\$600.32
FIRE CAPTAIN (1) 8 hours	\$498.32
FIREFIGHTERS (22) 8 hours	\$7235.36

Last Meal Cost: \$50.00

Cost Breakdown of Annual Training:

All Lethal Injection Team (Infusion Sub-Team, Intravenous Sub-Team and Record Keeping Sub-Team) members must train eight hours per month (96 hours annually) regardless of the number of executions scheduled (if any).

Regular Pay

CORRECTIONAL OFFICER (6): \$23,915.52
 CORRECTIONAL SERGEANT (1): \$4472.64
 CORRECTIONAL NURSE (3): \$18,020.16
 SUPERVISING NURSE II: (1): \$6776.64
 PHYSICIAN (1): \$13,555.20

Pay scales of CDCR staff who may be on the Lethal Injection Team or who may be needed the day of a scheduled execution (based upon 160 hours per month, top-of-the-pay-range, salary only):

	<u>MONTHLY PAY</u>	<u>HOURLY PAY</u>	<u>OT HOURLY*</u>
CORRECTIONAL OFFICER:	\$6644.00	\$41.52	\$62.28
CORRECTIONAL SERGEANT	\$7455.00	\$46.59	\$69.88
CORRECTIONAL LIEUTENANT	\$8395.00	\$52.47	\$78.70
CORRECTIONAL NURSE:	\$10,011.00	\$62.57	\$93.85
CORRECTIONAL SUPERVISING NURSE II	\$11,294.00	\$70.59	\$105.89
PHYSICIAN:	\$22,592.00	\$141.20	\$211.80
ELECTRICIAN:	\$5480.00	\$34.25	\$51.37
OFFICE TECHNICIAN:	\$3515.00	\$21.97	\$32.95
OFFICE ASSISTANT:	\$3043.00	\$19.02	\$28.53
FIRE CHIEF:	\$8006.00	\$50.03	\$75.04
FIRE CAPTAIN:	\$6644.00	\$41.53	\$62.29
FIRE FIGHTER:	\$4384.00	\$27.40	\$41.11
ASSISTANT FOOD MANAGER:	\$5064.00	\$31.65	\$47.48
CORRECTIONAL SUPERVISOR			
COOK:	\$4671.00	\$29.19	\$43.79

*Some classifications may not be eligible for overtime pay

Economic Impact Assessment:

CDCR has determined that the proposed regulations will have no impact on the creation of new jobs or businesses within California. CDCR has determined that the proposed regulations will have no impact on the elimination of existing jobs or businesses within California. CDCR has determined that the proposed regulations will not affect the expansion of businesses currently doing business with California or the health and welfare of California residents, worker safety, and the state's environment because they effect the internal management of CDCR prisons only.

CDCR has made an initial determination that no reasonable alternatives to the regulations have been identified or brought to the attention of CDCR that would lessen any adverse impact on small business. The proposed regulations effect the internal management of CDCR prisons only.

CDCR made an initial determination that the action will not have a significant adverse economic impact on business as this proposed regulatory action is directed at actions to be taken at CDCR. Additionally, there has been no testimony or other evidence provided that would alter CDCR's initial determination. The proposed regulations effect the internal management of CDCR prisons only.

CDCR 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. The proposed regulations effect the internal management of CDCR prisons only.

Documents Relied On:

Pursuant to Government Code Section 11346.2, CDCR, in proposing the adoption of these regulations, relied upon the following technical, theoretical, and empirical studies, reports and similar documents:

Please see attachments A-G for all documents relied upon.

Specific Purpose and Rationale for each Section per Government Code section 11346.2 (b)(1):

3349. METHOD OF EXECUTION

Existing Subsections 3349(a) through 3349(d) are amended to incorporate by reference revised CDCR Forms; 1801(Rev. 10/15), Notification of Execution Date and Choice of Execution Method, 1801-A (Rev. 10/15), Choice of Execution Method and 1801-B (Rev. 10/15), Service of Execution Warrant, Warden’s Initial Interview. These forms, which provide information to the inmate about the execution process and allow him/her to elect either lethal injection or lethal gas as the method of execution, have been amended to comport with the provisions contained in these regulations. In addition, “San Quentin” has been added before the word “Warden” for clarity. The term “selection” has been amended to “election” to comport with the language of Penal Code section 3604(b). Subsection (d) has deleted the word “person” and incorporated the word “inmate” for clarity purposes. These changes are necessary to ensure staff utilize appropriate terminology and CDCR Forms as identified by their revision dates. In addition, these changes are necessary to clarify which warden and institution the associated CDCR forms shall be transmitted to.

3349.1. DEFINITIONS

New Section 3349.1 is adopted to provide the definition of numerous terms that are applicable only to Title 15, Subchapter 4, Article 7.5. The definitions are necessary to establish a common understanding of terms that are used throughout Article 7.5.

New Subsections 3349.1(a) through 3349.1(s) are adopted to provide the definition to terms that are applicable only to Title 15, Subchapter 4, Article 7.5. The definitions are necessary to define applicable terms used throughout Article 7.5.

3349.2. RECRUITMENT, SELECTION, AND ANNUAL REVIEW OF LETHAL INJECTION TEAM SUPERVISOR AND LETHAL INJECTION TEAM MEMBERS

New Section 3349.2 is adopted to establish the recruitment, selection, and annual review requirements of the Team Supervisor and Lethal Injection Team members.

New Subsections 3349.2(a) through 3349.2(a)(2)(E) are adopted to establish the Director - Division of Adult Institutions, or designee, shall have overall responsibility to coordinate the recruitment and selection of an Associate Warden to serve as the Team Administrator, a Captain to serve as the Team Supervisor, and the Lethal Injection Team members. The Team Administrator and Team Supervisor are not members of the Lethal Injection Team, but shall meet all the general selection criteria established for the selection of a Lethal Injection Team member. It is not required that the Team Administrator and the Team Supervisor meet the criteria for the Lethal Injection Sub-Team members contained in Subsection 3349.2(d) because they do not perform any of the specific duties required of the Lethal Injection Sub-Team members. The Team Administrator and the Team Supervisor cannot be members of the Lethal Injection Team because each has duties in these regulations that disclose their identities to the inmate and their attorneys and the Lethal Injection Team must remain confidential.

The Team Administrator serves independently from the Lethal Injection Team members to provide managerial oversight for the Lethal Injection Team and to act as a liaison between the Team Supervisor and the San Quentin Warden. The Team Supervisor shall serve independently from the Lethal Injection Team members to provide a neutral level of direct supervision in order to ensure adherence to the regulations, and to perform administrative duties including the scheduling of training.

The Lethal Injection Team shall consist of CDCR employees, contracted medical personnel, or a combination of both, and shall comprise a minimum of 12 Lethal Injection Team members who shall serve at the will of the Director – Division of Adult Institutions. The Record Keeping Sub-Team shall have a minimum of 4 members. The Intravenous Sub-Team shall have 4 members, one whom shall be designated as the Intravenous Sub-Team leader. The Infusion Sub-Team shall have 4 members, one whom shall be designated as the Infusion Sub-Team leader. CDCR determined a minimum of 12 Lethal Injection Team members are necessary to carry out the Lethal Injection Team's responsibilities. This is necessary to provide staff to perform designated duties and provide backup should a Lethal Injection Team member become unavailable due to illness, or other reason. The Intravenous and Infusion Sub-Team leaders are necessary because the Team Administrator and Team Supervisor are not required to be licensed medical personnel. Selection of training curriculum and performance assessment of Intravenous Sub-Team and Infusion Sub-Team duties listed in Section 3349.3(e) and (f) require medical expertise the Team Administrator and Team Supervisor may not possess.

The Team Administrator shall assist the Director – Division of Adult Institutions, or designee, with coordinating the recruitment and selection of prospective candidates for the Team Supervisor and the Lethal Injection Team members. A Selection Panel comprised of the Associate Director – Reception Centers (Chairperson), the San Quentin Warden, and the Team Administrator shall select the Team Supervisor and Lethal Injection Team members consistent with criteria established in subsections (b)(2) and (3) and (c)(1)-(8) of this section. This is necessary to ensure that the screening of Lethal Injection Team members is consistent and reliable and to identify the staff

responsible for the recruitment and selection of the Team Supervisor and the Lethal Injection Team members.

The Chairperson of the Selection Panel shall ensure the Lethal Injection Team members are selected consistent with the criteria established in subsections (b)(2) and (3) and (c)(1)-(8) of this section. The Team Administrator is responsible for assigning each selected Lethal Injection Team member to one of the following Sub-Teams: Intravenous Sub-team, Infusion Sub-team, or Record Keeping Sub-team pursuant to the criteria as set forth in subsection (d). The screening and selection criteria established in this section are necessary to ensure that the Team Supervisor and Lethal Injection Team members are qualified and able to fulfill their responsibilities.

Subsection (a)(2)(D) establishes the CDCR may contract with medical personnel or a pharmacist to be members of the Lethal Injection Team. CDCR may also contract a physician to serve as the physician attending the execution. Contracting is permitted so long as the contract does not displace a qualified state civil service employee who is available and willing to perform the prescribed duties. Contract personnel shall meet all the criteria set forth in subsections (b)(2)-(3), (c)(1)-(8), and (d)(1)-(3). This is necessary to ensure that there is adequate qualified staffing of medical personnel to be members of the Lethal Injection Team and/or to serve as the physician attending the execution, if qualified state civil service employees are not available and willing to perform the prescribed duties.

Names and identities of the members of the Lethal Injection Team shall remain confidential. Language on confidentiality of Lethal Injection Team members is necessary to protect Lethal Injection Team members from potential threats, harassment, and retaliation for participating in a lawful activity.

New Subsections 3349.2(b) through 3349.2(b)(3)(B)2. are adopted to establish the process and criteria used to screen and interview potential Lethal Injection Team members. The Selection Panel shall ensure it reviews a potential Lethal Injection Team member's background to include: the candidate's most recent performance evaluation; personnel, supervisory and training files; current Criminal Identification and Information report from the California Department of Justice; personal history; professional experience which would aid the candidate in performing the required duties as well as their training, knowledge, composure, related skill and ability. The screening process detailed in this subsection is necessary to ensure that only candidates with the best combination of professional experience, personal characteristics, and background will be selected for the tasks associated with an execution.

New Subsections 3349.2(c) through 3349.2(c)(8) are adopted to identify the specific selection criteria which CDCR has determined necessary for a potential Lethal Injection Team member to possess in order to fulfill the assigned duties and responsibilities. Prior job performance and demeanor demonstrates the ability to consistently perform essential job functions at a level of standard or above and to work collaboratively with others. Probationary employees have yet to demonstrate that they meet the standard of

expectations necessary for their current classification, therefore CDCR elected to eliminate them from the candidate pool for initial selection for the Lethal Injection Team. Attendance history is an indicator as to whether an individual will likely be consistently available for training and scheduled executions. Absence of corrective or sustained adverse actions demonstrates individual integrity, and the ability to understand and follow directions. The most recent annual employee performance evaluation or comparable private sector performance evaluation reflects the most current documented record of work performance.

These criteria individually and collectively demonstrate to the Selection Panel that a candidate has consistently met or exceeded expected performance standards and is dependable. The established criteria in these subsections are necessary to ensure only highly qualified and reliable candidates are selected to participate as a member of one of the various lethal injection sub-teams.

Additionally, the Lethal Injection Team Members shall not work in, or be assigned to, the condemned unit for the employee's personal safety and security. This is to ensure that if the inmate is returned to the condemned unit, the employee's identity will not be compromised.

New Subsections 3349.2(d) through 3349.2(d)(4)(B) are adopted to delineate the specific selection criteria for the three lethal injection sub-teams identified as Intravenous Sub-Team, Infusion Sub-Team, and Record Keeping Sub-Team. Specific criteria require potential candidates to provide certification and licensure to verify the ability to insert and maintain intravenous catheters, place electrocardiogram leads, read and follow Lethal Injection Chemical preparation instructions, and understand and accurately document information.

These subsections ensure the Intravenous Sub-team Members shall be medically trained personnel certified to insert and maintain intravenous catheters and place electrocardiogram leads; the Infusion Sub-Team members are able to comply with the pharmaceutical standards provided in the instructions for preparing the Lethal Injection Chemical to be used in an execution; and the Record Keeping Sub-Team members are able to demonstrate proficiency in record keeping. The criteria established in these subsections is necessary to ensure only highly qualified and reliable candidates are selected to participate as a member of one of the various lethal injection sub-teams, to ensure that the execution is conducted properly, and to ensure that the procedures are followed as written in these regulations without deviation. It is necessary for the Intravenous Sub-Team members to know how to place the electrocardiogram leads so that the equipment functions as intended and the physician can monitor the inmate.

Neither CDCR nor any of its employees shall take any action against any employee or contractor solely because of his or her participation in an execution, as it is a legal activity. If a member of the Lethal Injection Team is licensed by a board or department, neither CDCR nor any of its employees shall refer the employee or contractor to any licensing body solely based on participation in an execution for the purpose of having

action taken against their license. Furthermore, no doctor, nurse, pharmacist, pharmacy, medical, professional, or other business entity licensed by a board or department shall be referred to their licensing body by CDCR or any of its employees solely because of participating, assisting, aiding, facilitating or otherwise being involved with an execution or one of the associated, ancillary, auxiliary, supplemental, or supportive related activities, as an execution is a legal activity.

These provisions are necessary to ensure that Lethal Injection Team members are free to participate in the legal activity without fear of reprisal or harassment, and to ensure confidentiality of the identities of the Lethal Injection Team members. For the same reason, neither CDCR nor any of its employees shall take action, including referral to a licensing board, against any individual or entity providing ancillary services for an execution.

New Subsections 3349.2(e) through 3349.2(e)(4) are adopted to establish that the Team Administrator will annually review each Lethal Injection Team member to ensure continued compliance with selection criteria. CDCR elected to do an annual review of Lethal Injection Team members to adopt the same timeframe for the annual employee performance evaluation for CDCR employees. The review shall consist of a review of the Lethal Injection Team members' Official Personnel File, supervisory file, training file, most recent performance evaluation, Criminal Identification and Information Report from the California Department of Justice and all related certifications and licenses to ensure that they are current. This is necessary to clarify what must be reviewed and maintained in order for a Lethal Injection Team member to remain assigned to a lethal injection sub-team. In addition, this will ensure only qualified and reliable members remain on the Lethal Injection Team, the execution is conducted properly, and to ensure that procedures are followed as written in these regulations without deviation.

3349.3. LETHAL INJECTION TEAM TRAINING

New Section 3349.3 is adopted to establish the training requirements for the Lethal Injection Team members. This section is necessary to ensure training, supervision, and oversight of the Lethal Injection Team. CDCR's training regimen, as established in this section, will ensure that all members of the Lethal Injection Team are trained in their respective roles and are knowledgeable about their duties.

New Subsection 3349.3(a) is adopted to establish the Team Administrator is responsible for ensuring each Lethal Injection Team member is provided with training on their duties. This is necessary to clearly establish the responsibility of the Team Administrator to ensure all Lethal Injection Team members are knowledgeable about their duties.

New Subsection 3349.3(b) is adopted to establish that each Lethal Injection Team member shall undergo training specific to their assigned sub-team duties during an execution. This is necessary to ensure that training relevant to the respective sub-team

roles and responsibilities is provided and to ensure each Lethal Injection Team member has an understanding of, and ability to perform, assigned duties.

New Subsections 3349.3(c) through 3349.3(c)(5) are adopted to establish the frequency of the Lethal Injection Team training. All Lethal Injection Team members shall train at least once per month for a minimum of eight hours, unless on approved leave. The Team Supervisor shall attend all scheduled training unless on approved leave. In addition, each sub-team member shall have training specific to his or her assigned sub-team as directed by the sub-team leaders and the Team Supervisor. The Team Supervisor shall determine training curriculum for the Record Keeping Sub-Team and training for the Intravenous Sub-Team and Infusion Sub-Team other than that set forth in Section 3349.2(a)(2)(B) and (C). The sub-team leaders shall determine training curriculum as set forth in Section 3349.2(a)(2)(B) and (C). This is necessary to ensure that the curriculum includes training on all duties performed by all Lethal Injection Team members.

Each Lethal Injection Team member shall participate in at least six training sessions prior to being assigned duties during an execution. This includes participation in all three of the daily training sessions immediately preceding a scheduled execution. The Team Supervisor shall attend at least six training sessions prior to a scheduled execution, including the three daily training sessions immediately preceding a scheduled execution. All training sessions shall be for a minimum of eight hours per session.

The training sessions are to allow the Warden, Team Administrator, Team Supervisor, and the sub-team leaders sufficient time to observe performance and skill of the Lethal Injection Team members, their coordination as a unit, and to identify any concerns with proficiency of Lethal Injection Team members' performance. Assessment of the Intravenous Sub-Team members' performance of their specific duties related to setting an IV and placement of electrocardiogram leads shall be assessed by the Intravenous Sub-Team leader and reported to the Team Supervisor and Team Administrator. Assessment of the Infusion Sub-Team members' performance of the specific duties related to preparation of the Lethal Injection Chemical and knowledge of the level and rate of infusion of the Lethal Injection Chemical shall be assessed by the Infusion Sub-Team leader and reported to the Team Supervisor and Team Administrator.

The training three calendar days immediately preceding the execution is to ensure proper functioning of the equipment, preparedness of Lethal Injection Team members, and to confirm inventory of supplies. The medical personnel who shall serve as the physician attending the execution will train at least once every six months for a minimum of eight hours, and will participate in each of the three daily training sessions immediately preceding a scheduled execution. This is necessary to ensure all Lethal Injection Team members and the medical personnel serving as physician attending the execution train regularly, as specified, and to ensure that they are proficient in carrying out their assigned duties and responsibilities.

New Subsections 3349.3(d) through 3349.3(d)(2) are adopted to establish training for all Lethal Injection Team members shall include a simulation of an execution by lethal injection, including utilizing artificial limbs to train in setting intravenous lines, preparation of the Lethal Injection Chemical, and identification of potential problems and recommendations for avoidance or resolution. This is necessary to ensure all Lethal Injection Team members are knowledgeable about their duties during an execution by ensuring minimum requirements for the training curriculum.

New Subsections 3349.3(e) through 3349.3(e)(6) are adopted to establish specific training requirements pertinent to the assigned duties of the Intravenous Sub-Team members. The scope of this training shall include: the use of an electrocardiogram for vital signs; setting up intravenous lines and intravenous drips; differentiation of sizes of intravenous catheters and determination of size to be used dependent on vein size and condition; crimping, uncoupling, and detaching intravenous lines; monitoring intravenous lines to ensure patency; and performing consciousness checks. The training for Intravenous Sub-Team members is necessary to ensure the Lethal Injection Team members are prepared to carry out their assigned duties during an execution by ensuring minimum requirements for the training curriculum.

New Subsections 3349.3(f) through 3349.3(f)(5) are adopted to establish specific training requirements pertinent to the assigned duties of the Infusion Sub-Team members. The scope of this training shall include: appropriate preparation of the Lethal Injection Chemical used in an execution; proper level and rate of infusion of the Lethal Injection Chemical into the intravenous lines; numbering and color coding of the syringes used in an execution; proper sequence of syringes used in an execution; and proper handling and accountability of controlled substances. The training for Infusion Sub-Team members is necessary to ensure the Infusion Sub-Team members are prepared to carry out their assigned duties during an execution, including the preparation and administration of the Lethal Injection Chemical, by ensuring minimum requirements for the training curriculum.

New Subsections 3349.3(g) through 3349.3(g)(3) are adopted to establish specific training requirements pertinent to the assigned duties of the Record Keeping Sub-Team members. The scope of this training shall include: accurate record keeping, report writing, and preparation of specific records used to document an execution. This training for Record Keeping Sub-Team members is necessary to ensure minimum training curriculum including familiarity with all CDCR forms and documentation required for an execution, the information to be recorded on the forms, and to ensure proficiency in recordkeeping.

New Subsections 3349.3(h) through 3349.3(h)(2) are adopted to establish the requirements for documenting the Lethal Injection Team training. The Team Supervisor is responsible to maintain the training file which shall contain a record of all lethal injection training sessions. A copy of records for training conducted the three calendar days immediately preceding an execution shall be placed in the Master Execution File. A Record Keeping Sub-Team member shall ensure all training is documented on the

following CDCR Forms; 2177 (10/15), San Quentin State Prison Execution Log-Lethal Injection Infusion Sub-Team, 2179 (10/15), San Quentin State Prison Execution Log-Lethal Injection Intravenous Sub-Team and 2181 (10/15), San Quentin State Prison Execution Log-Lethal Injection Team Administrator/Team Supervisor. These forms are procedural logs used both during training and during the actual execution process to ensure all required steps are completed and documented. This is necessary to clarify who is responsible for maintaining the training file, who is responsible for documenting the training, and what documents shall be completed during the training sessions. Accurately documenting the training sessions is necessary to verify that Lethal Injection Team members participated in and completed the required training.

3349.4. EXECUTION SITE OPERATION

New Section 3349.4 is adopted to establish parameters for the operation, maintenance, accountability, and security of the execution site located at San Quentin State Prison.

New Subsection 3349.4(a) is adopted to require all persons entering the Lethal Injection Facility to have prior oral or written approval of the San Quentin Warden or designee during the Warden's absence and that the approval be documented by the San Quentin Warden, San Quentin Chief Deputy Warden, Team Administrator or Team Supervisor in the key control log. This is necessary to maintain security and ensure a record of all persons entering the Lethal Injection Facility. The San Quentin Warden shall maintain a record of individuals approved to enter the Lethal Injection Facility. The record shall be kept in the San Quentin Warden's Office Complex.

New Subsection 3349.4(b) is adopted to ensure that the Infusion Control Room, located within the Lethal Injection Facility, shall accommodate a Lethal Injection Chemical preparation area; the members of the Infusion Sub-Team; designated members of the Intravenous Sub-Team; designated members of the Record Keeping Sub-Team; the San Quentin Litigation Coordinator; the Team Administrator; the Team Supervisor; and one representative each from the Governor's office, Office of the Inspector General, and the Office of the Attorney General. This is necessary to ensure the Lethal Injection Team members have room to perform their assigned duties and responsibilities during the execution, and ensure overcrowded conditions do not exist in the Infusion Control Room. CDCR designed the Lethal Injection Facility to address concerns that were identified in the United States District Court, Northern District December 15, 2006 Memorandum of Intended Decision (*Morales v. Tilton* (N.D. Cal. 2006) 465 F.Supp.2d 972, 980).

New Subsections 3349.4(c) through 3349.4(c)(2) are adopted to establish security and operational procedures relative to the safe located in the Infusion Control Room, where the Lethal Injection Chemical shall be stored. This is necessary to ensure a designated and secure location is identified to store the Lethal Injection Chemical in addition to maintaining quality control and accountability of the Lethal Injection Chemical.

New Subsections 3349.4(d) through 3349.4(d)(4) are adopted to establish the key control requirements for, and appropriate record keeping of, access to the Lethal Injection Facility. This is necessary to establish the mandates for accessing the Lethal Injection Facility. These requirements will ensure Lethal Injection Facility key control, security, and accountability of access to the Lethal Injection Facility.

New Subsection 3349.4 (e) is adopted to establish that monthly security and operational inspections of Lethal Injection Facility shall be conducted and documented by the Team Supervisor. This inspection shall include ensuring the equipment is functioning, supply inventory, and building maintenance. This is necessary to ensure maintenance and security of the facility.

3349.5. RESPONSIBILITIES AND TASKS UPON RECEIPT AND SERVICE OF THE EXECUTION WARRANT

New Section 3349.5 is adopted to establish the various responsibilities of staff and the condemned inmate upon receipt and service of the execution warrant.

New Section 3349.5 Presentence is adopted to identify what shall occur upon receipt of the execution warrant.

New Subsection 3349.5(a) is adopted to direct the Litigation Coordinator where the inmate is housed, upon receipt of the execution warrant, to investigate and determine whether the condemned inmate named on the execution warrant has any pending litigation. If pending litigation exists, the Litigation Coordinator at the institution where the inmate is housed shall advise the Warden where the inmate is housed and the San Quentin Warden. This is necessary to ensure investigation of any pending litigation is completed and appropriate notifications are made of any possible impediment to proceeding with the execution.

New Subsection 3349.5(b) is adopted to establish the San Quentin Litigation Coordinator shall be responsible to create and maintain the condemned inmate's Master Execution File. The San Quentin Litigation Coordinator is responsible for ensuring a copy of all execution related documents and reports are placed into the Master Execution File. This is necessary to ensure documentation and accountability of the events proceeding and up to the date of the scheduled execution.

New Subsection 3349.5(c) is adopted to establish the San Quentin Warden or the Warden where the inmate is housed shall notify the Director - Division of Adult Institutions, and other appropriate officials as necessary, within 24 hours of receipt of the execution warrant. The Director – Division of Adult Institutions shall notify the CDCR Secretary. The CDCR Secretary shall notify the Governor's Legal Affairs Secretary. A copy of the execution warrant shall be delivered to the Governor's Legal Affairs Secretary within 24 hours of receipt of the execution warrant. Notification to the Governor's Legal Affairs Secretary shall be completed by providing a copy of the

execution warrant. This is necessary to ensure all identified persons are notified of the pending execution. A condemned inmate may be housed at an institution other than San Quentin if the inmate is female, out to court, or requires special housing needs that cannot be accommodated at San Quentin.

New Subsection 3349.5(d) is adopted to establish the Director - Division of Adult Institutions shall, upon notification of the execution warrant, notify the CDCR Secretary, and select and appoint three Alienists to interview and evaluate the inmate to determine his/her sanity. The three Alienists shall be CDCR employees. The Director - Division of Adult Institutions shall maintain a list of Alienists with a minimum of six names. This provision is necessary to identify who may be appointed as an Alienist, provide backup should an Alienist become unavailable, and identify what responsibility the Alienists have pertaining to a sanity review pursuant to Penal Code Section 3700.5, *Investigation of sanity of persons sentenced to death; report*. Notification by the Director – Division of Adult Institutions to the CDCR Secretary is necessary to ensure that the CDCR Secretary is aware that an execution has been scheduled.

New Subsection 3349.5(e) is adopted to establish the tasks and responsibilities of the San Quentin Warden in conjunction with the Warden of the institution where the inmate is housed upon receipt of the execution warrant.

New Subsection 3349.5(e)(1) is adopted to establish the San Quentin Warden must coordinate a transfer of the condemned male inmate to San Quentin. This is necessary as Penal Code Section 1227 requires that a court appoint a day of execution which must not be less than 30 days nor more than 60 days from the time of making an execution warrant. Penal Code Subsection 3600(c)(3) requires a male inmate housed in another location other than San Quentin shall be transferred to San Quentin at least 60 days prior to the scheduled execution. Therefore, to ensure compliance with the statutory requirements, the condemned male inmate shall be returned to San Quentin.

New Subsection 3349.5(e)(2) is adopted to establish that the San Quentin Warden and the Warden of the institution where the inmate is housed shall serve the execution warrant on the inmate to be executed pursuant to Penal Code Section 3604(b), interview the inmate, and document the interview on a CDCR Form 1801-B (Rev. 10/15), Service of Execution Warrant-Warden's Initial Interview, in the presence of an Associate Warden and the Litigation Coordinator of the institution where the inmate is housed. This is necessary to identify the staff required to serve the execution warrant, the staff to be present as witness(es) during the service of the execution warrant, to advise the inmate of his or her ability to elect an execution method, identify the form to document the service of the execution warrant, and to ensure accountability and a record of the service of the execution warrant.

New Subsection 3349.5(e)(3) is adopted to establish the San Quentin Warden and the Warden of the institution where the inmate is housed shall notify the District Attorney, the attorney for the inmate, and the court, when there is good reason to believe that a female inmate, who has been served an execution warrant, is pregnant.

This is necessary to establish the notice responsibilities of staff pursuant to Penal Code Sections 3705 and 3706.

New Subsections 3349.5(e)(4) and 3349.5(e)(5) are adopted to require the condemned inmate be informed of the choices of execution method, either lethal injection or lethal gas and ensure staff document the notice on the CDCR Form 1801 (Rev. 10/15), Notification of Execution Date and Choice of Execution Method. Additionally, the condemned inmate shall be instructed to indicate his/her choice within ten calendar days on the CDCR Form 1801-A (Rev. 10/15), Choice of Execution Method, with the explanation that if no choice is made, lethal injection will be the method of execution. This is necessary to ensure accountability, proper notification, and documentation of the inmate's election of the execution method pursuant to Penal Code Section 3604.

New Subsection 3349.5(e)(6) is adopted to establish the condemned inmate shall be provided CDCR Forms; 1801-C (10/15), Request For Approval of Witnesses, 1801-D (10/15), Last Meal Request, 1801-E (10/15), Disposition of Personal Property and 1801-F (10/15), Release of Remains and Burial Arrangements. These forms are used to ensure the condemned inmate is made aware of the right to have witnesses attend the execution, the right to request and consume a last meal, the right to identify release of remains and burial arrangements, the right to dispose of their personal property, and to provide clarity so the condemned inmate understands the process leading up to the day of the scheduled execution pursuant to these regulations and Penal Code Section 3605.

New Subsections 3349.5(e)(7) is adopted to ensure the inmate has a copy of the current California Code of Regulations, Title 15, Division 3, for review of rules and procedures that will be utilized during the days leading up to the date of execution. This is necessary to ensure the condemned inmate understands the process leading up to the day of scheduled execution pursuant to these proposed regulations.

New Subsections 3349.5(e)(8) and 3349.5(e)(9) are adopted to establish the San Quentin Warden and the Warden of the institution where the inmate is housed shall ensure the appointed Alienists have access to interview and evaluate the inmate for investigation into the inmate's sanity. The Alienists shall immediately receive copies of any information received which may be relevant to the inmate's sanity. This is necessary to ensure a thorough and complete evaluation of all information that may be relevant to the inmate's sanity is conducted pursuant to Penal Code Section 3700.5.

New Subsection 3349.5(f) is adopted to establish specific responsibilities of the San Quentin Warden upon receipt of the execution warrant.

New Subsections 3349.5(f)(1) through 3349.5(f)(1)(E) are adopted to establish that the San Quentin Warden, in consultation with medical personnel, shall select the Lethal Injection Chemical from the listed Barbiturates. The CDCR Secretary shall be notified of the selection. This is necessary so that the San Quentin Warden will have medically trained personnel available to answer any questions he or she may have regarding the

selection of the Lethal Injection Chemical. It is necessary for the CDCR Secretary to notified of the Lethal Injection Chemical selection because he or she is responsible for the supervision, management, and control of state prisons and inmates pursuant to Penal Code Section 5054. The CDCR may contract with medical personnel if qualified civil service staff is not available, or willing, to assist with the selection of the Lethal Injection Chemical. If an authorized Lethal Injection Chemical is declared unconstitutional for purposes of execution by a court with jurisdiction, the Lethal Injection Chemical shall not be considered for selection. The list of Lethal Injection Chemicals are: Amobarbital, Pentobarbital, Secobarbital and Thiopental. The *Morales* Plaintiffs' medical expert has agreed that 5 grams of thiopental is a lethal dose. (Transcript of Proceedings, *Morales v. Tilton* (N.D. Cal., Sept. 27, 2006, No. C-06-0219-JF) pp. 542-543) All named barbiturates contained in the proposed regulations are equal to, or greater than, Thiopental in strength. (Rulemaking File documents relied upon: Vol. I, Document 26 (pp 29, 50); Vol. III, Document 26 (p 692); Vol. VI, Document 12 (1652), Document 32 (pp 413, 430, 433, 434), Document 33, Document 34 (pp 1, 12,14, 15), Document 35 (pp 6, 11, 30).) As a result, CDCR considers the listed chemicals equally effective in carrying out the purpose of these regulations. The proposed regulations call for a 7.5-gram barbiturate single-chemical dose to address the variations that may be present due to Lethal Injection Chemical tolerance, size, or weight of the inmate and to ensure that the dose will be lethal even if one or more of these factors exist.

The Lethal Injection Chemical selection shall be done on a case-by-case basis taking into account availability. The Lethal Injection Chemical selected and dosage shall be documented on the CDCR Form 1801-A, Designation of Lethal Injection Chemical (Rev. 10/15). This is necessary to identify staff responsibility, the process for the selection of the Lethal Injection Chemical, and to comply with Penal Code Section 3604. This provision is necessary to ensure that the San Quentin Warden has the discretion required to make a Lethal Injection Chemical selection. Obtaining the Lethal Injection Chemical from a licensed pharmaceutical facility or distributor is necessary to ensure that procurement of the Lethal Injection Chemical shall comply with all state and federal laws regarding controlled substances. In addition, storage of the Lethal Injection Chemical shall comply with all state and federal laws regarding controlled substances.

New Subsections 3349.5(f)(2) and 3349.5(f)(3) are adopted to establish the San Quentin Warden shall, upon selection of the Lethal Injection Chemical, notify the Warden of the institution where the inmate is housed, inform the inmate that he/she shall be executed by lethal injection, the Lethal Injection Chemical and amount to be used, and document this information on the CDCR Form 1801-A (Rev. 10/15), Choice Of Execution Method. This is necessary to identify staff responsibilities and to ensure necessary notifications are made and accurately documented for inclusion into the Master Execution File.

New Subsection 3349.5(f)(4) is adopted to establish the San Quentin Warden shall meet with the Team Administrator who shall notify the Team Supervisor and Lethal Injection Team members of the execution warrant. This is necessary to provide

notification of the scheduled execution to the Team Supervisor and the Lethal Injection Team, thus initiating necessary preparations and training for the Lethal Injection Team members.

New Subsection 3349.5(f)(5) is adopted to establish the San Quentin Warden is responsible to ensure the Team Administrator, the Team Supervisor, and all Lethal Injection Team members involved in an execution understand their roles in the scheduled execution. This is necessary to ensure the Team Administrator, the Team Supervisor and the Lethal Injection Team members are prepared for the scheduled execution and understand the responsibilities and duties they are to perform. The San Quentin Warden has the responsibility to ensure that a scheduled execution is performed and to ensure that all Lethal Injection Team members are prepared to carry out their duties during a scheduled execution. The San Quentin Warden has the discretion to determine the preparedness of a specific Lethal Injection Team member. The San Quentin Warden may consider the training session performance assessments by the Intravenous Sub-Team leader, the Infusion Sub-Team leader, and Team Supervisor; any concerns expressed by the Team Administrator, Team Supervisor, or any Lethal Injection Team member; recent performance in job duties, to include personnel evaluations or corrective and adverse action taken against the specific Lethal Injection Team member; and any other information that causes the San Quentin Warden to believe that the specific Lethal Injection Team member may be unprepared or unable to perform the duties required by these regulations during a scheduled execution.

New Subsection 3349.5(f)(6) is adopted to establish the San Quentin Warden shall refer the inmate to the Intravenous Sub-Team for a vein assessment to determine the size, location, and resilience of the inmate's veins. The vein assessment shall identify the primary, backup, and alternate backup locations, taking into account individualized medical history and information including age, physical condition of vein site, scarring, body size, body weight, dehydration, skin texture, rolling veins, hardening of veins, bruising, or other vein trauma. The alternate backup location may be a vein, or may be a percutaneous portal vein access, if necessary. Upon completion of the vein assessment, the San Quentin Warden shall obtain a copy of the vein assessment report. This is necessary to ensure the Intravenous Sub-Team members identify the veins or artery if necessary to be used, are prepared in advance to carry out their required duties and responsibilities during an execution, and to ensure the vein assessment report is documented in the Master Execution File.

New Subsection 3349.5(f)(7) is adopted to establish the San Quentin Warden's responsibility to ensure all institution staff members who are not part of the Lethal Injection Team, but have specific institutional responsibilities during an execution, are notified of the execution warrant. This is necessary to ensure awareness by institution staff of the scheduled execution of the need to prepare to carry out their required duties and responsibilities during the execution.

New Subsection 3349.5(f)(8) is adopted to ensure the selection of the witnesses is in accordance with Penal Code Section 3605.

New Subsection 3349.5(g) is adopted to establish the Warden of the institution where the inmate is housed shall ensure that the tasks designated to the Associate Warden, Correctional Counselor II-Condemed Unit, Litigation Coordinator, Warden's Administrative Assistant-Public Information Officer, and Visiting Lieutenants are carried out. This subsection is necessary to provide clarity to staff of their required duties and responsibilities.

New Subsections 3349.5(g)(1) through 3349.5(g)(1)(C) are adopted to establish specific responsibilities of the Associate Warden of the unit where the inmate is housed. These responsibilities include: direct staff in the unit where the inmate is housed to initiate the inmate's Pre-Execution Logbook; ensure the custody staff in the unit where the inmate is housed are conducting hourly checks and ensure documentation of the inmate's behavior, activities, requests, and welfare in the inmate's Pre-Execution Logbook, address any questions the inmate may have, and ensure the inmate does not attempt to inflict harm upon himself or herself, or take any action to impede Intravenous insertion; visit the inmate daily and document the visit in the inmate's Pre-Execution Logbook. The decision to conduct hourly checks is due to administrative need to elect a time to perform checks, ensure documentation of the inmate's behavior, to ensure the inmate does not attempt to inflict harm upon him or herself, take any action to impede intravenous insertion, and address any inmate needs. Although CDCR recognizes that Section 3317 applies to the inmate disciplinary process, CDCR is referencing this section for the sole purpose of identifying the type of behavior that requires custody staff to make a written report pursuant to the proposed regulations. The proposed provision is necessary to ensure that this type of behavior is reported in writing via CDCR Form 128-B to the Warden of the institution where the inmate is housed, the San Quentin Warden, and the Alienists pursuant to Penal Code Sections 3700.5 and 3701. This is not intended to modify the obligations of staff under Section 3317. The CDCR Form 128-B is a largely blank form used by CDCR staff in a variety of situations to document relevant information. This form will be used for subsection 3349.5(g)(1)(B) to document the inmate's conduct and behavior as described in Section 3317.

The Pre-Execution Logbook is not incorporated by reference because it is a blank journal utilized to document all activity according to these regulations. A photo of the logbook is included with this rulemaking package and an example of the logbook is available for public review. These provisions are necessary to provide clarity on what the Associate Warden of the unit where the inmate is housed is responsible for, in addition to accountability, and ensuring accurate documentation for inclusion in the Master Execution File.

New Subsections 3349.5(g)(2) through 3349.5(g)(2)(F) are adopted to establish specific responsibilities of the Correctional Counselor II - Condemed Unit at the institution where the inmate is housed. These responsibilities include:

- maintain daily contact with the inmate, document any changes in the inmate's conduct and behavior in the Pre-Execution Logbook and immediately report any conduct or behavior that is of the type identified in Section 3317 in writing via CDCR Form 128-B to the Associate Warden of the unit where the inmate is housed, the Warden of the institution where the inmate is housed, the San Quentin Warden, and the Alienists. The Form 128-B (see description above under subsection 3349.5(g)(1) through (g)(1)(C)) is used to document behavior described in Section 3317;
- ensure that all communications are understood by the inmate;
- update the inmate's Notification In Case Of Inmate Death, Serious Injury Or Serious Illness in the Strategic Offender Management System to ensure the information is accurate and current;
- prepare and submit a report to the San Quentin Warden, via the Warden of the institution where the inmate is housed, consisting of a review of the inmate's case factors and any observations of the inmate documented by the assigned Correctional Counselor I and/or custody staff, to document the inmate's past and present conduct and behavior. It is necessary to provide this information to the Alienists for inclusion into the CDCR Form 2173 (10/15), 20-Day Pre-Execution Report pursuant to Penal Code Section 3700.5, Investigation of sanity of persons sentenced to death; report. The CDCR Form 2173 is a memorandum to the Warden of San Quentin. The form is necessary to record the results of the Alienist's sanity reviews;
- Collection of the completed CDCR Forms 1801-C (10/15), Request For Approval of Witnesses, 1801-D (10/15), Last Meal Request, 1801-E (10/15), Disposition of Personal Property and 1801-F (10/15), Release of Remains and Burial Arrangements within ten calendar days of providing them to the inmate, and forward them to the Litigation Coordinator at the institution where the inmate is housed so the inmate's requests are known to CDCR and there is time for CDCR to make arrangements to carry out the requests; and
- Ensure all non-legal telephone calls made by the inmate on an institutional telephone are monitored pursuant to Section 3282. Legal calls shall not be monitored but shall be facilitated by staff to provide inmate confidential access to legal counsel. All calls shall be logged in the inmate's Pre-Execution Logbook.

This is necessary to establish responsibilities of the Correctional Counselor II - Condemned unit where the inmate is housed, in addition to ensuring accountability and accurate documentation for inclusion into the Master Execution File.

New Subsections 3349.5(g)(3) through 3349.5(g)(3)(B) are adopted to establish that the Litigation Coordinator at the institution where the inmate is housed shall ensure approval for visiting is on file for the inmate's attorney(s), shall notify the Visiting Lieutenant at the institution where the inmate is housed, and expeditiously schedule attorney visits upon request of the inmate's attorney(s), notwithstanding Title 15, Section 3178, Attorney Visitations and Consultation. This is necessary to establish the duties of the Litigation Coordinator at the institution where the inmate is housed. Additionally, this provision is necessary to ensure the condemned inmate has

expeditious access to legal counsel from the time of the service of the execution warrant.

New Subsection 3349.5(g)(4) is adopted to establish the Administrative Assistant – Public Information Officer at the institution where the inmate is housed shall act as liaison between the inmate’s family and the Warden. This is necessary to facilitate expeditious communication between the inmate’s family and the Warden.

New Subsections 3349.5(g)(5) through 3349.5(g)(5)(B) are adopted to establish specific responsibilities of the Visiting Lieutenant at the institution where the inmate is housed. These responsibilities include: to ensure the attorney(s) for the inmate is afforded assistance to expeditiously access the inmate, which may include facilitating attorney visits during weekends and/or holidays as necessary; and to arrange visitation for the inmate’s family and/or friends. This is necessary to establish the responsibilities of the Visiting Lieutenant at the institution where the inmate is housed. In addition, this is necessary to ensure the inmate’s right to legal visitation is not delayed. Finally, it is necessary to ensure regular visiting for family and friends is facilitated.

New Subsections 3349.5(h) through 3349.5(h)(5) are adopted to establish the process for a sanity review of an inmate. State law prohibits the execution of inmates who are legally insane pursuant to Penal Code Section 3704. An investigation of sanity of persons sentenced to death shall be conducted by a panel of three appointed Alienists pursuant to Penal Code Section 3700.5. In addition, a sanity review may be requested pursuant to Penal Code Section 3701, if there is good reason to believe that the inmate has become insane. Attorneys may submit any information that pertains to the inmate’s sanity to the San Quentin Warden in writing. The Warden where the inmate is housed shall have available for review all known psychiatric information about the inmate. All information that may be relevant to an inmate’s sanity shall be reviewed to determine if there is good reason to believe that the inmate has become insane. Should the San Quentin Warden, in consultation with the Alienists, find good reason for such a belief, the Warden of the institution where the inmate is housed and the San Quentin Warden shall notify the Director – Division of Adult Institutions, the Secretary – CDCR, and the inmate’s attorney in writing of the results of the requested sanity review. The District Attorney shall also be notified pursuant to Penal Code Section 3701, via a CDCR Form 2174 (10/15), Notification By Warden To The District Attorney Concerning Sanity of Condemned Inmate. This form is a notification from the San Quentin Warden to the District Attorney in which the Warden provides notice that there is good reason to believe that the condemned inmate has become insane and the facts supporting the belief. The Secretary – CDCR shall ensure the Governor’s Legal Affairs Secretary is notified of all referrals to the District Attorney’s office pursuant to Penal Code Section 3701. This is necessary to ensure that no inmate shall be executed should their sanity be in question and to comply with Penal Code Sections 3700.5, 3701 and 3704.

3349.6. CHRONOLOGY OF EVENTS AFTER THE EXECUTION WARRANT HAS BEEN SERVED

New Section 3349.6 is adopted to establish the chronology of events that shall occur after the execution warrant has been served to the inmate.

New Section 3349.6 Presentence is adopted to establish a chronological timeline of events which shall occur after the execution warrant has been served on the inmate. This is necessary to identify specific procedures which shall be implemented prior to the scheduled execution.

New Subsection 3349.6(a) is adopted to establish procedures that shall be completed no later than 20 calendar days prior to the scheduled execution. This is necessary to ensure specific requirements are implemented in a timely manner and to ensure accountability for staff responsible to implement the procedures.

New Subsections 3349.6(a)(1) through 3349.6(a)(2) are adopted to establish the San Quentin Warden and the Warden of the institution where the inmate is housed ensure the completion of the CDCR Form 2173 (10/15), 20-Day Pre-Execution Report. Each Alienist shall complete the CDCR Form 2173 and attach his or her independent psychiatric report regarding the inmate and submit it to the San Quentin Warden and the Warden of the institution where the inmate is housed. This is necessary to establish the duties of the Wardens and the Alienists and identify the documents that shall be included in the report.

New Subsection 3349.6(a)(3) is adopted to establish the Alienists panel shall submit a copy of the completed CDCR Form 2173 (10/15), 20-Day Pre-Execution Report to the Governor, the Warden of the institution where the inmate is housed, and the San Quentin Warden. The report shall include a summary of the examinations conducted on the inmate, summary of interviews conducted with the inmate, and the inmate's history stated in plain language. This is necessary to establish the parameters of the 20-Day Pre-Execution Report pursuant to Penal Code Section 3700.5.

New Subsection 3349.6(a)(4) is adopted to establish that upon completion, the 20-Day Pre-Execution Report shall be forwarded for submission to the Director – Division of Adult Institutions and the CDCR Secretary, together with a cover letter, and the summary of the inmate's conduct and behavior, submitted by a Correctional Counselor II – Condemned Unit. This is necessary to establish both Wardens' responsibilities pertaining to the 20-Day Pre-Execution Report pursuant to Penal Code Section 3700.5 and their responsibility to forward the report to the Director – Division of Adult Institutions and the CDCR Secretary. This is necessary to ensure that the Director – Division of Adult Institutions and the CDCR Secretary are informed of the Alienists' report on the inmate's mental health status.

New Subsections 3349.6(b) through 3349.6(b)(3) are adopted to establish the events that occur approximately ten calendar days prior to a scheduled execution. CDCR determined ten calendar days are necessary to allow the Alienists approximately three calendar days to complete the duties required by the second evaluation of the inmate's sanity that must be included in the CDCR Form 2175 (10/15), 7-Day Pre-Execution Report. The CDCR Form 2175 is a memorandum, similar to the CDCR Form 2173, to

the Warden of San Quentin in which the alienists record their conclusions regarding the inmate's sanity. This form is necessary to document the Alienists' conclusions and convey this information to the Warden. During this time, the Alienists shall conduct a second interview and evaluation of the inmate, compare their evaluations with their previous findings, and submit the 7-Day Pre-Execution Report, to the San Quentin Warden. The 7-Day Pre-Execution Report updates the 20-Day Pre-Execution Report with the most current information, noting any change in the inmate's mental condition since the 20-Day Pre-Execution Report.

The San Quentin Warden and the Warden of the institution where the inmate is housed shall submit the completed CDCR Form 2175 (10/15), 7-Day Pre-Execution Report with a cover letter, and the summary of the inmate's conduct and behavior, submitted by a Correctional Counselor II – Condemned Unit, to the Director – Division of Adult Institutions and the CDCR Secretary. The 7-Day Pre-Execution Report shall be forwarded to the CDCR Secretary in sufficient time to forward the report in accordance with subsection (c) of this section.

These provisions ensure that the Alienists and the San Quentin Warden have current information regarding the inmate's mental status and that the report is timely prepared. This is necessary to establish the staff responsibility pertaining to the 7-Day Pre-Execution Report. While not required by statute, CDCR requires the 7-day Pre-Execution Report as a precautionary measure to ensure that no inmate shall be executed should their sanity be in question.

New Subsection 3349.6 (c) is adopted to establish the CDCR Form 2175 (10/15), 7-Day Pre-Execution Report, shall be delivered to the Governor's Legal Affairs Secretary seven calendar days prior to the scheduled execution. This is necessary to ensure that the Governor receives the 7-Day Pre-Execution Report with current information regarding the inmate's mental status.

New Subsection 3349.6(d) is adopted to establish the events that shall occur approximately five calendar days prior to a scheduled execution. The CDCR determined five calendar days is necessary to accommodate the inmate's needs, access to counsel, and observation and reporting requirements, because in the last five calendar days legal, family, and spiritual advisor visits increase as the scheduled execution date approaches. It is necessary to establish this timeframe to place the inmate under closer observation for security, 24 hour access to staff, and to ensure ongoing observation and reporting of any conduct or behavior of the type identified in Section 3317 can be brought to the attention of the San Quentin Warden and the Warden of the institution where the inmate is housed. This is also necessary to ensure specific requirements are implemented in a timely manner and to ensure staff accountability for completion of the duties listed in the provisions.

New Subsections 3349.6(d)(1) through 3349.6(d)(3)(B) are adopted to establish it is the responsibility of the San Quentin Warden to ensure the condemned male inmate has been moved to the Designated Security Housing area. Once moved to the

Designated Security Housing area, assigned custody staff shall continue to monitor the inmate's behavior and activities 24 hours a day and document the observations every hour in the inmate's Pre-Execution Logbook. The Warden where the inmate is housed shall ensure unit staff are monitoring the inmate 24 hours a day. The Associate Warden at the institution where the inmate is housed shall ensure the required documentation is completed every hour in the inmate's Pre-Execution Logbook. If there is any conduct or behavior of the type identified in Section 3317, the Warden where the inmate is housed and the San Quentin Warden shall be notified. The San Quentin Warden and the Warden at the institution where the inmate is housed shall immediately report any changes in conduct or behavior that raise concern pursuant to Penal Code Section 3701, in writing, to the Secretary of the CDCR via the Director - Division of Adult Institutions.

CDCR determined it is necessary to move a male inmate from his assigned housing to the Designated Security Housing area to accomplish the provisions set out in Subsection (d)(2)-(d)(7) due to San Quentin's Condemned Unit facility design. Female inmates do not need to be moved because the female condemned housing unit is smaller and does not pose the same design obstacles.

The requirements set forth in Subsection (d)(2)-(d)(7) apply equally to male and female condemned inmates. This is necessary to accommodate the inmate's needs, access to counsel, and observation and reporting requirements, because in the last five calendar days legal, family, and spiritual advisor visits increase as the scheduled execution date approaches. Twenty-four hour observation is necessary to ensure the condemned inmate does not attempt to inflict harm upon him or herself, or take any action that would impede intravenous insertion. There is dedicated staffing to continuously monitor the inmate to respond to any inmate needs including expedited access to the Warden. In addition, this is necessary to establish staff responsibilities, documentation and reporting requirements and to comply with Penal Code Section 3701.

New Subsection 3349.6(d)(4) is adopted to establish the Correctional Counselor II-Condemned Unit shall begin daily briefings for the Warden where the inmate is housed regarding the inmate's needs, requests, conduct, and behavior. This is necessary to ensure the Warden of the institution where the inmate is housed is aware of the inmate's needs, requests, and behavior, to ensure that they are expeditiously addressed.

New Subsection 3349.6(d)(5) is adopted to establish provisions to ensure the condemned inmate shall have 24-hour access to a telephone for attorney contact. Legal calls will not be monitored but shall be facilitated by staff. All calls shall be logged on the inmate's Pre-Execution Logbook. This is necessary to ensure the inmate has 24-hour access to legal counsel and to establish it is the responsibility of staff to facilitate legal phone calls upon request.

New Subsections 3349.6(d)(6) through 3349.6(d)(6)(B) are adopted to establish religious accommodations. Religious accommodations shall be available for the inmate

using state employed Chaplains and Spiritual Advisors selected by the inmate and/or non-state employed Chaplains and Spiritual Advisors who have been pre-approved pursuant to Section 3170, et seq. Religious visitation shall be conducted at the inmate's cell front on either second watch (6 a.m. to 2 p.m.) or third watch (2 p.m. to 10 p.m.) No visiting is permitted during first watch (10 p.m. to 6 a.m.) due to unavailability of staff needed to accommodate visiting on first watch, and because it is disruptive to the sleep of other inmates in the housing unit. Telephone access is available to the inmate at any time. This is necessary to ensure the inmate's constitutional right to exercise his/her religion is accommodated. Cell front visitation is in the interest of the inmate while at the same time ensuring the safety and security of the visitor, staff, and the institution.

New Subsections 3349.6(d)(7) through 3349.6(d)(7)(B) are adopted to establish provisions regarding the inmate's last meal and to establish that the Food Manager shall make a determination if food services can fulfill the request or if other arrangements need to be made. It is necessary to establish a cost limit for the meal to ensure fiscal responsibility with taxpayer dollars. It is also necessary to ensure food services can fulfill the request or make arrangements to obtain the requested menu items.

New Subsection 3349.6(e) is adopted to establish the events that shall occur approximately three calendar days prior to a scheduled execution. The CDCR determined approximately three calendar days is necessary to ensure compliance with Penal Code Section 3602 for transfer of condemned female inmates prior to an execution and to accomplish the other provisions of this subsection which are requirements of subsection 3349.3(c).

New Subsection 3349.6(e)(1) is adopted to establish the condemned female inmate shall be delivered to San Quentin not earlier than 72 hours prior to the scheduled execution pursuant to Penal Code Section 3602. The female condemned inmate shall be moved no later than 12 hours prior to the scheduled execution to ensure she is delivered to San Quentin and placed in the Lethal Injection Facility Holding area no less than six hours prior to an execution to make necessary preparations, ensure institutional security, and preserve Lethal Injection Team Member confidentiality. This is necessary to ensure that traffic or other transportation issues do not delay arrival to San Quentin with inadequate time to perform the necessary preparations that occur in the six hours immediately preceding the scheduled execution. Once at San Quentin, the condemned female inmate shall be secured in the Lethal Injection Facility Holding Area. The female inmate is not housed in the Designated Security Housing Area, as it is located in a male inmate housing area and CDCR does not house female inmates in male inmate housing areas. In addition, housing in the Lethal Injection Facility Holding Area is necessary to ensure the safety and security of the inmate, staff, and the institution.

New Subsections 3349.6(e)(2) through 3349.6(e)(4) are adopted to establish the Team Administrator shall ensure the Team Supervisor schedules and conducts required training three calendar days prior to the scheduled execution for the Lethal Injection Team members. The Intravenous Sub-Team leader or Infusion Sub-Team leader shall conduct any training that requires medical knowledge. This training prepares the Lethal

Injection Team for the execution and allows the Intravenous Sub-Team leader, Infusion Sub-Team leader, and Team Supervisor to assess the Lethal Injection Team members' readiness to carry out their assigned tasks. This is necessary to ensure the preparedness of the Lethal Injection Team members, supervision, and oversight of the Lethal Injection Team. The training three calendar days immediately preceding the execution is to ensure proper functioning of equipment, preparedness of Lethal Injection Team members, and to confirm inventory of supplies as close to the scheduled execution date as possible. This is necessary to ensure that if any issue arises immediately preceding a scheduled execution, there is time to resolve it without delaying the scheduled execution.

New Subsection 3349.6(f) is adopted to establish the events that shall occur approximately 24 hours prior to a scheduled execution. The CDCR determined 24 hours is necessary to provide the San Quentin Warden time to address any issues that may arise regarding the Lethal Injection Team during the daily training, to ensure that the Lethal Injection Chemical is available and secured in the Lethal Injection Facility before the scheduled execution, and complete the specific requirements in the provisions in this subsection.

New Subsection 3349.6(f)(1) is adopted to establish the San Quentin Warden shall confirm that all the Lethal Injection Team members are prepared and ready to perform their assigned duties within 24 hours of the execution. This is necessary because the San Quentin Warden has the legal duty to carry out the execution and must be confident the necessary Lethal Injection Team members are ready and able to perform their assigned duties and responsibilities. The San Quentin Warden has the discretion to determine the preparedness of a specific Lethal Injection Team member. The San Quentin Warden may consider performance during training sessions, any concerns expressed by the Intravenous Sub-Team leader, Infusion Sub-Team leader, Team Administrator, Team Supervisor, or any Lethal Injection Team member; recent performance in job duties, to include personnel evaluations or corrective and adverse action taken against the specific Lethal Injection Team member; and any other information that causes the San Quentin Warden to believe that the specific Lethal Injection Team member may be unprepared or unable to perform the duties required by these regulations during a scheduled execution.

New Subsections 3349.6(f)(2) through 3349.6(f)(2)(C) are adopted to establish the Team Administrator, accompanied by the Team Supervisor and a Lethal Injection Team member, shall obtain the Lethal Injection Chemical and transport it to the Lethal Injection Facility. The Team Supervisor and a Lethal Injection Team member shall ensure that the Lethal Injection Chemical is properly controlled and secured in the Lethal Injection Facility. The Team Administrator shall ensure documentation of the receipt of the Lethal Injection Chemical on the CDCR Form 2176 (10/15), Lethal Injection Chain of Custody-San Quentin State Prison. The CDCR Form 2176 shall be completed upon any movement of the Lethal Injection Chemical to provide accountability and to maintain the security and integrity of the Lethal Injection Chemical. This is necessary to establish the procedures and corresponding documentation that

governs the acquisition, transfer of custody, and secure storage of the Lethal Injection Chemical.

New Subsection 3349.6(g) is adopted to establish the events that shall occur approximately six hours prior to a scheduled execution. The CDCR determined six hours is necessary to accommodate and complete the specific requirements in the provisions. The CDCR determined six hours is necessary to move the inmate to the Lethal Injection Facility for the inmate's security, and to complete the movement prior to the arrival of the Lethal Injection Team. It is also necessary to ensure the condemned inmate is aware of the process, address any questions the inmate may have, and to ensure the inmate does not attempt to inflict harm upon him or herself, or any action to compromise the intravenous injection site(s) or other actions to prevent the execution. This is also necessary to ensure specific requirements are implemented in a timely manner and to ensure staff accountability for completion of the duties listed in the provisions.

New Subsections 3349.6(g)(1) through 3349.6(g)(1)(F) are adopted to establish the Team Supervisor shall meet with and brief the inmate on the execution procedures; supervise the movement of and secure the male inmate in the Lethal Injection Facility Holding Area cell; ensure staff document the inmate's activities, requests, conduct, and behavior every 15 minutes in the inmate's Pre-Execution Logbook; ensure the delivery, inspection and service of the inmate's last meal; and inform the inmate he/she may request additional food or drink items and other privileges specified in these provisions. This is necessary to ensure the Team Supervisor has knowledge of assigned duties and responsibilities, what the inmate may receive during the last six hours prior to the scheduled execution, and to ensure documentation and accountability of the inmate's requests and welfare. Additionally, this is necessary to ensure the condemned inmate is aware of the process, address any questions the inmate may have, and to ensure the inmate does not attempt to inflict harm upon him or herself, take any action to compromise the intravenous injection site(s), or take other actions to prevent the execution.

New Subsection 3349.6(g)(2) is adopted to establish all visiting shall cease at six hours prior to the scheduled execution with the exception of an inmate's attorney, state employed or pre-approved non-state employed Chaplains and Spiritual Advisors. Visitation shall be in the presence of a correctional officer(s) to ensure the safety and security of the Lethal Injection Facility, staff, visitors, and the inmate. No visiting is permitted during first watch (10 p.m. to 6 a.m.) due to unavailability of staff needed to accommodate visiting on first watch. If attorney-client confidentiality is needed, attorneys may have access to the inmate by phone as requested by either the attorney or the inmate. This is necessary to ensure the inmate is afforded the constitutional right to exercise religion and their right to legal counsel. All visiting ceases upon moving the inmate to the Lethal Injection Facility Holding Area cell to ensure the safety and security of the inmate and staff.

New Subsection 3349.6(h) is adopted to establish the events that shall occur approximately three hours prior to a scheduled execution. The CDCR determined three hours is the minimum time necessary for the Lethal Injection Team members to report to the Lethal Injection Facility and to complete the specific requirements in the provisions in this subsection. This is necessary to allow the Lethal Injection Team to complete all duties required by these provisions to prepare for the execution while ensuring the Lethal Injection Team members' confidentiality.

New Subsections 3349.6(h)(1) through 3349.6(h)(1)(E) are adopted to establish that all visiting shall cease three hours prior to the execution in order to begin making final preparations of the inmate, staff, and execution facility. Attorneys, Chaplains, and Spiritual Advisors may have access to the inmate by phone as requested by the Attorney, the Chaplain, the Spiritual Advisor, or the inmate. This is necessary to ensure that the inmate has access to his or her legal counsel and religious or spiritual advisors.

In addition, these provisions are necessary to establish it is the responsibility of the Team Supervisor to remove the Lethal Injection Chemical from the Lethal Injection Facility safe, and immediately transfer custody of the Lethal Injection Chemical to two members of the Infusion Sub-Team. The Team Supervisor shall ensure accountability of the Lethal Injection Chemical by relinquishing control of the Lethal Injection Chemical to a minimum of two Infusion Sub-Team staff members who shall verify receipt of the Lethal Injection Chemical at the time of the transfer by documenting the transfer on CDCR Form 2176 (10/15), Lethal Injection Chain of Custody – San Quentin State Prison. These provisions ensure accountability for the Lethal Injection Chemical.

Additionally, the Team Supervisor shall ensure a Record Keeping Sub-Team member is assigned to initiate documentation on the CDCR Form 2177 (10/15), San Quentin State Prison Execution Log-Lethal Injection Infusion Sub-Team (see subsection 3349.3(h) above for an explanation of this form), upon receipt of the Lethal Injection Chemical by the Infusion Sub-Team members, continue observation and documentation throughout the Lethal Injection Chemical preparation process, and ensure a Record Keeping Sub-Team member is assigned to initiate documentation on the CDCR Form 2181 (10/15), San Quentin State Prison Execution Log - Lethal Injection Team Administrator/Team Supervisor (see subsection 3349.3(h) above for an explanation of this form). This is necessary to establish handling and documentation requirements pertaining to the transfer of the designated Lethal Injection Chemical, to maintain control and integrity of the Lethal Injection Chemical, and maintain safety and security of the institution, staff, and the inmate.

New Subsections 3349.6(h)(2) through 3349.6(h)(2)(B) are adopted to establish the San Quentin Warden and the Team Administrator shall meet with the inmate in the Lethal Injection Facility Holding Area and advise the inmate that a written last statement can be prepared and made available after the execution. The inmate shall also be informed that a sedative is available upon request. This subsection is necessary to ensure the inmate is offered the opportunity to prepare a written last statement to

express his or her thoughts, as well as to ensure the inmate is informed of the option to have a sedative available to the inmate upon request.

New Subsections 3349.6(h)(3) through 3349.6(h)(3)(E) are adopted to establish how the designated Lethal Injection Chemical is labeled for each tray with the corresponding total amount of Lethal Injection Chemical to utilize and the amount of Lethal Injection Chemical each syringe shall contain. Each tray is comprised of five syringes each containing 1.5 grams of the designated Lethal Injection Chemical. A sixth syringe shall be prepared containing saline. The *Morales* Plaintiffs' medical expert has agreed that 5 grams of thiopental is a lethal dose. (Transcript of Proceedings, *Morales v. Tilton* (N.D. Cal., Sept. 27, 2006, No. C-06-0219-JF) pp. 542-543) All named barbiturates contained in the proposed regulations are equal to, or greater than, Thiopental in strength. (Rulemaking File documents relied upon: Vol. I, Document 26 (pp 29, 50); Vol. III, Document 26 (p 692); Vol. VI, Document 12 (1652), Document 32 (pp 413, 430, 433, 434), Document 33, Document 34 (pp 1, 12,14, 15), Document 35 (pp 6, 11, 30).) As a result, CDCR considers the listed chemicals equally effective in carrying out the purpose of these regulations. While CDCR recognizes that 5 grams has been deemed lethal, CDCR chose to increase the dosage to 7.5 grams to take into account Lethal Injection Chemical tolerance, size or weight of the inmate.

The Infusion Sub-Team shall prepare three identical trays which shall be color coded and lettered A, B, or C for distinction. The three color-coded trays shall have six color-coded syringes each to match the tray and be labeled by content and numbered sequence of administration, i.e. five separate 60cc syringes, each containing the specified amount of designated Lethal Injection Chemical and one 60cc syringe containing the saline flush. A saline flush is necessary to ensure that the Lethal Injection Chemical is fully delivered through the IV tubing. The Lethal Injection Chemical shall be prepared according to the manufacturer's instructions. The syringes on each tray shall be prepared by a medically trained Infusion Sub-Team member and a separate medically trained Infusion Sub-Team or Intravenous Sub-Team member shall verify proper preparation of the syringes for each tray.

This subsection is necessary to ensure the preparation and verification of the Lethal Injection Chemical is completed by medically-trained Lethal Injection Team staff members according to the manufacturer's instructions, thus ensuring the Lethal Injection Chemical is ready for proper administration consistent with these regulations. Additionally, these provisions are necessary to ensure accountability and establish the procedures for the proper preparation of the Lethal Injection Chemical. The color coding and lettering of the Lethal Injection Chemical trays is necessary to visually aid in distinguishing the primary, backup and alternate backup.

New Subsection 3349.6(i) is adopted to establish the events that shall occur approximately two hours prior to a scheduled execution. This is necessary to ensure specific requirements are implemented in a timely manner and to ensure staff accountability.

New Subsections 3349.6(i)(1) through 3349.6(i)(1)(B) are adopted to establish the San Quentin Warden shall confirm that the curtains are open in the viewing rooms in the Lethal Injection Facility prior to the witnesses' arrival and that all witnesses are appropriately accommodated. The curtains are open prior to the start of the execution and remain so until after the inmate is pronounced dead. This is necessary to clearly articulate staff responsibility and transparency in accordance with *California First Amendment Coalition v. Woodford* (2002) 299 F.3d 868.

New Subsection 3349.6(j) is adopted to establish the events that occur approximately one hour prior to a scheduled execution. This is necessary to ensure specific requirements are implemented in a timely manner and to ensure accountability for staff responsible to implement the procedures.

New Subsection 3349.6(j)(1) is adopted to establish the Team Supervisor is responsible for ensuring the dedicated phone lines with the Governor's Office, the Office of the Attorney General, the California Supreme Court, and the San Quentin Warden's office complex are open in the Infusion Control Room and staffed at least 15 minutes prior to an execution. This is necessary to provide clear direction to the assigned Team Supervisor to ensure all necessary open phone lines are established and staffed in case there is a last-minute stay of execution and/or to communicate other information to the San Quentin Warden that may preclude the execution from proceeding.

New Subsection 3349.6(j)(2) is adopted to establish the San Quentin Warden shall order the inmate be prepared approximately 45 minutes before the execution. This is necessary to provide direction to the San Quentin Warden as to when staff should begin preparing the inmate for the execution to allow the necessary time to place the inmate in restraints, place electrocardiogram leads, and other preparations.

New Subsections 3349.6(j)(3) through 3349.6(j)(3)(C) are adopted to establish when the Team Supervisor shall direct the inmate to be placed in restraints, removed from the Lethal Injection Facility Holding Cell, and observe the placement of the electrocardiogram leads on the inmate by an Intravenous Sub-Team member to monitor the inmate's heart activity and assist the physician in determining and declaring death. Additionally, the Team Supervisor shall ensure a Record Keeping Sub-Team member is completing the required documentation on the CDCR Form 2179 (10/15), San Quentin State Prison Execution Log-Lethal Injection Intravenous Sub-Team. This is necessary to provide clear direction on staff responsibility, accountability, and completion of documentation for inclusion into the Master Execution File. It is a necessary precaution for the inmate to be placed in restraints given the safety and security concerns for the staff, inmate, and witnesses in the hour before a scheduled execution. Restraints may be required pursuant to Subsection 3268.2(b).

New Subsections 3349.6(j)(4) through 3349.6(j)(4)(D) are adopted to establish the procedures for managing an inmate who refuses an order to be placed in restraints. The Team Supervisor shall speak with a resistive inmate to attempt to gain the inmate's compliance. If the inmate still refuses to comply with the order, immediate force, in

accordance with Section 3268, may be used. Any such use of force shall be documented in accordance with Section 3268.1, and a copy shall be placed in the Master Execution File. This section is necessary to direct staff to comply with the CDCR regulations governing the Use of Force should an inmate become resistive prior to an execution.

New Subsections 3349.6(j)(5) through 3349.6(j)(5)(C) are adopted to establish approximately 15 minutes before a scheduled execution the inmate shall be escorted to the Lethal Injection Room and secured to the gurney with restraints. CDCR determined that 15 minutes provides the necessary time to move the inmate from the Lethal Injection Facility Holding Area cell to the Lethal Injection Room and secure the inmate to the gurney. Restraints strapping and holding the inmate to the gurney are necessary precautions in light of the safety and security concerns during an execution. In addition, restraints will assist in immobilizing the inmate to enable the Intravenous Sub-Team to set the intravenous lines.

New Subsection 3349.6(j)(6) is adopted to establish the Team Administrator and the Team Supervisor shall take a position in the Infusion Control Room. The Team Supervisor shall directly supervise the infusion of the Lethal Injection Chemical. This is necessary to give staff clear direction of their assigned duties and responsibilities, ensure accountability, and provide appropriate supervision of the execution.

New Subsection 3349.6(j)(7) is adopted to establish the San Quentin Litigation Coordinator shall staff the dedicated phone lines to the Governor's Office, the Office of the Attorney General, the California Supreme Court, and the San Quentin Warden's office complex. These four phones in the Lethal Injection Facility have indicator lights which will alert the San Quentin Litigation Coordinator if there is an incoming call. The San Quentin Litigation Coordinator shall communicate all calls to the San Quentin Warden, the Team Administrator, and the Team Supervisor. This subsection is necessary in case there is a last-minute stay of execution and/or to communicate other information to the San Quentin Warden that may preclude the execution from proceeding.

3349.7. ADMINISTRATION OF THE LETHAL INJECTION CHEMICAL

New Section 3349.7 is adopted to establish the events that occur from the time the inmate is secured in the Lethal Injection Room until the time death is declared by a physician. This section is necessary to ensure that the inmate is executed in a manner consistent with the Eighth Amendment.

New Subsections 3349.7(a) through 3349.7(a)(8) are adopted to establish the responsibilities of the Intravenous Sub-Team when preparing the intravenous lines for administration of the Lethal Injection Chemical. The intravenous lines shall consist of intravenous tubing without extensions. By facility design, the Lethal Injection Chemical infusion is from the Infusion Control Room where the Lethal Injection Chemical is prepared to the Lethal Injection Room where the inmate is located. This is necessary to

provide immediate access to additional Lethal Injection Chemical, and to prevent overcrowding in the two rooms where the Lethal Injection Chemical trays are prepared and where intravenous lines are inserted. The Lethal Injection Facility was designed to allow placement of the gurney immediately adjacent to the wall of the Infusion Control Room. This is necessary to permit an intravenous line to pass from the Infusion Control Room to the inmate through a wall port without interruption or line extension. Two lines shall be established for this purpose, one designated primary site line and one designated backup site line.

The Intravenous Sub-Team is responsible for ensuring the patency of the intravenous lines throughout the process. When the intravenous lines have been successfully established, the Intravenous Sub-Team shall inform the San Quentin Warden. One Intravenous Sub-Team member shall remain with the inmate to assess the inmate's consciousness throughout the procedure. This is necessary to provide clear direction on staff responsibilities and to provide procedural safeguards to ensure that the intravenous patency is monitored.

New Subsections 3349.7(b) through 3349.7(b)(5) are adopted to establish the responsibilities of the San Quentin Warden just prior to the administration of the Lethal Injection Chemical. During this time, the San Quentin Warden shall take a position in the Lethal Injection Room in close proximity to the inmate; confirm with the Supreme Court, the Governor's Office, and the Attorney General's Office that there is no matter pending that precludes the execution from proceeding; and ensure that the court order mandating the execution is read aloud. The San Quentin Warden will then provide the inmate with the opportunity to make a brief final statement over the public address system. The San Quentin Warden shall direct the Infusion Sub-Team to proceed with the execution and administer the Lethal Injection Chemical. This is necessary to provide clear direction to the San Quentin Warden of the responsibility to ensure there is no legal impediment to proceeding with the execution and to provide the inmate an opportunity to address the witnesses.

New Subsections 3349.7(c) through 3349.7(c)(4)(F) are adopted to establish the process for the administration of the Lethal Injection Chemical. The infusion of the Lethal Injection Chemical shall begin with Tray A using the intravenous catheter designated as primary. The saline drip in the intravenous catheter that was designated primary infusion shall be stopped prior to the injection of the first syringe. The saline drip in the backup intravenous line shall be continually maintained unless and until the backup site becomes necessary or the inmate is declared dead. A Record Keeping Sub-Team member in the Infusion Control Room shall initiate a ten-minute count down at the start of the infusion of syringe #1 and document all observations on the CDCR Form 2179 (10/15), San Quentin State Prison Execution Log-Lethal Injection Intravenous Sub-Team. If inmate death has not been declared within ten-minutes of administration of the primary 7.5 grams of Lethal Injection Chemicals, the backup tray should be utilized to ensure delivery of the Lethal Injection Chemical. The ten-minute timeframe was selected because if the inmate death has not been declared within this time, it indicates that there may be an issue with delivery of the Lethal Injection

Chemical. Beginning with Tray A and using the primary intravenous catheter, the Lethal Injection Chemical shall be administered utilizing the first 60cc syringe containing the specified amount of the designated Lethal Injection Chemical, followed by a consciousness assessment of the inmate. The consciousness check shall consist of the Intravenous Sub-Team member brushing the back of his/her hand over the inmate's eyelashes, speaking to and gently shaking the inmate. If the inmate is unresponsive, it will demonstrate that the inmate is unconscious. This method of consciousness check was cited with approval by United States Supreme Court Justice Ruth Bader Ginsberg as providing "a degree of assurance . . . that the first drug has been properly administered," and therefore "searing pain" would be avoided. (*Baze v. Kentucky* (2008) 553 U.S. 35, 128 S.Ct. 1520, 1571) Upon performing the consciousness check and finding the inmate to be unconscious, the process shall continue, utilizing the remaining five color coded separate 60cc syringes in sequential order, four syringes containing the specified amount of designated Lethal Injection Chemical and one 60cc syringe containing the saline flush. This is necessary to establish the procedures for the proper administration of a lethal dose of the Lethal Injection Chemical, to ensure a humane death for the inmate, and to ensure staff have clear direction of the duties and responsibilities during the infusion of the Lethal Injection Chemical. The saline flush is to ensure that the Lethal Injection Chemical has been fully delivered through the intravenous tubing.

New Subsection 3349.7(c)(5) is adopted to establish that if, following the administration of syringe #1, the assessment indicates the inmate is not unconscious, the Intravenous Sub-Team member shall check the catheter for patency. After checking for patency, syringe #2 shall be administered followed by a second consciousness assessment. If the assessment indicates the inmate is not unconscious, the San Quentin Warden shall direct that the injection through the primary intravenous catheter be discontinued and the Lethal Injection Chemical administration process set forth in subsections (4) and (5) begin again, but with the Lethal Injection Chemical on Tray B and using the designated backup intravenous catheter. This is necessary to validate intravenous patency, to establish the procedures for the proper administration of the Lethal Injection Chemical, to establish consciousness checks are done to confirm delivery of the Lethal Injection Chemical, and to ensure staff have clear direction of the duties and responsibilities during the infusion of the Lethal Injection Chemical. If the second consciousness check indicates that the inmate is still conscious, provisions require moving to the backup site and administering the Lethal Injection Chemical from Tray B to ensure that the inmate receives delivery of the Lethal Injection Chemical.

New Subsections 3349.7(c)(6) through 3349.7(c)(6)(B) are adopted to establish that if at any time during the infusion of the Lethal Injection Chemical the primary intravenous catheter fails, the San Quentin Warden shall direct the use of the primary intravenous catheter and the Lethal Injection Chemical on Tray A be discontinued, and direct the Lethal Injection Chemical administration process set forth in subsections (4) and (5) begin again, but using the backup intravenous catheter and the Lethal Injection Chemical on Tray B. This is necessary to ensure staff has an understanding of their duties and responsibilities during the infusion of the Lethal Injection Chemical. If the

primary catheter fails, provisions require moving to the backup site and administering the Lethal Injection Chemical from Tray B to ensure that the inmate receives delivery of the Lethal Injection Chemical.

New Subsections 3349.7(c)(7) and 3349.7(c)(8) are adopted to establish the inmate's heart activity shall be monitored by an electrocardiogram. The attending physician shall monitor the electrocardiogram showing the inmate's vital signs and determine when the inmate has died. Death shall be determined and declared by a physician. Once death is declared, infusion of any remaining Lethal Injection Chemical shall cease. An execution is not a medical procedure (*Morales v. Tilton* (N.D. Cal. 2006) 465 F.Supp.2d 972, 983). The role of the physician is to determine and declare death. This is necessary to establish the physician duties to monitor inmate vital signs and declare death.

New Subsection 3349.7(c)(9) is adopted to establish in cases where all six syringes from Tray A have been administered, ten minutes has elapsed, and death has not been declared, the Record Keeping Sub-Team member shall advise the Team Supervisor, who shall then advise the Team Administrator and the San Quentin Warden. The Warden shall direct the administration of the Lethal Injection Chemical be continued using the backup intravenous catheter and the six syringes from Tray B. It is necessary to move to the backup site and administer the Lethal Injection Chemical from Tray B to ensure that the inmate receives sufficient delivery of the Lethal Injection Chemical to cause death. The ten minute countdown was selected because if the inmate has not been declared dead within this time, it indicates that delivery of the Lethal Injection Chemical from Tray A via the primary site may have been compromised. This is necessary to identify the need to move to the backup site and utilize Tray B.

New Subsection 3349.7(c)(10) is adopted to establish in the event all six syringes from Tray B have been administered, ten minutes has elapsed, and death has not been declared, or an intravenous site cannot be established or maintained at the primary or backup sites, the Record Keeping Sub-Team member shall advise the Team Supervisor, who shall then advise the Team Administrator and the San Quentin Warden. The Warden shall direct that the administration of the Lethal Injection Chemical be continued utilizing the alternate backup and Tray C following the sequence established in subsections (4) and (5). It is necessary to move to the alternate backup site and administer the Lethal Injection Chemical from Tray C to ensure that the inmate receives sufficient delivery of the Lethal Injection Chemical to cause death. The ten-minute countdown was selected because if the inmate has not been declared dead within this time, it indicates that delivery of the Lethal Injection Chemical from Tray B via the backup site may have been compromised. This is necessary to identify the need to move to the alternate backup site and utilize Tray C.

New Subsections 3349.7(d) through 3349.7(d)(6) are adopted to establish alternate backup to the primary and backup intravenous sites. In the event that the primary intravenous and backup intravenous sites cannot be maintained, the San Quentin Warden may choose to utilize an alternate vein location as identified in Subsection

3349.5(f)(6) as alternate backup to the primary and backup intravenous sites. The alternate vein location may be utilized by inserting the catheter into the pre-designated vein, initiating the saline drip to ensure the line is successfully established, followed by the administration of the six syringes from Tray C utilizing the intravenous line.

In the event all six syringes from Tray C have been administered, ten minutes has elapsed and death has not been declared, the San Quentin Warden shall direct the Infusion Sub-Team to prepare a set of five additional syringes of Lethal Injection Chemical, each containing 1.5 grams of Lethal Injection Chemical. The Lethal Injection Chemical shall be mixed according to the manufacturer's instructions. A medically trained Infusion Sub-Team member shall prepare the syringes. A separate medically trained Infusion Sub-Team member or Intravenous Sub-Team member shall verify proper preparation of each syringe. The Warden shall direct the Infusion Sub-Team to administer a syringe containing 1.5 grams of the Lethal Injection Chemical in the alternate backup intravenous line, and wait for ten minutes. If the inmate's death has not been declared by the end of that ten-minute period, the San Quentin Warden shall direct the Infusion Sub-Team to administer another syringe containing 1.5 grams of Lethal Injection Chemical in the alternate backup intravenous line and wait ten minutes. The same process shall be followed until the five syringes have been administered. If at any time during this process the inmate is declared dead, the administration of Lethal Injection Chemical shall stop.

In the event all five syringes have been administered, ten minutes has elapsed and death has not been declared, the San Quentin Warden shall direct the Infusion Sub-Team to prepare a second set of five additional syringes of Lethal Injection Chemical, each containing 1.5 grams of Lethal Injection Chemical. The Lethal Injection Chemical shall be mixed according to the manufacturer's instructions. A medically trained Infusion Sub-Team member shall prepare the syringes. A separate medically trained Infusion Sub-Team member or Intravenous Sub-Team member shall verify proper preparation of each syringe. The Warden shall direct the Infusion Sub-Team to administer a syringe containing 1.5 grams of the Lethal Injection Chemical in the alternate backup intravenous line, and wait for ten minutes. If the inmate's death has not been declared by the end of that ten-minute period, the San Quentin Warden shall direct the Infusion Sub-Team to administer another syringe containing 1.5 grams of Lethal Injection Chemical in the alternate backup intravenous line and wait ten minutes. The same process shall be followed until the five syringes have been administered. If at any time during this process the inmate is declared dead, the administration of Lethal Injection Chemical shall stop.

The ten additional syringes of Lethal Injection Chemical are necessary to address variations in the inmate's Lethal Injection Chemical tolerance, size or weight to ensure that the dose will be lethal even if one or more of these factors exist.

In the event that all ten syringes of Lethal Injection Chemical referred to in subsection (5) have been administered, ten minutes has elapsed, and death has not been

declared, the San Quentin Warden shall stop the execution and summon medical assistance for the inmate.

Use of the alternate backup site is necessary to provide an additional safeguard in the event that the primary and backup intravenous access is unavailable or cannot be maintained and another site option is needed to ensure effective intravenous access, patency, and delivery of the Lethal Injection Chemical to complete the execution. If death is not declared following administration of all three trays of the Lethal Injection Chemical, CDCR shall prepare and administer a maximum of ten additional syringes, each containing 1.5 grams of the Lethal Injection Chemical. This is necessary to ensure the judgment of death has been carried out as required by Penal Code Section 3603.

The ten-minute timeframe between syringes is consistent with the consciousness check intervals and permits time for the Lethal Injection Chemical to take effect. In addition, it is necessary to establish staff direction of the duties and responsibilities during the infusion of the Lethal Injection Chemical. If the inmate is declared dead at any time during the administration of the ten additional syringes of Lethal Injection Chemical, administration of Lethal Injection Chemical shall stop. This is necessary because upon declaration of death, the sentence has been carried out and additional administration of Lethal Injection Chemical is not required.

In the event all three trays and the ten additional syringes of Lethal Injection Chemical have been administered and the inmate's death has not been declared within ten minutes of the administration of the fifth additional syringe, the San Quentin Warden shall stop the execution and summon medical assistance for the inmate. This is necessary because the amount of Lethal Injection Chemical in the inmate by that time should have resulted in death. If it did not, it indicates that there may be an issue with delivery of the Lethal Injection Chemical.

New Subsections 3349.7(e) is adopted to establish that San Quentin medical personnel, or contracted medical personnel if there is no state civil service employee who is available and willing to perform the prescribed duties, shall be immediately requested to assist the inmate should an execution be stopped at any time after the administration of the Lethal Injection Chemical has begun. The curtains on the viewing windows for witnesses shall be closed. The San Quentin Warden shall immediately go to the Infusion Control Room and ensure an announcement via the public address system notifying the witnesses the execution has been stayed or stopped. Immediately after the announcement, the public address system shall be turned off. The San Quentin Warden shall direct staff to escort the witnesses from the Lethal Injection Facility to the media center or off grounds. This is necessary to ensure that medical assistance is provided to the inmate if a last-minute stay issues or other event occurs that prevents the completion of the execution and that the witnesses are notified. Closing the curtains and turning off the public address system is necessary to maintain the inmate's right to medical confidentiality under state and federal law. Allowing for contracted medical personnel is necessary to ensure the inmate has access to medical care in the event state civil service employees are unavailable to do so.

3349.8. POST EXECUTION PROCEDURE

New Section 3349.8 is adopted to establish the events that occur following an execution.

New Subsection 3349.8(a) through 3349.8(a)(3) are adopted to establish requirements of the San Quentin Warden immediately following the determination of death of the inmate. The San Quentin Warden shall ensure a prepared statement is read aloud via the public address system notifying the witnesses the execution is complete, ensure the curtains on the viewing windows are closed, and direct staff to escort the witnesses from the Lethal Injection Facility to the media center or off grounds. This is necessary to provide clear direction of staff responsibilities post execution. Ensuring the curtains are closed and witnesses are escorted out of the Lethal Injection Facility immediately following the pronouncement of death is intended to help maintain respect for the inmate and his/her family, preserving their dignity and privacy.

New Subsection 3349.8(b) is adopted to establish the Intravenous Sub-Team shall crimp closed and disconnect all intravenous lines from the catheter or needle. The catheter or needle shall not be removed from the inmate to allow for review by the Marin County Coroner. This is necessary to provide clear direction to staff and to provide transparency.

New Subsection 3349.8(c) is adopted to establish the Team Supervisor shall ensure the inmate's body is placed, with care and dignity, into a post-mortem bag pending removal as pre-arranged with the contract mortuary. This is necessary to provide clear direction of staff responsibilities post execution and to ensure respect, care, and dignity of the inmate's body is continued.

New Subsection 3349.8(d) through 3349.8(d)(2) are adopted to establish the San Quentin Warden shall, approximately one hour after the execution, issue a statement to the media advising the sentence has been carried out and announcing the time of death and make available the inmate's written statement, if applicable. This is necessary to establish the San Quentin Warden responsibilities post execution. CDCR has determined that the approximate one hour time period provides time to escort all witnesses from the Lethal Injection Facility and escort media to the location where the CDCR official statement and the inmate's written statement shall be made available.

New Subsection 3349.8(e) is adopted to establish the Lethal Injection Team and assigned custody staff is responsible to clean each area of the Lethal Injection Facility after the inmate's body has been removed. This is necessary to sanitize, and to preserve the security and integrity of the Lethal Injection Facility.

New Subsection 3349.8(f) is adopted to establish that if any amount of the Lethal Injection Chemical is unused, the amount and the reason why it was unused shall be documented on the CDCR Form 2176 (10/15), Lethal Injection Chain of Custody-San Quentin State Prison. The Infusion Sub-Team shall transfer the unused Lethal Injection

Chemical to the Team Supervisor who shall place it in the Lethal Injection Facility safe to await disposal. The Lethal Injection Chemical transfer shall be documented on the CDCR Form 2176 (10/15), Lethal Injection Chain of Custody-San Quentin State Prison, and the final signature block signed by the Team Supervisor. The signed form shall remain with the Lethal Injection Chemical. This is necessary to ensure accountability of the unused amount of the designated Lethal Injection Chemical, to maintain the security and integrity of the Lethal Injection Chemical and process.

New Subsection 3349.8(g) is adopted to establish the Intravenous Sub-Team shall complete a post-execution inventory of all supplies and equipment that were used by the Intravenous Sub-Team during the execution. The Intravenous Sub-Team shall give the inventory to the Team Supervisor, who shall arrange for replacement and replenishment of supplies. This is necessary to ensure accountability of the used and unused supplies, to maintain security, and to ensure the Lethal Injection Facility inventory is restored.

New Subsections 3349.8(h) through 3349.8(h)(6) are adopted to establish the Lethal Injection Reporting requirements including; the Team Supervisor shall complete a CDCR Form 2182 (10/15), San Quentin State Prison Execution Report - Part A, each Lethal Injection Team member shall complete a CDCR Form 2183 (10/15), San Quentin State Prison Execution Report - Part B, documenting his/her actions and observations during the execution and shall use identifiers assigned to his/her specific position (duties), rather than names and/or classifications, when he/she submits his/her reports. Both forms are hereby incorporated by reference in these subsections. The CDCR Forms 2182 and 2183 are largely blank forms on which the execution Team Supervisor and execution team members describe their own roles in the execution and report any unusual events that may have occurred. Any use of force shall be documented and reviewed in accordance with Section 3268.1, Reporting and Investigating the Use of Force for Institution/Facility Staff.

The Team Administrator shall review the complete Execution Report which includes a CDCR Form 2179 Lethal Injection Intravenous Sub-Team Execution Log, CDCR Form 2182 Lethal Injection Team Administrator/Team Supervisor Execution Log, and CDCR Forms 2183 from all Lethal Injection Team members. The Execution Report shall include all appropriate supplemental reports and shall be routed through the San Quentin Chief Deputy Warden for the San Quentin Warden's review and signature. A copy of the completed Execution Report shall be delivered to the Director - Division of Adult Institutions and the CDCR Secretary for review and follow up as needed. The original Execution Report shall be retained at San Quentin as part of the Master Execution File. This is necessary to ensure documented accountability of staff responsibilities carried out during the execution, the integrity of the execution, and to preserve the record of the execution in the Master Execution File.

New Subsection 3349.8(i) is adopted to establish assigned custody staff shall conduct a security inspection of the Lethal Injection Facility to ensure all doors are secured and

no items were left behind. This is necessary to preserve the integrity of the execution and maintain safety and security of the Lethal Injection Facility and the institution.

New Subsection 3349.8(j) is adopted to establish the Team Supervisor is responsible to secure the Lethal Injection Facility, return the keys, and report directly to the Team Administrator and the San Quentin Warden that the Lethal Injection Facility has been secured. This is necessary to preserve the integrity of the execution and maintain safety and security of the Lethal Injection Facility and the institution.

New Subsections 3349.8(k) through 3349.8(k)(3) are adopted to establish a post execution debriefing requirement. The Team Administrator along with the Team Supervisor shall hold a debriefing and critique with all Lethal Injection Team members. All documents and records concerning the execution shall be collected by the Team Administrator for review. The Team Administrator and the Team Supervisor shall offer Lethal Injection Team members post-trauma counseling. As soon as possible but no later than 24 hours after the execution, the San Quentin Warden shall arrange for a confidential individual debriefing by appropriate staff with the Team Administrator, Team Supervisor, and each Lethal Injection Team member. Each individual may be accompanied by a person of his or her choosing to the individual debriefing. The San Quentin Warden shall offer the Team Administrator, and the Team Supervisor post trauma counseling. It is necessary to offer the Team Administrator, Team Supervisor, and the Lethal Injection Team members trauma counseling to ensure employee wellness. Additionally, this is necessary for all participating staff members to have an opportunity to assess the execution to ensure it operated as intended and to provide valuable feedback.

New Subsection 3349.8(l) is adopted to establish the San Quentin Litigation Coordinator shall assemble all appropriate reports, place them into the Master Execution File, and maintain the Master Execution File. This is necessary to ensure appropriate documentation regarding the execution has been completed and copies placed into the Master Execution File to preserve a record of the execution.

New Subsection 3349.8(m) is adopted to establish The San Quentin Warden shall ensure the CDCR Form 2178 (10/15), Return on Execution Warrant, which is hereby incorporated by reference, is completed and forward it and a copy of the Certificate of Death to the Clerk of the Court from which the inmate was under sentence of death. This is necessary to comply with Penal Code Section 3607.

3349.9. LETHAL INJECTION RECORD KEEPING AND DOCUMENTATION

New Section 3349.9 is adopted to establish lethal injection record keeping and documentation requirements. This is necessary in order to preserve an accurate and complete record of the execution.

New Subsections 3349.9(a) through 3349.9(g) are adopted to establish the reporting, record keeping, and review standards necessary to create a complete, timely, and

accurate Master Execution File. Individual responsibilities are identified for documenting events, reviewing reports, and maintaining records. The Master Execution File shall be kept indefinitely in the San Quentin Warden's office complex. Also identified are various documents that shall be maintained in the Master Execution File. These provisions ensure that all aspects of the execution are documented and retained in the Master Execution File. Moreover, individual responsibilities are identified to clarify what each Lethal Injection Team member is responsible to document, in order to preserve each Lethal Injection Team member's observations and actions. Finally, multiple levels of review will ensure that all appropriate documentation is collected and preserved in the Master Execution File. This is necessary to ensure consistent and reliable record-keeping and maintain an accurate record of the execution which can assist CDCR in training staff.

Attachment A

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Doc	Subject	©
1	California Code of Regulations, title 15, sections 3349- 3349.4.6 (effective Aug. 29, 2010)	
2	<i>Towery v. Brewer</i> (9th Cir. 2012) 672 F.3d 650	©
3	<i>Baze v. Rees</i> (2008) 553 U.S. 35 [128 S.Ct. 1520]	©
4	<i>Hill v. Owens</i> (2013) 292 Ga. 380 [738 S.E.2d 56]	©
5	<i>Beaty v. Food and Drug Administration</i> (D.D.C. 2012) 853 F.Supp.2d 30	©
6	Domenic J. Veneziano, Dir., Div. of Import Operations and Policy, Dept. of Health and Human Services, letter to General Counsel Benjamin Rice, Cal. Dept. Corrections and Rehabilitation (Apr. 6, 2012) Order on Summary Judgment, <i>Cook v. FDA</i> (formerly <i>Beaty v. FDA</i>), No. 1:11-cv-00289-RJL (D.D.C. Mar. 27, 2012)	©
7	<i>Glossip, et al. v. Gross, et al.</i> (June 29, 2015, No. 14-7955) 576 U.S. ____ [135 S.Ct. 2726]	©
8	<i>Morales v. Woodford</i> CA No. 5:06-cv-00219 (JF) Protective Order 4/3/06	
9	<i>California First Amendment Coalition v. Woodford</i> (9th Cir. 2002) 299 F.3d 868	©
10	Longnecker et al., <i>Anesthesiology</i> , Second Edition, McGraw-Hill (2012) pp. 687-741.	©
11	Krug, <i>Pharmacology in Nursing</i> , Eighth Edition, C.V. Mosby Company (1960) pp. 196-207.	©
12	Olson et al., <i>Poisoning & Drug Overdose</i> , Sixth Edition, McGraw-Hill (2011) pp. 135-137; 140-142; 310-312; 367-369.	©
13	Synopsis of Cardiac Inotropic Effects of Propoxyphene and Its Major Metabolite Norpropoxyphene, and the Possibility of Similar Effects by Alternative Opiate Analgesics if Propoxyphene was Discontinued, U.S. Food and Drug Admin. (FDA) (Jan. 25, 2010) < http://www.fda.gov/downloads/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/UCM234312.pdf > (as of Oct. 13, 2015).	

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14	What are unapproved drugs and why are they on the market?, FDA (Jan. 4, 2011) < http://www.fda.gov/AboutFDA/Transparency/Basics/ucm213030.htm > (as of Dec. 5, 2012).	
15	Unapproved Drugs: Drugs Marketed in the United States That Do Not Have Required FDA Approval, FDA (Aug. 22, 2012) < http://www.fda.gov/AboutFDA/Transparency/Basics/ucm213030.htm > (as of Dec. 5, 2012).	
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17	Guidance for FDA Staff & Industry Marketed Unapproved Drugs- Compliance Policy Guide, FDA (Sept. 19, 2011) < http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidance/UCM070290.pdf > (as of Oct. 13, 2015).	
18	Additions/Deletions for Prescription and OTC Drug Product Lists, FDA (Jan. 22, 2013) < http://www.fda.gov/Drugs/InformationonDrugs/ucm086229.htm > (as of Feb. 5, 2013).	
19	Prescription and Over-the-Counter Drug Product List, 29th Edition, FDA (Dec. 2009) < http://www.fda.gov/downloads/Drugs/InformationOnDrugs/UCM197809.pdf > (as of Oct. 13, 2015).	
20	Prescription and Over-the-Counter Drug Product List, 30th Edition, FDA (Mar. 2010) < http://www.fda.gov/downloads/Drugs/InformationOnDrugs/UCM209238.pdf > (as of Oct. 13, 2015).	
21	Prescription and Over-the-Counter Drug Product List, 32nd Edition, FDA (Dec. 2012) < http://www.fda.gov/downloads/Drugs/InformationOnDrugs/UCM336308.pdf > (as of Oct. 13, 2015).	
22	510(k) Substantial Equivalence Determination Decision Summary Assay Only Template: Access data K070009 (Benzodiazepines, Barbiturates, Methadone & Oxycodone), FDA < http://www.accessdata.fda.gov/cdrh_docs/reviews/K070009.pdf > (as of Oct. 13, 2015).	
23	510(k) Substantial Equivalence Determination Decision Summary Assay Only Template: Access data K092268 (Barbiturates), FDA < http://www.accessdata.fda.gov/cdrh_docs/reviews/K092268.pdf > (as of Oct. 13, 2015).	

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24	510(k) Substantial Equivalence Determination Decision Summary Assay Only Template: Access data K113747 (Opiates), FDA < http://www.accessdata.fda.gov/cdrh_docs/reviews/K113747.pdf > (as of Oct. 13, 2015).	
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30	<i>Physician Assisted Suicide: Challenges for Pharmacies: Drug Information Issues</i> , American Journal of Health-System Pharmacy (2011) < http://www.medscape.com/viewarticle/742070_3 > (as of Apr. 4, 2012).	©
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13	<p>Year 9 (Oregon Public Health Division, Oregon’s Death with Dignity Act - 2006 (March 2007) <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year9.pdf> [as of January 17, 2013].)</p>	
14	<p>Year 8 (Oregon Department of Human Services, Office of Disease Prevention and Epidemiology, Eighth Annual Report on Oregon’s Death with Dignity Act (March 9, 2006) <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year8.pdf> [as of January 17, 2013].)</p>	
15	<p>Year 7 (Oregon Department of Human Services, Office of Disease Prevention and Epidemiology, Seventh Annual Report on Oregon’s Death with Dignity Act (March 10, 2005) <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year7.pdf> [as of January 17, 2013].)</p>	

Attachment E
VOLUME V
(Oregon Death with Dignity Act)

16	<p>Year 6 (Oregon Department of Human Services, Office of Disease Prevention and Epidemiology, Sixth Annual Report on Oregon’s Death with Dignity Act (March 10, 2004) <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year6.pdf> [as of January 17, 2013].)</p>	
17	<p>Year 5 (Oregon Department of Human Services, Office of Disease Prevention and Epidemiology, Fifth Annual Report on Oregon’s Death with Dignity Act (March 6, 2003) <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year5.pdf> [as of January 17, 2013].)</p>	
18	<p>Year 4 (Oregon Department of Human Services, Office of Disease Prevention and Epidemiology, Fourth Annual Report on Oregon’s Death with Dignity Act (February 6, 2002) <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year4.pdf> [as of January 17, 2013].)</p>	
19	<p>Year 3 (Oregon Department of Human Services, Oregon Health Division, Center for Disease Prevention and Epidemiology, Oregon’s Death with Dignity Act: Three Years of Legalized Physician-Assisted Suicide (February 22, 2001) <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year3.pdf> [as of January 17, 2013].)</p>	
20	<p>Year 2 (Oregon Department of Human Services, Oregon Health Division, Center for Disease Prevention and Epidemiology, Oregon’s Death with Dignity Act: The Second Year’s Experience (February 23, 2000) <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year2.pdf> [as of January 17, 2013].)</p>	
21	<p>Year 1 (Oregon Department of Human Resources, Oregon Health Division, Oregon’s Death with Dignity Act: The First Year’s Experience (February 18, 1999) <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year1.pdf> [as of January 17, 2013].)</p>	

Attachment F

VOLUME VI

Doc		©
1	California Code of Regulations, title 15, section 3349 (effective Jan. 1, 1993).	
2	Notice of Approval of Regulatory Action, Office of Administrative Law, OAL File 2010-0706-02 SR (July 30, 2010).	
3	Execution List 2014, Death Penalty Information Center < http://www.deathpenaltyinfo.org/execution-list-2014 > (as of Sept. 22, 2015).	
4	Execution List 2015, Death Penalty Information Center < http://www.deathpenaltyinfo.org/execution-list-2015 > (as of Sept. 22, 2015).	
5	Transcript of Proceedings, <i>Morales v. Tilton</i> (N.D. Cal., Sept. 27, 2006, No. C-06-0219-JF) pp. 542-543.	
6	Order Denying Conditionally Plaintiff's Motion for Preliminary Injunction, <i>Morales v. Hickman</i> (N.D. Cal. 2006) 415 F. Supp.2d 1037.	
7	Memorandum of Intended Decision, <i>Morales v. Tilton</i> (N.D. Cal. 2006) 465 F.Supp.2d 972, 980.	
8	Order after Hearing, <i>Morales v. California Dept. of Corrections and Rehabilitation (CDCR)</i> , (Super Ct. Marin County, Oct. 31, 2007, No. CV061436).	
9	<i>Morales v. California Dept. of Corrections and Rehabilitation</i> (2008) 168 Cal.App.4th 729.	
10	<i>Sims v. California Dept. of Corrections and Rehabilitation</i> (Super. Ct. Marin County, 2011, No. Civ100419).	
11	<i>Sims v. California Dept. of Corrections and Rehabilitation, supra</i> , 216 Cal.App.4th at p. 1059	
12	Longnecker et al., <i>Anesthesiology</i> , Second Edition, McGraw-Hill (2012) pp. 1650-1660.	©
13	Cal. Const. art. 1, section 27.	©
14	Cal. Pen. Code, section 3604.	©
15	Cal. Pen. Code, section 190.	©

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16	Cal. Pen. Code, section 3603.	©
17	17 U.S.C.A. § 501 (West)	©
18	17 U.S.C.A. § 506 (West)	©
19	Cal. Pen. Code, section 1227.	©
20	Cal. Pen. Code, section 3700.5.	©
21	Cal. Pen. Code, section 3600.	©
22	Cal. Pen. Code, section 3705.	©
23	Cal. Pen. Code, section 3706.	©
24	Cal. Pen. Code, section 3605.	©
25	California Code of Regulations, title 15, section 3178.	©
26	Cal. Pen. Code, section 3704.	©
27	Cal. Pen. Code, section 3701.	©
28	Cal. Pen. Code, section 3602.	©
29	California Code of Regulations, title 15, section 3268.	©
30	California Code of Regulations, title 15, section 3268.1.	©
31	Cal. Pen. Code, section 3607.	©
32	Olson et al., Poisoning & Drug Overdose, Sixth Edition, McGraw-Hill (2011) pp. 412-413, 430, 433-434.	©
33	SECONAL SODIUM – secobarbital sodium capsule, DailyMed (May 2007) < http://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?id=5171 > (as of Oct. 14, 2015).	

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34	Winek et al., Winek's Drug & Chemical Blood-Level Data 2001, pp. 1, 9, 12, 14-15 < http://abmdi.org/documents/winek_tox_data_2001.pdf > (as of Oct. 13, 2015).	
35	Secobarbital, TOXNET Toxicology Data Network, U.S. National Library of Medicine (Sept. 2, 2010) pp. 6, 11, 30 < http://toxnet.nlm.nih.gov/cgi-bin/sis/search/a?dbs+hsdb:@term+@DOCNO+3182 > (as of Oct. 14, 2015).	
36	Definition of Strategic Offender Management System (SOMS) California Code of Regulations, title 15, section 3000.	©
37	Definition of Effective Communication California Code of Regulations, title 15, section 3000.	©
38	California Code of Regulations, title 15, section 3317.	©
39	<i>Abdur'Rahman v. Bredesen</i> (Tenn. 2005) 181 S.W.3d 292.	©
40	Cal. Const. art. 1, section 17.	©
41	<i>Heckler v. Chaney</i> (1985) 470 U.S. 821.	©
42	Order on Defendant's Motion to Proceed with Execution Under Alternative Condition to Order Denying Preliminary Injunction, <i>Morales v. Hickman</i> (N.D. Cal. Feb. 21, 2006, Case Nos. C06219JF and C06926FJRS).	
43	<i>O'Bryan v. McKaskle</i> (5th Cir. 1984) 729 F.2d 991.	©
44	Cal. Pen. Code, section 3601.	©
45	Cal. Pen. Code, section 3700.	©
46	Cal. Pen. Code, section 3702.	©
47	Cal. Pen. Code, section 3703.	©
48	U.S. Const. amend. VIII	©
49	California Code of Regulations, title 15, section 3170.	©

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50	California Code of Regulations, title 15, section 3170.1.	©
51	California Code of Regulations, title 15, section 3170.5.	©
52	California Code of Regulations, title 15, section 3171.	©
53	California Code of Regulations, title 15, section 3172.	©
54	California Code of Regulations, title 15, section 3172.1.	©
55	California Code of Regulations, title 15, section 3172.2.	©
56	California Code of Regulations, title 15, section 3173.	©
57	California Code of Regulations, title 15, section 3173.1.	©
58	California Code of Regulations, title 15, section 3173.2.	©
59	California Code of Regulations, title 15, section 3174.	©
60	California Code of Regulations, title 15, section 3175.	©
61	California Code of Regulations, title 15, section 3176.	©
62	California Code of Regulations, title 15, section 3176.1.	©
63	California Code of Regulations, title 15, section 3176.2.	©
64	California Code of Regulations, title 15, section 3176.3.	©
65	California Code of Regulations, title 15, section 3176.4.	©
66	California Code of Regulations, title 15, section 3177.	©
67	California Code of Regulations, title 15, section 3178.	©
68	California Code of Regulations, title 15, section 3179.	©
69	California Code of Regulations, title 15, section 3182.	©

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Attachment G

VOLUME VII

Doc	Subject	©
1	U.S. Attorney General Eric Holder, Jr., U.S. Dept. of Justice, letter to Executive Director James McPherson, Nat. Assn. of Atty. Gen. (Mar. 4, 2011).	
2	U.S. Dept. of the Army, Army Regulation 190-55, U.S. Army Corrections System: Procedures for Military Executions (Jan. 17, 2006).	
3	Notice of Filing, <i>State of Florida v. Gore</i> , No. F90-11445 (Fla. Sept.10, 2013). Florida Dept. of Corrections, Execution by Lethal Injection Procedures (Sept. 9, 2013).	
4	Georgia Dept. of Corrections, Lethal Injection Procedure (June 7, 2007).	
5	Kentucky Administrative Regulations, 501 KAR 16:330, Lethal Injection Protocol, Proposed Amendment (July 20, 2012).	
6	Missouri Dept. of Corrections, Preparation and Administration of Chemicals for Lethal Injection (May 15, 2012).	
7	North Carolina Dept. of Corrections, Execution Procedure Manual for Single Drug Protocol (Pentobarbital) (Oct. 24, 2013).	
8	Ohio Dept. of Corrections and Rehabilitation, No. 01-COM-11, Execution Policy (June 29, 2015).	
9	Oklahoma Dept. of Corrections, OP-040301, Execution Procedures, Execution of Offenders Sentenced to Death (Sept. 30, 2014).	

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