

FINAL STATEMENT OF REASONS:

The Initial Statement of Reasons is incorporated by reference.

UPDATES TO THE INITIAL STATEMENT OF REASONS

The Notice of Proposed Emergency Regulations was published on July 22, 2011. The Notice of Change to Regulations was mailed the same day. The public hearing was held on September 15, 2011. No one provided oral comments at the public hearing. During the 45-day comment period, 43 written comments were received. These comments are discussed below under the heading “*Comments Received During 45-Day Comment Period.*” During a review of these comments, it was determined that a change in text be included in a modified text. These changes and reasons for them are found below under the heading “*Changes to Text of Proposed Regulations.*”

A 15-Day Renote, which included the amended text, was distributed on September 21, 2011, to the 43 commenters who responded during the initial 45-day comment period. During the 15-Day comment period, 5 comments were received. These comments are discussed below under the heading, “Comments Received During 15-Day Renote.”

DETERMINATION:

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

ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

This action will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, or create or expand businesses in the State of California.

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

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states because they are not directly affected by the internal management of State prisons; and no costs or reimbursements to any local agency or school district within the meaning of Government Code, Part 7, Section 17561. The Department has made an initial determination that the proposed action will have no significant effect on housing costs. Additionally, there has been no testimony or other evidence provided that would alter the Department’s initial determination.

CHANGES TO TEXT OF PROPOSED REGULATIONS

Subsection 3140(a) through 3140(c)(2) are unchanged.

Subsection 3140(d) is amended.

The following updates to text were included in the 15-Day Renotice.

- The additional text “for thirty (30) days from the date of deposit into the inmate trust account and must” was added to replace the deleted text “until the funds” to reflect the time necessary for the banks to verify and clear all negotiable instruments before the funds are available to the inmates for spending.

PUBLIC HEARING COMMENTS:

Public hearing was held on September 15, 2011, at 8:30 a.m.

No one commented at the public hearing.

COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD:

COMMENTER #1:

Comment 1A: Commenter objects to the proposed regulation change and characterization as emergency.

Accommodation: None

Response 1A: It is necessary to file this as an emergency to prevent further loss of funds from checks and money orders that were returned because payment was stopped, money orders and checks were altered, referred back to maker, or forged.

Comment 1B: Commenter states CDCR lauds family relationships as an integral element of rehabilitation of the incarcerated and cites California Code of Regulations, Title 15 Section 3170 as an example. Commenter further states that it is pathetic that the first response to a Controller’s Report finding of lack of financial controls is to make it more expensive for families to transfer funds to CDCR for the benefit of their loved one.

Accommodation: None

Response 1B: The Department did not place a hold on checks and money orders to increase the cost to transfer funds to their loved ones or for financial control, but to prevent further loss of funds not only to the Department, but also to the inmates.

Comment 1C: Commenter states this is not an emergency and the Federal Reserve Board has dealt with the obligation to promptly honor funds in financial institutions and arguably, government agencies acting as financial institutions since enacting Regulation CC in 2003. Commenter included text from the Federal Reserve Board’s regulation and contends it is not the Department’s job to collect from the inmates for counterfeit money orders, but rather is a function of the U.S. Postal Service and the claim should be against the counterfeiter, not the inmate.

Accommodation: None

Response 1C: See **Commenter #1, Response 1A.** The Department is liable to the bank for any negotiable instruments deposited that comes back dishonored. The Department is obligated per SAM 8000 to purchase all negotiable instruments making checks payable to the bank. The Inmate Trust Accounting works closely with the Criminal Intelligence Services Unit and banks when reporting and paying for dishonored items.

Comment 1D: Commenter believes that the internal memoranda behind this issue calls for a hold of thirty (30) days before the inmates has access to his/her funds. Commenter states this is anachronistic in a world where financial institutions, including Bank of America, where he believes the funds are deposited, is to treat money orders as cash, i.e., available the same day.

Accommodation: None

Response 1D: An individual in the general public who receives funds may go to the bank and either get cash or deposit it into their account that same day. However, the mailroom at each institution receives large amounts of mail each day that must be processed. Before funds received in correspondence can be made available to inmates, the CDCR must allow for processing time from the mailroom, to the trust office for posting, and then to the bank to verify and clear all bank transactions before releasing funds to inmates for spending.

Comment 1E: Commenter states that the Department signed a consent order agreeing that interest in the inmates accounts is to be shared on a pro rata basis among the inmates. Commenter asks how the Department benefits unless they are violating AB 439 regarding the distribution of interest from Inmates Trust Accounts. Commenter states that in the last audit report on the Inmate Welfare Fund the Department was unable to justify its claims to a million dollars of administrative expense charged against that fund, supposedly for the benefit of the inmates. Inmates quotes from the Schneider case.

Accommodation: None

Response 1E: Although the above comment does address an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to GC Section 11346.9(a)(3), it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Comment 1F: Commenter states that there is a probability that the Department has found that it can generate additional funds for administration by taking exaggerated amounts from the Inmate Welfare Fund and Inmate Trust Accounts by claiming administrative expenses far in excess of amounts and necessary to administer the funds. Commenter states this occurred quite soon after the Governor required the elimination of 400 positions in headquarters.

Accommodation: None

Response 1F: See Commenter #1, Response 1E.

Comment 1G: Commenter contends that the only emergency is preserving unauthorized Department employment. Commenter states that the only reasonable presumption then is that the Department has determined that by extending the time before a money order must be honored from immediately to 30 days will add a month of interest earning from which to take administrative fees. Commenter asks why the Department has refused to make public the extent of the Inmate Welfare Fund balances, the interest thereon, and the allocation of administrative expense.

Accommodation: None

Response 1G: The Department's financial statements are public record and the interest earned and allocated goes back to the inmates who apply for interest earned and is based on their average daily balance per Section 3099 of Title 15, California Code of Regulations.

Comment 1H: Commenter states that the proposed action should not be permitted as an emergency because the Initial Statement of Reasons does not support an emergency. Commenter further states that the issue of dishonor of money orders has been addressed by the Federal Reserve Board in Circular #3 in 2008 and it is clear that there are other alternatives to the holding of funds for an unduly long period of time. Commenter states if the Department is going to act as a bank for prisoners and those that deposit money into the inmates trust account, the Department ought to be held akin to time regulations in either The Expedited Fund Availability Act and/or The Check Clearing for the 21st Century Act.

Accommodation: None

Response 1H: The Department disagrees. **See Commenter #1, Response 1A.** Also, it is not the policy of the Department to act as a bank for prisoners. The Department maintains trust accounts for inmates and the checks or money orders they receive are posted to the inmates trust accounts with a hold while they are sent to banking institutions, which are governed by the Federal Reserve Board, to verify and clear all bank transactions before releasing funds to inmates.

Comment 1I: Commenter asserts the emergency regulations ignores the impact on the families and/or loved ones who provide the funds for the Inmate Welfare Fund and are saddled with leaving funds on hold for a month while trying to support the family outside and the inmate. Commenter contends that while this cost is hard to reduce to dollars because the balances of the Inmate Trust Accounts do not appear to be made public, this comports with the court reported actions of the Department in taking the funds out of interest bearing accounts rather than account for the interest income and the alleged related administrative expense.

Accommodation: None

Response 1I: The intent of these proposed regulations is to protect the inmates' fund, not to make it difficult for the families and/or loved ones who provide the funds. Funds sent by certified check will be made available immediately to the inmate and may help with any cost families/or loved ones are "saddled" with because of the hold. The balances of Inmate Trust Accounts may not be public record, but the Department's financial statements are and the interest earned is distributed based on the inmates' average daily balance per Section 3099 of Title 15, California Code of Regulations. The money shows in the daily balance even though it is not available to spend and in theory, the inmate may earn more now in earned interest.

Comment 1J: Commenter requests that:

- The proposed regulation change be rejected as an emergency.
- The proposed regulation be denied in its entirety.
- The Legislature direct an examination and report on the calculation and propriety of the administrative expense changes to the Inmate Trust Accounts and Inmate Welfare Fund account.
- Other and further relief as the Office of Administrative Law may deem reasonable and proper under the circumstances.

Accommodation: None

Response 1J: **See Commenter 1, Response 1E.**

COMMENTER #2

Comment 2A: Commenter objects to the amendment of these proposed regulations as an emergency action because it deletes prompt posting of money orders into prisoner trust accounts when money orders are received by the CDCR in the U.S. Mail.

Accommodation: None

Response 2A: This regulation will not change how the mailrooms process funds received in correspondence and will continue the same process for money orders.

Comment 2B: Commenter states that the proposed regulation does not meet the Administrative Procedure Act requirement of necessity, authority, clarity, consistency, and/or reference to law, in derogation of Penal Code 5076.2, and subject to review under Government Code 11340.5.

Accommodation: None

Response 2B: The Department disagrees and asserts the regulations do meet the requirements of the Administrative Procedure Act as shown below in the definitions and explanations listed below.

- *Necessity* means “the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.” Fraudulent money orders necessitated the need for the proposed regulations.
- *Authority* is “the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation.” Penal Code 5058(a) is the Department’s *authority* to change the regulations. “*The director may prescribe and amend rules and regulations for the administration of the prisons and for the administration of the parole of persons sentenced under Section 1170 except those persons who meet the criteria set forth in Section 2962.*”
- *Clarity:* “*Written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.*” These proposed regulations are written to be easily understood and do not have more than one meaning.
- “*Consistency*” means “*being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.*” These regulations are not in conflict with or contradictory to existing statutes, court decisions, or other provision of law.
- “*Reference*” means “the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation.” The reference for Section 3140 is Penal Code 2601.

Comment 2C: Commenter states that the Initial Statement of Reasons alleges that there has been an increase in the use of counterfeit money orders and the result has been a loss in thousands of dollars from fraudulent money orders. Commenter asks if there is any documentation by CDCR to demonstrate a presentation of even one fraudulent money order or any documentation to demonstrate CDCR reports to the U.S. Postal Service of using the U.S. Mail system to defraud. Commenter seriously questions the validity of such an argument.

Accommodation: None

Response 2C: Inmate Trust Accounting works closely with the Criminal Intelligence Services Unit and the banks when reporting and paying back for dishonored items. The Department keeps copies of these fraudulent items.

Comment 2D: Commenter states this emergency action has already created a substantial hardship on prisoners and their families when the money orders they purchase are not honored by the CDCR. Commenter further state that at least five family visits have been cancelled in CSP-Solano alone during the past week due to

money orders not being honored by CDCR. Commenter contend that additional hardships on honest, taxpaying citizens are sure to follow without lawful or factual justification if this proposed regulation is approved by the Office of Administrative Law.

Accommodation: None

Response 2D: The Department honors all money orders that the banks have cleared. The Department is also aware of the value of family visits and will look into adding family visits as an option for the Electronic Fund Transfer process.

Comment 2E: Commenter objects to this regulation change on the following grounds:

- Lack of Necessity. Commenter contends the record of rulemaking proceeding does not demonstrate the need for this regulation of effectuate the purpose of any statute, court decision or other provision of law.
- Lack of Authority. Commenter contends no provision of law permits or obligates the agency to adopt this proposed regulation. Commenter asks why CDCR holds money orders up to one month before posting to prisoner accounts, when bank checks can be electronically cleared in less than two days.
- Lack of Clarity. Commenter contends the proposed regulation cannot be easily understood by those directly affected. Commenter contends it is unclear why money orders are purchased and treated as cash money around the world are not accepted as such by CDCR for immediate posting in Inmate Trust Accounts. Commenter asks if there is a claim that U.S. postal money order, Bank of America Money Orders, etc., were fraudulently prepared.
- Commenter contends there is a Lack of Consistency as the proposed regulations are inconsistent with professional practices throughout the world in that money orders, postal money orders, and similar funds are no longer recognized by CDCR as lawful tender.
- Commenter contends there is a Lack of Reference as no statute, court decision, or other provision of law is being implemented, interpreted, or made specific by the proposed regulation.

Accommodation: None

Response 2E: The Department disagrees. **See Commenter #2 Response 2B.**

Comment 2F: Commenter contends the proposed regulation should be disapproved because it does not meet the necessity or other requirement of the Administrative Procedure Act and creates an undue financial burden on prisoners and their families.

Accommodation: None

Response 2F: The Department disagrees. **See Commenter #2 Response 2B.** The Department will look into adding Family Visits as an option for the Electronic Fund Transfer process.

COMMENTER #3

Comment 3A: Commenter objects to the proposed regulation and contends money orders do not clear banks, but are purchased with cash by friends and families of inmates and have been immediately available for inmates' use by deposit into their trust accounts because issuing entities (Western Union, Money gram, U.S. Post Office) almost always clear the funds immediately.

Accommodation: None

Response 3A: All checks and money orders are sent from the institution to the bank and the bank clears the money orders as well as checks. It would be impossible for CDCR staff to take each money order to the

Western Union, Post Office, etc. where it was purchased. 'Almost always' does not include the counterfeit or fraud that takes place. Any loss resulting from cancelled, stolen, or fraudulent money orders or checks are a loss to the trust fund since we are obligated to purchase the dishonored item from the bank.

Comment 3B: Commenter states that the agency has been unable to identify a single example that the agency has lost money due to this process and contends the proposed regulation does not meet the Administrative Procedure Act's necessity requirements.

Accommodation: None

Response 3B: See Commenter #2, Responses 2C and 2B.

Comment 3C: Commenter contends the proposal to delay inmates' use of funds received in money orders is unfair and unjustified as they are often received just in time for the inmate to use for their monthly canteen purchase. Commenter states that some of the canteen goods purchased by inmates in this way are for living essentials not provided by the agency (shampoo, writing paper, and envelopes, etc.).

Accommodation: None

Response 3C: These regulations are to protect the inmate's fund, not to be unfair to inmates. It is best to plan ahead and allow time for checks and money orders to clear the bank.

Comment 3D: Commenter states that families of inmates are traditionally poor and their money orders are usually for smaller amounts usually sent monthly. Commenter further comments that because the proposed regulations state that only cashier's checks will be deposited immediately, a \$25 cashier's check for relatively poor families will be paying a penalty of up to 100% of the amount their loved one is able to use because of traveling to the bank, \$10 fee for cashier's check, and half of the money withdrawn by the agency for restitution. Commenter contends this is oppressive and prohibitive.

Accommodation: None

Response 3D: These regulations are to protect the inmate's fund, not make it difficult or costly for families. It is best to plan ahead and allow time for checks and money orders to clear the bank. Regarding funds deducted for victim restitution, the Department is required by State law in Penal Code 2085.5 to collect such funds and the process is governed by Department regulations in Section 3097 of Title 15, California Code of Regulations. The Department reminds the commenter that a victim restitution order or fine is imposed by a sentencing court, not by the Department.

Comment 3E: Commenter states that the Department is already utilizing the regulations that have not yet been approved by Office of Administrative Law. Commenter-enclosed a CDCR memorandum that states that inmates will not have access to their funds received in money orders for thirty (30) days. Commenter contends money orders are almost always paid immediately by the cashing or depositing entity and contends the proposed change is unjustified and its implementation irrational.

Accommodation: None

Response 3E: The proposed regulations were filed as an emergency with the Office of Administrative Law on June 13, 2011, approved and filed with the Secretary of State on June 27, 2011, pursuant to the Administrative Procedure Act and were effective immediately on June 27, 2011, for 160 days at which time a Certificate of Compliance for this action will be filed and the regulation will be permanent. See Commenter #1, Response 1D.

Comment 3F: Commenter contends implementation of the proposed regulations will substantially inconvenience and disadvantage:

- The agency's canteen sales.
- The restitution fund.
- The inmate's families.
- Inmates.

Commenter contends for these reasons, the proposed "hold" on money orders should be stricken and not adopted and CDCR should terminate its emergency implementation of this provision.

Accommodation: None

Response 3F: The disadvantage is the loss to the inmates' trust funds from dishonored negotiable instruments, which the Department is protecting with these regulations.

COMMENTS #4

Comment 4A: Commenter asks what the CDCR considers a "Certified Check" and understands they will be readily available for inmates to use, but not money orders or personal checks. Commenter asks why the proposed regulations don't clarify the amount of days required to clear the money orders.

Accommodation: None

Response 4A: A certified check is a form of check that the bank verifies that sufficient funds exist in the account to cover the check, and so certifies, at the time the check is written. Those funds are then set aside in the bank's internal account until the check is cashed or returned by the payee. Thus, a certified check cannot "bounce" and, in this manner, its liquidity is similar to cash, absent failure of the bank.

The Department is unable to state how long it will take for a money order to clear. It depends on the type of money order and the bank.

Comment 4B: Commenter states that most money orders are bought from the U.S. Post Office and the CDCR should not have any problem coordinating and confirming the legitimacy of its currency. Commenter also states that a money order is basically a prepaid check, so it shouldn't take any more time to confirm a personal check.

Accommodation: None

Response 4B: The mailroom at each institution receives a large amount of mail each day and the Department does not have staffing to confirm before deposit each negotiable instrument that is received. That is why we have the hold to allow time for the bank to clear the item.

COMMENTS #5

Comment 5A: Commenter asks if the 30 day period begins upon receipt of date stamped on the envelope.

Accommodation: None

Response 5A: The 30 days starts when it is posted to the inmates trust account.

Comment 5B: Commenter asks if the 30 day period is inclusive of weekends and holidays.

Accommodation: None

Response 5B: The 30 day period is 30 calendar days.

Comment 5C: Commenter states that the information from Comments 5A and 5B will greatly reduce the amount of appeals and provide a better understanding of when the funds will be available.

Accommodation: Partial accommodation. A 15 day Renotice was sent out September 21, 2011, that included text that stated “the 30 day starts when it is posted to the inmates trust account.”

Response 5C: The Department agrees.

COMMENTER #6

Comment 6A: Commenter asks how long it takes for funds to clear the bank upon which they were drawn.

Accommodation: None

Response 6A: The time it takes for the funds to clear the bank varies from institution to institution and bank to bank. Also, if an item is returned dishonored, the bank may send this item back through again in an attempt to re-clear the item. That is why we have a 30 day umbrella.

Comment 6B: Commenter asks if the trust office will notify the inmate when the funds have been cleared for use or failed to clear the bank in which it was drawn.

Accommodation: None

Response 6B: The funds will automatically be released for spending and show as “available balance” on the inmate statement. If a negotiable instrument is dishonored, it is up to the individual trust office to notify the inmate.

Comment 6C: Commenter was informed by the Correctional Business Manager, Folsom State Prison (FSP), that the Regional Accounting Office (RAO) issued directions to hold Certified Checks until cleared by the bank. Commenter claims this is not what the recently adopted Subsection 3140(d) reads in Title 15 and states the amendment is illegal.

Accommodation: None

Response 6C: Certified checks are not included in the 30-day hold as the regulations clearly state.

Comment 6D: Commenter states the proposed regulation has been implemented at FSP and not filed as an emergency regulation change or even submitted as a proposed regulation change and believe that the RAO has violated the Administrative Procedure Act and created an underground policy.

Accommodation: None

Response 6D: See Commenter #3, Response 3E.

Comment 6E: Commenter request FSP and all other institutions be informed to rescind the instructions by the RAO to include Certified Checks as funds that must clear the bank upon which they were drawn before being released for spending.

Accommodation: None

Response 6E: See Commenter #6, Response 6C.

COMMENTER #7

Comment 7A: Commenter contends this proposed regulation will impact small business because family and friends of inmates will not be patronizing businesses that sell money orders.

Accommodation: None

Response 7A: If families and friends of inmates plan ahead to allow time for money orders to clear, they can still purchase them from small businesses. These proposed regulations should not have any effect on small business

Comment 7B: Commenter states that a 30 day hold on money order funds is absurd in this day and age where personal checks clear the bank in 24 hours or less. Commenter further states 10 days should suffice to clear legal money orders and discover fraudulent money orders.

Accommodation: None

Response 7B: See Commenter #1, Response 1D and Commenter #24, Response 24B.

Comment 7C: Commenter states that as to the provision of forwarding a dated envelope when a money order is received he has attached is a response received from CSP/SAC mailroom in which there was no mention of the dated envelope receipt and commenter was advised that a cashier's check is the best way to receive money from the outside. The advice to purchase a cashier's check sends business to banks which cost more than a money order and is a burden to family and friends who do not have a bank account. Commenter further states that the mailroom has misplaced mail in the past and their response to his question about the money order was for late mail not missing mail.

Accommodation: None

Response 7C: See Commenter #1, Response 1E.

Comment 7D: Commenter states the new regulation needs a provision instituting procedures that clearly notify the inmate the exact time and date a money order is placed on hold for processing and when the hold is lifted. Commenter states the current procedure of imprinting the envelope with this important information is lacking at CSP SAC.

Accommodation: None

Response 7D: See Commenter #5, Response 5A, and Commenter #6, Response 6B.

Comment 7E: Commenter sent 3 inquiries to the mailroom and trust office before being informed of the date the 30 day hold started and might end. The trust office used the word "if" in a note on an inmate statement report indicating to commenter that the procedure for clearing a money order might not be completed in 30 days. Commenter asks what the average time CDCR envisions this procedure to be completed.

Accommodation: None

Response 7E: See Commenter #5, Response 5A. Also, every inmate's deposit is recorded on the inmate's account, systematically held for 30 days if applicable, and automatically released for spending unless it comes back dishonorable.

Comment 7F: Commenter suggests that if the money orders clear the bank in less than 30 days, the hold should be lifted, the funds be accounted to the inmate's available balance, and the inmate notified.

Accommodation: None

Response 7F: The Department is not notified when items clear the bank, only when items do not clear. Also, see Commenter #6, Response 6A.

Comment 7G: Commenter contends notification to the inmates that a hold has been placed on the funds received by money order by the mailroom is insufficient and non-sensical since the hold is not placed on the funds until the Report of Corrections is received by the inmate trust account office and not at the time the mailroom affixes a stamp that the funds were accepted. Commenter contends it is possible the date of the mailroom stamp is not the date the hold begins. The trust office does not always post the funds for a day or possibly 3-5 days making it impossible to calculate when the hold is lifted.

Accommodation: None

Response 7G: The mailrooms at the institutions receive a large amount of mail each day and may get behind sometimes, which may delay the Report of Corrections being sent to the trust office on a daily basis. However, funds are posted as quickly as possible. The 30-day hold will begin when the funds are posted to the account and lifted 30 calendar days after it is posted to the inmate's account unless it does not clear.

Comment 7H: Commenter states that since the trust office is responsible for placing and releasing the hold, they should be the one to notify the inmate when the hold is placed and not the mailroom. Commenter states since the mailroom does not know when the hold is placed and released, the mailroom should not be held responsible to notify the inmates.

Accommodation: None

Response 7H: The mail room processes the funds received in correspondence and forwards the stamped envelope that is a receipt for the inmate that the funds were received. The funds are then forwarded to the trust office for posting. The date the funds are posted will show on the daily balance of the inmates trust account.

Comment 7I: Commenter states he fails to see the need for a blanket change when there are criminal sanctions for those that receive funds from fraudulent money orders and for the sender of the fraudulent funds, without placing a hold on funds that are genuine money orders.

Accommodation: None

Response 7I: The Department's responsibility is to protect the funds from any losses and now, per a directive from the Department of Finance, we are to not release any items for spending until they have cleared the bank.

COMMENTER #8

Comment 8A: Commenter provided several quotes from the Initial Statement of Reasons including "...there has been an increase in the use of counterfeit money orders and the loss of thousands of dollars" and the following "in proposing amendments to Section 3140 of the Title 15, the CDCR has not identified or relied

up any technical, theoretical, or empirical study, report or similar document.” Commenter states this is cause for any reasonable individual to doubt the veracity of the Department’s claim of drastic financial losses due to fraudulent checks and money orders and such a severe change of policy should not be undertaken without documentation supporting the assertions of the State.

Accommodation: None

Response 8A: See Commenter #1, Response 1C. The Department does not have the funds to continue to pay for dishonored items. The CDCR received a letter from the Department of Finance, Office of State Audits and Evaluations who maintains a database of all reported fraud and irregularities, which states “We recommend CDCR implement internal controls to ensure Inmate Trust Fund account deposits are available for canteen purchases only after the funds clear the bank. This recommendation applies to all deposits into the Inmate Trust fund including cashier’s checks and money orders.”

Comment 8B: Commenter contends that if an empirical study is completed and the State finds that fraudulent checks and money orders are resulting in thousands of dollars in losses, this would still amount to less than a percentage point of the amount of money sent to inmates.

Accommodation: None

Response 8B: Any loss to the Trust Account Funds is a loss that we must try to stop. We have no means to compensate the bank for the loss to this fund.

Comment 8C: Commenter states there is a very serious issue of accounting regarding the overwhelming majority of legitimate checks and money orders sent to the inmates, namely the interest accrued over the period in which an inmate’s finances are being withheld. By placing a hold on deposits into inmate trust account, the State is effectively stealing a month’s worth of interest from that inmate. Commenter is concerned the State is not only withholding the interest an inmate is entitled to, but reallocating the interest on every check or money order sent to an inmate at the State’s discretion. This amounts to undisclosed revenue being generated by the State illegally and outside the accountability of the law.

Accommodation: None

Response 8C: The Department disagrees. The Department is mandated by law to distribute interest to inmates based on their balances. The funds are posted to the inmates trust account and a hold is placed on the funds until they clear the bank. Interest is distributed based on the inmate’s average daily balance. The money shows in the daily balance even though it is not available to spend. In practice, the inmate may earn more now in earned interest. However, interest rates on all secured investments are at historic lows currently. If the money order does not clear, the interest is lost.

Comment 8D: Commenter expresses concern this change in regulation may set precedent that the State can arbitrarily place holds on inmate finances based on vague, unsupported claims, steal the interest, and potentially reallocate funds without accountability. Commenter asks what’s to keep the State from going further. Commenter believes this change to regulations is illegal and will open the door for the Department to find more ways to steal from inmates and their families.

Accommodation: None

Response 8D: The Department is mandated by law to distribute interest to inmates based on their balance. See Commenter #1, Response 1E.

COMMENTER #9

Comment 9A: Commenter contends the institution is already holding a money order he received for 30 days or longer after it clears the bank it is drawn on and it is not available to spend at canteen.

Accommodation: None

Response 9A: See Commenter #7, Response 7E.

Comment 9B: Commenter asks where all the monies are and if they are sitting in Ironwoods bank collecting interest.

Accommodation: None

Response 9B: The Department does not have banks at the institutions. After the negotiable instruments are posted to the inmate trust account, they are sent to the banking institutions for deposit. The same day the funds are sent for deposit, they are reported to the California State Treasury and the negotiable instruments must balance to the amount reported to the State Treasury. These funds are deposited into an interest bearing account and controlled by the Department of Finance not the CDCR. The State Treasury account bears interest monthly with distribution to inmates being divided into monthly disbursements. **Also see Commenter #8, Response 8C.**

Comment 9C: Commenter states that at previous institutions a receipt for an electronic deposit made by the family is in the mail within a day or two. Commenter further states the current institution does not send a notice or receipt and commenter is notified one day before canteen. Commenter asks where the money is and contends it is in CDCR's bank up to 30 days before commenter knows it's there.

Accommodation: None

Response 9C: This is an issue for the institution's Associate Warden, Business Services, at that specific institution. **See Commenter #9, Response 9B.**

Comment 9D: Commenter states a postal money order is as good as a cashier's check which clears in 1 or 2 days and contends there is no reason to hold a money order from being spent for 30 days. Commenter states families pay for postal money orders or electronic deposits and there is no need to give prisons the cover of change in policy to cover their illegal activities.

Accommodation: None

Response 9D: Money orders of various types are mailed and cancelled without our knowledge before we process them.

Comment 9E: Commenter asks that postal money orders be made available when cleared, not held 30 days, or find a way to let commenter check when they collect interest on all money held for 30 days.

Accommodation: None

Response 9E: Money orders are sent from the institutions to the bank and the bank verifies and clears all money orders as well as checks. The length of time it takes a money order to clear depends on the type of money order and the bank. **Also see Commenter #4, Response 4B.**

Comment 9F: Commenter's concern is that each institution can use this change in policy to hold funds in their bank no matter when they clear the bank drawn upon for the whole 30 day period as Ironwood State Prison (ISP) is doing now with all money orders, even postal ones commenter's family has always used.

Accommodation: None

Response 9F: There are no banks in the institutions. The funds are held in the inmate's trust account for 30 days and automatically released for spending unless they did not clear the bank.

Comment 9G: Commenter states the postal money order dated July 15, 2011, has been cashed and cleared, yet ISP continues to hold it and all money orders in their account for the complete 30 days.

Accommodation: Full accommodation.

Response 9G: Proposed text in Section 3140 of Title 15, California Code of Regulations now state that the funds shall not be released for spending by the inmate for 30 days from the date of deposit into the inmates trust account and must have cleared the bank upon which they were drawn. **See Commenter #24, Response 24B.**

Comment 9H: They are holding every ones (money orders) and that amounts to thousands and thousands of dollars and they do not notify you of an Electronic Deposit unless you write and ask. This is wrong and should be addressed in the hearing. I'm sure there should even be a legal issue with the holding of funds put into their account.

Accommodation: None

Response 9H: It is not illegal to hold funds until they have cleared the bank. The deposits show on the inmate statement account balance. The Department has also been directed by the Department of Finance to make funds available only after they have cleared the bank.

COMMENTS #10

Comment 10A: Commenter states the Department asserts in the Initial Statement of Reasons that fraudulent money orders have been sent to inmates resulting in a monetary loss to the Department presumably because the money was spent by inmates before verification and/or recovery of funds could be achieved. Commenter contends the Department's reasoning is flawed in its attempt to make a distinction between money orders and certified checks and treating money orders like personal checks.

Accommodation: None

Response 10A: The Department disagrees. A Certified check is a form of check the bank verifies that sufficient funds exist in the account to cover the check, and so certifies, at the time the check is written. Those funds are then set aside in the bank's internal account until the check is cashed or returned by the payee. Thus, a certified check cannot "bounce."

Money orders of various types are mailed and cancelled before the Department can process them without the Department's knowledge. Also counterfeit or fraudulent money orders also result in a loss to the Fiduciary Fund and any loss is a loss the Department must try to stop.

Comment 10B: Commenter contends the Department has not stated with clarity or credible evidence that U.S. Postal Money Orders have been the target of counterfeiting.

Accommodation: None

Response 10B: The Department keeps copies of fraudulent items.

Comment 10C: Commenter contends the Department has failed to state other than its inability to recover lost funds from inmate trust accounts, what attempts have been made to verify the authenticity of check cashing businesses including those that do pay day loans who are able to verify on the spot whether or not a check is from a fraudulent account or the account has insufficient funds.

Accommodation: None

Response 10C: See Commenter #1, Response 1E.

Comment 10D: Commenter states it appears the Department, or at least employees/agents, is engaging in a private enterprise to profit from inmates families by starting up/steering business to a company known as "Touch Pay" that is in the business of accepting by credit card, deposits from those wishing to place funds in a Department inmate's trust account or making payments against restitution obligations. Commenter contends it appears to be generating profit for either the Department or individuals of the Department engaging in unscrupulous business practices. Commenter contends the proposed change should not be adopted.

Accommodation: None

Response 10D: See Commenter #1, Response 1E.

COMMENTS #11 is same form letter as #1.

Comment 11A: Identical to comments provided by Commenter #1. Commenter objects to the proposed regulation change and characterization as emergency.

Accommodation: None

Response 11A: See Commenter #1, Response 1A.

Comment 11B: Commenter states CDCR lauds family relationships as an integral element of rehabilitation of the incarcerated and cites California Code of Regulations, Title 15 Section 3170 as an example. Commenter further states that it is pathetic that the first response to a Controller's Report finding of lack of financial controls is to make it more expensive for families to transfer funds to CDCR for the benefit of their loved one.

Accommodation: None

Response 11B: See Commenter #1, Response 1B.

Comment 11C: Commenter states this is not an emergency and that the Federal Reserve Board has dealt with the obligation to promptly honor funds in financial institutions and arguably, government agencies acting as financial institutions since enacting "Regulation CC" (sic.) in 2003. Commenter included text from the Federal Reserve Board's regulation and contends it is not the Department's job to collect from the inmates for counterfeit money orders, but rather is a function of the U.S. Postal Service and the claim should be against the counterfeiter, not the inmate.

Accommodation: None

Response 11C: See Commenter #1, Response 1C.

Comment 11D: Commenter believes that the internal memoranda behind this issue calls for a hold of thirty (30) days before the inmates has access to his/her funds. Commenter states this is anachronistic in a

world where financial institutions, including Bank of America, where he believes the funds are deposited, is to treat money orders as cash, i.e., available the same day.

Accommodation: Full accommodation.

Response 11D: See Commenter #1, Response 1D and Commenter #24, Response 24B.

Comment 11E: Commenter states that the Department signed a consent order agreeing that interest in the inmates' accounts be shared on a pro rata basis among the inmates. Commenter asks how the Department benefits unless they are violating AB 439 regarding the distribution of interest from inmates trust accounts. Commenter states that in the last audit report on the Inmate Welfare Fund the Department was unable to justify its claims to a million dollars of administrative expense charged against that fund, supposedly for the benefit of the inmates.

Accommodation: None

Response 11E: See Commenter #1, Response 1E.

Comment 11F: Commenter states that the Department has found that it can generate additional funds for administration by taking exaggerated amounts from the Inmate Welfare Fund and Inmate Trust Accounts by claiming administrative expenses far in excess of amounts and necessary to administer the funds. Commenter states this occurs quite soon after the Governor required the elimination of 400 positions in headquarters.

Accommodation: None

Response 11F: See Commenter #1, Response 1E.

Comment 11G: Commenter contends that the only emergency is preserving unauthorized Department employment. Commenter states that the only reasonable presumption then is that the Department has determined that by extending the time before a money order must be honored from immediately to 30 days will add a month of interest earning from which to take administrative fees. Commenter asks why the Department has refused to make public the extent of the Inmate Trust Account balances, the interest thereon, and the allocation of administrative expense.

Accommodation: None

Response 11G: See Commenter #1, Response 1G.

Comment 11H: Commenter states that the proposed action should not be permitted as an emergency because the Initial Statement of Reasons does not support an emergency. Commenter further states that the issue of dishonor of money orders has been addressed by the Federal Reserve Board in Circular #3 in 2008 and it is clear that there are other alternatives to the holding of funds for an unduly long period of time. Commenter states if the Department is going to act as a bank for prisoners and those that deposit money into the inmates trust account, the Department ought to be held akin to time regulations in either The Expedited Fund Availability Act and/or The Check Clearing for the 21st Century Act.

Accommodation: None

Response 11H: See Commenter #1, Response 1H.

Comment 11I: Commenter asserts the emergency regulations ignores the impact on the families and/or loved ones who provide the funds for the Inmate Trust Accounts and are saddled with leaving funds on hold for a month while trying to support the family outside and the inmate. Commenter contends that while this cost is

hard to reduce to dollars because the balances of the Inmate Trust Accounts do not appear to be made public, this comports with the court reported actions of the Department in taking the funds out of interest bearing accounts rather than account for the interest income and the alleged related administrative expense.

Accommodation: None

Response 11I: See Commenter #1, Response 1I.

Comment 11J: Commenter requests that:

- The proposed regulation change be rejected as an emergency.
- The proposed regulation be denied in its entirety.
- The Legislature direct an examination and report on the calculation and propriety of the administrative expense changes to the Inmate Trust Accounts and Inmate Welfare Fund account.
- Other and further relief as the Office of Administrative Law may deem reasonable and proper under the circumstances.

Accommodation: None

Response 11J: See Commenter #1, Response 1E.

COMMENTS # 12

Comment 12A: Commenter states that a postal money order is and always has been based on federal regulations and is like cash. Commenter feels any problems with postal money orders would be taken up with postal services not the bank or government agency acting as a bank.

Accommodation: None

Response 12A: See Commenter #2, Response 2C.

Comment 12B: Commenter contends that this money order mess started when CDCR started TouchPay and states that cashier's checks and postal money orders should not be held 30 day in CDCR bank account and belongs in the inmate's account. Commenter feels personal checks and liquor store money orders should be held 30 days.

Accommodation: None

Response 12B: All funds received for inmates including cashier's checks and postal money orders are posted to the inmates trust account and because some checks and money orders are returned cancelled or fraudulent it is necessary to place a hold to protect the inmates' accounts.

Comment 12C: Commenter says that for over 24 years commenter's money has come from automatic pay from Wells Fargo Bank to commenter's books with no problem and now CDCR just wants the cash from the TouchPay payment system and commenter does not feels its right to keep taking money from commenter's friends, family, and commenter.

Accommodation: None

Response 12C: See Commenter #1, Response 1E.

Commenter 12D: Commenter strongly objects to postal money orders and cashier checks drawn on California banks be held 30 days before crediting to inmate trust account as Commenter still trusts and believe in the United States Postal Office not TouchPay.

Accommodation: None

Response 12D: See Commenter #1, Response 1E.

Comment 12E: Commenter states a bank direct deposit for \$40 is sent to commenter each month and what little money received by postal money orders are now held for 30 days and commenter feels indigent and for the first time asks other inmates for things and this is not right. Commenter states checks and U.S.A. money orders are like cash and commenter does not approve of money being withheld.

Accommodation: None

Response 12E: See Commenter #1, Response 1E.

Comment 12F: Commenter feels this is another money scheme by the CDCR to gain interest on commenter's money placed in her account by placing a 30 day hold on all money sent from the bank and post office. Their money is guaranteed and should never be withheld from commenter.

Accommodation: None

Response 12F: The Department disagrees. See Comment #8, Response 8C, and Commenter #19, Response 19A.

Comment 12G: Commenter opposes this new policy because commenter has federal post money order sent to commenter that are supposed to be treated as cash and should not be withheld for 30 days since they have exceptional security measures in place to avoid counterfeiting.

Accommodation: None

Response 12G: See Commenter #1, Response 1E.

Comment 12H: Commenter states if CDCR refused to alter its policy on postal money orders, commenter is requesting the interest earned on the money for those 30 days and hopes CDCR is not allowed to continue this policy of gouging its prisoners for their interest earned on money placed on this 30 day hold. Commenter states it would be a slap in the face to allow CDCR to keep making money on prisoner's money, considering the current state of affairs within CDCR.

Accommodation: None

Response 12H: See Commenter #8, Response 8C.

Comment 12I: Commenter states that surely CDCR is not looking to cause another multiple lawsuits over this issue and commenter contends the interest gained on all 30 day holds should be place in commenter's account not CDCR's bank accounts as commenter suspects this is the reason for the change. Commenter further says to stop being greedy off the backs of the most disadvantaged already.

Accommodation: None

Response 12I: See Commenter #8, Response 8C.

COMMENTER # 13

Comment 13A: Commenter noticed that the proposed rule changes does not address the effect of holding/encumbering the funds for 30 days on an inmate's indigent status and the rule changes should include and specify that an inmate shall remain indigent until the funds clear. The procedure now is that the non-cleared money orders etc. are listed as an "encumbrance."

Accommodation: None

Response 13A: Inmates are not indigent if there is an account balance whether it is available or not.

Comment 13B: Commenter believes the purpose for this specification is to not penalize an inmate for waiting a period of 30 days of clearance. Because the funds are listed in the account but unavailable, an inmate has to wait 30 days for the funds to clear and he/she will not be allowed to use the funds at canteen for supplies or receive monthly indigent supplies of paper, envelopes, and dental floss.

Accommodation: None

Response 13B: See Commenter #13, Response 13A.

Comment 13C: Commenter contends there must be a fundamental fairness to the rules and practice and CDCR's position is to keep embezzlement from happening and suggests to keep the proposed rule change from being a form of punishment or penalization to the inmate, that specific language "the inmate shall remain indigent until the funds clear for spending" is needed for the inmate to obtain necessary indigent items. Commenter feels this suggestion will eliminate any confusion, disagreements, and unfairness to the inmate population and CDCR.

Accommodation: None

Response 13C: See Commenter #13, Response 13A.

COMMENTER #14

Comment 14A: Commenter states that having had many years experience in the banking industry you can rest assured it does not have to take 30 days for any kind of funds to clear and the 30 day hold is excessive and unwarrantable.

Accommodation: None

Response 14A: See Commenter #1, Response 1D.

Comment 14B: Commenter states that commenter's funds, as well as other inmates, took well over 30 days to clear (more like 45). This practice is in violation of CDCR's policy.

Accommodation: None

Response 14B: After 30 days, the funds are automatically released for spending unless they did not clear.

Comment 14C: Commenter's understanding is that the date of receipt stamped on the envelope is not the actual date that reflects the start of your 30 day hold. For reasons unknown to commenter, it's taking many

days for those funds to be picked up from the trust account office or for the trust account office to enter them into the system. Commenter states that either practice is unacceptable.

Accommodation: None

Response 14C: The 30 days start when it is posted to the inmates account and because the institutions receive a huge amount of mail each day, processing from the mailrooms to the trust account office and posting in the inmate's account may take longer.

Commenter 14D: Commenter states that if inmates are forced to accept this policy change, then there must be some level of accountability on CDCR's part and let 30 days be 30 days.

Accommodation: None

Response 14D: See Commenter #7, Response 7E.

Commenter 14E: Commenter states that on behalf of inmates, commenter will contact other federal and State agencies to see if there is any type of legal recourse available. Commenter hopes that some kind of compromise could be reached before tying up the courts with this burdensome litigation.

Accommodation: None

Response 14E: See Commenter #1, Response 1E.

COMMENTER #15

Comment 15A: Commenter asks why it will be necessary to hold postal money orders from the United States Postal Service for 30 days per department/institution policy.

Accommodation: None

Response 15A: In recent years there has been an increase in the use of counterfeit money orders and the result has been a loss in thousands of dollars from fraudulent money orders that were placed in the inmate trust account and spent by the inmate before the money orders have cleared the bank. Recovering these funds from the inmates' trust account accounts has not always been successful. **Also, see Commenter #1, Response 1D.**

Comment 15B: Commenter questions why will the processing of funds under the proposed amendment require the funds be held by the Department/institution for 30 days despite the possibility/probability that they have cleared the bank in as little as 3 to 5 days.

Accommodation: None

Response 15B: See Commenter # 6, Response 6A.

Comment 15C: Commenter asks if the processing of funds by the Department/institutions pays a qualifying inmate the interest for the number of days their personal funds are converted after they have cleared the bank.

Accommodation: None

Response 15C: See Commenter #8, Response 8C.

COMMENTER # 16

Comment 16A: Commenter quotes the proposed regulations in the NCR and states he received a Western Union money order July 29, 2011, and as of August 28, 2011, it still has not cleared to be able to go to canteen. Commenter contends that in the policy it still does not state how long check or money orders have to clear in inmate trust account and the dilemma commenter faces is, to sign up for indigent envelopes, they say commenter has money in his account and it has been 30 days and when commenter goes to canteen, they say commenter does not have money. Commenter states it is a problem either trying to get indigent envelopes or going to canteen on a timely manner.

Accommodation: None

Response 16A: If the funds cleared the bank, 30 Calendar days would be August 30th for the release of funds. Inmates are not indigent when there is an account balance whether it is available or not.

Comment 16B: Commenter suggests a security measure put on by companies that print money orders or checks by requiring a thumb print and an index finger on the check so more of a finger print or DNA could track offender on fraudulent checks and money orders. Commenter states most banks require this, not a member of their establishment, so this could and can catch the perpetrator and be able to prosecute and track the offender of fraudulent checks and money orders.

Accommodation: None

Response 16B: See Commenter #1, Response 1E.

Comment 16C: Commenter is trying to find out how long the Department has because there is no given date to clear to go to the store. Commenter states rumor say it takes up to 60 days for a money order to clear just to go to canteen. Commenter hopes CDCR understands the situation and problem inmates' face trying to get indigent envelopes or a canteen draw in a timely manner.

Accommodation: None

Response 16C: See Commenter #5, Response 5A and 5B and Commenter #6, Response 6B.

COMMENTER #17

Comment 17A: Commenter contests the amendment and states it is taking well over 30 days to clear money orders and this is not right as nowhere in the U.S. does it take longer than a few days to clear a check or money order. Commenter contends that Postal Money Orders are the same as cash and there is zero reason they should have to hold them, let alone a 30 day hold.

Accommodation: None

Response 17A: See Commenter #1, Response 1D.

Comment 17B: Commenter states it would be one thing if the money coming in to prisoners were only held until they clear, but due to the amount of money orders and checks coming in to prisoners, it is taking over the 30 day limit that this regulation imposes.

Accommodation: None

Response 17B: The Department disagrees. See Commenter #7, Response 7E.

Comment 17C: Commenter asks why impose this new regulation now especially when the banking system is so automated. Commenter further states that criminals will always commit crimes.

Accommodation: None

Response 17C: See Commenter #1, Response 1C. The Department does not have the funds to continue to pay for dishonored items. In a letter from the Department of Finance it states “We recommend CDCR implement internal controls to ensure Inmate Trust Fund account deposits are available for canteen purchases only after the funds clear the bank. This recommendation applies to all deposits into the Inmate Trust fund including cashier’s checks and money orders.”

Comment 17D: Commenter strongly objects to this regulation as it is not needed in the big scheme of things.

Accommodation: None

Response 17D: See Commenter #8, Response 8B.

COMMENTER # 18

Comment 18A: Commenter states it appears that CDCR is attempting to gain funds by holding my funds for 30 days and I am being punished for another inmates conduct. Commenter states commenter shall be held accountable for his own conduct, not other inmates who fraudulent the State.

Accommodation: None

Response 18A: See Commenter #8, Response 8C.

Comment 18B: Commenter states it appears that CDCR is altering its policy on U. S. Postal Money Orders and requests that CDCR not keep the interest earned on my money for those 30 days. Commenter asks who gets that interest that is being withheld for those 30 days and feels the interest earns should be placed in the inmate’s account and not in CDCR’s bank account.

Accommodation: None

Response 18B: See Commenter #8, Response 8C.

Comment 18C: Commenter contends that CDCR is not looking to cause multiple lawsuits over this issue and should enforce its ‘good faith’ by continuing to allow Postal Money Orders as cash and accept nothing but certified checks.

Accommodation: None

Response 18C: See commenter #7, Response 7I.

COMMENTER #19

Comment 19A: Commenter ask how CDCR justifies placing a hold on Postal Money Orders (PMO) for 30 days when PMOs are suppose to be just as good as cash money and you can pay your rent and bills without a hold placed on them. Commenter contends they are federally insured, have water marks, and are harder to counterfeit than paper money.

Accommodation: None

Response 19A: The Department has received fraudulent and altered Postal Money Orders and because they are not federally insured, has resulted in losses and the reason for these proposed regulations.

Comment 19B: Commenter asks where the funds are held, if they are held at a bank or trust office, and if the CDCR is collecting interest on these monies.

Accommodation: None

Response 19B: After the funds are posted to the inmate trust account, the funds are deposited into an interest bearing account within the California State Treasury and controlled by the Department of Finance not the CDCR and are kept in trust with the Treasurer who selects how the funds are to be invested. The State Treasury account bears interest monthly with distribution to inmates being divided into monthly disbursements.

See also Commenter #8, Response 8C.

Comment 19C: Commenter can imagine how much comes in a month and asks how the CDCR is allowed to make money off commenter's money when commenter has paid off all the money he was ordered to pay.

Accommodation: None

Response 19C: See Commenter #8, Response 8C.

Comment 19D: Commenter asks if CDCR staff paychecks are placed on hold for 30 days because it is a State agency and if they would like someone else to collect interest on those monies.

Accommodation: None

Response 19D: See Commenter #1, Response 1E.

Comment 19E: Commenter asks for an explanation for the reasoning for this and to stop or give commenter his money that CDCR is trying to make on his money.

Accommodation: None

Response 19E: The Department is mandated by law to distribute interest to inmate's based on their balances.

COMMENTS #20

Comment 20A: Commenter states the proposed regulation creates a burdensome hardship upon the majority for safeguard against the vast minority and suggests to simply place an encumbrance on the inmate trust account of occurrence equal to 100% of all future deposits, plus 10% for punitive measures until the fraudulently received funds are returned to CDCR. Commenter states this would deter inmates from participating in fraudulent schemes without withholding honorable trust account deposits.

Accommodation: None

Response 20A: Placing an encumbrance on the inmate's trust account would place the assumption that we punish the inmate for something they have no control over since anyone can mail them funds for deposit.

Comment 20B: Commenter contends the policy amendment is ambiguous to the matter of electronic deposits secured from a vendor such as “J-pay” or “inmates deposits,” which serve as a forwarding agency from credit card lending companies who also instantly terminate lost/stolen credit card accounts and extend insurance for just such occasions as it seems this amendment is attempting to quell.

Accommodation: None

Response 20B: See Commenter #1, Response 1E.

Comment 20C: Commenter states said ambiguity has already caused prisons to have electronically deposited funds to be withheld for 30 days because they can easily be misinterpreted as with the meaning of “not in the form of certified checks” which is in the language of the amendment. Commenter contends this scenario may be the cause of action/liability by the electronic deposit/transfer companies under the Fair Business Practices Act because said policy change renders their service without its key advantage of instantaneous delivery and will obviously cause inmates to ask of their supporters to use only certified checks because of they are more timely processing and may put these service providers out of business.

Accommodation: None

Response 20C: See Commenter #1, Response 1E.

Commenter #21

Comment 21A: Commenter states it has been very difficult to make ends meet and when money is received from a kind soul or lawsuit he filed against the CDCR, all the money gained has come under some form of deduction, be it restitution, fines, or court costs. Commenter contends CDCR has come up with another scheme to earn interest on money placed into commenter’s account by placing a 30 day hold on all money sent to commenter and contests this new policy because when money is sent to him, only federal postal money orders are sent and they are suppose to be treated as cash. To place a 30 day hold on postal money order is like putting a hold on cash. Commenter states the policy needs to exclude federal postal money orders since they have exceptional security measures in place to avoid any type of counterfeiting.

Accommodation: None

Response 21A: See Commenter #9, Response 9B and Commenter #19, Response 19A.

Comment 21B: Commenter states that if CDCR refuses to alter its policy on postal money orders, commenter requests CDCR not keep the interest earned on my money for those 30 days that has basically been placed in escrow. Commenter asks who gets that interest on money withheld for 30 day and states commenter should be awarded all interest earned for those 30 days. Commenter states that way CDCR is not awarded commenter’s interest in their scheme to stop fake instruments from being cashed out and CDCR won’t take any losses and should not be allowed to make any gains on commenter’s money.

Accommodation: None

Response 21B: See Commenter #8, Response 8C.

Comment 21C: Commenter hopes and prays CDCR is not allowed to continue this policy of gouging its prisoners for their interest earned on money place on this 30 day hold and it would be a slap in the face to allow CDCR to make money on commenter’s money considering the current state of affairs within CDCR. Commenter contends CDCR is not looking to cause lawsuits over this issue costing the State money it have because of a ploy to gain money on the back of inmate family and friends who are already being gouged

through vendors, canteen prices, restitutions, fine, etc. Commenter hopes CDCR allows the interest gained on all money being placed on a 30 day hold be placed in the inmates account and not in CDCR bank account as I suspect is the reason for this change in policy.

Accommodation: None

Response 21C: See Commenter #8, Response 8C.

COMMENTER #22

Comment 22A: Commenter states that more than a thousand inmates at COR have been unable to purchase canteen items yet this month and they have had no official notification as to why money orders sent from families have not been credited to inmates trust account. Commenter states there are rumors of several forged or at the least questionable money orders were identified and canteen sales have all but stopped. Commenter contends most retailers, depending on the size and number of locations, build into their markup the profits lost of 4 to 32% because of lost through bad check, fraud, and shoplifting. Commenter contends the CDCR canteen operation operates on a 60% or greater markup. Commenter asks if the rationale that does cause a loss of over \$50,000 in net sales over a loss of sever hundred dollars is unsound and asks if this unsound policy is devoid of any retail savvy is limited to this one prison.

Accommodation: None

Response 22A: See Commenter #9, Response 9A and Commenter #1, Response 1E.

Comment 22B: Commenter states inmates have lost money to the mishandling of our funds by the accounting department here. Commenter lost \$90.00 last year when a money order went missing and at least a dozen books of stamps that can be refunded at a post office go missing from the mailroom over the last 5 years. Commenter figures by taking his loss and multiply in by an average inmate population during that period of over 6,800, it's not pocket change and requests the Department look into the unusual circumstances where monies are not made available to inmates.

Accommodation: None

Response 22B: See Commenter #1, Response 1E.

COMMENTER # 23

Comment 23A: Commenter is not in agreement with CDCR's placing a 30 day hold on money orders that are sent into the facility by family or friends and asks who will get the interest. Commenter asks, the inmates?

Accommodation: None

Response 23A: See Commenter #8, Response 8C.

Comment 23B: Commenter contends that while it takes the money order 30 days to clear, inmates will not be able to receive indigent for that month and will be without the necessities that are needed to survive, such as, hygiene and writing materials. Commenter states it's not fair for CDCR to place inmates' money on hold for 30 days.

Accommodation: None

Response 23B: The Department provides all inmates with the necessities that are needed to survive. For supplies such as hygiene and writing materials see **Commenter #13, Response 13A.**

COMMENTER # 24

Comment 24A: Commenter states Avenal State Prison is placing a mandatory 30 day hold on all money orders and commenter is concerned that the funds will be on hold until the 30 day period expires even if the funds already have been cleared.

Accommodation: None

Response 24A: The regulations state the funds are held 30-days. The Department must allow for processing time from the mailing room to the trust office for posting funds to the inmate trust account and for the banks to verify and clear all transactions before releasing funds to inmates for spending.

Comment 24B: Commenter states the regulations should specify that the funds should be made available immediately upon the bank clearing the funds and include the maximum time the institution has to process the funds in order for them to be made available. The institution should not be allowed to place 30 day period to clear funds if the regulations itself does not call for such a period.

Accommodation: Full Accommodation. The Department filed a 15 Day Renotice that included the 30 day hold.

Response 24B: The Department agrees and has included text that states “Funds not in the form of certified checks shall not be released for spending by the inmates for thirty (30) days from the date of deposit into the inmate trust account.”

COMMENTER # 25

Comment 25A: Commenter contends the 30 day hold placed on all postal money orders is an underground policy not written in the CCR Title 15 and a scheme to earn interest on all money sent to the inmate.

Accommodation: None

Response 25A: The Department disagrees as a 15 Day Renotice was sent out September 21, 2011, that included the 30 day hold. Furthermore, any interest earned from the pooled account of inmate trust funds is applied back to those accounts on a proportional basis. See **Commenter #8, Response 8C.**

Comment 25B: Commenter states postal money orders are supposed to be treated as cash and asks how CDCR can place a hold on cash. Commenter states the policy needs to be amended to accept Postal money order without a 30 day hold since they have special security measure in place to avoid counterfeiting.

Accommodation: None

Response 25B: See **Commenter #19, Response 19A.**

Comment 25C: Commenter requests that CDCR not keep the interest earned on commenter’s money if CDCR refuses to alter its policy on Postal money orders. Commenter asks who gets the interest that is being withheld for 30 days as CDCR has placed commenter’s money into a form of escrow. Commenter states that in addition, beginning January 1, 2009, Section 3099 of Title 15 requires CDCR to pay interest on inmate trust account deposits, to qualifying inmates based on average daily balance and nowhere does it state that CDCR is allowed to earn any of this interest from inmates trust account.

Accommodation: None

Response 25C: See Commenter #8, Response 8C.

Comment 25D: Commenter request this office grant a formal investigation into this complaint and allegations brought forth herein.

Accommodation: None

Response 25D: See Commenter #1, Response 1E.

Comment 25E: Commenter hopes CDCR is not allowed to continue this policy of gouging its prisoners for their interest earned on money placed on this 30-day hold. It would be a slap in the face to allow CDCR to make money on prisoners' money considering the current state of affairs within CDCR. Commenter states that CDCR is not looking to cause multiple lawsuits over this issue and the interest gained on all 30-day holds should be placed in the inmates trust accounts and not in CDCR's bank account, as commenter suspects is the reason for this policy to make money off the inmates trust accounts.

Accommodation: None

Response 25E: See Commenter #8, Response 8C.

COMMENTERS #25 THROUGH #33 SUBMITTED IDENTICAL LETTERS.

COMMENTER #34

Comment 34A: Commenter understands the CDCR needs to ensure the persons under its jurisdiction do not defraud the Inmates Welfare Fund or other aspects of the State's finances. It appears unfair to require that postal money orders be subject to the same 30-day delay for bank clearance.

Accommodation: None

Response 34A: See Commenter #19, Response 19A.

Comment 34B: Commenter contends when postal money orders are purchased, they are insured and for that reason alone should be exempt from the 30-day delay.

Accommodation: None

Response 34B: See Commenter #9, Response 9D.

Comment 34C: Commenter contends that while a money order is being held to clear, the CDCR is collecting interest. Commenter asks if this is true, if not, why not?

Accommodation: None

Response 34C: See Commenter #8, Response 8C.

Comment 34D: Commenter asks if it would not be easier for the CDCR to allow inmates to receive money orders and have them process in 3 to 5 working days if the person sending the money order attaches a copy of the receipt if paid for in cash or at a U.S. Post Office and mailed from that agency?

Accommodation: None

Response 34D: An individual who purchases a money order can also cancel the money order at any time with their receipt before it has cleared the bank.

Comment 34E: Commenter asks if the CDCR could make an exception and allow only postal money orders which are federally insured and if not, why?

Accommodation: None

Response 34E: See Commenter # 19, Response 19A.

Comment 34F: Commenter asks if the new regulations do not apply to cashier's check or the electronic fund transfer and if not, why?

Accommodation: None

Response 34F: Cashier's checks are included in the 30 day hold; however, electronic fund transfers do not go through the mail room nor does the Department have to deposit them so they are not included in these regulations.

Comment 34G: Commenter asks if friends/family will be able to send funds by Western Union and/or Money Gram.

Accommodation: None

Response 34G: Section 3140(a) states that "Funds may be mailed to an inmate in the form of a money order, certified check, personal check, or any other negotiable means except cash and Traveler's Checks."

Comment 34H: Commenter contends it seems compulsory to use J-Pay or similar services just to go to canteen in a timely manner because the CDCR seems to have expedited this new policy, yet took no consideration that many family members are facing harsh economic hardship and money orders were simple. Commenter asks if cash can ever be accepted and if not, why. Commenter contends funds can be brought at visitor processing like at all county jails.

Accommodation: None

Response 34H: Cash sent through the mail to inmates is not accepted per Section 3140(a) of Title 15, California Code of Regulations.

COMMENTS RECEIVED DURING 15-DAY RENOTICE

COMMENTER #1R:

Comment 1A: Commenter opposes the change on the 15-Day Renotice as the proposed post-hearing change can be construed as further limiting access to those funds placed in a prisoner's trust account, via money order of any kind, personal check, cashier's check, etc., for an additional 30 days after clearance of funds from the bank.

Accommodation: None

Response 1A: See Commenter #7, Response 7E.

Comment 1B: Commenter states the CDCR's justification for the proposed 30 day period is remoteness of various CDCR institutions and contends the vast majority of CDCR institutions are remotely located by design.

Accommodation: None

Response 1B: See Commenter #1, Response 1E.

Comment 1C: Commenter states the instant proposal would punish those inmates who are not housed at R.J. Donovan, CSP-Los Angeles county, San Quentin, CSP-Sacramento, and Folsom State Prison. Commenter assumes CDCR officials at those institutions do not rigidly apply the proposed time period and commenter states the instant post-hearing proposal should not be adopted.

Accommodation: None

Response 1C: This is a CDCR policy and applies to all the institutions within California.

COMMENTER #2R

Comment 2A: Commenter states the CDCR will keep the 30 day hold even though a much better solution is obviously to place an encumbrance upon the account the inmate who has misused their trust account for fraudulent causes. Commenter contends that even though CDCR's action is not the least restrictive means of accomplishing the goal, it's obvious that the CDCR is enacting this regulation to misappropriate interest earned funds.

Accommodation: None

Response 2A: The Department disagrees. The Department is mandated by law to distribute interest to inmate's based on their average daily balance. The money shows in the daily balance even though it is not available to spend. In theory, the inmate may now earn more in earned interest.

Comment 2B: Commenter states that since CDCR would not adhere to logic of commenter's earlier letter, this issue must be litigated in court wherein CDCR may be held accountable under your personal capacity.

Accommodation: None

Response 2B: See Commenter #1, Response 1E.

Commenter 2C: Commenter states the seeing the course of action to be set by the Department's unwavering despotical dereliction, commenter suggests a better and less ambiguous rule change wherein the electronically deposited funds into an inmate's account are clearly not to be held for thirty days, which would provide clarity for wardens and ensure fairness for business practices and also inmate meaningful access to canteen privileges. Commenter, quoting the 15-Day Renotice and adding Commenter's suggested addition to the proposed text indicated by placing asterisk*** suggests the following additional text:

“Subsection 3140(d) is amended to read: Funds not in the form of certified checks***or electronic wire transfer deposits, i.e. J-Pay or inmate secure deposits.*** shall not be released for spending by the inmate for thirty (30) days from the date of deposit into the inmate trust account and must ~~until the funds~~ have cleared the bank upon which they were drawn.....”

Accommodation: None

Response 2C: The thirty day hold does not affect Electronic Fund Transfers (ETF) since they do not come through the mail room nor do we have to deposit EFTs ourselves, as a Department we did not address them in this regulation.

COMMENTS #3R

Comment 3A: Commenter's research indicated that it takes no longer than 2 weeks for a check to be cleared by a bank and facilities that do not use a courier to deposit check for inmates' accounts, should not be penalized by a 30 day hold.

Accommodation: None

Response 3A: The mailroom at each institution receives a large amount of mail each day and the Department does not have staffing to confirm before deposit each negotiable instrument that is received. That is why we have the 30 day window and allow time for the bank to clear the item. The time it takes for the funds to clear the bank varies from institution to institution and bank to bank. Also, if an item is returned dishonored, the bank may send this item back through again in an attempt to re-clear the item. That is why we have a 30 day umbrella.

Comment 3B: Commenter does not think checks that are sent directly from an inmate's credit union or bank should be delayed 30 days because the check is not sent unless there is money in the account to cover the check. Commenter contends that once the credit union mails the check there is a hold placed at the credit union until the check is cashed, which is the same as sending cash.

Accommodation: None

Response 3B: See Commenter #3R, Response 3A.

Comment 3C: Commenter states there should be some method of confirming that checks are cleared so that the inmate has access to their money. Commenter suggests that perhaps the person sending the check could send proof of clearance in order to speed up the process.

Accommodation: None

Response 3C: See Commenter #1, Response 1E.

COMMENTS #4R

Comment 4A: Commenter asks that since certified checks are directly deposited into an inmates' account because they are drawn from a bank, why wouldn't postal money also be as they are already paid for and are FDIC insured.

Accommodation: None

Response 4A: A Certified check is a form of check the bank verifies that sufficient funds exist in the account to cover the check, and so certifies, at the time the check is written. Those funds are then set aside in the bank's internal account until the check is cashed or returned by the payee. Thus, a certified check cannot "bounce."

Money orders of various types are mailed and cancelled before the Department can process them without the Department's knowledge. Also counterfeit or fraudulent money orders also result in a loss to the Fiduciary Fund and any loss is a loss the Department must try to stop.

Comment 4B: Commenter asks why the State is making money off commenter's money when commenter paid off restitution and does not owe the State any more money. Commenter asks where the money the State makes off his money goes.

Accommodation: None

Response 4B: See Commenter #8, Response 8C.

Comment 4C: Commenter states the statement in the Notice makes it seem like the interest gained off the money goes to the inmates' account which it does not and commenter can see why CDCR does not want any public oversight.

Accommodation: None

Response 4C: See Commenter #8, Response 8D.

Comment 4D: Commenter can see the hold on personal checks because they are drawn off some ones account and also see liquor store money orders, and asks when CDCR received the rash of counterfeit postal money orders. Commenter contends the reason commenter's family purchase postal money order is they are supposed to be as good as cash money and they are guaranteed as well as insured.

Accommodation: None

Response 4D: Cancelled, altered, or fraudulent money orders of various types sent to inmates for deposit into the inmate trust accounts has been an ongoing problem. The Department of Finance, Office of State Audits and Evaluations who maintains a database of all reported fraud and irregularities, sent a letter to the Department which states "We recommend CDCR implement internal controls to ensure Inmate Trust Fund account deposits are available for canteen purchases only after the funds clear the bank. This recommendation applies to all deposits into the Inmate Trust fund including cashier's checks and money orders."

Comment 4E: Commenter states the CDCR always had the hold on all of the other ways for an inmate to receive cash, it seems the State is trying to make more money off an inmates' family as well as the inmates. Commenter contends CDCR already pulls 50% off any money received before it clears as well as the 5% off the top for a total of 55% and asks isn't that enough that you have to have the interest too.

Accommodation: None

Response 4E: See Commenter #8, Response 8C and 8D.

Comment 4F: Commenter states CDCR's explanation makes no sense for postal money orders and has no merit for all that bank mumbo-jumbo and commenter asks CDCR to be frank and call it what it is.

Accommodation: None

Response 4F: See Commenter #1, Response 1E.

COMMENTS #5R

Comment 5A: Commenter states the Department's Statement of Reasons reflecting the time necessary to allow time for processing funds received has been an ongoing underground policy since at least 2003, i.e., holding money orders for 30 days prior to the current proposed rule changes.

Accommodation: None

Response 5A: The Department disagrees, money orders were not held prior to this policy change, unless they did not clear the bank.

Comment 5B: Commenter contends the prior underground policy of holding money order for 30 days has been the practice of the Department/institutions and is contrary to the California Commercial Code Section 3420 Conversion as applied to negotiable instruments.

Accommodation: None

Response 5B: See Commenter #5R, Response 5A.

Comment 5C: Commenter states the Department's/Institutions underground policy of conversion of negotiable instruments is a breach of the fiduciary relationship of guardian-ward, as noted by the "Authorization for Direction to Maintain a Trust Account" in a prisoner's name.

Accommodation: None

Response 5C: See Commenter #1, Response 1E.

Comment 5D: Commenter contends the proposed amendment to Title 15 Section 3140(d) as originally proposed September 21, 2011, are ultra-vires acts because the Department's officials have no vested authority or prerogative to delete/amend a validly enacted legislative law.

Accommodation: None

Response 5D: The Department disagrees. California Penal Code Sections 5054 and 5058(a) gives the Secretary of CDCR the broad Authority to operate the State Prison System and set Department Rules. The Department has authority to adopt, amend, or repeal policies or procedures that are "regulations" under the Administrative Procedure Act per Government Code Section 11340. The Department asserts that no statute or legislation has been deleted or amended by these regulations.

Comment 5E: Comment contends the Department's proposed amendments are in conflict with and contrary to California Rules of Court, Rule 10.821 and Government Code Section 71386 - current with amendments received through March 1 2011.

Accommodation: None

Response 5E: Rule 10.821 of the California Rules of Court, and Government Code Section 71386 pertains to payment to a Superior court for any fee, fine, or bail and does not pertain to funds the Department of Corrections receives for inmates trust accounts.