

FINAL STATEMENT OF REASONS:

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

Updates to the ISOR

On September 2, 2011, the Notice of Proposed Regulations was published which began the public comment period. The Department's Notice of Change to Regulations #11-13 was also mailed the same day in addition to being posted on the California Department of Corrections and Rehabilitation (CDCR) Internet and Intranet websites. The Department received one written comment which is included below under Summaries and Responses to the Written Public Comments. A public hearing was held on October 26, 2011 with no one providing verbal comments.

Specific Purpose of Each Section Being Adopted

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed is as follows:

Article 4. Food Services

3052. Health and Safety Standards

Subsection 3052 (a) through (e) remains unchanged.

Subsection 3052 (f) is amended to add the text "and/or facial hair," after "their hair." This is necessary in order to incorporate facial hair into this subsection due to the changes necessitated by the revision of section 3062, as described below, resulting from the settlement agreement.

Subsections (g) and (h) remain unchanged.

Article 5. Personal Cleanliness

Section 3062 is amended to incorporate the terms of this settlement agreement into the grooming standards which eliminates restrictions related to the length of facial hair, however it still subjects facial hair to the same maintenance standards for hair within this section.

3062. Inmate Grooming Standards.

Subsection 3062 (a) is amended to add "and facial hair" after "An inmate's hair." This change is necessary to ensure inmate facial hair is held to the same standards as hair in relation to hygiene and grooming standards defined within this subsection.

Subsection 3062 (b) is amended to add "and facial hair" after "An inmate's hair." This change is necessary to ensure inmates don't cut, shape, or alter their facial hair's natural growth pattern as defined for hair in this subsection.

Subsection 3062 (c) is amended to add “/facial hair” after “his/her hair.” This change is necessary to ensure inmates do not alter the color of their facial hair, reducing the potential for them to alter their appearance as defined for hair in this subsection. This is necessary to ensure inmate accountability and escape prevention.

Subsection 3062 (d) remains unchanged.

Subsection 3062 (e) is amended. For text consistency, the wording “or facial hair” is added after the word “hair” and the wording “The hair and/or facial hair shall not” is added to begin a new second sentence to clarify that it shall not pose a health and safety risk. This change is necessary to ensure an inmate’s beard is maintained in a safe manner in accordance with the standards required by this subsection for hair.

Subsection 3062 (f) is amended to add “and/or facial hair” after “approved hair.” This change is necessary for text consistency and to ensure that inmates are allowed to possess holding devices for their facial hair as they currently exist for hair as defined in this subsection.

Subsection 3062 (g) is amended to add “hair/facial hair” after “An inmate with,” and add “and/or facial hair” after “ensure hair.” This change is necessary for text consistency and to ensure an inmate’s facial hair is subject to the same search requirements as they currently are for hair as defined in this subsection.

Subsection 3062 (h) is amended to delete the word “short” in reference to beards, mustaches, and sideburns. This is necessary as the word “short” is no longer applicable to these regulations. Also, the wording “be maintained in a manner as defined in this section” is added and the wording “extend more than one half inch in length outward from the face” is deleted. This change in text is necessary to ensure that the current length restrictions for facial hair, which are no longer applicable to these regulations, are eliminated and that all facial hair is maintained consistent with the other regulations for inmate grooming standards.

Subsections 3062 (i) through 3062(m) remain unchanged.

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 persons.

ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

This action will neither create or 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 Section 17561. The Department has made an initial determination 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.

PUBLIC HEARING COMMENTS:

Public Hearing was held on October 26, 2011 at 10:30am

No one commented at the public hearing.

SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS:

Commenter #1:

Comment 1A: Commenter expressed that he was happy that the Department has eliminated the arbitrary hair length restrictions regarding inmate grooming standards, however, commenter states there is a problem with the language in subsection 3062(a) which require that hair be "neatly styled and groomed." Commenter states the Department's property matrix does not allow conditioners and combs in the ASU (Administrative Segregation Unit) or SHU (Security Housing Unit). Due to the disallowance of such products in the ASU or SHU, the styling and grooming of an inmate's hair/facial hair while in these units is not possible, therefore these regulations are a contradiction, and will always put the inmate in violation.

Accommodation: none

Response 1A: The comment addresses a part of the regulation text that is not changed by this rulemaking action. If the commenter would like to propose a change to the regulations governing what personal property is allowed in ASU or SHU, they may petition the Department for a change to the inmate personal property regulations. The Department does allow palm brushes in ASU/SHU, and has determined these grooming tools as sufficient for maintaining grooming standards in these units. Although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment/objection is insufficiently related to the specific action or actions proposed.

Comment 1B: Commenter recognizes the security risks that some outdated, antiquated combs posed (due to their hard plastic material they could be broken out, sharpened and made into shanks or spears), but contends that the combs that are now available are so flexible they do not pose a security threat. The basis that was originally used to justify denying a small comb or afro pick are no longer valid, and were only partially valid based upon when combs were made out of hard plastic. The changes to the comb material make the comb restriction obsolete serving no valid penalty purpose.

Accommodation: none

Response 1B: Although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment/objection is insufficiently related to the specific action or actions proposed.

Comment 1C: Commenter feels there is an ethnic bias because the Department sells “palm brushes” which can only be used on short/straight hair and cannot be used on nappy hair that he as a black man has on his face and head.

Accommodation: none

Response 1C: Although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment/objection is insufficiently related to the specific action or actions proposed.