



Department of Corrections and Rehabilitation

**NOTICE OF CHANGE TO
REGULATIONS**
Section(s) 3173.2 and 3410.1
**ELECTRONIC DRUG DETECTION
EQUIPMENT**

Number:

14-09

Publication Date:

October 17, 2014

Effective Date:

October 2, 2014

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendments to Section(s) 3173.2 and the adoption of Section 3410.1 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into the CCR, provisions concerning the use of **ELECTRONIC DRUG DETECTION EQUIPMENT** to search persons entering prison institutions to prevent the introduction of drugs and contraband into the institutions.

IMPLEMENTATION: IMMEDIATELY

PUBLIC COMMENT PERIOD

Any person may submit written comments about the proposed regulations to the California Department of Corrections and Rehabilitation, Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, by fax to (916) 324-6075, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received by the close of the public comment period **December 9, 2014**, at 5:00 p.m.

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held **December 9, 2014, from 9:00 a.m. to 10:00 a.m. in the Kern Room, located at 1515 S Street, Sacramento, CA 95811.** The purpose of the hearing is to receive oral comments about this action. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written or facsimile comments submitted during the prescribed comment period are given the same significance and weight as oral comments presented at the hearing. This hearing site is accessible to the mobility impaired.

POSTING

This Notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each Department facility and field office not later than five calendar days after receipt. Also, facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. CDCR Form 621-A (Rev. 07/08), Certification of Posting, shall be returned to the RPMB electronically, by fax, or by mail. See Department Operations Manual Sections 12010.5.7 and 12010.5.8 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this Notice should be directed to Timothy M. Lockwood, Chief, RPMB, California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone (916) 445-2269 or e-mail RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations may be directed to John Peterson, Correctional Administrator, Division of Division of Adult Institutions, at (916) 324-1653.

Original signed by:

MARTIN HOSHINO
Undersecretary, Operations
California Department of Corrections and Rehabilitation

Attachments

NOTICE OF PROPOSED REGULATIONS

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

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, in order to implement, interpret, and make specific PC Section 5054, proposes to amend Sections 3073.2 and 3410 in the California Code of Regulations, Title 15, Division 3, concerning the use of **Electronic Drug Detection Devices** for searches.

PUBLIC HEARING: December 9, 2014 9:00 a.m. to 10:00 a.m.

Place: Department of Corrections and Rehabilitation
Kern Room
1515 S Street – North Building
Sacramento, CA 95811

Purpose: To receive comments **only about**
Electronic Drug Detection Equipment

PUBLIC COMMENT PERIOD:

The public comment period will close **December 9, 2014, at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections and Rehabilitation, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

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

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

G. Long
Regulation and Policy Management Branch
Telephone (916) 445-2276

Questions regarding the substance of the proposed regulatory action should be directed to:

John Peterson
Correctional Administrator, General Population, DAI
Telephone (916) 324-1653

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

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

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

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

This action:

- Establishes the use of electronic drug detection equipment, such as ion scanners, as an additional method to search all individuals coming onto institution grounds.
- Provides an enhanced drug and contraband interdiction strategy to reduce drugs and contraband within the prisons.
- Enables the Department to identify individuals who may be using illegal substances or attempting to traffic drugs into the prison.
- Enables the Department to conduct enhanced inspections on staff, inmates, and visitors.
- Creates a safer environment for inmates, visitors, and staff.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

The Department has determined these proposed regulations will be an additional method to prevent the introduction of drugs and contraband into the institutions, eliminate the potential strife between inmates trying to profit from illegal activities, and provide a safer environment for inmates, visitors, staff, all employees, and volunteers.

EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING REGULATIONS:

The Department has researched existing regulations regarding the use of electronic drug detection equipment on all individuals who come onto institutional grounds and has determined that these proposed regulations are not inconsistent or incompatible with existing State laws and regulations.

LOCAL MANDATES:

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

FISCAL IMPACT STATEMENT

- Cost to local agency or school district that is required to be reimbursed pursuant to 17500 et seq.: *None.*
- Cost or savings to any state agency: *None.*
- Other nondiscretionary cost or savings imposed on local agencies: *None.*
- Cost or savings in federal funding to the state: *None.*

EFFECT ON HOUSING COSTS:

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT AFFECTING BUSINESSES:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT:

The Department has determined that the proposed regulations will have no impact in the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

The Department has determined that the proposed regulations promote worker safety, and benefits the health and welfare of California residents and the State's environment with the use of enhanced drug and contraband interdiction strategies to reduce drugs and contraband within the institutions.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

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

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of State prisons.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons will be available on the Department's website at http://www.cdcr.ca.gov/Regulations/Adult_Operations/index.html and may also be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

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

TEXT OF PROPOSED REGULATIONS

In the following, all new language is indicated by underline and deleted text is indicated by ~~strikethrough~~.

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 2. Inmate Resources

Article 7. Visiting

3173.2 Searches and Inspections.

Subsections 3173.2(a) through 3173.2(b) are unchanged.

Subsection 3173.2(c) is amended to read:

(c) Visitors shall be required to submit to contraband and/or metal detection device(s); and/or electronic drug detectors including, but not limited to, ION scanners and other available contraband and/or metal detecting device(s) technology, and a thorough search of all personal items, including inspection of a wheelchair, implant, prosthesis or assistive devices, prior to being allowed to visit with an inmate.

Subsections 3173.2(d) through (i)(2) are unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 4573, 4573.5, 4576 and 5054, Penal Code.

Subchapter 5. Personnel

Article 2. Employees

New Subsection 3410.1 title is adopted to read:

3410.1 Search of Employees.

New subsection 3410.1 is adopted to read:

All persons who are employed by the department, employees of other government agencies, contract employees, contractors and their employees, and volunteers who come onto institutional grounds are subject to a search via the use of contraband and/or metal detection equipment and/or electronic drug detectors including, but not limited to, ION scanners and other available contraband and/or metal detecting device(s) technology.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 4573, 4573.5, 4576, and 5054, Penal Code.

INITIAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Section 3173.2, Searches and Inspections, and adopt Section 3410.1, Searches of Employees, of the California Code of Regulations (CCR), Title 15, Division 3, by implementing the use of Electronic Drug Detection Equipment (EDDE) and other available technology to search all persons who come onto institutional grounds. Persons entering and exiting CDCR institutions sometimes employ extraordinary means to try and smuggle drugs and contraband into and out of prisons. These methods include secreting drugs and contraband in hidden pockets in clothing or in body cavities.

An ION Mobility Spectrometry (ION Scanner) unit is a trace detecting device that measures the deflection of particles after they are exposed to an electric field. Samples are collected by wiping an object and then placing the swipe into the unit. The results of the swipe are displayed within six seconds. ION Scanners can be employed as a non-intrusive search tool for inmates, staff, and visitors, as well as for incoming mail and parcels.

Recognizing the ongoing problem with drug use and trafficking within the institutions, CDCR must focus on undertaking a comprehensive approach to prevent the introduction of drugs and contraband into the institutions. Importing, trafficking, and drug use causes many problems in a prison setting including an increase in assaults, power struggles within the inmate population, establishment of an underground economy, and staff corruption.

There were over 4000 documented incidents recorded in 2013 related to drugs in California prisons. Of these 4000 drug related incidents in CDCR prisons, there were 382 arrests of non-inmates attempting to introduce drugs into an institution. Of the 382 arrests there were 10 staff, 320 visitor, and 52 non-visitor arrests. Tragically, from January 2012 to February 2014 there were a reported 29 inmate deaths attributed to illegal drug overdose.

In June 2013 the CDCR conducted blind baseline urine testing of 25 percent of the inmate population. The results confirmed that nearly 23 percent of the inmates who voluntarily participated tested positive for one or more illicit drugs. Approximately 30 percent of inmates randomly selected to voluntarily test declined to do so even though there were no disciplinary actions taken against inmates testing positive.

Based on the 2013 drug related incidents and test results, the Department must do more to reduce the availability of and use of drugs in the prison system. Therefore, the Department seeks to implement various drug interdiction strategies, which includes the use of ION Scanners and other available technology.

ION Scanners coupled with other drug and contraband interdiction strategies, such as increased sanctions will act as a deterrent to the use of illicit drugs.

CONSIDERATION OF ALTERNATIVES:

The Department has determined that no reasonable alternatives considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department has made an initial determination that no reasonable alternatives to the regulation have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

Currently, no reasonable alternatives have been brought to the attention of the Department that would alter the Department's initial determination.

Statement of Significant Adverse Economic Impact on Business

The Department has made an initial determination that this action will not have a significant adverse economic impact on business because business is not affected by the internal management of State prisons.

ECONOMIC IMPACT ASSESSMENT

The Department is implementing EDDE and ION Scanners to the extent allowed with existing resources and will expand the program when and if additional resources are provided.

In accordance with Government Code Section 11346.3(b), the CDCR has made the following assessments regarding the proposed regulations:

Creation of Jobs or Elimination of Existing Jobs within the State of California

The Department has determined that the proposed regulations will have no impact on the creation of jobs or elimination of existing jobs or businesses within California because those jobs or businesses are not affected by the internal management of prisons.

Creation of New Businesses or Elimination of Existing Businesses within the State of California

The Department has determined that the proposed regulations will have no effect on the creation of new or elimination of existing businesses with the State of California because those businesses are not affected by the internal management of State prisons.

Expansion of Business Currently Doing Businesses within the State of California

The Department has determined that the proposed regulations have no effect on the expansion of businesses currently doing business within the State of California because they are not affected by the internal management of State prisons.

BENEFITS OF THE REGULATIONS

The proposed regulatory action will provide staff with non-invasive electronic equipment that is capable of simultaneously testing for a wide range of narcotics in seconds.

Eliminate potential strife between inmates trying to profit from illegal activities.

Disruptive behaviors are significantly reduced.

Provide a safer environment for visitors, staff, contractors, contractors and their employees, and volunteers.

The use of ION scanners to prevent illegal drugs from entering the prisons will have a positive effect on public health and safety, worker safety, and the environment.

REPORTS RELIED UPON

The Department, in proposing amendments to these regulations, relied upon the following reports: COMPSTAT DAI Analysis – Drug Related Incidents 2013 (January 2013 through December 2013), DAI Urinalysis Baseline Testing COMPSTAT Analysis (July 9, 2013), Staff Arrest Statistics, Division of Adult Institutions, January 2013 through December 2013, Visitor Arrest Statistics, Division of Adult Institutions, January 2013 to December 2013, and Non-Visitor Arrest Statistics, Division of Adult Institutions, January 2013 to December 2013. All of these reports can be viewed on the Department’s website at http://www.cdcr.ca.gov/Regulations/Adult_Operations/Supplemental_Documents.html.

Copies of these documents are available for review as part of the rulemaking file.

SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE 11346.2(B)(1):

Chapter 1, Rules and Regulations of Adult Operations and Programs

Article 7, Visiting

3173.2 Searches and Inspections.

Subsections 3173.2(a) through 3173.2(b) are unchanged.

Subsection 3173.2(c) is amended to add electronic drug detectors and other available technology as additional devices to search visitors for drugs. This is necessary to assist the Department’s efforts in minimizing/eliminating the introduction of dangerous contraband into the prisons to provide a safer environment for inmates, visitors, and staff.

Article 2. Employees

New section 3410.1 title is adopted to read:

3410.1 Search of Employees.

New subsection 3410.1 is adopted to specify that all persons who come onto institutional grounds are subject to be searched. This is necessary to assist the Department’s efforts in minimizing/eliminating the introduction of dangerous contraband into the prisons to provide a safer work environment for all employees and volunteers.