

P.O. Box 942883
Sacramento, CA 94283-0001



September 28, 2015

NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED

The full text of the amendments to the California Code of Regulations that concern the Inmate Religious Personal Items and Sanctuaries is provided in its original single underline and strikethrough format. Changes to this original text, which are being proposed in this Notice, are indicated by **bold double underlining** for additional added text and **bold double strikethrough** for deleted text. These proposed changes are being made available for public comment.

As determined by the California Department of Corrections and Rehabilitation (CDCR), the attached text contains the following changes:

Section 3213 Title Heading: The section heading is changed to remove "Sacramental Wine" and replace it with "Ceremonial Drink." This change is necessary to accommodate other types of drinks which may be used in religious ceremonies.

Section 3213(a): The wording "a ceremonial drink, such as" is placed in front of the words "sacramental wine," and for proper grammar and punctuation, a comma is added after the word "wine." This change was done to accommodate the allowance of other types of ceremonial drink for religious purposes. In addition, the word "unauthorized" is added to clarify that prior written approval is required for any unauthorized religious item and not items that are already authorized per the Religious Personal Property Matrix.

Section 3213(b): For clarification and consistency, the word "reasonable" is placed in front of the words "search by staff." This is necessary to be consistent with language agreed to in the settlement agreement for *Zomalt v. Beard*. Additionally, "prayer beads" is added to the list of items that an inmate may wear or carry at any time. The Department determined that inmates may have a sincerely held belief to wear or carry prayer beads, and these items are similar to the other items which are allowed to be worn or carried by inmates.

Section 3213(c): For clarification, additional language is added and/or removed to specify the instructions for inspection, and the subsequent proper handling of the medicine bag. Language is also added to reiterate the requirements per subsection 3191(c), which specifies the disposal of contraband items.

Section 3213(d): For clarification, the language "Except as specified in subsection 3213(c)," is added in front of the existing language. Additionally, the word "reasonable" is placed in front of the words "searches by staff" to be consistent with language agreed to in the settlement agreement for *Zomalt v. Beard*.

Section 3213(e): Language in this section is re-worded for clarity purposes, and the standard for when an institution may restrict an approved religious item is changed from "security/operational need and/or inmate misconduct," to "a serious threat to facility security or to the safety of inmates and staff, and to the degree necessary to eliminate

the threat.” This change makes subsection 3213(e) consistent with existing regulation, subsection 3006(d), regarding when prison staff may control non-contraband items. In addition, language is added to subsections 3213(e)(1) and (e)(2) to clarify when the Associate Director of the Statewide Religious Review Committee does or does not approve an extension for removal or restriction of an approved religious item for longer than 30 days.

Section 3213(f): For clarification and consistency, the word “reasonable” is placed in front of “searches by staff.” By adding the word “reasonable” the language is now consistent with language agreed to in the settlement agreement for *Zomalt v. Beard*.

The 15-day comment period on these changes shall close on October 15, 2015. Submit any comments to Timothy M. Lockwood, Chief, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001; fax to (916) 324-6075; or e-mail to rpmb@cdcr.ca.gov before the close of the public comment period. Comments must be received no later than 5:00 p.m. on October 15, 2015.

Only those comments relating directly to the enclosed post-hearing changes that are indicated by **bold double underlining** or ~~double strikethrough~~ will be considered.



TIMOTHY M. LOCKWOOD, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation

Attachment

15-DAY RENOTICE TEXT OF PROPOSED REGULATIONS

In the following, bold double underline indicates additional text and bold ~~double strikethrough~~ indicates additional deleted text to the originally proposed text presented in the original single underline and strikethrough format.

Title 15, Crime Prevention and Corrections

Division 3, Adult Institutions, Programs, and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

Section 3000. Definitions.

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

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Outdoor Religious/Spiritual Grounds are an outside area where all interested inmates, with the exception of inmates who use Native American Sweat Lodge Grounds, can perform their approved religious/spiritual practices.

Statewide Religious Review Committee (SRRC) means a committee established to ensure that a framework for religious/spiritual program policy exists, and that program continuity from institution to institution is maintained. The SRRC also provides an avenue for addressing statewide inmate religious/spiritual issues and offers recommendations to the Director of the Division of Adult Institutions (DAI) for consideration of policy development and/or enactment. The SRRC is comprised of the following: Associate Director, DAI (General Population-Males); one Warden from each mission within DAI; Headquarters Community Resources Manager (HCRM), Religious Programs; one CRM from each mission within DAI; a Captain; a designee from the Office of Legal Affairs; the departmental Food Administrator, and other stakeholders as required.

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Note: Authority cited: Sections 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq. and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; and *Madrid v. Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH).

Subchapter 3. INMATE ACTIVITIES

Article 1. Religious Program

Section 3213 Title heading is amended to read:

3213. Stipulations Regarding ~~Religious Items~~ Sacramental Wine Ceremonial Drink, Sanctuaries Religious Items, and Sacramental Wine Sanctuaries.

Subsection 3213(a) is amended to read:

(a) Prior written approval of the institution head or their designee shall be required for ~~the following:~~ any person to bring a ceremonial drink, such as sacramental wine, or any unauthorized religious item into a facility.

Existing subsection 3213(a)(1) is deleted.

~~(1) For any person to bring sacramental wine or any religious item into a facility.~~

Existing subsection 3213(a)(2) is deleted.

~~(2) For an inmate to be provided any religious item.~~

Existing subsection 3213(a)(3) is deleted.

~~(3) For an inmate to wear or carry an approved religious item at any time other than during their regular religious or sweat events, or facility approved special events.~~

Existing subsection 3213(b) is renumbered and relocated to 3213(c).

New subsection 3213(b) is adopted to read:

(b) An inmate may possess any religious item authorized in the Religious Personal Property Matrix (RPPM) (Rev. 6/27/13). As defined in the RPPM, and subject to reasonable search by staff, an inmate may wear or carry at any time, the following: beaded headband, beaded wrist band, beaded choker, religious medallion and chain, religious headgear, medicine bag, prayer beads, and tallit katan/tsitsit.

Existing subsection 3213(b) is renumbered 3213(c), and amended to read:

~~(b)~~ (c) Medicine bags shall be constructed of soft leather or other natural material without a lining and shall not exceed 2 x 3 inches in diameter. The bag shall, be constructed to in the presence of staff, either be closed with a drawstring, or sewn shut in such a manner as to permit subsequent searches of the bag's contents by in the presence of staff. During a search of an inmate's medicine bag, the inmate shall empty the medicine bag of its contents in the presence of staff. Staff shall then visually inspect the medicine bag and its contents for contraband. Any contraband items that are found shall be disposed of in accordance with subsection 3191(c). Inmates shall return any non-contraband items into the medicine bag.

Existing subsection 3213(c) is renumbered 3213(d).

(ed) Except as specified in subsection 3213(c), All religious items shall be subject to reasonable searches by staff.

Existing subsection 3213(d) is renumbered and relocated to 3213(f).

New subsections 3213(e) through 3213(e)(2) are adopted to read:

(e) The institution head or designee retains the authority pursuant to section 3006(d), to remove or restrict use of an approved religious item in accordance with subsection 3006(d), based on security/operational need and/or inmate misconduct a serious threat to facility security or to the safety of inmates and staff, and to the degree necessary to eliminate the threat, for a period of up to 30 calendar days. The removal or restriction may continue for a period of up to 30 calendar days and shall be documented on a CDC Form 128-A (Rev. 4/74), Custodial Counseling Chrono, pursuant to section 3312. Removal or restriction of an approved religious item for longer than 30 calendar days shall require approval by the Associate Director of the Statewide Religious Review Committee (SRRC), as defined in section 3000. At the end of the removal or restriction period, either of the following will occur:

(1) If the Associate Director of the SRRC does not approve an extension, the restriction shall be lifted and the item(s) shall be returned to the inmate and documented on the CDC Form 128-A.

(2) If the Associate Director of the SRRC does approve an extension, the restriction will continue, and the issue sent for review to the SRRC to determine the appropriate response or restriction.

Existing subsection 3213(d) is renumbered 3213(f), and amended to read:

(df) Sanctuaries (e.g., chapels), Native American ~~s~~Sweat ~~H~~Lodges Grounds, Outdoor Religious/Spiritual Grounds, and other areas designated for religious/ ~~or~~ spiritual use shall be subject to reasonable searches by staff.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5009 and 5054, Penal Code; and Section 1996, Title 42, United States Code.