

MAY 12 2016

**State of California
Office of Administrative Law**

In re:
Department of Corrections and
Rehabilitation

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections:

Amend sections: 3000, 3213

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2016-0330-01

OAL Matter Type: Regular Resubmittal (SR)

This is a resubmittal of rulemaking action no. 2015-1215-04 by the California Department of Corrections and Rehabilitation, which amends regulations in title 15 of the California Code of Regulations that deal with inmate possession of religious items.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 7/1/2016.

Date: May 11, 2016


Eric J. Partington
Attorney

For: Debra M. Cornez
Director

Original: Scott Kernan
Copy: Sarah Pollock

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2015-0511-01	REGULATORY ACTION NUMBER 2016-0330-01SR	EMERGENCY NUMBER
------------------	--------------------------------------	--	------------------

For use by Office of Administrative Law (OAL) only

2016 MAR 30 A 11:40
OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)

15-0017

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER 2015, 21-2	PUBLICATION DATE 5/22/2015

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Inmate Religious Personal Items and Sanctuaries	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2015-1215-04
---	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 3000, and 3213
	REPEAL
TITLE(S) 15	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
9/28/15-10/15/15; 2/19/16-3/5/16

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

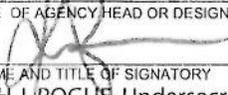
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
--	--	---	--

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Sarah Pollock	TELEPHONE NUMBER 916 445-2305	FAX NUMBER (Optional) 916 324-6075	E-MAIL ADDRESS (Optional) Sarah.Pollock@cdcr.ca.gov
------------------------------------	----------------------------------	---------------------------------------	--

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 3/28/16
TYPED NAME AND TITLE OF SIGNATORY KENNETH J. POGUE, Undersecretary, Administration and Offender Services	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAY 11 2016

Office of Administrative Law

FINAL TEXT OF ADOPTED REGULATIONS

In the following, underline indicates additional text, and ~~strikethrough~~ indicates deleted text.

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, and amended to read:

*
*
*

Outdoor Religious/Spiritual Grounds are an outside area at an institution designated to be used for any approved religious/spiritual group activities. Outdoor Religious/Spiritual Grounds does not include Native American Sweat Lodge Grounds, as defined in this section.

Statewide Religious Review Committee (SRRC) is 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.

*
*
*

Native American Sweat Lodge Grounds means ~~a~~ are ~~native American Indian ceremonial hut~~ an outside area at an institution designated to be used for approved Native American religious/spiritual group activities.

*
*
*

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~~ 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 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), which is incorporated by reference in subsection 3190(b). 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:

~~(bc) 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 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). The inmate 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 to remove or restrict use of an approved religious item in accordance with subsection 3006(d), based on a serious threat to facility security or to the safety of inmates and staff, and to the degree necessary to eliminate the threat. 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 sSweat 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.

FINAL STATEMENT OF REASONS

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

UPDATES TO THE INITIAL STATEMENT OF REASONS

On May 22, 2015 the Notice of Proposed Regulations for “Inmate Religious Personal Items and Sanctuaries” was published which began the public comment period. The Department’s Notice of Change to Regulations #15-03 was also mailed the same day to individuals who had requested to be on the Department’s mailing list for regulation changes. In addition they were posted on the California Department of Corrections and Rehabilitation (CDCR) internet and intranet websites, and copies posted in CDCR institutions. The Department received 26 written comments which are included below under *Summaries and Responses to the Written Public Comments Received During the Initial Comment Period*. A public hearing was held on July 15, 2015 with no individuals providing verbal comments.

After considering public comments, it was determined that additional changes to the text of proposed regulations were necessary. Changes were made to include the word “reasonable” in front of the word “search” or “searches” in order to be consistent with language agreed to in the *Zomalt v. Beard* settlement agreement. Other additional changes included: replacing the word “sacramental wine” with “ceremonial drink” to include other types of drinks used for religious ceremonies; clarifying the specifics regarding the search of a medicine bag; including prayer beads as an item that inmates may wear or carry throughout the institution; and making language consistent regarding when staff may control non-contraband items. Some other minor changes were made for clarity purposes.

The changes were presented to the public by issuance of a 15-Day Re-Notice, and an effective comment period from September 28, 2015 to October 15, 2015. The 15-Day Re-Notice was posted to the CDCR internet and intranet websites, and mailed to the initial 26 written commenters. The changes to the text and the reasons for them can be found below under the heading *Changes to the Proposed Text of Regulations (15-Day Re-Notice)*. The Department received five written comments during the 15-Day Re-Notice period. The Re-Notice comments and the responses to them are included below under *Summaries and Responses to the Written Comments Received During the 15-Day Re-Notice Comment Period*.

After completion of the 15-Day Re-Notice, the Department determined that additional changes were still needed for corrective purposes. Changes were made to revise the definition for Outdoor Religious/Spiritual Grounds for clarity and consistency purposes and to remove any perception that inmates who use the Native American Sweat Lodge Grounds are not permitted to use the Outdoor Religious/Spiritual Grounds; include and amend the definition for “Sweat Lodge” in the Text of Proposed Regulations in order to be consistent with the new term “Native American Sweat Lodge Grounds” which is now being used; remove the word “unauthorized” in subsection 3213(a) to avoid confusion over what items can or cannot be brought into a facility without prior written approval; add language in subsection 3213(b) to reference the location of the Religious Personal Property Matrix; and make other minor non-substantive grammatical corrections. In addition to the changes for the Text of Proposed Regulations it was determined

that corrections to the Initial Statement of Reasons were also necessary to meet the clarity and necessity standards of the Administrative Procedures Act.

These changes, including the Supplemental Initial Statement of Reasons were presented to the public by issuance of a 2nd 15-Day Re-Notice, with an effective comment period from February 19, 2016 to March 5, 2016. The 2nd 15-Day Re-Notice was posted to the CDCR internet and intranet websites, and mailed to the initial 26 written commenters and the five Re-Notice commenters. The changes to the text and the reasons for them can be found below under the heading *Changes to the Proposed Text of Regulations (2nd 15-Day Re-Notice)*. The Department received three written comments during the 2nd 15-Day Re-Notice period. The Re-Notice comments and the responses to them are included below under *Summaries and Responses to the Written Comments Received During the 2nd 15-Day Re-Notice Comment Period*.

DETERMINATION

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. This determination was reached by a consensus of the Division of Adult Institutions.

Except as set forth and discussed in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to the Department's attention that would alter the Department's decision.

CHANGES TO THE TEXT OF PROPOSED REGULATIONS (15-DAY RE-NOTICE)

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

Section 3213(a): The wording "a ceremonial drink, such as" was placed in front of the words "sacramental wine," and for proper grammar and punctuation, a comma was 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" was 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" was placed in front of the words "search by staff." This was necessary to be consistent with language agreed to in the settlement agreement for *Zomalt v. Beard*. Additionally, "prayer beads" was 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 was added and/or removed to specify the instructions for inspection, and the subsequent proper handling of the medicine bag. Language was 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),” was added in front of the existing language. Additionally, the word “reasonable” was 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 was re-worded for clarity purposes, and the standard for when an institution may restrict an approved religious item was 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 was 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” was 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*.

CHANGES TO THE TEXT OF PROPOSED REGULATIONS (2nd 15-DAY RE-NOTICE)

Section 3000: The definition for “Outdoor Religious/Spiritual Grounds” is changed to provide clarity and remove any perception that inmates who use the Native American Sweat Lodge Grounds are not permitted to use the Outdoor Religious/Spiritual Grounds. These changes also make the definition consistent with the new term “Native American Sweat Lodge Grounds” as added in this section.

Section 3000: In the definition for “Statewide Religious Review Committee” the word “means” is removed and replaced with “is.” This language better establishes a definition of the Statewide Religious Review Committee.

Section 3000: The definition for “Sweat Lodge” is added to the regulatory amendments for this proposed change of regulations as it was inadvertently omitted. Changes to the definition are necessary to provide consistency with the new term “Native American Sweat Lodge Grounds” which is now being used.

Section 3213(a): Language is revised to remove the word “unauthorized” to avoid confusion over what items can or cannot be brought into a facility without prior written approval. The language is now similar to the original language, except for the addition of “ceremonial drink,” and specifies that “prior written approval... shall be required for any person to bring... into a facility.” These changes provide clarity and a better understanding of this subsection.

Section 3213(b): Language is added to reference the location of the Religious Personal Property Matrix (RPPM), which is incorporated by reference in existing subsection 3190(b). This provides assistance for any person who needs to refer to the RPPM, which is the list of approved religious personal property that inmates may possess.

Section 3213(c): For proper grammar, and keeping within the singular tense verbiage of the paragraph, the word “Inmates” is changed to “The inmate.”

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.

SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS RECEIVED DURING THE INITIAL COMMENT PERIOD

Commenter #1

Comment 1A: Commenter requests that a reference be made to inmates working in the Food Service Departments. Commenter notes that inmates are required to wear sanitary head coverings when working with food, and the religious headgear will not meet public health standards for sanitary head covering. Commenter asks, will they need to remove their headgear to put on the sanitary food handler head covering? Or will they be allowed to wear their religious headgear and cover it with the food handler sanitary head covering? Commenter states this is contested regularly in the institutions.

Accommodation: None

Response 1A: No reference in the regulations is required at this time for inmate food service workers. To the extent possible, inmate food service handlers shall be allowed to continue wearing their religious headgear with a food service net or cap subject to Title 15, subsection 3052(f).

Commenter #2

Comment 2A: Commenter notes that the difficulty one has when striving to practice their religion comes from what’s *not* written, or is omitted in the regulations; therefore it is imperative for all aspects of religious practice which does not create a threat to institution security, be systematically codified in CDCR regulations and policy.

Accommodation: None

Response 2A: Although the above comment does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is either insufficiently related to the specific action, or too

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 2B: Commenter states the definition of the SRRC fails to include any Chaplains, as comprised in 3210(d). Such omission neglects Chaplains religious knowledge and ideas, ensuring a framework for religious/spiritual program policy exists, and that program continuity from institution to institution is maintained. Chaplains from each faith (one from each mission in DAI) should be included in the SRRC.

Accommodation: None

Response 2B: The SRRC is a management committee comprised of managers and supervisors at the Headquarters' level. This normally does not include Chaplains, however, the SRRC may make use of other stakeholders as required, which may include Chaplains when their input is deemed necessary. Also, as set out in Title 15, Section 3210(d), Chaplains are regularly included in the Religious Review Committee (RRC) at the institutional level.

Comment 2C: Commenter states the proposed text for the new subsection 3213(b) fails to include the carrying of Islamic dhiker beads, prayer oil, and prayer rugs.

Accommodation: Partial Accommodation

Response 2C: CDCR will add prayer beads as authorized in the Religious Personal Property Matrix (RPPM), which includes but is not limited to, dhikr beads, into the subsection 3213(b) list of religious items that may be worn or carried at any time. Due to various security considerations, prayer oils and prayer rugs will not be included in the subsection 3213(b) list. However, inmates may possess and use those religious items in their cells, as approved by the RPPM.

Comment 2D: Commenter states inmates at Pelican Bay State Prison are not being allowed to attend religious services during their assignment hours, even if they do not have work or school that day due to various 'S' time reasons. He personally is assigned to voluntary college, Monday – Friday from 8am – 3pm, and despite the fact that they never actually go to any classroom, he is not allowed to attend religious services even with Excused Time Off. Commenter believes there should be a new subsection adopted for Section 3210 to address this issue.

Accommodation: None

Response 2D: See Response to Comment 2A.

Commenter #3

Comment 3A: Commenter takes issue with the definition of Outdoor Religious/Spiritual Grounds which allows access to any inmate who wishes to use it, exclusive of Native American (NA) inmates, whom are given exclusive sanctity for their own grounds. Commenter feels this is a violation of the Government ban upon State created religion, and is therefore a violation of the

1st Amendment of the U.S. Constitution Establishment Clause because CDCR is allowing exclusive sanctity to NA inmates while excluding Wiccans and Asatru from their own sanctity.

Accommodation: None

Response 3A: Outdoor religious spiritual areas are used in the same manner as indoor sanctuaries and other indoor worship areas. Based on an ongoing settlement agreement for Sample vs Borg as put into effect in 1987, areas of CDCR adult institutions have been designated for use by inmates who practice Native American spirituality. This longstanding practice does not give rise to First Amendment Establishment Clause issues.

Native Spiritual Grounds, which contain a sweatlodge, are uniquely tailored to various forms of Native American worship. The sweatlodge is a fixed, large scale structure for the purpose of prayers and ceremonial sweating. This structure is not normally removed following sweat ceremonies.

In addition, Native American spirituality encompasses many different forms of worship. Native American spirituality is not confined to a single belief system. Native American Spiritual Grounds and sweatlodges accommodate multiple Native American spiritual groups.

Comment 3A(1): Commenter states Wiccan and Asatru should be entitled to their own individual sanctity/grounds. Similar to NA inmates, they also have doctrine which supports use of sweat lodges and fire. Common grounds lack water, forbid symbols and excavation fitting to their religious design, and lack of fire and especially sanctity not only creates a lack of security and liability, but coerces them to abandon practices in order to use common grounds, which is coercion under Lee Coercion test against their wills.

Accommodation: None

Response 3A(1): CDCR has not been mandated to provide a fixed, large scale structure for worship purposes, similar to a Native American sweatlodge, that would necessitate an area of an institution set aside exclusively for Wiccan and Asatru inmates. With limited space availability, worship areas are generally used by a wide variety of groups. CDCR is not aware that the use of shared grounds has resulted in Wiccan and Asatru inmates being unlawfully impeded from practicing their faith or being denied any religious accommodations. Wiccan and Asatru inmates have access on shared grounds to tea lights or battery operated candles that satisfy their need for a sacred flame.

Comment 3B: Commenter states the presumed census of the number of Wiccans and Asatru is incorrectly reported by CDCR. The numbers far exceed CDCR's census. Commenter states CDCR recognizes 5 faith groups for the purpose of the General fund budget which is used to accommodate paid Chaplains, etc. Commenter attempted to file a grievance for exclusive sanctity for Wiccans, separate from Asatru, for grounds use; however, CDCR proceeded with construction of 1 common area, ignoring his said sanctity. CDCR responded to Commenter's appeal that "the burden created by any sanctity which would cause CDCR to create separate grounds for Wiccan vs. Asatru is a burden which is unsupported by the number of Wiccan and Asatru followers statewide." This sparked in Commenter a new policy appeal that addressed the

lack of policy to allow inmates to register for census by creating a 128(B) Chrono system which allows inmates to prove they are not a class burden upon resources. Commenter filed this appeal because the State count on Wiccans in 2012 dropped to 182 from 2007, which he states is inaccurate. CDCR's failure to provide a survey application to those who request it creates CDCR's improper assessment of faith participation, and which faith groups qualify as a sanctioned faith. Commenter feels CDCR is keeping Wiccans and Asatru from proving an accurate survey in order to be added as a 6th or 7th sanctioned group. Commenter compares the Jewish faith, which he states has far less numbers than Wiccans and Asatru, so they should be a sanctioned faith before the Jews. They are not being given the means to prove their numbers and CDCR controls who they issue and refuse faith Chronos to.

Accommodation: None

Response 3B: See Response to Comment 2A.

Comment 3C: Commenter states Section 3213(a) is vague, and allows R&R's or prison officials to confiscate systematically a person's property upon arrival, because technically it was not pre-authorized by the institution head or Warden. Inmates are persons too! The language provides too much interpretation "lead" (sic) way that custody will abusively capitalize upon to rid itself of all religious property in a way aimed at restrictiveness when no legitimate interest is stated. This would defy Turner's Test to determine a penal interest first.

Accommodation: Full Accommodation

Response 3C: The word "unauthorized" is added to Section 3213(a). This section now requires prior written approval of the institution head or their designee for any person to bring sacramental wine or any unauthorized religious item into a facility. This change ensures that authorized religious items, as described by the RPPM, are not confiscated from inmates. In addition, this change aligns Section 3213(a) with Section 3213(b).

Comment 3D: Commenter feels that the Religious Personal Property Matrix (RPPM) should include non-hooded ritual robes of white, gray, or multi-color, but not primarily of a restricted color, and should state that robes may be worn in cells or religious services or areas of which an inmate chooses to pray. It should also establish that some vendors that only sell hooded style robes, that the hood may be cut off in R&R upon issuance in a way that removes the hood but does not destroy the robe and can be sewn. There is currently no ritual clothing on the RPPM which Wiccans and Asatru commonly use, such as robes.

Accommodation: None

Response 3D: See Response to Comment 2A.

Comment 3E: With regard to Section 3213(c) and (d), Commenter states the search of property is a common problem, and sometimes staff disrespect and desecrate items deliberately, hiding behind exactly this kind of policy. The same is true for search of religious grounds. Language should stipulate that any religious items needing search must be done in inmate's presence, and inmates should be allowed to open items that are stored separately from a cell; and, that staff

may contact a Chaplain to physically inspect any item in order to preserve its sanctity. Commenter states that a desecrated item is destruction of that item in many cases because it's discharged of its magical property and is charged now with unconsecrated energy, and must be destroyed in a fire ritual.

Accommodation: Partial Accommodation

Response 3E: The clarifying word “reasonable” is added next to the word “searches” in Sections 3213(b) and (d). Subject to these sections, prison staff must conduct reasonable searches of religious items in accord with the law. CDCR is otherwise not required to offer the additional measures described by the Commenter.

Comment 3F: Commenter states Sections 3213(e)-(e)(2) are unnecessary and could be abused by staff. The reason being is because inmates can order any item on the RPPM, therefore it's not a security issue. Items not on the RPPM are authorized via a proposal first, and subject to review and authorization by RRC and then WAG, before approval. Therefore it's been previously approved over the scope of institution level upon WAG approval and review. That overrides institutional level removal and restriction authority, except under reasons of misuse. Other items that are a security issue may be stored for controlled use, which is least restrictive in purpose than flat out deprivation, which violates Turner Test elements.

Accommodation: Partial Accommodation

Response 3F: Subsection 3213(e) is revised to clarify that an institution head or designee retains the authority to remove or restrict use of an approved religious item in accordance with subsection 3006(d), based on a serious threat to facility security or to the safety of inmates and staff, to the degree necessary to eliminate the threat. This standard aligns subsection 3213(e) with 3006(d) and it is consistent with the RLUIPA and other applicable law. Section 3213(e) applies similar standards to Section 3006(d) in regards to when a religious/spiritual item may be temporarily removed. These are longstanding departmental standards for the removal of inmate personal property items.

Comment 3G: Regarding Section 3213(f), Commenter states grounds should be searched in the presence of Chaplains or inmate grounds keeper, so that sanctity can be supervised as being honored.

Accommodation: Partial Accommodation

Response 3G: The clarifying word “reasonable” is added next to the word “searches” in Section 3213(f). This section now requires sanctuaries, Native American Sweat Lodge Grounds, Outdoor Religious/Spiritual Grounds, or any other designated religious/spiritual use areas to be searched in a reasonable manner. CDCR is otherwise not required to offer the additional measures described by the Commenter.

Commenter #4

Comment 4A: Commenter states that religious practice is for the strengthening of an inmate's life channels to represent and to take an approved religious item in relation to a disciplinary action is counter-productive, and that's what the regular disciplinary system is for. Commenter states Section 3213(e) is an encroachment on what's religious in nature, and is already regulated in both DOM and CCR. It is a slippery slope making rules to take away religious rights due to a systemic situation in California prisons.

Accommodation: Partial Accommodation

Response 4A: See Response to Comment 3F.

Comment 4B: Commenter states rules should be in place for practitioners and non-practitioners. This will stop litigation and non-practitioners who seize opportunities due to staff ignorance of religious obligations. Commenter suggests CDCR have an inmate review board, as many inmates are very knowledgeable of their faith, and many times the Chaplains cannot stop inmate litigations, but inmates who are able to determine whether a litigation will continue, can. Commenter asks CDCR at least meet with the reps.

Accommodation: None

Response 4B: See Response to Comment 2A.

Comment 4C: Commenter asks to be sent any information relating to budget for religious groups, and purchase allowances for the faith groups.

Accommodation: None

Response 4C: See Response to Comment 2A.

Commenter #5

Comment 5A: With regard to renumbered Section 3213(c), Commenter states current language provides that medicine bags are subject to search by staff, however the amendment to this section, which removes the word "by" and replaces it with "in the presence of," makes for ambiguity about medicine bag searches, and staff and inmates will be confused by the proposed text, since now, which is apparent from the language, the bags can be searched "in the presence of staff," not "by staff." Commenter states if it is the intent of the text that inmates search the bag, and allow staff to see that it does not contain contraband, it is not clear from the text alone. And the matter is made worse by renumbered Section 3213(d) which clearly allows staff to search all religious items, which necessarily includes medicine bags. Commenter feels the problem can be resolved by amending 3213(c) to read: Medicine bags...shall be constructed to be closed with a drawstring in such a manner as to permit subsequent searches of the bag's contents by inmates in the presence of staff. And amending Section 3213(d) to read: Except as provided in subsection (c), all religious items shall be subject to searches by staff.

Accommodation: Full Accommodation

Response 5A: Subsection 3213(c) is revised to clarify that during a search the inmate shall empty the contents of his or her medicine bag. The medicine bag and its contents shall then be subject to a visual inspection by staff. Any contraband that is found shall be disposed of subject to subsection 3191(c). The inmate shall return any non-contraband items to the medicine bag. Subsection 3213(d) is revised to clarify that, except as provided in subsection (c), all religious items shall be subject to reasonable searches by staff.

Comment 5B: Commenter states some facilities do not allow inmates to display their necklaces; they must be hidden under clothing. This seems as much a violation as not being allowed to wear them at all. Commenter states the problem can be remedied by amending language to read: An inmate may possess...an inmate may wear, display, or carry at any time....

Accommodation: None

Response 5B: Subject to the proposed subsection 3213(b), inmates may wear or carry specified authorized religious items at any time. It is not necessary to clarify in the subsection that authorized religious items need to be displayed.

Comment 5C: Commenter states Section 3213(e) should not reference Section 3006(d). The reference to Section 3006(d) is not necessary and creates ambiguity. Section 3213(d) is its own authority for such restrictions. It adds nothing to borrow authority from another regulation. Although Section 3006(d) could reasonably be relied upon as authority for restricting the use of religious items based on security needs, it can hardly be said to provide authority for restricting use of religious items based on operational needs or inmate misconduct. The problem can be remedied by amending 3213(e) to read: The institution head or designee may remove or restrict the use....

Accommodation: Partial Accommodation

Response 5C: The reference within Section 3213(e) to Section 3006(d) is necessary to clarify the standards for when an institution may withhold an otherwise authorized religious property item. Section 3213(e) is further revised to reflect the standards for withholding property that are set out in Section 3006(d). See also, Response to Comment 3F.

Comment 5D: Commenter states Section 3213(e) allows the institution head to restrict the possession and wearing of religious items for any misconduct. The institution head should only be allowed to restrict the use of religious items based on misconduct related to those religious items. It seems inconsistent to remove rights as punishment for misconduct unrelated to the possession and wearing of these items, which are protected by California Penal Code 5009, the Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), and the First Amendment of the United States Constitution. This problem can be remedied by amending 3213(e) to read: The institution head...based on security/operational need and/or inmate misconduct related to the misuse of approved religious items...

Accommodation: Partial Accommodation

Response 5D: Consistent with Section 3006(d), the text of Section 3213(e) is further revised to clarify that an institution may withhold an approved religious item based on a serious threat to facility security or to the safety of inmates and staff. See also, Response to Comment 3F. The revision to Section 3213(e) deletes the text about inmate misconduct.

Comment 5E: Also in relation to Section 3213(e), Commenter states the normal appeals process for inmates wishing to appeal such restrictions is inadequate for two reasons: First, the 30 day restriction is likely to be over before a first level appeal response is received. Second, since authority to restrict religious items is vested in the institution head, resort to the first level of appeals is unlikely to afford relief. Commenter proposes remedies as follows: Add a new paragraph (5) to Section 3084.7(a) that reads: All appeals shall be initially submitted and screened at the first level unless the first level is exempted. The appeals coordinator may bypass the first level for appeal of:...(5) Religious item restrictions. And adding a new subparagraph (C) to paragraph 3084.9(a)(1) that reads: ...Emergency circumstances include, but are not limited to: (C) Religious item restrictions.

Accommodation: None

Response 5E: Similar to Section 3006(d), the proposed text of Section 3213(e) allows an institution to withhold authorized personal property items based on a serious threat to facility security or to the safety and security of inmates and staff. Section 3213(e) is in fact more stringent upon the institution than Section 3006(d) in that Section 3213(e) places a 30 day limitation on the withholding of property while Section 3006(d) imposes no time limitation. There are no exceptions to the regular appeals process for the withholding of personal property based upon Section 3006(d). Accordingly, CDCR does not create an exception to the appeals process for the withholding of authorized religious property items subject to Section 3213(e).

Comment 5F: Commenter states that although proposed Section 3213(e) limits the institution head's authority to restrict religious item use to 30 days, 3213(e)(2) allows the restriction to remain in effect indefinitely pending review by the SRRC. The effect is that, although the intent is to allow only the SRRC to impose restrictions greater than 30 days, institution heads have this authority by reason of the unrestricted time that will pass between the expiration of the 30 days and review and resolution by the SRRC. Procedural safeguards must be put in place to ensure that inmates do not suffer religious item restrictions greater than 30 days unless approved by the SRRC. Commenter offers a solution for resolving this problem as follows: Require the institution head to send the case to SRRC for review as soon as the restriction is put in place in those instances where it appears that a longer period of restriction is required, and then require that the restriction will be removed at the end of the 30 days unless the SRRC has ruled that a longer period can be imposed. This would prevent institution heads from imposing de facto restrictions greater than 30 days safe in the knowledge that the restriction will actually be much greater than 30 days as the inmate waits for review by the SRRC. It will also motivate the SRRC to act quickly in those instances where a longer period of restriction is necessary. These procedures are also necessary in order to prevent situations where inmates wish to appeal the imposition of more than 30 days of restrictions, but are required to wait indefinitely for review by the SRRC before they can submit the appeal. These procedures would not threaten institutional security, since in those instances where possession of the religious item actually

poses a threat to safety or security staff already has the authority under Section 3006(d) to control the item indefinitely.

Accommodation: Partial Accommodation

Response 5F: Subsection 3213(e)(1) is further revised to clarify that if the Associate Warden of the SRRC does not approve an extension for an institution to withhold a religious item beyond 30 days, the restriction of the religious item shall be lifted and the item will be returned to the inmate. Subsection 3213(e)(2) is further revised to clarify that if the Associate Warden of the SRRC does approve an extension to withhold a religious item beyond 30 days, the restriction will continue and the issue sent for review to the SRRC to determine the appropriate response.

Commenter #6

Comment 6A: Commenter identifies himself as a Native American inmate, and states that the U.S. Dept. of Fish, Game, and Wildlife will soon be sending him a permit to possess eagle feathers for religious use, and 10 eagle feathers. Eagle feathers are a fundamental aspect of Native religious tradition and practice, with deep spiritual significance. As an enrolled member of an American Indian tribe he is entitled to possess them legally with an issued permit. Commenter states the Notice of Change to regulations does not provide for possession of eagle feathers by American Indian inmates for religious use, or other types of feathers (crow, hawk, owl, etc.) also with religious significance.

Accommodation: None

Response 6A: Subject to the Religious Personal Property Matrix, inmates are allowed to possess up to 12 bird feathers, each up to 18 inches in length. Eagle feathers may be obtained via the U.S Department of the Interior. The above comment is otherwise insufficiently related to the specific proposed regulatory action. See also, Response to Comment 2A.

Commenter #7

Comment 7A: Commenter requests to add items to Section 3213(b); dhikr beads, which are approved Muslim prayer beads, and the kifiya, which is a Muslim prayer shawl. Commenter also states he would also like to request the appropriate time and procedure to seek to add a turban to the language for permissible religious headgear, and the kurda/jalabiyah which is a long shirt worn by Muslims.

Accommodation: Partial Accommodation

Response 7A: CDCR added prayer beads as authorized in the RPPM, which includes but is not limited to, dhikr beads, into the subsection 3213(b) list of religious items that may be worn or carried at any time. See also, Response to Comment 2C. For security reasons, CDCR will not add prayer shawls/scarfs, such as a kifiya, to the subsection 3213(b) list. An inmate may wear any item of authorized religious headgear, as described in the RPPM, and an inmate may wear any authorized clothing items, as described in the Authorized Personal Property Schedule (APPS).

Commenter #8

Comment 8A: Commenter requests that CDCR clarify that inmates may wear the religious items mentioned in new subsection 3213(b) in the visiting rooms. The clarification is needed because DOM Section 54020.21 currently allows religious headgear and one religious medal on a necklace, but not the specific items mentioned in new subsection 3213(b).

Accommodation: None

Response 8A: Title 15 subsection 3213(b) provides that inmates may wear or carry specified religious items at any time, subject to reasonable search. This necessarily includes visiting rooms, along with all other areas of an institution. A revision to DOM Section 54020.21 will be forthcoming to align that DOM section with Title 15 regulations.

Commenter #9

Comment 9A: Commenter requests CDCR to include the provisions of the Ancient Egyptian (Kemetic) Neterian Religion, which includes but is not limited to an organic vegan diet. Commenter lists the diet requirements as follows: 1) fresh organic green/phyto base foods, 2) at least 80% raw vegetables and 20% cooked, 3) no meat (cow, pig, chicken, fish), no dairy, no eggs, 4) no wheat – substitute spelt or kamut, 5) no candy, refined sugar or table salt (for table salt substitute sea salt), 6) no genetically modified food (Monsanto seeded), 7) no irradiated food, 8) substitute nut milk or rice milk for cow milk, 9) substitute organic food bars for granola. If for any reason the 80% raw 20% cooked cannot be granted, a diet of 50% raw fruit and vegetables (organic) and 50% cooked vegetables and meat substitute such as beans (lentils), wild rice, quinoa, etc. would be acceptable, however that should be viewed as a temporary departure from the practice, and at no time should practitioners consume foods that are carcinogenic, with growth hormones, antibiotics, GMO, artificial ingredients, preservatives or animal based products if they can be avoided. Commenter states ancient African religion (Neterian) has been practiced since the time of ancient Kemet (Ancient Egypt 10,000 B.C.E.), the faith is followed globally. The IRS recognizes their status as an established church with tax exempt status.

Accommodation: None

Response 9A: See Response to Comment 2A.

Commenter #10

Comment 10A: Commenter requests that a Rakusu be incorporated into the RPPM. Commenter states his comments represent the interests of all current and future inmate Buddhist practitioners. Commenter notes that the tallist katan/tsitsit has been approved for those practicing Judaism and Islam. Commenter originally proposed this item in response to NCR 13-01 (RPPM regulations). Commenter filed an appeal, but was refused, and given the response that the committee would review the matter during its next every six months meeting, however it has been two years and nothing has happened. Commenter has challenged the cancellation of his appeal, and states that the cancellation violated his basic due process and blocked the

constitutional right to court access for redress of continued violation of the RLUIPA. Commenter included a 5 page copy of literature entitled “Buddha’s Robe is Sewn.”

Accommodation: None

Response 10A: This regulatory package is not a revision to the RPPM. See also, Response to Comment 2A.

Commenter #11

Comment 11A: Comment is sent on behalf of the American Civil Liberties Union of California. Commenter contends that the amendment allowing the removal of a religious item based on “security/operational need and/or inmate misconduct” appears to expand the authority to restrict inmates’ religious accommodations beyond the extent permitted by federal law. RLUIPA prohibits the state from imposing a substantial burden on the religious exercise of a person residing in or confined to an institution unless the state can prove that the burden: 1) is furtherance of a compelling interest; and 2) is the least restrictive means of furthering that compelling governmental interest. Courts recognize that RLUIPA affords confined persons greater protection to religious exercise than what the Constitution itself affords. The proposed amendment appears to allow a substantial burden on inmates’ religious exercise without the requisite narrow tailoring under RLUIPA. Proposed subsection 3213(e), which allows the outright denial of a religious accommodation for 30 days or longer, authorizes what could be a substantial burden on religious exercise. Commenter can ascertain no compelling interest for the government to subject the denial of religious items to less scrutiny than the denial of other non-contraband items. The standard for non-contraband items states that items “if retained in possession of the inmate, present a serious threat to facility security or the safety of inmates and staff, shall be controlled by staff to the degree necessary to eliminate the threat,” 15 CCR, subsection 3006(d). While the proposed amendment allows the restriction of religious items “based on security/operational need and/or inmate misconduct,” non-religious items appear to retain greater protection, because their restriction is limited “to the degree necessary” to eliminate a “serious threat” to safety or security. The language in the amendment authorizing denial of a religious accommodation based solely on “security/operational need” is the type of bare invocation of security that fails to establish the narrow tailoring required under RLUIPA. Commenter cites court cases in which the 9th Circuit repeatedly held that the government must do more than merely assert a security concern to satisfy the rigorous and exacting scrutiny of RLUIPA. Prison authorities cannot rely on general or conclusory assertions to support their policies. Commenter states less restrictive and reasonable alternatives are readily apparent. Why not require that punishment involving the restriction of a religious item be limited to instances where the conduct requiring discipline involved the use of that religious item? Why not, at minimum, limit the restriction of religious items “to the degree necessary” to eliminate a “serious threat” consistent with 15 CCR subsection 3006(d)? Absent a modification of the amendment, limiting or clarifying the authority to deprive prisoners religious items within narrow parameters consistent with RLUIPA, the proposed amended Section 3213(e) risks needlessly depriving prisoners of access to vital religious accommodations for 30 days at a time, or longer. CDCR should promulgate a final rule, consistent with RLUIPA’s heightened protection for the religious exercise of institutionalized persons, with revisions sufficient to address the concern discussed above.

Accommodation: Full Accommodation

Response 11A: See Response to Comment 3F.

Commenter #12

Comment 12A: Commenter is thankful for the progressive move towards recognizing one's spirituality and tenets by allowing prisoners to wear this regalia, and fully supports such change. The only drawback is that the RPPM doesn't fully allow for such items to be produced in a traditional manner as it should. Commenter states it's like giving him a car to drive, but no gasoline. Commenter states staff are confused about what they can have or not have. For instance, he can have a 'beaded' headband, but not allowed a bandana, or certain items like beads or thread, what good is the RPPM? Commenter states obviously CDCR implemented the criteria based on the Rouser settlement, as it is identical.

Accommodation: None

Response 12A: See Response to Comments 2A and 10A.

Commenter #13

Comment 13A: Commenter asks that two items be added to subsection 3213(b) from the Buddhist faith. Commenter requests a mala (prayer beads) and khatas (worn around the neck) be added to what can be worn or carried. These items are on the RPPM. Commenter sent pictures from a magazine to show the items being worn by his faith.

Accommodation: Full Accommodation

Response 13A: Subsection 3213(b) is revised to include prayer beads in the list of approved religious items that may be worn or carried at any time. Prayer beads may include mala or khatas, so long as they meet the specifications of the RPPM. See also, Response to Comments 2C and 7A.

Commenter #14

Comment 14A: Commenter asks that CDCR not change the name to "Outdoor Religious/Spiritual Grounds," and requests the name "Pagan" or "Pagan/nature-based" be placed before the new definition as to ensure no destruction, deconstructing, or deconsecrating of the tenets of their faith. Commenter states that a name already exists for the outdoor areas, as they have been called 'Pagan/nature based Outdoor Worship Grounds' for years. Therefore, any change in the name is tantamount to a violation of the 1st & 14 Amendment of the U.S. Constitution, RLUIPA, and various state and federal laws. This act in no way furthers a compelling governmental interest, but is purely based on exaggerated fears, rationalizations of unfounded speculations, provides no 'least restrictive means' to those directly affected, and whose sincerely held religious beliefs reflect conducting out-of-door worshipping in an area designated for the sole usage by Pagan/nature-based practitioners, and only those similar in

nature to their beliefs. Commenter states that CDCR pushing religious neutrality is encroaching upon the civil and religious rights of affected prisoners. Commenter states that allowing current religiously accommodated inmates who utilize the chapel for religious services is infringing upon those religious practitioners who don't worship indoors and places a substantial religious burden upon them. Commenter states in conjunction with an agreement, each facility was provided an out-of-the-way area from which the Pagan/nature-based faiths may practice in accordance to the tenets of their faith. Commenter notes that all Pagan/nature-based practitioners follow a similar belief system in that they collectively believe they are directly connected to the lands, nature, and their environment, and that they shall conduct all rituals out-of-doors in areas separated from the mundane and where no deliberate or inadvertent desecration or trespass may occur. Commenter further explains Pagan traditions and necessary rituals/items to the faith, states items/offerings must remain unmolested and undisturbed otherwise the prayers and offerings are not accepted. Commenter states their belief system cannot be separated from them nor should they be prevented from following a tenet of their collective religions. Religious neutrality is an impossibility, and many religious faith groups whole system of beliefs are contradictory especially to Pagan/nature based communities. Commenter states you cannot deconsecrate something which is by its very nature, imbued with divinity. It can be desecrated or destroyed, but to do so is a criminal act (i.e. religious hate crime, discrimination, destruction of property) and is contrary to their sincerely held religious beliefs. This is an unreasonable callous act being perpetrated with deliberate indifference. The various non-Pagan/non-nature based religious groups have all utilized the indoor chapels for decades as none of these groups have a religious mandate for worshipping outdoors, nor has any group requested to do so.

Accommodation: None

Response 14A: Outdoor religious spiritual areas are used in the same manner as indoor worship areas. Although the Pagan/nature-based groups have been primary users of the Outdoor Religious/Spiritual Grounds, CDCR has not designated Outdoor Religious/Spiritual grounds exclusively for Pagan/nature-based activities. Outdoor Religious/Spiritual Grounds have on occasion been made available to non-pagan/nature-based groups. CDCR is not aware that the use of shared grounds has resulted in Pagan/nature-based groups being unlawfully impeded from practicing their faith or being denied any religious accommodations.

Comment 14B: Commenter states there has been a failure to mention "materials relied upon" governing the changing of the outdoor worship area's name, and this is a deliberate attempt to defraud the public from inter-departmental policies which are currently being used as "underground rules and policies" as a means to push an agenda without scrutiny or criticism. This is an illegal act, depriving the public of prison oversight and accountability, with the sole purpose to subject a specific group of prisoners who practice non-mainstream religion from worshipping or practicing in a way mandated by their sincerely held tenet beliefs and ancestral traditions. Commenter lists several documents which he states are being deliberately suppressed from the public, including: A Solano prison memorandum dated 12-31-09 in which the Warden coined the name for these outdoor grounds as "Outdoor Spiritual Grounds for Pagan Faith Groups" or simply "Pagan Outdoor Spiritual Grounds"; a CDCR memorandum from the office of Adult Institutions dated 12-3-13 which has been interpreted by correctional and religious staff to subvert and destroy all current existing Pagan sacred worship areas; other various Department memorandums; the court settlement of *Rouser v. White*; Director's rule change 13-01; an inmate

appeal; various letters sent to the Director of Adult Institutions and the Community Resources Manager – Religious Programs, and the Associate Warden – General Population Males. All these documents including others are part of an on-going religious litigation which were utilized in conjunction with this rule change however has been withheld. Commenter states this withholding of information is defrauding the public and the Office of Administrative Law, which oversees compliance with the Administrative Procedures Act (APA). Commenter states that the fact that none of this pertinent information noted as reference or resource material relied upon is a violation of the APA, RLUIPA, and the Constitution. Commenter further states that the proposed regulations subjects a specific class of religious practitioners to discrimination, suppression, and harassment, and is tantamount to criminal acts; and to allow the wanton destruction and desecration of established sacred Pagan religious worship areas, Pagan symbols, offering mounds, various herbs, all constitute by definition, as hate crimes as reflected in California Penal Code.

Accommodation: None

Response 14B: CDCR has not unlawfully withheld any documents or other materials that are pertinent to the proposed regulations. To the extent that Solano State Prison may, in 2009, have designated an area as “Outdoor Spiritual Grounds for Pagan Faith Groups”, or “Pagan Outdoor Spiritual Grounds”, this would have only been a local designation that does not reflect statewide CDCR policy. See also, Response to Comment 14A.

Comment 14C: Commenter takes issue with the searching of religious areas and personal artifacts without having justifiable reasoning. Current regulations allow searching of designated religious areas by correctional staff under the observation of a Chaplin, except when an actual emergency exists. Commenter states searching of an inmate’s religious property should be done so in the presence of the inmate, whenever possible. Additionally, correctional staff are in no way qualified to determine what is or is not something which has a religious significance to a prisoner, and will be, if allowed, abused by staff for no other reason than to punish or discriminate against practitioner(s). Commenter again cites reasoning for this change is based upon unfounded and exaggerated fears as well as over-rationalizations or speculative assumptions. The change is without merit and has no basis on security concerns. Commenter states this will cause an avalanche of lawsuits as to staff’s desecration, destruction, or confiscation of items having a sincere religious significance to the practitioner. Commenter asks that we not allow correctional staff to search any religious area (except under emergencies), without a Chaplain present, or an inmate’s religious personal property under the heading of “random searches” unless in the inmate’s presence.

Accommodation: Partial Accommodation

Response 14C: Subsections 3213(b), (d), and (f) are revised to clarify that searches by custody staff of religious items and religious areas must be reasonable. See also, Response to Comments 3E and 3G. CDCR is not required to have a Chaplain or an inmate present upon conducting reasonable searches of religious items or religious areas.

Commenter #15

Comment 15A: Commenter takes issue with the Outdoor Religious Spiritual Grounds, stating that the grounds have been won on CDCR 602 appeals as sacred. The current religious symbols and faith of Pagan/nature-based groups have called forth invisible entities which believe who inhabit the Outdoor Religious/Spiritual Grounds.

Accommodation: None

Response 15A: See Response to Comment 2A.

Comment 15B: Commenter takes issue with Section 3213(e) through 3213(e)(2) regarding removing or restricting use of an approved religious item. Commenter states that per court rulings religious items are a right to possess and utilize for religious rights and or practices. The RPPM already approves items that inmates may have. If CDCR allows restrictions of items that have been deemed not to impede safety and security it would not only be against federal constitutional rights but would be setting their religious freedom back to the stone ages. Commenter notes that religious artifacts/items have been approved on CDCR 602. The denial of the only redress under administrative law now to be denied is illegal and unconstitutional and a grave miscarriage of justice. Commenter included supporting documentation for additional consideration, including: various CDCR 602's, Memos, and letters.

Accommodation: Partial Accommodation

Response 15B: Subsections 3213(e)-3213(e)(2) are revised to clarify that inmate religious items may be temporarily withheld in the same manner as other inmate personal property items, subject to subsection 3006(d). See also, Response to Comments 3F and 5F.

Commenter #16

Comment 16A: Commenter identifies himself as the lead counsel for the plaintiff in *Zamaad v. Beard*, whose settlement gives rise to the proposed changes to Sections 3000 and 3213. Commenter states there are three places where changes are needed to the proposed regulatory language. The first is as follows: New subsection 3213(e) states “The institution head or designee retains the authority pursuant to section 3006(d), to remove or restrict use of an approved religious item, based on security/operational need and/or inmate misconduct, for a period of up to 30 calendar days,” with any restriction for a longer time subject to additional review. Although the new language references section 3006(d) authority on non-contraband items, it is unclear whether the language incorporates section 3006(d)’s limitation to those items that would “present a serious threat to facility security or the safety of inmates and staff.” To avoid inferior treatment of religious items for such purposes, the phrase “in accordance with that section” should be inserted after “to remove or restrict use of an approved religious item”.

Accommodation: Full Accommodation

Response 16A: See Response to Comment 3F.

Comment 16B: New subsection 3213(e) authorizes limitations on approved religious items due to “security/operational need and/or inmate misconduct.” To eliminate the concern that religious

items would be limited for reasons unrelated to their use, which would frustrate the religious-liberty purpose to the amendment and their tentative settlement, the phrase “relating to the use of the religious item” should be inserted after “inmate misconduct”.

Accommodation: Partial Accommodation

Response 16B: Subsection 3213(e) is revised to clarify that inmate religious items may be temporarily withheld in the same manner as other inmate personal property items, in accordance with subsection 3006(d). See also, Response to Comment 3F. The revision to subsection 3213(e) removes the term “security/operational need and/or inmate misconduct” and replaces it with the same language as subsection 3006(d).

Comment 16C: Their settlement agreement provides that the contemplated regulation change would “expressly allow inmates to wear religious headgear as specifically defined in the Religious Personal Property Matrix at all times throughout the prisons, subject to reasonable search.” The new proposed subsection 3213(b) and (d) omit the modifier “reasonable” before “search”. In accordance with the settlement agreement, the “reasonable” modifier should be included before both “search” in subsection 3213(b), and “searches” in 3213(d).

Accommodation: Full Accommodation

Response 16C: See Response to Comment 3E.

Commenter #17:

Comment 17A: Commenter objects to the renaming of the Pagan/Nature-Based Outdoor Religious/Study Grounds, as a means to create neutrality. This will place a substantial burden upon Pagan faith groups and provide other faiths quadruple the amount of worship/study time than the Pagan/Nature-based groups combined. Commenter believes letting other faiths trespass on Pagan consecrated grounds is defiling it and desecrating the area, destroying the sacred energy and powers within, making it unsuitable for worship to their gods/goddesses, etc. Commenter asks that CDCR not rename these grounds which they have used for well over a decade, and therefore should reflect this in the name.

Accommodation: None

Response 17A: CDCR has not, on a statewide basis, designated or named any outdoor areas so as to be exclusive to Pagan or Nature-Based spiritual groups. See also, Response to Comment 14A.

Comment 17B: Commenter objects to allowing correctional staff to have unfettered access and no supervisory oversight when searching designated religious worship areas and artifacts, and states it violates his sincerely held religious beliefs. Current rules ensure oversight is closely monitored, and provide staff the ability to conduct reasonable searches. Correctional staff are not qualified to determine what is or what does not hold religious significance to an inmate, which is why a Chaplain is present during searches of religious areas and the inmate during searches of personal religious artifacts. By making a change to current established procedures CDCR is

authorizing a substantial burden upon inmate's beliefs, and this will allow for abuse of authority and retaliatory searches. Commenter asks that CDCR not change the rules as there is no genuine basis of fact reflecting a necessary governmental interest.

Accommodation: Partial Accommodation

Response 17B: Subject to longstanding policy within Title 15, Section 3213, all religious items and religious areas are subject to search by correctional staff. Within this regulation, subsections (b), (d), and (f), are revised to clarify that the searches be conducted in a reasonable manner. See also, Responses to Comments 3E, 3G, and 14C.

Commenters #18 through #21 - These comments are duplicative of Commenter #17.

Commenter #22

Comment 22A: Commenter is Native American, and states it has long been a problem that other non-Native American inmates are wanting Native American items, and using their grounds as a "guest," then expecting to have things that are only for Native American inmates. They are filing frivolous law suits, and appeals, and they are not documented in their C-File as A.M.I. Commenter feels that if they are not documented A.M.I. they should not be allowed to possess things that are only for Native American inmates, and this should be included in the Dept. Operations Manual (DOM). These other nationalities are ruining it for the Native Americans when they don't get what they want. Every time these inmates file a 602, staff get mad at the real Natives, and they get their medicine ran through their cells. Non-Native American inmates are ordering sacred eagle feathers, and beads, and leather, and bone, and they are not even documented as A.M.I. The Native American way of life and spiritual practices need to be protected. Commenter asks that Natives have their rights enforced to be free from all foreign seekers who sneak onto their grounds just to hide or sneak through the prison by using their ground for cover from their own racial conflicts.

Accommodation: None

Response 22A: See Response to Comment 2A.

Commenters #23 and #24 – These comments are duplicative of Commenter #17.

Commenter #25

Comment 25A: Commenter asks that religious headgear be clarified in order to assist Correctional Officers. Commenter is referring to "ear totems" which Officers see as "earrings. Commenter notes that an earring is a piece of jewelry, worn to enhance physical attractiveness. A Native American ear totem is worn to signify an adult male, specific medicine to announce ones closeness to Mother Earth, and other tribal meanings. While religious headgear would include the ears, them being an internal/external organ of the head, and this in itself should suffice, Officers need further enlightenment so that incorrect decisions are not made.

Accommodation: None

Response 25A: The commenter is asking for a clarification of Religious Headgear, which is described in the RPPM. However, this regulatory package is not a revision to the RPPM and the comment does not pertain to the subject matter addressed in this amendment. See also, Response to Comments 2A and 10A.

Commenter #26

Comment 26A: Commenter suggests some changes to the proposed regs to accommodate his Wiccan faith. In Section 3000 for “Outdoor Religious/Spiritual Grounds,” Commenter states that the language should specifically mention “Pagan (Asatru/Wiccan, etc.)” as the intended typical attendants, and that it is for “solitary and group worship.”

Accommodation: None

Response 26A: See Response to Comment 14A.

Comment 26B: In Section 3213, Commenter states that “Mead” should be mentioned additionally to wine. Their faiths are Celtic in majority and pre-date wine. It is used in “the blessings of the cakes and mead (or “wine” in more modern traditions),” which is standard in their rituals.

Accommodation: Full Accommodation

Response 26B: Subsection 3213(a) is amended to clarify that prior written approval of the institution head or their designee shall be required for any person to bring a ceremonial drink, such as sacramental wine, or any unauthorized religious item into a facility. A ceremonial drink may include sacramental wine, mead, or other beverage that is used for ceremonial purposes.

Comment 26C: Commenter asks that “Tarot or Rune set” be added to Section 3213(b), as Wiccan and Asatru faiths strongly believe in atuning and constant use of divinatory tools. Also, that “sacred stones” be added, as Pagans use these for atunement, healing, and spellwork.

Accommodation: None

Response 26C: Subsection 3213(b), which lists religious items that may be worn or carried at any time, is limited to items that may be worn on one’s person. CDCR is not aware that the items listed by the commenter are typically on one’s person at all times.

Comment 26D: In Section 3213(c), Commenter asks that the following language be added at the end: “either displayed at the direction of staff by the inmate or by staff wearing gloves in a controlled well-lit environment. Due to the minute contents (sand, pebbles, animal stock, soil, etc.) care should be taken to return contents in whole to the bag.”

Accommodation: Partial Accommodation

Response 26D: See Response to Comment 5A.

Comment 26E: Commenter asks that the following language be added to Section 3213(d): “while wearing gloves in a controlled environment or by the inmate at the direction of staff.”

Accommodation: Partial Accommodation

Response 26E: See Response to Comments 3E and 5A.

Comment 26F: For Section 3213(f), Commenter asks that Asatru/Wicca be referenced as per suggestion for Section 3000, and add in to the end: “during services staff should refrain from interrupting unless there’s emergency cause, staff should minimally alter the area or return it to initial conditions after searching, while wearing gloves. Whenever possible staff should utilize the presence of a supervisor.” Commenter notes the request for gloves is due to the sensitive metaphysical beliefs of “energy levels” and/or “contamination” by contact to bare skin. The request for a supervisor is due to rampant disrespectful playful behavior he’s seen done by unsupervised staff on their grounds.

Accommodation: Partial Accommodation

Response: 26F: See Response to Comments 3E, 3G, 14C, and 17B.

SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS RECEIVED DURING THE 15-DAY RE-NOTICE COMMENT PERIOD

Re-Notice Commenter #1 (Initial Commenter #13)

Re-Notice Comment 1A: Commenter is thankful for the Department adding Prayer Beads to the allowable wearable religious items. Commenter asks if the Department could also include Khatas to be added to Section 3213(b).

Accommodation: None

Response, Re-Notice Comment 1A: For security reasons, CDCR will not add prayer shawls/scarfs, such as a khatas, to the subsection 3213(b) list of religious/spiritual items that inmates may wear or carry at any time. An inmate may wear any item of authorized religious headgear, as described in the RPPM, and an inmate may wear any authorized clothing items, as described in the Authorized Personal Property Schedule (APPS).

Re-Notice Commenter #2 (Initial Commenter #21)

Re-Notice Comment 2A: Commenter alleges that because he received notification of the Re-Notice changes 8 days after its issuance, that this violates the mandates by OAL.

Accommodation: None

Response, Re-Notice Comment 2A: No mandate as required by OAL, or per the Government Code (GC) and the APA has not been violated. Per Government Code, Section 11346.8(c),

sufficiently related changes shall be made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulation. Additionally, Title 1, Section 44 states, the agency shall mail a notice stating the period within which comments will be received. The Re-Notice for Notice of Change to Regulations (NCR) 15-03, Inmate Religious Personal Items and Sanctuaries, was mailed to all commenters of the initial public comment period, and posted to CDCRs internet/intranet websites on September 28, 2015, with the effective comment period clearly stated in the Re-Notice, of September 28, 2015 to October 15, 2015, which is an additional 2 days to the required 15 days.

Re-Notice Comment 2B: Commenter states the public hearing held July 15, 2015 gave no due consideration to his letter of objections, nor was it given the same weight as verbal comments.

Accommodation: None

Response, Re-Notice Comment 2B: Commenter's comments as well as all comments received within the given effective comment period/s, were given consideration as noted in this Final Statement of Reasons. Additionally, as stated in the Notice to the public, written comments are given the same significance and weight as oral comments presented at the hearing. All comments received during the effective comment period/s, whether they are received orally at the public hearing or in written format, are treated the same, with the result being that every comment is summarized and responded to in the Final Statement of Reasons, in compliance with GC 11346.9. A lack of an accommodation does not mean the comment was not considered.

Re-Notice Comment 2C: As stated in Commenter's previous comment, Commenter again states his sincerely held religious belief that trespass onto outdoor grounds from non-practicing Pagan community is defiling the grounds and an act against their gods, which goes beyond the physical world and is felt in the mental and spiritual realms, and is desecration of that which is holy. The outdoor grounds at CSP-Solano have been established as the "Pagan/Nature-Based Worship Grounds" since 2009 and renaming it will allow for outside negativity, desecration by other faiths, and destroy the energy and benevolent spirits which inhabit within it.

Accommodation: None

Response, Re-Notice Comment 2C: See Response to Initial Comment 14A.

Re-Notice Comment 2D: Also stated in Commenter's previously submitted comment, Commenter notes his objection to inspection of religious artifacts, which are not to be touched by the uninitiated or spiritually unenlightened, which to do so desecrates it and depletes the energy contained within it. Allowing a staff member unfettered access to his artifacts with spiritually unclean hands is a violation of the tenets of his beliefs. To allow anyone to arbitrarily touch them without proof of substantiation is an infringement of his religious rights and is not to be tolerated.

Accommodation: None

Response, Re-Notice Comment 2D: See Response to Initial Comments 3E, 3G, 14C, and 17B.

Re-Notice Comment 2E: NCR 15-03 provides no “least restrictive means” or “least intrusive means” and therefore violates Federal law contained within RLUIPA. The Department has not provided any good cause as to why this change should occur or how the Department is applying a legitimate compelling “governmental interest.”

Accommodation: None

Response, Re-Notice Comment 2E: See Response to Initial Comment 2A.

Re-Notice Commenter #3 (Initial Commenter #14)

Re-Notice Comment 3A: Commenter alleges that because he received notification of the Re-Notice changes 8 days after its issuance, that this violates the mandates by OAL.

Accommodation: None

Response, Re-Notice Comment 3A: See Response to Re-Notice Comment 2A.

Re-Notice Comment 3B: Commenter states there has been no consideration given to his original written comments and those of numerous other Pagan/nature passed practitioners that were submitted, nor was his letter given the same weight as verbal comments at the public hearing. Commenter feels he submitted reasonable alternatives which departmental staff chose to wholly ignore nor comment upon.

Accommodation: None

Response, Re-Notice Comment 3B: See Response to Re-Notice Comment 2B.

Re-Notice Comment 3C: Commenter states that nowhere on the mailing notification provided for the Re-Notice, is it written “NCR 15-03.” Commenter feels this is a violation of OAL procedures and makes the hearing void due to noncompliance of regulations.

Accommodation: None

Response, Re-Notice Comment 3C: There are no requirements for identifying the NCR number on either the Re-Notice Text or letter. The NCR (Notice of Change to Regulations) is a CDCR document developed to help facilitate special notices of regulations to inmates under Penal Code 5058(a). Both the Re-Notice and Text clearly identified the regulations as pertaining to “Inmate Religious Personal Items and Sanctuaries.”

Re-Notice Comment 3D: Commenter states there is no enclosed report referring to materials relied upon which obviously occurred during the July 15, 2015 hearing, and warranted making these additional changes. Additionally, Commenter states Department staff have failed to reveal all relevant documents/materials relied upon in its formation of the original NCR 15-03. Commenter feels this represents a deliberate attempt to defraud the public and introduce an incomplete record that has a severe discriminatory impact and undue burden upon a specific class of prisoners.

Accommodation: None

Response, Re-Notice Comment 3D: As stated in the Initial Statement of Reasons under the heading “Materials Relied Upon,” the Department revealed that it relied upon the Settlement Agreement for *Zamaad Gary Zomalt v. Jeffrey A. Beard, et al.*, Case No. ED CD 13-02239 VAP (DTBx). Also stated, was that a copy of this document is available for review as part of the rulemaking file. The rulemaking file which contains all information on which the proposal is based, is available to the public upon request, as stated in the Notice of Change to Regulation (NCR 15-03) under the heading “Availability of Proposed Text and Initial Statement of Reasons.” No other materials were relied upon in making the proposed changes to these regulations. Other changes were decided upon by a departmental team of subject matter experts with knowledge and experience in a wide range of areas related to institutional operations and policy.

Re-Notice Comment 3E: Commenter states no Final Statement of Reasons has been provided to him as he requested, nor has a direct response to his comments submitted to the hearing.

Accommodation: None

Response, Re-Notice Comment 3E: The Final Statement of Reasons will be provided to Commenter once the document is complete and ready for submission with the final regulations to the Office of Administrative Law. All responses to comments are included in the Final Statement of Reasons. Responses to individual public comments are not sent individually to each individual commenter.

Re-Notice Comment 3F: Commenter references his comments in his initial comment regarding a substantial burden being placed upon the entire Pagan/nature based religious practitioners, and that the need to re-name the outside grounds is tantamount to an over-exaggeration to unfounded fears, rationalizations, and speculations. Numerous letters have been sent in opposition to the re-naming of the Pagan Outdoor Worship Grounds, and unfettered access for staff to search in inmate’s personal religious property or facility religious areas, however no amendments were made on the Re-Notice, which is proof that no due consideration was given to their objections. Additionally, there is no factually compelling governmental interest but that of infringing upon the free exercise of the Pagan/nature based religion and their spiritual beliefs. Further, staff has failed to provide a “least restrictive” or “least intrusive” means to the effected Pagan/nature based groups.

Accommodation: None

Response, Re-Notice Comment 3F: See Response to Initial Comments 3E, 3G, 14A, 14C, 17A and 17B, and Re-Notice Comments 2B and 2E.

Re-Notice Comment 3G: The Re-Notice does not specifically outline what it deems to be considered “reasonable” in order for staff to touch objects of veneration and subsequently (Sic) by act, desecrates the artifacts.

Accommodation: None

Response, Re-Notice Comment 3G: The term “reasonable” is a general term that denotes reasonable searches of religious items and religious areas by correctional staff, in accordance with the law. See also, Response to Initial Comments 3E, 3G, 14C, and 17B.

Re-Notice Comment 3H: Commenter feels this rule change, in its entirety is a violation of his religious and civil rights, an invasion upon that which he holds as sacred and spiritual, and it violates CCR Section 3004, as it purposefully discriminates against a class of religious practitioners and reflects staff’s openly displaying disrespect and contempt for others in a manner intended or likely to cause a disruption of operations or inciting animosity towards others.

Accommodation: None

Response, Re-Notice Comment 3H: See Response to Initial Comment 2A.

Re-Notice Commenter #4 (Initial Commenter #17):

The comments of Re-Notice Commenter #4 are duplicative of Re-Notice Commenter #3. Therefore, please see Comments and Responses to Re-Notice Commenter #3, in regards to Re-Notice Commenter #4. In addition, it should be noted that Re-Notice Commenter #4/Initial Commenter #17 never requested a copy of the Final Statement of Reasons in his initial comment.

Re-Notice Commenter #5 (Initial Commenter #6)

Re-Notice Comment 5A: As commented in Commenter’s initial comment, Commenter again asks that feathers be added as an item to be possessed and worn as religious items. Commenter states he is Native American Indian and feathers are crucial to their religious practice and appearance.

Accommodation: None

Response, Re-Notice Comment 5A: See Response to Initial Comment 6A.

SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS RECEIVED DURING THE 2ND 15-DAY RE-NOTICE COMMENT PERIOD

2nd Re-Notice Commenter #1 (Initial Commenter #19)

2nd Re-Notice, Comment 1A: Commenter objects to all of the changes contained in Notice of Change to Regulations (NCR) 15-03, and does not want them adopted or amended as written. Commenter states as written they promote mainstream religious beliefs, and not those of Pagan/Nature Based. Commenter states they are entitled to representation ensuring equality and recognition of their essential needs, however the DAI and SRRC have denied this.

Accommodation: None

Response, 2nd Re-Notice Comment 1A: Although the above comment does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment. In addition, the above comment is not related to the changes proposed in the 2nd Re-Notice. As specified in the 2nd Notice of Change to Text as Originally Proposed, only comments relating directly to the 2nd Notice of Change amendments will be considered.

2nd Re-Notice, Comment 1B: Commenter objects to the Supplemental ISOR and not being provided the opportunity to comment on these specific reasoning for the rule change.

Accommodation: None

Response, 2nd Re-Notice Comment 1B: Commenter is provided the opportunity to comment through the 2nd Re-Notice.

2nd Re-Notice, Comment 1C: Commenter states the SRRC and DAI staff continue to obstruct and disenfranchise the Pagan/Nature Based religious groups by not providing equal recognition regarding their sacred artifacts and therefore no statewide consistency can be claimed governing a standardized list of essential allowable personal religious artifacts.

Accommodation: None

Response, 2nd Re-Notice Comment 1C: The proposed regulations do not concern the Religious Personal Property Matrix (RPPM), which is the list of authorized religious personal property items that an inmate may possess, and is incorporated by reference in Section 3190; therefore the above comment is insufficiently related to the specific action and no response can be formulated by the Department in refutation of or accommodation to the comment.

2nd Re-Notice, Comment 1D: Commenter believes the DAI is a group of non-religious prison bureaucrats that are so far removed from the genuine needs and concerns of every religious group, and therefore essentially unqualified to make judgements of the finality of personal artifacts authorized to be carried on one's person.

Accommodation: None

Response, 2nd Re-Notice Comment 1D: See Response to 2nd Re-Notice Comment 1A.

2nd Re-Notice, Comment 1E: DAI fails to acknowledge the extreme importance of runes/tarot cards, casting cloth, and notepad in the daily lives of Pagan practitioners.

Accommodation: None

Response, 2nd Re-Notice Comment 1E: CDCR continually revises the Religious Personal Property Matrix, and other departmental policy concerning religious items, as needed for inmate religious accommodations. In addition, the above comment is not related to the changes proposed in the 2nd Re-Notice. As specified in the 2nd Notice of Change to Text as Originally Proposed, only comments relating directly to the 2nd Notice of Change amendments will be considered.

2nd Re-Notice, Comment 1F: Commenter states that non-Pagan state officials should not be allowed to make arbitrary decisions regarding religious artifacts or sanctuaries because it is a violation of Federal law which mandates separation of church and state must be maintained at all times. Failure to provide a full time Pagan/Nature Based practitioner at each and every meeting/hearing ensures the State continues to suppress and discriminate against a specific group of practitioners.

Accommodation: None

Response, 2nd Re-Notice Comment 1F: See Response to 2nd Re-Notice Comment 1A.

2nd Re-Notice, Comment 1G: Commenter states Section 3213(e)-(e)(2) doesn't allow the opportunity for appeal which violates due process and the right to be free of all forms of discrimination, prejudice, and harassment.

Accommodation: None

Response, 2nd Re-Notice Comment 1G: The above comment is not related to the changes proposed in the 2nd Re-Notice. As specified in the 2nd Notice of Change to Text as Originally Proposed, only comments relating directly to the 2nd Notice of Change amendments will be considered.

2nd Re-Notice, Comment 1H: Commenter states that any non-Pagan/Nature Based practitioner who trespasses upon their sacred grounds will defile the grounds, they view this act as an affront to their Gods/Goddesses, ancestors, and benevolent spirits whom inhabit within the grounds. This is an act of desecration and sacrilege to their holy hearth. Similar to Native American Grounds, they are extremely sacred and cannot be separated from them.

Accommodation: None

Response, 2nd Re-Notice Comment 1H: See Response to Initial Comments 14A and 17A. Additionally, the above comment is not related to the changes proposed in the 2nd Re-Notice. As specified in the 2nd Notice of Change to Text as Originally Proposed, only comments relating directly to the 2nd Notice of Change amendments will be considered.

2nd Re-Notice, Comment 1I: Commenter states there has been no description of what constitutes "reasonable" in regards to searches. Commenter states anyone touching or handling artifacts that is not a Pagan practitioner is defiling sacred objects. They believe their artifacts are imbued with Godly earthly elemental powers, and to touch them improperly would desecrate and drain them of their power. Previous regulations required a Chaplain present during a search of

chapels/sanctuaries and the presence of the prisoner during search of artifacts. There has been no penological reason provided to warrant amending this rule, which stops staff abuse of harassment and religious discrimination.

Accommodation: None

Response, 2nd Re-Notice Comment 1I: See Response to Initial Comments 3E and 14C. Additionally, the above comment is not related to the changes proposed in the 2nd Re-Notice. As specified in the 2nd Notice of Change to Text as Originally Proposed, only comments relating directly to the 2nd Notice of Change amendments will be considered.

2nd Re-Notice Comment 1J: Commenter states at no time has a “least restrictive means” or a “least intrusive alternative” been provided. Staff is over-exaggerating their response to fictitious data. The rule change in its entirety serves no governmental interest and places undue hardship on Pagan/Nature-Based practitioners, and is intended to suppress their religious beliefs.

Accommodation: None

Response, 2nd Re-Notice Comment 1J: See Response to Initial Comments 3F and 14A. Additionally, the above comment is not related to the changes proposed in the 2nd Re-Notice. As specified in the 2nd Notice of Change to Text as Originally Proposed, only comments relating directly to the 2nd Notice of Change amendments will be considered.

2nd Re-Notice Commenter #2 (Initial Commenter #14 and Re-Notice Commenter #3) – This Comment is duplicative of 2nd Re-Notice Commenter #1

2nd Re-Notice Commenter #3 (Initial Commenter #12)

2nd Re-Notice Comment 3A: Commenter states the RPPM is not being adhered to properly and is misinterpreted by institutional personnel at Lancaster State Prison. Staff believes the only materials available to inmates are listed on the RPPM, even though they have their own DOM and Supplements they are being disregarded through either ignorance or inadvertence.

Accommodation: None

Response, 2nd Re-Notice Comment 3A: The proposed regulations do not concern the Religious Personal Property Matrix (RPPM), which is the list of authorized religious personal property items that an inmate may possess, and is incorporated by reference in Section 3190; therefore the above comment is insufficiently related to the specific action and no response can be formulated by the Department in refutation of or accommodation to the comment. If commenter has issues with his institution, he can pursue his administrative appeal rights outlined in Section 3084 of Title 15, Division 3.

2nd Re-Notice Comment 3B: Commenter suggests the SRRC be better defined as to whom can address issues of religious concerns, inmates or only the individual prison? Commenter states that at his institution (Lancaster), when an issue is addressed to the RRC, whoever is comprised of that committee fails to answer the request.

Accommodation: None

Response, 2nd Re-Notice Comment 3B: Inmates may raise issues pertaining to religious accommodations directly to the RRC but not to the SRRC as defined in Section 3000. Additionally, concerns regarding a lack of response from an institution's RRC can be addressed through the administrative appeals process outlined in Section 3084 of Title 15, Division 3.

2nd Re-Notice Comment 3C: Commenter suggests the RPPM clarify how inmates are meant to construct spiritual items such as chokers, medicine bags, etc. when the institution fails to allow inmates the means to make these items. Commenter notes "spiritual items are not to be purchased or sold." Commenter suggests institutions be informed to create a supplemental DOM policy which allows materials to be purchased from approved vendors "to construct" spiritual items for religious use.

Accommodation: None

Response, Re-Notice Comment 3C: See Response to 2nd Re-Notice Comment 1A.