

**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: 3124
Repeal sections:

**NOTICE OF APPROVAL OF CERTIFICATE OF
COMPLIANCE**

**Government Code Sections 11349.1 and
11349.6(d)**

OAL Matter Number: 2015-1028-02

**OAL Matter Type: Certificate of Compliance
(C)**

This Certificate of Compliance filing submitted by the Department of Corrections and Rehabilitation (DOCS) makes permanent the prior emergency regulatory action (OAL File No. 2015-0513-06EON) that amended section 3124 of title 15 of the California Code of Regulations to update the list of legal materials to be made available to inmates in Department institution law libraries.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

Date: December 14, 2015



Lindsey S. McNeill
Attorney

For: **DEBRA M. CORNEZ**
Director

Original: Jeffrey Beard
Copy: Josh Jugum

NOTICE PUBLICATION/REGULATIONS SUBMISSION

CERT

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2015-0615-03	REGULATORY ACTION NUMBER 2015-1028-02C	EMERGENCY NUMBER
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ENDORSED - FILED
in the office of the Secretary of State
of the State of California

DEC 14 2015

3:47PM

For use by Office of Administrative Law (OAL) only

NOTICE	REGULATIONS
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2015 OCT 28 P 12:47
OFFICE OF ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY
California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)
15-0105

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 Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER 2015, 26-2	PUBLICATION DATE 6/26/2015

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Content of Law Libraries	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2015-0513-06EON
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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 3124
	REPEAL
TITLE(S) 15	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" 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 type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)		<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<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)

September 22, 2015 through October 13, 2015

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

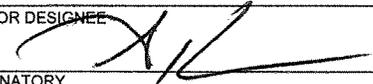
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. 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 Josh Jugum	TELEPHONE NUMBER 916 445-2228	FAX NUMBER (Optional) 916 324-6075	E-MAIL ADDRESS (Optional) joshua.jugum@cdcr.ca.gov
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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 10-22-15
TYPED NAME AND TITLE OF SIGNATORY Scott Kernan, Undersecretary, Operations	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 14 2015

Office of Administrative Law

TEXT OF ADOPTED REGULATIONS

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

California Code of Regulations, Title 15, Chapter 1, Subchapter 2

Article 3. Library

3124. Content of Law Libraries.

(a) Each institution shall maintain at least one law library for the use of inmates, in print and/or by means of the Electronic Law Library Delivery System with any necessary print or other electronic supplements. Except for items that are out of print, the law library collection shall include, but shall not be limited to, the following current and updated legal materials or their equivalents from other publishers:

- (1) Deering's California Codes Annotated.
- (2) Judicial ~~Counsel~~Council of California Civil and Criminal Jury Instructions.
- (3) Michie, California Official Reports.
- (4) Matthew Bender, Standard California Codes: Rules of Court (latest edition).
- (5) Matthew Bender, California Criminal Defense Practice (latest edition).
- (6) Matthew Bender, California Criminal Discovery (latest edition).
- (7) Matthew Bender, California Evidence Courtroom Manual (latest edition).
- (8) Matthew Bender, California Forms of Pleading and Practice (latest edition).
- (9) Michie, United States Code Service.
- (10) Matthew Bender, Moore's Federal Practice (latest edition).
- (11) All United States Supreme Court Cases.
- (12) All Federal Appeals Court Cases —~~All Circuits~~as reported in the Federal Reporter.
- (13) All Federal District Court Cases —~~All Districts~~as reported in the Federal Supplement.
- (14) Anderson, Constitutional Rights of Prisoners (latest edition).
- (15) Michie, Federal Habeas Corpus Practice and Procedure (latest edition).
- (16) The Daily Journal (newspaper), one year back file.
- (17) Shepard's United States Citations.
- (18) Shepard's Federal Citations.
- (19) Shepard's California Citations.
- (20) A recognized law dictionary, such as Black's or Ballantine's (latest edition).
- (21) California Code of Regulations.

- (22) California Family Law Litigation Guide (latest edition).
- (23) California Family Law Practice and Procedure (latest edition).
- (24) Civil Rights Actions (latest edition).
- (25) California Courtroom Evidence, by Cotchett.
- (26) California Juvenile Courts Practice and Procedure (latest edition).
- (27) California Superior Court Local Rules.

(b) Each institution shall also make supplemental legal materials available to inmates from an outside source. Except for items that are out of print, the supplemental legal materials shall include, but shall not be limited to, the following legal materials or their equivalents from other publishers:

- (1) Federal Rules Decisions.
- (2) Corpus Juris Secundum.
- (3) California Jurisprudence (latest edition).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Gilmore v. Lynch*, 319 F.Supp. 105 (N.D. Cal. 1970); *Toussaint v. McCarthy*, 801 F.2d 1080 (9th Cir. 1986); *Toussaint v. McCarthy*, USDC N.D. Cal. No. C 73-1422 SAW, First Special Report of the Monitor, August 19, 1987; *Toussaint v. Rowland*, USDC N.D. Cal. No. C 73-1422 SAW, Second Special Report of the Monitor, June 30, 1988; ~~*Zatko*~~ *Zatko v. Rowland*, 835 F.Supp. 1174 (N.D. Cal. 1993); *Lewis v. Casey*, 518 U.S. 343 (1996).

FINAL STATEMENT OF REASONS:

The Initial Statement of Reasons is incorporated by reference.

UPDATES TO THE INITIAL STATEMENT OF REASONS

On May 13, 2015, the Department submitted to the Office of Administrative Law a notice of proposed emergency regulations concerning the contents of institution law libraries. The emergency regulations were approved effective June 2, and were noticed to the public on June 26. Public comments were accepted through August 19, 2015. Thirty-eight comments were received during this period. A public hearing was held on August 19, at which no comments were received.

In response to public comments, the Department made revisions to the proposed text. The amendments to the originally proposed text and the reasons for these revisions are explained below under the heading "*Changes to the Text of Proposed Regulations Initially Noticed to the Public.*"

A rennotice of the amended text was distributed on September 22, 2015, to the people/organizations who provided comments during the initial public comment period, and was posted on the Department's internet website the following day. The Department accepted public comments from this date through October 13, 2015. No comments were received during this period.

DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

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

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the CDCR's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

The Department has determined that no reasonable alternatives to the regulation have been identified or brought to the attention of the Department that would lesson any adverse impact on affected private persons or small business than the action planned.

The Department, in proposing the adoption of these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document. The Department has relied upon the results of the Economic Impact Assessment, which can be found in the Notice of Proposed Regulations and is available for review as part of the rulemaking file.

CHANGES TO THE TEXT OF PROPOSED REGULATIONS INITIALLY NOTICED TO THE PUBLIC - RENOTICE

Section 3124. Content of Law Libraries.

Subsection 3124(a)(2) is amended to correct a spelling error. The word Counsel should have been Council. This revision that does not change the meaning or effect of the regulations.

Subsections 3124(a)(3) and (a)(9) are amended to add the name of the publisher of the documents listed in these subsections, to make clear which publications will be available in institution law libraries, and for consistency with the rest of the section.

Subsection 3124(a)(12) is amended to specify that all Federal Appeals Court Cases as reported in the Federal Reporter shall be made available to inmates in institution law libraries. This amendment is necessary to specify that only those cases reported in the Federal Reporter shall be available. The previous language implied that all federal appeals court cases would be available, with no date parameters, when many of these cases are not reported or are too old to be located.

Subsection 3124(a)(13) is amended to specify that all Federal District Court Cases as reported in the Federal Supplement shall be made available to inmates in institution law libraries. This amendment is necessary to specify that only those cases reported in the Federal Supplement shall be available. The previous language implied that all federal district court cases would be available, with no date parameters, when many of these cases are not reported or are too old to be located.

PUBLIC HEARING COMMENTS:

A public hearing was held on August 19, 2015. No comments were received at the hearing.

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

Commenter #1: (Note: This letter was addressed to the Office of Administrative Law, however the letter is regarding the proposed regulations and a copy was sent to the Department during the public comment period, therefore the Department will treat the letter as a public comment and provide a summary and response)

Comment #1A: Commenter states he is currently in litigation against the Department regarding the issue of the content of institution law libraries and access to law library documents. Commenter provides historical information regarding the content of institution law libraries including exhibits from *Gilmore v. State of California*, which first required the Department to provide inmates with access to specified legal materials. Commenter states “the facts recited in the statement of initial reasons do not constitute an emergency”. Commenter asks the Office of Administrative Law to disallow the proposed regulations and cites Government Code from the Administrative Procedure Act regarding adoption of emergency regulations. Commenter asks that the proposed regulations “be deemed an Underground Rule.”

Accommodation: None

Response A: The Department’s authority to adopt regulations on an emergency basis is not established by Government Code but by Penal Code 5058.3. This statute grants discretion to the Secretary to determine when an emergency adoption is necessary. The Secretary’s designee has signed a Certification of Operational Necessity regarding these regulations which provides an explanation of the need for emergency adoption. The proposed regulations are not an “underground rule” because they are being adopted pursuant to the Administrative Procedure Act.

Comment #1B: Commenters states that inmates have experienced an adverse effect as a result of the change from West law books to the Lexis system, because there aren't enough computers at the facility in which he is housed and inmates aren't allowed sufficient time to use the computers. Commenter also states the new system doesn't "work hand in hand" with the physical law books available at the law library like the previous system.

Accommodation: None

Response 1B: The commenter resides at Centinela State Prison, which recently received and deployed 13 additional computers equipped with the Lexis Nexis system. Inmates at Centinela and elsewhere are provided sufficient access to the courts by means of Lexis Nexis. Lexis Nexis does not provide exactly the same legal materials as are contained in the physical law books, which are published by West Publishing. However, Lexis Nexis is an equivalent system that offers at least as many resources as West Publishing company materials. The amount of time inmates are allowed access to law libraries is established in Section 3123 and is not being amended by this action.

Commenter #2: Commenter states the new legal materials don't include any state civil procedure books or manuals. Commenter states the lack of such guides restrict inmate's access to the courts, as inmates won't know how to pursue their claims.

Accommodation: None

Response 2: The Code of Civil Procedure has all the steps to go from the commencement of an action through trial and appeal. Lexis Nexis also includes in amended section 3124 (a)(8), Matthew Bender, California Forms of Pleading and Practice (latest edition), which contains a comprehensive procedure guide for litigating civil actions in California state courts. The Lexis Nexis collection listed in subsection 3124(a)(1) – (27) provide inmates with as many legal resources, if not more, than the former law library collection that was provided by West Publishing.

Commenter #3:

Comment #3A: Commenter states he is an inmate library clerk at a state prison. Commenter states that some of the new legal materials that will be available as described in the proposed regulations "have no relevancy to criminal convictions and sentences, or conditions of confinement." Specifically proposed subsections 3124(a)(22), (23), and (26).

Accommodation: None

Response 3A: CDCR is not limited to providing legal materials that pertain just to criminal convictions, criminal sentences, or conditions of confinement. By means of the Lexis Nexis system, CDCR makes available the publications listed in subsections 3124(a)(22), (23), and (26). These publications, respectively, are the California Family Law Litigation Guide, the California Family Law Practice and Procedure, and the California Juvenile Courts Practice and Procedure. These publications provide resources to litigate family law case and juvenile court matters. Family law and juvenile court matters are often highly relevant to inmates and their families.

Comment #3B: Commenter states that some legal materials that will be available as described in the proposed regulations are "germane to trial, pre-guilt and pre-penalty phases of criminal proceedings, not post-conviction/sentencing". Specifically proposed subsections 3124(a)(5), (6), (7), (10), and (25).

Accommodation: None

Response 3B: Amended subsections 3124(a)(5), (6), (7), (10), and (25), respectively, list Matthew Bender, California Criminal Defense Practice; Matthew Bender, California Criminal Discovery; Matthew Bender, California Evidence Courtroom Manual; Matthew Bender, Moore's Federal Practice; and California Courtroom Evidence, by Cotchett. These publications set out the law relevant to trial, pre-guilt and pre-penalty phases of criminal proceedings. Moreover, these publications are also germane to post-conviction/sentencing. They provide information about researching errors in procedure for inmates to challenge their conviction on habeas corpus or on direct appeal. The Matthew Bender publication about California Criminal Defense Practice, listed at amended subsection 3124(a)(5), contains at least four chapters about post-trial remedies. In addition, inmates may also commit new crimes while they are incarcerated and therefore may need to review these publications in order to defend their cases.

Comment #3C: Commenter states some of the publications that will no longer be available under the new proposed system are "touchstone 'go to' publications for state prisoners seeking post-conviction remedies through either direct appeal or habeas corpus, etc." Specifically the publications previously listed in subsections 3124(a)(2), (6), (7), (8), and (10). Commenter states the removal of previous (7) and (8) will "leave the libraries void of any material specific to direct appeal and petitions for writs of habeas corpus at the state court level.

Accommodation: None.

Response 3C: Amended subsections 3124(a)(5), (6), (7), (8), and (15), respectively, list Matthew Bender, California Criminal Defense Practice; Matthew Bender, California Criminal Discovery; Matthew Bender, California Evidence Courtroom Manual; Matthew Bender, California Forms of Pleading and Practice; and Michie, Federal Habeas Corpus Practice and Procedure. All these publications, when taken as a whole, provide at least the equivalent amount of legal resources for inmate use than what were available in Continuing Education of the Bar (CEB) publications that had previously been listed in former subsections 3124(a)(7) and (a)(8).

The CDCR Office of Correctional Education has at any rate directed that hard copies of existing law library books in the institutions, including the CEB publications that were formerly listed in subsection 3124(a)(7) and (a)(8), are to be retained until 2020. Hard copies of the CEB publications accordingly remain available for inmate use before the designated time of disposal.

Comment #3D: Commenter suggests the Department "trim away" new proposed publications that are "outside the narrow/conservative holdings in *Lewis v Casey* and *Bounds v. Smith*" and use the resulting savings to reinstate the legal materials in previous subsections 3124(a)(7) and (8). Commenter further states that the legal materials in previous subsections 3124(a)(2) and (10) could be "installed autonomously" on the computers now running Lexis-Nexis.

Accommodation: None

Response 3D: The Lexis Nexis system offers legal materials for inmate use that are at least equivalent to the CEB publications previously listed in former subsections 3124(a)(7) and (8), the West's California Digest listed in former subsection 3124(a)(2), and the West's Federal Practice Digest listed in former subsection 3124(a)(10). Additionally, the CDCR Office of Correctional Education has directed that hard copies of existing law library books in the institutions are to be retained until 2020.

Comment #3E: Commenter states some legal materials “currently running on Lexis-Nexis CD ROM version have been observed by myself, other prisoners, and library staff as inaccurate and unreliable.” Specifically existing (and unchanged by the proposed regulations) subsections 3124(a)(17), (18) and (19).

Accommodation: None.

Response 3E: Lexis Nexis offers similar access to Shepards as did the previous West’s system. If an inmate or a staff member has difficulty using Shepard’s on the Lexis Nexis system, that person may report issues with the software to the library staff locally so they may be addressed.

Commenter #4:

Comment #4A: Commenter states he is a librarian at a law school library. Commenter states that he believes the new Lexis system and the previous West system are “fairly equivalent” however the “one loss” would be Witkin (amended subsection 3124(a)(6)). Commenter states the Department could “negotiate with Lexis for access to Witkin” and that providing Witkin in addition to the new titles “would arguably provide better secondary sources than the West titles.”

Accommodation: None.

Response 4A: The former subsection 3124(a)(6) had previously listed Witkin and Epstein, California Criminal Law. This publication has been replaced with Matthew Bender publications about California criminal law and practice, as set out in amended subsections 3124(a)(4) through (8), which offer at least as many legal resources as Witkin. See also response to Comment 3C.

Comment #4B: Commenter states “the greater loss to prisoners would be the Continuing Education of the Bar titles cut in subpart (a)(8) and (a)(9). These are indispensable to criminal law practitioners.”

Accommodation: None

Response 4B: See response to 3C.

Comment #4C: Commenter states “With regard to subpart (a)(3), California Official Reports is the title of the advance sheets to the Official California Reports and Official California Appellate Reports. Note that the words California and Official are interposed. It should also be noted that the word "Official" was added to the titles of the two reporters only at the 4th series--thus changing the language to Official California Reports would mean that prison libraries would only be required to provide access to California Supreme Court cases (not appellate courts) that were published in the 4th series onward. Changing the language to "California Reports and California Appellate Reports" would include all of the published precedent California decisions.”

Accommodation: Partial Accommodation

Response 4C: Subsection 3124(a)(3) is revised to add the publisher, Michie of the California Official Reports that is available on the Lexis Nexis system. The California Official Reports, as published by Michie, offers California Supreme Court opinions and published opinions from the California Courts of Appeal.

Comment #4D: Commenter states that “no library will ever be able to comply with subparts (a)(12) and (a)(13).” No system provides access to all federal appellate and district court cases as not all of these cases are reported, and the lack of date parameters in the proposed regulations means the Department would be responsible to provide cases going back potentially for centuries. Commenter suggests revised language: subsection 3124(a)(12) could state “All Federal Appeals Court cases as reported in the Federal Reporter” and subsection 3124(a)(13) could state “All Federal District Court cases as reported in the Federal Supplement.”

Accommodation: Full Accommodation.

CDCR agrees with the commenter. Subsection 3124(a)(12) is revised to list all Federal Appeals Court Cases, as reported in the Federal Reporter, and subsection 3124(a)(13) is revised to list all Federal District Court Cases, as reported in the Federal Supplement.

Commenter #5:

Comment #5A: Commenter states that most inmates are not computer literate and suggests training classes so that inmates are able to benefit from the proposed changes rather than finding the new system to be an obstacle.

Accommodation: None.

Response 5A: CDCR, though Lexis Nexis, has provided a hard-copy laminated set of research instructions that are posted next to every inmate law library computer. These instructions fully explain, in condensed form, how to use the Lexis Nexis system effectively. In addition, institutional librarians are trained to use Lexis Nexis and are available to assist inmates with the system as needed.

Comment #5B: Commenter states that it would be beneficial to inmates and society if technology training was provided to inmates to assist them in reentering the workforce after release. Commenter states that electronic tablets could be issued to inmates that would contain law library materials. Providing these tablets would allow inmates to have as much time as needed to work with law library materials.

Accommodation: None.

Response 5B: Although the comment does regard some aspect of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is insufficiently related to the specific action to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment.

Commenter #6: Commenter states the proposed changes are a “great mistake” due to the removal of the publications in subsections 3124(a)(2) and (10). Commenter states that removing these digests would “severely hamper” inmate’s ability to find important cases. Commenter states he has been using the new electronic system for many months and there is no way to emulate these digests. Commenter states the proposed changes “would be very detrimental to the functionality of the law library and would constitute an effective violation of inmate’s rights of access to the courts as provided for” in the State and federal Constitutions.

Accommodation: None.

Response 6: The amendment to subsection 3124(a)(2) removed West’s California Digest and the amendment to subsection 3124(a)(10) removed West’s Federal Practice Digest. These publications are replaced with several legal treatises offered by Lexis Nexis, including but not limited to Matthew Bender, California Criminal Defense Practice (amended subsection 3124(a)(5)); Matthew Bender, California Criminal Discovery (amended subsection 3124(a)(6)); Matthew Bender, California Evidence Courtroom Manual (amended subsection 3124(a)(7)); Matthew Bender, California Forms of Pleading and Practice (amended subsection 3124(a)(8)); and Michie, Federal Habeas Corpus Practice and Procedure (amended subsection 3124(a)(15).) These legal treatises provided by Lexis Nexis, combined with the robust global search functions in the Lexis Nexis system, provide at least the equivalent of legal research information for inmate use as the removed publications.

In addition, subject to an existing policy from the CDCR Office of Correctional Education, all institutions were directed to retain hard copies of the existing law library collection until 2020. Accordingly, until the expiration date of this directive, institutions continue to have hard copies of the West Digests and other publications.

Commenter #7:

Comment #7A: Commenter states the word “Counsel” in amended subsection 3124(a)(2) is misspelled and should be corrected to Council. Commenter further states the jury instructions in this subsection “don’t specify which ones, e.g., BAJI, CALJIC, CACI, etc. and what about federal civil and criminal jury instructions?”

Accommodation: Partial Accommodation.

Response 7A: The Department has corrected the spelling of “Council” in the amended text that was renoticed to the public on September 22, 2015. Also, the Judicial Council of Civil and Criminal Jury Instructions as set out in the amended subsection 3124(a)(2) includes a comprehensive set of state civil and criminal jury instructions, including the California Civil Jury Instructions (CACI), California Criminal Jury Instructions (CALCRIM), BAJI, and CALJIC. CDCR is not mandated at this time to offer federal civil and criminal jury instructions.

Comment #7B: Commenter states that proposed amended subsection 3124(a)(7) and new proposed subsection 3124(a)(25) are duplicative in that they cover the same subject matter but are from different publishers. Commenter suggests replacing one of these with a book on a different subject “such as a Mathew Bender California Civil Practice and Procedure, California Civil Litigation/Action Guide, California Civil Discovery, or the same books for federal court.”

Accommodation: None.

Response 7B: The amended subsection 3124(a)(7) lists Matthew Bender, California Evidence Courtroom Manual and the amended subsection 3124(a)(25) lists California Courtroom Evidence, by Cotchett. These publications are offered through Lexis Nexis to provide inmates with comprehensive information about the rules of evidence in California. With regard to federal and state civil practice, inmates have access at least to Deering’s California Codes Annotated (amended subsection 3124(a)(1)); Judicial Council of California Civil and Criminal Jury Instructions (amended subsection 3124(a)(2); Matthew Bender, California Forms of Pleading and Practice (amended subsection 3124(a)(8); Michie, United States Code Service (amended subsection 3124(a)(9); and Matthew Bender, Moore’s Federal Practice (amended subsection 3124(a)(10).) CDCR is not mandated at this time to offer additional titles beyond what is listed in the amended regulation.

Comment #7C: Commenter states new proposed subsection 3124(a)(26) is unnecessary for adult inmates sentenced under adult laws. Commenter suggests replacing this publication with other books that will be needed by the inmate population.

Accommodation: None.

Response 7C: Subsection 3124(a)(26) adds California Juvenile Courts Procedure and Practice to the law library collection that is available for inmates. This publication might be useful for inmates who were charged for their crimes as juveniles but tried and convicted as adults. CDCR strives to provide a wide range of resources, as California law provides inmates with broad access to the courts.

Comment #7D: Commenter states the proposed regulations will provide inmates with books regarding their civil rights but not the “practice and procedure” books needed to enforce those rights.

Accommodation: None.

Response 7D: See Responses to Comments 2, 7B, and 7C.

Comment #7E: Commenter states the publications listed in amended sections 3124(b)(1), (2), and (3) are not part of Lexis Nexis. Commenter asks whether an inmate can request updated versions of these books.

Accommodation: None.

Response 7E: Subsection 3124(b)(1) lists Federal Rules Decisions, subsection 3124(b)(2) lists Corpus Juris Secundum, and subsection 3124(b)(3) lists California Jurisprudence as legal materials that are available to inmates from an outside source. Inmates may request access to these materials via institution library staff.

Comment #7F: Commenter asks whether inmates will be allowed access to hard-copy books if those books are also available in the electronic system.

Accommodation: None.

Response 7F: Inmates will not be denied access to any hard-copy books available in institution law libraries as a result of these proposed regulations.

Commenter #8:

Comment #8A: Commenter states the publications described in the new proposed regulations are apparently intended to reflect the content of Electronic Law Library Delivery System, however there are errors and omissions, such as the publication name in subsection 3124(a)(2).

Accommodation: Partial Accommodation.

Response 8A: See Response to Comment 7A.

Comment #8B: Commenter states the publication listed in amended subsection 3124(a)(4) does not exist in the electronic system. The “rules of court” are instead contained in *Deering’s California Codes*

Annotated. Commenter suggests amended language for this subsection: “The California Rules of Court, published separately or contained in another publication, such as specified in subsection (1)”.

Accommodation: Partial Accommodation.

Response 8B: The reference in amended subsection 3124(a)(4) to Matthew Bender, Standard California Codes: Rules of Court, was an error. CDCR agrees with the commenter that the California Rules of Court are available in the Deering’s California Codes Annotated, as listed in the amended subsection 3124(a)(1). The Department will amend this subsection in a future rulemaking action to correct this error.

Comment #8C: Commenter states that several publications: *Federal Court Rules*, the United States Constitution, *Spanish/English Legal Dictionary*, and a Spanish language version of Title 15, Division 3 regulations are available on the electronic system and should be added to the proposed regulations.

Accommodation: None.

Response 8C: Subsection 3124(a) lists the law library materials that institutions are required to provide. However, additional titles such as what the commenter references may also be available.

Comment #8D: Commenter states the publication listed in amended subsection 3124(b)(1) is contained within the publications listed in amended subsections 3124(a)(12) and (13). Commenter suggests amended language similar to 8B (above).

Accommodation: None.

Response 8D: Subsection 3124(b)(1) lists the Federal Rules Decision (FRD) as an item of supplemental legal materials that is available to inmates. The FRD is a distinct publication from All Federal Appeals Court Cases as reported in the Federal Reporter (subsection 3124(a)(12)) and All Federal District Court Cases as reported in the Federal Supplement (subsection 3124(a)(13)).

Comment #8E: Commenter suggests the publication listed in amended subsection 3124(a)(16) should “be moved to the end of the 3124(a) list” since it is not contained in the electronic system.

Accommodation: None.

Response 8E: Subsection 3124(a)(16) adds The Daily Journal (newspaper), one year backfile to the regulatory list of law library materials that are made available to CDCR inmates. This regulatory list is not arranged by material type and CDCR is not required to place the Daily Journal at the end of section 3124(a).

Comment #8F: Commenter states the proposed regulations “should contain quality and performance requirements on the [electronic system] vendor regarding frequency of updates, accuracy of publications [...] and functionality of the software used to access and search the publications.” Commenter states “the update schedule is uncertain, the publications are rife with error, and the vendor is totally unresponsive to feedback concerning problems” and provides examples of what he describes as errors and lack of functionality.

Accommodation: None.

Response 8F: See Response to Comment 5B.

Comment #8G: Commenter states the Initial Statement of Reasons is “misleading” in that the replacement titles do not match the order of deleted titles (i.e., the publication being added to a subsection is not necessarily the specific replacement for the publication being removed). Commenter suggests reordering the proposed amended regulations to be more “organized and informative”.

Accommodation: None.

Response 8G: -There is no requirement in the Administrative Procedure Act or anywhere else to organize new proposed text as the commenter requests. Once the proposed text is adopted and the previous text repealed, the new regulatory section will stand on its own.

Commenter #9: Commenter objects to the removal of the *Continuing Education of the Bar, California Criminal Law Procedure and Practice* (formerly subsection 3124(a)(7)) from the list of required law library publications. Commenter states this publication “is absolutely mandatory for anyone concerned with an issue about California criminal law” because it is a comprehensive overview of several key legal topics. Commenter states nothing else on the proposed list “covers the breadth of issues that this volume does”. Commenter states that “depriving” inmates of this book is “simply wrong”.

Accommodation: None.

Response 9: See Response to Comment 3C.

Commenter #10:

Comment #10A: Commenter states “training and assistance on the use of electronic databases are essential to ensure prisoners can in fact access legal materials. It is essential that prisoners can understand and use legal databases in order to have meaningful access to courts.” Commenter quotes an American Bar Association statement regarding electronic legal materials (not related to the proposed regulations) stating “trained staff or trained prisoners should be available to teach prisoners how to conduct research using either the law books or the electronic system”. Commenter states that a recent review by prison librarians in Oregon found the Lexis Nexis search engine confusing to use. Commenter suggests “periodic, interactive” training that covers how to use the electronic databases.

Accommodation: Partial Accommodation.

Response 10A: See Response to Comment 5A.

Comment #10B: Commenter states the proposed regulations must mandate a minimum number of computers based on prison population. “One computer for every fifty people incarcerated is the minimum level necessary to permit sufficient access to the law library.” Commenter cites Section 3123 regarding access to law libraries and states that wait times should be monitored and additional computers made available if inmate access is insufficient.

Accommodation: None.

Response 10B: The amended section 3124 pertains solely to the content of law libraries. This regulatory package does not pertain to the number of computers that are available for inmate use. See also response to Comment 5B.

Comment #10C: Commenter states that books currently in law libraries should not be destroyed. “Though the books will become outdated, they may still be useful for older case cites and any resources can potentially be of value.” Commenter states the proposed regulations should require that these books not be removed or destroyed. Commenter states “California should consider continuing to update hard copies of the most essential materials, such as the California and federal statutes related to prisoner’s rights, the California Reporter, and the Supreme Court Reporter.

Accommodation: Partial Accommodation.

Response 10C: Subsection 3124(a) sets out the current list of legal materials which are available to inmates. Hard copies of some existing law library books are not included on this list. However, the CDCR Office of Correctional Education has nevertheless directed that hard copies of law library books are to be retained until 2020. See also Response to Comment 6.

Commenters #11 through #29A: (Note: these comments are substantively identical and are therefore grouped together for simplicity and clarity)

Commenters “express their concern” regarding the proposed amendments. Commenters state the Lexis system “doesn’t have all the components” of the previous system to adequately research criminal cases. Commenters ask that the previous system be restored because the new system is not a true equivalent system and has caused hardship to inmates learning and searching legal materials.

Accommodation: None.

Response 11 through 29A: See Response to Comment 2.

Commenter #29B: Commenter states the “new system” will disadvantage wrongly convicted prisoners in comparison to the old West system. “Please keep the West System in place so that these wrongly convicted prisoners can have the same access to their records when it comes to exposing the truth about their cases.”

Accommodation: None.

Response 29B: Lexis Nexis is an equivalent system that offers at least as many resources as West Publishing company materials.

Commenter #30: Commenter is “in favor of keeping the West System in place”.

Accommodation: None

Response 30: See response to Comment #29B.

Commenter #31: (Note: Enclosed with this comment were several Declarations from law librarians who were asked by Commenter #31 to comment on the proposed regulations. For clarity, and because each Declaration made different, specific comments, each Declaration has been given a separate commenter number – see comments #32 through #37.)

Comment 31A: Commenter states the proposed regulations “exceed CDCR’s authority” and violate prisoners’ right to access the courts. Commenter states “The proposed regulations [...] must be modified to ensure prisoners are provided reasonably adequate access to the courts, as required by the US

Constitution and the *Gilmore* court orders.” Commenter provides a history of the litigation and regulations regarding the issue of law library contents.

Accommodation: None.

Response 31A: A former federal court injunction for *Gilmore v. State* had set out a list of required materials for CDCR prison law libraries. As of April 2010, however, the *Gilmore* injunction was terminated. The regulatory amendment accordingly does not violate the *Gilmore* injunction. Moreover, the current Lexis collection is at least equivalent to the former Westlaw collection. See also response to Comment 2.

Comment 31B: Commenter states “The collection that the Department seeks to establish is not equivalent to the ‘*Gilmore*’ collection [...] the ‘Lexis Library’ omits critical resources without which prisoners will not have adequate access to the courts.” Commenter provides comments from several librarians at California law schools regarding the proposed regulations (see Comments #32 through #37 below).

Accommodation: None.

Response 31B: See Responses to Comments 2 and 31A.

Comment 31C: Commenter “strongly recommends” the proposed regulations be modified to require, at a minimum, the following publications: *West’s California Digest*; CEB, *Appeals and Writs in Criminal Cases*; CEB, *Criminal Law Procedure and Practice*; and Witkin and Epstein, *California Criminal Law*. Commenter also states the *California State Prisoners’ Handbook* ought to be included in the mandatory collections.

Accommodation: None.

Response 31C: See Responses to Comments 3C, 4A, and 6.

Comment 31D: Commenter states “The proposed regulations lack clarity.” Commenter references proposed subsections 3124(a)(12) and (13) and states that no system can provide access to all cases. “The proposed regulation should be modified to reflect the collection of federal appellate and lower court cases that will be actually available to prisoners.”

Accommodation: Full Accommodation.

Response 31D: See response to Comment 4D.

Commenter #32:

Comment 32A: Commenter states the proposed regulations “do not provide prisoners with adequate access to legal research materials, and therefore, adequate access to the courts”. Commenter states “The regulation is unclear as written. I am unable to determine [...] the content of the [electronic system] and how prisoners may search this library’s content” therefore the commenter is unable to determine “the usability of this system for prisoners”.

Accommodation: None.

Response 32A: The content of the Lexis Nexis system, as codified into the amended section 3124, provides a comprehensive set of legal materials for the purposes of ensuring adequate inmate access to the courts. See also responses to Comments 2, 3C, 4A, and 6.

Comment 32B: Commenter states the West Key Number Digest System available under the existing regulations, is superior to the Lexis system. Commenter states “I am unable to determine [...] if cases will be offered online or in print and if prisoners will be able to search for cases by using Lexis headnotes.”

Accommodation: None.

Response 32B: The Lexis headnotes and search functions are equivalent to the West Key Number Digest System for the purposes of locating relevant cases and statutes for inmate use. See also responses to Comments 2, 3C, 4A, and 6.

Comment 32C: Commenter states that Witkin and Epstein *California Criminal Law* (formerly subsection 3124(a)(6)) is an essential resource for which there is no substitute in Lexis.

Accommodation: None.

Response 32C: See Responses to Comments 3C and 4A.

Comment 32D: Commenter states “In order for anyone to do effective legal research, they need access to multiple secondary sources, online sources, and the Internet.” Commenter describes the many resources available to judges, attorneys, and most non-incarcerated people and states “The majority of these sources are not listed in the proposed regulations, and therefore [...] the proposed regulations are inadequate and deny prisoners access to the courts.”

Accommodation: None.

Response 32D: See response to Comment 32A.

Commenter #33:

Comment 33A: Commenter states West’s California Digest (formerly subsection 3124(a)(2)) is the only publication “which provides access to cases in print format”. Commenter states inmates will now have access to California Official Reports (subsection 3124(a)(3)), which is available in both print and electronic formats. Commenter states the proposed regulations should clarify “whether these cases will be available electronically.” If not, West’s California Digest is needed.

Accommodation: None.

Response 33A: Subsection 3124(a) sets out a list of law library materials that are available to inmates in print and/or by means of the Electronic Law Library Delivery System. Included in that list is Michie, California Official Reports, as set out in subsection 3124(a)(3). The California Official Reports is provided electronically through the Lexis Nexis system. In view of the availability of the California Official Reports and the other law library items on Lexis Nexis, this system does not need to include West’s California Digest. See also Response to Comment 6.

Comment 33B: Commenter references proposed subsections 3124(a)(12) and (13) and states that no system can provide access to all cases. Commenter states the proposed regulations should be amended to

clarify “whether published cases, unpublished cases, or both as included in a particular database will be provided to inmates”.

Accommodation: Partial Accommodation.

Response 33B: See response to Comment 4D.

Comment 33C: Commenter states the Continuing Education of the Bar titles removed from the proposed regulations (former subsections 3124(a)(7) and (8) are “of high quality and yet are easily understood by non-legally trained individuals”. Commenter states that Matthew Bender, *California Forms of Pleading and Practice* (proposed subsection 3124(a)(8)) is comprehensive but requires legal sophistication to use effectively.

Accommodation: None.

Response 33C: See Responses to Comments 3C and 6.

Comment 33D: Commenter states Matthew Bender, *California Criminal Discovery* (proposed subsection 3124(a)(6)) is “far more limited in scope” than the publication it is replacing in this subsection and not as appropriate for non-lawyers.

Accommodation: None.

Response 33D: See Responses to Comments 3C and 6.

Commenter #34:

Comment 34A: Commenter states the removal of West’s California Digest (former subsection 3124(a)(2)) is “a cause for concern because without a digest, prisoners who lack access to electronic resources will lack adequate case law research materials.” Commenter states this publication “has no counterpart because Lexis does not publish a California Digest.”

Accommodation: None.

Response 34: See Responses to Comments 6 and 33A.

Comment 34B: Commenter states the removal of “the Witkin treatise” (former subsection 3124(a)(6)) is “a cause for concern” as this publication is “one of the most widely used secondary sources in California law”. Commenter states that Deering’s California Codes Annotated (new proposed subsection 3124(a)(1)) will not be as useful to inmates doing legal research because it “references in its annotations the Witkin treatises much more often than the Bender publications” and inmates will not be able to take advantage of the annotated code.

Accommodation: None.

Response 34B: See Response to Comments 3C and 6.

Commenter #35: Commenter states “the proposed changes [...] do not provide state prisoners who lack access to electronic resources with adequate print legal research materials.” Commenter states “the West Digest system (former subsection 3124(a)(2)) is the only comprehensive method for performing case law

research by topic.” Eliminating this publication “deprives inmates of the ability to find relevant case law”. Additionally, the Continuing Education of the Bar *Appeals and Writs in Criminal Cases* (former subsection 3124(a)(8)) “has no equivalent publication in the proposed changes”.

Accommodation: None.

Response 35: See Response to Comments 3C, 6, and 33A.

Commenter #36:

Comment 36A: Commenter states the proposed changes do not provide state prisoners with adequate legal research materials because they delete core materials that are not included under the new contract with Lexis and do not reflect current practice as to what is actually still available to prisoners.

Accommodation: None.

Response 36A: Lexis Nexis is an equivalent system that offers at least as many resources as West Publishing company materials. Additionally, see responses to Comments 2, 3C, 6, and 33A.

Comment 36B: Commenter states that Witkin and Epstein *California Criminal Law* (formerly subsection 3124(a)(6)) is “a basic resource for California criminal law research and that Continuing Education of the Bar *California Criminal Law Procedure and Practice* (former subsection 3124(a)(7)) and Continuing Education of the Bar *Appeals and Writs in Criminal Cases* (former subsection 3124(a)(8)) “add balance to the other materials”. Commenter states these publications should be restored to the list.

Accommodation: None.

Response 36B: See Response to Comment 36A.

Comment 36C: Commenter states that “Edward A. Rucker & Mark E. Overland, *California Criminal Practice Motions Jury Instructions and Sentencing* (latest edition) should be added to the list.”

Accommodation: None.

Response 36C: Subsection 3124(a)(2) lists the Judicial Council of California Civil and Criminal Jury Instructions as an available law library resource for inmates. In addition, subsection 3124(a)(5) makes the Matthew Bender, *California Criminal Defense Practice* available for inmate use. These items obviate the need for the publication suggested in the comment.

Comment 36D: Commenter states “Ballantine’s legal dictionary (item 20) is not updated as frequently as Black’s Law Dictionary. I recommend requiring Black’s only”

Accommodation: None.

Response 36D: This comment references an existing subsection (3124(a)(20)) that is not being amended by this proposed regulatory action. Pursuant to Government Code section 11346.9(a)(3), the Department is not required to provide a response. The commenter is free to petition the Department to amend this subsection.

Commenter #37: Commenter states the proposed changes do not provide state prisoners with adequate legal research materials due to the removal of West’s California Digest. Commenter states the Digest allows researchers to find relevant cases that cannot be found using any other print resources because of how the digest is organized by subject rather than by case or statute. Commenter states the Digest is currently the only research tool of its kind.

Accommodation: None.

Response 37: See Responses to Comments 6 and 33A.

Commenter #38:

Comment #38A: Commenter suggests extensive amendments to subsection 3124(b). Commenter suggests adopting the following language following the first sentence of this subsection: “Whenever supplemental legal materials are made available by the publisher in, on the Internet as, or so they can be printed, exported, or scanned into, printable electronic versions, such as, but not limited to, the PDF format, the institution shall source only such versions, electronically archive such materials on one or more computers allowing for future retrieval by institution/facility law librarians. Upon inmate requests, including paging requests, for supplemental legal material, the law librarian receiving the request shall query the archive to determine if the requested material is already available from an inside source, the archive.” Commenter suggests adopting the phrase “the latest edition of” after “but shall not be limited to” in the existing second sentence of this subsection.

Accommodation: None.

Response 38A: The regulatory amendment to section 3124 pertains exclusively to law library content. This amendment does not revise the processes for law library operations relating to outside sources.

Comment #38B: Commenter also suggests adopting the following publications in this subsection: “Lexis/Nexis COURTLINK (print out access via law librarian only); CEB *California Criminal Law Practice and Procedure*; CEB *Appeals and Writs in Criminal Cases*; California Daily Appellate Reports; Federal Daily District/Circuit Reports; Daily Journal Corporation’s California Directory of Attorneys; and Thompson-West Trial Objections.

Accommodation: None.

Response 38B: As set out in the amended subsection 3124(a), a comprehensive set of law library materials is available for inmate use. See also Responses to Comments 3C and 6. CDCR is not required to provide the publications suggested by the commenter.

NO PUBLIC COMMENTS WERE RECEIVED DURING THE RENOTICE PUBLIC COMMENT PERIOD