

**State of California
Office of Administrative Law**

In re:
**Department of Corrections and
Rehabilitation**

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections: 3401.6
Amend sections: 3084.2, 3084.6, 3084.8,
3084.9, 3323, 3335, 3401.5
Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2016-0908-01

OAL Matter Type: Regular Resubmittal (SR)

This rulemaking action by the Department of Corrections and Rehabilitation amends seven sections and adopts one section in title 15 of the California Code of Regulations to implement the national standards for detection, prevention, reduction, and punishment of prison rape developed as a result of the federal Prison Rape Elimination Act (PREA).

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/20/2016.

Date: October 20, 2016



Lindsey S. McNeill
Attorney

For: Debra M. Cornez
Director

Original: Scott Kernan
Copy: Anthony Carter

RESUBMITTAL

Instructions on reverse

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2015-0828-02	REGULATORY ACTION NUMBER 2016-0908-01 SR	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

2016 SEP -8 P 3:08
OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

OCT 20 2016

1:28 pm

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation	AGENCY FILE NUMBER (if any) 14-0265
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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 Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER 2015, 37-2	PUBLICATION DATE 9/11/2015

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Prison Rape Elimination Act	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2016-0422-045
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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 3401.6 AMEND 3084.2, 3084.6, 3084.8, 3084.9, 3323, 3335, 3401.5, REPEAL
TITLE(S) 15	

3. TYPE OF FILING	<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))			<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"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify)	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only
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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) Initial Notice on 8/8/15 - 11/4/15 (45 day), 15 day Re notice 2/3/16-2/29/16, 2nd 15 day Re notice 7/29/16-8/19/16
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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 checked="" 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)	per agency request 10/20/16 per agency request 10/20/16 per agency request 10/20/16
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7. CONTACT PERSON Anthony Carter	TELEPHONE NUMBER (916) 445-2220	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Anthony.Carter@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 9-8-16
TYPED NAME AND TITLE OF SIGNATORY Scott Kernan, Secretary, CDCR	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 20 2016

Office of Administrative Law

TEXT OF REGULATIONS AS FINALLY ADOPTED

In the following text, ~~strikethrough~~ indicates deleted text; underline indicates added or amended text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs Article 8

3084.2 Appeal Preparation and Submittal.

Subsection 3084.2(a) through 3084.2(f) remains unchanged.

Subsection 3084.2(g) is amended to read:

(g) An inmate or parolee shall not submit an appeal on behalf of another person, unless the appeal contains an allegation of sexual violence, staff sexual misconduct, or sexual harassment.

Subsections 3084.2(h) through 3084.2(i)(2) remains unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5(a) and 5054, Penal Code; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations 28 CFR Sections 35.107 and 115.52.

3084.6. Rejection, Cancellation, and Withdrawal Criteria.

Subsection 3084.6(a) through 3084.6(c)(4) remain unchanged.

Subsection 3084.6(c)(5) is amended to read:

(c) An appeal may be cancelled for any of the following reasons, which include, but are not limited to:

*

*

(5) The appeal is submitted on behalf of another person, unless it contains allegations of sexual violence, staff sexual misconduct, or sexual harassment of another inmate.

Subsection 3084.6(c)(6) through 3084.6 remains unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5 and 5054, Penal Code; Sections 19570, 19575.5, 19583.5 and 19635, Government Code; and 28 CFR Section 115.52.

3084.8. Appeal Time Limits.

Subsections 3084.8(a) remains unchanged.

(a) Time limits for reviewing appeals shall commence upon the date of receipt of the appeal form by the appeals coordinator.

Subsection 3084.8(b) is amended to read:

(b) Except as described in subsection 3084.8(b)(4), An inmate or parolee must submit the appeal within 30 calendar days of:

Subsections 3084.8(b)(1) through 3084.8(b)(3) remain unchanged.

- (1) The occurrence of the event or decision being appealed, or;
- (2) Upon first having knowledge of the action or decision being appealed, or;
- (3) Upon receiving an unsatisfactory departmental response to an appeal filed.

Subsection 3084.8(b)(4) is added:

(4) There shall be no time limits for allegations of sexual violence or staff sexual misconduct.

Subsections 3084.8(c) through 3084.8(g) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; and ~~Section 35.107, Title 28, Code of Federal Regulations~~ 28 CFR Sections 35.107 and 115.52.

3084.9. Exceptions to the Regular Appeal Process.

Subsections 3084.9(a) through 3084.9(a)(4) remain unchanged.

(a) Emergency appeals. Emergency appeals should not be used by inmates or parolees as a substitute for verbally or otherwise informing staff of an emergency situation requiring immediate response.

Subsections 3084.9(a)(5) through 3084.9(a)(5)(A)(7) are adopted to read:

(5) Prison Rape Elimination Act (PREA) Sexual Violence (Inmate on Inmate) and Staff Sexual Misconduct Appeals.

A grievance in whole or part containing allegations of sexual violence or staff sexual misconduct shall be processed as an emergency appeal. The appeal shall be immediately reviewed by the Hiring Authority or designee and processed directly at the Second Level of Review. When the appeal alleges or indicates that the inmate may be in substantial risk of imminent sexual violence or imminent staff sexual misconduct, a risk assessment shall be undertaken.

(A) Staff Complaints: While the department maintains the right to defend against an inmate lawsuit on the grounds of the applicable statute of limitations, a time limit shall not be imposed upon when an appellant may file such a grievance. The time limits for processing an emergency Staff Complaint are as follows:

1. There shall be no time limit for allegations of staff sexual misconduct, but once received by the appeals coordinator, the appeal shall be screened in accordance with subsection 3084.5(b)(4).

2. A risk assessment determination of all staff sexual misconduct related appeals shall be immediately completed by the Hiring Authority to determine if the appellant is in substantial risk of imminent staff sexual misconduct. If the assessment results in a determination of the appellant being in substantial risk of imminent staff sexual misconduct, the Hiring Authority shall take immediate corrective action.
3. The appeals coordinator shall provide an initial response to the appellant within 48 hours that shall include whether or not the appeal is being processed as an emergency Staff Complaint.
4. An initial risk assessment shall be documented within 48 hours and the completed risk assessment determination by the Hiring Authority shall be documented within 5 calendar days describing whether the appellant was determined to be in substantial risk of imminent staff sexual misconduct and the action(s) taken in response to the appeal.
5. If the conditions of exceptional delay exist as described in subsection 3084.8(d), the time constraints of Second Level of Review or Third Level of Review may be extended in increments of 30 days, but shall not exceed 160 days from the date the appeal was received by the appeals coordinator. Any extension shall require written notification to the appellant and shall include the estimated completion date. The time consumed by the appellant in preparing the appeal shall not count in the calculation of a timely response.
6. The appellant may consider an absence of a timely response at any level, including that of any properly noticed extension, a denial at that level.
7. The appellant is required to respond to the Second Level Review within 30 calendar days in accordance with subsection 3084.8(b)(3).

Subsections 3084.9(a)(5)(B) through 3084.9(a)(5)(B)(7) are adopted to read:

(B) PREA Allegations Against Another Offender: A time limit shall not be imposed upon when an appellant may file a grievance alleging inmate on inmate sexual violence. The time limits for processing an emergency sexual violence appeal are as follows:

1. Once received by the appeals coordinator, the appeal shall be screened in accordance with section 3084.8. When the appeal alleges or indicates that the inmate is at substantial risk of imminent sexual violence, a risk assessment shall be undertaken.
2. A risk assessment determination of all sexual violence related appeals shall be immediately completed by the Hiring Authority to determine if the appellant is in substantial risk of imminent sexual violence. If the assessment results in a determination of the appellant being in substantial risk of imminent sexual violence, the Hiring Authority shall take immediate corrective action.
3. The appeals coordinator shall provide an initial response to the appellant within 48 hours that shall include whether or not the appeal is being processed as an emergency PREA appeal.
4. An initial risk assessment shall be documented within 48 hours and the completed risk assessment determination by the Hiring Authority shall be documented within 5 calendar days describing whether the appellant was determined to be in substantial risk of imminent sexual violence and the action(s) taken in response to the appeal.
5. If the conditions of exceptional delay exist as described in subsection 3084.8(d), the time constraints of Second Level of Review or Third Level of Review may be extended

in increments of 30 days, but shall not exceed 160 days from the date the appeal was received by the appeals coordinator. Any extension shall require written notification to the appellant and shall include the estimated completion date. The time consumed by the appellant in preparing the appeal shall not count in the calculation of a timely response.

6. The appellant may consider an absence of a timely response at any level, including that of any properly noticed extension, a denial at that level.

7. The appellant is required to respond to the Second Level Review within 30 calendar days in accordance with subsection 3084.8(b)(3).

Subsections 3084.9(b) through 3084.9(i)(6) remain unchanged.

Note: Authority cited: Section 5058, Penal Code; and Section 6304.3, Labor Code. Reference: Sections 148.6, 832.5, 832.7, 832.8, 5054 and 5058.4, Penal Code; Sections 935.6, 965, 3300-3313, 19570-19575.5, 19583.5 and 19635, Government Code; Sections 98.7 and 6304.3, Labor Code; Sections 337, 338 and 339, Code of Civil Procedure; Sections 344.40, 344.41, 344.42 and 344.43, Title 8, Industrial Relations, California Code of Regulations; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; ~~Section 35.107, Title 28, Code of Federal Regulations~~ 28 CFR Sections 35.107 and 115.52; Wolff v. McDonnell (1974) 418 U. S. 539, 558-560; and Vasquez v. State of California, 105 Cal.App.4th 849 (2003) as implemented by the Stipulated Injunction and Order entered by the Superior Court of San Diego County in Case No.GIC-740832.

Subchapter 4. General Institution Regulations

Article 5.

3323. Disciplinary Credit Forfeiture Schedule.

Subsections 3323(a) through 3323(b)(2) remain unchanged.

(a) Upon a finding of guilt of a serious rule violation, a credit forfeiture against any determinate term of imprisonment or any minimum eligible parole date for an inmate sentenced to an indeterminate sentence, as defined in section 3000 Indeterminate Sentence Law (ISL), shall be assessed within the ranges specified in (b) through (h) below:

(b) Division "A-1" offenses; credit forfeiture of 181-360 days.

Subsection 3323(b)(3) is amended to read:

(3) Battery, including sexual battery, causing serious injury.

Subsections 3323(b)(4) through 3323(f)(8) remain unchanged.

(f) Division "D" offenses; credit forfeiture of 61-90 days.

Subsection 3323(f)(9) is amended to read:

(9) Assault or battery, including sexual assault or battery, on a prisoner with no serious injury.

Subsections 3323(f)(10) through 3323(k)(4) remain unchanged.

Note: Authority cited: Sections 5058, 5058.3 and 1170.05, Penal Code. Reference: Sections 148, 241, 243, 295-300.3, 314, 647, 1170.05, 2932, 2933, 4500, 4501, 4501.1, 4573.6, 4576, 4600, 5054 and 12020, Penal Code.

Article 7.

3335. Administrative Segregation.

Subsection 3335 is amended to read:

3335. Administrative Segregation.

When an inmate's presence in an institution's General Population (GP) presents an immediate threat to the safety of the inmate or others, endangers institution security or jeopardizes the integrity of an investigation of an alleged serious misconduct, criminal activity, or the safety of any person, the inmate shall be immediately removed from the GP and placed in administrative segregation. Administrative segregation may be accomplished by confinement in a designated Administrative Segregation Unit (ASU) or, in an emergency, to any single cell unit capable of providing secure segregation.

(a) Non Disciplinary Segregation.

(1) Non Disciplinary Segregation (NDS) means segregated housing placement for administrative reasons to include but are not limited to:

(A) ASU placement for safety concerns not resulting from misconduct warranting a Rules Violation Report.

(B) Investigation not related to misconduct or criminal activity.

(C) Being a relative or an associate of a prison staff member.

(D) Investigation related to being the victim of a Prison Rape Elimination Act (PREA) incident

1. If the placement in NDS is related to being the victim of a PREA incident, the inmate will be afforded all programs, privileges, and education in accordance with section 3044 and subsection 3190(b)(5)(C), of Title 15 of the CCR. If these are restricted, assigned staff shall document: 1) the opportunities that have been limited; 2) the duration of the limitation; and 3) the reasons for such limitations.

2. The facility shall assign such inmates to NDS only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days. If the period of segregation exceeds 30 days, reasoning shall be documented on a CDC Form 128-G (Rev. 10/89), Classification Chrono.

3. Every 30 days, the facility shall afford each such inmate with a review by the assigned custody supervisor to determine whether there is a continuing need for segregation from the general population. The review shall be documented on the CDC Form 128-B (Rev. 4/74), General Chrono. If the custody supervisor determines the need for continued segregation no longer exists, the inmate shall be referred to the Institution Classification Committee for a program review.

(2) Designation as NDS shall be made by ICC.

(A) Any case designated as NDS, and included in the MHSDS, shall be transferred to an appropriate institution within 72 hours of initial designation.

Subsection 3335 (b) through 3335 (e) remains unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; 28 CFR Sections 115.42 and 115.43; *Wright v. Enomoto*, (1976) 462 F Supp 397; and *Toussaint v. McCarthy* (9th Cir. 1986) 801 F2d 1080, cert. denied, 481 U.S. 1069.

Subchapter 5. Personnel

Article 2

§ 3401.5. Employee Staff Sexual Misconduct.

(a) For the purposes of this section, staff sexual misconduct means any sexual behavior by a departmental employee, volunteer, agent or individual working on behalf of the Department of Corrections and Rehabilitation, which involves or is directed toward an inmate or parolee. The legal concept of "consent" does not exist between departmental staff and inmates/parolees; any sexual behavior between them constitutes sexual misconduct and shall subject the employee to disciplinary action and/or to prosecution under the law. Sexual misconduct includes, but is not limited to:

Subsection 3401.5(a)(1) through 3401.5(a)(3)(F) remain unchanged.

Subsection 3401.5(a)(4) and 3401.5(a)(5) are adopted to read:

(4) Display by staff, in the presence of an inmate, of the staff person's uncovered genitalia, buttocks, or breast;

(5) Voyeurism by a staff person including volunteers or independent contractors. Voyeurism is defined as an invasion of privacy of an offender by staff for reasons unrelated to official duties.

Subsection 3401.5(b) through 3401.5(e) is amended to read:

(b) Penalties. All allegations of staff sexual misconduct shall be subject to investigation, which may lead to disciplinary action and/or criminal prosecution.

(c) Reporting Requirements. Any employee who observes, or who receives information from any source concerning staff sexual misconduct, shall immediately report the information or incident directly to the ~~institution head~~ hiring authority, unit supervisor, or highest-ranking official on duty, ~~who shall then immediately notify the Office of Internal Affairs.~~ Failure to accurately and promptly report any incident, information or facts which would lead a reasonable person to believe sexual misconduct has occurred may subject the employee who failed to report it to disciplinary action.

(d) Confidentiality. Alleged victims who report criminal staff sexual misconduct falling into one of the Penal Code section set forth in Government Code Section 6254(f)(2) shall be advised that their identity may be kept confidential pursuant to Penal Code Section 293.5, upon their request.

(e) Retaliation Against Employees. Retaliatory measures against employees who report incidents of staff sexual misconduct shall not be tolerated and shall result in disciplinary action and/or criminal prosecution. Such retaliatory measures include, but are not limited to, unwarranted denials of promotions, merit salary increases, training opportunities, or requested transfers; involuntary transfer to another location/position as a means of punishment; or unsubstantiated poor performance reports.

(f) Retaliation Against Inmates/Parolees. Retaliatory measures against inmates/parolees who report incidents of staff sexual misconduct shall not be tolerated and shall result in disciplinary action and/or criminal prosecution. Such retaliatory

measures include, but are not limited to, coercion, threats of punishment, or any other activities intended to discourage or prevent an inmate/parolee from reporting sexual misconduct.

Subsection 3401.5(g) is adopted to read:

(g) Protection Measures. Multiple protection measures shall be considered to protect inmate victims who report staff sexual misconduct or cooperate with staff sexual misconduct investigations including but not limited to housing changes or transfers for inmate victims, removal of alleged staff from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting staff sexual misconduct or sexual harassment or for cooperating with investigations.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 289.6, 293.5 and 5054, Penal Code; and Section 6254, Government Code; and 28 CFR Sections 115.67.

Subsection 3401.6 is adopted to read:

3401.6. Staff Sexual Harassment.

(a) Staff Sexual Harassment. For the purpose of the Prison Rape Elimination Act policy, staff sexual harassment means repeated verbal comments or gestures of a sexual nature to an offender by a staff member, volunteer, or contractor, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

(b) Penalties. All allegations of staff sexual harassment shall be subject to review and investigation, and when appropriate, to disciplinary action and/or criminal prosecution.

(c) Reporting Requirements. Any employee who observes, or who receives information from any source concerning staff sexual harassment shall immediately report the information or incident directly to the hiring authority, unit supervisor, or highest-ranking official on duty. Failure to accurately and promptly report any incident, information or facts which would lead a reasonable person to believe staff sexual harassment has occurred may subject the employee who failed to report it to disciplinary action.

(d) Retaliation Against Inmates/Parolees. Retaliatory measures against inmates/parolees who report incidents of staff sexual harassment shall not be tolerated and shall result in disciplinary action and/or criminal prosecution. Such retaliatory measures include, but are not limited to, coercion, threats of punishment, or any other activities intended to discourage or prevent an inmate/parolee from reporting sexual harassment.

(e) Protection Measures. Multiple protection measures may be considered to protect inmate victims who report staff sexual harassment or cooperate with staff sexual harassment investigations including but not limited to housing changes or transfers for inmate victims, removal of alleged staff from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting staff sexual harassment or for cooperating with investigations.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 289.6, 293.5 and 5054, Penal Code; Section 6254, Government Code; and 28 CFR Sections 115.67 and 115.76.

NAME and NUMBER

CDC 128-B (Rev. 4/74)

DATE

GENERAL CHRONO



NAME and NUMBER

CDC 128-B (Rev. 4/74)

DATE

GENERAL CHRONO



NAME and NUMBER

CDC 128-B (Rev. 4/74)

DATE

GENERAL CHRONO

STATE OF CALIFORNIA		CDC-128-G (10/89) CLASSIFICATION CHRONO		DEPARTMENT OF CORRECTIONS	
CDC NUMBER	NAME	CLASSIFICATION SCORE	TYPE AND RELEASE DATE		
CUSTODY	ASSIGNMENT	WG/PG	NEXT CLASSIFICATION		
OTHER COMMITTEE ACTIONS:		HOUSING	RECOMMENDATION TO CSR:		
COMMENTS:					

INSTITUTION	CLASSIFICATION	DATE	SIGNATURE

STATE OF CALIFORNIA		CDC-128-G (10/89) CLASSIFICATION CHRONO		DEPARTMENT OF CORRECTIONS	
CDC NUMBER	NAME	CLASSIFICATION SCORE	TYPE AND RELEASE DATE		
CUSTODY	ASSIGNMENT	WG/PG	NEXT CLASSIFICATION		
OTHER COMMITTEE ACTIONS:		HOUSING	RECOMMENDATION TO CSR:		
COMMENTS:					

INSTITUTION	CLASSIFICATION	DATE	SIGNATURE

FINAL STATEMENT OF REASONS:

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

UPDATES TO THE INITIAL STATEMENT OF REASONS:

The Notice of Regulations was published in the California Regulatory Notice register on September 11, 2015, which began the public comment period. The Notice of Change to Regulations 15-07 was mailed out by September 11, 2015 and also posted on the Department's Internet and Intranet websites. The public hearing was held November 4, 2015. No one provided public comments.

During the public comment period 27 comments were received from 5 commenters. These comments are discussed below under the heading "*Summaries and Responses to Written Public Comments.*" During a review of these comments, it was determined that accommodations should be included in a modified text.

A 15-Day Renotice, which included revisions to the revised text of the regulations, were distributed on February 3, 2016, to all persons whose comments were received during the public comment period and all person who requested notification of the availability of such changes. These documents were also posted on the Department's Internet and Intranet websites. The changes and reasons for them are found below under the heading "*Changes to Text as Originally Noticed to the Public.*" During the 15-Day comment period, no commenters responded.

A 2nd 15-Day Renotice, which included revisions to the revised text of the regulations, were distributed on July 29, 2016, to all persons whose comments were received during the public comment period and all person who requested notification of the availability of such changes. These documents were also posted on the Department's Internet and Intranet websites. The changes and reasons for them are found below under the heading "*Changes to Text as Originally Noticed to the Public.*" During the 2nd 15-Day comment period, no commenters responded.

Non-substantive revisions to the final text were made to ensure consistency and clarity with punctuation, references, grammatical errors, and numbering.

Sections 3401.5(g) and 3401.6(e) inadvertently referenced the term "inmate abusers". These specific sections are intended to refer only to sexual misconduct and sexual harassment as perpetrated by staff. As such the references are clearly incorrect and have been removed.

The adoption of Subsection 3401.6(c) was adopted to ensure that any employee who observes, or receives information concerning staff sexual harassment has a duty to immediately report the information accurately. This requirement meets the intent of the PREA national standards and is in conjunction with current Departmental policy regarding employee discipline that resulted from *Madrid v. Woodford*, (USDC. No CV90-03094 TEH) December 2005.

Subsections 3335(a)(1)(D)2. and 3335(a)(1)(D)3. reference two departmental forms (CDC Form 128-B and CDC Form 128-G). These forms were previously incorporated by reference in other sections of the California Code of Regulations, Title 15, Division 3, pursuant to the Administrative Procedure Act. These forms would have been made available had any requests for copies been received.

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 adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. No reasonable alternatives were brought to the attention of the Department that would alter the Department's initial determination.

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.

CHANGES TO TEXT AS ORIGINALLY NOTICED TO THE PUBLIC

Section 3084.2 is being amended to allow inmates to file an appeal on behalf of another inmate when the appeal contains an allegation of sexual violence, staff sexual misconduct, or sexual harassment. This change is being made based on findings in the first formal PREA audit and to continue to address the department's commitment to complying with the Federal standards.

Section 3084.6 is being amended to ensure that appeals containing allegations of sexual violence, staff sexual misconduct, or sexual harassment which are submitted on behalf of another inmate will not be automatically cancelled without being addressed. This change is being made based on findings in the first formal PREA audit and to continue to address the department's commitment to complying with the Federal standards.

Section 3084.8 is being amended to more clearly articulate that there is no time limit on inmate appeals which contain allegations of sexual violence or staff sexual misconduct. This change is being made as a result of feedback received through the public comment period.

Section 3084.9 is being further amended to more clearly articulate the specific timeframes and criteria for the Department to respond to allegations of staff sexual misconduct or sexual violence which are submitted through the inmate appeal process. This clarification required the section to be divided into two subsections, one for staff sexual misconduct and the other to address sexual violence by another offender.

Allegations of sexual harassment were removed from this section because the standards do not mandate that these types of claims rise to the level of requiring an exception to the regular appeals process. The exception to the appeals process takes effect when the allegation addresses substantial risk of imminent sexual violence or staff sexual misconduct and requires the Hiring Authority to take immediate actions to address the allegation. This change is being made as a result of feedback received through the public comment period.

PUBLIC HEARING COMMENTS:

A public hearing was held on November 4, 2015, at 10:00 a.m. No one provided comments at the public hearing.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS:

Commenter # 1

Comment 1A - Commenter states that they are pleased with the regulations and hope they generate positive results in the prison system. Commenter also criticizes the Department for sixteen grammar and punctuation errors within the ISOR and proposed text and provides various suggestions to correct those errors. Commenter also volunteers the proof reading function for the duration of their confinement.

Response to Comment 1A:

Although the comment does regard some aspect of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11349.9(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. However; the Department did make non-substantive revisions to the text to fix grammatical errors.

Commenter #2

Comment 2A- Commenter states that the proposed regulations do not substantially comply with the Prison Rape Elimination Act (PREA). Commenter states that specific guidelines are omitted for housing Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) to preventing sexual abuse.

Response to Comment 2A:

The comment/letter is regarding an inmate's individual case. It does not directly address the proposed regulations therefore the department is unable to refute or accommodate the comment. The department notes that existing regulations provide an appeal process, which is available to any inmate who seeks redress of any policy, decision, action, condition or omission that has a material, and adverse impact.

The provisions provided by PREA and these regulations apply to inmates and staff regardless of sexual orientation or gender identity. The Department has not ceased in its efforts to reach compliance with PREA national standards.

Comment 2B - Commenter states that "Employees are failing to implement the mandatory Federal and State Laws, and Agency operating procedures in a diminutive way." Commenter states that employees have overtly violated the laws and procedures in the commenter's individual case.

Response to Comment 2B:

The comment/letter is regarding an inmate's individual case. It does not directly address the proposed regulations therefore the department is unable to refute or accommodate the comment. The department notes that existing regulations provide an appeal process, which is available to any inmate who seeks redress of any policy, decision, action, condition or omission that has a material and adverse impact.

Comment 2C - Commenter requests that the California Code of Regulations and the Department's Operation Manual be immediately changed by adding further provisions to ensure that employees fully comply with PREA and other laws, that they have proven unwilling to do.

Response to Comment 2C:

California Penal Code (PC) Sections 2635 through 2643 and existing California Code of Regulations (CCR) Title 15, Sections 3269 (Inmate Housing Assignments), 3287 (Cell, Property and Body Inspections), and 3375 (Classification Process) in conjunction with the proposed regulations establish compliance with the federal PREA Standards. The Department has created an employee training program that assists all employees in understanding their responsibilities and the expectations of the department as required in federal PREA Standard 115.31, Employee Training. The Department continues to work towards full compliance with the PREA national standards.

Commenter # 3

Comment 3A - Commenter applauds the Department's efforts to "come into compliance with many deficits it has found over the years", and shows the public that there seems to be better management in place to operate the prison system safely and efficiently. Commenter states that there are records and studies that show that there have been too many sexual assaults and rapes not only in the prison system, but also other state-run facilities, due to insufficient staffing and managerial supervision to maintain the proper mechanisms and policies.

Response to 3A:

Although the comment does regard some aspect of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11349.9(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.

Comment 3B - Commenter states that they are currently in a state run facility, and is still traumatized and frustrated from past incidents whose resolutions were hindered by "the red tape holding back proper mechanisms to be put in place". Commenter claims that they have not received counseling for these incidents, and these changes are appropriate and necessary. Commenter hopes that the Department of State Hospitals follows suit to remedy such incidents.

Response to 3B:

The comment/letter is regarding an inmate's individual case. It does not directly address the proposed regulations therefore the department is unable to refute or accommodate the comment. The department notes that existing regulations provide an appeal process, which is available to any inmate who seeks redress of any policy, decision, action, condition or omission that has a material, adverse impact.

The Department of State Hospitals is a separate state agency from the CDCR. The commenter may want to contact that state agency regarding their regulations and policy on this subject.

Comment 3C – Commenter states that only a provision of remedies that exist in the regulations are for those who have been sexually harassed or assaulted by a staff member. Commenter states that no provisions exist for those who have been sexually harassed or assaulted by another inmate. Commenter states that statistics show that inmate-on-inmate sexual harassment or assaults are far greater than inmate-on-staff incidents. Commenter states that PREA's strategic purpose was to reduce inmate-on-inmate harassment and assaults, and without those remedies available, the regulations will not meet the objective of PREA.

Response to 3C:

The Department disagrees with the commenter. Sexual activity between inmates in prison is illegal under the California PC, Section 286(e) and Division 3 of the CCR, Title 15, Section 3007. The Department continues its efforts to strive for compliance with national PREA standards.

Commenter #4

Comment 4A- Commenter states they are a non-profit organization that advocates for improved living conditions of California state prisoners, and that they applaud and commend the Department's efforts to eliminate sexual abuse in California prisons. However, they state that the Department falls short in meeting the Federal requirements of the PREA standards.

Response to 4A:

Although the comment does regard some aspect of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11349.9(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. The Federal PREA law and Federal PREA regulations are extensive. The Governor of the State of California has certified to the federal Department of Justice that CDCR is working towards compliance with the PREA standards. Existing PC Sections 2635 through 2643 and CCR, Title 15, Sections 3269 (Inmate Housing Assignments), 3287 (Cell, Property and Body Inspections), and 3375 (Classification Process) establish the basis for compliance with PREA.

The Department is currently participating in formal PREA audits by federally certified PREA auditors. Through these audits there may become a need to further revise regulations and/or modify the DOM to clarify policy and procedures. The Department has not ceased in its efforts to reach compliance with PREA national standards.

Comment 4B - Commenter states that the standards require an assessment of available housing alternatives be conducted prior to involuntary housing in segregation of those people who are at risk for sexual victimization. Commenter states that the proposed regulations anticipate placement in Non-disciplinary Segregation (NDS). Although this provides access to NDS privileges and programs; it is still segregation and significantly more restrictive than General Population. Commenter states that the regulations should be modified to require alternative housing assessments be done prior to placing people in segregation, to comply with the PREA standards.

Response to 4B:

Current regulations within CCR, Title 15, Section 3269 (Inmate Housing Assignments) and 3275 (Classification Process), provide for proper classification and housing for all inmates that also meet the intent of the federal PREA Standard 115.41, Screening for Risk of Victimization and Abusiveness, and more determines the housing of an offender identified on the Initial Housing Review (electronic) as "at high risk for sexual victimization." The Department continues to evaluate and strive for compliance with the PREA national standards.

Comment 4C - Commenter states that PREA standards require agencies to establish policies to protect all prisoners or staff who report sexual abuse or harassment, or cooperate with investigations in order to protect them from retaliation from prisoners or staff. Commenter states that the regulations adopt some measures but limit them to reports of sexual misconduct or harassment by staff members, not reports of abuse by other prisoners. Commenter states that the

regulations do not include follow-up monitoring and check-ins. Commenter states that the regulations regarding protection measures for people reporting sexual abuse should be expanded to comply with PREA Standards.

Response to 4C:

In an effort to comply with federal PREA Standard 115.67, Agency Protection Against Retaliation, the development of training practices and procedures have been incorporated to meet this need. Existing regulations regarding inmate appeals, and inmate discipline, and current Departmental policy regarding employee discipline that resulted from Madrid v. Woodford, (USDC. No CV90-03094 TEH) December 2005; sets expectations and consequences regarding these issues. The Department is currently participating in formal PREA audits by federally certified PREA auditors. Through these audits there may become a need to further revise regulations and/or modify the DOM to clarify policy and procedures. The Department has not ceased in its efforts to reach compliance with PREA national standards.

Comment 4D - Commenter states that current regulations prevent third parties, including people in prison to submit appeals regarding allegations of sexual abuse on behalf of fellow prisoners. Commenter states that the proposed changes should include an exception allowing prisoners to file grievances regarding allegations of sexual abuse on behalf of fellow prisoners to be in compliance with PREA standards.

Response to 4D:

Third party reports are addressed in proposed changes to CCR, Title 15, Section 3084.2 (Appeal Preparation and Submittal) and 3084.6 (Rejection, Cancellation, and Withdrawal Criteria). These changes to the CCR and department practices along with CCR, Title 15, 3084.5 (Screening and Managing Appeals), and 3084.9 (Exceptions to the Regular Appeal Process), together more clearly describes the process when screening appeals forms utilized as a reporting mechanism by a third party for allegations of sexual abuse and creates compliance with federal PREA Standard 115.54, Third Party Reporting. The Department is committed to continuing its progression to compliance to the National standards for PREA.

Comment 4E - Commenter states that PREA standards require the elimination of time limits on all grievances regarding allegations of sexual abuse. However, the proposed regulations only eliminate time limits in cases of staff sexual misconduct or harassment. Commenter states the regulations should be expanded to include all allegations of sexual abuse, not just abuse by staff members.

Response to 4E:

Existing language in the CCR, Title 15, 3084.9, Exceptions to the Regular Appeal Process, address the exception to the time limits for allegations of sexual abuse made by offenders. Thank you for making this observation. Section 3084.8 “Appeal Time Limits”, and Section 3084.9 “Exception to the Regular Appeals Process” were amended in the February 3, 2016 renote, to identify the time limit exceptions.

Comment 4F - Commenter states that though the regulations provide that a risk assessment determination is required for all PREA related appeals, the provision is “sufficiently broad”. Commenter states that it is confusing as currently drafted due to its placement in the subsection that applies only to the filing of a grievance related to staff sexual misconduct and staff harassment. Commenter states that the problem would be eliminated if the exceptions to the regular appeals process were expanded to include all allegations of sexual abuse.

Response to 4F:

Thank you for making this observation. CCR, Title 15, Section 3084.9 “Exception to the Regular Appeals Process”, is being amended to describe the process to be used when an inmate files a PREA related appeal against another inmate. The Department has not ceased in its efforts to reach compliance with PREA national standards.

Comment 4G - Commenter states that PREA standards regarding protections to prevent sexual abuse and harassment of transgender people in prison are not included in the proposed regulations, nor do they appear in existing policy and regulations. Commenter states that PREA standards require, for example, “that transgender people be allowed to shower separately; that staff receive special training on “pat down” searches, and searches of transgender people in a respectful manner; that safety rather than anatomy be used as the primary basis to house people in a men’s or women’s prison.” Commenter states that the department’s own studies show that transgender people, even among “vulnerable” populations, are raped or coerced into sexual acts at an alarming rate. Commenter states that the protections should be adopted within the regulations.

Response to 4G:

Penal Code Sections 2635 through 2643 and existing Title 15, Sections 3269 (Inmate Housing Assignments), 3287 (Cell, Property and Body Inspections) and 3375 assist the department in meeting the PREA standards. The department’s processes, training, and policies relating to protecting all inmates, including LGBTI offenders, has not ceased.

As to considering, on a case-by-case basis, whether a housing assignment is safe and whether it would present management or security problems, CDCR’s existing classification processes in reception centers and upon arrival at the inmate’s assigned institution are individualized and are robust, including interviews.

Institutions have been given direction that transgender and gender non-conforming inmates may request to shower separate from other inmates. If the request is made, staff are expected to work with the inmate to ensure accommodation.

Existing regulations provide an appeal process, which is available to any inmate who seeks redress of any policy, decision, action, condition or omission that has a material, and adverse impact. Lastly, the provisions provided by PREA and these regulations/procedures apply to all inmates regardless of sexual orientation or gender identity.

Commenter #5

Comment 5A - Commenter states that they are a non-profit legal organization that works to change law, policy, and attitudes so that all people can live safely, authentically, and free from discrimination regardless of their gender identity or expression. Commenter commends the Department for taking the necessary steps to comply with the federal PREA standards as they relate to staff sexual abuse and harassment of incarcerated people and agree with the proposed amendments in that aspect of the federal PREA standards.

Response to 5A:

Although the comment does regard some aspect of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11349.9(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.

Comment 5B - Commenter wishes to express concerns regarding the lack of other aspects of Title 15 and the Department's Operations Manual (DOM), which are not compliant with federal PREA standards, and to which no amendments have been offered. Commenter specifically identifies that the Department has not proposed amendments to Title 15 and DOM that is aimed "to protect some of the most vulnerable populations of incarcerated people: Lesbian, gay, bisexual, transgender and intersex (LGBTI) incarcerated people".

Response to 5B:

Penal Code Sections 2635 through 2643 and existing Title 15, Sections 3269 (Inmate Housing Assignments), 3287 (Cell, Property and Body Inspections) and 3375 (Classification Process) assist the department in meeting the PREA standards.

Existing regulations provide an appeal process, which is available to any inmate who seeks redress of any policy, decision, action, condition or omission that has a material, and adverse impact. Lastly, the provisions provided by PREA and these regulations/procedures apply to all inmates regardless of sexual orientation or gender identity. The Department is and will continue to take the necessary steps as needed in the form of regulations, and/or establishment of policy and/or necessary training to comply with the national standards.

Comment 5C - Commenter states that the numbers of sexual abuse, rapes, and incidents of subjected coercive sex of LGBTI incarcerated people by staff and other incarcerated persons occurs at a much higher rate than that of other incarcerated persons. Commenter states that transgender people are subjected to "rape and sexual exploitation," which are "often overlooked or even encouraged by guards, who provide access and impunity as means of controlling social hierarchies and maintaining order".

Response to 5C:

The department neither allows nor condones this behavior. The existing staff disciplinary process is utilized to uniformly correct non-compliance with the department's policies. The Department has provisions for reporting, appealing, and for investigating such allegations.

Comment 5D - Commenter cites a congressional study which found that instances of prison rape often go unreported and that most prison staff are not adequately trained or prepared to prevent, report, or treat inmate sexual assaults; and in the long term, the victims are more likely to become homeless and/or lapse into recidivism after release since they suffer severe physical and psychological affects that can hinder their ability to re-integrate into the community.

Response to 5D:

Although the comment does regard some aspect of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11349.9(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.

Comment 5E - Commenter states that in addition to sexual violence, transgender prisoners are often subject to verbal and physical abuse in the hands of officers or other incarcerated people. Commenter cites a 2011 study performed by the National Center for Transgender Equality and the National Gay & Lesbian Taskforce which reveals percentages of transgender women who have suffered physical assaults and harassment from other incarcerated persons and correctional officers and staff.

Response to 5E:

The department neither allows nor condones this behavior. Staff and offenders are subject to disciplinary processes that include administrative sanctions and criminal prosecution.

Comment 5F - Commenter lists additional aspects of the federal PREA standards that are either not reflected in the Department's regulations or policy or have a limited presence of language which inhibits the full impact and intention of the revisions:

- Shower access- Commenter states that the Department's regulations and policies are silent in regards to PREA standards that state, "Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates".
- Searches- Commenter commends the Department in its revision to the Department's Operations Manual to explicitly include the training of security staff how to conduct cross-gender pat-down searches, and searches of transgender and intersex incarcerated people in a professional and respectful manner. Commenter states that the policy ignores the intent of the PREA standards by omitting the requirement that searches are not completed by persons of the opposite sex. Commenter suggests CDCR to revise all of its search policies and regulations to allow for case-by-case assessments of transgender and intersex incarcerated people, which include a consultation with the incarcerated person regarding the preferred gender of the staff member who will perform the searches. Commenter also urges the Department to adopt policies and regulations that acknowledge transgender women as female and follow PREA search standards in that regard.

Response to 5F:

Existing Title 15, Section 3287 (Cell, Property and Body Inspections) establish the basis for meeting the PREA standards. In addition, recent changes in DOM, Article 44, Prison Rape Elimination Policy were made to clearly describe the department's processes, training, and policies relating to protecting all inmates including LGBTI offenders. In addition, staff training for searching of LGBTI offenders was also updated to clearly describe the methods to be used when searching these offenders.

Shower: To comply with federal PREA Standard 115.42, institutions have been given direction that transgender and gender non-conforming inmates may request to shower separate from other inmates. If the request is made, staff are expected to work with the inmate to ensure accommodation.

Searches: The Department believes it has revised the policy and established procedures which meet the PREA standards and work effectively within our institutions.

Existing regulations provide an appeal process, which is available to any inmate who seeks redress of any policy, decision, action, condition or omission that has a material, and adverse impact. Through the initial PREA auditing that has been conducted, these issues have not been identified as needing corrective action by the certified DOJ auditors.

Comment 5G - Commenter cites a Department of Justice reasoning that male inmates are less likely to have a history of traumatic sexual abuse and are less likely to experience the re-traumatization that may affect a female inmate during a cross gender pat down search. Additionally, Commenter cites that transgender women are also far more likely to have experienced sexual assault and trauma and reasons that transgender incarcerated people should not be subjected to searches only by individuals of the opposite biological sex to ensure they are not traumatized or re-traumatized during search procedures. Commenter states that if a cross-gender strip search, visual body cavity search, or pat-down searches of transgender women is

required, that CDCR must follow documentation guidelines consistent with such searches of incarcerated people.

Response to 5G:

Federal PREA Standard 115.15 does not provide limits regarding pat-down searches of male offenders by opposite gender staff, nor does it require such searches to be documented. Based on these standards, CDCR did not limit when opposite gender staff perform pat down searches on male offenders. The Department is currently participating in formal PREA audits by federally certified PREA auditors. Through these audits there may become a need to further revise regulations and/or modify the DOM to clarify policy and procedures. The Department has not ceased in its efforts to reach compliance with PREA national standards.

Comment 5H - Commenter stresses that it is important that CDCR's policies and regulations pertaining to searches clearly address the vulnerability of transgender inmates and detainees during these processes. Commenter suggests the following:

- Amend specific Department Operations Manual sections be consistent with PREA standards explicitly stating that female incarcerated people, including transgender women, shall not be subjected to cross-gender searches unless in exigent circumstances.
- Train staff on searches as required by the PREA standards, as described in the previous comments.
- Clarify that transgender individuals may request to be searched by an officer of the same gender identity within the policy.
- Require that all searches of cross-gender pat-down searches of all transgender incarcerated people be documented.
- Add a provision requiring that strip searches of transgender incarcerated people and detainees be conducted out of sight of other incarcerated people, detainees and staff members who are not necessary for the search.
- Require that if a transgender incarcerated person must be searched, that another staff of the same gender identity be present.

Response to 5H:

The Department believes it has revised its regulations and operational policy and established procedures which meet the PREA Standards and work effectively within our institutions. The Department is currently participating in formal PREA audits by federally certified PREA auditors. Through these audits there may become a need to further revise regulations and/or modify the DOM to clarify policy and procedures. The Department has not ceased in its efforts to reach compliance with PREA national standards

Comment 5I - Commenter states that current CDCR regulations and policies are not compliant with the PREA standards regarding screening and classification to ensure proper housing to prevent sexual assault. Commenter states that in terms of making a determination of whether to house a transgender person with men or women and other housing and programming assignments, "the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems". Commenter encourages CDCR to include clear instructions, particular to the screening process as it relates to transgender and intersex detainees, and current policy must be more explicit in regards to the factors considered when determining if a transgender or intersex individual should be housed with men or women. These factors include whether the incarcerated person is or perceived gay, lesbian, bisexual, transgender, intersex, or gender nonconforming; whether the incarcerated person has previously experienced sexual victimization, and the

incarcerated person's own perception of vulnerability. The determination should also consider the implications to a transgender individual's mental health if they are not treated and housed in accordance with their gender identity.

Response to 5I:

The Department believes that CCR, Title 15, Sections 3269 (Inmate Housing Assignments) and 3375 (Classification Process) demonstrate compliance with federal PREA Standard 115.41 and 115.42, and work effectively within our institutions. The provisions provided by PREA and these regulations apply to all inmates regardless of sexual orientation or gender identity. The department strives to ensure safe housing for all offenders including those identified as LGBTI.

Comment 5J - Commenter states that current CDCR policy only provides two options to address safety concerns related to transgender, incarcerated people in the form of administrative segregation or single cell status if there are no other alternative means of separation from likely abusers. Commenter cites that PREA standards clearly indicate that these alternatives only be used as a last resort and only until another alternative safe option can be implemented.

Response to 5J:

The Department believes that CCR, Title 15, Sections 3269 (Inmate Housing Assignments) and 3375 (Classification Process) demonstrate compliance with federal PREA Standard 115.42. Additionally, the Department is currently participating in formal PREA audits by federally certified PREA auditors. Through these audits there may become a need to further revise regulations and/or modify the DOM to clarify policy and procedures. The Department has not ceased in its efforts to reach compliance with PREA national standards

Comment 5K - Commenter states that despite initial classification screening assessments currently within policy, that circumstances often arise that indicate an incarcerated person is not safe in their housing assignment. Commenter urges CDCR, in order to comply with PREA standards, to include additional information in their policy that would require a reassessment of all incarcerated people to take place not more than 30 days from arrival at the facility. The assessment would include, "inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.

Response to 5K:

In order to comply with federal PREA Standard 115.41, a process has been developed for Reception Center Institutions and distributed via memorandum which requires the PREA Compliance Managers (PCM) to maintain a list of inmates who have received documentation showing victimization or abusiveness concerns within 21 days of arrival. The list will include: the name of any inmate who has filed complaints or PREA allegations within 21 days of arrival; the name of any inmate who has filed an Inmate Appeal which contains a PREA allegation within 21 days of arrival; and the name of any inmate that is involved in a battery within 21 days of arrival. The PCM or designee will assign staff to conduct a follow-up with the identified inmate(s). Actions taken during the follow-up will be documented on a CDC Form 128-B, General Chrono. A copy will be retained by the PCM or designee and a copy will be scanned into the inmate's ERMS/SOMS (electronic) file.

When inmates are received at their assigned institution, they are initially screened in Receiving and Release and then seen by a classification committee within 10 days, for their initial review. This is the process being used in general population institutions to address the standard.

Comment 5L - Commenter encourages CDCR to amend or remove a portion of policy which requires all transgender women to be housed in one of nine facilities, which is not consistent

with the PREA standards, as it dictates the facility a transgender incarcerated person may be housed solely based on their gender identity and/or expression. Commenter states that PREA standards explicitly state, “The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status....”.

Response to 5L:

The Department believes that CCR, Title 15, Sections 3269 (Inmate Housing Assignments) and 3375 (Classification Process) provide regulations to ensure appropriate housing of all CDCR inmates. The Department is currently participating in formal PREA audits by federally certified PREA auditors. Through these audits there may become a need to further revise regulations and/or modify the DOM to clarify policy and procedures. The Department has not ceased in its efforts to reach compliance with PREA national standards. The Department does not believe that the practice of assigning male to female inmate patients to one of nine specifically identified male institutions and female to male inmate patients being housed in listed female institutions, violates the intent of the PREA standards, as each of these institutions has multiple facilities and multiple housing units within each facility. The population of these facilities includes inmates with a variety of case factors, not just transgender inmates. Inmates at these institutions are offered work and programming opportunities consistent with other general population institutions. These inmates are assigned to ensure they receive proper medical and mental health care. Case conferences are used for determining housing for transgender individuals with case factors making it difficult to house at the identified institution.

Comment 5M - Commenter states that they have received many letters from transgender individuals indicating that they have been subjected to physical and sexual assaults while in the custody of CDCR. Commenter alleges that these incidents occurred because correctional staff did not take transgender person’s risks into account when determining a cellmate. Commenter further alleges that correctional staff deliberately placed transgender people at risk by intentionally housing them with cellmates who were known to be a potential risk to the individual solely based upon their gender identify and/or expression. Commenter urges CDCR to address these risks by creating policies consistent with PREA, but also take steps to ensure staff is held accountable for placing vulnerable, incarcerated people at increased risks by not taking protective measures to reduce that risk.

Response to 5M:

The department neither allows nor condones this behavior. The proposed regulations further incorporate the Department’s efforts in reaching compliance with the national PREA standards. Current regulations regarding classification, and inmate housing work in conjunction to safely and appropriately house all inmates, as well as existinfg regulations regarding inmate appeals, Current Departmental policy regarding employee discipline that resulted from *Madrid v. Woodford*, (USDC. No CV90-03094 TEH) December 2005, sets expectations and consequences regarding staff accountability.