NOV 15 2016

State of California
Office of Administrative Law

In re: **Department of Corrections and Rehabilitation**	**NOTICE OF APPROVAL OF REGULATORY ACTION**
Regulatory Action:	**Government Code Section 11349.3**
Title 15, California Code of Regulations	**OAL Matter Number: 2016-0930-01**
Adopt sections: **Amend sections: 3140** **Repeal sections:**	**OAL Matter Type: Regular Resubmittal (SR)**

This rulemaking action by the Department of Corrections and Rehabilitation amends section 3140 in title 15 of the California Code of Regulations to require a sender of funds to provide his or her name and address on the face of the negotiable instrument.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 1/1/2017.

Date: November 14, 2016

Lindsey S. McNeill
Attorney

For: Debra M. Cornez
Director

Original: Scott Kernan
Copy: Sarah Pollock

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

RESUBMITTAL

(See instructions on reverse)

For use by Secretary of State only

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

NOV 14 2016

3:12 PM

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2015-0929-03	2016-0930-01SR	

For use by Office of Administrative Law (OAL) only

2016 SEP 30 P 12:02

OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (If any)
15-0213

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
☐ Notice re Proposed Regulatory Action ☐ Other

4. AGENCY CONTACT PERSON

TELEPHONE NUMBER

FAX NUMBER (Optional)

OAL USE ONLY

ACTION ON PROPOSED NOTICE
☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn

NOTICE REGISTER NUMBER
2015, 41-2

PUBLICATION DATE
10-9-2015

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)
Funds Enclosed in Correspondence

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
2016-0302-01S

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
3140

REPEAL

TITLE(S)
15

3. TYPE OF FILING

☐ Regular Rulemaking (Gov. Code §11346)

☒ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)

☐ Emergency (Gov. Code, §11346.1(b))

☐ 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.

☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)

☐ Emergency Readopt (Gov. Code, §11346.1(h))

☐ File & Print

☐ Other (Specify)

☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)

☐ Print Only

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)
2/2/16 - 2/17/16 and 9/9/16 - 9/24/16

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

☒ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))

☐ Effective on filing with Secretary of State

☐ §100 Changes Without Regulatory Effect

☐ Effective other (Specify)

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

☐ Department of Finance (Form STD. 399) (SAM §6660)

☐ Fair Political Practices Commission

☐ State Fire Marshal

☐ Other (Specify)

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Sarah Pollock	916 445-2308	916 324-6075	Sarah.Pollock@CDCR.CA.GOV

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

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE
9/29/16

TYPED NAME AND TITLE OF SIGNATORY
KENNETH J. POGUE, Undersecretary, Administration and Offender Services

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

NOV 14 2016

Office of Administrative Law

FINAL TEXT OF PROPOSED REGULATIONS

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

Title 15, Crime Prevention and Corrections

Division 3, Adult Institutions, Programs, and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 2. Inmate Resources

Article 4. Mail

3140. Funds Enclosed in Correspondence.

Subsection 3140(a) is amended to read:

(a) Funds may be mailed to an inmate in the form of a money order, cashier's check, certified check, personal check, or any other negotiable ~~means~~ instrument except cash and ~~T~~traveler's ~~C~~checks.

Subsection 3140(a)(1) is amended to read:

(1) The personal check, ~~or~~ money order, cashier's check, certified check, or any other negotiable instrument shall be made payable to the California Department of Corrections and Rehabilitation with the inmate's last name and departmental identification number. This information, along with the sender's name and address, shall be on the face of the ~~check or money order~~ negotiable instrument.

Subsections 3140(a)(2) through 3140(a)(4) are unchanged.

Existing subsection 3140(a)(5) is relocated and renumbered as 3140(a)(6).

New subsection 3140(a)(5) is adopted to read:

(5) If a personal check, money order, cashier's check, certified check, or any other negotiable instrument is received in the mailroom and it does not contain the sender's name and address on its face, it will be considered contraband per section 3006, and will be disposed of in accordance with section 3191(c). The negotiable instrument will be held in the Trust Office safe for thirty days while the inmate is contacted in regards to the disposition of the contraband, in accordance with section 3191(c).

Existing subsection 3140(a)(5) is renumbered 3140(a)(6) and is amended to read:

(~~5~~6) Mailroom staff shall arrange the day's remittances in numerical order. The remittances shall be listed in sequence on the report of collections. This report shall include each inmate's name, departmental identification number, type of payment, amount, and the total received.

Subsections 3140(b) through 3140(c)(2) are unchanged.

Subsection 3140(d) is amended to read:

(d) Funds ~~not in the form of certified checks~~ shall not be released for spending by the inmate for thirty (30) days from the date of deposit into the inmate trust account and must have cleared the bank upon which they were drawn. When any personal check~~s~~, ~~or~~ money order~~s~~, cashier's check, certified check, or any other negotiable instrument ~~are~~ is received, the face of the envelope in which the funds were received shall be imprinted with a stamp indicating the funds have been accepted at this time. This stamp is not intended to indicate that the funds are immediately available for inmate use, but only that the funds were accepted for processing by the department.

Subsection 3140(e) is unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 2601, Penal Code.

FINAL STATEMENT OF REASONS

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

UPDATES TO THE INITIAL STATEMENT OF REASONS

On October 9, 2015 the Notice of Proposed Regulations for "Funds Enclosed in Correspondence" was published which began the public comment period. The Department's Notice of Change to Regulations (NCR) #15-09 was also mailed the same day to individuals who had requested to be on the Department's mailing list for regulation changes. In addition they were posted on the California Department of Corrections and Rehabilitation (CDCR) internet and intranet websites, and copies posted in CDCR institutions. The Department received six written comments, which are included below under *Summaries and Responses to the Written Public Comments Received During the Initial Comment Period*. A public hearing was held on December 2, 2015, and there were no attendees at the public hearing.

After publication of the Notice of Proposed Regulations, it was determined that additional changes to the proposed regulations were necessary. Language which referenced that funds "shall be from a sender other than the inmate" was removed to resolve any issues with not accepting a check that is received with the inmate's name listed as the remitter on the check. Additionally, the language regarding the "sender's name and address shall be written on each of the aforementioned documents" was revised and relocated to subsection 3140(a)(1) for a better fit and to clarify the specific documents that shall have the sender's name and address on them. New language provided that the "sender's name and address shall be on the face of the negotiable instrument and envelope" this clarified where the information is to be located and allowed the "envelope" to also be considered for determining the sender information. Subsection 3140(d) was also added to the proposed changes to remove language which had allowed that "certified checks" not be held for 30 days. The language now requires *all* funds not to be released for spending for 30 days from the date of deposit into the inmate trust account and they must have cleared the bank upon which they were drawn. This change was initially inadvertently omitted due to an oversight, but now provides for resolution to problems that resulted in financial injuries for the Department, and provides consistency in the accounting process.

It is noted, that by removing certified checks as an exception of funds that are held until they have cleared the bank, this is a cost liability avoidance issue. Any savings to the State for this regulatory change is minor, inconsistent, and insignificant, and do not meet the requirements per the Dept. of Finance, STD. 399, Economic and Fiscal Impact Statement.

The changes were presented to the public by issuance of a 15-Day Re-Notice, and an effective comment period from February 2, 2016 to February 17, 2016. The 15-Day Re-Notice was posted to the CDCR internet and intranet websites, and sent to the six written commenters. The changes to the text and the reasons for them can be found below under the heading *Changes to the Proposed Text of Regulations (15-Day Re-Notice).* There was one written comment received during the 15-Day Re-Notice period. The Re-Notice comment and the Department's response are included below under *Summaries and Responses to the Written Comments Received During the 15-Day Re-Notice Comment Period.*

After completion of the 15-Day Re-Notice the Department determined that additional changes were still needed for corrective purposes, to provide clarity, and to codify the process regarding the final disposition of a negotiable instrument that is received and does not have the sender's information on it. Additionally, to correct statements in the ISOR an Addendum to the ISOR was issued along with the 2nd 15-Day Re-Notice. Language now specifies that if a personal check, money order, cashier's check, certified check, or any other negotiable instrument does not contain the sender's name and address on its face, it will be considered contraband, and will be disposed of in accordance with section 3191(c). For clarity and

consistency purposes the wording "negotiable means" was changed to "negotiable instrument" which is a commonly used term and defined in the Uniform Commercial Code. Additionally, changes removed "the envelope" as an additional area where the sender's name and address shall be located. The Department determined that the sender information on the envelope may *not* be the true source of the funds, and it should not be assumed the sender on the envelope is the donor of the funds.

These changes were presented to the public by issuance of a 2nd 15-Day Re-Notice, and an effective comment period from September 9, 2016 to September 24, 2016. The 2nd 15-Day Re-Notice was posted to the CDCR internet and intranet websites, and mailed to the initial 6 written commenters and the one Re-Notice commenter. The changes to the text and the reasons for them can be found below under the heading *Changes to the Proposed Text of Regulations (2nd 15-Day Re-Notice).* The Department received one written comments during the 2nd 15-Day Re-Notice period. The Re-Notice comments and the responses to them are included below under *Summaries and Responses to the Written Comments Received During the 2nd 15-Day Re-Notice Comment Period.*

For correction purposes, it is noted that in the Notice of Change to Regulations (NCR) 15-09, that was published on October 9, 2015, reference to Penal Code 2601 was inadvertently left out and should have been included in the Authority and Reference citations.

DETERMINATION

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

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

Local Mandates

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.

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

Section 3140(a): The language "and shall be from a sender other than the inmate" was deleted to resolve any issues with not accepting a check that is received with the inmate's name listed as the remitter on the check. There may be some instances where the check is coming from the inmate's own bank account, and these types of situations would not necessarily be cause for investigation or denial. Additionally, the language "The sender's name and address shall be written on each of the aforementioned documents" was removed from this section, revised, and relocated into section 3140(a)(1) for better placement and configuration within the article.

Subsection 3140(a)(1): This section was added to the Proposed Change to Regulations Text to incorporate the language removed from section 3140(a) that deals with the sender's name and address being written on the document. The relocation of language provided better placement and configuration of the article. The specific negotiable instruments (i.e. personal check, cashier's check, etc.) were listed out, so that there would be no confusion as to what documents required the information that is to be

written on them. Additionally, language was added that specified that the *sender's name and address* shall be on the face of the check or money order and envelope. This reconfiguration of the language was to lessen confusion and/or disputes regarding where the sender's name and address should be located. In addition, the sender's information on the "envelope" was added to the language, as it was determined that this was also helpful in determining the sender, and also notified the inmate whom the sender was.

Section 3140(d): This section was added to the Proposed Change to Regulations Text to remove language concerning certified checks. This section was initially not included in the Proposed Change to Regulations, due to an oversight. After further review CDCR Accounting Department determined the deletion of the language "not in the form of certified checks" was necessary to avoid further accounting complications and financial injuries caused from voided checks or stopped payments. Any form of negotiable instrument can be voided or a stop payment issued and funds returned to the purchaser. CDCR had seen incidents where the purchaser of a certified check holds on to the check for a period of time, then goes back to the bank and states that the person they sent the check to never received it, they then receive their money back from the bank, then send the check to the inmate. The inmate receives the certified check with no 30 day hold placed on it, and then has access to funds immediately. CDCR then has to buy the certified check back from the bank in order to pay the bank back, thereby creating a red balance in the inmate's account. By removing this language, consistency and fairness will be achieved by requiring that *all* funds not be released for spending by the inmate for thirty days from the date of deposit into the inmate trust account, and they must have cleared the bank upon which they were drawn.

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

Subsection 3140(a): The term "negotiable means" was revised to "negotiable instrument." This change provided for consistency with the newly proposed language, and provided a clearer, definable, commonly used term which is defined in the Uniform Commercial Code, sections 3-104(a)-(d).

Subsection 3140(a)(1): The reference to the term "negotiable means" was revised to "negotiable instrument" for consistency and to provide a clearer definable term. For grammatical purposes and proper sentence structure, the word "any" was also added in the first sentence. Additionally, the last sentence of this section was revised to delete the words "and envelope." In the 1st Re-Notice this language was added because it was thought to be helpful in determining the sender, however after further review the Department has determined that the name/address on the envelope may not be the actual donor of the funds. This change removes potential inaccuracies from assuming that the "sender" as presented on the envelope is the same person who is the true source of the funds. Instead, the identity of the sender (name and address) must be on the face of the negotiable instrument.

Existing subsection 3140(a)(5): This subsection was relocated and renumbered as 3140(a)(6) for better configuration and organization of these subsections.

New Subsection 3140(a)(5): New subsection 3140(a)(5) specified that when a check, money order, cashier's check, certified check, or any other negotiable instrument is received in the mailroom and it does not contain the sender's name and address on its face, it will be considered contraband per section 3006, and will be disposed of in accordance with section 3191(c); additionally, it will be held in the Trust Office safe for thirty days while the inmate is contacted in regards to the disposition of the contraband, in accordance with 3191(c). The Department decided upon following the already established rules of 3191(c) because these are the only rules in place regarding disposal of contraband. It was determined that 30 days was a sufficient amount of time for contacting the inmate and getting a response back from him/her regarding his/her choice for disposal of the contraband. The Department felt the best course of action for handling negotiable instruments without the sender's identification on them was to consider them as contraband. This eliminates unnecessary, possibly lengthy, time consuming and costly

investigations which would also necessitate additional procedural rules to document that process. These changes obligate compliance with the requirements of these sections as well as the established requirements of section 3191(c). They increase efficiency amongst the staff processing these funds, and provide a more efficient and streamlined process overall. Additionally, the proposed changes establish uniformity and consistency of Department disposal practices while enhancing safety and security within the institutions by combating possible criminal activity, by intercepting funds without a clearly identified sender. As previously noted in the ISOR receiving negotiable instruments without proper sender identification can be linked to many forms of criminal activity; these proposed changes will help to eliminate that threat and protect public safety.

Subsection 3140(a)(6): Existing subsection 3140(a)(5) was relocated and renumbered 3140(a)(6) for better organization of the Article. Only non-substantive punctuation changes were added to provide correct grammar; adding a comma after the word "payment" and a comma after the word "amount."

Subsection 3140(d): For consistency within the section, language was added to mirror the language: "personal checks, money orders, cashier's check, certified check, or any other negotiable instrument." Other minor grammatical changes were made for proper sentence structure.

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

Commenter #1

Comment 1A: Commenter disagrees with the proposed rule change, specifically the language "funds may be mailed to an inmate…and shall be from a sender other than the inmate." Commenter states that there are no rules/laws which prohibit him from sending money to himself from his bank. Commenter's U.S. Army pension payments are direct deposited into his bank account in accordance with Veterans Administration laws, and this requires him to contact his bank when he needs money. He has the bank either send a cashier's check to the institution (showing himself as the remitter), or he fills out a JPay form, sends that to his bank, and they attach a cashier's check and mail it to JPay, again showing him as the remitter. Commenter states the proposed change effectively stops himself and any other disabled veteran with a pension; retired persons; and anyone else who is required to use a bank account, from accessing their funds. Commenter believes this opens CDCR to civil and criminal liabilities if this proposed change goes into effect in this present form.

Accommodation: Full Accommodation

Response 1A: The Text of Proposed Regulations was revised in the 15-Day Re-Notice Text of Proposed Regulations to remove the language that funds shall be from a sender other than the inmate. This removes any problems as the Commenter mentioned in his comment, which would prevent an inmate from receiving funds from his/her own bank account with his/her name identified as the remitter on the check.

Commenter #2

Comment 2A: Commenter agrees that prohibiting inmates from receiving anonymous funds is a good idea, but he believes that the new text language at the end of Section 3140(a) would be better configured and less confusing if it were moved to the end Section 3140(a)(1), so that Section 3140(a)(1) would read: "(a)(1) The check or money order shall be made payable to the California Department of Corrections and Rehabilitation with the inmate's last name and departmental identification number and the sender's name and address on the face of the check or money order. The inmate shall not be listed as the sender."

Accommodation: Partial Accommodation

Response 2A: The Text of Proposed Regulations was revised in the 15-Day Re-Notice Text of Proposed Regulations to relocate the language regarding the sender's name and address from subsection 3140(a) to 3140(a)(1) for a more appropriate fit. In addition, the language regarding "funds shall be from a sender other than the inmate," was deleted in the 15-Day Re-Notice, as stated in Response 1A.

Comment 2B: Commenter states most of the procedures outlined in the Initial Statement of Reasons make sense, but they need to be included and codified in the text of the regulations so that inmates and staff know their rights and responsibilities, and it will avoid non-uniform application of the procedures. Commenter offers the following suggestions:
"(a)(1)(A) If a check or money order does not contain the sender's name or address, or if the inmate's name is listed as the sender, mailroom staff shall determine if the envelope containing the check or money order has the sender's name and address. If the envelope contains the sender's name and address, mailroom staff shall forward the sender's name and address to the Trust Office along with the check or money order."
"(a)(1)(B) If a check or money order does not contain the sender's name or address, or if the inmate's name is listed as the sender, and if mailroom staff have not forwarded the sender's name and address to the Trust Office, Trust Office staff shall send a CDCR-128 to the inmate indicating that unidentified funds have been received and advising the inmate to contact the Trust Office with any available information about who sent the funds."
"(a)(1)(C) An inmate who has received a CDCR-128 indicating that he has received unidentified funds may send a CDCR-22 form to the Trust Office containing the name, address, and phone number of the sender."
"(a)(1)(D) The Trust Office shall deposit funds into an inmate's account when the sender's name and address have been determined from the envelope or from information provided by the inmate."
"(a)(1)(E) Unidentified funds will be held for three years from the date of receipt by the mailroom. After three years the funds will be remitted to the State Controller's Office, Division of Unclaimed Property. Senders of unidentified funds may contact the Trust Office to claim the funds, or, after the funds have been remitted to the State Controller's Office, may contact that office at https://ucpi.sco.ca.g/UCP default.aspx."
Commenter states that these paragraphs or something like them, are the only way of ensuring that the intent of the amendments to 3140 are carried out.

Accommodation: Partial Accommodation

Response 2B: The procedures for determining "sender" information on unidentified funds were codified in subsection 3140(a)(5) as part of the 2nd 15-Day Re-Notice. After further review, the Department determined the best course of action for handling a negotiable instrument without proper sender identification was to consider it as contraband. This provides a straightforward and concise process for handling unidentified funds enclosed in correspondence. Senders will be obligated to comply with the requirements as set forth in 3140(a)(1) which will reduce unnecessary, costly, and time consuming investigating to determine the sender. In addition, this process will help protect public safety and security by combating possible criminal activity as referenced in the ISOR.

Commenter #3

Comment 3A: Commenter asks if these proposed changes supersede recent changes to the manner in which funds can be sent in to inmates. Commenter states currently funds must be sent to JPay where they are then electronically forwarded to the institution. Commenter asks for clarification.

Accommodation: None

Response 3A: Sending funds through JPay is a choice of convenience, not a requirement. JPay is a private electronic funds transfer service available to family and friends to send money to an incarcerated person.

Commenter #4

Comment 4A: Commenter states that the proposed language "The sender's name and address shall be written on each of the aforementioned documents" do not meet the Necessity standard per Government Code, Section 11349(a). The proposed change in text says nothing of requiring a sender to identify themselves on the face of the envelope, but instead requires them to identify themselves on the face of the money order, cashier's check, certified check, personal check, or other negotiable means, thus defacing and possibly voiding such documents as they do not contain any space designated for the identity of the sender. Under CDCR's proposed change, every envelope containing funds will be withheld because it will be unreasonable to expect a sender to identify themselves on a document which does not contain a designated space for such information which would be known to the common person [sic]. Commenter states in order to comply with the necessity standard, it should be in harmony with the rational and therefore read as follows: "The sender's name and address shall be written on the face of the envelope." It is the face of the envelope which ultimately ends up becoming the document which CDCR recognizes as the receipt of the funds. The only relevant and necessary information which should appear on the face of the money order, personal check, etc., is already addressed by Section 3140(a)(1).

Accommodation: None

Response 4A: The necessity for this change has been established in the Initial Statement of Reasons. The negotiable instrument itself is the primary source of where the funds are coming from, the information on the envelope may only indicate who mailed the envelope. Therefore it is important that the sender information be on the negotiable instrument itself. In regard to having sufficient room on the negotiable instrument, unless you have a check from the introductory series (First 100 in a new checking account), personal and business checks have the name and address of the issuing party on them. The introductory series of the first one hundred checks have room for the sender's information to be written in. The majority of the problems come from money orders, where the sender has omitted the information or filled in the inmate as the sender. Every money order has a place for the sender information to be filled out. CDCR will recognize the sender's information written on the item being deposited, if that information is absent, then the item will be treated as contraband.

Commenter #5

Comment 5A: Commenter states that per a memorandum dated April 8, 2015 from the Division of Adult Operations, California Substance Abuse Treatment Facility and State Prison – Corcoran (SATF), effective April 2015, SATF went live with JPay lock box and debit card processes, and inmates are no longer able to receive personal funds via money order, personal check, cashier's check, etc. at the institutional address. Therefore Commenter feels the intent to modify Section 3140 is moot, void, and without effect. Commenter attached a copy of the April 8, 2015 memorandum, along with a copy of a money order deposit form from JPay. Commenter asks "who has the overpowering authority in this critical matter?" Commenter states there has been widespread damage and inconvenience to inmates by this executive ruling of the acting Warden's representative, and to Commenter's knowledge this decision/ruling was never put out to the public for bidding or for comment. In addition, JPay's rules prohibit a transaction greater than $999.99, and he has been told money order purchase costs for larger transactions are just

another pain to bear. Commenter asks for a response to confirm or modify this unacceptable condition, so that they can know what is what.

Accommodation: None

Response 5A: Funds may still be mailed to an inmate as per Section 3140(a). The JPay Lockbox is a free service option offered by JPay to friends and family of the inmate. Amounts over $999.99 can be mailed to the institution. See also, Response to Comment 3A.

Commenter #6

Comment 6A: Commenter feels the proposed change violates inmates' California and U.S. Constitutional rights under the 4th Amendment of illegal search and seizure by confiscating inmates' funds in order to investigate. CDCR would collect interest on all monies held in trust. Commenter states there is approximately 11 million in taxpayer monies unaccounted for as per the last audit. So CDCR has a documented history of losing monies. With the proposed rule change, an overzealous state employee can "investigate" indefinitely just to harass inmates. Therefore the proposed rule change should not be allowed to be implemented. If it is, Commenter states to expect multiple civil claims.

Accommodation: None

Response 6A: CDCR does respect the individual's privacy in regard to personal information and financial transactions. Outside parties are required to go through the institution's Public Information Officer for any information in regard to the institution, inmates, or employees. Even the California State Attorney's office must go through CDCR's Legal Counsel or obtain a subpoena to view inmate information collected by CDCR. Also, money must be deposited to obtain interest. Under the new proposed regulations funds sent from unidentified senders will be handled as contraband, therefore there will be no interest earned from a deposit, as the funds will not be deposited.

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

Re-Notice Commenter #1 (Initial Commenter #4)

Re-Notice Comment 1A: Commenter states that the proposed text continues to contain language which does not comply with the Necessity standard (Government Code 11349(a)). Commenter feels the information that requires the sender of funds to be identified on the face of the negotiable instrument is unnecessary, and that the only critical information necessary is the sender's name and address on the face of the envelope. Although language now includes that the sender of funds also identify themselves on the face of the envelope, this will create unnecessary confusion, e.g. if the sender does identify themselves on the face of the envelope, but *not* on the face of the negotiable instrument, this would be cause for CDCR to not process the funds. This allows CDCR the ability to refuse to process inmate funds on a technicality, even though they would already possess the sender's name and address from the face of the envelope. Commenter requests that the language "negotiable instrument and" in section 3140(a)(1) be removed.

Accommodation: None

Response Re-Notice Comment 1A: After further review the Department determined that the name/address on the envelope may not be the actual donor of the funds. By having the sender

information on the negotiable instrument, this ensures that only legitimate funds are received and processed, and removes potential inaccuracies from assuming that the "sender" as presented on the envelope is the same person who is the true source of the funds.

Re-Notice Comment 1B: Commenter states CDCR has attempted to discourage sending of funds to institutions by providing inmates with misleading information. This information notified inmates at his institution that all funds will not be accepted at the institution and should be directed to JPay. Commenter included copies of Notices he says he received, that indicate CDCR no longer accepts inmate trust deposits at Centinela State Prison. Commenter states if CDCR is receiving a kick-back from JPay then it does in fact have an incentive to frustrate and discourage anyone from mailing funds directly to the institution, and the proposed text will allow CDCR to do just that.

Accommodation: None

Response Re-Notice Comment 1B: CDCR has set up a Lockbox Program through JPay where individuals can send checks and money orders, thereby lessening the time a check or money order will be held before funds are available to the inmate. Checks or money orders will still be accepted at the institutions, but will continue to have a 30 day hold placed on them. Sending funds through JPay is a choice of convenience, not a requirement.

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

2ND Re-Notice Commenter #1 (Initial Commenter #4 and Re-Notice Commenter #1)

2nd Re-Notice Comment 1A: Commenter is unhappy with the 2nd Re-Notice changes which remove the "envelope" as an area where the sender of the funds can be identified. Commenter feels the Department must prove why the identification on the "envelope" is not sufficient to adequately identify the actual sender. Commenter does not feel the Necessity standard as required by the Administrative Procedures Act (APA) has been substantiated. Additionally, Commenter states the Department initially deemed the change in regulation necessary because people were allegedly not identifying themselves on the face of the envelope. Commenter wants substantiation as to why identification on the envelope is adequate for all other forms of correspondence but not correspondence with funds enclosed.

Accommodation: None

Response, 2nd Re-Notice Comment 1A: As stated in the 2nd Re-Notice letter that accompanied the 2nd Re-Notice text, after further review the Department determined that the name/address on the envelope may not be the actual donor of the funds. This change removes potential inaccuracies from assuming that the sender as presented on the envelope is the same person who is the true source of the funds. The Department feels the information provided fulfills the Necessity standard required by the APA. Additionally, Commenter is mistaken regarding his statement "the Department initially deemed the change in regulation necessary because people were allegedly not identifying themselves on the face of the envelope." The Department did not state the change was necessary because of people not identifying themselves on the face of the "envelope." Furthermore, regarding regular mail "correspondence" the only area that can be identified for a sender of correspondence is the envelope, but in identifying a sender/donor of funds the Department has determined it must be identified on the negotiable instrument to assure accuracy.

2nd Re-Notice Comment 1B: Commenter states that the Department deemed the change in regulation necessary because it has seen funds used to finance crimes, however the 2nd 15 Day Re-Notice has failed to comply with the substantive evidence test in order to prove that paroled validated STG (security threat group) affiliates have financed crimes, and also that trust account funds could be utilized to finance such crimes

Accommodation: None

Response, 2nd Re-Notice Comment 1B: This comment does not relate directly to only those changes presented in the 2nd 15-Day Re-Notice; and as stated in the 2nd Re-Notice letter that accompanied the 2nd Re-Notice text, only comments relating directly to those changes will be considered. However, the Department responds as follows: The Department deemed the proposed regulation changes necessary to: remove potential security risks, resolve administrative problems, and avoid possible violations of section 3139, Correspondence Between Inmates, Parolees, and Probationers. Commenter is basically saying the Department hasn't fulfilled the "necessity" standard of the Administrative Procedures Act (APA). The Department believes APA requirements have been complied with, "necessity" has been proven in the ISOR, and as substantiated in the ISOR, a potential safety and security threat exists by accepting unidentified negotiable instruments. The Department is not presuming STG affiliates are financing crimes, we are saying there is a potential security risk (the source could be anyone).

2nd Re-Notice Comment 1C: Commenter feels deeming funds as contraband subjects inmates to discipline. Furthermore, the Department presumes to deem a sender of funds as a validated STG parolee who is attempting to finance crimes, thus subjecting the intended recipient of such funds to validation as an STG affiliate. Commenter feels the Department has created for itself a conclusive presumption, without any due process protections which would help determine if the sender is actually a parolee validated as an STG affiliate.

Accommodation: None

Response, 2nd Re-Notice Comment 1C: No disciplinary measures will be taken against the inmate as the procedures set forth in Section 3191(c) are only for disposal of the item. The Department is not making a presumption about the sender, but attempting to identify the sender. The proposed regulations ensure compliance that all negotiable instruments have the necessary information on them and there is no question or confusion regarding the sender of the funds. In addition to a more efficient and streamlined process, these changes will help to ensure safety and security within the institution as well as public safety.

2nd Re-Notice Comment 1D: The Commenter feels the proposed changes provide an ulterior motive by the Department to attempt to burden the sender of funds, and discourage people from mailing funds directly to the institution in order to justify not having to process funds into an inmate's trust account, and direct all transactions to JPay. Commenter states JPay will benefit from the change to regulations. Additionally JPay will not refuse to process funds into an inmate's trust account simply because the sender did not place his name and address on the face of the negotiable instrument. Nor will JPay presume a sender to be a parolee STG affiliate, and will not treat the funds as contraband.

Accommodation: None

Response, 2nd Re-Notice Comment 1D: JPay does not charge a fee to CDCR, the inmate, or the sender for checks or money orders processed through the JPay Lockbox. JPay requires a deposit slip to be completed and sent along with the check or money order. This deposit slip requires the amount, CDCR

ID number, inmate's full name, institution, sender's full name, phone number and address. In addition, see Response to Comments 3A, 5A, and Re-Notice Comment 1B.

2nd Re-Notice Comment 1E: The Commenter contends the 2nd Re-Notice changes fail to identify the adverse and beneficial fiscal impact the changes will have within the Department. Commenter states there will be a significant decrease in sending funds to inmates because senders will want to avoid being presumed STG affiliates, and subjecting inmates to discipline, therefore there will be a decrease in staff needed to process funds. Also, it is reasonable to infer that JPay handling all financial transactions was not provided by the Department for free, and if the Department is benefiting from commissions or kickbacks they should be disclosed. The Department should identify any financial benefit it will receive from JPay by steering all financial transactions to it. Commenter requests the Department conduct an economic impact assessment on the current and future economic impact the proposed changes will have on JPay. With the burden of conducting hundreds of financial daily transactions, there is no guarantee JPay will not begin incremental fees.

Accommodation: None

Response, 2nd Re-Notice Comment 1E: The Department does not anticipate any adverse or beneficial fiscal impact from the proposed changes. As stated in Response to Comments 3A, 5A, and Response to Re-Notice Comment 1B, JPay is a convenience option available that allows for quicker processing of funds. Use of JPay is not a requirement. Funds may be mailed to an inmate per section 3140(a). These regulations govern the Department's treatment of funds enclosed in inmate correspondence. These regulations do not attempt to regulate the business practices of JPay or any other outside business.

ADDENDUM - INITIAL STATEMENT OF REASONS:

After publication of the Initial Statement of Reason (ISOR), the Department became aware that amendments to the ISOR were necessary for corrective purposes. Some statements in the ISOR were made in error and/or were inconsistent with the proposed regulatory text. The Department wishes to correct and/or clarify the following language as stated in the ISOR:

2nd paragraph: "The proposed revisions will allow the Department to place a hold on funds received from the public for deposit into an inmate's trust account until the sender of the funds has been identified." This statement is incorrect and did not align with the originally proposed regulatory text. While it was the Department's intent to no longer accept funds that did not provide an identified sender, this language was not stated properly. The Department wishes to retract this statement.

6th paragraph, last sentence: "If the sender's information is missing, it is very hard for the Department to know who the funds should be returned to, making it more likely that these will become unclaimed funds." The Department wishes to retract the underlined portion, so that the sentence reads: "If the sender's information is missing, it is very hard for the Department to know who the funds should be returned to." Funds received from an unidentified sender would *not* be considered "unclaimed funds." Unclaimed funds are funds that we know who the intended recipient of the funds is, and we have some identifying information, but we are unable to locate them. These are the type of funds that would be submitted to the State Controller's Office. Funds from an unidentified *sender* are the issue in these regulations.

2nd page, 3rd paragraph: "Under these proposed rules, when an inmate's in-coming correspondence containing funds lacks an identified sender/return address or has the inmate as the sender, CDCR staff will ask the inmate if he/she knows who has sent them the funds. Alternatively, if an inmate is expecting funds and doesn't receive them in the timeframe they expect, he/she can make an inquiry of the Trust Office at their institution. If the inmate can provide information to verify that the sender is an authorized party, the funds will be processed into the inmate's trust account. This would be the fastest way for the inmate to identify the unidentified sender of the funds. The institution's Investigative Services Unit (ISU) would make the final determination to return the funds to the sender or have the institution's Trust Office deposit them into the inmate's account." These statements are incorrect, and the Department wishes to retract this paragraph. At the time of the publication of the ISOR, procedures regarding the handling of funds from unidentified senders were still unclear and no formal process was in place. The Department apologizes for any confusion this may have caused. New procedures in section 3140(a)(5) have now been proposed in the 2nd 15-Day Re-Notice which is being made available to the public from September 9, 2016 to September 24, 2016.

2nd page, 5th paragraph: "Unidentified and unclaimed funds will be held for three years and then remitted to the State Controller's Office (SCO), Division of Unclaimed property. Individuals may search the SCO's website for unclaimed funds and property at: https://ucpi.sco.ca.gov/UCP/Default.aspx." The Department wishes to retract this paragraph. While this information was meant to be helpful, it was inadvertently misleading because unclaimed funds sent to the State Controller's Office are not the same as funds that are received from unidentified senders. The Department apologizes for any confusion this may have caused. At the time of the publication of the ISOR, procedures regarding the handling of receiving funds from unidentified senders were still unclear and no formal process was in place.