

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



September 9, 2016

2nd NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED

The full text of the original proposed amendments to the California Code of Regulations that concern Funds Enclosed in Correspondence is provided in its original single underline and ~~strikethrough~~ format.

Changes that were provided in the 1st Notice of Change to Text, are indicated by bold double underlining for additional added text, and bold ~~double strikethrough~~ for deleted text to the originally proposed text. The comment period on the 1st 15-Day Re-Notice text changes is closed.

The changes provided in this 2nd Notice of Change to Text are indicated by dotted bold underline for additional added text and ~~dotted bold strikethrough~~ for additional deleted text to the originally proposed text. In addition, any changes to the 1st 15-Day Re-Notice text which originally appeared in bold double underline and ~~bold double strikethrough~~, will now be indicated by dotted bold underline in italics for additional added text, and ~~dotted bold strikethrough in italics~~ for additional deleted text to the 1st 15-Day Re-Notice text changes. Only those comments relating directly to these 2nd Notice of Change amendments that are indicated by the dotted bold underline, ~~dotted bold strikethrough~~, dotted bold underline in italics, or ~~dotted bold strikethrough in italics~~ will be considered.

An Addendum to the Initial Statement of Reasons (ISOR) is also included with this 2nd Notice of Change to Text. This Addendum to the ISOR is added to the rulemaking record to correct statements in the Initial Statement of Reasons which were incorrect or inconsistent with the proposed regulatory text.

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

Subsection 3140(a)(1): The reference to the term “negotiable means” is revised to “negotiable instrument” for consistency and to provide a clearer definable term. “Negotiable instrument” is a commonly used term and defined in the Uniform Commercial Code, sections 3-104(a)-(d). For grammatical purposes and proper sentence structure, the word “any” is also added in the first sentence. Additionally, the last sentence of this section is 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.

New Subsection 3140(a)(5): Existing section 3140(a)(5) is relocated and renumbered 3140(a)(6) for better organization of the Article. New subsection 3140(a)(5) specifies 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 feels the best course of action for handling negotiable instruments without the sender's identification on them is 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) is relocated and renumbered 3140(a)(6) for better organization of the Article. Only non-substantive punctuation changes are 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 is added to mirror the language: "personal checks, money orders, cashier's check, certified check, or any other negotiable instrument." Other minor grammatical changes are made for proper sentence structure.

The 2nd 15-day comment period on these changes shall close on September 24, 2016. Submit any comments to Timothy M. Lockwood, Chief, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001; fax to (916) 324-6075; or e-mail to rpmb@cdcr.ca.gov before the close of the public comment period. Comments must be received no later than 5:00 p.m. on September 24, 2016.

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Only those comments relating directly to the enclosed post-hearing changes that are indicated by **dotted bold underline**, ~~**dotted bold strikethrough**~~, ***dotted bold underline in italics***, or ~~***dotted bold strikethrough in italics***~~ will be considered.

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

Attachment

2nd 15-DAY RE-NOTICE TEXT OF PROPOSED REGULATIONS

In the following, 2nd 15-Day changes will appear in dotted bold underline which indicates additional added text, and ~~dotted bold strikethrough~~ which indicates additional deleted text to the originally proposed text which appears or appeared in single underline and ~~strikethrough~~ format. Changes will also appear in ~~*dotted bold strikethrough in italics*~~ for deleted text to the 1st 15-Day Re-Notice text which appears or appeared in bold double underline and bold ~~double strikethrough~~.

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 Traveler's Checks, ~~and shall be from a sender other than the inmate. The sender's name and address shall be written on each of the aforementioned documents.~~

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

(1) The personal check, ~~or~~ money order, cashier's check, certified check, or any other negotiable means 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 and envelope.

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) 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 checks, or money orders, 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.

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.