

**State of California
Office of Administrative Law**

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

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections:
Amend sections: 3000
Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2016-0330-02

OAL Matter Type: Regular (S)

This rulemaking action amends section 3000 of Title 15 of the California Code of Regulations to remove language from the definition of the term "modified program" which qualifies the prohibition against targeting specific racial or ethnic groups in the institution of a modified program for inmates.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/28/2016.

Date: April 28, 2016



Dale P. Mentink
Senior Attorney

For: Debra M. Cornez
Director

Original: Scott Kernan
Copy: Anthony Carter

REGULAR NOTICE PUBLICATION/REGULATORY SUBMISSION (See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2016-0105-03	per agency request REGULATORY ACTION NUMBER 2016-0330-025	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation			AGENCY FILE NUMBER (If any) 15-0326

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

APR 28 2016

2:07 PM

2016 MAR 30 P 3:14

OFFICE OF
ADMINISTRATIVE LAW

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	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER 2016, 03-2	PUBLICATION DATE 1/15/2016

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Modified Program-Definition	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) Z-2016-0105-03 per agency request
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SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 3000
	REPEAL
TITLE(S) 15	

3. TYPE OF FILING

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

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

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

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

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

7. CONTACT PERSON 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 3/29/16
TYPED NAME AND TITLE OF SIGNATORY Kenneth J. Pogue, Undersecretary-Administrative and Offender Services, CDCR	

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ENDORSED APPROVED

APR 28 2016

Office of Administrative Law

TEXT OF ADOPTED REGULATIONS

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

California Code of Regulations, Title 15. Crime Prevention and Corrections Division 3. Rules and Regulations of Adult Institutions, Programs, and Parole Department of Corrections and Rehabilitation

Article 1. Behavior

3000. Definitions.

Section 3000 is amended to read:

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Modified Program means the suspension or restriction of ~~inmate program activities and/or movement that impacts less than all inmate programs~~ activities and/or movement. ~~or less than all inmates.~~ A Modified Program may either occur independently in response to an incident or unusual occurrence or may occur as a facility transitions from a lockdown to regular programming. Imposed restrictions may fluctuate as circumstances dictate with the goal of resuming regular programming as soon as it is practical. Modified programming will last no longer than necessary to restore institutional safety and security or to investigate the triggering event, and shall not target a specific racial or ethnic group ~~unless it is necessary and narrowly tailored to further a compelling government interest~~. For those inmates whose movement has been restricted, movement may be authorized on a case-by-case basis for essential or emergency services such as medical, dental, mental health or law library visits. The routine and/or temporary restrictions on inmate movement or yard activities, which do not last longer than 24 hours, are not considered a program modification.

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Note: Authority cited: Sections 243(f)(4), 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 600, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq. and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; ~~and~~ *Madrid v. Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH); ~~and~~ *Sassman v. Brown* (E.D. Cal. 2015) 99 F.Supp.3d 1223, and *Mitchell v. Cate*, USDC ED 2:08-CV-01196-TLN-EFB.

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 January 15, 2016, which began the public comment period. The Notice of Change to Regulations 16-01 was mailed out by January 22, 2016 and also posted on the Department's Internet and Intranet websites. An additional notice was mailed out and posted on the websites extending the public comment period to March 10, 2016.

During the 45-day public comment period one comment was received. These comments are discussed below under the heading "*Summaries and Responses To Written Public Comments.*"

DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

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

Regarding benefits, these regulations will protect the health and safety of California residents, worker safety, and the State's environment by providing a safe environment that will encourage visitation for families, which will have a positive impact on inmates, and increase worker safety. The proposed amendment promotes standardization and fairness, and is necessary to adequately reflect current legal standards, such as the Equal Protection Clause, the Eighth Amendment to the United States Constitution, and practices with respect to modified programming, and satisfies the Department's obligation under the terms of the settlement agreement reached in *Mitchell v. Cate*, USDC ED 2:08-CV-01196-TLN-EFB.

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.

PUBLIC HEARING COMMENTS:

A public hearing was held on March 3, 2016, at 10:00 a.m. No one provided public comment at the hearing.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS:

Commenter # 1

Comment 1A - Commenter states that they both agree and disagree with the amendment to “the new Modified Program”, and the “new amendment must take all considerations”. Commenter states that the “new measurement would be to the advantage of inmates, with only the purpose of retaliating on other inmates or staff, in shutting the facility down at their convenience”. Commenter infers that the new proposal should include the investigation of “bogus allegations of inmates or staff” and “anonymous kites or notes”, that are frequently discovered, that are an attempt to retaliate against staff or inmates, at great expense to taxpayers.

Response to Comment 1A: The department agrees with commenter. The department fully investigates anonymous notes and kites that indicate a threat of violence and disruption to the safety and security of the institution. Disciplinary action is taken if the outcome of an investigation indicates a staff member or inmate submitted a false anonymous note leading to the implementation of a modified program.

Comment 1B- Commenter states that the “new measurement should also include the Modified Program only apply to inmates or individuals, including staff, that are investigated under false claims”. Additionally, commenter states that the revision should include inmates in segregated housing and suspended staff “on suspicion of anonymous notes or kites”.

Response to Comment 1B: Comment is unintelligible as written.