

**State of California  
Office of Administrative Law**

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

**Regulatory Action:**

**Title 15, California Code of Regulations**

**Amend sections: 3134.1, 3136**

**NOTICE OF APPROVAL OF REGULATORY  
ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2016-0912-01**

**OAL Matter Type: Regular (S)**

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This action by the Department of Corrections and Rehabilitation amends sections 3134.1 and 3136 of title 15 of the California Code of Regulations and revises Form 1819, which is incorporated by reference in section 3134.1. This action increases the amount of time an inmate has to respond to the notice of disapproved mail, packages, and/or publications from fifteen days to thirty calendar days, updates cross-references to Form 1819, and makes other nonsubstantive changes.

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



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Nicole C. Carrillo  
Attorney

**For:** Debra M. Cornez  
Director

**Original:** Scott Kernan  
**Copy:** Sherri Garcia

# REGULAR

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2016-0222-01</b>	REGULATORY ACTION NUMBER <b>2016-0912-01S</b>	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only		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) 15-0252

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

OCT 20 2016

1:30 pm

2016 SEP 12 P 3 55  
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)
<b>OAL USE ONLY</b> <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER <b>2016 11-2</b>	PUBLICATION DATE <b>3-11-2016</b>

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Inmate Mail and Publications	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT
AMEND 3134.1, 3136
REPEAL
TITLE(S) 15

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 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 §511349.3, 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)

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 Sherri Garcia	TELEPHONE NUMBER 916-445-2266	FAX NUMBER (Optional) 916-324-6075	E-MAIL ADDRESS (Optional) sherri.garcia@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 9/7/16
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**

OCT 20 2016

Office of Administrative Law

## TEXT OF ADOPTED REGULATIONS

### Subchapter 2. Inmate Resources

#### Article 4. Mail (Refs & Annos)

##### § 3134.1. Processing of Publications.

##### 3134.1(a) through 3134.1(c) are unchanged

##### Subsections 3134.1(d) is amended to read:

(d) Notifications, to Publisher, to the Inmate, and to the Division of Adult Institutions (DAI) for Disapproval of Publication. When incoming books, magazines, or publications to an inmate are withheld or disallowed on a temporary basis by the institution pending approval from DAI, a letter shall be sent by the institution to the publisher explaining why the item was denied. A book, magazine, or publication denied to an inmate(s) based on a violation of departmental regulation or policy, and that is not included on the current Centralized List of Disapproved Publications (Centralized List) pursuant to subsection 3134.1(e), shall only require one notification letter per institution to be sent to the publisher. At a minimum the letter must include the reason why the book, magazine, or publication was denied, the names and CDCR number for all inmates, the applicable CCR section that the publication violates, and a notice to the Publisher of their right to appeal ~~per~~ pursuant to subsection 3137(c). The letter must be sent within 15 calendar days of the determination to disallow the book, magazine or publication, with a copy of the notification letter and supporting documents to be retained by the facility for a minimum of seven years. Concurrent to the letter to the publisher, when incoming or outgoing publications addressed to or being sent by an inmate are withheld or disallowed, the institution shall also notify the inmate addressee via CDCR Form 1819 (Rev. ~~01/1608/08~~), Notification of Disapproval-Mail/Packages/Publications, which is incorporated by reference. The CDCR Form 1819 shall include the reason, disposition, name of official disallowing the publication, and the name of the official to whom an appeal can be directed.

The institution shall also concurrently notify DAI and request that DAI affirm or deny the withholding of the temporarily disallowed publication. DAI shall provide the decision within 30 calendar days of receiving the request. If DAI affirms the withholding of the publication, disallowance of the publication shall become permanent. If DAI denies the withholding of the publication, the institution shall deliver the publication to the inmate within 15 calendar days, upon receipt of DAI's decision.

For periodicals, as defined in subsection 3133(a)(3), the DAI may include a periodical on the Centralized List, in accordance with subsection 3134.1(e), provided that all issues of the publication for twelve consecutive months violate departmental regulation or policy. However, an institution may disallow individual issues of a periodical in accordance with this subsection. The disallowance of individual issues of a periodical shall become permanent, as to those issues only, if DAI affirms an institution's decision to temporarily withhold/disallow the individual issues. If the DAI denies the institution's decision to temporarily withhold individual issues of a periodical, the institutional shall deliver those issues to the inmate within 15 calendar days upon receipt of DAI's decision.

##### § 3134.1(e) is unchanged

Note: Authority cited: sSection 5058, Penal Code. Reference: Sections 2601 and 4570, Penal Code; *Procurier v. Martinez*; (1974) 416 U.S. 396; and *Bell v. Wolfish*; ~~99 S. Ct. 1861~~ (1979) 441 U.S. 520.

## **TEXT OF ADOPTED REGULATIONS**

### **Subchapter 2. Inmate Resources**

#### **Article 4. Mail (Refs & Annos)**

##### **§ 3136. Disapproval of Inmate Mail.**

###### **Subsections 3136(a) through 3136(b) are amended to read:**

(a) Disapproval of inmate mail that is in clear violation of CCR sections 3006 or 3135 shall be referred to staff not below the level of ~~Correctional Facility~~ Captain for determination and appropriate action. Disapproval of inmate mail that is not in clear violation of CCR sections 3006 or 3135 shall be referred to the Warden, but not lower than the Chief Deputy Warden, for determination and appropriate action. When incoming or outgoing mail/packages/publications addressed to or being sent by an inmate are withheld or disallowed, the inmate shall be informed via CDCR Form 1819 (Rev. 01/16), Notification of Disapproval-Mail/Packages/Publications, ~~(Rev 6/98)~~ of the reason, disposition, name of official disallowing the mail/package/publication, and the name of the official to whom an appeal can be directed.

(b) When inmate mail is disapproved based on the criteria established in this section, a copy of the CDCR Form 1819 and the supporting document(s) shall be retained by each facility for a minimum of seven years.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2600 and 2601(d), Penal Code.

INMATE'S NAME	CDC NUMBER	HOUSING
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**MAIL / PACKAGES SECTION (Complete for mail or package cases only)**

INCOMING MAIL/PACKAGE
  OUTGOING MAIL/PACKAGE

LIST ITEM(S) WHICH MEET DISAPPROVAL CRITERIA

DESCRIPTION OF MATERIAL THAT MEETS DISAPPROVAL CRITERIA, INCLUDE CCR, TITLE 15 SECTION

DISPOSITION	SENDER INFORMATION		
<input type="checkbox"/> HELD PENDING INVESTIGATION/APEAL  <input type="checkbox"/> RETURNED TO SENDER _____ (At Inmate's Expense) (Date)  <input type="checkbox"/> DESTROYED  <small>*(INMATE HAS THIRTY (30) CALENDAR DAYS, AFTER NOTIFICATION OF DISAPPROVAL HAS BEEN FORWARDED TO LET STAFF KNOW THE CHOICE OF DISPOSAL, OTHERWISE MATERIAL WILL BE DESTROYED).</small>	FIRST NAME	MI	LAST NAME
	ADDRESS (NUMBER AND STREET)		
	CITY	STATE	ZIP CODE
	ACKNOWLEDGE RECEIPT OF THIS NOTIFICATION: (INMATE'S SIGNATURE)		DATE SIGNED

**AUTHORITY TO DISALLOW (Must be completed in all cases)**

PRINTED NAME OF WARDEN'S DESIGNEE	SIGNATURE OF WARDEN'S DESIGNEE	DATE SIGNED	DATE FORWARDED TO INMATE
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**PUBLICATIONS SECTION (Complete for publication cases only)**

TITLE OF PUBLICATION (Include issue/date)	PUBLISHER	PAGE(S) WHICH MEET DISAPPROVAL CRITERIA
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DESCRIPTION OF MATERIAL THAT MEETS DISAPPROVAL CRITERIA, INCLUDE CCR, TITLE 15 SECTION

DISPOSITION	DESIGNEE INFORMATION		
<input type="checkbox"/> HELD PENDING INVESTIGATION/APEAL  <input type="checkbox"/> DESTROYED  <input type="checkbox"/> RETURNED TO OUTSIDE DESIGNEE AT INMATE'S EXPENSE _____ (DATE)  <small>** (INMATE HAS THIRTY (30) CALENDAR DAYS, AFTER NOTIFICATION OF DISAPPROVAL HAS BEEN FORWARDED TO LET STAFF KNOW THE CHOICE OF DISPOSAL, OTHERWISE MATERIAL WILL BE DESTROYED).</small>	FIRST NAME	MI	LAST NAME
	ADDRESS (NUMBER AND STREET)		
	CITY	STATE	ZIP CODE
	ACKNOWLEDGE RECEIPT OF THIS NOTIFICATION: (INMATE'S SIGNATURE)		DATE SIGNED

**AUTHORITY TO DISALLOW (Must be completed in all cases)**

CAPTAIN'S PRINTED NAME	CAPTAIN'S SIGNATURE	DATE SIGNED	DATE FORWARDED TO INMATE
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DISTRIBUTION: WHITE - MAILROOM      CANARY - INMATE      PINK - SENDER / DESIGNEE

**\*ALL APPEALS REGARDING MAIL/PACKAGES SHALL BE REFERRED TO THE WARDEN'S DESIGNATED STAFF.**  
**\*\*ALL APPEALS REGARDING PUBLICATIONS SHALL BE REFERRED TO THE CAPTAIN.**

## **FINAL STATEMENT OF REASONS**

The Initial Statement of Reasons is incorporated by reference.

## **UPDATES TO THE INITIAL STATEMENT OF REASONS**

On March 11, 2016 the Notice of Proposed Regulations was published in the California Notice Register which began the public comment period. The Department's Notice of Change to Regulations #16-02 was also mailed the same day in addition to being posted on the California Department of Corrections and Rehabilitation (CDCR) Internet and Intranet websites. The Department received three written comments which are included below under *Summaries and Responses to the Written Public Comments*. A public hearing was held on April 27, 2016, no members of the public attended the hearing.

## **REFERENCE CITATION**

Penal Code sections 2600, 2601, and 4570; *Procurier v. Martinez* (1974) 416 U.S. 396; and *Bell v. Wolfish* (1979) 441 U.S. 520.

## **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. The proposed regulations have been determined to be the most efficient and effective means for providing inmates notification of disallowed mail/packages/publications.

## **ASSESSMENTS, MANDATES, AND FISCAL IMPACT**

This action will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, or create or expand businesses in the State of California because they are not directly affected by the internal management of State prisons.

The Department has determined this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government; or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, because they are not directly affected by the internal management of State prisons; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561. The Department has made an initial determination the proposed action will have no significant effect on housing costs. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

The Department, in proposing amendments to these regulations, has not relied upon any technical, theoretical, or empirical study, report, or similar document.

### **INCORPORATED BY REFERENCE (1 CCR 20)**

CDCR Form 1819 (Rev. 01/16), Notification of Disapproval - Mail/Packages/Publications was made available to the public throughout the rulemaking, and will continue to be made available upon request. To publish this document into the California Code of Regulations would be cumbersome and impractical, and would increase costs to the Department.

### **CHANGES TO THE PROPOSED TEXT OF REGULATIONS**

Non-substantive formatting changes and typographical errors and/or omissions are corrected throughout the document for clarity. In section 3134.1, the reference citations for *Procurier v. Martinez* (1974) 416 U.S. 396 and *Bell v. Wolfish* (1979) 441 U.S. 520, were updated to align with the California Style Manual. In section 3136, “Correctional/Facility” was removed for clarity as there are no longer different types of Captains and the designation of Correction or Facility with regards to Captain is no longer in use.

### **SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS**

#### **Commenter #1**

**Comment 1A:** Commenter states there are numerous Notice of Change to Regulations (NCR), with an “Effective Date” as “To Be Announced” but the commenter has never once seen an announcement of a regulation’s effectuation date unless it was a part of the NCR. Commenter questions how the department will announce the “Effective Date”. Commenter believes there is a difference between issuing an NCR and giving meaningful notice of a new regulation and the department’s NCR is inadequate to put anyone on notice of the change.

**Response 1A:** Regulations become effective quarterly per Government Code (GC) 11343.4, which reads in part, (a) Except as otherwise provided in subdivision (b), a regulation or an order of repeal required to be filed with the Secretary of State shall become effective on a quarterly basis...

**Comment 1B:** Commenter states it is not within the mandates of the Administrative Procedures Act (APA) to omit actual announcement of the effective date.

**Response 1B:** The Department has complied with the APA and the APA does not require an effective date be published with the notice.

#### **Commenter #2**

**Comment 2A:** Commenter states upon review, the majority proposed regulations are substantially in compliance with current law, regulations, and policies. Commenter commends CDCR on making the necessary and required changes to better conform to the appeals time frames.

**Response 2A:** The Department appreciates the commenter’s statement of support with regards to the changes to these regulations.

**Comment 2B:** Commenter states there is a potential significant issue found in 15 CCR, §3134.1(e), in that the citations pertaining to *Procunier v. Martinez* and *Bell v. Wolfish* are two different parallel citation formats. Commenter states it seems odd to provide a “U.S.” cite compared to a “S.Ct.” cite and that it may be necessary for the purposes of confirming citations cited in regulations to choose one of the other across all CDCR regulations.

**Response 2B:** The Department changed the citations of *Procunier v. Martinez* and *Bell v. Wolfish* to align with the California Style Manual which is a non-substantive change to text.

**Comment 2C:** Commenter states another issue found in 15 CCR, §3134.1(e), is a typographical error and the spelling of “Wolffish” should be amended to “Wolfish.”

**Response 2C:** The Department appreciates commenter bringing notice to the spelling error. The spelling error has been corrected in the new text.

**Comment 2D:** Commenter requests a copy of the Final Statement of Reasons and changes of proposed text be mailed to commenter in hard-copy format when available.

**Response 2D:** The Department has noted commenters request for a copy of the Final Statement of Reasons and changes to the proposed text and will mail a hard-copy to commenter once available.

### **Commenter #3**

**Comment 3A:** Commenter states the mailroom personnel have abused their authority in regard to photos. Commenter asks for the definition of “frontal nudity” pursuant to CCR §3135(d)(1) and §3006(c)(17)(A).

**Response 3A:** This comment does not directly address the proposed regulations as measures taken in this regulatory change. Therefore, the Department is unable to accommodate the comment.