



Department of Corrections and Rehabilitation

**NOTICE OF CHANGE TO
REGULATIONS**

Section(s): 3134.1 and 3136

Number:

16-02

Publication Date:

March 11, 2016

Effective Date:

To Be Announced

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendments to Sections 3134.1 and 3136, of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into the CCR, changes to the revision date of the CDCR form 1819 (Rev. 01/16), Notification of Disapproval – Mail/Packages/Publications. The CDCR 1819 was revised to increase 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.

IMPLEMENTATION:

To be announced.

PUBLIC COMMENT PERIOD

Any person may submit written comments about the proposed regulations to the **California Department of Corrections and Rehabilitation, Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, by fax to (916) 324-6075, or by e-mail to RPMB@cdcr.ca.gov.** All written comments must be received by the close of the public comment period **April 27, 2016 at 5:00 p.m.**

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held **April 27, 2016, from 9:00 a.m. to 10:00 a.m. in the Kern room, located at 1515 S Street, Sacramento, CA 95811.** The purpose of the hearing is to receive oral comments about this action. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written or facsimile comments submitted during the prescribed comment period are given the same significance and weight as oral comments presented at the hearing. This hearing site is accessible to the mobility impaired.

POSTING

This Notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each Department facility and field office not later than five calendar days after receipt. Also, facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. CDCR Form 621-A (Rev. 09/14), Certification of Posting, shall be returned to the RPMB electronically, by fax, or by mail. See Department Operations Manual Sections 12010.12.1 and 12010.12.2 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this Notice should be directed to Timothy M. Lockwood, Chief, RPMB, **California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone (916) 445-2269 or e-mail RPMB@cdcr.ca.gov.** Inquiries regarding the subject matter of these regulations may be directed to Brent Burkhart, Correctional Lieutenant, Division of Adult Institutions, at (916) 327-5305.

Original signed by:

SCOTT KERNAN
Secretary
California Department of Corrections and Rehabilitation

Attachments

NOTICE OF PROPOSED REGULATORY ACTION

California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, proposes to amend Sections 3134.1 and 3136 of the California Code of Regulations (CCR), Title 15, Division 3, concerning Processing of Publications and Disapproval of Inmate Mail, and the CDCR form 1819 (Rev. 01/16), Notification of Disapproval-Mail/Packages/Publications.

PUBLIC HEARING:

Date and Time: **April 27, 2016 – 9:00 a.m. to 10:00 a.m.**

Place: Department of Corrections and Rehabilitation
Kern Room
1515 S Street – North Building
Sacramento, CA 95811

Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close **April 27, 2016 at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 445-2269

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

S. Garcia
Regulation and Policy Management Branch
Telephone (916) 445-2266

Questions regarding the substance of the proposed regulatory action should be directed to:

Brent Burkhart
Department of Corrections and Rehabilitation
(916) 327-5305

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

This action:

- Amends the revision date from “6/98” to “01/16” of the CDCR form 1819, Notification of Disapproval-Mail/Packages/Publications which is incorporated by reference.
- Amends Section 3134.1 Processing of Publications.
- Amends Section 3136 Disapproval of Inmate Mail.
- Proposes to increase the amount of time an inmate has to respond to the notice of disapproved mail, packages, or publications from fifteen (15) calendar days to thirty (30) calendar days on the CDCR form 1819 (Rev. ~~6/96~~ 01/16).

FORMS INCORPORATED BY REFERENCE:

CDCR form 1819 (Rev. 01/16) Notification of Disapproval-Mail/Packages/Publications

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

Regulations concerning the amount and type of inmate property (Section 3190 and following) and the types of mail and inmate can send/receive (Sections 3130 and following) were adopted to ensure the safety and security of the public, inmates, and staff in its institutions. The Department anticipates that this revision to the CDCR form 1819 will better serve inmates by conforming to the inmate appeal time limits and by giving them additional time to consider the disposition of their disapproved mail, packages, or publications, or to appeal the Department’s disallowance.

The proposed revisions to the CDCR form 1819 also clear up the ambiguous “fifteen days” by specifying and adding 30 “calendar” days on the form. This provides clarity to both staff and inmates on timeframes for the process.

EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING REGULATIONS:

The Department has determined that these proposed regulations are consistent and compatible with existing state laws and regulations. The Department has reviewed existing regulations pertaining to inmate property and mail within CCR, Title 15, Division 3 and determined that these proposed regulations are not inconsistent or incompatible.

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 – 17630.

FISCAL IMPACT STATEMENT:

- Cost to any local agency or school district that is required to be reimbursed: *None*
- Cost or savings to any state agency: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

RESULTS OF ECONOMIC IMPACT ASSESSMENT:

The Department has determined that the proposed regulations will have no impact on the creation of new or the elimination of existing jobs or businesses within California or affect the expansion of businesses currently doing business in California. The Department has determined that the proposed regulations will have no effect on worker safety, or the state's environment, because the proposed regulations relate strictly to the internal management of CDCR institutions. The proposed regulations will have no effect on the health and welfare of California residents, worker safety, or the State's environment as these regulations deal with the internal management of prisons.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared, and will make available, the proposed text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

TEXT OF PROPOSED REGULATIONS

In the following, all new language is indicated by underline and deleted text is indicated by ~~strikethrough~~.

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 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; *Proconier v. Martinez*, 416 U.S. 396; and *Bell v. Wolfish*, 99 S. Ct. 1861.

TEXT OF PROPOSED REGULATIONS

In the following, all new language is indicated by underline and deleted text is indicated by strikethrough.

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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INITIAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend the California Code of Regulations (CCR), Title 15, Division 3, Sections 3134.1 and 3136, to update the revision date for CDCR Form 1819 (Rev. 01/16), Notification of Disapproval - Mail/Packages/Publications.

The Department has existing regulations to inspect incoming personal property and mail intended for inmates. The Department also has set standards on the amount and types of property an inmate can possess (Section 3190 and following) as well as the types of mail an inmate can send/receive (Section 3130 and following). These regulations were adopted to ensure the safety and security of the public, inmates, and staff in its institutions. Inmate mail defined as offensive and/or disturbing will be disallowed. Section 3135 of Title 15, CCR identifies offensive and disturbing correspondence such as mail that incites violence, threatens blackmail or extortion, describes the making of weapons, or pictures or images that depict sex acts and frontal nudity. Items defined in regulations as contraband are disallowed as unauthorized for inmate possession. When incoming mail and/or property are received by an institution that meets the criteria of "contraband", the item(s) are withheld and the inmate is notified of the withholding on the CDCR form 1819. This notice provides the inmate the reason, disposition, name of official disallowing the mail/package/publication, and the name of the official to whom an appeal can be directed. It also gives the inmate options for how the disallowed mail, publication, or property can be disposed.

In an effort to promote consistency throughout the Department, CDCR revised the "Disposition" section of the CDCR Form 1819, increasing the amount of time an inmate has to respond to the notice of disapproved mail, package, or publication from fifteen (15) days to thirty (30) calendar days to conform to inmate appeals time limits. This will give inmates additional time to consider how they would like to handle any mail, packages, or publications that have been denied, including appealing the disallowance. The word "calendar" was added to distinguish between "calendar" and "working" days and remove any ambiguity and provide clarity.

Further changes to the CDCR 1819 include changing the title of the signature authority from Facility Captain to Captain. There are no longer different types of Captains (Facility and Correctional). Therefore the designation of Facility Captain is no longer in use. Additionally, a section was added to the top of the form to record the inmate's housing location. This addition is to make the form consistent with Department standards by including an inmate's housing along with the inmate's name and CDCR number to better track inmate's location and movement within the facilities.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Currently, no reasonable alternatives have been brought to the attention of the Department that would alter the Department's initial determination.

ECONOMIC IMPACT ASSESSMENT:

These changes will have no economic impact on the Department or taxpayers. The proposed regulation only affects the internal management of prisons.

Creation or elimination of jobs within the State of California

The Department has determined that this proposed regulation will have no impact on the creation or elimination of jobs within the state. The proposed regulation only affects the internal management of prisons.

Creation of new or elimination of existing businesses within the State of California

The Department has determined that the proposed regulations will have no effect on the creation of new or elimination of existing businesses within the State of California because those businesses are not affected by the internal management of prisons.

Expansion of businesses or elimination of existing businesses within the State of California

The Department has determined that the proposed regulations have no effect on the expansion of businesses currently doing business within the State of California because those businesses are not affected by the internal management of prisons.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

Based on the above economic impact assessment, the Department has determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

BENEFITS OF THE REGULATIONS:

If an inmate receives a notice that their mail, package, or publication has been denied he/she may choose to appeal the denial. CCR, Title 15, Section 3084.8 details time frames associated with the Department's inmate appeals process. Inmates have 30 calendar days to file an appeal from the occurrence of the event or decision being appealed, or upon first having knowledge of the action or decision being appealed, or upon receiving an unsatisfactory departmental response to an appeal filed. Increasing the time frame an inmate has to decide on the disposition of the denied material will conform to the inmate appeals process time frames, allowing for a decision on their appeal to be received prior to the requirement to decide on the disposition of the denied item(s).

The proposed regulations will have no effect on the health and welfare of California residents, worker safety, or the State's environment as these regulations deal with the internal management of prisons.

LOCAL MANDATES:

The Department has determined that this action imposes no mandates on local agencies or school districts.

MATERIALS RELIED UPON:

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

DETERMINATIONS:

CDCR has determined that the proposed changes will be an improvement to the process and a benefit to the inmate in the event any mail, packages, or publications are denied.

SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE 11346.2(B)(1):

Subchapter 2. Inmate Resources

Article 4. Mail

3134.1. Processing of Publications.

Subsections 3134.1(a) through 3134.1(c) are unchanged.

Subsections 3134.1(d) is amended by the following changes: The “R” was added to CDC in the text of the paragraph to bring it current with the Department’s acronym CDCR. The revision date (Rev. 01/16) is being updated in the text.

Subsection 3134.1(e) is unchanged.

3136. Disapproval of Inmate Mail.

Subsection 3136(a) is amended by the following changes: The revision date (Rev. 01/16) was moved to be consistent with the standard format used for Departmental forms. The revision date is updated to the new revision date (Rev. 01/16) on the form. The “R” was added to CDC in referencing the form, this is to bring the form current with the Department’s acronym CDCR.

Subsection 3136(b) is amended by the following changes: The “R” was added to CDC in referencing the form, this is to bring the form current with the Department’s acronym CDCR.