

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 3006, 3134.1, and 3135 of the California Code of Regulations (CCR), Title 15, Division 3 concerning Obscene Material.

PUBLIC HEARING:

Date and Time: **June 17, 2014 – 10:00 am to 11:00 am**

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 **June 17, 2014, 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:

R. Ruiz
Regulation and Policy Management Branch
Telephone (916) 445-2244

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

Christopher Abshire
Division of Adult Institutions, Standardized Procedures Unit
Telephone (916) 327-5305

AUTHORITY AND REFERENCE:

Penal Code (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 5058.3 authorizes the Director to adopt, amend, or repeal emergency regulations conducted pursuant to GC Section 11340.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Current laws expressly define what is considered obscene matter, and further provides for prison officials to disallow obscene material as contraband. The proposed amendments clarify Department regulations concerning contraband as obscene material, ensuring compliance with statute concerning the established standard for obscene material.

The specific benefits anticipated with these regulations include greater transparency in business and government, preventing discrimination, promoting fairness and social equality, and improved worker safety.

This action provides the following:

- Clarifies Department regulations concerning obscene material as contraband as provided for by statute.
- Provides references of existing Department regulations, in compliance with PC, for the definition of the terms “obscene material” and “sexually explicit.”
- Designates the Division of Adult Institutions (DAI) as the sole Department authority to designate text-only publications as obscene material, and place the text-only publication on the Department’s Centralized List of Disapproved Publications.
- Specifies CDCR institutions may withhold publications on a temporary basis, pending an “obscene material” determination from DAI.
- Utilizes the term Security Threat Group (STG) in place of the terms: “prison gang,” “disruptive group,” and “street gang.”
- Establishes that written material and photographs that indicate an association with validated STG members or associates are not permitted into the institutions, and shall be included on the Department’s Centralized List of Disapproved Publications.

INCORPORATED BY REFERENCE:

The following document is incorporated by reference into these regulations and will be made available to the public along with the Notice of Proposed Regulations, Text of Proposed Regulations, and Initial Statement of Reasons.

- CDCR Form 1819 (Rev. 08/08), Notification of Disapproval-Mail/Packages/Publications

EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING REGULATIONS:

In developing the proposed regulations, the Department researched existing regulations on this topic and determined that this action is not inconsistent or incompatible with existing State regulations. California PC provides that obscene matter is matter that, when taken as a whole, to the average person applying contemporary statewide standards, appeals to the prurient interest and depicts or describes sexual conduct in a patently offensive way, and that, when taken as a whole, lacks serious literary, artistic, political, or scientific value. The proposed regulations are in compliance with PC, and are consistent with existing regulations in the CCR.

LOCAL MANDATES:

The proposed regulatory 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.

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 AFFECTING BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, 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 not have an 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, as the proposed regulations clarify the Department’s regulations concerning obscene material as contraband and affect the internal management of prisons only.

The proposed regulations promote worker safety of CDCR staff and the safety of CDCR inmates by helping to reduce animosity within the prisons concerning publications designated obscene material and disallowed into the institutions.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

The proposed regulatory action will provide clarity and guidance to CDCR staff and inmates concerning Department regulations for obscene material to appropriately identify obscene material disallowed as contraband, as provided for by statute. The proposed regulations will ensure compliance with statute concerning obscene material, reducing animosity in the prisons and improving worker safety.

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:

It is determined that this action has no significant adverse economic impact on small business as the proposed regulations solely affect the internal management of 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 proposed regulatory action. 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 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.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared, and will make available, the 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.