

**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, 3030, 3190, 3269

**Repeal sections:**

**NOTICE OF APPROVAL OF CERTIFICATE OF  
COMPLIANCE**

**Government Code Sections 11349.1 and  
11349.6(d)**

**OAL Matter Number: 2018-0404-03**

**OAL Matter Type: Certificate of Compliance  
(C)**

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This timely certificate of compliance action by the Department of Corrections and Rehabilitation (Department) amends four sections to allow transgender inmates and inmates having symptoms of gender dysphoria that are housed at designated institutions to have access to state-issued and authorized personal property items in accordance with their gender identities. The Department is also adopting two new property lists for transgender inmates and inmates having symptoms of gender dysphoria for use in designated institutions, which are incorporated by reference.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

Date: May 15, 2018

  
\_\_\_\_\_  
Lindsey S. McNeill  
Attorney

For: Debra M. Cornez  
Director

Original: Scott Kernan, Secretary

Copy: Rachel Orr

NOTICE PUBLICATION/REGULATORY SUBMISSION

CERT

(See instructions on reverse)

For use by Secretary of State only

ENDORSED - FILED

In the office of the Secretary of State of the State of California

MAY 15 2018 at 1:36 pm

STD. 400 (REV. 01-2013)

per agency *fm*

OAL FILE NUMBERS	NOTICE FILE NUMBER(S)	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	2-2017-0418-18	2018-0404-03C	

For use by Office of Administrative Law (OAL) only

2018 APR -4 P 12:02

OFFICE OF ADMINISTRATIVE LAW

NOTICE REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)

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 Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
		2017 17-2	4-28-17

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Authorized Property for Transgender Inmates	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2017-0328-01EON and 2017-0915-01EON <i>per agency request</i>
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)	2017-1222-01EE <i>per agency request</i>
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	REPEAL
TITLE(S) 15	3000, 3030, 3190, and 3269

3. TYPE OF FILING

<input 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 §§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 §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)

February 2, 2018 - February 19, 2018 *per agency request*

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

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))

Effective on filing with Secretary of State

§100 Changes Without Regulatory Effect

Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)

Fair Political Practices Commission

State Fire Marshal

Other (Specify)

7. CONTACT PERSON

Rachel Orr

TELEPHONE NUMBER (916) 445-2314

FAX NUMBER (Optional)

E-MAIL ADDRESS (Optional)

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 4/2/18

TYPED NAME AND TITLE OF SIGNATORY  
Ralph M. Diaz, Undersecretary, Operations

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAY 15 2018

Office of Administrative Law

## TEXT OF ADOPTED REGULATIONS

In the following text, ~~strikethrough~~ indicates deleted text and underline indicates added or amended text as a result of the 15-Day Renote.

### California Code of Regulations, Title 15, Crime Prevention and Corrections

#### Division 3, Adult Institutions, Programs, and Parole

#### Chapter 1. Rules and Regulations of Adult Operations and Programs

#### Article 1. Behavior

#### Section 3000. Definitions.

**Section 3000 is amended to alphabetically merge the definitions below with those already in the regulations.**

**Gender Dysphoria** means distress caused by a conflict between a person's gender identity and the sex the person had or was identified as having at birth.

**Gender Identity** means a person's sense of identification as male, female, neither, or both.

**Transgender** means a person whose gender identity is different from the person's assigned sex at birth.

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; *Madrid v. Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH); *Sassman v. Brown* (E.D. Cal. 2015) 99 F.Supp.3d 1223; *Mitchell v. Cate*, USDC ED 2:08-CV-01196-TLN-EFB; *In re Garcia* (2012) 202 Cal.App.4th 892; and *Quine v. Beard*, No. C 14-02726 JST.

#### Article 2. State-Issued Inmate Clothing and Linen

#### Section 3030. Issuance and Possession of State Clothing and Linen.

**Subsections 3030(a) and 3030(b) are unchanged but are shown for reference.**

(a) Each inmate shall be provided state clothing and linen pursuant to this section. Each item issued shall remain state property for which the inmate shall be accountable. State items shall be recalled and exchanged as directed by the institution head.

(b) Inmates shall possess only those items of state clothing and linen issued to them. Below are the standard inmate issues:

**Subsections 3030(b)(1) through 3030(b)(3)(I) are unchanged.**

**New Subsection 3030(c) is adopted to read:**

(c) Transgender inmates and inmates having symptoms of gender dysphoria as identified and documented in SOMS by medical or mental health personnel within a CDCR institution shall be allowed to possess the state-issued clothing that corresponds to their gender identities in place of the state-issued clothing that corresponds to their ~~anatomical sexes~~ assigned sex at birth at designated institutions.

**Existing Subsections 3030(c) through 3030(d) are renumbered to new Subsections 3030(d) through 3030(f) and the text is unchanged.**

(d)...

(e)...

(f)...

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2084 and 5054, Penal Code; and *Quine v. Beard*, No. C 14-02726 JST.

**Subchapter 2. Inmate Resources**

**Article 9. Personal Property and Religious Personal Property**

**Section 3190. General Policy.**

**Subsections 3190(a) through 3190(c) are unchanged.**

**New Subsection 3190(d) is adopted to read:**

(d) The Transgender Inmates Authorized Personal Property Schedule (TIAPPS) (~~4/4/18-4/28/17~~) identifies a separate list of allowable personal property afforded to transgender inmates and inmates with symptoms of gender dysphoria as identified and documented in SOMS by medical or mental health personnel within a CDCR institution, and is incorporated by reference. The TIAPPS shall be updated through the collaboration of all mission-based programs within the Division of Adult Institutions no more frequently than twice yearly. All changes to the TIAPPS shall be adopted in accordance with the rulemaking requirements of the Administrative Procedure Act (Government Code Sections 11340 through 11350.3) and, if applicable, Penal Code Section 5058.3.

The following two property lists are incorporated by reference:

(1) TIAPPS—Designated Male Institutions (~~4/4/18-4/28/17~~). This personal property schedule applies to transgender inmates and inmates having symptoms of gender dysphoria who are housed at male institutions.

(2) TIAPPS—Designated Female Institutions (~~4/4/18-4/28/17~~). This personal property schedule applies to transgender inmates and inmates having symptoms of gender dysphoria who are housed at female institutions.

**Existing Subsections 3190(d) through 3190(u) are renumbered to new Subsections 3190(e) through 3190(v) and the text is unchanged.**

(e)...

(f)...

- (g)...
- (h)...
- (i)...
- (j)...
- (k)...
- (l)...
- (m)...
- (n)...
- (o)...
- (p)...
- (q)...
- (r)...
- (s)...
- (t)...
- (u)...
- (v)...

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 2086, 2601, 5006 and 5054, Penal Code; *In re Alcala*, Marin County Superior Court, No. 117925, December 20, 1984 and *Armstrong v. Davis Court Ordered Remedial Plan*, Amended January 3, 2001; *In re Armstrong*, N.D. Cal, No. C 94-02307, March 20, 1998; and *Quine v. Beard*, No. C 14-02726 JST.

**Subchapter 4. General Institution Regulations**

**Article 1.6. Inmate Housing**

**Section 3269. Inmate Housing Assignments.**

**Sections 3269 through 3269(f) are unchanged.**

**New Subsection 3269(g) is adopted to read:**

(g) Transgender inmates and inmates having symptoms of gender dysphoria as identified and documented in SOMS by medical or mental health personnel within a CDCR institution shall be referred to a classification committee for a determination of appropriate housing at a designated institution, pursuant to Article 10 of Subchapter 4.

**Existing Subsection 3269(g) is renumbered to new Subsection 3269(h) and the text is unchanged.**

- (h)...

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Quine v. Beard*, No. C 14-02726 JST.

**TRANSGENDER INMATES**

**AUTHORIZED PERSONAL PROPERTY SCHEDULE**

(4/4/18-4/28/17)

DESIGNATED MALE INSTITUTIONS.....PAGE 2

DESIGNATED FEMALE INSTITUTIONS.....PAGE 5

Transgender inmates and inmates having symptoms of gender dysphoria as identified and documented in SOMS by medical or mental health personnel within a CDCR institution who are housed at male institutions may possess the authorized personal property items listed in the “DESIGNATED MALE INSTITUTIONS” section of this schedule and in the Authorized Personal Property Schedule (APPS) (Rev. 4/1/14), which is incorporated by reference in Section 3190(b), specific to their security levels and privilege groups as described in Subsections 3190(b)(1) through 3190(b)(4). Transgender inmates and inmates having symptoms of gender dysphoria as identified and documented in SOMS by medical or mental health personnel within a CDCR institution who are housed at female institutions may possess the authorized personal property items listed in the “DESIGNATED FEMALE INSTITUTIONS” section of this schedule and in the APPS specific to their security levels and privilege groups as described in Subsection 3190(b)(5).

Despite the increase in allowable personal property items, the combined volume of state-issued and allowable personal property items possessed by a transgender inmate or an inmate having symptoms of gender dysphoria shall not exceed six cubic feet per Subsection 3190(~~de~~).

**DESIGNATED MALE INSTITUTIONS**

**PERSONAL CLOTHING ITEMS FOR TRANSGENDER INMATES/  
INMATES HAVING SYMPTOMS OF GENDER DYSPHORIA**

- INMATES ARE PERMITTED TO WEAR SOLID COLORS ONLY, UNLESS OTHERWISE INDICATED.
- INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING PERSONAL CLOTHING ITEMS IN ANY SHADE OR TINT OF GREEN, BLACK, BROWN, TAN, RED, OR BLUE, UNLESS OTHERWISE INDICATED.
- INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING ITEMS WHICH ARE OBSCENE OR WHICH HAVE LOGOS, LETTERING, OR PICTURES WHICH ADVERTISE OR DEPICT ALCOHOL, GANGS, PROFANITY, SEX, WEAPONS, DRUGS, OR DRUG PARAPHERNALIA.

ITEM DESCRIPTION  With additional requirements and restrictions.	GENERAL POPULATION LEVELS I, II, and III			GENERAL POPULATION LEVEL IV			SHU/PSU	ASU	
	PRIVILEGE GROUP								
	A	B	C	A	B	C	D	D	
<b>BRASSIERES</b> (White or gray only. No metal underwire, lace, strapless, see through, or pushup.)	7	7	7	7	7	7	7	7	
<b>PANTIES</b> (White or gray only. No thong, G-string, lace, see-through or pockets.)	10	10	10	10	10	10	10	10	
<b>SANDALS</b> (Beige, brown, or white only. No hidden compartments, zippers, or laces that are covered or concealed. Purchase value not to exceed \$75.)	1	1	1	1	1	1	0	0	
<b>T-SHIRTS</b> (White or gray only. Any combination of crew neck, v-neck, long sleeve, or sleeveless athletic tank-top. Turtle neck and mock turtle neck not permitted. The number of allowable t-shirts is combined with, and not in addition to, the number of allowable under shirts. Under shirts are as allowed in the APPS.)	5	5	5	5	5	5	3	0	
<b>WALKING SHOES</b> (Beige, brown, or white only.)	1	1	1	1	1	1	0	0	

**PERSONAL CARE/HYGIENE ITEMS FOR TRANSGENDER INMATES/  
INMATES HAVING SYMPTOMS OF GENDER DYSPHORIA**

- NO ALCOHOL-BASED PRODUCTS AND NO AEROSOL CONTAINERS ALLOWED.
- NO METAL CONTAINERS OR CONTAINERS HAVING METAL TOPS OR BOTTOMS.
- PRODUCTS CONTAINING PHOSPHATES ARE NOT ALLOWED.
- MAKE UP PRODUCTS ARE ALLOWED AS DESCRIBED BELOW. THEY MUST BE NATURAL SKIN TONES PER CALIFORNIA CODE OF REGULATIONS, SECTION 3062, INMATE GROOMING STANDARDS.

ITEM DESCRIPTION  With additional requirements and restrictions.	GENERAL POPULATION LEVELS I, II, and III			GENERAL POPULATION LEVEL IV			SHU/PSU	ASU
	PRIVILEGE GROUP							
	A	B	C	A	B	C	D	D
<b>BODY SPLASH</b> (10 oz. each max. No sprays or pumps.)	2	2	2	2	2	2	0	0
<b>BLUSH</b> (Natural skin tones only.)	2	2	2	2	2	2	0	0
<b>COTTON BALLS</b>	400	400	400	400	400	400	0	0
<b>EMERY BOARD</b> (Non-metal only.)	6	6	6	6	6	6	0	0
<b>EYEBROW PENCIL/EYELINER</b> (Factory sealed. Pencil only, no liquid. Natural skin tones only, i.e., black or brown in color.)	2	2	2	2	2	2	0	0
<b>EYE SHADOW KIT</b> (No mirrors. Kit shall not be altered. Natural skin tones only.)	2	2	2	2	2	2	0	0
<b>FABRIC SOFTENER</b> (Liquid, one bottle only, 36 oz. max.)	1	1	1	1	1	1	0	0
<b>FACE POWDER</b> (10oz. each max.)	2	2	2	2	2	2	0	0
<b>FACIAL ASTRINGENT</b> (10 oz. each max.)	2	2	2	2	2	2	1	0
<b>FACIAL CLEANSER</b> (10 oz. each max.)	2	2	2	2	2	2	1	0
<b>FEMINE HYGIENE WASH</b>	2	2	2	2	2	2	1	0
<b>FOUNDATION</b> (Natural skin tones only.)	2	2	2	2	2	2	0	0
<b>HAIR GEL, SPRAY AND GEL CURL, BRAID SPRAY AND LOCK GEL</b>	2	2	2	2	2	2	1	0
<b>HAIR ROLLERS</b> (Non-electric.)	30	30	30	30	30	30	0	0
<b>LIP GLOSS/LIPSTICK/LIP LINER</b> (Natural skin tone only.)	2	2	2	2	2	2	0	0
<b>MASCARA</b> (Factory sealed. Natural skin tone, i.e., black or brown.)	1	1	1	1	1	1	0	0
<b>PUMICE BAR/PUMICE SPONGE</b> (Combined with shower puffs/loofahs and	3	3	3	3	3	3	0	0

washcloths. Washcloths are as allowed in the APPS.)								
<b>SCRUNCHIES</b> (Black, white, or gray only. Combined total with hair ties. Hair ties are as allowed in the APPS.)	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>0</b>	<b>0</b>
<b>SHOWER BAG</b> (At Warden's discretion. Mesh construction.)	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>
<b>SHOWER CAP</b> (Must be both clear and colorless.)	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>
<b>SHOWER PUFFS/LOOFAHS</b> (White only. Combined with pumice bar/pumice sponge and washcloths. Washcloths are as allowed in the APPS.)	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>0</b>	<b>0</b>
<b>TWEEZERS</b> (Plastic only. Maximum of 3" long.)	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>

**REGISTERABLE PROPERTY FOR TRANSGENDER INMATES/  
INMATES HAVING SYMPTOMS OF GENDER DYSPHORIA**

ITEM DESCRIPTION  With additional requirements and restrictions.	GENERAL POPULATION LEVELS I, II, and III			GENERAL POPULATION LEVEL IV			SHU/PSU	ASU
	PRIVILEGE GROUP							
	A	B	C	A	B	C	D	D
<b>CHAIN OR NECKLACE</b> (Yellow or white metal only. Purchase value not to exceed \$25. The chain or necklace shall be no more than 5 millimeters wide and 24" long.)	<b>1</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>

**DESIGNATED FEMALE INSTITUTIONS**

**PERSONAL CLOTHING ITEMS FOR TRANSGENDER INMATES/  
INMATES HAVING SYMPTOMS OF GENDER DYSPHORIA**

- INMATES ARE PERMITTED TO WEAR SOLID COLORS ONLY, UNLESS OTHERWISE INDICATED.
- INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING PERSONAL CLOTHING ITEMS IN ANY SHADE OR TINT OF GREEN, BLACK, BROWN, TAN, RED, OR BLUE, UNLESS OTHERWISE INDICATED.
- INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING ITEMS WHICH ARE OBSCENE OR WHICH HAVE LOGOS, LETTERING, OR PICTURES WHICH ADVERTISE OR DEPICT ALCOHOL, GANGS, PROFANITY, SEX, WEAPONS, DRUGS, OR DRUG PARAPHERNALIA.

ITEM DESCRIPTION  With additional requirements and restrictions.	GENERAL POPULATION LEVELS I, II, and III			GENERAL POPULATION LEVEL IV			SHU	ASU	
	PRIVILEGE GROUP								
	A	B	C	A	B	C	D	D	
<b>ATHLETIC SUPPORTER</b>	2	2	2	2	2	2	2	0	
<b>BINDERS/COMPRESSION TOPS</b> (White or gray only. The number of allowable binders/compression tops is combined with, and not in addition to, the number of allowable brassieres. Brassieres are as allowed in the APPS.)	7	7	7	7	7	7	7	7	
<b>BRIEFS/BOXERS</b> (White or gray only. For SHU and ASU inmates, boxers shall have no elastic on the leg opening.)	10	10	10	10	10	10	6	0	

**PERSONAL CARE/HYGIENE ITEMS FOR TRANSGENDER INMATES/  
INMATES HAVING SYMPTOMS OF GENDER DYSPHORIA**

- NO ALCOHOL-BASED PRODUCTS AND NO AEROSOL CONTAINERS ALLOWED.
- NO METAL CONTAINERS OR CONTAINERS HAVING METAL TOPS OR BOTTOMS.
- PRODUCTS CONTAINING PHOSPHATES ARE NOT ALLOWED.

ITEM DESCRIPTION  With additional requirements and restrictions.	GENERAL POPULATION LEVELS I, II, and III			GENERAL POPULATION LEVEL IV			SHU	ASU
	PRIVILEGE GROUP							
	A	B	C	A	B	C	D	D
<b>AFTER SHAVE</b> (Must be clear and in clear container only. 5 oz. each max.)	2	2	2	2	2	2	1	0

## **FINAL STATEMENT OF REASONS:**

The Initial Statement of Reasons (ISOR) is incorporated by reference.

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

The Notice of Proposed Action was published in the California Regulatory Notice Register on April 28, 2017, which began the public comment period. Notice of Change to Regulations 17-03 was mailed on April 28, 2017, and posted on the Department's Internet and Intranet websites. The public hearing was held on June 19, 2017. No comments were received at the public hearing. The 45-day comment period ended at 5:00 p.m. on June 19, 2017. During the 45-day comment period, forty-four written comments were received. These comments are discussed below under the heading, "Summary and Response to Written Public Comment."

On September 15, 2017, the Department submitted a request to the Office of Administrative Law (OAL) for an emergency readoption of these regulations pursuant to Penal Code Section 5058.3. This request was approved on October 4, 2017, with an effective date of October 6, 2017.

On December 22, 2017, the Department submitted a request to OAL for a second emergency readoption of these regulations pursuant to Government Code (GC) Section 11346.1(h). This request was approved on January 2, 2018, with an effective date of January 5, 2018.

On February 2, 2018, a 15-Day Renotice, which included revisions to the revised text of the regulations and an addendum to the ISOR, was distributed to all persons whose comments were received during the public comment period and all persons who requested notification of the availability of such changes. The 15-Day Renotice was also posted on the Department's Internet and Intranet websites.

The 15-Day Renotice included an "Addendum to the Initial Statement of Reasons" that read as follows:

The Department has determined that flat irons will be provided in the same way as curling irons because flat irons do not pose an additional safety and security risk. The update to the Initial Statement of Reasons is as follows:

**"Curling Irons and Flat Irons":** Transgender inmates and inmates having symptoms of gender dysphoria who are housed at designated institutions will have access to curling irons and flat irons in common areas where the usage of the curling irons and flat irons shall be under direct staff supervision; curling irons and flat irons shall not be permitted as authorized personal property as they pose a significant security risk due to their being comprised of large pieces of metal that can be modified into and used as weapons."

**Additional Update:** In the "Documents Relied Upon" section of the Initial Statement of Reasons, the American Psychological Association was incorrectly identified as the "American Psychiatric Association."

The 15-day Renotice comment period ended at 5:00 p.m. on January 19, 2018. During the 15-Day comment period, zero comments were received.

## **CHANGE TO TEXT AS ORIGINALLY ADOPTED:**

The 15-Day Renotice included a "Change to the Text as Originally Adopted" that read as follows:

**Subsection 3030(c) is amended to** replace “anatomical sex” with “assigned sex at birth.” This is necessary to be consistent with the definition of “Transgender” that is provided in Section 3000.

**NON-SUBSTANTIVE CHANGES TO THE PROPOSED TEXT:**

The following non-substantive change was made to the proposed text:

On Page 1 of the Transgender Inmates Authorized Personal Property Schedule (TIAPPS) (4/28/17), “Subsection 3190(d)” was corrected to “Subsection 3190(e)” to accurately reflect the creation of the new Subsection 3190(d) within the regulations.

Other non-substantive formatting changes and typographical errors and/or omissions are corrected throughout the text and TIAPPS to ensure clarity and consistency.

**INCORPORATED BY REFERENCE:**

The TIAPPS is incorporated by reference. To publish this document in the California Code of Regulations would be cumbersome and impractical, and would increase costs to the Department.

**DOCUMENTS AVAILABLE TO THE PUBLIC:**

The TIAPPS was made available to the public throughout the rulemaking process and will continue to be made available to the public.

**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 Department has rejected alternatives that posed a threat to the safety and security of the institutions. The Department’s rationale for each denial can be found in the “Summary and Response to Written Public Comment” section of this document.

**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 inmates in State prisons.

The Department has determined this action imposes no mandates on local agencies or school districts and no fiscal impact on State or local government or Federal funding to the State or private persons. It is also determined that this action neither affects small businesses nor has 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 inmates in State prisons. This action also has no costs or reimbursements to any local agency or school district within the meaning of GC 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.

## **SUMMARY AND RESPONSE TO WRITTEN PUBLIC COMMENT:**

### **Commenter #1:**

**Comment 1A:** The Commenter requests that the Department define “Transgender Man” and “Transgender Woman.” The Commenter states that the clarifications provided by the definitions would alleviate instances of Department staff referring to transgender inmates by the wrong gender-specific pronouns and terms, which the Commenter states is in conflict with *Shaw v. District of Columbia* and *Farmer v. Brennan*.

**Response 1A:** One of the documents that the Department relied upon in crafting these regulations was “Transgender People, Gender Identity and Gender Expression,” which was electronically published by the American Psychiatric Association in 2017, and states that “transgender” is “an umbrella term for persons whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth.” The Department has defined the word “transgender” as a person whose gender identity is different from the person’s assigned sex at birth so as to be all-encompassing.

### **Commenter #2:**

**Comment 2A:** The Commenter takes issue with the following quotation from the Initial Statement of Reasons: “the prison gang problem remains mostly a male problem, with female inmates having a significantly lower gang density rate.” The Commenter is a transgender inmate who identifies as female, and states that because she is female, the Department’s argument regarding Security Threat Groups (STGs) is undermined.

**Response 2A:** Based upon a study by the National Gang Crime Research Center, the Department maintains that the use of colors to show STG affiliations is a greater concern at male institutions than female institutions and therefore property authorizations related to colors for transgender inmates who are housed at designated male institutions must be reflective of the prevalence of STGs at male institutions. Being that STGs are more prevalent among male inmates and are therefore more prevalent in male institutions, the use of colors to show STG affiliations is a greater concern at male institutions than female institutions and property authorizations must be reflective of that concern. By only allowing gray or white colored clothing, displaying STG affiliations is much more difficult.

**Comment 2B:** The Commenter states that the issue of clothing items that are authorized in the TIAPPS being possessed by male STG members, whether the male STG members acquire the clothing items through theft or by having the clothing items provided to them by an inmate who is authorized to possess the items, is checked by CDCR officers who are trained specifically to notice gang color flagging and to confiscate anything that is only authorized for transgender inmates.

**Response 2B:** In part due to concerns regarding STG color “flagging,” the Department restricts all inmates in both male and female institutions from possessing, using, or wearing personal clothing items in certain colors, e.g., any shade or tint of green, black, brown, tan, red, or blue, unless otherwise indicated on the appropriate property schedule. At male institutions, the Department restricts colors on purchased items to white and gray only due to the threat posed by STGs identifying by colors and the risk of escape paraphernalia. Allowing deviations from this practice could result in compromising the safety and security of the institutions through the possible confusion of staff who, as the commenter states, are trained specifically to notice these

colors. The Department is committed to maintaining this consistency for the purposes of preserving the safety and security of the institutions.

**Comment 2C:** In the context of clothing items authorized on the TIAPPS being acquired by male STG members who are not authorized to possess the items, the Commenter expresses doubt that male STG members would voluntarily dress in female clothing.

**Response 2C:** The Department holds that the issue of displaying STG affiliation through the use of colors is not limited to the intended use of clothing items because clothing items can be modified into items that can be used to “flag” STG affiliation. Displaying STG affiliation is much more difficult when color limitations are imposed upon personal property items, e.g., certain items of clothing being authorized for purchase in white or gray only.

**Comment 2D:** The Commenter states that authorized colors should not be limited to gray and white because pink (e.g., fuchsia) is not an STG color.

**Response 2D:** See Responses 2A and 2B.

**Comment 2E:** The Commenter states that there is no known STG that accepts transgender inmates who are housed at male institutions and states that the transgender inmates housed at male institutions are targeted by male STG members. The Commenter states that if transgender inmates at male institutions were authorized to wear other colors, their risk of victimization would be lowered because they would be more visible to CDCR staff and because they would be more visible to each other, which would allow for safety in numbers.

**Response 2E:** In accordance with Federal Prison Rape Elimination Act (PREA) standards, 28 Code of Federal Regulations 115.41(i), an inmate’s identification as transgender or having symptoms of gender dysphoria is considered sensitive information and is not to be shared with other inmates in order to reduce the potential for targeting or other predatory behavior. Allowing transgender inmates or inmates having symptoms of gender dysphoria to visibly identify through wearing different colors than the rest of the population would breach this confidentiality. Additionally, as stated in Response 2B, colors other than white and gray are not allowed for purchase at male institutions. For information about how staff are aware of an inmate’s identification as transgender, see Response 14A.

**Commenter #3:**

**Comment 3A:** The Commenter states that transgender inmates who are housed at male institutions should be authorized to possess more shampoo, body wash, and other such products because transgender inmates who identify as female require greater volumes of product than are authorized on the TIAPPS in order to manage longer hair and keep themselves clean.

**Response 3A:** The amount of shampoo and body wash available to male inmates per the Authorized Personal Property Schedule (APPS) (Rev. 4/1/14) is limited, depending upon housing and custody factors, to a maximum of two 20 ounce bottles of shampoo and two 20 ounce bottles of body wash per inmate because the containers may be used to hide contraband; this limitation is correspondingly reflected on the TIAPPS for transgender inmates who identify as female and are housed at designated male institutions. The APPS authorizes possession of two 10 ounce bottles of body splash for female inmates and the TIAPPS authorizes this item in the same amount for transgender inmates who identify as female and are housed at designated male institutions. Also, Section 3062 allows for an inmate’s hair to be any length regardless of whether the inmate is male, female, or transgender.

**Comment 3B:** The Commenter, a transgender inmate who identifies as female, objects to the Department’s decision to house her “exclusively based off of [her] gender genital status” because it disadvantages her in terms of her “basic ability to keep [herself] clean.” The Commenter also states that she risks incurring “gender motivated” rules violation reports by “circumvent[ing] state rules” and ordering more products than she is allowed by ordering them under another inmate’s name in an attempt to secure her needed quantity of the products.

**Response 3B:** The Department considered this comment and was unable to determine the connection that the Commenter, a transgender inmate who identifies as female, was drawing between her cleanliness and her allegation that the Department houses her “exclusively based off of [her] genital status,” and the Department notes that it does not house inmates exclusively based off of their genital statuses. Although the above comment does address an aspect or aspects of the proposed regulatory action and must be summarized pursuant to GC Section 11346.9(a)(3), it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment. Additionally, all inmates, regardless of institution assignment or gender, are held accountable for rules infractions via the inmate discipline process as governed by Subchapter 4, Article 5.

**Commenter #4:**

**Comment 4A:** The Commenter states that additions to the TIAPPS are necessary so that transgender inmates who are housed at male institutions will be able to purchase clothing items that are in keeping with their identification as female and are designed to accommodate the bodily changes that result from hormone treatment. The Commenter requests that the following items be added to the TIAPPS in the totals specified: thermal tops, two; thermal bottoms, two; shorts, two; sweat shirts, two; sweat pants, two; socks, seven pairs; caps and hats, three total combined; and sunglasses, one pair. The Commenter wants these items to be included on the TIAPPS so that transgender inmates who are housed at male institutions are permitted to buy clothing items in a female cut rather than a male cut to ensure a correct fit, which the Commenter states will serve to relieve symptoms of gender dysphoria.

**Response 4A:** The Department notes that thermal bottoms, shorts, sweat shirts, sweat pants, socks, caps and hats, and sunglasses are already available in the APPS for both male and female inmates. Thermal tops are not currently included in the APPS for male or female inmates and will therefore not be added to the TIAPPS. The purpose of the TIAPPS is to grant inmates access to items that are not already included in the APPS. The APPS allows for male inmates to be circumstantially provided with items of clothing specifically manufactured for women, and transgender inmates and inmates having symptoms of gender dysphoria who are housed at designated male institutions would therefore be allowed to purchase items in the APPS in a female cut.

**Commenter #5:**

**Comment 5A:** The Commenter states that hair clips should be authorized because the Department already permits items such as CD players, typewriters, harmonicas, and guitars that include or are composed of metal components, e.g., spring-loaded CD player lids and springs within typewriter ribbons, and the Commenter does not think that the metal components in hair clips would pose a greater safety and security concern than the aforementioned items. The Commenter further states that the Department should consider authorizing hair clips on a

level-by-level basis, allowing inmates housed at a lower level to have access to items that may not be safely provided to inmates housed at a higher level.

**Response 5A:** The Department recognizes that CD players, typewriters, and musical instruments have greater value and are made of materials that could create safety and security concerns for institutions. For that reason, these items are considered to be registerable personal property and must be registered under the inmate’s name and number in the institution’s inmate property records. In addition, inmates are required upon request by institution staff to properly account for all registerable personal property that is registered under their names and numbers. Hair clips are not particularly valuable and they are not considered to be registerable property, making them vulnerable to alteration into inmate manufactured weapons. The Department has decided that hair clips will not be considered on a level-by-level basis because of the potential threat the metal components create within a male facility for use in manufacturing weapons or circumventing restraint gear such as handcuffs, waist chains, or leg restraints.

**Commenter #6:**

**Comment 6A:** The Commenter takes issue with the Department’s determination that the slash between the “Pajama/Nightgown,” specified in the recommendations pertaining to the settlement agreement for *Quine v. Beard*, means that the Department is allowed the option of providing either pajamas or a nightgown. The Commenter states that if the Department were allowed this option, the recommendations pertaining to the settlement agreement for *Quine v. Beard* would have stated “either/or.” The Commenter, a transgender inmate who identifies as female, further states that the Department’s determination denies her the ability to choose between the two types of sleepwear and that the vendors for the state-issued property may not provide a nightgown of sufficient quality or appropriate size.

**Response 6A:** Institutions work with the California Prison Industry Authority (CALPIA) to purchase nightgowns and other state-issued clothing in sizes that are appropriate for all inmates. The CALPIA catalog lists nightgowns in sizes small through 7XL. The Department maintains that as noted in the ISOR, the slash between “Pajama/Nightgown” in the recommendations pertaining to the settlement agreement for *Quine v. Beard* allows the Department the option of providing either pajamas or a nightgown, and the Department has elected to provide the nightgown as state-issued personal property. Personal pajamas and nightgowns are not authorized at male institutions due to the additional fabric that has the potential to be used as escape paraphernalia.

**Commenters #7-12:**

**Comment 7A:** The Commenter states that the Department is using the term “security risk” as an “umbrella term” without an “actual valid reason that has a logical, rational connection to the issues at hand,” and is doing so in order to “arbitrarily deny” personal property items to transgender inmates. As an example, the Commenter states that the Department justified unfairly denying color clothing options to transgender inmates by claiming colored clothing was a “security risk” because transgender inmates who identify as female are being categorized as male and STG members.

**Response 7A:** See Response 2A. To clarify, the Department is not categorizing transgender inmates as STG members nor is the Department categorizing transgender inmates who identify as female as being male. Additionally, the Department holds that the security concerns that it

references within the ISOR are legitimate and are not being used to “arbitrarily deny” personal property items to transgender inmates.

**Comment 7B:** The Commenter states that bracelets, curling irons, earrings, hair clips, and metal hair rollers should be authorized because male institutions have canned goods for sale in the prison canteens and the cans could pose a greater weapons concern than the aforementioned items and because earrings and bracelets do not pose a greater weapons concern than paper clips, “which [are] allowed even in Level-4 prisons.” The Commenter states that hair clips and hair brushes should be authorized for Level III inmates and that earrings and bracelets should be authorized for Level III and Level IV inmates.

**Response 7B:** For hair clips, see Response 5A.

For bracelets, see Responses 19A and 25C.

Earrings would have significant value due to their relative scarcity in male prisons. It is not always the monetary value of the item that drives predatory behavior; items that are in short supply could present the same issue. As a scarce item, earrings would have the potential to increase predatory behavior against weaker inmates. Earrings could be stolen or be used to barter or trade for contraband and other items. Earrings can also be easily modified to assist in the circumventing of restraint gear such as handcuffs, waist chains, or leg restraints.

Palm brushes, which are full-size hair brushes without a handle, are authorized in the APPS. These brushes allow for the usability of a full size brush without introducing additional plastic material that can be easily melted, molded, and sharpened into a weapon that would pass easily through metal detection equipment.

Curling irons are not listed in the TIAPPS because they are not allowed as personal property in designated male institutions; however, as noted in the ISOR, they are available in common areas where the usage of the curling irons shall be under direct staff supervision. The Department maintains that, as noted in the ISOR, electric hair rollers contain core metal pieces that can be removed and easily altered to use in inmate manufactured weapons; however, curling irons are an alternative to the unauthorized electric hair rollers, as are the non-electric hair rollers that are authorized in the TIAPPS.

**Comment 7C:** The Commenter states that there is no known STG that accepts transgender inmates who are housed at male institutions and states that the transgender inmates housed at male institutions are targeted by male STG members. The Commenter requests that the Department “adjust [its] percentages” to account for STG members who are transgender inmates who identify as female. The Commenter states that because transgender inmates who identify as female do not associate with STG members, there “is no valid potential security risk for allowing us to have the same color[s] as all the women can buy.”

**Response 7C:** See Responses 2A, 2B, and 2E. To clarify, the Department relied on a survey that was conducted by the National Gang Crime Research Center—the Department did not conduct the survey.

**Comment 7D:** The Commenter expresses doubt that male STG members would voluntarily dress in female clothing.

**Response 7D:** See Response 2C.

**Comment 7E:** The Commenter states that pink, yellow, and purple are not STG colors and therefore the Department should not restrict those colors.

**Response 7E:** See Responses 2A and 2B.

**Comment 7F:** The Commenter wants scarves to be authorized for transgender inmates who identify as female, specifying that the scarves would be used as headwear and worn outside of their cells, in day rooms, yards, dining halls, churches, schools, and/or anywhere that female inmates can wear their scarves. The authorization of scarves for use as headwear would serve to accommodate the bodily changes that result from hormone treatment, namely for transgender inmates who identify as female and have “male-pattern baldness” that the Commenter states results from starting hormones late in life. The Commenter states that the handkerchiefs, which are currently authorized in the APPS, are insufficient for this purpose because “as a means of harassment, officers can in fact order you to remove your handkerchief from your head,” and inmates are not allowed to wear handkerchiefs in schools, churches, or dining halls, nor are they allowed to wear handkerchiefs for medical visits. The Commenter also states that baseball hats, which are currently authorized in the APPS, are insufficient for this propose because most transgender inmates who identify as female do not like wearing “male-associated” baseball hats outside. The Commenter further states that if the Department will not authorize transgender inmates who identify as female to possess scarves to be used as headwear, the Department should authorize handkerchiefs to be used as headwear for transgender inmates who identify as female anywhere that female inmates can wear their scarves.

**Response 7F:** The Department maintains that, as noted in the ISOR, scarves cannot be authorized for transgender inmates and inmates having symptoms of gender dysphoria who are housed at male institutions because scarves would pose too much of a security risk in that they would be uncontrolled and unaccounted for, and made of material that can too easily be fashioned into clothing items for the purposes of escape. Also, scarves that are authorized in the APPS for female inmates cannot have a hood and are not approved to be worn as head coverings. Regarding officers allegedly ordering inmates to remove handkerchiefs from their heads, see Response 28B.

**Commenter #13 (same letter as Commenters #7-12, with two additional comments summarized and responded to below):**

**Comment 13A:** The Commenter states that if the Department will not authorize transgender inmates who identify as female to possess scarves to be used as headwear, the Department should authorize handkerchiefs to be used as headwear for transgender inmates, who identify as female anywhere that female inmates can wear their scarves, including to meals.

**Response 13A:** See Responses 7F and 28B.

**Comment 13B:** In the context of headwear, the Commenter also states that the Department should consider authorizing transgender inmates who identify as females to possess wigs.

**Response 13B:** Wigs afford inmates the ability to dramatically alter their appearances. For that reason, Section 3062 notes that an inmate shall not possess a wig unless it is deemed medically necessary by the Chief Medical Officer and authorized, in writing, by the appropriate Division of Adult Institutions Associate Director. Outside of the parameters of Section 3062, wigs are not authorized as either state-issued or personal property for inmates.

**Commenter #14 (including four signatures):**

**Comment 14A:** The Commenter suggests that transgender inmates, whether they identify as male or female, should each possess a state-issued identification card with the notation “TIAPPS” in red to indicate that each individual is a transgender inmate and is therefore authorized to receive any form of property or service that would pertain to a transgender inmate. The Commenter states that the issuance of “TIAPPS” identification cards will alleviate instances of harassment and discrimination against transgender inmates by clarifying that the individual a transgender inmate and is therefore authorized to receive any form of property or service that would pertain to a transgender inmate. The Commenter continues by describing how the “TIAPPS” identification cards would function within the institutions.

**Response 14A:** The Department has considered this comment and determined that the Commenter is chiefly concerned with the clarity surrounding staff’s recognition of an inmate’s eligibility to acquire property that is authorized in the TIAPPS. An inmate who identifies as transgender would not need a specialized identification card to indicate his or her eligibility to acquire property that is authorized in the TIAPPS because an inmate’s identification as transgender, and therefore his or her eligibility to acquire property that is authorized in the TIAPPS, can be readily accessed by staff in SOMS. For staff training and combatting alleged instances of harassment and discrimination, see Response 28B.

**Commenter #15:**

**Comment 15A:** The Commenter is a transgender inmate who identifies as female and who is housed in a Protective Housing Unit (PHU). The Commenter requests that due to “the unusual circumstances which involve a PHU transgender inmate,” she be allowed to purchase the following items which are not included on the TIAPPS: bath robe, scarf, earrings, bracelet, hair clips, hair brush, and flat iron. The Commenter states that she wants to possess clothing items that are pink, yellow, and purple in color because she is not a member of a STG, those colors are not STG colors, and therefore the Department should not restrict those colors.

**Response 15A:** The Department will not authorize additional items in the TIAPPS exclusively for PHU inmates because PHU is not intended to allow property privileges that are not allowed for other inmates; rather, PHU is intended to keep inmates separated from other inmates for reasons such as to protect them from violence or because they have affiliations with STGs. See Responses 2A and 2B.

**Commenter #16:**

**Comment 16A:** The Commenter requests that the Department authorize flat irons as well as curling irons in order to accommodate transgender inmates with both curly and straight hair. If the Department authorizes flat irons, the Commenter, a transgender inmate who identifies as female, requests to be authorized to purchase a flat iron of her choosing that she could then donate for use in the building in which she lives, stating that she would buy another flat iron to donate should she be moved to a different building.

**Response 16A – Accommodation:** The Department has considered this comment and has determined that flat irons will be authorized in the same manner as curling irons, which is indicated in the ISOR. This change was included in the Notice of Change to Text as Originally Adopted and Addendum to the Initial Statement of Reasons, dated February 2, 2018.

**Commenter # 17:**

**Comment 17A:** The Commenter states that the emergency regulations fail to meet the standards set forth pursuant to both the Administrative Procedure Act (APA) and Penal Code (PC) Section 5058.3 for an emergency filing. The Commenter disputes the Department's claim that there is a cost-saving aspect to implementing the emergency regulation because the Department failed to adhere to the requirement that a cost estimate be prepared and placed in the rulemaking file. The Commenter also states that because the Office of Administrative Law is required to return any rulemaking record if the adopting agency has not prepared the cost or savings estimate required by the APA, "this emergency regulation should be voided and the rulemaking file returned to the adopting agency unless and until deficiencies in the rulemaking record [are] corrected accordingly." The Commenter further states that, in order to correct deficiencies contained in the emergency regulation and avoid litigation, the Department should study similar regulations which have already been implemented and stay the implementation of this emergency regulation. The Commenter also requests that, when available, the proposed and amended text of the regulation and the Initial and Final Statement of Reasons be made available in hard-copy format through the regular mail system.

**Response 17A:** CDCR followed the requirements of the APA and PC Section 5058.3 for an emergency filing, and this is affirmed by the Office of Administrative Law's approval of this emergency rulemaking action. The Department has noted the Commenter's 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.

**Comment 17B:** The Commenter states that the emergency regulations violate "equal protection" because "such standards and procedures have not been fully implemented for any other individual currently confined" under CDCR's jurisdiction. The Commenter further states that the rules and regulations of CDCR and its individual facilities must be uniformly applied and that the regulations create "unequal application of rules and regulations as it pertains not just to the care and treatment of inmates being admitted into those facilities, but also relating to the conduct and management of the State prisons in general."

**Response 17B:** The Department considered this comment and was unable to determine what aspect of the regulations the Commenter took issue with in regards to the equal protection issue. Although the above comment does address an aspect or aspects of the proposed regulatory action and must be summarized pursuant to GC Section 11346.9(a)(3), it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment. The Department affirms that these regulations are not in violation of the Equal Protection Clause. See Response 44A.

**Comment 18A:** The Commenter states that transgender inmates and inmates having symptoms of gender dysphoria should be housed separately from male and female inmates, in accordance with their gender identities. The Commenter describes various detrimental scenarios that the Commenter states would arise from transgender inmates and inmates having symptoms of gender dysphoria being housed with male and female inmates, e.g., transgender inmates who identify as female being a danger to female inmates if they were to be housed at female institutions while still possessing the physical strength of male inmates and inmates with Christian beliefs suffering "psychological chaos" that would violate their "individual, civil, and constitutional rights."

**Response 18A:** In keeping with PREA standards, 28 CFR 115 et seq., the Department will not segregate transgender inmates and inmates having symptoms of gender dysphoria, keeping them completely separate from the rest of the inmate population. To do so would limit the opportunities available for this population to successfully program and obtain all the rehabilitative benefits offered in the various designated institutions.

**Commenter #19:**

**Comment 19A:** The Commenter states that bracelets should not be considered as posing a significant security risk because “BEADED WRIST BAND” is already authorized in the Religious Personal Property Matrix (RPPM) (Rev. 6/27/13). The Commenter states that because the Department authorizes bracelets for inmates who are religious, the Department should authorize bracelets for inmates who are not religious, stating that the discrepancy places the Department in violation of the “establishment clause” in the Religious Land Use and Institutionalized Persons Act. The Commenter also states that bracelets should not be considered a security risk because “RELIGIOUS MEDALLION AND CHAIN” is authorized in the RPPM and “CHAIN OR NECKLACE” is authorized in the TIAPPS, both with the specification that they be no more than 24 inches long, and an inmate possessing two chains that are both 24 inches in length would pose a greater threat than an inmate possessing a bracelet that is six inches in length (the length of the bracelet is suggested by the Commenter, not listed in the RPPM or the APPS). The Commenter further states that in regards to male inmates preying on transgender inmates who identify as female because they possess bracelets, PREA requires the State to “protect and screen” transgender inmates as well as male and female inmates from “being exposed to predators.”

**Response 19A:** The Department draws a distinction between metal bracelets as allowed in the APPS for female inmates and the beaded wrist band or beading materials as allowed in the RPPM. The Department acknowledges that multi-colored beaded wrist bands are a significant part of certain spiritual beliefs. This allowable item worn on the wrist is not analogous to a commercially produced metal bracelet. Certain jewelry items, including bracelets, have been limited in male institutions due to their scarcity promoting predatory behavior and violence. The Department has a duty to protect all inmates and this restriction on jewelry is in furtherance of that goal. As noted in the ISOR, the Court stated in the order regarding the settlement agreement for *Quine v. Beard*, dated June 9, 2017, that bracelets “pose significant safety and security concerns,” and the Department agrees with the Court. The Department disagrees that disallowing bracelets for inmates who are not religious places the Department in violation of the Religious Land Use and Institutionalized Persons Act (42 USC 2000cc) in that these bracelets would not be worn for religious purposes.

**Commenter #20:**

**Comment 20A:** The Commenter requests that being that the Department is authorizing “BINDERS/COMPRESSION TOPS” for transgender inmates who identify as male in order to allow for “an aesthetic that would be in keeping with the gender identity of a transgender inmate,” the Department should also authorize a “tucker,” also known as a “gaff,” for transgender inmates who identify as female, which would be similar to panties and be combined with the total authorized number of “PANTIES” as listed on the TIAPPS.

**Response 20A:** The Department has a legitimate safety and security interest in limiting clothing items that enhance the ability to conceal contraband. Items such as a gaff or tucker are designed

for concealment. As noted in the ISOR, weapons offenses are much more prevalent in male institutions, which makes clothing items designed for concealment an even more significant threat to the safety and security of male institutions; therefore, the property authorizations for transgender inmates who identify as female and who are housed at designated male institutions must be reflective of that threat.

**Commenter #21:**

**Comment 21A:** The Commenter requests that robes, which are authorized for use by female inmates, also be authorized for transgender inmates who identify as female. The Commenter, a transgender inmate who identifies as female, states that “PREA mentions our highest risk is when we shower” and states that a robe would assist her in minimizing “exposing [her] nude body to men” when using the dayroom shower facilities. The Commenter also states that a robe would provide the warmth and coverage that her “improvised nightgown (a 5XL t-shirt)” does not.

**Response 21A:** Transgender inmates are allowed to shower separately from other inmates in CDCR institutions. The Department has also completed modifications to bathroom and shower areas at all institutions to include privacy screens to help maintain privacy while showering. Also, inmates are allowed to bring their clothing to the shower and dress before leaving the shower area and are encouraged to dress before exiting the shower area if they are concerned about privacy and exposure. Therefore, there is no specific privacy need for robes when showering.

**Commenter #22:**

**Comment 22A:** The Commenter requests that purchasable body-size towels be authorized for transgender inmates who identify as female. The Commenter, a transgender inmate who identifies as female, states that the “PREA statute on allowing transgender inmates to shower separately from men emphasizes the higher rate of risk to [them] when [they] shower” in terms of assault, and therefore “affording [them] an extra layer of privacy to cover [themselves] up with” would reduce the aforementioned risk of assault by providing more coverage. The Commenter states that the risk of authorizing purchasable towels for transgender inmates would be minimal because inmates are already authorized to possess large pieces of cloth, e.g., blankets and sheets, and because the towels already being sold are white, which is not a STG color. The Commenter also states that the quality of the purchasable towels is softer than that of the state-issued towels, which would be beneficial for transgender inmates who identify as female because their skin is “naturally softer due to the effects of [their] hormones.” The Commenter points out that the state-issued towels are a “nightmare” when drying off, as drying her long hair completely soaks the thin towel which she must also use to dry her body and to wrap around herself for privacy while exiting the shower.

**Response 22A:** See Responses 3A and 21A. Section 3030 authorizes two state-issued towels per inmate, which currently suffices at male institutions, even for inmates with long hair. The quality and softness of towels can vary based on the use and age of the towel regardless of whether it is state-issued or available for purchase. Body-size towels are also larger than state-issued towels and are not allowed at male institutions due to the additional fabric that has the potential to be used as escape paraphernalia.

**Commenter #23:**

**Comment 23A:** The Commenter requests that the Department alter the term “T-SHIRTS” on the TIAPPS, stating that there is “possible confusion” in this term because t-shirts are “too specific to being of a certain cut.” The Commenter, a transgender inmate who identifies as female, states that the term “BLOUSES” should be used instead as the Commenter believes that shirts are listed as blouses on the APPS for female inmates, though the Commenter states that she “does not have access” to the APPS for female inmates.

**Response 23A:** The APPS authorizes “T-SHIRTS” for female inmates; the APPS does not authorize “BLOUSES” for female inmates. Regarding access to the APPS, per Section 3124, the institution law libraries are required to have the entire collection of the California Code of Regulations. Transgender inmates at designated institutions are allowed to purchase personal clothing items, as indicated in the TIAPPS, from either the male or female section of the vendor catalogs in accordance with their gender identities. This means that a transgender inmate who identifies as female will be allowed to purchase personal clothing items indicated on the TIAPPS in a female cut.

**Commenter #24:**

**Comment 24A:** The Commenter wants scarves to be authorized for transgender inmates who identify as female, specifically in white or gray. The Commenter states that the Department’s position regarding the security risks of scarves should be reconsidered for the following reasons: 1) “TALLITS (sic),” which are nearly identical to scarves, are included on the RPPM and have not been used to threaten institutional security; 2) due to inmate transfers, countless personal and state-issued linen/clothing items already exist within the institutions; 3) the security risk posed by the “occasional lone scarf” (especially a white or gray one, as those are inmate-approved colors) is far outnumbered by the vast number of items “of possible repurposing for use in prison”; and 4) counting scarves within the transgender female inmates’ property limits further reduces the risk to institutional security. The Commenter further states that scarves are feminizing and would provide transgender inmates who identify as female with the option to “keep [themselves] warmer due to [their] sensitive sensibilities.” The Commenter, a transgender inmate who identifies as female, states that transgender inmates who identify as female should not be denied scarves based on their being “housed by [their] genital status in male prisons.”

**Response 24A:** See Responses 3B and 7F. The Department notes that prayer shawls/scarves as noted on the RPPM, such as Tallits, are traditionally made of a thin woven cloth whereas the scarves that are available for female inmates through the vendor catalogs are akin to a warm weather accessory made of an acrylic knitted cloth. The Department disagrees with the Commenter’s assertion that these items are identical and pose the same risk; the fabric that comprises scarves available in the vendor catalogs is of a significantly different texture than cloth items that are currently available in male institutions, and is therefore a safety and security concern regarding possible escape paraphernalia. The Department declines to “count” scarves among transgender female property as the Department only tracks registerable inmate property of a more significant value, e.g., televisions or typewriters. Also, prayer shawls/scarves are only allowed to be worn in authorized religious/spiritual activity areas or the inmates’ bed areas. With respect to the items already existing within institutions and the security risk posed, Sections 3030 and 3190(e) limit the amount of specific clothing items an inmate may possess.

**Commenter #25:**

**Comment 25A:** The Commenter requests that hair brushes be authorized on the TIAPPS for transgender inmates who identify as female, stating that hair brushes could be cut at the handle by Receiving and Release staff at each institution, with the acceptable length of the handle being determined at the discretion of each institution, thereby addressing safety concerns. The Commenter states that Receiving and Release staff currently cut toothbrush handles to address safety concerns. The Commenter also stated that full-length hairbrushes are already being sold in canteens and, to date, there have been no reports of male inmates using hairbrushes in a “malicious or nefarious (sic)” way.

**Response 25A:** See Response 7B.

**Comment 25B:** The Commenter requests that “[d]urable plastic hair clips” be authorized on the TIAPPS for transgender inmates who identify as female, stating that unlike “[m]etal hair clips,” they “pose no safety or security concern as they can not be modified into a weapon and are [n]ot valuable enough to be of concern for theft” (sic). The Commenter states that Department staff currently use plastic hair clips within the institutions.

**Response 25B:** See Response 5A. Hair clips are significant pieces of plastic and include metal spring components. The plastic material can be easily melted, molded, and sharpened into a weapon that would pass through metal detection equipment. The spring component can be easily modified to assist in the circumventing of restraint gear such as handcuffs, waist chains, leg restraints, etc. Staff members can wear plastic hair clips, but they also carry handcuffs, keys, chemical agents, and batons. It is the staff members’ responsibility to maintain possession of all personal and duty items.

**Comment 25C:** The Commenter states that bracelets should be authorized on the TIAPPS for transgender inmates who identify as female because “Native American and other South American spiritual groups use bracelets and medicine bags in religious worship and no safety concerns have developed.” The Commenter also states that the Department’s concern regarding relatively weaker inmates being pressured into giving away items of personal property is “invalid due to the cost limitation [being] set at \$25.” The Commenter states that inmates are already authorized to possess watches with a value of up to \$50, and watches “are essentially characteristic of bracelets.” The Commenter states that if the monetary value of bracelets is a concern, the Department should set a more appropriate cost limit or allow inmates to make and possess handmade bracelets.

**Response 25C:** See Response 19A. The Department distinguishes between watches and bracelets. Watches are not a scarce item in male prisons and also serve a functional use, aiding in rehabilitation by allowing inmates to maintain their work or education schedules and attend health care appointments.

**Comment 25D:** The Commenter requests that earrings be authorized on the TIAPPS for transgender inmates who identify as female, stating that a low cost limit could be set and that plastic, clip-on, magnetic, or “homemade” earrings could be authorized in place of standard earrings to “avoid adverse effects during altercations.” The Commenter states that inmates who already have pierced ears or “gauged earlobes” do not want their holes to close, which would require re-piercing at a later time. The Commenter also states that female inmates “can wear earrings without fear of physical injury.”

**Response 25D:** See Response 7B. Additionally, it is not the Department’s responsibility to ensure that inmates’ pierced ears do not close up.

**Comment 25E:** The Commenter requests that both pajamas and nightgowns be authorized on the TIAPPS for transgender inmates who identify as female—specifically that they be included on the TIAPPS rather than be provided as state-issued property—because inmates may have a preference for pajamas or nightgowns and would be denied one based upon what is provided at each institution and their inclusion within the TIAPPS would “minimize confusion with R&R staff and package vendors.”

**Response 25E:** See Response 6A. Institutions can work with the California Prison Industry Authority (CALPIA) to purchase nightgowns and other state-issued clothing in sizes that are appropriate for all inmates. The CALPIA catalog lists nightgowns in sizes small through 7XL.

**Comment 25F:** The Commenter requests that pants, shorts, capris, sweatpants, and jeans be authorized on the TIAPPS for transgender inmates who identify as female, stating that these garments pose no safety issues. The Commenter also notes that many transgender inmates who identify as female need the aforementioned garments in a female cut that is designed to accommodate the bodily changes resulting from hormone treatment.

**Response 25F:** See Response 4A. Personal jeans are not authorized at male institutions due to higher rates of escape and escape attempts from male institutions and the potential for the material to be used as escape paraphernalia. Sweat pants and athletic shorts are allowed at both male and female institutions. Personal capris and shorts are not included in the APPS for female inmates and will therefore not be authorized for transgender inmates who identify as female.

**Comment 25G:** The Commenter requests that, being that the Department is authorizing “BINDERS/COMPRESSION TOPS” for transgender inmates who identify as male, the Department should also authorize a “tucker,” also known as a “gaff,” for transgender inmates who identify as female, which is “designed to be worn under existing underwear” and to allow transgender inmates who identify as female to conform to their identified gender.

**Response 25G:** See Response 20A.

**Comment 25H:** The Commenter requests that hairbands be authorized on the TIAPPS for transgender inmates who identify as female. The Commenter suggests that the hairbands be made of either cloth or plastic “with exclusions for those made with metal.”

**Response 25H:** “HAIR TIES” and “HEAD BANDS” are currently authorized on the APPS for male and female inmates, and therefore transgender inmates who are housed at designated male and female institutions are authorized to possess them. The Department maintains that hair ties and head bands are suitable alternatives to the “hairbands” requested by the Commenter, as are the scrunchies that are authorized on the TIAPPS, and being that “hairbands” are not authorized for either male or female inmates, they will not be authorized for transgender inmates.

**Comment 25I:** The Commenter requests that “specialized, smaller gauge pencil sharpeners” for eyeliner/eyebrow pencils be authorized on the TIAPPS for transgender inmates who identify as female, stating that they need different sharpeners than are currently provided for because the use of a “provided institutional pencil sharpener” would “pose significant [h]ealth risks” because it is not designed to sharpen products that are “used for a person’s face and eyes.”

**Response 25I:** Pencil sharpeners are currently authorized as personal property in male and female institutions. Inmates may purchase twist-up eyeliner/eyebrow pencils to avoid the need for a pencil sharpener.

**Comment 25J:** The Commenter requests that clothing colors such as pink, yellow, and purple be authorized on the TIAPPS for transgender inmates who identify as female, specifically for brassieres, panties, nightgowns, and t-shirts because they are “rarely exposed.” The Commenter states that transgender inmates are “often kept away from yards” that house STG members, and “therefore transgender inmates should not be at risk of exchanging these items [with STG members] or being confused as an affiliate.” The Commenter states that pink is not an STG color and is unlikely to be work to represent and STG, especially if the colored clothing item was a brassier, panty, or “other feminine garment.”

**Response 25J:** For colors such as pink, yellow, and purple, see Responses 2A and 2B.

For the issue of the displaying of STG affiliation though the use of colors not being limited to the intended use of clothing items, see Response 2C.

For the theft/exchange of property items, see Response 2B.

**Comment 25K:** The Commenter states that scarves are “considered problematic due to concern of possible physical injury,” but that scarves equipped with safety measures to prevent strangulations, e.g., Velcro or button snaps, should be authorized on the TIAPPS for transgender inmates who identify as female.

**Response 25K:** The Department has not indicated that scarves are considered problematic due to a concern of possible physical injury; the Department has stated in the ISOR and maintains that scarves would pose too much of a security risk because they would be uncontrolled and unaccounted for, and made up of material that can be too easily fashioned into clothing items for the purposes of escape.

**Comment 25L:** The Commenter requests that nail polish be authorized in the TIAPPS for transgender inmates who identify as female, provided that the nail polish is nonflammable. The Commenter states that “Title 15 specifically allows female inmates to use clear nail polish.”

**Response 25L:** Although Section 3062(j) states in part, “Female inmates may be permitted to wear only clear nail polish,” the purpose of the TIAPPS is to bring property allowances for in line with the APPS for transgender inmates. Nail polish is not listed in the APPS for female inmates will therefore not be authorized in the TIAPPS for transgender inmates who identify as female.

**Comment 25M:** The Commenter states that “the TIAPPS does not reflect nightdresses or dresses of any kind” and requests that skirts and dresses be authorized in the TIAPPS for transgender inmates who identify as female, specifically as being “medically necessary” and with restrictions on length, e.g., “no more than two inches above the knee when standing.” The Commenter states that dresses and skirts are not mentioned in the APPS, but that dresses, muumuus, robes, or dusters are authorized as state-issued property for female inmates in Section 3030(b)(3)(D). The Commenter states that transgender inmates “have no safety or security issues that should prohibit them from wearing skirts or dresses,” and that restrictions on length “should be included to ensure inmates do not improperly use such garments.” The Commenter states that dresses and skirts are worn to “allow air to circulate in specific areas of

the female anatomy” and that the use of hormones cause transgender inmates to “experience similar and often increased levels of perspiration,” thereby making them “medically necessary.”

**Response 25M:** State-issued nightgowns have been authorized in these regulations for transgender inmates who identify as female and are housed at designated institutions. Muumuus are dress-like state-issued clothing items that have been authorized in these regulations for transgender inmates who identify as female and are housed at designated institutions. Pursuant to Section 3030(b)(3)(D), the Department shall issue a dress or a muumuu to each female inmate but is not mandated to provide both. The Department currently offers a muumuu for female inmates, not a dress, and will therefore offer the same for transgender inmates who identify as female and are housed at designated institutions. Skirts are not currently authorized in the APPS for female inmates and will therefore not be authorized for transgender inmates who identify as female.

**Commenter #26:**

**Comment 26A:** The Commenter requests that nightgowns be removed from “the CDCR property matrix.” The Commenter states that although “all prisoners want pajamas,” vendors do not sell them and they are not provided as state-issued property, and so requests that pajamas be removed as well. The Commenter states that neither “females; males; nor transgender [persons]” want to be forced to wear nightgowns and that “[c]limbing to the upper bunk bed in a nightgown is [neither] cool nor respectable.”

**Response 26A:** The Department considered this comment, and as neither nightgowns nor pajamas are authorized on the TIAPPS, the Department concludes that the Commenter is requesting that changes be made to the APPS. Although the above comment does address an aspect or aspects of the proposed regulatory action and must be summarized pursuant to GC Section 11346.9(a)(3), it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Commenter #27:**

**Comment 27A:** The Commenter states that pink, yellow, and purple are not STG colors and therefore the Department should not restrict those colors. The Commenter also states that pink, yellow, and purple items are already being offered by all approved vendors. The Commenter also requests to know who within the Department will have the responsibility to inform all of the approved property vendors of the new regulations and when the vendors will be informed.

**Response 27A:** See Responses 2A and 2B. The Department’s Office of Policy Standardization will notify vendors of any regulatory changes when the changes are approved and adopted.

**Commenter #28:**

**Comment 28A:** The Commenter requests that bracelets, earrings, hair brushes, hair clips, pajamas, nightgowns, robes, and scarves be added to the TIAPPS for transgender inmates who identify as female.

**Response 28A:** For bracelets, see Responses 19A and 25C.

For earrings and hair brushes, see Response 7B.

For hair clips, see Response 5A.

For pajamas/nightgowns, see Response 6A.

For robes, see Response 21A.

For scarves, see Responses 7F and 25K.

**Comment 28B:** The Commenter, a transgender inmate who identifies as female and who is housed at the California Substance Abuse Treatment Facility (SATF) and State Prison at Corcoran, states that SATF “has refused to implement the recent TIAPPS,” and that when her family members requested to know if the TIAPPS has been implemented, they were told by “CSP-Corcoran Property” that she was “only allowed to purchase bras and that [she] had to wear boxers.” The Commenter asks why she is “being denied the right to purchase all of the items on the TIAPPS” and states that she is being discriminated against.

**Response 28B:** The Department continues to train institutional staff in the application of the TIAPPS. Inmates may appeal any decision that they believe adversely affects them by following the appeals process outlined in Article 8.

**Commenter #29:**

**Comment 29A:** The Commenter, a transgender inmate who identifies as female and who is housed at SATF, states that “multiple ranking officers on our yard are wholly against [the emergency regulations]” and are “circumventing them by subjective interpretation.” The Commenter goes on to describe instance of “subjective interpretation,” e.g., makeup being viewed as altering an inmate’s appearance if it is worn “noticeably.” The Commenter also states that Department staff are referring to transgender inmates by the wrong gender-specific pronouns and terms and are harassing them on the basis of their gender identities. The Commenter requests that the Department address the issues identified.

**Response 29A:** See Response 28B.

**Commenter #30:**

**Comment 30A:** The Commenter requests that earrings be authorized on the TIAPPS for transgender inmates who identify as female. The Commenter, a transgender inmate who identifies as female, states that although the Department may have security concerns over the amount of metal in hoop earrings, the Department should authorize stud earrings in “ball type” without “set-stones” that will be feminizing while minimizing the amount of metal in the earrings. The Commenter further states that if the Department will not authorize metal earrings, the Department should authorize plastic studs for health and sanitation reasons, as transgender inmates who identify as female currently have to use the teeth from combs to keep their ear piercings open.

**Response 30A:** See Response 7B.

**Commenter #31:**

**Comment 31A:** The Commenter requests that the Department define “Transgender Man” and “Transgender Woman.” The Commenter states that the clarifications provided by the definitions would allow for the appropriate use of “gender pronouns” and alleviate instances of Department staff referring to transgender inmates by the wrong gender-specific pronouns and terms. The Commenter states that transgender inmates are “marshalled to their gender identity NOT their

biological designation given at birth” (sic). The Commenter refers to “Civil Right Act Article VII that puts trans as protected from gender discrimination” within the request.

**Response 31A:** See Responses 1A, 28B, and 44A. The Department affirms that these regulations are not in violation of Title VII of the Civil Rights Act, which prohibits employment discrimination based on race, color, religion, sex, and national origin.

**Commenter #32:**

**Comment 32A:** The Commenter requests that robes be added to the TIAPPS for transgender inmates who identify as female. The Commenter states that having a robe will allow transgender inmates who identify as female to have more privacy when going to and from the showers. The Commenter further states that robes will minimize transgender inmates who identify as female “being seen by the opposite gender naked,” which “promotes [their] victimization,” by allowing them to “change facing a wall where [they] can hide [their] nakedness.” The Commenter specifically requests that privately-obtained robes be added to the TIAPPS so that inmates can order robes that are “fluffy and have a durable stitching.”

**Response 32A:** See Response 21A.

**Comment 32B:** The Commenter requests that the Department extend the length of shower time for transgender inmates who identify as female from five minutes to ten minutes, or at least to seven minutes, because they have “longer hair and more body maintenance than a man does.”

**Response 32B:** Although the above comment does address an aspect or aspects of the proposed regulatory action and must be summarized pursuant to GC Section 11346.9(a)(3), it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Commenter #33:**

**Comment 33A:** The Commenter requests that additional institutions be designated to house transgender inmates, specifically Valley State Prison and California Men’s Colony. The Commenter understands that “the pods there have private showers” that would allow transgender inmates to “keep [their] private business private,” stating that this would “eliminate LOTS (sic) of drama involved with CDCR not putting partitions up for [transgender inmates] to shower privately.” The Commenter states that the designation of additional institutions for the housing of transgender inmates would help transgender inmates experience a more balanced daily life “as most trans in prison have [a] slight mental health imbalance that is expressed through territorial leanings where we end up getting on one another’s (sic) nerves in such a high dense environment.” In requesting that additional institutions be designated to house transgender inmates, the Commenter is relying upon the following excerpt from “the draft of NCR 17-03”: “Currently there are 9 male institutions and 2 female institutions identified to house transgender inmates. [The Division of Adult Institutions] would like to add two additional male institutions (California Men’s Colony and California Health Care Facility) and one female institution (Folsom Women’s Facility).”

**Response 33A:** Regarding the showers, see Response 21A. In the ISOR, the Department articulates the basis upon which institutions are designated to house transgender inmates and therefore does not include a list of the institutions that are currently designated within the text of the regulations, which would be impractical as the institutions designated for a particular purpose

could be subject to change based upon Department needs. That said, the Department informs the Commenter that California Men's Colony and Folsom Women's Facility are currently designated to house transgender inmates.

**Commenter #34:**

**Comment 34A:** The Commenter requests that sharpeners for "makeup pencils (lip liner and eyeliner both)" be authorized on the TIAPPS for transgender inmates who identify as female, stating that they need different sharpeners than are currently provided for because the use of a "public one" would pose a health risk. The Commenter states that because "makeup typically comes into contact with bodily fluids such as the mucus membranes of [the inmates'] eyes and mouth," the shared use of sharpeners promotes "the spreading of infectious diseases," and transgender inmates "have higher infection risks." The Commenter, a transgender inmate who identifies as female and who is housed at SATF, states that her institution allows transgender inmates who identify as female "access to personal razors by keeping them in a box for checkout...under staff supervision and to be inspected before and after checkout," and requests that transgender inmates be given access to sharpeners for makeup pencils in the same way.

**Response 34A:** See Response 25I.

**Commenter #35:**

**Comment 35A:** The Commenter requests that makeup blenders be authorized on the TIAPPS for transgender inmates who identify as female, stating that they are "made of supersoft material and serve no ability to be weaponized." The Commenter wants to know if makeup blenders were "meant to be included or are intended to be a part of the cotton ball count," and states that if so, a clarifying slash with alternative names for the items should be added. The Commenter also states that cotton balls are not sold by vendors any longer, "at least not within [W]alkenhorsts current catalog," and states that cotton balls are an inadequate substitute for makeup blenders.

**Response 35A:** Makeup blenders are not authorized in the APPS for female inmates and will therefore not be authorized in the TIAPPS for transgender inmates who identify as female. Since makeup blenders are not authorized property, they are not part of the cotton ball count. Regarding the availability of cotton balls in vendor catalogs, although the comment does address an aspect or aspects of the proposed regulatory action and must be summarized pursuant to GC Section 11346.9(a)(3), it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Commenter #36:**

**Comment 36A:** The Commenter requests that hair brushes be authorized in the TIAPPS for transgender inmates who identify as female. The Commenter states that being that Level I-IV inmates are permitted to possess long handled toothbrushes, with the toothbrush handles being cut for Level IV inmates, Level I-IV inmates should be able to possess hair brushes, with the hair brush handles being cut for Level IV inmates. The Commenter states that "palm comb[s]" and "pocket comb/wide tooth comb[s]" are inadequate substitutes for hair brushes, and that hair brushes are needed for transgender inmates who identify as female to be able to "utilize fully the curling iron that is now permitted" and to "grow [their] hair longer...to accentuate [their] gender identities." The Commenter also states that hair brushes without handles are inferior to hair brushes with handles because hair brushes without handles are "designed [to be] disposable

items and can hardly stand up to repetitive use let alone compare to the quality of effectiveness at their job.” The Commenter further states that in terms of cutting the handles of hair brushes, the “designation of either cutting or not cutting the handles” should be indicated in the TIAPPS as being at the discretion of each institution.

**Response 36A:** See Response 7B. Section 3062 allows for an inmate’s hair to be any length regardless of whether the inmate is male, female, or transgender. Palm brushes are available in male institutions and are used by male inmates with long hair. The Department holds that palm brushes are durable and are hygienically suitable for inmates with long hair, including transgender inmates who are housed at designated male institutions. In response to the comment that palm brushes are designed to be disposable, the Department notes that the vendor catalogs do not describe these items as “disposable” and offer more than one type and price point.

**Commenter #37:**

**Comment 37A:** The Commenter requests that the RPPM be amended to ensure that it gives transgender inmates the right to possess religious clothing items that correspond to their gender identities. The Commenter further requests that the RPPM be amended to better clarify what clothing transgender inmates may wear, claiming that “the vagueness of the wording...has come to haunt me when arguing with staff.” The Commenter, a transgender inmate who identifies as female, also states that although Section 3213(b) was adopted in NCR 15-03 (in connection with the items authorized in the RPPM), she has “personally been told no on items [she has] made out of beads that it’s too feminizing” and requests that Section 3213(b) be amended to clarify what transgender inmates may wear.

**Response 37A:** The Department considered this comment, but as the RPPM and the TIAPPS are two separate property schedules and Section 3213(b) specifically deals with the RPPM, the Department concludes that the requested changes to the RPPM and Section 3213(b) will not be made as a part of NCR 17-03. Although the above comment does address an aspect or aspects of the proposed regulatory action and must be summarized pursuant to GC Section 11346.9(a)(3), it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Commenter #38:**

**Comment 38A:** The Commenter requests that body splash be paired with body spray in the TIAPPS for transgender inmates who identify as female just as the paired items are listed in the APPS for female inmates, but that the item description for the paired items in the TIAPPS should be reworded to “emphasize that pumps are to be removed.” The Commenter, a transgender inmate who identifies as female and who is housed at SATF, states that this would be similar to how her institution handles the ordering of CDs: she states that the inmates are able to order CDs, but “the package officer takes the CD case itself (thusly allowing the content not the case that’s been deemed a security threat).” The Commenter states that the pumps should be removed “because a lot of hygiene female items are exclusively available in pumps.” The Commenter also states that body splash “is not available in any of our current catalogues as a product.”

**Response 38A:** Per the APPS, pumps are not allowed at male institutions. Additionally, pumps could not be removed from body sprays by CDCR staff as the removal of the pumps would leave the containers with no means to be secured.

**Commenter #39:**

**Comment 39A:** The Commenter requests that “liquid soap,” “scrub soap,” and “body scrub” be authorized in the TIAPPS alongside facial astringent and facial cleansers for transgender inmates who identify as female. The Commenter requests an increase in the authorized number of “facial cleansers,” stating that the authorization of “2 facial cleansers at a time” would be insufficient if transgender inmates who identify as female “repurpose [the facial cleansers] for use as body scrub...as the ounces are on average 6 oz. per facial so would only last a few showers not the whole quarter.”

**Response 39A:** The APPS authorizes “SOAP, LIQUID BODY WASH/DISH SOAP” at 20 ounces. each and “SOAP, BAR” at 5 ounces each for male and female inmates, and transgender inmates who identify as female and are housed at designated male institutions are able to order these items. The TIAPPS authorizes “FACIAL CLEANSER” and “BODY SPLASH” at 10 ounces each for transgender inmates who are housed at designated male institutions. The APPS does not authorize “liquid soap,” “scrub soap,” or “body scrub” for either male or female inmates, and therefore those items will not be authorized for transgender inmates.

**Commenter #40:**

**Comment 40A:** The Commenter states that disallowing all hair clips “seems extremely unfair” and requests that plastic hairclips be authorized in the TIAPPS for transgender inmates who identify as female, including the specification that “they have to be 3 [inches] or less” as with tweezers, with hair clips with metal components being disallowed. The Commenter then states that if the Department will not authorize plastic hairclips because they are a security risk, the Department should authorize side combs, stating that “Walkenhorsts used to sell them, they are small (less than 3 inches), contain no moving part or spring, and they are invaluable as compared to bobbypins (sic) they perform a similar job in securing hair in place.” The Commenter states that although side combs “aren’t currently for sale, permitting them will motivate companies to sell them again.” The Commenter states that side combs would allow transgender inmates who “transition way late in life and have experienced hair loss” to “cover [themselves] up as best as [they] can in order to present as best as possible as female.” The Commenter further states side combs should not be considered hair clips because “there aren’t 2 sides of [a side comb] that hinge to pin something between them so the *Quine v. Beard* restriction technically didn’t disallow them even.”

**Response 40A:** See Response 25B. Side combs are not authorized in the APPS for male or female inmates and will therefore not be authorized in the TIAPPS for transgender inmates. The Department holds that transgender inmates are able to purchase a variety of instruments for securing and/or covering their hair, including head bands, hats and caps, and hair ties as authorized in the APPS as well as scrunchies as authorized in the TIAPPS.

**Commenter #41:**

**Comment 41A:** The Commenter, a transgender inmate who identifies as female and who is housed at SATF, requests that “the canteens be mandated to carry a couple items for the trans who can’t afford packages,” and she suggests “pink lip gloss, eyeliner (black), loofahs, and body splash.” The Commenter states that the “current policy for inclusion of new items to a yard’s canteen requires a ‘majority vote’ of canteen subcommittees within the Inmate Advisory Council (IAC),” and states that because transgender inmates “are a minority and currently are

merely allowed to participate within the IAC as an ‘Honorary Representative,.’” the transgender inmates “can’t vote let alone carry a majority in the IAC canteen subcommittee that [they are] not even allowed to join.”

**Response 41A:** Although the above comment does address an aspect or aspects of the proposed regulatory action and must be summarized pursuant to GC Section 11346.9(a)(3), it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Commenter #42 (two signatures, two organizations):**

**Comment 42A:** The Commenters, who identify themselves as the American Civil Liberties Union (ACLU) of California and the National Center for Lesbian Rights (NCLR), state that they “generally support the proposed changes, which will improve access to gender-appropriate clothing and personal care items for transgender people.” The Commenters state that they “have received numerous complaints from California prisoners experiencing gender dysphoria who are extremely upset because they have been denied access to gender-appropriate garments and grooming items,” and state that the regulations “should afford these complainants and other prisoners long-overdue access to gender-appropriate clothing, shoes, undergarments, jewelry, and personal care items.” The Commenters state as follows: “The ACLU and NCLR support the proposed rule because it will help transgender individuals housed at designated institutions address their symptoms of gender dysphoria and express their identities in healthy, authentic ways within such facilities. In addition, we applaud CDCR’s stated commitment to providing training to staff at designated facilities who interact with transgender prisoners, including training on the types of personal property that are, pursuant to this new rule, permissible for transgender and gender dysphoric prisoners to possess.”

**Response 42A:** The Department appreciates the positive comment.

**Comment 42B:** The Commenters state that “the designation of specific institutions for the housing of transgender and gender dysphoric prisoners has not eliminated the need to accommodate the needs of transgender and gender non-conforming prisoners at other CDCR institutions.” The Commenters state that whether “an individual is being processed at an intake facility, is newly pursuing treatment for gender dysphoria, or is in a host of other likely situations, there will inevitably be, at any given time, some gender dysphoric individuals housed at CDCR facilities other than the designated institutions.” The Commenters state that it is “imperative that such individuals also have access to gender-appropriate clothing and personal care items, as well as to safe living conditions and to mental health and medical care addressing their gender dysphoria.” The Commenters therefore state that “in order to meet its obligations under the Prison Rape Elimination Act (‘PREA’), the Eighth Amendment to the United States Constitution, and other applicable law, CDCR should allow for the possibility that prisoners outside of the designated institutions will also have urgent medical needs related to gender dysphoria, including but not limited to needs for gender-appropriate personal items.” The Commenters also state that the Department “also must ensure that staff at other facilities also receive training on the needs of transgender individuals.”

**Response 42B:** The Department affirms that these regulations are in compliance with PREA and the Eighth Amendment. The Department is already obligated to provide safe housing, medical and mental health care in compliance with PREA and the Eighth Amendment at all institutions.

The Department's approach to providing transgender inmates and inmates having symptoms of gender dysphoria with access to state-issued and authorized personal property items balances the allocation of Department resources with the Department's commitment to best meet the needs of the transgender inmate population while maintaining the safety and security of the institutions. As noted in the ISOR, in order to accommodate a variety of transgender inmates' custody levels and educational, vocational, and rehabilitative needs, CDCR has currently designated 14 institutions to house transgender inmates. The transgender inmate population, including inmates having symptoms of gender dysphoria, is very small in comparison with the overall inmate population; presently, CDCR has approximately 500 transgender inmates in an inmate population of approximately 129,000 inmates. The Department maintains that for logistical and practical purposes in meeting the needs of the relatively small population, the Department will designate institutions in order to provide training to a large number of staff at a small number of institutions as opposed to a small number of staff at a large number of institutions. By clustering services for this small group of inmates, the designated institutions are able to provide continuous training to custody, medical, and mental health staff concerning the needs of transgender inmates and inmates with symptoms of gender dysphoria while also maintaining the safety and security of the institutions. For example, in order to maintain the safety and security of the institutions, Department staff at designated institutions need to be able to distinguish between property that is authorized for transgender inmates and inmates having symptoms of gender dysphoria by contrast to the property that is authorized for the rest of the inmate population in order to ensure that all inmates are only in possession of authorized property items. See Response 44G.

Regarding the provision of "mental health and medical care addressing their gender dysphoria," mental and medical health care is provided to inmates at all institutions. As explained above, designated institutions cluster services for this small inmate population. There may be instances where an inmate having symptoms of gender dysphoria is housed at a non-designated institution, but the Department provides for that inmate's consideration for appropriate housing in Subsection 3269(g), which states, "[t]ransgender inmates and inmates having symptoms of gender dysphoria as identified and documented in SOMS by medical or mental health personnel within a CDCR institution shall be referred to a classification committee for a determination of appropriate housing at a designated institution, pursuant to Article 10 of Subchapter 4." A classification committee takes into consideration the inmate's case factors, including any medical/psychiatric/disability concerns (Section 3375(g)(5)(R)).

**Comment 42C:** The Commenters state that "allowing access to gender-appropriate personal items within designated facilities does not obviate CDCR's obligations under PREA, the United States Constitution, and California law to provide each person a meaningful individual assessment (both initially and at regular intervals thereafter) of the safest and most appropriate placement available, allowing for the possibility that a transgender woman's most appropriate placement is in a women's facility, or that a transgender man's most appropriate placement is in a men's facility."

**Response 42C:** Current regulations within Sections 3269 and 3375 provide for proper classification and housing for all inmates and also meet the intent of federal PREA Standard 115.41.

**Comment 42D:** The Commenters request that the Department "avoid using the misleading term 'anatomical sex' in the proposed rule at Subsection 3030(c), and instead to substitute the phrase

‘assigned sex at birth,’ as is already used in the proposed rule’s definition of ‘transgender.’” The Commenters state that this wording change “will more accurately and respectfully convey how the policy will apply to transgender and intersex people in CDCR custody.”

**Response 42D – Accommodation:** The Department has reviewed this comment and has determined that Section 3030(c) will be changed to replace “anatomical sex” with “assigned sex at birth.” This change was included in the Notice of Change to Text as Originally Adopted and Addendum to the Initial Statement of Reasons, dated February 2, 2018.

**Commenter #43:**

**Comment 43A:** The Commenter, a transgender inmate who identifies as female, requests clarification as to whether the regulations “mean that [she] will receive gender appropriate treatment” from correctional officers. The Commenter says that she is harassed nightly with “[g]ender-inappropriate pronouns” and “loud, vile, argumentative behavior” when she tries to explain that she is a transgender inmate who identifies as female.

**Response 43A:** See Response 28B.

**Commenter #44 (four signatures, a coalition of organizations):**

**Comment 44A:** The Commenters, who identify themselves as a coalition of organizations that includes Legal Services for Prisoners with Children, Transgender, Gender-variant, Intersex Justice Project, Justice Now, California Coalition for Women Prisoners, and the National Lawyers Guild - San Francisco, state that “the regulation fails to comply with federal and state equal protection laws and still is not compliant with the Settlement Agreement in *Quine v. Beard et. al.* (2015).”

**Response 44A:** An equal protection claim requires the comparison of like groups. But transgender inmates who are housed at male institutions are not similarly situated to transgender inmates who are housed at female institutions. Male institutions are demonstrably more dangerous. The Department provided examples in the ISOR that demonstrated as such:

“...CDCR COMPSTAT (short for COMPUter STATistics or COMPARative STATistics, COMPSTAT is an organizational management tool based on a concept of statistical analysis of operational performance, continuous review, and direct dialogue between CDCR’s executive management and program managers) reports for 2015 show that inmates at male institutions commit weapons offenses at twice the rate of inmates at female institutions (1.25 per capita for males and .66 per capita for females). Weapons offenses are therefore a greater concern at male institutions than female institutions, and property authorizations must be reflective of that concern. Additionally, the National Gang Crime Research Center (NGCRC) determined that “the prison gang problem remains mostly a male problem, with female inmates having a significantly lower gang density rate. Being that STGs are more prevalent among male inmates and are therefore more prevalent in male institutions, the use of colors to show STG affiliations is a greater concern at male institutions than female institutions and property authorizations must be reflective of that concern.”

The Department complied with the settlement agreement. The portion of the settlement agreement that is disputed in ongoing litigation states:

“CDCR shall review and revise its policies to allow inmates identified by medical or CDCR personnel as transgender or having symptoms of gender dysphoria access to property items available to CDCR inmates consistent with those inmates’ custody and classification factors, including property items that are designated as available to a specific gender only. Before those policies are final, Plaintiff shall have the opportunity to comment on its specific language, including provisions that limit certain property because of safety and security concerns.”

The Department complied with this term by promulgating these emergency regulations and by allowing Plaintiff to comment on the regulations.

**Comment 44B:** The Commenters state that the regulations violate “42 U.S.C. § 1983 and California Gov. Code § 11135 By Refusing All Prisoners Unencumbered Access to Personal Items Available to Prisoners in Other Institutions On the Basis of Gender, Transgender and/or [Gender Nonconforming] GNC Status.” The Commenters state, “All prisoners should have access to all property items irrespective of where they are housed or how they identify.” The Commenters state as follows: “CDCR applies this policy in a manner that discriminates against transgender and gender nonconforming prisoners on the basis of their gender, and transgender and GNC status. Due to the difference in treatment, similarly situated cisgender people are able to receive access to these personal items, but transgender and GNC prisoners requiring or desiring such products are barred from receiving them or must pursue classification through a CDCR medical provider and obtain a chrono to receive items that cisgender prisoners housed in institutions consistent with their gender identity are able to access. The difference in treatment between transgender and GNC people and cisgender people does not further any important government interest in a way that is substantially related to that interest, nor is it rationally related to any legitimate government interest. CDCR’s discriminatory denial of access to these personal items is causing irreparable harm to transgender and GNC people, including severe anxiety and distress, and this discrimination further encourages the mistreatment of and discrimination against transgender and GNC people in other contexts and by other persons.”

**Response 44B:** The Department maintains separate property lists for inmates based upon sex/gender, housing, custody factors, and classification levels. Section 3190(b) incorporates the overall APPS as five separate property schedules based upon the sex/gender that is allowed to have certain items as well as the custody levels and classification factors of the inmates: 1) Authorized Personal Property Schedule—Reception Center Male Inmates; 2) Authorized Personal Property Schedule—General Population Levels I, II, and III, Male Inmates; 3) Authorized Personal Property Schedule—Level IV Male Inmates; 4) Authorized Personal Property Schedule—Administrative Segregation Units (ASU) / Security Housing Units (SHU) / Psychiatric Services Units (PSU) Male Inmates; and 5) Authorized Personal Property Schedule—Female Inmates. The new Section 3190(d) incorporates the TIAPPS as two separate property schedules based upon where a transgender inmate is housed as well as the custody levels and classification factors of the inmates: 1) TIAPPS—Designated Male institutions, and 2) TIAPPS—Designated Female Institutions.

The need for the separate property lists lies in the recognition by the courts of the real differences between male and female institutions. Because of these differences, the courts tend not to view these inmate populations as being similarly situated for the purposes of the services or privileges that they receive in prison. It has been established that “when a prison regulation impinges on inmates’ constitutional rights, the regulation is valid if it is reasonably related to legitimate

penological interests” (*Turner v. Safley* 482 U.S. 78, 89 (1987)). Also, “it is not per se necessary for the CDCR to make individualized determinations as to the violent or predatory nature of a particular inmate before imposing regulations on a group of inmates to which that inmate belongs” (*Harrison v. Kernan*, 2017 WL 3602076, at \*8 (N.D. Cal. Aug. 21, 2017)). As noted in the ISOR, inmates at male institutions are more likely to commit weapons offenses than inmates at female institutions, and property authorizations must be reflective of these concerns. The real differences between male and female institutions result in varying security needs that must be met in order to maintain the safety and security of the institutions; just as these security needs affect the property authorizations of male and female inmates, so too will they affect the property authorizations of transgender inmates who are housed at designated male and female institutions.

The differences in property allocations for cisgender and transgender inmates housed at female institutions compared with cisgender and transgender inmates housed at male institutions offenders is not the act of intentional discrimination but rather arises from legitimate safety and security concerns. As such, the regulations do not violate “42 U.S.C. § 1983 and California Gov. Code § 11135.”

As to the “medical chrono” concern, which the Department has determined is in reference to the SOMS documentation noted in Subsection 3269(g), transgender inmates differ from cisgender inmates in that their gender identities do not correspond to their assigned sexes at birth, and therefore, being that the Department cannot assume when an inmate identifies as transgender, the Department needs to document transgender inmates in accordance with their gender identities just as the Department documents cisgender inmates in accordance with their assigned sexes at birth for the purposes of property allowances.

**Comment 44C:** The Commenters state as follows: “To avoid running afoul of the U.S. Constitution’s Equal Protection Clause and California Gov. Code §11135, CDCR should provide all prisoners in men’s institutions access to pajamas, nightgowns, robes, scarves, and T-shirts that are currently available to people housed in institutions designated for women. CDCR should also provide all prisoners housed in women’s institutions access to the following items that are available to individuals housed [in] institutions designated for men: tennis shoes, underwear (thermal or long) undershirts (any combination of crew neck, V-neck, long sleeve, tank top, muscle shirts, or sleeveless ribbed or athletic tank top), personal clothing (e.g. jeans), watch (wrist or pocket style), deodorant/antiperspirant (designed for men), face cream, hair conditioner, hair oil/grease/gel/pomade (designed for men), lotions (designed for men), disposable razors, shampoo (designed for men) shave gel, cream, bump control lotion and conditioner, and shaving cream (designed for men). Transgender men should be allowed to wear ribbed tank top/undershirts in lieu of bras or binders, or to wear no undershirt at all.”

**Response 44C:** The Department considered the above comment and determined that although the above comment does address an aspect or aspects of the proposed regulatory action and must be summarized pursuant to GC Section 11346.9(a)(3), it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment. These regulations concern property authorizations for transgender inmates and inmates having symptoms of gender dysphoria, not property authorizations for “all prisoners in men’s institutions” and “all prisoners housed in women’s institutions.” In regards to the Commenters’ request that transgender inmates housed at designated female institutions be allowed to wear “ribbed tank top/undershirts,” the Department notes that Section 3030(c)

authorizes state-issued undershirts to be provided to transgender inmates housed at designated female institutions and that “ribbed tank top” is not authorized for male or female inmates and will therefore not be authorized for transgender inmates. Transgender inmates housed at designated female institutions cannot “wear no undershirt at all” because this would constitute indecent exposure, which is defined in Section 3000. In regards to the statement that transgender men should be allowed to wear ribbed tank tops/undershirts in lieu of a bra or binder, ribbed tank tops will not be authorized for the reasons stated above and these regulations do not address how state-issued undershirts are worn; therefore, although the above comment does address an aspect or aspects of the proposed regulatory action and must be summarized pursuant to GC Section 11346.9(a)(3), it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Comment 44D:** The Commenters state as follows: “CDCR’s proposed policies discriminate against prisoners based on their gender. Transgender women and GNC men in men’s prisons do not have the same access to property items as cisgender women in women’s prisons. CDCR maintains that similar access across institutions is impossible based on safety and security reasons, but its justifications fail to meet constitutional standards. There is no rational basis, much less persuasive justification to bar certain items— pajamas, nightgowns, robes, scarves, T-shirts, bracelets, earrings, hair brushes, and hair clips—from men’s institutions when they already are safely provided in women’s institutions without an increase in violence. Furthermore, CDCR’s assertion that access to items like a nightgown or scarf would increase a prisoner’s capacity to escape is implausible, especially when prisoners in men’s institutions already have access to similar types of traditionally masculine ‘street clothes’ and the statistics related to escapes from institutions designated for men and those designated for women have virtually the same escape rates according CDCR’s own data.” When referencing “CDCR’s own data,” the Commenters are referring to the “ANNUAL ESCAPE REPORT CALENDAR YEAR 2012 available at [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Annual/BEH4/BEH4d2012.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/BEH4/BEH4d2012.pdf).”

**Response 44D:** For information regarding the safety and security reasons behind the different property allowances and why this difference is not discriminatory, see Response 44B.

For bracelets, see Responses 19A and 25C.

For earrings and hair brushes, see Response 7B.

For hair clips, see Response 5A.

For pajamas/nightgowns, see Response 6A.

For robes, see Response 21A.

For scarves, see Responses 7F and 25K.

The Department notes that the TIAPPS currently authorizes the purchase of “T-SHIRTS” at designated male institutions.

In response to the comment that the Department’s statistics show “virtually the same escape rates” from male institutions versus female institutions, the data has been incorrectly interpreted. For example, in the last five years of the report (2008-2012) the number of escapes at male

institutions ranged from 11 to 23 whereas female institutions reported zero escapes (see [https://www.cdcr.ca.gov/Reports\\_research/offender\\_information\\_services\\_branch/annual/BEH4/BEH4d2012.pdf](https://www.cdcr.ca.gov/Reports_research/offender_information_services_branch/annual/BEH4/BEH4d2012.pdf) at Page 2).

**Comment 44E:** The Commenters state that the regulations “Do Not Even Comply With The Settlement Agreement In *Quine v. Beard et. al.*” The Commenters state that the Department “has not sufficiently revised its policy to allow a broad range of staff to determine whether a prisoner is eligible to obtain clothing and property items consistent with the person’s gender expression,” and that “Medical or CDCR personnel should be able to identify a prisoner as transgender or having symptoms of gender dysphoria.” The Commenters state that “CDCR’s policy creates unnecessary barriers by limiting such authorization only to a joint team of medical and mental health staff,” and that the Department “must allow any CDCR personnel to independently have the authority to grant access, not simply trigger a long process that may or may not lead to access.” The Commenters state that a “layperson may easily identify symptoms of a condition without being qualified to formally diagnose a condition like gender dysphoria.” The Commenters also state that being that “the word ‘transgender’ is not necessarily synonymous with a medical diagnosis of gender dysphoria,” custody staff “should be able to grant gender-appropriate property items to those prisoners who self-identify as transgender or whose gender identity is different from their sex assigned at birth even if they might be denied or otherwise lack access to a formal diagnosis.” The Commenters state that “it does not take a physician’s or mental health practitioner’s expertise to recognize when a person fits the definition of ‘transgender’” that is provided in the regulations.

**Response 44E:** The *Quine v. Beard* settlement agreement stipulates that the Department shall “review and revise its policies to allow inmates identified by medical or CDCR personnel as transgender or having symptoms of gender dysphoria access to property items available to CDCR inmates consistent with those inmates’ custody and classification factors, including property items that are designated as available to a specific gender only.” Regarding the Commenters’ concern about the specification of “mental health staff,” this concern was considered by the court and addressed in the *Quine v. Beard* Order Granting in Part and Denying in Part Motion to Enforce, dated April 28, 2017. The aforementioned order states, in part, as follows: “...the Court does not see anything in the Agreement that would require that all CDCR staff, rather than mental health CDCR staff, have the power to make that determination [regarding an inmate’s access to appropriate clothing and property items]. Of course, any CDCR staff member may still refer inmates to those with the authority to grant access. Just because custody staff are not the final step in signing off on an inmate’s access to these property items, for example, does not mean they cannot begin the process.” The Department agrees with the court’s assessment of this concern. Additionally, see the “Policy Review and Development Guide: Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings,” Second Edition, published by the National Institute of Corrections in 2015, which was included in the “Documents Relied Upon” section of the Department’s Initial Statement of Reasons.

For information regarding the scope of the word “transgender,” see Response 1A.

**Comment 44F:** The Commenters state as follows: “In order for the language ‘transgender or having symptoms of gender dysphoria’ to have meaning, it must be understood to apply to all of the following groups: (1) transgender prisoners with formal diagnoses of gender dysphoria; (2) self-identified transgender prisoners without diagnoses of gender dysphoria; and (3) cisgender prisoners with symptoms of gender dysphoria; and (4) gender nonconforming

(GNC) prisoners with and without gender dysphoria.” The Commenters state that “CDCR’s policy inappropriately limits access to gender-specific clothing and property items consistent with the person’s gender identity and expression to only the first group.”

**Response 44F:** Based on the established definitions for “gender dysphoria,” “gender identity,” and “transgender” within these regulations, inmates belonging to the groups listed by the Commenter would meet the criteria established for identification as transgender within SOMS. See Responses 1A and 44E.

**Comment 44G:** The Commenters state that “the policies as described in CDCR’s brief only benefit transgender inmates if incarcerated in one of 14 hub facilities” given that only transgender inmates and inmates having symptoms of gender dysphoria who are housed at one of these facilities would have access to the state-issued property items. The Commenters state that the Department “appears to have changed its position since the Settlement Agreement, offering state-issued property items only to those inmates in the ‘transgender hub’ facilities.” The Commenters state that this “unwarranted further limitation to the property policy contravenes the language of the Agreement and will result in denial of property items to prisoners who were intended to be covered by the new policy.” Regarding the contravening of the language in the settlement agreement, the Commenters state as follows: 1) “it arbitrarily limits access to state-issued property items to those prisoners in the hub institutions, without any basis or justification in the Agreement; 2) “transgender prisoners are only moved to the particular hub institutions if they have a medical chrono identifying them as transgender,” which “creates an improper hurdle that exceeds the language of the Agreement and requires prisoners to go through a burdensome process that is the identical clinical process required to establish a formal diagnosis of gender dysphoria”; and 3) “some transgender or GNC prisoners are not housed at the 14 hub facilities for a variety of reasons that include receiving medical or mental health care that requires them to be housed elsewhere, or during the reception and classification process.”

**Response 44G:** See Response 44E.

In response to the Commenters’ concern that “some transgender or GNC prisoners are not housed at the 14 hub facilities for a variety of reasons that include receiving medical or mental health care that requires them to be housed elsewhere, or during the reception and classification process,” as noted in the ISOR, there are 14 institutions that are currently designated the house transgender inmates and designated institutions are specifically selected to accommodate a wide variety of inmate custody levels and education, vocation, and rehabilitative needs. The Department may alter the number of designated institutions as well as the institutions that are designated based upon Department needs, which include the needs of the transgender inmate population and the inmate population as a whole. In the ISOR, the Department articulates the basis upon which institutions are designated to house transgender inmates and therefore does not include a list of the institutions that are currently designated within the text of the regulations, which would be impractical as the institutions designated for a particular purpose could be subject to change based upon Department needs. That said, the Department informs that Commenter that the Department has included Reception Centers in the current number of designated institutions.

In response to the comment that the Department “appears to have changed its position since the settlement agreement, offering state-issued property items only to those inmates in the ‘transgender hub’ facilities,” see Response 44B regarding the safety and security reasons behind

the different property allowances and why this difference is not discriminatory. Also, designated or “hub” institutions were not a term of the settlement agreement. The settlement agreement does not prevent the Department from allocating its resources to best meet the needs of the inmate population.

**Comment 44H:** The Commenters state that the regulations “Fail To Meet Federal Constitutional Requirements Under The Eighth Amendment Of The United States Constitution.” The Commenters state that the “policy does not provide state-issued chest binders for transgender men or others experiencing symptoms of gender dysphoria, but it does provide state-issued bras for cisgender women.” The Commenters state that denying “access to binders, which are often essential to combat gender dysphoria, to those who cannot afford to purchase them discriminates against transgender and GNC prisoners and constitutes indifference to a serious medical need.” The Commenters describe the Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People that are promulgated by the World Professional Association for Transgender Health (WPATH) and describe them as “the accepted protocol for the diagnosis and treatment of gender dysphoria, and they are recognized as authoritative standards of care by the American Psychiatric Association, the Endocrine Society, and the American Psychological Association.” The Commenters state that given that the “WPATH Standards of Care are the recognized standards of care for the treatment of gender dysphoria and they explicitly indicate breast binding as one of the treatment options for individuals suffering from gender dysphoria, it follows that access to binders is a medical need and should be provided to individuals who would benefit from this form of treatment at no charge and in the same manner other medical devices are provided to prisoners with other diagnoses that require special items and devices, such as helmets for individuals who experience seizures or eyeglasses for individuals whose sight is impaired.”

**Response 44H:** See Response 42B. In response to the comment that breast binding is a form of treatment and should be provided at no charge in the same manner as “medical devices” because access to binders is a medical need comparable to helmets for individuals who experience seizures or eyeglasses for individuals whose sight is impaired, the Department has considered this comment and has determined that the Commenter is suggesting that binders be provided at no charge as Durable Medical Equipment (DME). DME is equipment prescribed by a licensed provider to meet the medical equipment needs of a patient and that can withstand repeated use. The provision of health care services to inmates, which includes the provision of DME, falls under the purview of California Correctional Health Care Services. Although the above comment does address an aspect or aspects of the proposed regulatory action and must be summarized pursuant to GC Section 11346.9(a)(3), it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Comment 44I:** The Commenters state that “this policy does not amend §62080.14 of the Department Operation Manual by adding boxer/briefs to state issued clothing for transgender men,” and request that to “avoid conflicting regulations,” the Department should “address this inconsistency by adding language allowing these items to §62080.14 of the Department Operation Manual.”

**Response 44I:** The Department considered this comment, but as the Department Operations Manual (DOM) does not have the force of law in and of itself and is instead reliant upon the legal authorities cited within each of its articles, including Title 15 regulations, the Department

concludes that the requested changes to the DOM cannot be considered until the emergency regulations are permanently adopted. Although the above comment does address an aspect or aspects of the proposed regulatory action and must be summarized pursuant to GC Section 11346.9(a)(3), it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.