

**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: 3016, 3315

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

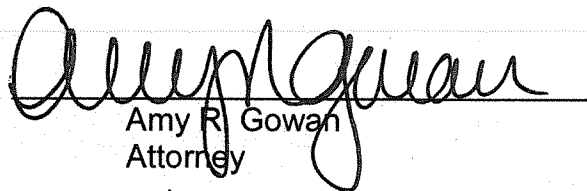
OAL Matter Number: 2018-0228-03

OAL Matter Type: Regular (S)

This rulemaking action by the Department of Corrections and Rehabilitation amends two sections related to random drug testing and serious rule violations to revise timelines for retesting inmates who have previously tested positive for drug use, update guidelines for assignment to substance use disorder treatment programs, and make additional non-substantive changes to update cross-references and make stylistic changes to text.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 7/1/2018.

Date: April 9, 2018


Amy R. Gowan
Attorney

For: Debra M. Cornez
Director

Original: Scott Kernan, Secretary
Copy: Josh Jugum

REGULAR

See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2017-1128-02	REGULATORY ACTION NUMBER 2018-0228-03S	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

2018 FEB 28 P 4:48

OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

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

APR 09 2018

1:41 pm

AGENCY WITH RULEMAKING AUTHORITY

California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)
17-0259**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2017, 49-Z	PUBLICATION DATE 12-8-17	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Mandatory Random Drug Testing	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 3016, 3315
	REPEAL
TITLE(S) 15	

3. TYPE OF FILING

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

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

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

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

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

7. CONTACT PERSON Joshua Jugum	TELEPHONE NUMBER 916 445-2228	FAX NUMBER (Optional) 916 324-6075	E-MAIL ADDRESS (Optional) joshua.jugum@cdcr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 2-28-18
TYPED NAME AND TITLE OF SIGNATORY RALPH DIAZ, Undersecretary	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 09 2018

Office of Administrative Law

TEXT OF ADOPTED REGULATIONS

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

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

3016. Controlled Substances, Drug Paraphernalia, and Distribution.

Subsections 3016(a) through (d) are amended to read:

(a) Inmates shall not use, inhale, ingest, inject, or otherwise introduce into their body; ~~use, possess, manufacture, or have under their control~~ any controlled substance, medication, or alcohol, except as specifically authorized by the institution's/facility's health care staff.

(b) Inmates shall not possess, ~~exchange~~, manufacture, or have under their control any ~~paraphernalia as defined by Health and Safety Code section 11014.5, or device related to the use, injection, or manufacture of any~~ controlled substance, medication, or alcohol, except as specifically authorized by the institution's/facility's health care staff.

(c) Inmates shall not possess, exchange, manufacture, or have under their control any drug paraphernalia as defined by Health and Safety Code section 11014.5, or device related to the use, injection, or manufacture of any controlled substance, except as specifically authorized by the institution's/facility's health care staff. ~~distribute, as defined in section 3000, any controlled substance.~~

(d) Inmates shall not distribute, as defined in Section 3000, any controlled substance. ~~possess medication in quantities exceeding the dosage specifically authorized by the institution's/facility's health care staff, nor may an inmate possess medication prescribed to another inmate.~~

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2931, 4573, 4573.6, and 5054, Penal Code; and Sections 11014.5, ~~11350-11383~~ 11350, 11351, 11351.5, 11352, 11352.1, 11352.5, 11355, 11356, 11356.5, 11357, 11359, 11360, 11363, 11364, 11364.5, 11364.7, 11368, 11369, 11370, 11370.1, 11370.2, 11370.4, 11370.6, 11370.9, 11375, 11376, 11377, 11378, 11378.5, 11379, 11379.2, 11379.5, 11379.6, 11379.7, 11379.8, 11379.9, 11381, 11382, 11382.5, 11383, 11383.5, 11383.6, 11383.7, Health and Safety Code.

Subchapter 4. General Institution Regulations

Article 5. Inmate Discipline

3315. Serious Rule Violations.

Subsections 3315(a) through (e)(6) are unchanged.

Subsection 3315(f) is unchanged but is shown for reference.

Disposition. Upon completion of the fact-finding portion of the disciplinary hearing, the inmate may be found:

Subsections 3315(f)(1) through (f)(3) are unchanged.

Subsection 3315(f)(4) is unchanged but is shown for reference.

If the violation included an act related to the use, possession, or distribution of controlled substances, controlled medication, drugs or drug paraphernalia; or if the inmate refused to submit to a test for controlled substances or

drugs, the disposition shall include an order for the inmate to submit to mandatory random drug testing for one year from the date of the order.

Subsections 3315(f)(4)(A) through (C) are amended to read:

(A) For the first offense, the inmate ~~must provide a minimum of one random drug test per month for one year~~ shall be retested within 90 days.

(B) For the second and all subsequent offenses, the inmate shall be placed in the MRDT program, and must provide one a minimum of two random drug tests per month every 90 days for one year. With each subsequent positive test result and guilty finding, the Senior Hearing Officer shall reset the mandatory testing period.

(C) ~~For the third and all subsequent offenses, the inmate must provide a minimum of four random drug tests per month for one year.~~ The inmate shall be informed that refusal to submit to a random test or any positive test result during the mandatory random drug-testing period shall result in the issuance of a RVR and a new mandatory drug testing order.

Subsection 3315(f)(4)(D) is deleted.

~~(D) The inmate shall be informed that refusal to submit to a random test or any positive test result during the mandatory random drug testing period shall result in the issuance of a RVR and a new mandatory drug testing order.~~

Subsection 3315(f)(5) is unchanged but is shown for reference.

The disposition may or when mandated shall include assessment of one or more of the following:

Subsection 3315(f)(5)(A) is unchanged.

Subsection 3315(f)(5)(B) is amended to read:

(B) Suspension of privileges specified by the hearing official for no more than a 90-day period starting the date the rule violation report was adjudicated. The suspension of privileges for violations of subsections 3016(a), 3016(b), 3016(de), and 3290(d) shall be assessed as follows:

1. Thirty days for the first offense.
2. Sixty days for the second offense.
3. Ninety days for the third offense.

Subsection 3315(f)(5)(C) is unchanged.

Subsection 3315(f)(5)(D) is amended to read:

(D) Disciplinary detention or confinement to quarters as provided in sections 3330 and 3333 for not more than a ten-day period. If facility security will not be jeopardized, the inmate shall be released to attend work and program assignments.

1. Second offense violations of subsections 3016(a), 3016(b), 3016(~~de~~), and 3290(d) shall result in confinement to quarters for five days.

2. Third and all subsequent offense violations of subsections 3016(a), 3016(b), 3016(~~de~~), and 3290(d) shall result in confinement to quarters for 10 days.

Subsections 3315(f)(5)(E) through 3315(f)(5)(G) are unchanged.

Subsections 3315(f)(5)(H) through 3315(f)(5)(J) are amended to read:

(H) For a violation of subsection 3016(~~de~~), there shall be a loss of visits for one year to be followed by non-contact visits for two years.

(I) Loss of visits to be followed by non-contact visits for violations of subsection 3016(a), 3016(b) (with the exception of alcohol violations), or 3290(d) shall be as follows:

1. Loss of visits for 90 days, to be followed by non-contact visits for 90 days for the first offense.
2. Loss of visits for 90 days, to be followed by non-contact visits for 180 days for the second offense.
3. Loss of visits for 180 days, to be followed by non-contact visits for 180 days for the third offense.

(J) Violation of subsections 3016(a), 3016(b), 3016(~~de~~), and 3290(d) shall result in:

Subsections 3315(f)(5)(J)1. through 3. are amended to read:

1. For the first offense, the inmate shall be required to attend Alcoholics Anonymous or Narcotics Anonymous, ~~or be placed on a wait list to attend, meetings or assigned to a substance abuse education and/or treatment programs to the extent such programs are available in the institution/facility and~~ along with loss of pay for 90 days from a paid work assignment.

2. For the second offense, the inmate shall be referred ~~for endorsement~~ to a substance use abuse disorder treatment program, provided that program eligibility criteria ~~is~~ are met, along with ~~and~~ loss of pay for 180 days from a paid work assignment.

3. For the third offense, the inmate shall be referred ~~for endorsement~~ to a substance use abuse disorder treatment program, provided that program eligibility criteria ~~is~~ are met, and mandatory treatment shall be a condition of parole. Additionally, the inmate shall be referred for removal from a paid work assignment for one year ~~for the third offense.~~

Subsections 3315(f)(5)(K) through 3315(h) are unchanged.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections ~~295-300.3~~ 295, 295.1, 295.2, 296, 296.1, 296.2, 297, 298, 298.1, 298.2, 298.3, 299, 299.5, 299.6, 299.7, 300, 300.1, 300.2, 300.3, 314, 530, 532, 646.9, 647, 653m, 2931, 2932, 2933, 4501.1, 4573.6, 4576, 5054, and 5068 ~~and 12020~~, Penal Code.

FINAL STATEMENT OF REASONS:

The Initial Statement of Reasons is incorporated by reference.

DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law, than the action proposed. No such alternatives were proposed or brought to the Department’s attention during the adoption of this rulemaking action. The Department determined that taking no action would continue to prevent those inmates most in need of substance use disorder treatment from being prioritized for treatment in such programs.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the CDCR’s initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

The Department has determined that no reasonable alternatives to the regulation have been identified or brought to the attention of the Department that would lesson any adverse impact on affected private persons or small business than the action planned.

The Department, in proposing the adoption of these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document. The Department has relied upon the results of the Economic Impact Assessment, which can be found in the Notice of Proposed Regulations and is available for review as part of the rulemaking file.

NON-SUBSTANTIVE AMENDMENTS TO TEXT

After the completion of the public comment period, the Department discovered that the amendments made as part of this rulemaking action required updates to cross-references elsewhere in the same section (Section 3315) being amended by this action. Cross-references have been updated in the following subsections:

- 3315(f)(5)(B)
- 3315(f)(5)(D)1. and 2.
- 3315(f)(5)(H)
- 3315(f)(5)(I)
- 3315(f)(5)(J)

The Department erroneously omitted these cross-reference updates in its initial text made available to the public. These cross-references are corrected in the final version of the text being submitted to the Office of Administrative Law. These corrections are not being made available to the public for comment because the amendments meet the criteria for a “change without regulatory effect” pursuant to Title 1,

Section 100(a)(4) of the California Code of Regulations, and make no change to the meaning or effect of the proposed regulations.

ADDENDUM TO THE INITIAL STATEMENT OF REASONS

For clarity, the Department has chosen to add the following statement of reasons regarding subsections 3315(f)(5)(J)2. and 3315(f)(5)(J)3.:

These sections are amended to replace the term “substance abuse treatment” with “substance use disorder treatment.” This is a non-substantive change of terminology by the Department that does not alter the meaning or effect of these regulatory provisions.

PUBLIC HEARING COMMENTS:

A public hearing was held on January 23, 2018. There was one attendee, who chose not to provide a comment.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS RECEIVED DURING THE PUBLIC COMMENT PERIOD:

Comment 1: Commenter states that he is a CDCR inmate and supports the proposed regulations. During his 25 years of incarceration he has seen many inmates overdose as a result of use of controlled substances.

Response: The Department notes the commenter’s support.