



Department of Corrections and Rehabilitation

**NOTICE OF CHANGE TO  
REGULATIONS**

**Sections: 3016 and 3315**

**Number:**

**17-07**

**Publication Date:**

**December 8, 2017**

**Effective Date:**

**To Be Determined**

**INSTITUTION POSTING AND CERTIFICATION REQUIRED**

This Notice announces proposed amendments to sections 3016 and 3315 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, to incorporate into the CCR provisions concerning mandatory random drug testing in state prisons.

**IMPLEMENTATION**

To be announced after completion of the public portion of the rulemaking process and certification of adoption.

**PUBLIC COMMENT PERIOD**

Any person may submit written comments about the proposed regulations to the California Department of Corrections and Rehabilitation, Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov). All written comments must be received by the close of the public comment period **January 23, 2018**, at 5:00 p.m.

**PUBLIC HEARING INFORMATION**

A public hearing regarding these proposed regulations will be held Tuesday, January 23, 2018, from 10:00 a.m. to 11:00 a.m. in the Kern/Colorado Room, located at 1515 S Street, Sacramento, CA 95818. The purpose of the hearing is to receive oral comments about this action. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written comments submitted during the prescribed comment period are given the same significance and weight as oral comments presented at the hearing. This hearing site is accessible to the mobility impaired.

**POSTING**

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

**CONTACT PERSON**

Inquiries regarding this Notice should be directed to Timothy M. Lockwood, Associate Director, RPMB, California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2269, or e-mail at [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov). Inquiries regarding the subject matter of these regulations may be directed to Melanie Bruns, Division of Adult Institutions, at (916) 324-2758.

*Original Signed By:*

RALPH DIAZ  
Undersecretary, Operations  
California Department of Corrections and Rehabilitation

Attachments

## NOTICE OF PROPOSED REGULATIONS

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

**NOTICE IS HEREBY GIVEN** that the Secretary of the California Department of Corrections and Rehabilitation (CDCR) proposes to amend Sections 3016 and 3315 of the California Code of Regulations, Title 15, concerning mandatory random drug testing, pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, in order to implement, interpret and make specific PC Section 5054.

#### **PUBLIC HEARING:**

Date and Time: **January 23, 2018 - 10:00 a.m. to 11:00 a.m.**

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

Purpose: To receive comments about this action.

#### **PUBLIC COMMENT PERIOD:**

The public comment period will close **January 23, 2018, at 5:00 p.m.** Any person may submit public comments in writing (by mail or e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; or e-mail at [rpmb@cdcr.ca.gov](mailto:rpmb@cdcr.ca.gov), before the close of the comment period.

#### **CONTACT PERSON:**

Please direct any inquiries regarding this action to:

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

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

**Joshua Jugum  
Regulation and Policy Management Branch  
Telephone (916) 445-2228**

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

**Melanie Bruns  
Division of Adult Institutions  
Telephone (916) 324-2758**

## **AUTHORITY AND REFERENCE:**

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

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

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

## **INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW:**

### **This action will:**

- Amend the frequency with which inmates who have had a positive test result for illegal substances are required to be retested via urinalysis test, and the sanctions enforced in the event of a positive test.
- Help to ensure that substance use disorder treatments programs are available to those inmates most in need.
- Help to prevent false positives for substances that can be detected in urine for an extended period of time.

## **FORMS INCORPORATED BY REFERENCE:**

None

## **SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS**

The safety of California residents may be enhanced by better identifying and providing treatment to those inmates who actually have a substance abuse problem and need treatment, as opposed to those who possess or distribute illegal narcotics. Substance abuse is a frequent driver of criminal behavior, and providing treatment to those most in need may help those offenders to reintegrate into society upon their release.

## **EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING LAWS AND REGULATIONS**

Pursuant to Government Code 11346.5(a)(3)(D), the Department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review, the Department has concluded that these are the only regulations that concern the specific amendments to random drug testing of Department inmates.

## **LOCAL MANDATES:**

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

## **FISCAL IMPACT STATEMENT:**

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

**EFFECT ON HOUSING COSTS:**

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

**COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:**

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

**SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:**

The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations make changes to rules regarding random drug testing of Department inmates only, and place no obligations or requirements on any business.

**EFFECT ON SMALL BUSINESSES:**

The Department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small business because they place no obligations or requirements on any business. The proposed regulations make changes to rules regarding random drug testing of Department inmates only.

**RESULTS OF THE ECONOMIC IMPACT ASSESSMENT:**

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or effect the expansion of businesses currently doing business in California.

The Department has determined that the proposed regulations may promote worker safety and benefit the welfare of California residents because ensuring that those inmates most in need of substance use disorder treatment are able to receive such treatment may improve the reintegration of offenders to their communities upon being released from state prison, which will improve public safety.

**CONSIDERATION OF ALTERNATIVES:**

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

**AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:**

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

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS:**

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

**AVAILABILITY OF CHANGES TO PROPOSED TEXT:**

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

## TEXT OF PROPOSED 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, 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:

**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:

**Subsections 3315(f)(5)(A) through (I) are unchanged.**

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

(J) Violation of subsections 3016(a), 3016(c), 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, 314, 530, 532, 646.9, 647, 653m, 2931, 2932, 2933, 4501.1, 4573.6, 4576, 5054, 5068 and 12020, Penal Code.

## **INITIAL STATEMENT OF REASONS:**

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend sections 3016 and 3315 of the California Code of Regulations, Title 15, concerning the Mandatory Random Drug Testing (MRDT) program, which impacts the frequency in which inmates are required to submit to a urinalysis test and the sanctions enforced in the event of a positive test result.

The proposed revisions will allow the Department to better identify those inmates with a substance use disorder, without creating a greater disciplinary problem, and provide said inmates with the opportunity to participate in a substance use disorder treatment program, ultimately enhancing the safety and security of CDCR institutions, staff, visitors, and the inmate population.

This rulemaking action will establish that inmates placed in the MRDT, and who provide a positive urine sample, will be retested within 90 days. Further, for the first offense, the inmate shall be required to attend Alcoholics Anonymous or Narcotics Anonymous, or be added to the wait list in the event there are no vacancies. For a second and subsequent offense, the inmate must provide one random drug test every 90 days for one year. With each subsequent positive test result and guilty finding, the Senior Hearing Officer will reset the mandatory testing period. For the second offense, the inmate shall be referred to a substance use disorder treatment program.

### **Consideration of Alternatives:**

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

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

### **ECONOMIC IMPACT ASSESSMENT:**

In accordance with Government Code Section 11346.3(b), CDCR has made the following assessments regarding the proposed regulation:

The Department has determined that the proposed regulations will not have an impact on the creation of new, or the elimination of existing, jobs within California. The regulations place no requirements or restrictions on businesses inside or outside of California, as they affect only inmates at CDCR institutions who test positive for use of controlled substances.

The Department has determined that the proposed regulations will not have an impact on the creation, expansion, or elimination of new or existing business within California. The regulations place no requirements or restrictions on businesses inside or outside of California, as they affect only inmates at CDCR institutions who test positive for use of controlled substances.

The Department has determined that the proposed regulations will not have an impact on the expansion of businesses currently doing business in California. The regulations place no requirements or restrictions on businesses inside or outside of California, as they affect only inmates at CDCR institutions who test positive for use of controlled substances.

The Department has determined that the proposed regulations may promote worker safety and benefit the welfare of California residents because ensuring that those inmates most in need of substance use disorder

treatment are able to receive such treatment may improve the reintegration of offenders to their communities upon being released from state prison, which will improve public safety.

### **Significant Statewide Adverse Economic Impact On Business**

The Department has made an initial determination that this action will not have a significant adverse economic impact on business because business is not affected by the internal management of prisons.

### **BENEFITS OF THE REGULATIONS**

The Department anticipates that these regulations will promote rehabilitation for inmates when drug use is confirmed, with the goal of better identifying inmates who actually have a substance abuse problem and need substance abuse treatment. With already limited openings in substance abuse treatment programs, inmates identified to have substance abuse problems will be placed, versus inmates who possess or distribute.

The proposed regulations will allow CDCR to better identify and treat a substance abuse problem, without creating a greater disciplinary problem. By allowing time for disciplinary infractions to be adjudicated before potential additional disciplinary reports are issued, inmates are provided an opportunity to correct the behavior.

### **Documents Relied Upon**

The Department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

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

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

##### **Article 1. Behavior**

##### **Section 3016. Controlled Substances, Drug Paraphernalia, and Distribution.**

**Subsections 3016(a) through (d) are amended** for improved clarity. Language regarding inmates possessing, manufacturing, or having under their control any controlled substances have been moved from subsection 3016(a) to 3016(b). Language regarding inmates possessing, exchanging, or having under their control paraphernalia or devices relating to controlled substances has been moved from subsection 3016(b) to 3016(c). Language regarding inmates distributing controlled substances has been moved from subsection 3016(c) to 3016(d). Language regarding inmates possessing medication in quantities exceeding their prescribed dose, or belonging to another inmate, are deleted from subsection 3016(d), however the prohibition on this activity remains in effect pursuant to language in subsection 3016(b) stating inmates shall not “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.” The revisions to these subsections are to improve the clarity and simplicity of these provisions, and do not substantively change the meaning or effect of these regulatory provisions.

#### **Subchapter 4. General Institution Regulations**

##### **Article 5. Inmate Discipline**

##### **Section 3315. Serious Rules Violations**

**Subsections 3315(a) through 3315(f)(4) remain unchanged.**

**Subsection 3315(f)(4)(A) is amended to** replace the requirement that, upon an inmate committing a first offense for a violation as described in subsection 3315(f)(4), an inmate must provide a minimum on one random drug test per month for one year, with the requirement that such an inmate shall be retested within 90 days. This amendment is necessary because certain drugs and controlled medications, especially in chronic users, can be detected in the urine for up to 90 days. To ensure a positive test result is not because of previous use, inmates shall not be tested each month.

**Subsection 3315(f)(4)(B) is amended to** provide that upon a second (and any subsequent) offense, the inmate shall be placed in the MRDT program and shall be required to provide one random drug test every 90 days for a year. Additionally, each subsequent positive test shall result in the Senior Hearing Officer, the Correctional Lieutenant assigned to hear the offense, resetting the mandatory testing period. This is necessary to ensure the inmate is properly identified as having a substance abuse disorder, and can be referred to a suitable substance abuse disorder treatment program.

**Existing subsection 3315(f)(4)(C) is deleted.** Provisions established in proposed subsection 3315(f)(4)(B) require that an inmate be placed in the MRDT program after a second offense, and require the inmate to be tested every 90 days for a year, thus eliminating the need for this subsection. The provisions currently established in subsection 3315(f)(4)(D) have been moved to this subsection.

**Subsection 3315(f)(4)(D) is deleted.** The provisions established in this subsection have been moved to subsection 3315(f)(4)(C) (see above).

**Subsection 3315(f)(5)(A) through 3315(f)(5)(J) remain unchanged.**

**Subsection 3315(f)(5)(J)(1) is amended to** remove the requirement that the inmate will be assigned to a substance abuse education and/or treatment program. This is necessary because the inmate, after the first offense, has not yet been identified as a habitual user requiring attendance in a substance abuse treatment program.

**Subsection 3315(f)(5)(J)(2) is amended to** provide that an inmate is referred to the substance abuse treatment program, and not simply referred for an endorsement, to better guarantee their placement. Further, the name of the treatment program has changed, from substance abuse treatment program to substance use disorder treatment program.

**Subsection 3315(f)(5)(J)(3) is amended to** provide that an inmate is referred to the substance abuse treatment program, and not simply referred for an endorsement, to better guarantee their placement. Further, the name of the treatment program has changed, from substance abuse treatment program to substance use disorder treatment program.

**Subsections 3315(f)(5)(K) through 3315(h) remain unchanged.**