



Department of Corrections and Rehabilitation

**NOTICE OF CHANGE TO
REGULATIONS**

Section: 3190

Number:

18-03

Publication Date:

February 9, 2018

Effective Date:

To be Announced

INSTITUTION POSTING REQUIRED

This Notice announces the amendment of Section 3190 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into the CCR provisions concerning Religious Property Vendors.

IMPLEMENTATION: To be announced.

PUBLIC COMMENT PERIOD

Any person may submit written comments about the proposed regulations to the California Department of Corrections and Rehabilitation, Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received by the **close of the public comment period March 30, 2018 at 5:00 p.m.**

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held **March 30, 2018 from 10:00 a.m. to 11:00 a.m. in the Kern/Colorado Room, located at 1515 S Street, North Building, Sacramento CA 95811.** The purpose of the hearing is to receive oral comments about this action. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written or e-mail 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 12010.5.7 and 12010.5.8 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. Inquiries regarding the subject matter of these regulations may be directed to Charles Richey, Division of Adult Institutions, at (916) 327-1132.

/ Original signed by /

RALPH M. DIAZ
Undersecretary, Operations

Attachments

NOTICE OF PROPOSED REGULATORY ACTION

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

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058 in order to implement, interpret and make specific PC Section 5054, proposes to amend section 3190 of the California Code of Regulations (CCR), Title 15, Division 3, concerning Religious Property Vendors.

PUBLIC HEARING:

Date and Time: **March 30, 2018 – 10:00 a.m. to 11:00 a.m.**
Place: Department of Corrections and Rehabilitation
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 **March 30, 2018 at 5:00 p.m.** Any person may submit public comments in writing (by mail or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, 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:

**Anthony Carter
Regulation and Policy Management Branch
Telephone (916) 445-2220**

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

**Charles Richey
Division of Adult Institutions
Department of Corrections and Rehabilitation
(916) 327-1132**

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

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

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

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

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

This action amends Section 3190 of the CCR, Title 15, Division 3 concerning Personal Property and Religious Personal Property.

In 2013 the Department adopted regulations standardizing religious personal property, and incorporated by reference the Religious Personal Property Matrix (RPPM) (Rev. 6/27/13). This matrix lists the types and amounts of religious/spiritual items an inmate can possess while incarcerated. Currently, religious property is identified as a Special Purchase can be purchased through departmental approved package vendors, and local vendors authorized at the institutional level.

With the exception of departmentally approved personal package vendors that may offer a selection of religious items, the only authorized religious vendors are locally-approved special purchase vendors. The result is 35 different lists of approved religious vendors. This policy has created inconsistencies from institution to institution since each prison compiles their own unique lists of approved religious vendors. Inmates who are allowed to receive religious items from a locally approved religious vendor while incarcerated at one institution may be denied when requesting to order the same item from the same vendor after his/her transfer to another institution. Likewise, if an inmate places an order with a locally approved religious vendor and is subsequently transferred to another facility, the inmate's order may be sent to the new facility only to be refused and returned to sender because that vendor is not on the receiving institution's approved religious vendor list

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

Establishment of a Statewide Religious Vendor List will standardize the approved list of vendors from which inmates may purchase approved religious items, which will eliminate the inconsistencies of conflicting standards and lists throughout the State. Workload on the institutions and vendors will be lessened as the prisons will not need to do their own research and approval of lists. Likewise, vendors will need only to qualify with a single statewide approval instead of seeking up to thirty-five individual prison approvals. Inmates, prison staff, vendors and customers will be spared the frustration of product returns due to statewide guidelines.

The Department's intent to create a standardized religious property vendors list will: 1) Eliminate inconsistencies from institution to institution; 2) Decrease the incidences of inmate appeals regarding special purchases of religious items; 3). Support uniformity in regards to identification of approved

religious vendors; and 4) Provide assurance that items sold and shipped to inmates are in conformance with the RPPM.

EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING REGULATIONS:

The Department has determined that these proposed regulations are consistent and compatible with existing state laws and regulations. The Department reached this conclusion because these proposed regulations supplement existing regulations concerning inmate property, which is authorized by law.

LOCAL MANDATES:

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

FISCAL IMPACT STATEMENT:

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

EFFECT ON HOUSING COSTS:

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

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

RESULTS OF ECONOMIC IMPACT ASSESSMENT:

The Department has determined that the proposed regulations will have no impact on the creation of new or the elimination of existing jobs or businesses within California or affect the expansion of businesses currently doing business in California. The Department has determined that the proposed regulations will have no effect on the health of California residents or the state’s environment, because the proposed regulations relate strictly to the management of CDCR institutions.

The Department has made an initial determination that this action will not have a significant adverse economic impact on business in the state of California because these regulations will only affect the current existing religious product vendors by standardizing the approval of these businesses on a statewide basis and clarifying which of their products conform to the RPPM.

The proposed regulations may impact private businesses by expanding their customer base to all state inmates, which may also increase competition between vendors with a larger vendor and product list for inmates to choose from.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

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

EFFECT ON SMALL BUSINESSES:

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

CONSIDERATION OF ALTERNATIVES:

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

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

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

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

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

TEXT OF PROPOSED REGULATIONS

In the following, underline indicates new or additional text and strikethrough indicates deleted text.

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

Subchapter 2. Inmate Resources.

Article 9. Personal Property and Religious Personal Property.

Section 3190 General Policy

Subsections 3190(a) through 3190(j) remain unchanged.

Subsection 3190(k) is amended to read:

(k) Inmates shall be allowed special purchases of authorized personal property items from either departmentally-approved inmate package vendors, departmentally-approved vendors of religious/spiritual items, or locally-approved special purchase vendors ~~(except as provided for publications (including books and subscriptions to periodicals) in subsections 3190(k)(2) and 3190(k)(7))~~. The institution head or designated staff shall ensure approved vendor catalogs and order forms are available to inmates who qualify. Special purchases shall only include the following:

Subsection 3190(k)(1) through 3190(k)(3) remains unchanged.

Subsection 3190(k)(4) is amended to read:

(4) Religious/spiritual Items, as ~~listed~~ authorized by within the Religious Personal Property Matrix. Special purchases of religious/spiritual items will be from departmentally-approved vendors of religious/spiritual items only. Departmental approval of vendors of religious/spiritual items will be at the determination of the Statewide Religious Review Committee (SRRC). Departmental approval of each vendor's religious/spiritual items offered for sale to be shipped to inmates shall be in accordance with the Religious Personal Property Matrix as determined by the SRRC.

Subsections 3190(l) through 3190(v) remain unchanged.

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.

INITIAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR), proposes to amend Section 3190 of the California Code of Regulations (CCR) Title 15, Division 3, Inmate Personal Property and Religious Personal Property, specifically, Special Purchases of religious personal property.

In the earliest attempts to codify the standardization of inmate property, the Department intended to utilize departmentally approved vendors for all items of property. It was discovered at the time that with the scope of items allowed in the the Authorized Personal Property Schedule via the Inmate Vendor Package Program, that there was need to identify separate “Special Purchase items” (previously only available to purchase in the Institutional Canteens).

CCR, Title 15, Section 3190(k) identifies special purchase items as: healthcare appliances, legal materials, correspondence courses, religious items, handicraft materials, entertainment appliances/musical instruments, and publications.

The Local approval of special purchase vendors was necessary to permit each institution the discretion to select special purchase vendors as needed. It was impractical to manage all special purchase vendors department-wide as these types of purchases include, but are not limited to health care appliances from local physicians, religious items, hobby craft items from local lumber yards and correspondence courses from any educational institution in the country.

In 2013 the Department adopted regulations standardizing religious personal property, and incorporated by reference the Religious Personal Property Matrix (RPPM) (Rev. 6/27/13). This matrix lists the types and amounts of religious/spiritual items an inmate can possess while incarcerated. Currently, religious property is identified as a Special Purchase can be purchased through departmental approved package vendors, and local vendors authorized at the institutional level.

With the exception of departmentally approved personal package vendors that may offer a selection of religious items, the only authorized religious vendors are locally-approved special purchase vendors. The result is 35 different lists of approved religious vendors. This policy has created inconsistencies from institution to institution since each prison compiles their own unique lists of approved religious vendors. Inmates who are allowed to receive religious items from a locally approved religious vendor while incarcerated at one institution may be denied when requesting to order the same item from the same vendor after his/her transfer to another institution. Likewise, if an inmate places an order with a locally approved religious vendor and is subsequently transferred to another facility, the inmate’s order may be sent to the new facility only to be refused and returned to sender because that vendor is not on the receiving institution’s approved religious vendor list

In an effort to further standardize the process in which inmates can possess religious/spiritual items, the Department intends to establish a statewide departmental approved religious vendor list. All packages containing religious/spiritual personal property shall be received from departmentally approved religious vendors. Departmentally approved vendor catalogs and order forms will be available in the inmate library, and will be made available to inmates by the vendors. The use of departmentally approved religious vendors will further standardize allowable religious property and reduce administrative costs incurred by institutions when staff receive incoming inmate special purchase packages, because all packages will be shipped directly from departmentally approved religious vendors.

All religious personal property items shipped to inmates must conform to the specifications as set forth in the RPPM, which was incorporated by reference. Unfortunately, vendor employees and their customers (ie. inmates or inmate family members) may not be aware of the RPPM or may not know how to read and interpret the RPPM, which may result in items being ordered and shipped that are not RPPM compliant. Further, the requirements for a number of items may be subject to individual interpretation, such as determining “what is *multicolored*?” or, “is the prayer oil *Rose Pedal* the same as *Rose*?” and “can medicine bags come with beaded designs or just plain leather pouches?” Often, inmates or their family members may order items that they incorrectly believe to be in accordance with the RPPM, only to have those same items denied at the institution, due to the difference of the inmate’s interpretation versus the CDCR staff member’s interpretation of what is or is not allowed per the RPPM.

In order to avoid any potential confusion, CDCR is proposing the creation of a single statewide departmentally approved religious vendor list. For each approved religious vendor, CDCR will review and pre-approve which items each vendor is allowed to sell and ship to CDCR inmates. Product pre-approval will enhance the safety and security of the institution by authorizing only approved items to be shipped to the prison. Each vendor can then publish a CDCR Approved Religious Product Sheet specific to each vendor’s items for sale to California prison inmates.

The criterion to be approved as an authorized religious vendor will be overseen by the Statewide Religious Review Committee (SRRC). Approval and monitoring by a single committee will allow CDCR to maintain a standardized statewide list of religious vendors. In contrast, separate institution lists have resulted in a myriad of vendors, most of whom do not even sell items listed on the RPPM. In December 2015, each prison was asked to submit their locally approved religious vendor lists to CDCR headquarters. All of the vendors’ names were compiled into a single list which resulted in a total vendor count of 261 business listings. Of those 261 vendors, it was determined that approximately only 64 businesses sell products that are authorized on the RPPM. It is the Department’s intent to update the statewide religious vendor list as needed, as applications are submitted and approved, but no more than once every six months. This approval process applies to those religious vendors who sell items that meet the criteria as listed in the RPPM.

The Department will ensure that vendor process will be fair and equitable to all inmates and their correspondents by allowing competitive pricing by the religious vendors. Vendors with higher prices or inferior merchandise may lose business to vendors with lower prices or superior merchandise as inmates and their correspondents will make purchases based on a combination of cost and quality. Departmentally-approved religious vendor catalogs and order forms will be available in the inmate library, and will be made available to inmate correspondents by the vendors. This standardization will allow inmate correspondents a variety of religious products, which conform to the RPPM, to choose from at fair market value, and will also allow staff to quickly search packages ensuring the safety and security of the institutions.

The Department’s intent to create a standardized religious property vendors list will: 1) Eliminate inconsistencies from institution to institution; 2) Decrease the incidences of inmate appeals regarding special purchases of religious items; 3). Support uniformity in regards to identification of approved religious vendors; and 4) Provide assurance that items sold and shipped to inmates are in conformance with the RPPM.

The RPPM is made available in each institution's Receiving and Release units, and via the institutional Chaplains. The RPPM is also available on the department's website, as an appendix of the Department Operations Manual; at:

http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/DOM/DOM%202017/2017_DOM.PDF

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.

Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the proposed changes at the scheduled hearing or during the written comment period. Currently, no reasonable alternatives have been brought to the attention of the Department that would alter the Department's initial determination.

ECONOMIC IMPACT ASSESSMENT:

The Department believes there will not be any significant economic impact with these proposed regulations. In accordance with Government Code Section 11346.3(b), CDCR has made the following assessments regarding the proposed regulations: These changes will have no economic impact on the Department or taxpayers. The proposed regulations may impact private businesses by expanding their customer base to all state inmates, which may also increase competition between vendors with a larger vendor and product list for inmates to choose from.

Creation or Elimination of Jobs Within the State of California

The Department has determined that these proposed regulations will have no impact on the creation or elimination of jobs within state government. There may be minimal or no impact on the creation or elimination of private sector jobs within the state.

Creation of New or Elimination of Existing Businesses Within the State of California

The Department has determined that these proposed regulations will have minimal or no impact on the creation or elimination of existing businesses within the state.

Expansion of Businesses or Elimination of Existing Businesses Within the State of California

The Department has determined that these proposed regulations will have an impact on the expansion or reduction, but not the elimination, of existing businesses within the State, by allowing all approved vendors of religious/spiritual items to compete and sell to inmates in all California State prisons.

Significant 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 in the state of California because these regulations will only affect the current existing religious product vendors by standardizing the approval of these businesses on a statewide basis and clarifying which of their products conform to the RPPM.

BENEFITS OF THE REGULATIONS

Statewide Religious Vendors-Establishment of a Statewide Religious Vendor List will standardize the approved list of vendors from which inmates may purchase approved religious items, which will eliminate the inconsistencies of conflicting standards and lists throughout the State. Workload on the institutions and vendors will be lessened as the prisons will not need to do their own research and approval of lists. Likewise, vendors will need only to qualify with a single statewide approval instead of seeking up to thirty-five individual prison approvals. Inmates, prison staff, vendors and customers will be spared the frustration of product returns due to statewide guidelines.

Pre-Approved Vendor Products- By having each vendor's catalog contain only approved items from the vendor's CDCR Approved Religious Product Sheet for items for sale to California prison inmates, all persons involved in the transaction and handling of the product can be assured that the item(s) will not be rejected due to non-compliance with the RPPM. Buyers can select from the pre-approved list of items for each vendor, and the vendor will know that if an item ordered is not on the pre-approved list, that they are not to ship the item to the prison. Institution Receiving and Release staff will know that if the item is on the pre-approved list, that the item may be delivered to the inmate in accordance with the privilege group limitation as specified on the RPPM. If the item is not on the pre-approved list, staff will have easy justification to return the item to the vendor.

The health and welfare of California residents are not affected by the Department's changes to Religious Vendors and proposed regulations will not affect worker safety or the State's environment.

MATERIALS RELIED UPON:

The Department, in proposing amendments to these regulations, has in part relied upon the First Amendment of the United States Constitution, the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), and Section 5009 of the California Penal Code. Copies of these documents are available for review as part of the rulemaking file.

Specific Purpose and Rationale for each Section, per Government Code 11346.2(b)(1)

Subchapter 2. Inmate Resources

Article 9. Personal Property and Religious Personal Property.

Section 3190. General Policy

Section 3190(k) is amended to include departmentally-approved religious vendors as an additional entity from which inmates are be allowed to purchase authorized religious/spiritual personal property items. The paragraph is also amended to delete redundant language that is repeated in subsections 3190(k)(2) and 3190(k)(7)).

Section 3190(k)(4) is amended to change the word "religious" to "religious/spiritual" to be inclusive of inmates who see their faith as "spiritual" and not as "religious". This paragraph also includes language addressing the establishment of a statewide list of departmentally approved religious vendors to be determined by the Statewide Religious Review Committee for inmate purchases of religious personal property. This change removes the responsibility of screening and approving the vendors from the local institution to the Statewide Religious Review Committee for departmental approval. This paragraph also states requests for new vendors shall be submitted to the Statewide Religious Review Committee.