



Department of Corrections and Rehabilitation

NOTICE OF CHANGE TO REGULATIONS
Sections: 3084.7, 3270.2, 3288, 3314
and 3315

Number:
19-01

Publication Date:
January 18, 2019

Effective Date:
To be determined

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces proposed amendments to Sections 3084.7, 3270.2, 3288, 3314, and 3315 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into Division 3, Chapter 1, regarding audio-video surveillance systems.

PUBLIC COMMENT PERIOD

The public comment period will close on **March 8, 2019, at 5:00 p.m.** Any person may submit written comments about the proposed regulations by mail to the California Department of Corrections and Rehabilitation (CDCR), 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 or postmarked no later than **5:00 p.m. on Friday, March 8, 2019.**

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held on **Friday, March 8, 2019, from 10:00 a.m. to 11:00 a.m. in Conference Room 100N, located at 1515 S Street, North Building, Sacramento, CA 95811.** The purpose of the hearing is to receive 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 verbal 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, institutions and 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. CDCR Form 621-A (Rev. 04/18), Certification of Posting, shall be returned to RPMB by mail or email. 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 Josh Jugum, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2269, or e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to Bryan Donahoo, Division of Adult Institutions, at (916) 324-1653.

Original Signed By:

KATHLEEN ALLISON
Undersecretary (A), 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 3084.7, 3288, 3314, and 3315, and adopt new Section 3270.2 of the California Code of Regulations, Title 15, regarding audio-video surveillance in CDCR facilities.

PUBLIC HEARING:

Date and Time: **March 8, 2019 - 10:00 a.m. to 11:00 a.m.**

Place: California Department of Corrections and Rehabilitation
Conference Room 100N
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 8, 2019, at 5:00 p.m.** Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rpmb@cdcr.ca.gov, before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

CONTACT PERSONS:

<u>Primary Contact</u>	<u>Back-Up</u>	<u>Program Contact</u>
Josh Jugum	Y. Sun	B. Donahoo
Telephone: (916) 445-2228	Telephone: (916) 445-2269	Division of Adult Institutions
Regulation and Policy Management Branch	Regulation and Policy Management Branch	(916) 324-1653
P.O. Box 942883	P.O. Box 942883	
Sacramento, CA 94283-0001	Sacramento, CA 94283-0001	

AUTHORITY AND REFERENCE:

Government Code Section 12838.5 provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as: Department of Corrections, Department of the Youth Authority, and Board of Corrections.

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to 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 5055 provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR.

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

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW:

In 2015, the California Office of the Inspector General (OIG) conducted a review at the request of the State Senate. The OIG recommended that CDCR consider the use of audio-video recording in all inmates' areas.

There were over 4000 documented incidents recorded in 2015 related to inmate violence within Department institutions. The proposed regulations will promote safety and security and establish consistency and procedures as it pertains to the audio-video surveillance systems (AVSS) in institutions. The Department already uses audio-video recording technology in various capacities, such as in visiting areas, at all institutions. These regulations will establish regulatory authority for the use, as well as potential future expansions, of such technology. This technology may help reduce staff and inmate assaults, and inmate complaints regarding staff and use of force incidents. The use of audio and/or video recording systems will provide institutional staff the ability to monitor in real time criminal activity as it occurs. Additionally, such surveillance is an invaluable investigative tool in assisting to identify involved suspects after an incident has been contained.

This action will:

- Establish regulatory authority for the Department's use of audio-video recording technology in Department facilities.
- Establish that AVSS shall not be used to record inmate living spaces, except in specified situations that require the authorization of the institution warden.
- Establish the circumstances in which specified staff may request recordings made by the AVSS to be used in investigations or disciplinary actions.
- Require posting of notices that specified locations in Department facilities may be subject to audio and/or video surveillance.
- Incorporate by reference a new form which will be used by specified Department staff to request recordings made by the AVSS to be used in investigations or disciplinary actions.

FORMS INCORPORATED BY REFERENCE:

CDCR Form 1027 (08/18), Audio/Video Surveillance System Evidence Report

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

These regulations may benefit the welfare of California residents by helping to make CDCR institutions safer for inmates, staff, and visitors. Additionally, safer institutions may provide an environment more conducive to rehabilitation, thereby reducing recidivism.

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 audio-video surveillance systems in Department facilities.

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 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.

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 regulation will have no effect on worker safety or the state's environment.

These regulations may benefit the welfare of California residents by helping to make CDCR institutions safer for inmates, staff, and visitors. Additionally, safer institutions may provide an environment more conducive to rehabilitation, thereby reducing recidivism.

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.

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

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 2. Inmate Resources

Article 8. Appeals

3084.7. Levels of Appeal Review and Disposition.

Subsections 3084.7(a) through (i)(5) are unchanged.

New subsection 3084.7(j) is adopted to read:

(j) An Appeals Coordinator or member of the Office of Appeals may review audio, video, or both forms of recordings related to an inmate grievance or appeal.

Note: Authority cited: Sections 5058 and 10006(b), Penal Code. Reference: Sections 5054 and 10006(b), Penal Code; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 *et seq.*, Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations.

Subchapter 4. General Institution Regulations

Article 2. Security

New Subsection 3270.2 is adopted to read:

3270.2 Audio-Video Surveillance Systems

(a) The department may use audio, video, or both forms of recording technology within and surrounding any of its properties, institutions, facilities, perimeter fencing, or vehicles.

(b) Such technology shall not be used to record the interiors of living quarters or cells except in case of emergency or investigation as authorized by the warden.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

Subchapter 4. General Institution Regulations

Article 2. Security

3288. Notice to the Public, Employees and Inmates

Subsections 3288(a) through 3288(b) are unchanged.

New subsection 3288(c) is adopted to read:

(c) To promote safety and enhance security, the department may use audio, video, or both forms of recording technology within and surrounding any of its facilities, perimeter fencing, or vehicles. Public notice that recording technology may be in use shall be placed at the gatehouse, front entrance, and

vehicle sally ports of all correctional institutions and include the following minimum text: "This area is subject to audio and video surveillance."

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

Subchapter 4. General Institution Regulations

Article 5. Inmate Discipline

3314. Administrative Rule Violations.

Subsection 3314(a) through (j) are unchanged.

New subsection 3314(k) is adopted to read:

(k) The author of a Rules Violation Report may submit a CDCR Form 1027 (9/18), Audio-Video Surveillance System Evidence Request, which is incorporated by reference, to his or her supervisor to have any audio recordings, video recordings, or both forms of recordings related to the circumstances that gave rise to the rules violation preserved. Audio or video recordings preserved as part of a serious Rules Violation Report shall be reviewed by the Senior Hearing Officer during the hearing process.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

Subchapter 4. General Institution Regulations

Article 5. Inmate Discipline

3315. Serious Rule Violations

Subsection 3315(a) through (h) are unchanged.

New subsection 3315(i) is adopted to read:

(i) The author of a Rules Violation Report may submit a CDCR Form 1027 (9/18), Audio-Video Surveillance System Evidence Request, which is incorporated by reference, to his or her supervisor to have any audio recordings, video recordings, or both forms of recordings related to the circumstances that gave rise to the rules violation preserved. Audio or video recordings preserved as part of a serious Rules Violation Report shall be reviewed by the Senior Hearing Officer during the hearing process.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 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, Penal Code.

ADOPT

AUDIO/VIDEO SURVEILLANCE SYSTEM EVIDENCE REQUEST

CDCR 1027 (08/18)

I am requesting a Digital Versatile Disc (DVD) of audio/video data from the Audio Visual Surveillance System. By signing below, I acknowledge I am approved to collect the data and will be responsible for the inclusion of the evidence to the incident package, appeal, or Rules Violation Report (RVR). Additionally, I understand I can be subjected to adverse action and/or criminal prosecution for mishandling the information contained in the DVD or for violating the conditions of this request.

Incident Log Number:
Appeal Log Number:
RVR Log Number:
Date, Time, and Specific Location:

ITEM DESCRIPTION

1.	
2.	
3.	
4.	

REASON FOR REQUESTING VIDEO EVIDENCE

Requesting Person: _____
Print Name Signature

Agency Requesting: _____
Other than CDCR Staff

Approved By: _____
ISU Supervisor Only

To Be Completed By Person Receiving Evidence	
Date Received:	Received By (Print Name):
Time Received:	Signature:
Date Requested:	Date Completed:
Date/Time Contacted For Pickup:	Evidence Officer:
Additional Information:	

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR or the Department) proposes to amend Sections 3084.7, 3288, 3314, and 3315, and adopt new Section 3270.2 of the California Code of Regulations, Title 15 regarding audio-video surveillance in CDCR facilities.

There were over 4000 documented incidents recorded in 2015 related to inmate violence within our prisons. The objective of the proposed regulations is to promote safety and enhance security and to establish consistency and procedures as it pertains to the audio-video recording technology in our institutions and in our transportation vehicles. Additionally, this technology may help reduce staff and inmate assaults, and inmate complaints regarding staff and use of force incidents.

In 2015, the California Office of the Inspector General (OIG) conducted a Special Review of High Desert State Prison at the request of the Senate. The OIG recommended that the CDCR consider the use of audio-video recording in all inmates' areas. According to the OIG, "...such recording is invaluable in capturing misconduct, documenting inmate activity, and exonerating staff who have been wrongly accused of misconduct." The Department seeks to move forward with the use of audio-video recording equipment. This regulation will also require each CDCR institution to notice the public when audio-video recording equipment is installed.

As technology changes, the Department needs to be proactive in procuring and using audio-video recording technology to ensure the safety of the institutions. The use of audio and/or video recording systems will provide institutional staff the ability to monitor in real-time criminal activity as it occurs. Additionally, such surveillance is an invaluable investigative tool in assisting to identify involved suspects after an incident has been contained. With the installation of cameras, institutions can eliminate blind spots where prohibited activities may occur. The use of audio-video recording systems aids the Department in providing environments conducive to inmates participating in rehabilitative programs.

Consideration of Alternatives

CDCR must determine that no reasonable alternatives considered, or that have 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), the CDCR has made the following assessments regarding the proposed regulations:

Significant 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 on business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations affect only the internal management of CDCR institutions.

Creation of New or the Elimination of Existing Jobs within the State of California

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 proposed regulations place no requirements or restrictions on businesses inside or outside of California, as they affect only the internal management of CDCR institutions.

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

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 proposed regulations place no requirements or restrictions on businesses inside or outside of California, as they affect only the internal management of CDCR institutions.

Expansion of Businesses Currently Doing Business in the State of California

The Department has determined that the proposed regulations will not have an impact on the expansion of businesses currently doing business in California. The proposed regulations place no requirements or restrictions on businesses inside or outside of California, as they affect only the internal management of CDCR institutions.

Benefits of the Regulations

These regulations may benefit the welfare of California residents by helping to make CDCR institutions safer for inmates, staff, and visitors. Additionally, safer institutions may provide an environment more conducive to rehabilitation, thereby reducing recidivism.

Documents Relied Upon

CDCR, 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):

Section 3084.7. Levels of Appeal Review and Disposition.

Subsections 3084.7(a) through (5) are unchanged.

New subsection 3084.7(j) is adopted to specify that an Appeals Coordinator or member of the Office of Appeals may review audio, video, or both forms of recordings related to an inmate grievance or appeal. This is necessary in the event an Appeals Coordinator or member of the Office of Appeals receives an inmate grievance or an appeal alleging staff misconduct. These recordings can be an invaluable tool in investigating allegations of inmate or staff misconduct, and adjudicating inmate grievances or appeals.

Subchapter 4. General Institution Regulations

Article 2. Security

New Section 3270.2 Audio-Video Surveillance Systems is adopted.

New Subsection 3270.2(a) is adopted to establish that the Department may use audio, video, or both forms of recording technology within and surrounding any of its properties, institutions, facilities, perimeter fencing, or vehicles. The Department already uses audio-video recording technology in various capacities, such as in visiting areas, at all institutions. This new subsection will establish regulatory authority for the use of such technology, as well as potential future expansions of such technology. Audio-video recording technology can be invaluable in capturing

misconduct, documenting inmate activity, and exonerating staff who have been wrongly accused of misconduct.

New Subsection 3270.2(b) is adopted to establish that audio-video recording technology shall not be used to record the interiors of living quarters or cells except in case of emergency or investigation as authorized by the warden. This is necessary to establish the parameters for the use of this technology. This provision establishes that only the highest institutional authority- the warden- may authorize use of audio-video recording of inmate living quarters, and only in cases where he/she determines there may be an emergency situation, or as part of an ongoing investigation.

Subchapter 4. General Institution Regulations

Article 2. Security

3288. Notice to the Public, Employees and Inmates

Subsections 3288(a)(1) through 3288(b) are unchanged.

New subsection 3288(c) is adopted to require that public notice that audio-video recording technology may be in use shall be placed at the gatehouse, front entrance, and vehicle sally ports of all correctional institutions and include the following minimum text: "This area is subject to audio and video surveillance." This is necessary to notify all individuals within and surrounding any of the Department's properties, institutions, facilities, perimeter fencing, or vehicles that audio, video, or both forms of technology may be in use to promote safety and security.

Subchapter 4. General Institution Regulations

Article 5. Inmate Discipline

3314. Administrative Rule Violations.

Subsection 3314(a) through (j) are unchanged.

New subsection 3314(k) is adopted to specify that the author of a RVR may submit an Audio-Video Surveillance System Evidence Request Form (CDCR Form 1027) to his or her supervisor to have any audio recordings, video recordings, or both forms of recordings related to the circumstances that gave rise to the rules violation preserved. In addition, audio or video recordings preserved as part of a serious RVR shall be reviewed by the Senior Hearing Officer during the hearing process. This is necessary to establish a process for the preservation of audio and/or video recordings as supporting evidence in a disciplinary hearing when an inmate may be issued a Rules Violation Report. The requirement for the Senior Hearing Officer to review audio/video evidence during the hearing process for a serious RVR is necessary to ensure all available evidence is reviewed during the adjudication of the most serious Rules Violation Reports.

Subchapter 4. General Institution Regulations

Article 5. Inmate Discipline

3315. Serious Rule Violations

Subsection 3315(a) through (h) are unchanged.

New subsection 3315(i) is adopted is adopted to specify that the author of a RVR may submit an Audio-Video Surveillance System Evidence Request Form to his or her supervisor to have any audio recordings, video recordings, or both forms of recordings related to the circumstances that gave rise to the rules violation preserved. In addition, audio or video recordings preserved as part of a serious RVR shall be reviewed by the Senior Hearing Officer during the hearing process. This is necessary to establish a process for the preservation of audio and/or video recordings as supporting evidence in a disciplinary hearing when an inmate may be issued a Rules Violation Report. The requirement for the Senior Hearing Officer to review audio/video evidence during the hearing process for a serious RVR is necessary to ensure all available evidence is reviewed during the adjudication of the most serious Rules Violation Reports.