

**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:

**Repeal sections: 3349, 3349.1, 3349.2,
3349.3, 3349.4, 3349.5,
3349.6, 3349.7, 3349.8,
3349.9**

NOTICE OF FILING AND PRINTING ONLY

Government Code Section 11343.8

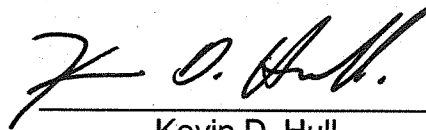
OAL Matter Number: 2019-0314-03

OAL Matter Type: File and Print Only (FP)

This file and print action by the California Department of Corrections and Rehabilitation repeals regulations pertaining to the administration of the death penalty and lethal injection process for inmates condemned to death. This action is exempt from the Administrative Procedure Act pursuant to Penal Code section 3604.1, enacted November 8, 2016, by Proposition 66, section 11.

OAL filed this regulation(s) or order(s) of repeal with the Secretary of State, and will publish the regulation(s) or order(s) of repeal in the California Code of Regulations.

Date: March 18, 2019



Kevin D. Hull
Senior Attorney

Original: Ralph Diaz, Acting Secretary
Copy: Josh Jugum

NOTICE PUBLICATION/REGULATIONS SUBMISSION

FILE PRINT

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS Z-	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER 2019-0314-03 FP	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

<p style="text-align: center;">NOTICE</p>	<p style="text-align: center;">REGULATIONS</p>
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ENDORSED - FILED
in the office of the Secretary of State
of the State of California

MAR 18 2019
3:06 pm

2019 MAR 14 P 1:20
OFFICE OF
ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation	AGENCY FILE NUMBER (if any) 19-0068
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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 <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Administration of the Death Penalty - Lethal Injection	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.)	ACTION
TITLE(S) 15	REPEAL 3349, 3349.1, 3349.2, 3349.3, 3349.4, 3349.5, 3349.6, 3349.7, 3349.8, 3349.9

3. TYPE OF FILING			
<input 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 §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input checked="" type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) Exempt per Penal Code 3604.1	

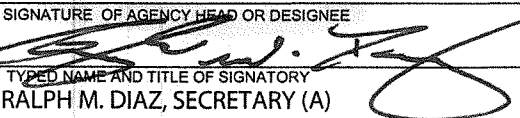
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

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 916 445-2266	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 3/14/19
TYPED NAME AND TITLE OF SIGNATORY RALPH M. DIAZ, SECRETARY (A)	

For use by Office of Administrative Law (OAL) only

AUTHORIZED FOR FILING AND PRINTING

MAR 18 2019

Office of Administrative Law

TEXT OF PROPOSED REGULATIONS

In the following text, repealed language is indicated by strikethrough.

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 4. General Institution Regulations

Article 7.5 is repealed.

~~Article 7.5. Administration of Death Penalty~~

Section 3349 is repealed.

~~Section 3349. Method of Execution.~~

~~(a) Inmates sentenced to death shall have the opportunity to elect to have the punishment imposed by lethal gas or lethal injection. Upon being served with the Execution Warrant, the inmate shall be served with CDCR Form 1801-B (Rev. 01/18), Service of Execution Warrant, Warden's Initial Interview, which is incorporated by reference. The completed CDCR Form 1801-B shall be transmitted to the San Quentin Warden.~~

~~(b) The inmate shall be notified of the opportunity to elect lethal gas or lethal injection and that, if the inmate does not choose either lethal gas or lethal injection within ten calendar days after being served with the Execution Warrant, the penalty of death shall be imposed by lethal injection. The inmate's attestation to this service and notification shall be made in writing and witnessed utilizing the CDCR Form 1801 (Rev. 01/18), Notification of Execution Date and Choice of Execution Method, which is incorporated by reference. The completed CDCR Form 1801 shall be transmitted to the San Quentin Warden.~~

~~(c) The inmate's election shall be made in writing and witnessed utilizing the CDCR Form 1801-A (Rev. 01/18), Choice of Execution Method, which is incorporated by reference. The completed CDCR Form 1801-A shall be transmitted to the San Quentin Warden.~~

~~(d) The inmate's election shall be irrevocable, with the exception that, if the inmate sentenced to death is not executed within the 10 day period specified by the Execution Warrant and a new Execution Warrant is issued, the inmate again shall have the opportunity to elect to have the punishment imposed by lethal gas or lethal injection, according to the procedures set forth in Sections (a), (b), and (c).~~

Note: Authority cited: Sections 1227, 3604, 3604.1 and 5058, Penal Code. Reference: Sections 190, 1227, 3603, 3604 and 5054, Penal Code.

Section 3349.1 is repealed.

~~Section 3349.1. Definitions.~~

For the purpose of Subchapter 4, Article 7.5, the following definitions shall apply:

- (a) ~~Administrative Assistant~~—Public Information Officer means the staff member or members responsible for responding to media inquiries and other duties as assigned.
- (b) ~~Alienists~~ means CDCR psychiatrists, all of whom must be from the medical staffs of the Department of Corrections and Rehabilitation who will perform the duties required by Penal Code Section 3700.5.
- (c) ~~Designated Security Housing~~ means the area designated by the San Quentin Warden where a condemned inmate shall be housed prior to the initial scheduled execution date.
- (d) ~~Execution Report~~ means the documents the Team Administrator routes through the San Quentin Chief Deputy Warden for the San Quentin Warden's review and signature after an execution. The Execution Report shall include: a CDCR Form 2177 A San Quentin State Prison Lethal Injection Infusion Sub Team Execution Log—Pentobarbital or CDCR Form 2177 B San Quentin State Prison Lethal Injection Infusion Sub Team Execution Log—Thiopental, CDCR Form 2179 San Quentin State Prison Lethal Injection Intravenous Sub Team Execution Log, CDCR Form 2181 San Quentin State Prison Lethal Injection Team Administrator/Team Supervisor Execution Log, CDCR Form 2182 Lethal Injection Team Supervisor Execution Report, CDCR Forms 2183 Execution Report Team Member from all Lethal Injection Team members, and any documented use of force in accordance with Section 3268.1, Reporting and Investigating the Use of Force for Institution/Facility Staff. In addition, the Execution Report shall include all appropriate supplemental reports.
- (e) ~~Execution Warrant~~ means the court order specifying a period of ten days during which a judgment of death shall be carried out pursuant to Penal Code Section 1227.
- (f) ~~Infusion Control Room~~ means the space allocated for the Lethal Injection Chemical preparation area and is the room designed to accommodate the Infusion Sub Team, designated members of the Intravenous Sub Team, the Team Administrator, Team Supervisor, designated members of the Record Keeping Sub Team, San Quentin Litigation Coordinator, and one representative each from the Governor's Office, the Inspector General's Office, and the Attorney General's Office.
- (g) ~~Infusion Sub Team~~ means the Lethal Injection Team members who are responsible for receiving the Lethal Injection Chemical, preparation of the Lethal Injection Chemical, drawing the Lethal Injection Chemical into syringes, labeling and color coding the syringes and infusing the Lethal Injection Chemical.
- (h) ~~Intravenous Sub Team~~ means the Lethal Injection Team members who are responsible for placing electrocardiogram leads, insertion of the intravenous catheters, attaching and monitoring the intravenous lines, performing consciousness checks, and crimping, uncoupling, and detaching the intravenous lines.
- (i) ~~Lethal Injection Chemical~~ means a barbiturate used to perform an execution.
- (j) ~~Lethal Injection Chemical Supplier~~ means a licensed pharmacy, pharmacist, compounding pharmacy, manufacturer, supplier, wholesaler, or distributor.
- (k) ~~Lethal Injection Facility~~ means the dedicated structure at San Quentin consisting of three witness viewing rooms, an Infusion Control Room, the Lethal Injection Facility Holding Area, restrooms and the Lethal Injection Room.
- (l) ~~Lethal Injection Facility Holding Area~~ means the cell and associated area where the inmate is held prior to an execution.
- (m) ~~Lethal Injection Room~~ means the room where the inmate is executed.

~~(n) Lethal Injection Team means the individuals that comprise the three sub-teams described in this Article.~~

~~(o) Master Execution File means the permanent record of all documents related to an execution that is maintained at San Quentin.~~

~~(p) Ministers of the Gospel means a person serving as an agent specific to a system of beliefs, secular or otherwise.~~

~~(q) Pre-Execution Logbook means a record of documentation of the condemned inmate's activities, requests, conduct and behavior, which shall commence upon receipt of the Execution Warrant.~~

~~(r) Record Keeping Sub-Team means the Lethal Injection Team members who are responsible for documenting each element of the execution and for assembling those documents for inclusion in the Master Execution File.~~

~~(s) Selection Panel means the Associate Director Reception Centers, the San Quentin Warden, and the Team Administrator who recruit and select the Team Supervisor and Team members.~~

~~(t) Spiritual Advisor means a person who, by profession or practice, provides spiritual advice, assistance, or guidance, religious or otherwise.~~

~~(u) Team Administrator means the Associate Warden who is responsible for providing managerial oversight of the Lethal Injection Team's training, preparation and the performance of assigned duties during an execution.~~

~~(v) Team Supervisor means the Captain who is responsible for providing direct supervision of the Lethal Injection Team's training, preparation and performance of assigned duties during an execution.~~

Note: Authority cited: Sections 1227, 3604, 3604.1 and 5058, Penal Code. Reference: Sections 190, 1227, 3600, 3601, 3602, 3603, 3604, 3605, 3607, 3700.5 and 5054, Penal Code; *Baze v. Rees* (2008) 553 U.S. 35; and *Towery v. Brewer* (2012) 672 F.3d 650.

Section 3349.2 is repealed.

Section 3349.2. Recruitment, Selection and Annual Review of Lethal Injection Team Members.

~~(a) Recruitment and Selection Process.~~

~~(1) The Director Division of Adult Institutions, or designee, and the San Quentin Warden shall recruit and select an Associate Warden to serve as the Team Administrator. The Team Administrator is not a member of the Lethal Injection Team, but the screening criteria set forth in subsections (b)(2) and (3) and (c)(1)(A)-(H) shall apply.~~

~~(2) The Director Division of Adult Institutions, or designee, with the Selection Panel, shall recruit and select the Team Supervisor and the Lethal Injection Team members. The Team Supervisor is not a member of the Lethal Injection Team, but the screening criteria set forth in subsections (b)(2) and (3) and (c)(1) shall apply. The Lethal Injection Team shall consist of CDCR employees, or contracted medical personnel, or a combination of both, and shall comprise a minimum of 12 members who shall be~~

~~assigned to one of three sub-teams and who shall serve at the will of the Director—
Division of Adult Institutions.~~

~~(A) The Selection Panel shall review qualifications of, interview, and recommend candidates for the Team Supervisor and Lethal Injection Team members. All recommendations shall be subject to the review and approval of the Director, Division of Adult Institutions. The Associate Director—Reception Centers shall chair the Selection Panel and ensure the Team Supervisor and Lethal Injection Team members are selected consistent with the criteria established in this section. After selection of the Lethal Injection Team members, the Team Administrator shall assign each member to one of the following Sub Teams: Intravenous Sub Team, Infusion Sub Team, or Record keeping Sub Team pursuant to the criteria as set forth in subsection (d) below. Each sub team shall have a minimum of four members.~~

~~(B) The Team Administrator shall select an Intravenous Sub Team leader from among the Intravenous Sub Team members. The Intravenous Sub Team leader shall be qualified in his or her profession to supervise medically trained personnel. The Intravenous Sub Team leader shall be responsible for determining training curriculum for duties identified in subsection (d)(1) for the Intravenous Sub Team, assessing performance of each Intravenous Sub Team member during training and executions, and reporting any concerns about any Intravenous Sub Team member to the Team Administrator and the Team Supervisor.~~

~~(C) The Team Administrator shall select an Infusion Sub Team leader from among the Infusion Sub Team members. The Infusion Sub Team leader shall be qualified in his or her profession to supervise medically trained personnel. The Infusion Sub Team leader shall be responsible for determining training curriculum for duties identified in subsection (d)(2) for the Infusion Sub Team, assessing performance of each Infusion Sub Team member during training and executions, and reporting any concerns about any Infusion Sub Team member to the Team Administrator and the Team Supervisor.~~

~~(D) The CDCR may contract with medical personnel or a pharmacist to be members of the Lethal Injection Team. The CDCR may also contract with a physician to serve as the physician attending the execution to declare death. Contract personnel shall meet all the criteria set forth in subsections (b), (c), and (d).~~

~~(E) Names and identities of the Lethal Injection Team members shall remain confidential.~~

~~(b) Screening of Lethal Injection Team Candidates.~~

~~(1) The Selection Panel shall screen and ensure each candidate meets the criteria established for membership on one of the three designated sub-teams as set forth in subsection (d) below.~~

~~(2) The Selection Panel screening process shall include:~~

~~(A) Review of all the state employee candidate's available performance evaluations.~~

~~(B) Review of the state employee candidate's official personnel, supervisory, and training files.~~

~~(C) Review of the candidate's current Criminal Identification and Information Report from the California Department of Justice.~~

~~(3) As part of the screening process, the Selection Panel shall interview each candidate to determine the following:~~

~~(A) Personal history and background.~~