

INITIAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Section 3173.2, Searches and Inspections, and adopt Section 3410.1, Searches of Employees, of the California Code of Regulations (CCR), Title 15, Division 3, by implementing the use of Electronic Drug Detection Equipment (EDDE) and other available technology to search all persons who come onto institutional grounds. Persons entering and exiting CDCR institutions sometimes employ extraordinary means to try and smuggle drugs and contraband into and out of prisons. These methods include secreting drugs and contraband in hidden pockets in clothing or in body cavities.

An ION Mobility Spectrometry (ION Scanner) unit is a trace detecting device that measures the deflection of particles after they are exposed to an electric field. Samples are collected by wiping an object and then placing the swipe into the unit. The results of the swipe are displayed within six seconds. ION Scanners can be employed as a non-intrusive search tool for inmates, staff, and visitors, as well as for incoming mail and parcels.

Recognizing the ongoing problem with drug use and trafficking within the institutions, CDCR must focus on undertaking a comprehensive approach to prevent the introduction of drugs and contraband into the institutions. Importing, trafficking, and drug use causes many problems in a prison setting including an increase in assaults, power struggles within the inmate population, establishment of an underground economy, and staff corruption.

There were over 4000 documented incidents recorded in 2013 related to drugs in California prisons. Of these 4000 drug related incidents in CDCR prisons, there were 382 arrests of non-inmates attempting to introduce drugs into an institution. Of the 382 arrests there were 10 staff, 320 visitor, and 52 non-visitor arrests. Tragically, from January 2012 to February 2014 there were a reported 29 inmate deaths attributed to illegal drug overdose.

In June 2013 the CDCR conducted blind baseline urine testing of 25 percent of the inmate population. The results confirmed that nearly 23 percent of the inmates who voluntarily participated tested positive for one or more illicit drugs. Approximately 30 percent of inmates randomly selected to voluntarily test declined to do so even though there were no disciplinary actions taken against inmates testing positive.

Based on the 2013 drug related incidents and test results, the Department must do more to reduce the availability of and use of drugs in the prison system. Therefore, the Department seeks to implement various drug interdiction strategies, which includes the use of ION Scanners and other available technology.

ION Scanners coupled with other drug and contraband interdiction strategies, such as increased sanctions will act as a deterrent to the use of illicit drugs.

CONSIDERATION OF ALTERNATIVES:

The Department has determined that no reasonable alternatives 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.

The Department has made an initial determination that no reasonable alternatives to the regulation have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

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

Statement of 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 because business is not affected by the internal management of State prisons.

ECONOMIC IMPACT ASSESSMENT

The Department is implementing EDDE and ION Scanners to the extent allowed with existing resources and will expand the program when and if additional resources are provided.

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

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

The Department has determined that the proposed regulations will have no impact on the creation of jobs or elimination of existing jobs or businesses within California because those jobs or businesses are not affected by the internal management of prisons.

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

The Department has determined that the proposed regulations will have no effect on the creation of new or elimination of existing businesses with the State of California because those businesses are not affected by the internal management of State prisons.

Expansion of Business Currently Doing Businesses within the State of California

The Department has determined that the proposed regulations have no effect on the expansion of businesses currently doing business within the State of California because they are not affected by the internal management of State prisons.

BENEFITS OF THE REGULATIONS

The proposed regulatory action will provide staff with non-invasive electronic equipment that is capable of simultaneously testing for a wide range of narcotics in seconds.

Eliminate potential strife between inmates trying to profit from illegal activities.

Disruptive behaviors are significantly reduced.

Provide a safer environment for visitors, staff, contractors, contractors and their employees, and volunteers.

The use of ION scanners to prevent illegal drugs from entering the prisons will have a positive effect on public health and safety, worker safety, and the environment.

REPORTS RELIED UPON

The Department, in proposing amendments to these regulations, relied upon the following reports: COMPSTAT DAI Analysis – Drug Related Incidents 2013 (January 2013 through December 2013), DAI Urinalysis Baseline Testing COMPSTAT Analysis (July 9, 2013), Staff Arrest Statistics, Division of Adult Institutions, January 2013 through December 2013, Visitor Arrest Statistics, Division of Adult Institutions, January 2013 to December 2013, and Non-Visitor Arrest Statistics, Division of Adult Institutions, January 2013 to December 2013. All of these reports can be viewed on the Department’s website at http://www.cdcr.ca.gov/Regulations/Adult_Operations/Supplemental_Documents.html.

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):

Chapter 1, Rules and Regulations of Adult Operations and Programs

Article 7, Visiting

3173.2 Searches and Inspections.

Subsections 3173.2(a) through 3173.2(b) are unchanged.

Subsection 3173.2(c) is amended to add electronic drug detectors and other available technology as additional devices to search visitors for drugs. This is necessary to assist the Department’s efforts in minimizing/eliminating the introduction of dangerous contraband into the prisons to provide a safer environment for inmates, visitors, and staff.

Article 2. Employees

New section 3410.1 title is adopted to read:

3410.1 Search of Employees.

New subsection 3410.1 is adopted to specify that all persons who come onto institutional grounds are subject to be searched. This is necessary to assist the Department’s efforts in minimizing/eliminating the introduction of dangerous contraband into the prisons to provide a safer work environment for all employees and volunteers.