

**State of California
Office of Administrative Law**

In re:
Department of Corrections and
Rehabilitation

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections: 3270.2
Amend sections: 3084.7, 3288, 3314, 3315
Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2019-1220-03

OAL Matter Type: Regular (S)

This action by the Department of Corrections and Rehabilitation (Department) adopts and amends regulations regarding audio-video surveillance in Department Facilities.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/1/2020.

Date: February 5, 2020



Kevin D. Hull
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Ralph Diaz, Secretary
Copy: Josh Jugum

NOTICE PUBLICATION/REGULATORY SUBMISSION (See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2019-0108-06	REGULATORY ACTION NUMBER 2019-1220-035	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

<p>2019 DEC 20 P 3:30</p> <p>OFFICE OF ADMINISTRATIVE LAW</p>	<p>2019 DEC 20 P 3:30</p> <p>OFFICE OF ADMINISTRATIVE LAW</p>
NOTICE	REGULATIONS

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

FEB 05 2020
1:41 PM

AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation	AGENCY FILE NUMBER (if any) 18-0286
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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 Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Audio Video Surveillance Systems	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.)	ADOPT 3270.2
	AMEND 3084.7, 3288, 3314, 3315
TITLE(S) 15	REPEAL

3. TYPE OF FILING			
<input checked="" 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 §§11346.2-11347.3 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 §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

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)
September 20, 2019 through October 9, 2019

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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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 Josh Jugum	TELEPHONE NUMBER 916 445-2266	FAX NUMBER (Optional)	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 12/17/19
TYPED NAME AND TITLE OF SIGNATORY JEFF MACOMBER, Undersecretary, Administration	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

FEB 05 2020

Office of Administrative Law

TEXT OF ADOPTED 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

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; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; 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 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 (8/18), 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 (8/18), 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:	

FINAL STATEMENT OF REASONS:

The Initial Statement of Reasons is incorporated by reference.

UPDATES TO THE INITIAL STATEMENT OF REASONS

On January 8, 2019, the Department submitted to the Office of Administrative Law a notice of proposed regulations concerning audio-video surveillance systems. The regulations were noticed to the public on January 18, 2019. Public comments were accepted through March 8, 2019. Eighty-one comments were received during this period. A public hearing was held on March 8, 2019, at which two comments were received.

In response to public comments, the Department made revisions to the proposed text. The amendments to the originally proposed text and the reasons for these revisions are explained below under the heading "Changes to the Text of Proposed Regulations Initially Noticed to the Public."

The *Notice of Change to Text as Originally Proposed* (Renotice) was distributed on September 20, 2019, to the people/organizations who provided comments during the initial public comment period, and posted on the Department's website the same day. The Department accepted public comments from this date through October 9, 2019. No comments were received during this period.

DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law, than the action proposed. No such alternatives were proposed or brought to the Department's attention during the adoption of this rulemaking action. The Department determined that taking no action would impede both the Department's ability to monitor in real time prohibited activity inside Department facilities, as well as investigate incidents after they occur.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the CDCR's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

The Department has determined 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 affected private persons or small business than the action planned.

The Department, in proposing the adoption of these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document. The Department has relied upon the results of the Economic Impact Assessment, which can be found in the Notice of Proposed Regulations and is available for review as part of the rulemaking file.

CHANGES TO THE TEXT OF PROPOSED REGULATIONS INITIALLY NOTICED TO THE PUBLIC.

Section 3270.2(b) is amended to remove the term "living quarters" from the proposed text. The Department received multiple public comments stating that this term was not sufficiently clear. The Department agrees the term is not clear and has therefore removed it from the proposed regulations.

Sections 3314 and 3315 are amended to correct a form revision date.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS RECEIVED DURING THE INITIAL PUBLIC COMMENT PERIOD:

PUBLIC HEARING COMMENTS:

A public hearing was held on March 8, 2019. There were two speakers.

Hearing Commenter #1

Hearing Comment 1A: Commenter states these cameras are a form of policing that is not necessary, as there are already cameras in place. Commenter would like to see police wear body cameras to protect inmates against sexual and physical brutality. Funds can be better used for rehabilitation.

Response to Hearing Comment 1A: The Department disagrees that cameras are not necessary. Audio, video, or both forms of recording technology is necessary and provides the department supporting evidence to make impartial decisions of the actions of involved persons. Not all prisons have audio, video, or both forms of recording technology in all areas of inmate congregation or inmate path of travel. The objective of the proposed regulations is to promote safety and enhance security and to establish procedures as it pertains to the audio, video, or both forms of recording technology in our institutions and in our transportation vehicles. The use of audio, video, or both forms of recording technology will provide institutional staff the ability for real-time monitoring and recording in order to conduct investigations and after-the-fact reviews by utilizing audio, video, or both forms of recording technology. Audio, video, or both forms of recorded footage are an invaluable investigative tool in assisting to identify involved suspects after an incident has been contained. With the installation of cameras, similar to 'body cameras,' institutions can eliminate blind spots where prohibited activities may occur (e.g., sexual misconduct, inmate on staff or inmate on inmate violence, etc.). The use of audio, video, or both forms of recording technology aids the Department in providing environments conducive to inmates participating in rehabilitative programs.

Hearing Comment 1B: Commenter states, "The wording is very vague and under the wrong supervision could be misused." These cameras would be invasive and allow incarcerated women no privacy during strip searches and security checks. Commenter is also concerned about male guards having access to sensitive images of women.

Response to Hearing Comment 1B: The Department disagrees with the Commenter that the wording is 'very vague.' The proposed text is clear and concise. As it pertains to the Commenters concerns that audio or video data, 'under the wrong supervision could be misused.' The regulations establish that only individuals having a legitimate need to view the live images or recorded media may do so, and staff will be held accountable if staff misconduct is identified.

Hearing Commenter #2

Hearing Comment 2A: Commenter states, "It's inappropriate to the people who are already in a security environment to have their cells monitored where they change, shower, and use the restroom. This is their sanctuary because they've already been stripped of their freedom." Commenter asks where inmates can grieve in private about the realities they face in prison.

Response to Hearing Comment 2A: The Department disagrees with the Commenter in that the audio, video, or both forms of recording technology are inappropriate. In order to increase the level of safety and security in our institutions the Department is proposing to install high definition cameras to capture

audio, video or both forms of recording technology within areas of inmate path of travel and inmate congregation.

As it pertains to the commenters other comments: The above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

WRITTEN PUBLIC COMMENTS RECEIVED DURING THE INITIAL PUBLIC COMMENT PERIOD:

Commenter #1

Comment 1A: Commenter states a provision should be added to the proposed regulations allowing inmates to obtain recordings they believe may exonerate them. Commenter alleges that Department officials may refuse to request recordings if they believe they may exonerate the inmate.

Response to Comment 1A: Inmates may request to have recordings reviewed as part of their appeal, as is the case with any other evidence they believe may be helpful. The Department's decision in the case of a disciplinary hearing or appeal is based on the available evidence. The Department disagrees with the commenter's assertion that a staff member would refuse to request and/or review a recording simply because they believe the recording may exonerate the inmate.

Comment 1B: Commenter states that if a Department official requests to view a recording, the inmate should be notified and given the opportunity to review the recording as well.

Response to Comment 1B: Inmates shall be afforded all procedural rights and due process rights during a disciplinary hearing, to include the ability to view all video or photographic evidence at least 24-hours prior to a disciplinary hearing (or within 24 hours of the hearing if he or she waived the 24 hour period), pursuant to Title 15 Section 3320(c). Subsequently, if an inmate submits a CDCR Form 602, Inmate/Parolee Appeal alleging staff misconduct the Appeals Coordinator shall submit a CDCR Form 1027, Audio/Video Surveillance System Evidence Request as evidence.

Comment 1C: Commenter states the proposed regulations should require that a recording reviewed as part of a disciplinary hearing must be reviewed at the hearing with the inmate present and able to respond.

Response to Comment 1C: As stated in response to Comment 1B above, inmates shall be afforded all procedural rights and due process rights during a disciplinary hearing, to include the ability to view all video or photographic evidence at least 24-hours prior to a disciplinary hearing (or within 24 hours of the hearing if he or she waived the 24 hour period), pursuant to Title 15, Section 3320(c). As the inmate will be allowed to view any audio and/or video evidence and prepare for the hearing at least 24 hours prior to the hearing, there is no need to require that the recording be reviewed during the hearing.

Commenter #2

Comment 2A: Commenter states that "program office" facilities should have audio/video recording technology. This could help exonerate innocent inmates and correctional officers.

Response to Comment 2A: The Department agrees with the Commenter in that each audio-video surveillance system installation includes cameras installed inside and outside of buildings throughout the institution. Typical locations include, but are not limited to, yards, housing units, program buildings, administration buildings, visiting, sally ports, and visitor processing.

Comment 2B: Commenter states that AVSS in program facilities would show how many correctional officers treat inmates with derogatory or obscene language.

Response to Comment 2B: See Response to Comment 2A.

Commenter #3

Comment 3A: Commenter states that he supports the installation of AVSS in prisons. Commenter states he is having trouble receiving his mail on time due to an address change.

Response to Comment 3A: The Department acknowledges the commenter's support of the proposed regulations. The remainder of the comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Commenter #4

Comment 4A: Commenter objects to the proposed regulations. Commenter states "these changes are all about 'spying' on prisoners" and that the benefits of the proposed regulations as stated in the Notice of Proposed Regulations is "political rhetoric".

Response to Comment 4A: See Hearing Commenter #2, Response 2A.

Commenter #5

Comment 5A: Commenter states that the provision that allows CDCR personnel to request that audio/video evidence be retained, but does not allow inmates to do the same, is inadequate. Inmates are more likely to need to make such a request to defend against false reports. Commenter states the authors of rules violation reports rarely have issues with credibility at disciplinary hearings, as hearing officers often disregard inmate testimony that contradicts the author of the report. Commenter alleges the Department "worded this policy in a manner that excluded inmates from using it to prove corrupt California peace officers committed crimes in falsifying their reports." Commenter states he has personally requested to have audio-video evidence used to exonerate him at disciplinary hearings and had his request refused by the hearing officer, while other inmates have been shown video when it can be used to prove guilt. Commenter requests that the proposed regulations be amended to provide inmates the means to request that video be preserved. Commenter also suggests an investigation to discover "who prompted [the Department] to enact the subject proposed regulation and why."

Response to Comment 5A: See Response 1A and Response 1B.

Commenter #6

Comment 6A: Commenter states that the proposed regulations contain no restrictions on the use of AVSS within facility houses of worship, spiritual grounds, Chaplain Offices, and similar locations. Commenter states it is illegal under California law to eavesdrop on conversations between an inmate and a religious or spiritual advisor.

Response to 6A: The Department will comply with all provisions of law regarding privacy in its placement of AVSS.

Comment 6B: Commenter states that the proposed regulations contain no restrictions on the use of AVSS in attorney visiting rooms and on phone calls with attorneys. Use of AVSS in these areas would be a violation of California law.

Response to 6B: See Response to Comment 6A.

Comment 6C: Commenter states subsection 3084.7(j) should be amended to include “and any appeals hearing officer” as inmate appeals are generally heard by staff who are not part of the appeals office.

Response to 6C: It is not necessary to specify additional individuals beyond those named in the proposed subsection who may review recordings in the case of a grievance or appeal. Inmates do not have the right to dictate who conducts an inquiry or responds to their appeal.

Commenter #7

Comment 7A: Commenter states the proposed regulations do not explicitly exempt areas where inmates meet with attorneys. Video-only recording in these areas may be appropriate, but not audio recording.

Response to 7A: See Response to Comment 6A.

Commenter #8

Comment 8A: Commenter states the proposed regulations should be amended to allow inmates to request the preservation of audio-video evidence for use in disciplinary hearings.

Response to 8A: See Response 1A, 1B, and 1C.

Commenter #9

Comment 9A: Commenter states the Department “went to great lengths” to incorporate a means of allowing correctional staff to request that audio-video recordings be preserved as evidence, but has not given inmates the same opportunity. This “one-sided” policy does not allow an inmate to preserve evidence that may allow the inmate to prove his innocence or prove an allegation of staff misconduct. This policy will encourage the “code of silence” among correctional staff.

Response to 9A: See Response 1A, 1B, and 1C.

Comment 9B: Commenter states the proposed regulations should specify a length of time that audio-video evidence should be retained. Without such a provision, footage capturing staff misconduct will be deleted before steps can be taken to preserve it. Commenter suggest recordings be retained for six months, and longer if necessary.

Response to 9B: The Department does not have a standard retention schedule at this time because some older audio-video recording systems still in use in CDCR facilities do not have the ability to retain data beyond a very short time period. As older systems are replaced, the Department may amend these regulations to adopt a standard retention schedule.

Comment 9C: Commenter states the proposed regulations should establish safeguards to prevent unscrupulous staff from uploading or selling video to profit or to blackmail inmates.

Response to 9C: See Response to Hearing Comment 1B.

Comment 9D: Commenter states the term “living quarters” is not adequately defined. For example, dayrooms may not be living quarters but they contain communal toilets, which should have some privacy. Living quarters should include areas with toilets, showers, and any areas in which inmates are routinely strip-searched.

Accommodation: Yes

Response to 9D: The Department agrees that the term “living quarters” was not sufficiently defined and has removed the term from the proposed regulation text.

Comment 9E: Commenter states that the wording of the Initial Statement of Reasons quoting the Office of the Inspector General’s report, and the lack of a provision for inmates to request the preservation of audio-video recordings, implies that the Department cares only about using AVSS to exonerate wrongfully accused staff, and not about prosecuting staff who are guilty of misconduct.

Response to 9E: The Department disagrees with the Commenter. All staff misconduct investigations or inquiries shall be conducted in compliance with all laws, regulations, and Department policies. Also see responses 1A and 1B.

Commenter #10

Comment 10A: Commenter asks “What will be the guidelines with respect as to how long will audio-video data be saved before it is destroyed?”

Response to 10A: See Response 9B.

Commenter #11

Comment 11A: Commenter asks whether inmates will be allowed to review recordings to support their appeals and whether they will be allowed to review recordings when their appeals have been denied. Also, will appeals coordinators be allowed to decline to review the recordings relevant to an inmate appeal?

Response to 11A: If an inmate submits a CDCR Form 602, Inmate/Parolee Appeal alleging staff misconduct the Appeals Coordinator shall submit a CDCR Form 1027, Audio/Video Surveillance System Evidence Request as evidence. The video may be used to support or refute allegations made by the appellant. Inmates will not be allowed to review recordings to support their appeal nor will they be allowed to review recordings when their appeal has been denied. See Responses 1A, 1B, and 1C.

Comment 11B: Commenter asks whether the AVSS equipment will be concealed or in plain sight. If they are in plain sight, unscrupulous staff can avoid them. Commenter asks whether the recordings can be used against staff or just against inmates.

Response to 11B: The audio, video or both forms of recording technology utilized as part of the AVSS program are visible to all employees, visitors, and inmates. In addition, audio-video evidence may be used in an investigation, an administrative, civil, or criminal proceeding, for employees, visitors, inmates, or other persons. See Responses 1A, 1B, 1C, and 9E.

Comment 11C: Commenter states the terms “living quarters” “emergency” and “investigation” are overly broad and unclear. Can inmates in dormitory housing be recorded in the bathroom? Commenter states that some institutions currently have AVSS in the interiors of inmate living quarters. Will these institutions be required to remove recording devices?

Accommodation: Partial

Response to 11C: The Department disagrees with the Commenter that the terms ‘emergency’ and ‘investigation’ are overly broad and unclear. These are common terms in everyday usage, and the Department is using their commonly understood definitions. Additionally, both terms are qualified by “as authorized by the warden” in the proposed regulations, to establish that the determination of an emergency or authorization for an investigation may be made only by the highest institutional authority.

The Department agrees that the term “living quarters” was not sufficiently defined and has removed the term from the proposed regulation text. See Response 9D.

Comment 11D: Commenter states that inmates are routinely strip-searched in many locations other than living quarters. Can inmates be recorded during this process? This would mean officers of the opposite sex could see and record inmates who are undressed, which violates privacy rights. Will strip searches only be conducted in areas without AVSS?

Response to 11D: See Hearing Response 2A, Response 6A and 9D.

Comment 11E: Commenter asks who will have access to recordings in addition to appeals staff and hearing officers. Will the public or media have access? Will the authors of rules violation reports be able to see and hear the recordings?

Response to 11E: See Response 1A and 1B. Requests by the media or public to gain access to audio, video or both forms of recorded footage via the Public Records Act shall be reviewed by the Department prior to the release of said audio, video or both forms of recorded footage (note: portions of the audio-video footage may need to be redacted or blurred). As stated in Sections 3314(k) and 3315(i), the author of a Rules Violation Report may submit a CDCR 1027, Audio/Video Surveillance System Evidence Request form to their supervisor to have the audio, video or both forms of recorded data captured as related to the circumstances of the RVR. The author will be allowed to review the video except in unusual circumstances where confidentiality is required, such as when, at any point, a CDCR recording relates to an incident involving an allegation of staff misconduct, or a criminal or deadly force investigation is contemplated.

Comment 11F: Commenter asks whether inmates charged with a rules violation will be able to request to review recordings and use them as evidence during disciplinary hearings. It may be a violation of due process to allow recordings to be used against inmates but not used when the recordings may exonerate the inmate.

Response to 11F: See Response 1A, 1B, and 1C.

Commenters #12 through #36 (NOTE: These commenters provided substantively identical comments.)

Comment 12: Commenter states “Cells are living quarter, not just common area”. Surveillance in cells is a violation of privacy.

Response to 12A: See Hearing Response 1A, 6A, and Response 9D.

Comment 13A: Commenter states that authorization of surveillance is too broad. There should be stricter procedures and steps to decide if surveillance is necessary, such as proof rather than the word of a staff member or inmate.

Response to 13A: See Response 1B. Additionally, the Department contends that proof is not a reasonable standard to use to determine when an investigation may be warranted.

Comment 14A: Commenter states “common area (day room) surveillance should have more accountability”. A higher authority than the warden should be required to provide authorization.

Response to 14A: See Hearing Response 1B, 2A, and Response 1A, 1C, 2A. The Department disagrees with the Commenter that the Warden would be unable to make an appropriate determination. The Warden is appointed by the Governor of the State of California and manages and oversees the activities of the all correctional facility staff to ensure safety and security of the facility, as well as the proper treatment of inmates.

Commenters #37 through #45 (NOTE: These commenters provided substantively identical comments.)

Comment 37A: Commenter states, “the installation of additional audio and video surveillance inside of all inmate areas is a step in the wrong direction.” It further dehumanizes inmates and does not coincide with moving towards a model of rehabilitation rather than one of punishment.

Response to 37A: The above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Comment 37B: Commenter asks if consideration has been given to how AVSS will affect the female population, many of whom have experienced a history of sexual abuse. Commenter states “studies have shown that this type of surveillance is often abused for voyeuristic reasons by male operators” and asks what safeguards are in place to ensure that women will not be exploited.

Response to 37B: The Department will comply with all provisions of law regarding privacy in its placement of AVSS. The regulations establish that only individuals having a legitimate need to view the live images or recorded media may do so and staff will be held accountable if staff misconduct is identified.

Comment 37C: Commenter cites a study to contend that there is no empirical evidence that this type of surveillance reduces crime or violent incidents. Commenter states “cameras alone will not solve the issues of violence, drug abuse, sexual misconduct” or other issues at Department facilities. Constant surveillance does not encourage rehabilitation or reduce recidivism. What has been proven to promote rehabilitation and reduce recidivism is education, access to resources, mental health treatment, skills development, and trained staff. Commenter states, “there is an extensive network of NGOs and community members” willing to provide reasonable alternatives to these proposed regulations.

Response to 37C: The Department disagrees with the Commenter that cameras are not beneficial. Audio, video or both forms of recording technology is necessary and provides the department supporting evidence to make impartial decisions of the actions of involved persons. 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 or both forms of recording technology in our institutions and in our transportation vehicles. The use of audio, video or both forms of recording technology will provide institutional staff the ability for real-time monitoring and recording in order to conduct investigations and after-the-fact reviews by utilizing audio-video recording technology. Audio, video or both forms of recorded footage is an invaluable investigative tool in assisting to identify involved suspects after an incident has been contained. With the installation of cameras, similar to ‘body cameras,’ institutions can eliminate blind spots where prohibited activities may occur (e.g., sexual misconduct, violence, etc.). The use of audio, video or both forms of recording technology aids the Department in providing environments conducive to inmates participating in rehabilitative programs.

Commenter #46

Comment 46A: Commenter states the proposed regulations “further perpetuate the dehumanization of the individual that is housed within your facilities” and do not coincide with moving towards a model of rehabilitation rather than one of punishment.

Response to 46A: The above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Comment 46B: Commenter states the proposed regulations “could lead to further oppression of the human psyche” leading to withholding of emotions, which according to a study cited by the commenter can cause violence and pain among inmates and undermine attempts at rehabilitation.

Response to 46B: The above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Comment 46C: Commenter states the proposed regulations “waste critical monetary and policy resources needed to invest in the incarcerated person through family reunification programs and educational and self-help groups led by directly impacted people themselves.”

Response to 46C: The Department disagrees with the Commenter in that the audio, video or both forms of recording technology “waste critical monetary and policy resources. . .” In order to increase the level of safety and security in our institutions the Department is proposing to install cameras to capture audio, video or both forms of recording technology within areas of inmate path of travel and inmate congregation. Furthermore, the above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Commenter #47

Comment 47A: Commenter suggests that proposed language in the Initial Statement of Reasons regarding subsection 3270.2(a) be amended to read “Audio-video recording technology can be invaluable in capturing misconduct, documenting inmate and staff activity, and exonerating persons who have been wrongly accused of misconduct.” Commenter states that “equality of language” is necessary to avoid exacerbating power differences and abuses.

Response to 47A: The Department agrees with the Commenter that AVSS may be used to capture staff as well as inmate misconduct. However, the statement the commenter is referring to in the Initial Statement of Reasons (ISOR) is a statement about the necessity of using AVSS throughout Department institutions. This language mirrors the language in the Inspector General’s report (see page 1 of the ISOR) regarding the necessity for the use of AVSS.

Comment 47B: Commenter states “the general benefits of inmate privacy” should be explicitly recognized somewhere in the proposed regulations and suggests proposed language for inclusion in the ISOR. Commenter states “solutions can be devised through consultations with inmate and staff participation.”

Response to 47B: The above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Commenter #48

Comment 48A: Commenter asks if consideration has been given to how AVSS will affect the female population, many of whom have experienced a history of sexual abuse. Commenter states “studies have shown that this type of surveillance is often abused for voyeuristic reasons by male operators” and asks what safeguards are in place to ensure that women will not be exploited.

Response to 48A: See Response 37 B.

Comment 48B: Commenter cites a study to contend that there is no empirical evidence that this type of surveillance reduces crime or violent incidents. Constant surveillance does not encourage rehabilitation or reduce recidivism. What has been proven to promote rehabilitation and reduce recidivism is education, access to resources, mental health treatment, skills development, and trained staff. Commenter asks the Department to “research and implement true evidence-based empirically proven solutions to implement in the rehabilitation of prisoner”.

Response to 48B: See Response 37 C.

Commenter #49

Comment 49A: Commenter states the proposed regulations “further perpetuate the dehumanization of the individual that is house within your facilities” and do not coincide with moving towards a model of rehabilitation rather than one of punishment.

Response to 49A: The above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Comment 49B: Commenter states the proposed regulations “could lead to further oppression of the human psyche” leading to withholding of emotions, which according to a study cited by the commenter can cause violence and pain among inmates and undermine attempts at rehabilitation.

Response to 49B: The above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Comment 49C: Commenter states the proposed regulations “waste critical monetary and policy resources needed to invest in the incarcerated person through family reunification programs and educational and self-help groups led by directly impacted people themselves.”

Response to 49C: See Response 46 C.

Commenter #50

Comment 50A: Commenter states their opposition to the proposed regulations. This would “do little or nothing to deter violence”. Commenter states a better use of resources would be to fund services such as education, mental health, and self-help groups.

Response to 50A: See Response 37 C.

Commenter #51

Comment 51A: Commenter opposes the use of AVSS “inside incarcerated people’s cells”. Commenter supports the use of AVSS in inmate yards, in hallways, and in “cop shops” for the security of both inmates and staff.

Response to 51A: As stated in proposed subsection 3270.2(b), AVSS “shall not be used to record the interiors of cells except in case of emergency or investigation as authorized by the warden.

Commenter #52

Comment 52A: Commenter opposes cameras in cells, and states this is an “outrageous cruel step towards those women in recovery to a better life.” Commenter states the proposed regulations are a violation of privacy.

Response to 52A: See response to Comment 51A. Regarding the remainder of the comment: the above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Commenter #53

Comment 53: Commenter states the proposed regulations are a waste of taxpayer money, which would be better spent on educational programming or the state education system.

Response to 53A: See Response 46 C.

Comment 53B: Commenter states the proposed regulations violate inmate privacy and open the doorway to surveillance ending up on inmate private spaces.

Response to 53B: See Response Hearing Comment 2A.

Comment 53C: Commenter states that citizen watchdog groups or the ACLU should be allowed to monitor prisons by allowing unannounced prison visits by these groups.

Response to 53C: The above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Commenter #54

Comment 54A: Commenter states the proposed regulations are a waste of taxpayer money, which would be better spent on educational programming or the state education system.

Response to 54A: See Response 46 C.

Comment 54B: Commenter states the proposed regulations violate inmate privacy and open the doorway to surveillance ending up on inmate private spaces.

Response to 54B: See Response Hearing Comment 2A.

Comment 54C: Commenter states that citizen watchdog groups or the ACLU should be allowed to monitor prisons by allowing unannounced prison visits by these groups.

Response to 54C: See Response 53 C.

Commenter #55

Comment 55A: Commenter states, “you and I know this isn’t about safety but just another tactic that is going to be employed to further strip us of our dignity and dehumanize us, take away what little privacy and solace one might still have.”

Response to 55A: The Department acknowledges the commenter's opposition to the proposed regulations, however the Department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Comment 55B: Commenter states the proposed regulations are especially concerning for the female and special needs population "as several studies have shown how cameras are used for male surveyor's voyeuristic perversions."

Response to 55B: See Hearing Response 1B and Response 1A and 2A.

Comment 55C: Commenter states the warden should not be allowed to place cameras wherever he/she wants. Commenter states that the warden would use this power as a retaliation tactic.

Response to 55C: As stated in proposed subsection 3270.2(b), AVSS "shall not be used to record the interiors of cells except in case of emergency or investigation as authorized by the warden.

Commenter #56

Comment 56A: Commenter opposes the proposed regulations and states the recording of inmates will impose more harm, which will lead to expensive medical treatment. "Spend the money on rehabilitation for these inmates not toys to keep inmates in longer. Awful practice and unconstitutional."

Response to 56A: The Department acknowledges the commenter's opposition to the proposed regulations, however the Department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Commenter #57

Comment 57A: Commenter opposes the proposed regulations. Commenter states the surveillance will cause mental distress by not allowing inmates to have privacy to vent and share feelings with other inmates.

Response to 57A: The Department acknowledges the commenter's opposition to the proposed regulations, however the Department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons. The remainder of the comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Commenter #58

Comment 58A: Commenter opposes the proposed regulations. Commenter states AVSS will further invade the privacy of inmates and will be used to humiliate and denigrate them rather than to provide evidence of the violence visited upon inmates by prison staff or the poor condition of prison buildings and yards. Commenter states that any funds used on AVSS should be reallocated to programs that support transition from prison to the community.

Response to 58A: See Hearing Comment 1A and Response 1A. The Department acknowledges the commenter's opposition to the proposed regulations, however the Department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons. The remainder of the comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be

formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Commenter #59

Comment 59A: Commenter states the proposed regulations increase the potential for violence in Department institutions. “Surveillance does not increase safety but rather violates privacy.” AVSS will increase the potential for retaliation by prison staff against inmates for the conversations inmates have about the conditions in prisons. “Horrible violence at the hands of prison guards in California has been extensively documented.”

Response to 59A: The Department disagrees that “the proposed regulations increase the potential for violence in Department institutions.” The Department must be proactive in procuring and using audio-video recording technology to ensure the safety of the institutions. The use of audio, video or both forms of recording technology 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 or both forms of recording technology aids the Department in providing environments conducive to inmates participating in rehabilitative programs.

Commenter #60

Comment 60A: Commenter states the proposed regulations benefit neither inmates nor staff. Commenter states AVSS may increase mental illness among inmates. Commenter states that prison is already traumatic to some, and many inmates have a hard time adjusting to society. Installing AVSS will add to the struggle of returning to society.

Response to 60A: The above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Commenter #61

Comment 61A: Commenter states AVSS should not be used in prison cells and living quarters. Proposed subsection 3270.2(b) is a gross invasion of privacy. Even the limited right to privacy of inmates must be protected. Other reasonable means of investigation, such as interviewing witnesses, may still be pursued.

Response to 61A: See Response to Hearing Comment 2A and 9D.

Comment 61B: Commenter states the Department should obtain a court order before using AVSS within a living quarter. Commenter states that wardens may be reluctant to deny a request by Department investigators for fear of alienating their staff. Requiring a court order will ensure an impartial review and balance the safety concerns of the institution and privacy rights on the inmate.

Response 61B: The Department disagrees with the Commenter that the Warden would be unable to make an appropriate determination. The Warden is appointed by the Governor of the State of California and manages and oversees the activities of the all correctional facility staff to ensure safety and security of the facility, as well as the proper treatment of inmates.

Comment 61C: Commenter states the terms “emergency” and “investigate” in subsection 3270.2(b) should be clearly defined. The terms are vague and leave too much to discretion with no standards. The

lack of clarity could result in over-inclusive understanding of what the terms mean, and may result in broad use of AVSS within cells.

Response to 61C: See Response 11C.

Comment 61D: Commenter states the proposed regulations should require that the request for authorization to record inside a living quarter be supported by probable cause to believe that specific evidence will be captured. These investigations should not be used as a “fishing expedition”. Commenter alleges that Department investigators are known to target certain individuals and to manufacture false evidence against them. AVSS could become a tool of harassment or retaliation. Investigators seeking approval to record in living quarters should be required to articulate the specific investigation or emergency, the reason why the particular inmate’s cell will be surveilled, and the specific kind of evidence the recording is likely to capture.

Response to 61D: The Department disagrees with the Commenter that the Warden would be unable to make an appropriate determination or would engage in a “fishing expedition”. The Warden is appointed by the Governor of the State of California and manages and oversees the activities of the all correctional facility staff to ensure safety and security of the facility, as well as the proper treatment of inmates. Harassment and retaliation are not permitted and staff will be held accountable if staff misconduct is identified.

Comment 61E: Commenter states the proposed regulations should require that the request for authorization to record in a living quarter be made in writing and preserved. The proposed regulations require a form to request a DVD already in the system. A similar form should be developed to request authorization to record in living quarters, rather than using a word-of-mouth approval system and the form should be preserved so that oversight bodies such as the Office of the Inspector General may review the documentation. Additionally, inmates should be able to view the request form to defend themselves against disciplinary action. The request for authorization should also be time-limited.

Response to 61E: The Department does not require a regulatory process to initiate an investigation (for example, see subsection 3378(c) regarding investigation of allegations of gang involvement). Any disciplinary action taken against an inmate based on the result of an investigation would require adjudication through the existing disciplinary process, which provides the inmate the right to review and respond to the evidence and to appeal the decision.

Comment 61F: Commenter states the Department should be required to inform inmates that their cell or living quarters is under surveillance and what the grounds are for the surveillance.

Response to 61F: Pursuant to proposed subsection 3270.2(b), cells may be recorded only in case of emergency or investigation as authorized by the warden. Informing an inmate under investigation that he/she is under surveillance could defeat the purpose of the investigation. Also See Response to Comment 9D.

Comment 61G: Commenter states the proposed regulations should include a provision to allow inmates to request to preserve, view, and present recordings at disciplinary hearings. Such a provision should ensure the inmate is informed of this right and how to make such a request. The regulations should require the Department to present the inmate at least 21 days in advance with any AVSS evidence that will be used or reviewed for a rules violation hearing, and the inmate should be allowed to view such evidence at least 14 days prior to the hearing.

Response to 61G: See Response 1B.

Comment 61H: Commenter states the proposed regulations should include a process for inmates and/or their representatives to review and receive a copy of any recordings relevant to their legal rights. These

recordings may have lawful value to inmates independent of their use at a disciplinary hearing. The regulations should include a provision to allow inmates and their representatives to request to preserve, review, and obtain recordings.

Response 61H: See Response 1B.

Comment 61I: Commenter states the proposed regulations should establish conditions, if any, under which the recordings may be released publicly to the media or other parties. The privacy rights of inmates require that such protections be adopted to prevent public release, particularly with regard to recordings made inside living quarters.

Response to 61I: Response to 11E.

Comment 61J: Commenter states the proposed regulations should replace the term “inmate” with “incarcerated person”. “The term ‘inmate’ degrades, disparages, and devalues the humanity of the person incarcerated.”

Response to 61J: The term “inmate” is standard terminology that appears throughout both the California Penal Code and the California Code of Regulations, therefore the Department will continue to use this term.

Commenter #62

Comment 62A: Commenter opposes the proposed regulations. “Additional surveillance will not ensure safety because surveillance is not a tool for prevention of violence”, and it does not offer tools for social-emotional learning.

Response to 62A: See Hearing Comment 1A.

Comment 62B: Commenter states that additional surveillance in areas where inmates go about their lives without additional surveillance of areas where staff misconduct could occur “does not lend itself to confidence in the outcomes”. If the goal were to reduce violence, surveillance of everyone would be ideal. Misconduct is not limited to those in custody.

Response to 62B: See Response 2A.

Comment 62C: Commenter states that leaving inmates with no semblance of privacy will not promote pro-social behaviors. “This level of surveillance will lead to worse outcomes not better.”

Response to 62C: See Hearing Comment 1A and 1B.

Commenter #63

Comment 63A: Commenter cites the report by the Office of the Inspector General (OIG) mentioned in the Initial Statement of Reasons for the proposed regulations. Commenter states the proposed regulations are “inadequate” because they allow staff, but not inmates, to request to have recordings preserved and used. Thus, the proposed regulations do not address the problems identified in the OIG report regarding a dysfunctional appeal process, broken staff misconduct review process, and concerns about use of force. It is also unfair to permit staff but not inmates and their advocates to request preservation of recordings. Commenter states the proposed regulations must be modified to allow any inmate, or their advocate, to request, using a specified form, the preservation of recordings in connection with a rules violation report, appeal, or reasonable accommodation request.

Response 63A: See Response 1B.

Comment 63B: Commenter states that proposed subsection 3084.7(j) should be amended to replace the provision stating that recordings *may* be reviewed, to require that such recordings *shall* be reviewed, including when recordings have been preserved at the request of the inmate or their advocate.

Response to 63B: See Hearing Comment 1B and Response 6C. The department disagrees with the Commenter that proposed subsection 3084.7(j) should be amended to replace the provision stating that recordings ‘may’ be reviewed, in that not in every instance will AVSS capture an incident. In cases where staff are able to conclude that the viewing of a recording poses no evidentiary value (for example, an inmate makes a claim of staff misconduct and it is determined that the accused staff member was off work on the day of the alleged misconduct), the recording may not be reviewed.

Comment 63C: Commenter states the proposed regulations should substitute the term “incarcerated person” for “inmate”. The term “inmate” degrades, disparages, and devalues the humanity of the person incarcerated.

Response to 63C: See Response to Comment 61J.

Comment 63D: Commenter states the proposed regulations should require rather than permit AVSS in all inmate areas, beginning with Level IV and restricted housing, except for areas used for confidential attorney-client meetings or healthcare encounters. Commenter strongly believes that, based on discussions with inmates at various institutions, AVSS works to reduce staff misconduct.

Response to 63D: The Department intends to install and use AVSS at all CDCR institutions. The Department used “may” in subsection 3270.2(a) because not every property, institution, facility, perimeter fence, or vehicle will necessarily have AVSS in use at all times.

Comment 63E: Commenter requests the rules be modified to require the wearing and use of body cameras for all staff that escort inmates to areas not otherwise subject to AVSS, including to off-site court appearances, medical appointments, and hospitalizations.

Response 63E: The use of body cameras by Department staff is a separate matter from the installation of AVSS at institutions, therefore this comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Comment 63F: Commenter states the proposed regulations be modified to establish that the provisions of these regulations do not modify the requirement that video recordings be made in specific circumstances relating to the use of force, pursuant to Section 3268.

Response to 63F: No provision of these proposed regulations states or implies that any other regulatory provision is inoperative.

Commenter #64

Comment 64A: Commenter states, “it is intrusive and humiliating to have somebody hear you use the restroom every single day.”

Response to 64A: See Hearing Comment 2A.

Comment 64B: Commenter asks if AVSS will be used for real-time surveillance or after-the-fact only. If only after-the-fact, it sounds more like punishment than safety.

Response to 64B: The use of audio, video or both forms of recording technology 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 or both forms of recording technology aids the Department in providing environments conducive to inmates participating in rehabilitative programs.

Comment 64C: Commenter states, “this looks like more of an attempt to keep people incarcerated”. Commenter states inmates should be treated with respect and dignity.

Response to 64C: The above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Commenter #65

Comment 65A: Commenter opposes the proposed regulations “due to all the stress and fear that can lead to PTSD”. Surveillance in cells and family visits is a violation of privacy.

Response to 65A: See Hearing Comment 1A. The remainder of the comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Commenter #66

Comment 66A: Commenter asks about the number of violent incidents in Department institutions in 2016, 2017, and 2018.

Response to 66A: The above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Comment 66B: Commenter states that the need for AVSS to monitor criminal activity inside Department institutions leads the commenter “to further believe that prisons actually breeds violence and video surveillance as a solution seems to be an oxymoron to the use of the word Rehabilitation.”

Response to 66B: The Department acknowledges the commenter’s opposition to the proposed regulations, however the Department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Comment 66C: Commenter has concerns that surveillance will be “oppressive to the human psyche” and that inmates will withhold emotions. Commenter cites a study showing that withholding emotions leads to a range of negative health outcomes. Commenter asks, “if those in the neuroscience community have been contacted in regards to the installation” of AVSS.

Response to 66C: The Department acknowledges the commenter’s opposition to the proposed regulations, however the Department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Comment 66D: Commenter states she is troubled that CDCR administration sees AVSS as a solution to violence in prison. Commenter states that what is needed are investments in inmates such as family reunification, educational programs, and self-help groups.

Response to 66D: The Department disagrees with the commenter in that audio, video or both forms of recording technology is the 'solution' to violence. 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, video or both forms of recording technology 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 or both forms of recording technology aids the Department in providing environments conducive to inmates participating in rehabilitative programs.

Commenter #67

Comment 67A: Commenter states the proposed regulations are a step in the wrong direction when it comes to rehabilitation. This will further dehumanize inmates and does not coincide with moving toward a rehabilitative model. Both inmates and staff should be treated with respect and dignity. AVSS will not solve issues of violence, drug abuse, sexual misconduct, etc. What has been proven to promote rehabilitation is education, access to resources, mental health treatment, and development of skills.

Response to 67A: The Department acknowledges the commenter's opposition to the proposed regulations, however the Department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Commenter #68

Comment 68A: Commenter strongly opposes with the proposed regulations. "No human should be watched and recorded 24/7" and doing so will create a mental burden on inmates. This will affect visitors as well. "Having visiting room's recorded and family visiting rooms is horrible."

Response to 68A: The Department acknowledges the commenter's opposition to the proposed regulations, however the Department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons. The remainder of the comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Commenter #69

Comment 69A: Commenter opposes the proposed regulations. "These amendments would basically eliminate all individual privacy which is simply a violation of human rights and common decency."

Response to 69A: The Department acknowledges the commenter's opposition to the proposed regulations, however the Department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons. The remainder of the comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Commenter #70

Comment 70A: Commenter opposes the proposed regulations due to the stress and fear they may cause.

Response to 70A: The Department acknowledges the commenter's opposition to the proposed regulations, however the Department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Commenter #71

Comment 71A: Commenter states "please install video cameras throughout all institutions".

Response to 71A: The Department agrees with the Commenter in that audio, video or both forms of recording technology should be installed in every institution.

Comment 71B: Commenter asks who will be responsible for maintaining AVSS and how will the Department ensure footage is not lost or deleted.

Response to 71B: There is local support at the institution level, and the Department may enter into service agreements if necessary. The department has implemented protocols to minimize or eliminate the possibility of audio, video or both forms of recorded footage from being lost or deleted.

Comment 71C: Commenter asks what is meant by "inmate areas".

Response to 71C: The phrase "inmates' areas" appears in the report of the Office of the Inspector General recommending that AVSS be installed in CDCR institutions, which is quoted in the ISOR, but does not appear in the proposed text or the Purpose and Rationale for Each Section of the ISOR. The Department contends it is not necessary to define the term in the proposed regulations.

Commenter #72

Comment 72A: Commenter states the proposed regulations are unfair and unconstitutional.

Response to 72A: The Department acknowledges the commenter's opposition to the proposed regulations, however the Department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Commenter #73

Comment 73A: Commenter states AVSS is wrong and will cause harm to inmates. Commenter states she was an inmate for 29 years and that there is a great deal of sexual abuse in prisons. AVSS may cause even more sexual abuse. Inmates who are not in segregated housing or contraband watch should not be recorded in their living quarters.

Response to 73A: See Hearing Comment 1A and 1B and Response 9B.

Commenter #74

Comment 74A: Commenter opposes the proposed regulations. AVSS is a misuse of power and a waste of taxpayer money better spend on education.

Response to 74A: See Hearing Comment 1A and 1B and Response 9B.

Commenter #75

Comment 75A: Commenter opposes the proposed regulations. AVSS will impede basic privacy rights and allow inmate's personal information to be used as tools of control and harassment. Increasing surveillance will not increase safety and will be a disincentive to rehabilitative goals.

Response to 75A: See Hearing Comment 1A and 1B and Response 9B.

Commenter #76

Comment 76A: Commenter states AVSS is a tool that has been used to further criminalize inmates by Department staff and is often used against inmates. The proposed regulations will eliminate privacy and give wardens even more authority to surveil inmates in their living quarters.

Response to 76A: See Hearing Comment 1A and 1B and Responses 9B and 9D.

Commenter #77

Comment 77A: Commenter is with the California Office of Health Information Integrity (CalOHII), a state agency. Commenter suggests the Department evaluate any risk that the use of AVSS may result in unintended, inappropriate disclosure of Protected Health Information (PHI), as defined by federal regulations.

"To the extent that CDCR uses AVSS in locations where health care services are provided to patients, or where health care services about patients may be discussed, or where health care related documents may be viewed, there is a risk that PHI may be disclosed unless CDCR takes appropriate precautions to implement administrative, physical, and technical safeguards to protect the information captured by AVSS, per the requirements of HIPAA. In addition to incorporating HIPAA requirements, the regulatory Amendments should adhere to the requirements of the Information Practices Act, California Civil Code section 1798, et seq."

Response to 77A: The Department will comply with all provisions of law regarding privacy in its placement of AVSS. The regulations establish that only individuals having a legitimate need to view the live images or recorded media may do so and staff will be held accountable if staff misconduct is identified.

Commenter #78

Comment 78A: Commenter opposes the proposed regulations.

Response to 78A: The Department acknowledges the commenter's opposition to the proposed regulations, however the Department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Commenter #79

Comment 79: Commenter emailed a link that the Department is unable to open. The commenter's subject line states, "I oppose it".

Response to 79A: The Department acknowledges the commenter's opposition to the proposed regulations, however the Department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Commenter #80

Comment 80A: Commenter states the proposed regulations are a waste of taxpayer money, which would be better spent on educational programming or the state education system.

Response to 80A: See Hearing Comment 1A and 1B and Response 9B.

Comment 80B: Commenter states the proposed regulations violate inmate privacy and open the doorway to surveillance ending up on inmate private spaces.

Response to 80B: See Hearing Comment 1A and 1B and Response 9B.

Comment 80C: Commenter states that citizen watchdog groups or the ACLU should be allowed to monitor prisons by allowing unannounced prison visits by these groups.

Response to 80C: See Response 53 C.

Commenter #81

Comment 81A: Commenter states that AVSS was implemented years ago without regulatory authority. While NCR 19-01 refers to the OIG report, “CDCR has already installed hidden AVSS in all inmates’ areas” including some attorney visiting areas. Commenter alleges that AVSS already allows the Department to eavesdrop on privileged conversations and read privileged correspondence, in violation of California law. Commenter alleges the hidden AVSS also serve as intercoms allowing Department staff to conduct illegal interrogations and inflict psychological torture on inmates.

Response to 81A: As stated in the Initial Statement of Reasons, the proposed regulations “will establish regulatory authority for the use of such technology, as well as potential future expansions of such technology.” The Department disagrees with the Commenter and notes that the Department will comply with all laws and regulations regarding privacy in its placement of AVSS. The regulations establish that only individuals having a legitimate need to view the live images or recorded media may do so and staff will be held accountable if staff misconduct is identified.