



Department of Corrections and Rehabilitation

NOTICE OF CHANGE TO REGULATIONS

Section: 3287	NCR Number: 20-01	Publication Date: February 21, 2020	Effective Date: N/A
--------------------------------	------------------------------------	--	--------------------------------------

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendment of Sections 3287 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding Cell, Property and Body Inspections.

PUBLIC COMMENT PERIOD

The public comment period will close on **April 8, 2020 at 5:00 p.m.** Any person may submit written comments about the proposed regulations by mail to the California Department of Corrections and Rehabilitation (CDCR), Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received or postmarked no later than **5:00 p.m. on April 8, 2020.**

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held **on April 8, 2020, from 9:00 a.m. to 10:00 a.m. in the Conference Room 100N, located at 1515 S Street, North Building, Sacramento, CA 95811.** The purpose of the hearing is to receive comments about this action. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written comments submitted during the prescribed comment period are given the same significance and weight as verbal comments presented at the hearing. This hearing site is accessible to the mobility impaired.

POSTING

This Notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each Department facility and field office not later than five calendar days after receipt. Also, institutions and facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. CDCR Form 621-A (Rev. 04/18), Certification of Posting, shall be returned to RPMB by mail or email. See Department Operations Manual Sections 12010.6.7 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this Notice should be directed to R. Ruiz, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2269, or e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to Bryan Donahoo, Division of Adult Institutions, at (916) 324-1653.

Original signed by:

KATHLEEN ALLISON
Undersecretary, Operations
California Department of Corrections and Rehabilitation

Attachments

NOTICE OF PROPOSED REGULATIONS
California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or Department), proposes to amend Sections 3287 into Title 15, Division 3, Chapter 1, regarding Cell, Property and Body Inspections.

PUBLIC HEARING

Date and Time: **April 8, 2020 – 9:00 a.m.**
Place: Department of Corrections and Rehabilitation
Conference Room 100N
1515 S Street – North Building
Sacramento, CA 95811

Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD

The public comment period begins **February 21, 2020** and closes on **April 8, 2020 at 5:00 p.m.** Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rmb@cdcr.ca.gov, before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

CONTACT PERSONS

Primary Contact

R. Ruiz
Telephone: (916) 445-2269
Regulation and Policy
Management Branch
P.O. Box 942883
Sacramento, CA 94283-0001

Back-Up

Y. Sun
Telephone: (916) 445-2269
Regulation and Policy
Management Branch
P.O. Box 942883
Sacramento, CA 94283-0001

Program Contact

Bryan Donahoo
Division of Adult Institutions
(916) 324-1653

AUTHORITY AND REFERENCE

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

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations. **PC Section 5050** provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR. **PC Section 5055** provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR. **PC Section 5058** authorizes the Director to prescribe and amend rules and regulations for the administration of prisons and for the administration of the parole of persons. **PC Section 5058.3** authorizes the Director to certify in a written statement filed with Office of Administrative Law that operational needs of the Department require adoption, amendment, or repeal of a regulation on an emergency basis.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Current regulations provide for various means of inspections for illegal drugs and other contraband, including visual inspections, hand-held detectors, and canine units. This action amends Section 3287 of the CCR, Title 15, Division 3 concerning Searches and Inspections to incorporate ION scanners and low-dose, full-body x-ray scanning of inmates.

This action will:

- Establish regulatory authority for the Department to utilize ION scanners and low-dose, full-body x-ray scanners as inmate search options.
- Increase the Department's ability to discover illegal drugs and contraband that are being introduced into and throughout the institutions.
- Enhance the overall safety of the institutions by discovering illegal drugs and contraband before they can be utilized.

DOCUMENTS INCORPORATED BY REFERENCE

The American National Standard Institute's Radiation Safety for Personnel Screening Systems Using X-Ray or Gamma Radiation (ANSI/HPS N43.17-2009).

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

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

The Department anticipates that these regulations will ultimately reduce the amount of contraband and illegal drugs introduced into and throughout the institutions, creating a safer environment for inmates, staff, visitors, contractors and their employees, and volunteers. The regulations will reduce the strife that is created when inmates are trying to profit from illegal activities and better allow inmates to focus on rehabilitation, which will result in more productive citizens being released into the community and make the community safer as a whole.

EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING LAWS AND REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the Department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. Pursuant to Government Code 11346.5(a)(3)(D), the Department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review, the Department has concluded that these are the only regulations that concern cell, body, and property inspections in Department facilities.

LOCAL MANDATES

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

FISCAL IMPACT STATEMENT

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

EFFECT ON HOUSING COSTS

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

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations place no obligations or requirements on any business.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small business because they place no obligations or requirements on any business.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or effect the expansion of businesses currently doing business in California. The Department has determined that the proposed regulation will have no effect on worker safety or the state's environment. These regulations may benefit the welfare of California residents by helping to make CDCR institutions safer for inmates, staff, and visitors. Additionally, safer institutions may provide an environment more conducive to rehabilitation, thereby reducing recidivism.

CONSIDERATION OF ALTERNATIVES

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

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

AVAILABILITY OF CHANGES TO PROPOSED TEXT

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

TEXT OF PROPOSED REGULATIONS

In the following, new text is indicated by underline and deleted text is indicated by ~~strikethrough~~.

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 4. General Institution Regulations

Article 2. Security

3287. Cell, Property and Body Inspections.

Subsections 3287(a) through 3287(b)(5) are unchanged.

Subsections 3287(c) and 3287(c)(1) are unchanged.

Subsections 3287(c)(2) through 3287(c)(3)(B) are renumbered to Subsections 3287(c)(1)(A) through 3287(c)(1)(B)2 and are unchanged.

New Subsection 3287(c)(2) is adopted to read:

(c)(2) Inmates shall submit to body inspections using contraband and metal detection devices and electronic drug detection devices, including, but not limited to, ION scanners and low-dose, full-body x-ray scanners. Inmates shall also submit to inspections of all personal property, including, but not limited to, wheelchairs, implants, prostheses, and assistive devices, using contraband and metal detection devices and electronic drug detection devices, including, but not limited to, ION scanners.

New Subsection 3287(c)(2)(A) is adopted to read:

(c)(2)(A) Low-dose, full-body x-ray scanners shall adhere to the American National Standard Institute's *Radiation Safety for Personnel Screening Systems Using X-Ray or Gamma Radiation* (ANSI/HPS N43.17-2009), which is hereby incorporated by reference. Scanner settings shall be standardized and fixed to ensure compliance with ANSI/HPS N43.17-2009. The annual radiation limit shall be 250 microsieverts per inmate and each scan shall have a radiation dose of 0.25 microsieverts.

New Subsection 3287(c)(2)(B) is adopted to read:

(c)(2)(B) A low-dose, full-body x-ray scanner shall identify an inmate by CDCR number and determine the radiation to which the inmate has been previously exposed as a result of scanning relative to the annual radiation limit BEFORE a scan is initiated. If the inmate has reached the annual radiation limit, pursuant to subsection 3287(c)(2)(A), the machine shall NOT perform a scan. A scan shall only be conducted when the radiation to which the inmate has been previously exposed as a result of scanning is determined to be under the annual radiation limit.

New Subsection 3287(c)(2)(C) is adopted to read:

(c)(2)(C) Low-dose, full-body x-ray scanners shall be used on inmates when they leave a visiting area, upon conclusion of a family visit, upon returning to a yard or facility from vocational or educational classes, upon entering or exiting a secure perimeter, or prior to placement into restrictive housing. The use of the low-dose, full-body x-ray scanners shall comply with Code of Federal Regulations, Title 28, Section 115.15(a).

New Subsection 3287(c)(2)(D) is adopted to read:

(c)(2)(D) An inmate who is excused from being scanned with a low-dose, full-body x-ray scanner, pursuant to subsections 3287(c)(2)(D)1. or (D)2., or who has reached the annual radiation limit, pursuant to subsection 3287(c)(2)(A), shall be searched by alternate means, including, but not limited to, passive canine air scan searches, hand-held metal detectors, walk-through metal detectors, and ION scanners.

New Subsection 3287(c)(2)(D)1. is adopted to read:

(c)(2)(D)1. An excusal for custody circumstances, shall be documented on CDC Form 128-B, General Chrono (Rev. 4/74), and signed by a Warden. A copy of the form shall be given to the inmate, and shall be stored in the Electronic Records Management System (ERMS), as defined in section 3000.

New Subsection 3287(c)(2)(D)2. is adopted to read:

(c)(2)(D)2. An excusal for medical circumstances, shall be documented on CDC Form 128-C, Chrono—Medical-Psychiatric-Dental (Rev. 01/96), and signed by a CDCR Nurse Practitioner or higher. A copy of the form shall be given to the inmate, and shall be stored in the ERMS.

New Subsection 3287(c)(2)(D)3. is adopted to read:

(c)(2)(D)3. An inmate shall notify a staff member that he or she refuses to be scanned with a low-dose, full body x-ray scanner due to custody or medical circumstances, whereupon verification of excusal is required. At least one of the following two methods of verification shall be used: the inmate shall present a copy of the approved CDC Form 128-B or C to a staff member operating a low-dose, full-body scanner, or a staff member shall access the copy of CDC Form 128-B or CDC Form 128-C that is stored in ERMS. In the event that verification cannot be obtained through one of these two methods when a body inspection must be conducted, staff shall search the inmate in accordance with subsection 3287(c)(2)(D).

New Subsection 3287(c)(2)(E) is adopted to read:

(c)(2)(E) Unless excused, pursuant to subsections 3287(c)(2)(D)1. or 3287(c)(2)(D)2., an inmate's refusal to be scanned with a low-dose, full-body x-ray scanner shall result in disciplinary action in accordance with section 3315.

Subsection 3287(d) is unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 6402, Penal Code; *Jordan v. Gardner*, 986 F.2d 1521; Title 28, Subsection 115.15(a), Code of Federal Regulations.

INITIAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR or Department) proposes to amend Section 3287 of California Code of Regulations, Title 15, Division 3, regarding inmate body and property inspections to include ION scanners and low-dose, full-body x-ray scanners as search options.

CDCR has long recognized the ongoing problem of the use and trafficking of illegal drugs and contraband within its institutions. Persons entering CDCR institutions sometimes employ extraordinary means to try to smuggle illegal drugs and contraband into the institutions, including secreting concealed illegal drugs and contraband in hidden pockets in clothing, or in body cavities. The importing, trafficking, and use of illegal drugs and contraband pose many problems in an institutional setting, including an increase in inmate violence, power struggles within the inmate population, the establishment of an underground economy, staff corruption, and inmate death due to overdose. The following table illustrates inmate deaths in institutions from 2016 through 2018.

Table 1: Inmate Deaths in Institutions from Overdose from 2016 through 2018

Year	Overdoses Resulting In Death
2016	28
2017	39
2018	61
Total	128

Table 1 data obtained from California Correctional Health Care Services, Medical Services Division.

The Department has adopted various regulations and has implemented procedures to combat the introduction of illegal drugs and contraband into and throughout the institutions. For example, existing regulations establish that an inmate is subject to an inspection of his or her person, either clothed or unclothed, when there is a reasonable suspicion the inmate may have unauthorized or dangerous items concealed on his or her person or that he or she may have been involved in an altercation of any kind. Such inspections may also be a routine requirement for inmate movement into or out of high security risk areas. Random, or spot-check inspections of inmates may also be authorized by the institution head to prevent possession and movement of unauthorized or dangerous items and substances into, out of, or within the institution.

Despite CDCR's efforts however, illegal drugs and contraband continue to be discovered within the secure perimeters of the institutions, perpetuating substance abuse, damaging rehabilitation efforts, facilitating criminal activities within the institutions and into the community. While the current strategies have been effective overall, the Department anticipates that the adoption of ION scanners and low-dose, full-body x-ray scanners as supplemental inmate search options will increase the Department's ability to discover illegal drugs and contraband that are being introduced into and throughout the institutions.

For example, contraband cell phones enable inmates to coordinate criminal activities with collaborators who are not incarcerated, which jeopardizes institutional security by taking and disseminating impermissible photographs and videos. Contraband cell phones also enable

inmates to access information about other inmates, parolees, and Department staff, victims, or the families thereof via public network sites.

The Department utilizes a variety of search options on inmates, including visual inspections, clothed body searches, visual unclothed body searches, hand-held metal detectors, walk-through metal detectors, audio and video surveillance devices, and canine units. The Department asserts that the existence and enforcement of these various regulations and the utilization of these search options has deterred inmates from attempting to introduce illegal drugs and contraband into and throughout the institutions and has resulted in the discovery, identification, and, in some instances, prosecution of those persons (inmates, employees, visitors, volunteers, attorneys, contractors, etc.) who have violated the law by attempting to introduce illegal drugs and contraband into and throughout the institutions as illustrated by the following data:

Table 2: Contraband Discovered in Institutions in 2017 and 2018

Type of Contraband	2017	2018
Cellular Telephones	13,195 phones	11,715 phones
Heroin	28.83 pounds	30.8 pounds
Marijuana	91.77 pounds	131.9 pounds
Methamphetamines	43.55 pounds	44.22 pounds
Tobacco	635.8 pounds	527.9 pounds

Table 2 data obtained from CDCR's Office of Research.

From July 2014 to June 2018, there were 1142 incidents in which staff, visitors, and non-visitors (civilians) were identified, arrested, and prosecuted for attempting to introduce illegal drugs, alcohol, or contraband into an institution as illustrated by the following data:

Table 3: Number of Persons Prosecuted for Attempting to Introduce Drugs, Alcohol, or Contraband - By Fiscal Year

Fiscal Year	Staff	Visitors	Non-Visitors	Totals
2014-15	6	211	51	268
2015-16	7	224	51	282
2016-17	9	221	32	262
2017-18	4	269	57	330
Totals	26	925	191	1142

Table 3 data obtained from CDCR's Office of Research.

Without the use of the many layers of interdiction devices and strategies available, inmates will continue to die from drug overdoses, and staff and visitors will continue to be compromised by being pressured by inmates to smuggle illegal drugs and contraband into the institutions.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Currently, no reasonable alternatives have been brought to the attention of the Department that would alter the Department's initial determination.

ECONOMIC IMPACT ASSESSMENT

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

Creation or Elimination of Jobs within the State of California

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

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 impact on the creation of new or elimination of existing businesses within the State of California because those businesses are not affected by the internal management of the institutions.

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 the institutions.

Significant Adverse Economic Impact on Business

The Department has determined that the proposed regulations will not have a significant adverse economic impact on business because business is not affected by the internal management of the institutions and the proposed regulations place no requirements or restrictions on business.

Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed regulations may have a positive effect on the health and welfare of California residents, worker safety, and/or the State's environment because the anticipated reduction in illegal drugs and contraband within the institutions will reduce the strife that is created when inmates are trying to profit from illegal activities and better allow inmates to focus on rehabilitation, which will result in more productive citizens being released into the community and make the community safer as a whole.

BENEFITS OF THE REGULATIONS

The Department anticipates that these regulations will ultimately reduce the amount of contraband and illegal drugs introduced into and throughout the institutions, creating a safer environment for inmates, staff, visitors, contractors and their employees, and volunteers. The regulations will reduce the strife that is created when inmates are trying to profit from illegal activities and better allow inmates to focus on rehabilitation, which will result in more productive citizens being released into the community and make the community safer as a whole.

DOCUMENTS RELIED UPON

The Department, in proposing these amendments, has relied upon the following documents:

- The Department's Office of Research, which is responsible for producing a variety of reports for the Department, including population projections and recidivism reporting.
 - Number of Arrests by Fiscal Year, spanning 2014 through 2018, dated March 3, 2019.
 - Number of Cell Phone Discoveries and Drug Discoveries and Amounts for 2018, dated March 1, 2019.
- The Department's Computer Statistics (COMPSTAT) programs, which allow the Department to collect, validate, and report strategic and operational performance data.
 - Inmate Disciplinary – Stimulants and Sedatives, spanning January 2015 through February 2016.
 - Cell Phone Discoveries, spanning January 2010 through December 2018.
 - Drug-Related Rules Violation Reports, spanning January 2016 through December 2018.
- The Medical Services Division of California Correctional Health Care Services, which directs the delivery of medical care to the Department's patient population by providing guidance and support to ensure the standardized prevention, diagnosis, and treatment of disease.
 - Overdoses Resulting in Death, spanning January 2016 through December 2018.
- The American National Standard Institute's *Radiation Safety for Personnel Screening Systems Using X-Ray or Gamma Radiation* (ANSI/HPS N43.17-2009).
- California Code of Regulations, Title 17, Division 1. Subchapter 4. Radiation; and Subchapter 4.5 Radiologic Technology.
- Title 10, Section 20.1003, of the Code of Federal Regulations.

SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE SECTION 11346.2(B)(1)

Existing Subsections 3287(c)(2) through 3287(c)(3)(B) are renumbered to new Subsections 3287(c)(1)(A) through 3287(c)(1)(B)2. and are unchanged.

New Subsection 3287(c)(2) is adopted to incorporate ION scanners and low-dose, full-body x-ray scanners as devices that shall be used to conduct body inspections of inmates and ION scanners as devices that shall be used to conduct inspections of inmates and their personal property. The subsection also establishes that inmates shall submit to searches using these devices.

Current regulations authorize the utilization of ION scanners to search visitors and staff. The use of ION scanners has proven effective in the number of arrests that have been made after an individual has scanned positive twice, submitted to a clothed body search, and ultimately been found with illegal drugs on their person. The use of ION scanners has also proven effective in situations in which a visitor has scanned positive twice, refused the clothed body search, and decided to leave institution grounds for the day; the Department asserts that in these instances, the ION scanners served as a deterrent to prevent individuals from continuing their efforts to bring illegal drugs into the institutions. By expanding the use of ION scanners to include inmates and their personal property, which may be used for the purpose of concealment, the Department

anticipates the increased discovery of the illegal drugs that have already been introduced into the institutions.

Low-dose, full-body x-ray scanners are non-invasive devices that scan the whole body in seconds, detecting the presence of illegal drugs and contraband hidden within pockets in clothing or in body cavities. The use of low-dose, full-body x-ray scanners will reduce the need for an inmate to be subject to an unclothed body search or other invasive search methods. Low-dose, full-body x-ray scanners are able to detect cell phones, illegal drugs, copper wires, plastics, and a variety of other prohibited substances. By using the low-dose, full-body x-ray scanners to search inmates, the Department anticipates the increased discovery of the illegal drugs and contraband that have already been introduced into and throughout the institutions.

To ensure that these devices are utilized to their fullest potential and that the maximum benefit is derived from the utilization thereof, inmates shall submit to searches using these devices unless they meet the exceptions noted in Subsection 3287(c)(2)(D).

New Subsection 3287(c)(2)(A) is adopted to mandate that the low-dose, full-body x-ray scanners that are utilized by the Department shall adhere to ANSI/HPS N43.17-2009, which is incorporated by reference, and that the scanner settings shall be standardized and fixed accordingly, thereby ensuring that the radiation dose levels that are delivered to an individual will be as low as reasonably achievable (pursuant to Code of Federal Regulations, Title 10, Section 20.1003) while meeting the required detection performance.

ANSI/HPS N43.17-2009 sets limits on radiation dose levels for individuals being screened, bystanders, operators, and other employees, requires that radiation-producing instruments have a variety of safety features, and establishes operational requirements for organizations using radiation-producing instruments. ANSI/HPS N43.17-2009 was written, reviewed, and approved by a consensus group that included government regulators, product manufacturers, and product users.

ANSI/HPS N43.17-2009 measures radiation doses using the sievert, which is a unit of radiation absorption that measures the health effect of low levels of ionizing radiation on the human body. According to ANSI/HPS N43.17-2009, an individual's annual radiation limit should not exceed 250 microsieverts (with one sievert being equivalent to 1,000,000 microsieverts) in a 12-month period. The Department's scanners will be standardized and fixed by the manufacturer at 0.25 microsieverts per scan, as the Department has determined that this radiation dose is as low as reasonably achievable while meeting required detection performance. The Department has determined that the chance of an inmate reaching the annual radiation limit of 250 microsieverts is exceedingly low, as an inmate would have to be scanned 1,000 times in a 12-month period, but the search methods that may be used in the event that an inmate does exceed the annual radiation limit are addressed in Subsection 3287(c)(2)(D).

New Subsection 3287(c)(2)(B) is adopted to establish that the low-dose, full-body x-ray scanners are equipped with safeguards to prevent continued radiation exposure as a result of scanning when an inmate's annual radiation limit has been reached. The low-dose, full-body x-ray scanners will identify an inmate by his or her CDCR number BEFORE a scan is initiated and will calculate the radiation to which the inmate has been previously exposed which will allow it to determine if a scan can take place. If the inmate has reached the annual radiation limit, the scanner will NOT perform a scan and a warning message will be displayed to alert the operator that the individual has reached his or her annual radiation limit, which will require the operator to follow Subsection 3287(c)(2)(D) in order to preserve the health of the inmate.

According to ANSI/HPS N43.17-2009, an individual's annual radiation limit should not exceed 250 microsieverts in a 12-month period. The Department's scanners will be standardized and fixed by the manufacturer at 0.25 microsieverts per scan, as the Department has determined that this radiation dose is as low as reasonably achievable while meeting required detection performance. The Department has determined that the chance of an inmate reaching the annual radiation limit of 250 microsieverts is exceedingly low, as an inmate would have to be scanned 1,000 times in a 12-month period, but the search methods that may be used in the event that an inmate does exceed the annual radiation limit are addressed in Subsection 3287(c)(2)(D).

New Subsection 3287(c)(2)(C) is adopted to identify the areas and the instances in which an inmate shall be subjected to low-dose, full-body x-ray scanners in an institution and to establish that the use of the low-dose, full-body x-ray scanners shall comply with Code of Federal Regulations, Title 28, Section 115.15(a), which is a component of the Prison Rape Elimination Act.

The areas and instances in this subsection were chosen as mandatory scanning points because the Department has identified them as critical points of inmate movement between higher and lower restricted areas, and as the most common avenues for illegal drugs and contraband to be introduced into and throughout the institutions.

The Department recognizes that the viewing of images that are generated by low-dose, full-body x-ray scanners when searching for items that may have been secreted in body cavities requires compliance with Code of Federal Regulations, Title 28, Section 115.15(a), and the Department notes that it shall comply with said section.

New Subsection 3287(c)(2)(D) is adopted to establish that alternate search methods will be used on an inmate who refuses to be searched or cannot be searched using a low-dose, full-body x-ray scanner.

According to ANSI/HPS N43.17-2009, an individual's annual radiation limit should not exceed 250 microsieverts in a 12-month period. The Department's scanners will be standardized and fixed by the manufacturer at 0.25 microsieverts per scan as the Department has determined that this radiation dose is as low as reasonably achievable while meeting required detection performance. The Department has determined that the chance of an inmate reaching the annual radiation limit of 250 microsieverts is exceedingly low, as an inmate would have to be scanned 1,000 times in a 12-month period. In the unlikely event that the annual radiation limit is exceeded, the Department will search the inmate using the most practical alternates at its disposal, including passive canine air scan searches, hand-held metal detectors, and ION scanners, which are covered in the "including, but not limited to" language in this subsection.

The effectiveness of the low-dose, full-body x-ray scanners is contingent upon the number of inmates being scanned, being that the greater the number of inmates being scanned, the greater the opportunity for the Department to discover illegal drugs and contraband that have been introduced into and throughout the institutions. Consequently, an inmate who is not excused by a nurse practitioner or warden shall be disciplined in accordance with Section 3315 for refusing to submit to a search method that aids the Department in maintaining the safety and security of the institutions.

The Department recognizes that there are circumstances in which it would not be possible for an inmate to be searched using a low-dose, full-body x-ray scanner. Consequently, the Department has determined that inmates who receive an excusal will not be disciplined for refusing to submit to a search with a low-dose, full-body x-ray scanner. Depending upon whether the need for excusal arises from custody or medical circumstances, the excusal shall be given

by either a warden or nurse practitioner or higher within a CDCR institution respectively. The Department has determined that a warden shall have the authority to provide an excusal in the event of custody circumstances, e.g., an inmate's volatile behavior is indicative of a safety risk to staff, the inmate, and other inmates, given that the warden serves as the head of the institution and is responsible for the safety of the inmates housed and the staff working therein. The Department has determined that a nurse practitioner or higher within a CDCR institution shall have the authority to provide an excusal in the event of particularized medical circumstances, e.g., an inmate being pregnant or an inmate receiving radiation treatment for a medical condition, given that they will necessarily be aware of any prohibitive medical conditions.

New Subsection 3287(c)(2)(D)1. is adopted to establish the documentation and storage of the excusal of an inmate from being searched with a low-dose, full-body x-ray scanner as provided by a warden.

The Department has determined that a warden shall have the authority to provide an excusal in the event of custody circumstances, e.g., an inmate's volatile behavior is indicative of a safety risk to staff, the inmate, and other inmates, as the warden serves as the head of the institution and is responsible for the safety of the inmates housed and the staff working in the institution.

The warden's excusal shall be documented on CDC Form 128-B (Rev. 4/74), General Chrono. A copy of the signed CDC Form 128-B shall be provided to the inmate as the inmate may present the copy to a staff member operating a low-dose, full-body x-ray scanner as proof of excusal; for more information, please see the justification for Subsection 3287(c)(2)(D)3. The signed CDC Form 128-B shall be stored in the Department's Electronic Records Management Systems (ERMS), a document management system that is defined in Section 3000. The form CDC 128-B is already incorporated by reference into Title 15 with the same revision date. Therefore, no copy of these form is being made available with this rulemaking action.

New Subsection 3287(c)(2)(D)2. is adopted to establish the documentation and storage of the excusal of an inmate from being searched with a low-dose, full-body x-ray scanner as provided by a nurse practitioner or higher within a CDCR institution.

The Department has determined that a nurse practitioner or higher within a CDCR institution shall have the authority to provide an excusal in the event of particularized medical circumstances, e.g., an inmate being pregnant or an inmate receiving radiation treatment for a medical condition, as they will necessarily be aware of a prohibitive medical condition.

The nurse practitioner or higher excusal shall be documented on CDC Form 128-C, Chrono—Medical-Psychiatric-Dental (Rev. 01/96), which has previously been incorporated by reference. A copy of the signed CDC Form 128-C shall be provided to the inmate as the inmate may present the copy to a staff member operating a low-dose, full-body x-ray scanner as proof of excusal; for more information, please see the justification for Subsection 3287(c)(2)(D)3. The signed CDC Form 128-C shall be stored in ERMS, a document management system that is defined in Section 3000. The form CDC 128-C is already incorporated by reference into Title 15 with the same revision date. Therefore, no copy of this form is being made available with this rulemaking action.

New Subsection 3287(c)(2)(D)3. is adopted to establish the way in which a staff member is made aware that an inmate has been excused from being searched with a low-dose, full-body x-ray scanner.

An inmate who has been excused from being searched with a low-dose, full-body x-ray scanner is required to notify a staff member of that excusal when refusing to be scanned, thereby alerting

the staff member who may have no knowledge of the excusal that the refusal is likely proper. In order to ensure that the refusal is proper, the excusal must be verified.

The Department provides two possible methods of verification with the requirement that one of the methods be utilized: an inmate shall present his or her copy of CDC Form 128-B or CDC Form 128-C to a staff member operating a low-dose, full-body scanner or a staff member shall access the copy of CDC Form 128-B or CDC Form 128-C that is stored in ERMS. The Department has provided two methods of verification so that one may be used if another is not available, e.g., if staff members' ability to access ERMS is affected by technological issues, verification may be supplied by the inmate's copy of CDC Form 128-B or CDC Form 128-C. Staff members have the ability to use both methods of verification as needed, however. For example, if the signature on an inmate's copy of CDC Form 128-B or CDC 128-C appears irregular and the staff member is concerned that it may have been forged, the staff member has the ability to ensure that a corresponding copy of CDC Form 128-B or CDC Form 128-C is stored in ERMS.

This section makes clear that in the event that neither of the aforementioned methods of verification are possible, or when a permissible excusal is pending, a body inspection must be conducted. Staff members shall utilize alternate search methods pursuant to Subsection 3287(c)(2)(D) to ensure that a scan with a low-dose, full-body x-ray scanner does not take place when it should not.

New Subsection 3287(c)(2)(E) is adopted to ensure understanding that an inmate who is not excused by a CDCR nurse practitioner or warden shall be disciplined in accordance with Section 3315 for refusing to submit to a search method. If it is determined that the inmate does not have a valid excusal or is pending, a permissible excusal, after staff members were required to utilize alternate search methods, the inmate shall be subject to disciplinary action.

Subsection 3287(d) is unchanged