

RECEIVED MAR 23 2021

State of California
Office of Administrative Law

RECEIVED MAR 23 2021

In re:
Department of Corrections and
Rehabilitation

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections:
Amend sections: 3287
Repeal sections:

NOTICE OF APPROVAL OF REGULATORY
ACTION

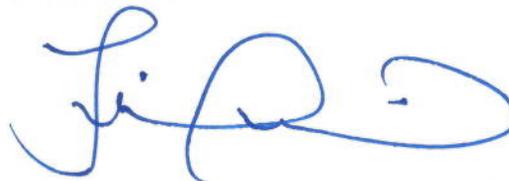
Government Code Section 11349.3

OAL Matter Number: 2020-1008-01

OAL Matter Type: Regular (S)

This rulemaking action by the Department of Corrections and Rehabilitation expands the inmate search procedures in order to detect drugs and other contraband.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 7/1/2021.



Date: March 19, 2021

Lindsey S. McNeill
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Kathleen Allison, Secretary
Copy: Rosie Ruiz

REGULAR

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2020-0211-06	REGULATORY ACTION NUMBER 2020-1008-015	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

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

MAR 19 2021
3:01 pm

2020 OCT -8 P 4: 21
OFFICE OF ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY
California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (If any)
19-0074

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 Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2020, 08-2	PUBLICATION DATE 2-21-20	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Cell, Property, and Body Inspections	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2017-1127-255
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
	AMEND
	REPEAL
TITLE(S) 15	
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"/> File & Print <input type="checkbox"/> Print Only	
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <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)	
2/22/2021 - 3/9/2021	
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) _____	
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 Rosie Ruiz	TELEPHONE NUMBER (916) 445-2244
FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) rosie.ruiz@cdcr.ca.gov

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 <i>K. Allison</i>	DATE 3/16/20
TYPED NAME AND TITLE OF SIGNATORY KATHLEEN ALLISON, Undersecretary (A), Operations	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 19 2021

Office of Administrative Law

TEXT OF ADOPTED 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.

Existing subsection 3287(c) is renumbered to 3287(d) and is amended to read:

~~(e)~~ Passive Air Scan Searches. Inspections of inmate cell or living areas, property, work areas, and body shall be conducted on an unannounced, random basis as directed by the institution head. Such inspections shall be conducted no more frequently than necessary to control contraband, recover missing or stolen property, or maintain proper security of the institution.

Existing subsections 3287(c)(1) through 3287(c)(3)(B) are renumbered to 3287(d)(1) through 3287(d)(3)(B) and text is unchanged.

~~(e)(1)~~ (d)(1) [Text is unchanged.]

~~(e)(2)~~ (d)(2) [Text is unchanged.]

~~(e)(2)(A)~~ (d)(2)(A) [Text is unchanged.]

~~(e)(2)(B)~~ (d)(2)(B) [Text is unchanged.]

~~(e)(3)~~ (d)(3) [Text is unchanged.]

~~(e)(3)(A)~~ (d)(3)(A) [Text is unchanged.]

~~(e)(3)(B)~~ (d)(3)(B) [Text is unchanged.]

New Subsection 3287(c) is adopted to read:

(c) Inmate Body Searches. 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 items, 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)(1) is adopted to read:

(1) 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 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, and prior to placement into restrictive housing.

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

(2) The use of the low-dose, full-body x-ray scanners shall comply with Code of Federal Regulations, Title 28, Section 115.15(a) (7/1/2012), which is hereby incorporated by reference.

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

(3) Low-dose, full-body x-ray scanners shall adhere to the American National Standard Institute's *Radiation Safety for Personnel Security Screening Systems Using X-Ray or Gamma Radiation* (ANSI/HPS N43.17-2009), which is hereby incorporated by reference. Scanner settings shall be set by the manufacturer to 0.25 microsieverts per scan. The annual radiation limit shall be 250 microsieverts per inmate and each scan shall have a radiation dose of 0.25 microsieverts. A low-dose, full-body x-ray scanner shall identify the inmate by CDCR number and determine the annual radiation to which the inmate has been previously exposed as a result of low-dose, full-body x-ray scanning relative to the annual radiation limit before a scan is initiated.

New Subsection 3287(c)(4) is adopted to read:

(4) If the inmate has reached the annual radiation limit pursuant to subsection 3287(c)(3), 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, and at least 0.25 microsieverts remain before the inmate reaches their annual radiation limit.

New Subsection 3287(c)(5) is adopted to read:

(5) An inmate shall be excused from a low-dose, full-body x-ray scanner search in the event of an emergency custody circumstance in which the inmate's behavior creates a safety risk for the inmate, other inmates, or CDCR staff if the search is performed, and requires immediate staff attention to deescalate the situation and maintain the safety and security of the institution. The staff member who is escorting the inmate to be searched shall make the determination that the inmate cannot safely be searched using the low-dose, full-body x-ray scanner.

New Subsection 3287(c)(5)(A) is adopted to read:

(A) An emergency custody circumstance includes physical aggression from the inmate requiring restraint of the inmate in order to maintain the safety and security of the institution or a circumstance where an inmate refuses to ambulate and stand up on the machine's platform to be scanned.

New Subsection 3287(c)(5)(B) is adopted to read:

(B) The staff member who excused the inmate from a search using the low-dose, full-body x-ray scanner shall document the emergency custody excusal on CDC Form 128-B, General Chrono (Rev. 4/74) as soon as is permissible and forward the completed Form to the warden for signature. The CDC Form 128-B shall be signed by the warden no later than 48 hours after the date of the emergency custody circumstance. 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)(6) is adopted to read:

(6) 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 medical staff member of a level no lower than a nurse practitioner. A copy of the form shall be given to the inmate, and shall be stored in the ERMS.

New Subsection 3287(c)(7) is adopted to read:

(7) An inmate who is excused from being scanned with a low-dose, full-body x-ray scanner pursuant to subsections 3287(c)(5) or 3287(c)(6), or who has reached the annual radiation limit pursuant to subsection 3287(c)(3), 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 subsections 3287(c)(8) through 3287(c)(8)(B) are adopted to read:

(8) An inmate shall notify a staff member that he or she is excused from being searched with a low-dose, full body x-ray scanner due to an emergency custody or medical circumstance, whereupon verification of excusal is required. At least one of the following two methods of verification shall be used:

(A) The inmate shall present a copy of the approved CDC Form 128-B or CDC Form 128-C to a staff member operating a low-dose, full-body x-ray scanner, or

(B) A staff member shall access the copy of CDC Form 128-B or CDC Form 128-C that is stored in ERMS.

New Subsection 3287(c)(9) is adopted to read:

(9) In the event that verification cannot be obtained through one of the methods enumerated in subsections 3287(c)(8)(A) or 3287(c)(8)(B), staff shall search the inmate in accordance with subsection 3287(c)(7).

New Subsection 3287(c)(10) is adopted to read:

(10) An inmate who is excused from being scanned with a low-dose, full-body x-ray scanner for emergency custody circumstances pursuant to subsection 3287(c)(5) shall be subject to disciplinary action in accordance with section 3315.

Existing Subsection 3287(d) is renumbered to 3287(e). Text is unchanged.

~~(d)~~ [Text 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, Code of Federal Regulations.

FINAL STATEMENT OF REASONS

The Initial Statement of Reasons (ISOR) is incorporated by reference.

UPDATES TO THE INITIAL STATEMENT OF REASONS:

The Notice of regulations was published in the California Notice Register on February 21, 2020, which began the public comment period. Notice of Change to Regulations 20-01, including the text of the regulations and the ISOR, was mailed the same day to persons who requested to be placed on the Department's mailing list to receive notifications of rulemaking actions. These documents were also posted on the Department's Internet and Intranet websites. During the 45-day comment period, 10 written comments were received. These comments are discussed below under the heading, "Summaries and Responses to Written Public Comments Received During the Initial Comment Period." The public hearing scheduled for April 8, 2020, was cancelled due to the COVID-19 public health emergency.

The ISOR lists California Code of Regulations, Title 17, Division 1, Subchapters 4 and 4.5 as Documents Relied Upon. This is an incomplete reference and the reference to these documents is corrected to accurately read: California Code of Regulations, Title 17, Division 1, Chapter 5, Subchapters 4 and 4.5.

After publication of the Notice of Proposed Regulations, it was determined that additional changes to the proposed regulations were necessary. The amendments to the originally proposed text and the reasons for these revisions are explained below under the heading "Notice of Change to Text as Originally Proposed – Re-Notice." The Notice of Change to Text as Originally Proposed (Re-Notice) was distributed on February 22, 2021, to those who provided comments during the public comment period, and was posted on the Department's website on February 23, 2021. The Department accepted public comments from this date through March 9, 2021. One comment was received during this period and a response is provide below under the heading "Comment Received During the Renotice Comment Period."

Non-substantive formatting changes and typographical corrections are made throughout for additional clarity.

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 the 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 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 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.

DOCUMENTS RELIED UPON:

A listing and explanation of documents relied upon in the development of the proposed regulations may be found on page four of the ISOR. The documents themselves are available in the rulemaking file.

The Department incorporated two documents by reference in section 3287: 1) CFR, Title 28, Section 115.15(a)(7/1/2012), and 2) American National Standard Institute's Radiation Safety for Personnel Security Screening Systems Using X-Ray or Gamma Radiation (ANSI/HPS N.43.17-2009). These two documents total more than 40 pages and as such, it would be cumbersome, unduly expensive, and impractical to publish these documents in the CCR. These documents were noticed to the public and made available upon request and on the Department's webpage during the course of this rulemaking action.

Notice of Change to Text as Originally Proposed – Re-Notice

Existing subsection 3287(c) is renumbered 3287(d) and amended to add the text "Passive Air Scan Searches" to the beginning of the subsection. This is necessary for additional clarity concerning the circumstances under which searches will be conducted and the areas that will be subjected to the search.

Existing subsections 3287(c)(1) through 3287(c)(3)(B) are renumbered to 3287(d)(1) through 3287(d)(3)(B). This is necessary as new subsection 3287(c) is adopted.

Subsection 3287(c)(2) is renumbered to 3287(c) and is amended for additional clarity. The text, "Inmate Body Searches" is added at the front of the subsection to clarify that subsection (c) addresses inmate body searches, including, but not limited to, ION scanners and low-dose, full-body x-ray scanners. For additional clarity regarding personal items on the inmate's person at the time of the search such as wheelchairs, implants, prostheses, and assistive devices that are also included in the search, the word "property" is replaced with the word "items."

Subsection 3287(c)(2)(C) is renumbered to 3287(c)(1) and is amended to add the text "Contraband and metal detection devices and electronic drug detection devices, including, but not limited to, ION scanners and" to the beginning of the subsection. This is necessary to clarify that inmates will be searched for contraband using metal detection and drug detection devices that include ION scanners and low-dose, full-body x-ray scanners.

In the last line of the subsection, the word "or" is replaced with "and" to clarify that inmates will be searched for contraband in all of the listed inmate movement.

For additional clarity, the following text is removed, amended, and placed in new subsection 3287(c)(2), "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) is adopted to include the text referencing Code of Federal Regulations (CFR), Title 28, Section 115.15(a). The revision date (7/1/2012) is added to the citation for proper citation to federal regulations. This document is also incorporated by reference into the regulations and available for public inspection as indicated on page

one of this document. This is necessary for additional clarity concerning the Department's compliance with CFR, Title 28, Section 115.15(a) as 28 CFR, Section 115.15(a) when using the low-dose, full-body x-ray scanners as 28 CFR is a component of the Prison Rape Elimination Act.

This change is necessary for additional clarity by including the text concerning the Department's compliance with CFR, Title 28, Section 115.15(a) in its own subsection.

Subsection 3287(c)(2)(A) is renumbered to 3287(c)(3) and amended.

- The word "Security" is added to the title of the American National Standard Institute's (ANSI) referenced report to accurately cite the title of this report.
- In reference to the manufacturer setting the low-dose, full-body x-ray scanners to 0.25 microsieverts, the text "standardized and fixed to ensure compliance with ANSI/HPS N43. 17-2009" is removed and the text "set by the manufacturer to 0.25 microsieverts per scan" is added. This is necessary to ensure understanding that CDCR is committed to following the radiation safety standards set by ANSI/HPS N43 17-2009.
- The text "A low-dose, full-body x-ray scanner shall identify the inmate by CDCR number and determine the radiation to which the inmate has been previously exposed as a result of low-dose, full-body x-ray scanning relative to the annual radiation limit before a scan is initiated" is added this subsection. This change is necessary for more appropriate placement. For additional clarity within the text, the use of "an" is replaced with "the" in reference to the inmate, the text "low-dose, full-body x-ray" is added to before the text "scanning relative to the annual radiation before a scan is initiated, and the word "before" is no longer written in all capital letters.

Subsection 3287(c)(2)(B) is renumbered to 3287(c)(4) and amended.

- The text "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" is removed as the text is added to subsection 3287(c)(3).
- For clarity, the reference to subsection 3287(c)(2)(A) is updated to renumbered subsection 3287(c)(3), and the word "not" is no longer written using all capital letters.
- The text "and at least 0.25 microsieverts remain before the inmate reaches their annual radiation limit" is added in reference to the person's annual radiation limit. This is necessary to clarify that the x-ray scanner machine will only perform a scan if the person to be scanned has not reached their annual radiation limit and at least 0.25 microsieverts remain before the person's annual radiation limit is reached.

New Subsection 3287(c)(5) is adopted to state that an inmate shall be excused from a search using a low-dose, full-body x-ray scanner in the event of an emergency custody circumstance that requires immediate staff attention to deescalate the situation and maintain the safety and security of the institution. This subsection is adopted to clarify that an emergency custody circumstance is a custody circumstance that creates a risk to the inmate, other inmates, or staff and requires immediate attention from staff to maintain the safety and security of the facility.

- The subsection provides that the staff member who is escorting the inmate to the search shall make the determination that the inmate cannot be safely searched using the low-dose, full-body x-ray scanner. This is necessary to clarify that safety is the Department's priority as the staff who is closest to the emergency custody circumstance shall make the determination.

New Subsection 3287(c)(5)(A) is adopted to state that an emergency custody circumstance is a circumstance that includes physical aggression from the inmate requiring for the inmate to be restrained to maintain the safety and security of the CDCR facility, or is a circumstance where the inmate is refusing to ambulate and participate in the scan. This is necessary for additional clarity concerning the common types of emergency custody circumstances that present in an institution/custody setting.

Subsection 3287(c)(2)(D)1. is renumbered to 3287(c)(5)(B) and is amended for additional clarity concerning documenting the emergency custody emergency on a CDC Form 128-B, the following text is added at the beginning of the subsection, "The staff member who excused the inmate from a search using the low-dose, full-body x-ray scanner shall document the emergency custody excusal" and the text, "An excusal for custody circumstances, shall be documented" is removed.

In reference to the completing the CDC Form 128-B, the text, "as soon as is permissible and forward the completed Form to the warden for signature. The CDC Form 128-B shall be signed by the warden no later than 48 hours after the date of the emergency custody circumstance." is added and the following text is removed, "and signed by the Warden." The changes are necessary for additional clarity concerning the time frame in which staff must complete the documentation of the emergency custody excusal.

The subsection now reads:

The staff member who excused the inmate from a search using the low-dose, full-body x-ray scanner shall document the custody on CDC Form 128-B, General Chrono (Rev. 4/74) as soon as is permissible and forward the completed Form to the warden for signature. The CDC Form 128-B shall be signed by the warden no later than 48 hours after the date of the emergency custody circumstance. 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.

Subsection 3287(c)(2)(D)2. is renumbered to 3287(c)(6) and is amended to add "CDCR medical staff of a level no lower than a" and to remove the text "or higher" in reference to the medical staff who is authorized to make a medical excusal from a low-dose, full-body x-ray scanner search. This change is necessary to clarify that medical staff not below the level of a nurse practitioner is authorized to provide a medical excusal from a search using a low-dose, full-body x-ray due to the inmate's 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 as they possess the minimal level of education necessary to render this determination.

To accurately reflect the title of CDC Form 128-C, the second set of "dashes" in the title of the Form are replaced with commas. The capital letters "N" and "P" in the term "Nurse Practitioner" are changed to lowercase letters for Department consistency with this term.

Subsection 3287(c)(2)(D) is renumbered to 3287(c)(7) and is amended to update references. The text "3287(c)(2)(D)1. or (D)2." is removed and replaced with the

text “3287(c)(5) or 3287(c)(6),” which includes references to renumbered subsection 3287(c)(5) and 3287(c)(6). The reference to subsection “3287(c)(2)(A),” is updated to renumbered subsection “3287(c)(3).”

Subsection 3287(c)(2)(D)3. is separated into three subsections for additional clarity and numbered subsections 3287(c)(8) through 3287(c)(8)(B).

- New Subsection 3287(c)(8) provides that an inmate shall notify a staff member that he or she is excused from being searched with a low-dose, full-body x-ray scanner due to an emergency custody or medical circumstances. The subsection provides that custody or medical excusals must be verified by one of the following verification methods. For additional clarity, the text “refuses to be scanned” is removed and replaced with the text, is excused from being searched” at the beginning of the subsection and custody circumstance is specified as “an emergency” custody circumstance.
- For additional clarity concerning an excusal from a search using a low-dose, full-body x-ray, new Subsection 3287(c)(8)(A) provides that the inmate shall present a copy of the approved CDC Form 128-B or CDC Form 128-C to the staff member operating a low-dose, full-body x-ray scanner. For additional clarity, the text “CDC Form 128” is added to the reference to CDC Form 128-C as that is the complete Form reference, and the beginning of the subsection is updated to a capital letter.
- New Subsection 3287(c)(8)(B) provides that a staff member shall access a copy of the CDC Form 128-B or the CDC Form 128-C that is stored in the electronic record management system. For additional clarity, the beginning of the subsection is updated to a capital letter, and to correct an oversight, the text “however” located after the text “verification as needed” and before the sentence beginning with the text “For example” is removed.

New Subsection 3287(c)(9) is adopted to provide text that was originally included in subsection 3287(c)(2)(D)3. providing that in the neither of the forms of verification of the excusal from the low-dose, full-body x-ray scanner search, can be obtained, staff shall use the alternate search methods previously described in subsection 3287(c)(7). This is necessary for additional clarity to staff an inmates that the Department will help preserve the health of the inmates by using alternate search methods if verification of the excusal from a search using a low-dose, full-body x-ray scanner cannot be obtained so that a low-dose, full-body x-ray scan does not take place when it should not.

- For additional clarity, the text “enumerated in subsections 3287(c)(8)(A) or 3287(c)(8)(B)” is added and the following text is removed, “when a body inspection must be conducted.” The reference to “these two” methods of verification is updated to “the” methods and the reference to subsection 3287(c)(2)(D) is updated to subsection 3287(c)(7).

The section now reads:

In the event that verification cannot be obtained through one of the methods enumerated in subsections 3287(c)(8)(A) or 3287(c)(8)(B), staff shall search the inmate in accordance with subsection 3287(c)(7).

Subsection 3287(c)(2)(E) is renumbered 3287(c)(10) and amended to add the text “An inmate who is excused from being scanned with a low-dose, full-body x-ray scanner for emergency custody circumstances pursuant to subsection (c)(5)” and remove the text,

“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” in reference to the excusal from a search using a low-dose, full-body x-ray scanner. This is necessary for fairness purposes to make clear to staff and inmates that an inmate is not able to avoid a low-dose, full-body x-ray scan through their behavior that creates a safety and security risk to the institution, or avoid disciplinary action for threats to the safety and security of the institution. For additional clarity in reference to disciplinary action, the text “result in” is replaced with the text “be subject to.”

The Subsection now reads:

An inmate who is excused from being scanned with a low-dose, full-body x-ray scanner for emergency custody circumstances pursuant to subsection 3287(c)(5) shall be subject to disciplinary action in accordance with section 3315.

Subsection 3287(d) is renumbered to 3287(e). This change is necessary for clarity allowing for the placement of regulations concerning inmate body searches with 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.

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

Commenter #1:

Comment 1A: Commenter states that even though California Code of Regulations, Title 15, Section 3287(b) requires the standard of reasonable suspicion for clothed and unclothed body searches to be performed, California State Prison, Solano, correctional officers performed clothed and unclothed body searches without reasonable suspicion or probable cause and without offering any law or regulation that supports their actions.

Response to Comment 1A: Commenter cites the initial portion of Section 3287(b). However, in addition to reasonable suspicion, the regulation also allows for inspections if the person has been in an altercation or on a routine requirement for inmate movement into or out of high risk security areas. Random spot-checks 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. Additionally, Section 3287(c) authorizes unannounced and random inspections (including body) to be conducted when directed by the institution head to maintain proper security of the institution.

Comment 1B: Commenter states that against Department regulations, correctional staff at California State Prison, Solano, performed unclothed body searches in plain view of people who were present, including cross-gender correctional officers.

Response to Comment 1B: Section 3287(b) requires inspections be conducted in a professional manner which avoids embarrassment or indignity to the inmate. Whenever possible, unclothed body inspections of inmates shall be conducted outside the view of others.

Pursuant to California Code of Regulations (CCR), Title 15, Section 3287(b)(1), CDCR allows for unclothed body inspections to be conducted by persons of the opposite sex under emergency conditions with life or death consequences.

Finally, the use of a low-dose, full-body x-ray scanners may mitigate the need for an unclothed body inspection which addresses the commenter’s concerns.

Violations of these sections may be reported as specified in CCR, Title 15, Section 3481, Claimant's Ability to Grieve and to Appeal.

Comment 1C: Commenter states the proposed regulations go against the primary objective of correctional institutions as the use of ion scanners/x-ray machines are known to put people at risk for cancer and overexposure to these devices is potentially dangerous to human life.

Response to Comment 1C: In regards to the scanning process, CDCR adheres to the standards set by the American National Standards Institute (ANSI) – Accredited Standards Committee N43, *Radiation Safety for Personnel Screening Systems Using X-Ray or Gamma Radiation* (ANSI/HPS N43.17-2009).

The low dose full body scanner is a non-intrusive device that scans the whole body in seconds, detecting the presence of contraband secreted or ingested inside the human body. The use of this device eliminates the need for an inmate to be subject to an unclothed body search. This machine is able to detect cell phones, drugs, copper wires, plastics, etc. The scanner uses software for the automatic calculation of the cumulative doses (ionizing radiation exposure) per individual being screened. The software will calculate the dose by an individual's name or CDCR number before a scan is initiated. If an individual is approaching his/her permitted annual limit, a warning message appears, alerting the operator that this individual is approaching the limit of the preset annual allowable dose. If any individual achieves this limit, the system will not perform a scan, and a warning message will be displayed to alert the operator that this individual has achieved his/her annual limit. In the unlikely event this limit is reached, an unclothed body search of the inmate will be conducted.

Commenter #2

Comment 2A: Commenter states CDCR does not seem to take inmates' health into account or seems to have studied negative health effects as CDCR is willing to expose the entire prison population to radiation in order to try to find a small fraction of the inmate population and should be held liable for negative health effects due to overexposure to radiation. Commenter states that testing this on human beings sounds unethical and illegal.

Response to Comment 2A: 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 a medical excusal will not be disciplined for refusing to submit to a search with a low-dose, full-body x-ray scanner. The Department has determined that a CDCR staff member of a level no lower than Nurse Practitioner 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. The Department has taken inmate health and safety into account and the manufacturer will set the low-dose, full body x-ray scanner to 0.25 microsieverts per scan, which is as low as reasonably achievable as specified by ANSI. The Department is maintaining the inmate's health and safety while seeking to keep institutions safe and secure as the x-ray scanner machine will only perform a scan if the person to be scanned has not reached their annual radiation limit and at least 0.25 microsieverts remain before the person's annual radiation limit is reached.

Comment 2B: Commenter states there is no oversight of the staff who expose inmates to radiation. Commenter asks what types of consequences will be applied for forcing too much radiation. Commenter states that CDCR needs to consider these issues before adopting the regulations.

Response to Comment 2B: See Responses to Comments 1C and 2A. The scanner uses software for the automatic calculation of the cumulative doses (ionizing radiation exposure) per individual being screened. The operator does not have the ability to force too much radiation into the inmate. The software will calculate the dose by an individual's name or CDCR number before a scan is initiated. If an individual is approaching his/her permitted annual limit, a warning message appears, alerting the operator that this individual is approaching the limit of the preset annual allowable dose. If any individual achieves this limit, the system will not perform a scan, and a warning message will be displayed to alert the operator that this individual has achieved his/her annual limit.

Commenter #3

Comment 3A: Commenter states the regulations will pose a significant risk to the health and safety of the inmate population that include elderly inmates with a compromised immune system. CDCR does not take into account the amount of gamma rays inmates with medical conditions may already be receiving their as a part of their medical treatment. CDCR cannot ensure a low dose radiation when the equipment is being misused or abused or under circumstances when the equipment fails to operate properly such as during a power surge or due to machine damages.

Response to Comment 3A: See Responses to Comments 1C, 2A and 2B.

Comment 3B: Commenter states the proposed regulations will be ineffective as most drugs come into the prison through corrupt staff, not visitors, and staff will never be subjected to these detection services.

Response to Comment 3B: The Department provided figures in the ISOR that indicate a percentage of drugs and contraband are introduced into prisons by inmates. This rulemaking action is only intended to address the introduction of drugs and contraband into prisons by inmates, not staff or visitors.

Comment 3C: Commenter states the proposed regulations will result in a cost to the public for unnecessary litigation resulting from these searches as well as the cost to repair or replace damaged personal property such as wheelchairs, walkers, and implants.

Response to Comment 3C: The commenter's statement regarding the cost to the public for unnecessary litigation resulting from these searches cannot be determined as there is no data to support this statement. The commenter's statement related to cost for repair or replacement of damaged personal property such as wheelchairs, walkers and implants would not occur, as a result of the x-ray scanner as inmates must be able to walk or move from one place to another in order to be searched with the low-dose, full body x-ray scanner.

Comment 3D: Commenter states that there is no distinction between situations where probable cause for a search may exist and situations where it does not. All inmates will be searched by this potentially injurious device and will be subject to the same invasion regardless of individual program status or incarceration behavior that shows no history of contraband smuggling.

Response to Comment 3D: See Response to Comment 2A.

Comment 3E: Commenter states that if the proposed regulations are adopted, the following populations should be excluded: those with a compromised immune system, those who are already exposed to radiation for other (medical) reasons, those who have prosthetics or are dependent on mobility devices, and those persons whom staff have absolutely no probable cause to believe are guilty of contraband smuggling.

Response to Comment 3E: See Response to Comment 1A.

Commenter #4

Comment 4A: Commenter states these methods were used before by various criminal justice institutions and the Federal Bureau of Prisons made them stop this illegal and inhumane treatment.

Response to Comment 4A: Commenter's statement that these methods were used before by various criminal justice institutions and the Federal Bureau of Prisons made them stop this illegal and inhumane treatment may have been referring to a different type of x-ray, as the United States Penitentiary, Atwater, currently uses the same low-dose, full-body x-ray scanner.

Comment 4B: Commenter states that these methods result in less visits as these methods are humiliating and traumatizing and violate the civil liberties of inmates' family and friends. Commenter states that family visits are important for inmates' mental health and rehabilitation.

Response to Comment 4B: The above comment is either insufficiently related to the specific action proposed or to the procedures followed by the Department in proposing or adopting these regulations, 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 4C: Commenter states the return of investment for utilizing these machines are not worth the cost noting that each machine costs over \$1,000,000 to purchase as well as operation and maintenance costs. Commenter states all this amounts to additional expenses of billions of dollars for California tax payers.

Response to Comment 4C: CDCR has provided extensive trainings of staff operating this equipment and will continue to update this training to ensure adherence with developing community standards. Concerning maintenance, ANSI/HPS N43.17-2009 provides detailed guidance for radiation-producing systems, manufacturing, installation, safety performance, and regular maintenance. Maintenance costs will be absorbed by each institution.

There are no additional costs associated with staffing to operate the low-dose, full-body x-ray scanner. The staff assigned to operate the low-dose, full body x-ray scanner are existing positions. The maintenance costs are currently covered by the vendor providing the Inmate/Ward Telephone System services.

Comment 4D: Commenter states the machines are not dependable as they are too sensitive and result in many false positives.

Response to Comment 4D: The low-dose, full-body x-ray scanners produce an image which is read by the trained user. Radiation-producing instruments are required to include fail-safe mechanisms that would halt the operation in case of major failures in mechanical

or electronic components, including testing of those fail safe mechanisms. See also Response to Comment 4C.

Comment 4E: Commenter states that ion scanners expose people to x-rays and states long term exposure to x-rays cause cancer, radiation sickness, fainting, confusion, nausea/vomiting, diarrhea, hair loss, skin/mouth sores, and bleeding. Commenter states that California prisons do not have the health resources or capability to monitor inmates and their visitors exposed to x-rays or gamma rays.

Response to Comment 4E: The ION Mobility Spectrometry (ION Scanner) technology is a trace detecting device that measures the deflection of particles after they are exposed to an electric field. Samples are collected by wiping an object and then placing the Electronic Drug Detection Equipment (EDDE) swab into the machine. The results of the swipe are displayed within 8-10 seconds. The ION Scanner is a non-intrusive search tool for inmates, staff and visitors, as well as for incoming mail and parcels. The Department is not aware of any additional safeguards necessary for the safe operation of the equipment. Additionally, there are no due process violations in place with the use of EDDE as described in the regulations. Commenter also references regulations for canine searches, which are not part of this rulemaking file. In regards to the Commenter's statement related to prolonged exposure to gamma rays being harmful, see Response to Commenter 1C.

Comment 4F: Commenter states that although the majority of drugs are brought into prisons by prison staff, there is no proof that staff have ever been subjected to such inhumane treatment.

Response to Comment 4F: See Responses to Commenters 3B and 4B.

Comment 4G: Commenter states that enhanced sentences and the "three-strikes law" that penalize inmates by doubling their sentences need to be revoked as these laws give life sentences for non-murder and non-violent crimes making inmates pay for crimes over and over. Commenter states these laws contribute to mass incarceration of people of color.

Response to Comment 4G: See Response to Commenter 4B.

Comment 4H: Commenter states that CDCR's focus should be on inmate rehabilitation or on improving prison living conditions instead of spending money on ion scanners.

Response to Comment 4H: See Response to Commenter 4B.

Commenter #5

Comment 5A: Commenter states that people will not be willing to submit to this experiment as x-rays can cause cancer and may be dangerous after continued use and will result in increased litigation to ban these practices.

Response to Comment 5A: See Response to Comment 1C.

Comment 5B: Commenter states that in his institution, drugs and cell phones are smuggled into the prison by corrupt staff states that prison staff should also be searched by these x-ray scanners or the smuggling problems will continue.

Response to Comment 5B: See Responses to Commenters 3B and 4B.

Commenter # 6

Comment 6A: Commenter states the proposed regulations do not have adequate safeguards in place for routine maintenance and certified compliance to ensure the “microseiverts” are not altered from the manufactured settings.

Commenter states that in November 2019, a local hospital was found to have an x-ray machine that had been altered from the manufacturer’s recommended settings and overexposed hundreds to potentially serious amounts of radiation.

Response to Comment 6A: See Response to Comment 1C. Service and maintenance for the low-dose, full-body x-ray scanners is conducted per manufacturer’s specifications.

Comment 6B: Commenter states that CDCR must disclose to the public the scientific studies and empirical data for the ANSI/HPS “standard” the Department adopted. Commenter states that risk factors exist and the rushed regulations do not guard against these risks.

Response to Comment 6B: See Response to Comment 1C. Research data for American National Standards Institute and for Health Physics Society may be accessed on their public websites: www.ansi.org and www.hps.org.

ANSI/HPS N.43.17-2009 was made available to the public for review and comment during the course of this rulemaking action.

Commenter #7

Comment 7A: Commenter agrees that body scanners should be used for searches in prisons as unclothed body searches are humiliating and degrading and some correctional officers abuse their power and conduct unclothed body searches.

Response to Comment 7A: We agree that some inmates feel degraded or humiliated by the unclothed body search process and also agree the x-ray scanner is a less invasive search of a person as it does not require them to disrobe. Also see Response to Comment 1C.

Comment 7B: Commenter states that drugs and cellphones are a necessary evil within prisons as inmates deteriorate mentally and psychologically due to the stress of prison life and being separated from loved ones. Commenter states that prison psychologists often fail to diagnose inmates with these mental health illnesses and as a result inmates fail to receive adequate treatment. Commenter states that inmates need drugs to cope with their depression and cellphones to keep in communication with friends and family. Commenter states that many of the reported prison “overdoses” are actually suicides and suicide attempts.

Additionally, Commenter states that drugs are also a means of financial security as drug sales are the only source of economy in the prisons. Commenter states that inmates sell drugs to save up for their future upon their release or they need the money to pay for competent counsel to help their release from prison.

Response to Comment 7B: See Response to Commenter 4B.

Comment 7C: Commenter states that CDCR policies are the root of the smuggling problem: CDCR needs to provide a means for inmates to talk and text with their friends and family, such as tablets with talk and text capability; Methadone should be supplied to the addicts; and the level of inmate pay needs to be raised with a portion going to a personal savings for the inmate. Commenter states that inmate education and

rehabilitation are the greatest weapons against smuggling. Commenter states that the biggest contributor to the smuggling problem are still the lengthy sentencing laws the district attorneys seek for criminal offenders.

Response to Comment 7C: See Response to Commenter 4B.

Comment 7D: Commenter states that removing drug and cellphones from prisons will have a negative ripple effect on the prison population. Cell phones are the only means of real communication with inmate family and removing this communication will result in an increase in inmate suicides, inmate on inmate violence, violence directed to staff, inmate homosexuality, and HIV diagnosis. Commenter states that although Global Tel Link has approved tablet use, CDCR does not use tablets.

Response to Comment 7D: See Response to Commenter 4B.

Commenter #8

Comment 8A: Commenter notes that new Section 3287(c)(2) states that inmates returning to a yard or prison facility from vocational/educational classes or the visiting area will be searched with full body x-ray scanners. Commenter states this is impractical as vocational areas lack the space necessary to set up the number of body scanners needed to process this quantity of inmates. Commenter states that the use of low-dose, full-body x-ray scanners will take much longer than strip searches.

Response to Comment 8A: See Response to Comment 1A related to inmates returning to a yard or prison facility from vocational/educational classes or the visiting area may be searched with a low-dose, full-body x-ray scanner. The commenter states vocational areas lack space necessary to set up the number of body scanners needed to process this quantity of inmates. There may be some vocational areas throughout the state where placing a low-dose, full-body x-ray scanner could prove challenging. Those institutions would find an alternate location where the x-ray scanner would be effective and efficient. Although a search using a low-dose, full-body x-ray scanner may take longer to administer, this search is less intrusive than a strip search.

Comment 8B: Commenter states that the cost for purchasing these x-ray machines and the cost to retrofit the vocational areas for setting up these machines are not reflected in the fiscal impact section of the Notice.

Response to Comment 8B: See Response to Commenter 4C related to the purchasing of the x-ray machines. The Department does not anticipate a need to retrofit vocational areas to accommodate the placement of low-dose, full-body x-ray scanners.

Comment 8C: Commenter asks why there are no regulations requiring CDCR staff, volunteers, or vendors to go through these x-ray machines upon entering the institution.

Response to Comment 8C: See Responses to Commenters 3B and 4B.

Commenter #9

Comment 9A: Commenter states that decades of exposure to x-rays and gamma rays will cause inmates to develop cancer or cause their children to develop genetic or other DNA defects. Commenter states that all radiation exposure causes damage eventually even if the damage is not immediately apparent and notes that taxpayers will become financially responsible for treating these conditions once these inmates are released. Commenter states that the proposed regulations make him think of the Tuskegee Experiment, only with radiation exposure instead of infecting with syphilis.

Response to Comment 9A: See Response to Commenter 1C.

Comment 9B: Commenter asks what provisions are being made for CDCR to ensure the x-ray machines actually only emit .25 microsieverts as intended - will the machines be regularly checked with radiation detection and, if so, how can the Department ensure the check is actually being conducted instead of just “checking the box” that the test was conducted? Additionally, Commenter states that CDCR cannot prevent radiation overexposure that result from mechanical failures or operator error.

Commenter notes that radiation from hospital x-ray machines have resulted in patient fatalities and asks if the manufacturer for these machines has a better software than Siemens machines.

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

Comment 9C: Commenter states that the proposed regulations will be ineffective unless all people who enter the prisons, including all visitors and Department staff, are searched. Commenter states that the majority of contraband is smuggled in by staff.

Response to Comment 9C: See Responses to Commenters 3B and 4B.

Comment 9D: Commenter states that removing a large volume of the contraband, but not eliminating it completely, will only have negative impact on the prison population.

- Supply and Demand will still be present and prices for sales of the drugs that are available.
- Prison staff that was not tempted to smuggle in contraband before may be tempted now with the increase in their pay-off amount.
- Because a smaller volume of drugs are available, inmates will “cut” these drugs with other available canteen items, which may result in lethal drug mixtures.
- CDCR may have initial success, but will taper down and then spike as new smuggling routes developed and used undetected and CDCR’s credibility will suffer such as it did during Prohibition and during the “War on Drugs.”

Response to Comment 9D: See Response to Commenter 4B.

Comment 9E: Commenter states that if CDCR’s intent with the x-ray machines is to save inmate lives from drug overdose, CDCR should use the purchase price money (which Commenter states must be around \$100,000) instead to buy “25,000 Naloxene Nasal Rescue kits” for inmates. Commenter states that kits reverses opiate overdoses and will really save inmates lives. Commenter states that CDCR will never implement harm reduction because they perceived it as accepting/condoning prison drug use rather than accepting prison drug use as the “unstoppable reality it is.”

Response to Comment 9E: See Response to Commenter 4B.

Comment 9F: Commenter states the issues mentioned in his correspondence are just the issues that came to mind during the little allotted time he had and states, “Who knows what unforeseen consequences will unfold in the years to come.”

Response to Comment 9F: See Response to Commenter 4B.

Commenter #10

Comment 10A: Commenter states that although *Jordan v. Gardner* and 28 CFR, Part 115.15 are cited as authorities supporting the proposed regulations, the Department

has not shown by substantial evidence, as required by law, that regulations are needed to comply with *Jordan v. Gardner*; 28 CFR, Part 115.15; and related law.

Commenter further states that if the Department sought to protect the Eighth Amendment of the Constitution with the proposed regulations, then why is there no mention of this intent in the Notice and information documents for the proposed regulations.

- In *Jordan v. Gardner*, the Court held that male guards conducting body searches on female inmates when the searches are random, non-emergency, and without suspicion to search constitute cruel and unusual punishment.
- 28 CFR, Part 115.15 provides that an institution shall not conduct cross-gender strip searches or visual body cavity searches except in exigent circumstances or when performed by medical professionals.

Response to Comment 10A: See Responses to Comments 1A and 1B.

Comment 10B: Commenter states that although Penal Code (PC) Section 6402 is cited as an authority in support of the proposed regulations, the Section does not require the proposed regulations. PC Section 6402 is concerned with intercepting contraband from coming into prisons, which provides for searching visitors; all Department staff; volunteers; and contract employees, but the proposed regulations exclusively pertain to inmates. Commenter asks that if CDCR is so concerned with more closely aligning Department regulations with PC Section 6402, then why didn't CDCR also amend existing visitor search regulations with this regulatory action.

Commenter states the as far as intercepting drugs from entering the prison, as PC Sections 6042 and 6042.5 provide, the proposed regulations are effective in that respect. However, Commenter states that any measures to remove inmate drug use in prisons will ultimately be unsuccessful unless access to treatment and to meaningful rehabilitative opportunities are also provided.

Response to Comment 10B: The Department agrees with the Commenter that PC Section 6402 is cited as an authority in support of the proposed regulations. The proposed regulations are specific to "inmate" cell, property, and body inspections and not to employees, contractors, attorneys, volunteers, and visitors. Refer to California Code of Regulations, Title 15, Sections 3173.2 and 3410.1, for the search protocols for employees, contractors, attorneys, volunteers, and visitors. The Department agrees with the Commenter that interdicting, detecting and providing rehabilitative programs (e.g., substance use disorder treatment) will be more successful than not having rehabilitative programs.

Additionally, drug treatment rehabilitative programs are outside the scope of this rulemaking action.

Comment 10C: Commenter states that as CDCR has finite resources and since the proposed regulations are contradictory to Penal Code (PC) Section 6042, Commenter asks how CDCR will be able to afford purchasing and maintaining the costly technologies described in the proposed regulations while at the same time complying with the mandates of PC Section 6042.

Response to Comment 10C: See Responses to Commenters 4B and 4C. Penal Code section 6402 applies to inmates as well as other individuals entering Department institutions.

Comment 10D: Commenter states that the Legislature did not intend for a public health issue to be addressed with punitive measures. Although the Department asserts the proposed regulations will allow inmates to better focus on their rehabilitation, Commenter states the proposed regulations will not have this result as inmates who are caught trying to smuggle contraband will be punished and the punishments may include loss of privileges such as visiting opportunities, including overnight visits, and denial of time out of the cell. Commenter states it is well known that conditions of “privation, isolation, and personal degradation” are obstacles to a person’s treatment and rehabilitative efforts.

Response to Comment 10D: The Department utilizes a disciplinary process to deter or prevent inmates from committing crimes to include smuggling contraband into an institution. The Department agrees with the commenter that an inmate who attempts to smuggle contraband into a prison is in violation of Department regulations and would be subject to disciplinary action. The introduction of certain contraband, such as narcotics could result in visiting restrictions such as non-contact visits, loss of visits, loss of family visiting, or out of cell time, under certain circumstances. Although the Commenter believes loss of visits, family visits and out of cell time are obstacles to a person’s treatment and rehabilitative efforts, smuggling contraband into prison is counterproductive to the Department’s rehabilitative efforts; furthermore, the Department must comply with regulations related to introduction of contraband.

Comment 10E: Commenter states that ION scanners are an ineffective way of intercepting drugs from coming into the prisons as the ION scanners may just pick up transfer residue that could be the result of the handling of shared products, such as books. Commenter states that the ION scanners do not distinguish between the possession of contraband and the mere presence of particulate molecules, yet the identified inmates will be punished just the same.

Response to Comment 10E: See Response to Commenter 3B related to effectiveness of intercepting drugs from coming into an institution and distinguishing between the possession of contraband and the mere presence of particulates.

Commenter’s statement that inmates will be punished just the same is inaccurate, as the Department must comply with regulations related to Disciplinary Methods as indicated in CCR, Title 15, Article 5, Inmate Discipline.

Comment 10F: Commenter states that the proposed regulations lack the required clarity as the proposed regulations state body searches will be conducted using “electronic detection devices, including but not limited to, ION scanners and low-dose full body x-ray scanners.” Commenter states that this language is widely open to interpretation and gives the Department a broad limit on the types of devices they may actually use to conduct their searches.

Response to Comment 10F: The phrase, “Including, but not limited to,” is used widely throughout the Penal Code and the California Code of Regulations, Title 15, Division 3 and does not pose a clarity problem. The phrase is included in this regulation to provide examples of several types of contraband, metal detection devices and electronic drug detection devices to be used by the Department.

Comment Received During the Renotice Comment Period

The comment received during the renotice period provides comments to the proposed regulations that were originally noticed to the public and do not address the modified text. However, Commenter submitted these comments during the initial comment period of this regulatory action, Comment #8 above, and the Department reviewed and responded to the comments.