

**State of California
Office of Administrative Law**

In re:
**Department of Corrections and
Rehabilitation**

Regulatory Action:

Title 15, California Code of Regulations

Adopt section: 3412

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

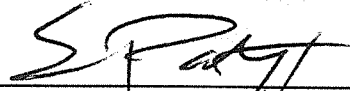
OAL Matter Number: 2022-0425-05

OAL Matter Type: Regular Resubmittal (SR)

This is a resubmittal of OAL action no. 2021-0920-04S, which proposed to establish conditions and restrictions regarding the concealed carrying of firearms by off-duty peace officers employed by the Department of Corrections and Rehabilitation.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 6/7/2022.

Date: June 7, 2022



Eric Partington
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Kathleen Allison, Secretary
Copy: Rosie Ruiz

RESUBMITTAL

DocuSign Envelope ID: 86066D... STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2020-1210-01	REGULATORY ACTION NUMBER 2022-0425-05	EMERGENCY NUMBER SR
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation			AGENCY FILE NUMBER (If any) 16-0195

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

JUN 07 2022

1:56 PM

OFFICE OF ADMIN. LAW
2022 APR 25 PM 4:31

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Off-Duty Firearms	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) Z2020-1210-01, 2021-0920-04S
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 3412
	AMEND
TITLE(S) 15	REPEAL
3. TYPE OF FILING	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	
<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"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	
<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify)	
<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only	
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) 4/30/21 - 5/20/21; 3/30/22 - 4/14/22	
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify)	
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify)	
7. CONTACT PERSON Rosie Ruiz	TELEPHONE NUMBER (916) 445-2244
FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Rosie.Ruiz@cdcr.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE DocuSigned by: Jennifer Barretto	DATE 4/22/2022
TYPED NAME AND TITLE OF SIGNATORY 4BE5E58378FF4AF... Jennifer Barretto, Undersecretary, Administration	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 07 2022

Office of Administrative Law

TEXT OF PROPOSED REGULATIONS

In the following, underline indicates additional text, and ~~strikethrough~~ indicates deleted text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 5. Personnel

Article 2. Employees

Section 3412 Title is amended to read:

~~3412. Personal Firearms~~Department-Authorized Off-Duty Firearms.

Section 3412 is adopted to read:

3412. Department Authorization of Off-Duty Concealed Firearms.

(a) Authorization. The following employees are authorized to carry an off-duty concealed firearm:

(1) Any active peace officer listed in Penal Code (PC) section 830.2(d).

(2) Any active peace officer listed in PC section 830.5(c).

(b) Definitions. As used in this section:

(1) "Active peace officer" means an employee who has taken the oath of allegiance and become a duly sworn peace officer for the department.

(2) "Off-duty concealed firearm" means any firearm capable of being concealed upon the person that is carried outside the employee's place of residence, place of business, or private property owned or lawfully possessed by the employee, and meets the following criteria:

(A) The firearm is a handgun as defined in PC section 16640, but is not an antique firearm as defined in PC section 16170 or a single-action revolver.

(B) The firearm uses only handgun ammunition as defined in PC section 16650. Department-owned firearms shall only use department-issued ammunition.

(C) The firearm functions as originally designed by the licensed manufacturer, as that term is defined in 18 U.S.C. section 921. The internal components and trigger shall not be modified or mechanically altered. Personally owned firearms may be modified as follows as long as the modifications do not impair the safe function of the firearm, render inoperative any safety device, or induce malfunctions by disrupting the normal cycle of operation of the firearm:

1. Allowable modifications are limited to customization of the grip, magazine release, slide lock, or gun sights. Machining is allowed for the sole purpose of adding a sighting system, and must be performed by a gunsmith as that term is defined in PC section 16630.

(D) Department-owned firearms issued to peace officers and permitted to be carried as off-duty concealed firearms shall not be modified or altered.

(c) Requirements to carry an off-duty concealed firearm. Employees authorized to carry an off-duty concealed firearm pursuant to subsection (a) shall comply with the following requirements:

(1) While carrying an off-duty concealed firearm, possess their peace officer badge and department-issued photographic identification. Employees listed in subsection (a)(2) shall also possess their CDCR Form 1803 (Rev. 03/21) Off-Duty Firearm Quarterly Qualification Certification, hereby incorporated by reference, for the off-duty concealed firearm.

(2) Retain firearm in their actual possession unless lawfully stored, wear attire that prevents the visible identification of a concealed firearm by the general public, and use a holster that prevents unintended discharge or loss of physical control.

(3) Store firearms as described in PC sections 16540, 16610, 16850, 16860, 25135, and 25140.

(4) Not be under the influence, as described in PC section 647(f), of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance, or toluene, and unable to exercise care for their own safety or the safety of others while carrying an off-duty concealed firearm.

(5) Report all contacts with other law enforcement agencies involving the off-duty concealed firearm to their immediate supervisor or Watch Commander.

(6) Report all incidents involving the brandishing or discharge (except for training or recreational purposes) of the off-duty concealed firearm to their immediate supervisor or Watch Commander.

(7) Not expose or openly carry a loaded or unloaded off-duty concealed firearm.

(d) Additional requirements for active peace officers listed in PC section 830.5(c) to carry an off-duty concealed firearm. Employees authorized to carry an off-duty concealed firearm pursuant to subsection (a)(2) shall comply with the following requirements:

(1) Satisfactorily complete the department's Use of Force Policy training requirements established in section 3268.

(2) Qualify quarterly using the off-duty concealed firearm in the presence of a certified Rangemaster or Firearms Instructor on a course of fire that meets the requirements in the Commission on Peace Officer Standards and Training Learning Domain 35, section E (Rev. 04/01/2020), hereby incorporated by reference, or an equivalent course of fire.

(A) For purposes of this subsection, a certified Rangemaster or Firearms Instructor is one who:

1. Is accredited as a firearms instructor by any state or federal law enforcement agency;

2. Is employed as a firearms instructor by a sport shooting range as that term is defined in Civil Code section 3482.1(a)(2); or

3. Is certified by a licensed business organization or association that trains and certifies persons as firearm instructors, such as the National Rifle Association, U.S. Concealed Carry Association, or National Law Enforcement Firearms Instructors Association.

(B) The department shall allow employees reasonable access to its ranges to quarterly qualify with off-duty concealed firearms.

(C) The time spent on the range for purposes of meeting the quarterly qualification requirements with off-duty concealed firearms shall be the employee's own time during the employee's off-duty hours.

(3) Complete departmental training on the requirements of this section within one month after the effective date or one month after being duly appointed as a peace officer for the department.

(4) Beginning January 1, 2023, annually complete departmental training on carrying, safe handling, and storage of off-duty concealed firearms.

(5) Maintain eligibility to carry an off-duty concealed firearm. Carrying an off-duty concealed firearm without meeting the requirements in subsections (d)(2) through (d)(4) shall constitute good cause to suspend or revoke that person's authorization to carry an off-duty concealed firearm.

(e) Suspension or revocation of authorization to carry an off-duty concealed firearm.

(1) An employee's authorization to carry an off-duty concealed firearm shall be suspended automatically during the pendency of:

(A) A criminal prosecution against the employee for a felony, domestic violence misdemeanor, or a crime involving firearms.

(B) An investigation into allegations that an employee engaged in misconduct while under the influence, as described in subsection (c)(4), and carrying a department-authorized off-duty concealed firearm.

(C) A medical work restriction placed on the employee that limits the employee's on-duty use of a firearm.

(D) A temporary or permanent restraining order against the employee that prohibits possession of a firearm.

(E) A restriction of the employee's on-duty use of a firearm by the hiring authority or a redirection of the employee by the hiring authority in a manner that also restricts the employee's on-duty use of a firearm. Employees who have qualified on a course of fire using an off-duty concealed firearm shall not have their authorization suspended pursuant to this subsection solely for failing to qualify on a course of fire using their on-duty firearm.

(F) The employee's failure to maintain eligibility to carry an off-duty concealed firearm.

(2) An employee's authorization to carry an off-duty concealed firearm shall be revoked automatically under any of the following circumstances:

(A) The employee is prohibited or restricted by state or federal law from carrying a firearm.

(B) The employee tests positive for illegal narcotics use.

(3) A suspension or revocation of an employee's authorization to carry an off-duty concealed firearm is effective upon serving the employee with a written statement of reasons for taking the action, except that suspensions pursuant to subsection (e)(1)(F) are effective automatically without notice.

(4) An employee may appeal the decision of the hiring authority to suspend or revoke their authorization to carry an off-duty concealed firearm as provided for in the negotiated grievance procedure between their bargaining unit and the department. A non-represented employee may appeal through the department's employee grievance procedures. An employee who fails to request an appeal pursuant to this subsection shall forfeit their right to appeal.

(f) Restoration of suspended or revoked authorization to carry an off-duty concealed firearm.

(1) An employee's authorization to carry an off-duty concealed firearm shall be restored by the hiring authority when:

(A) The employee is no longer subject to the same disqualifying factors that constituted good cause to suspend or revoke the employee's authorization to carry an off-duty concealed firearm and the employee requests restoration of their authorization to carry an off-duty concealed firearm.

(B) An investigation concludes and a determination does not sustain the allegations that precipitated the suspension of the authorization to carry an off-duty concealed firearm.

(C) It is determined on appeal as provided in subsection (e)(4) that good cause does not exist to suspend or revoke the employee's authorization to carry an off-duty concealed firearm.

(D) In accordance with subsections (f)(1)(A), (B), and (C), the employee's authorization to carry an off-duty concealed firearm shall be restored by the hiring authority after the employee makes a request for restoration and provides all necessary documentation. The employee is responsible for meeting all departmental requirements prior to carrying an off-duty concealed firearm.

Note: Authority cited: Sections 830.5 and 5058, Penal Code. Reference: Sections 830.2 and 830.5, Penal Code.

OFF-DUTY FIREARM

QUARTERLY QUALIFICATION CERTIFICATION (CARRY ON PERSON)



NAME
SIGNATURE
PEACE OFFICER ID#
FIREARM BRAND:
MODEL: CALIBER:
FIREARM TYPE: REVOLVER SEMI-AUTOMATIC
SERIAL NUMBER:

PEACE OFFICERS LISTED IN PC 830.5(c) ARE REQUIRED TO QUARTERLY QUALIFY IN ORDER TO LEGALLY CARRY A DEPARTMENT AUTHORIZED CONCEALABLE FIREARM WHILE OFF-DUTY

TO BE COMPLETED BY CERTIFIED FIREARMS INSTRUCTOR

INSTRUCTOR NAME (PRINT):
ACCREDITATION:
LOCATION:
QUALIFICATION DATE:
SIGNATURE:

OFF-DUTY FIREARM

QUARTERLY QUALIFICATION CERTIFICATION (CARRY ON PERSON)



NAME
SIGNATURE
PEACE OFFICER ID#
FIREARM BRAND:
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OFF-DUTY FIREARM

QUARTERLY QUALIFICATION CERTIFICATION (CARRY ON PERSON)



NAME
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OFF-DUTY FIREARM

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QUARTERLY QUALIFICATION CERTIFICATION
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CDCR 1803 (Rev. 03/21)

OFF-DUTY FIREARM

QUARTERLY QUALIFICATION CERTIFICATION
(CARRY ON PERSON)



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CDCR 1803 (Rev. 03/21)

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CDCR 1803 (Rev. 03/21)