

**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)**

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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



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Eric Partington  
Senior Attorney

For: Kenneth J. Pogue  
Director

Original: Kathleen Allison, Secretary  
Copy: Rosie Ruiz

# RESUBMITTAL

DocuSign Envelope ID: 86066D C-47 4133 AF 1952 4 AD3  
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 <b>Z-2020-1210-01</b>	REGULATORY ACTION NUMBER <b>2022-0425-05</b>	EMERGENCY NUMBER <b>SR</b>
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)
<b>OAL USE ONLY</b> <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE	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) <del>Z2020-1210-01, 2021-0920-04S</del>
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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 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 checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)  
**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) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON <b>Rosie Rulz</b>	TELEPHONE NUMBER <b>(916) 445-2244</b>	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) <b>Rosie.Ruiz@cdcr.ca.gov</b>
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

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

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:
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

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

OFF-DUTY FIREARM

QUARTERLY QUALIFICATION CERTIFICATION (CARRY ON PERSON)



NAME
SIGNATURE
PEACE OFFICER ID#
FIREARM BRAND:
MODEL: CALIBER:
FIREARM TYPE: REVOLVER SEMI-AUTOMATIC
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TO BE COMPLETED BY CERTIFIED FIREARMS INSTRUCTOR

INSTRUCTOR NAME (PRINT):
ACCREDITATION:
LOCATION:
QUALIFICATION DATE:
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OFF-DUTY FIREARM

QUARTERLY QUALIFICATION CERTIFICATION (CARRY ON PERSON)



NAME
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MODEL: CALIBER:
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TO BE COMPLETED BY CERTIFIED FIREARMS INSTRUCTOR

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

**OFF-DUTY FIREARM**

**QUARTERLY QUALIFICATION CERTIFICATION**  
(CARRY ON PERSON)

**TO BE COMPLETED BY FIREARMS INSTRUCTOR**

INSTRUCTOR NAME (PRINT): \_\_\_\_\_

ACCREDITATION: \_\_\_\_\_

LOCATION: \_\_\_\_\_

QUALIFICATION DATE: \_\_\_\_\_

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**CDCR 1803 (Rev. 03/21)**

**OFF-DUTY FIREARM**

**QUARTERLY QUALIFICATION CERTIFICATION**  
(CARRY ON PERSON)



**TO BE COMPLETED BY FIREARMS INSTRUCTOR**

INSTRUCTOR NAME (PRINT): \_\_\_\_\_

ACCREDITATION: \_\_\_\_\_

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**CDCR 1803 (Rev. 03/21)**

**OFF-DUTY FIREARM**

**QUARTERLY QUALIFICATION CERTIFICATION**  
(CARRY ON PERSON)



**TO BE COMPLETED BY FIREARMS INSTRUCTOR**

INSTRUCTOR NAME (PRINT): \_\_\_\_\_

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**CDCR 1803 (Rev. 03/21)**

**OFF-DUTY FIREARM**

**QUARTERLY QUALIFICATION CERTIFICATION**  
(CARRY ON PERSON)



**TO BE COMPLETED BY FIREARMS INSTRUCTOR**

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QUALIFICATION DATE: \_\_\_\_\_

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**CDCR 1803 (Rev. 03/21)**

## **FINAL STATEMENT OF REASONS**

The Initial Statement of Reasons (ISOR) and Addendum to the ISOR are incorporated by reference.

### **UPDATES TO THE INITIAL STATEMENT OF REASONS:**

On December 25, 2020, the Notice of Proposed Regulations for Off-Duty Firearms was published, which began the public comment period. The department's Notice of Change to Regulations #20-15 was also mailed the same day to individuals who had requested to be on the department's mailing list for regulation changes. In addition, they were posted on the California Department of Corrections and Rehabilitation (CDCR or department) website, and copies were posted in CDCR institutions. During the 45-day comment period, five 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.*"

A request for a public hearing was received during the public comment period. CDCR subsequently posted and mailed a Notice of Public Hearing on February 26, 2021, announcing a teleconference hearing, which occurred on March 12, 2021. There were no speakers at the public hearing.

On April 30, 2021, a 15-day renote was posted and mailed. The revision incorporated by reference CDCR Form 1803 (03/21) Off-Duty Quarterly Qualification Certification; clarified language regarding actual possession and control of a firearm; clarified language to ensure the prevention of visible identification of a concealed firearm; and included non-represented employees with the authority to appeal a suspension or revocation of authorization to carry a concealed firearm. One comment was received during this period and a response is provided below under the heading, "*Comment Received During the Renote Comment Period.*"

The ISOR stated the proposed regulations are resulting from the Office of Inspector General Semi-Annual Report, Volume 1, July-December 2013 (March 27, 2014). The report is not a mandate or binding on CDCR, but CDCR considered the recommendations in it for safe handling, required training, and suspension and revocation of the authorization to carry an off-duty firearm.

The rulemaking file was submitted to the Office of Administrative Law (OAL) on September 20, 2021. On October 28, 2021, OAL advised the proposed regulations did not meet Administrative Procedures Act (APA) standards concerning clarity and necessity and contained procedural errors. The regulatory documents were revised to address the APA issues. The department issued a second Notice of Change to Text as Originally Proposed (renote) on March 30, 2022. The renote was distributed on March 30, 2022, to those who provided comments during the public comment period and the April 30, 2021 renote and posted on the department's website. The department accepted public comments from March 30, 2022 through April 14, 2022. No comments were received during this period. The amendments to the text originally proposed and the reasons for the revisions are explained below under the heading Notice of Change to Text as Originally Proposed – March 30, 2022, renote.

## **DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:**

The department has determined that no alternative considered would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the action proposed. No such alternatives were proposed or brought to the department's attention during the adoption of this rulemaking action.

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

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

The department has determined that no reasonable alternatives to the regulation have been identified or brought to the attention of the department that would lessen any adverse impact on affected private persons or small businesses than the action planned.

## **NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED – MARCH 30, 2022, RENOTICE:**

The term "concealed firearm," and storage practices are further clarified as defined by Penal Code (PC). Language concerning carrying an off-duty concealed firearm while under the influence is edited to align with PC. For additional clarity, additional information concerning training requirements and suspension or revocation of the authorization to carry an off-duty concealed firearm is provided. Commission on Peace Officer Standards and Training Learning Domain 35, section E (Rev. 04/01/2020) is incorporated by reference and added to the rulemaking record pursuant to Government Code 11347.1. Criteria for "Rangemaster" and "Firearms Instructor" and additional information concerning the requested information on the CDCR Form 1803 is provided. For additional clarity, unnecessary text is removed and PC references are updated.

An Addendum to the ISOR describing the changes to the text as originally proposed was adopted and made available to the public during the renote period. The Addendum to the ISOR is added to the rulemaking record pursuant to Government Code section 11347.1.

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

### **Commenter # 1**

**Comment 1A:** Commenter states that Penal Code section 25605 permits persons to carry openly or concealed firearms in their legal residence, place of business, or on private property owned or lawfully possessed by the citizen or lawful resident. Commenter recommends the statement in subsection 3412(b)(2) "or on private property owned or lawfully possessed by the employee" be struck or amended to note that carrying a firearm in the CDCR peace officer's residence, business, or private property is done under the provisions of state law rather than as authorized (or prohibited) by department policy.

**Response to Comment 1A:** CCR, Title 15, Division 3, subsection 3412(b)(2) states, "carried outside the employee's place of residence, place of business, or on private property owned or lawfully possessed by the employee." This section was established to be consistent with Penal Code section 25605 language.

**Comment 1B:** Commenter asks to consider that some CDCR peace officers reside in states where open carry is not prohibited by state law, and that these employees should retain the right to lawfully open carry a personally owned firearm in accordance with that state's law and not be in violation of CDCR policy. Commenter recommends amending text to subsection 3412(c)(8) to include words to the effect of, "*while inside the state of California, or where otherwise prohibited by law.*"

**Response to Comment 1B:** The department disagrees with the Commenter's suggested edits. Anytime a California Peace Officer leaves the state and is carrying a department-authorized concealed firearm the federal Law Enforcement Officers Safety Act (LEOSA) applies. LEOSA authorizes a qualified law enforcement officer, with a valid governmental agency identification to carry a concealed firearm, notwithstanding state or local law. CDCR peace officers who are carrying firearms under the authority of the department and reside out of state shall comply with federal law. If a peace officer is carrying a firearm under the authority of a state they reside in, other than California, they should follow the firearm laws in that state per CCR, Title 15, Division 3, subsection 3412(c)(5).

**Comment 1C:** Commenter states that language in subsection 3412(d) in regards to requirements under Penal Code section 830.5(c) may be interpreted to apply only to peace officers though the minimum training requirements outlined in subsection 3412(d) should apply to all CDCR peace officers authorized to carry off-duty firearms. Office of Correctional Safety (OCS) and Office of Internal Affairs (OIA) peace officers receive advanced firearms training which should meet or exceed the training requirements noted in this section.

**Response to Comment 1C:** Code Section 830.2 does not require specific training for off-duty concealed carry of firearms by peace officers defined in that section so subsection 3412(d) does not include OCS or OIA peace officers.

**Comment 1D:** Commenter asks for consideration that not all CDCR peace officers covered by CCR, Title 15, Division 3, section 3412 are represented through collective bargaining. Commenter recommends amending text to read, "An employee may appeal a suspension or revocation of the authorization to carry an off-duty concealed firearm through the use of the STD. Form 630 (for represented employees), or the STD. Form 631 to review the decision by the hiring authority. An employee who fails to timely request an appeal pursuant to this section shall forfeit the right to appeal."

**Accommodation:** Partial

**Response to Comment 1D:** The department agrees with the suggestion in part. The proposed language was updated in the April 30, 2021 renote to afford non-represented employees the ability to appeal a suspension or revocation.

## **Commenter #2:**

**Comment 2A:** Commenter states that the statement of reason reflected for subsection 3412(c)(8) has already been enacted by the California Penal Code. Commenter asks if the Penal Code is going to be changed as a result of the regulations.

**Response to Comment 2A:** Nothing within these regulations is intended to change or be interpreted to change any California Penal Code (PC) section. The department is not anticipating introducing any legislation to change the PC. PC sections 25900 and 26361 exempt peace officers from being charged with a crime for carrying a loaded or unloaded firearm, exposed or concealed. These regulations only establish the method in which a CDCR peace officer shall carry a firearm under the authority of the department (authority cited PC section 5058).

**Comment 2B:** Commenter states that PC section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by any peace officer or any honorably retired peace officer if that officer may carry a concealed firearm pursuant to Article 2 (commencing with section 25450) of Chapter 2, or a loaded firearm pursuant to Article 3 (commencing with section 25900) of Chapter 3.

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

## **Commenter #3**

**Comment 3A:** Commenter states that the wording in subsection 3412(b)(2) can be very confusing, and would be clearer if the word “on” was removed to read, “(b)(2) “Concealed Firearm” means any pistol, revolver, or other firearm meeting department approved criteria 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.”

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

**Comment 3B:** Commenter states that the reference in subsection 3412(c)(1) to the “range qualification card” refers to the CDC Form 1803 (rev 12/92) Off Duty Firearm Quarterly Qualification Certification. Commenter claims that this form is outdated and should be revised as it is incorrect and inconsistent in that it should not identify specific firearm identification information i.e. caliber, barrel length, serial number, etc. Commenter states that a trained peace officer should be able to qualify with any departmental approved firearm and carry any departmental approved firearm and should not be restricted to a specific gun. Commenter states that different times of the year, weather, clothing, etc. would be a deciding factor as to what gun one might carry.

**Accommodation:** Partial

**Response to Comment 3B:** The department disagrees with the commenter’s suggested edits to the CDC Form 1803 (rev 12/92) Off Duty Firearm Quarterly Qualification Certification. The department revised the CDC Form 1803 and the revised CDCR Form 1803 is specifically quoted in the renote. The information on revised CDCR Form 1803 (Rev. 03/21) is required to identify the specific firearm authorized by the department to be carried off-duty in accordance with established policy and procedures. Currently, the department does not put limitations on the amount of firearms a CDCR

peace officer may qualify quarterly to carry off-duty. One CDCR Form 1803 is required for each firearm the peace officer intends to carry off-duty.

**Comment 3C:** Commenter attached a suggested version of an updated CDC Form 1803 and claims it complies with the proposed regulations as it includes an “accreditation” from the individual. Commenter refers to the current Department Operations Manual section 32010.19.9 for this language.

**Response to Comment 3C:** The department disagrees with the Commenter’s suggested version of the CDCR Form 1803 provided. The Commenter’s version of the CDCR Form 1803 does not provide sufficient information for a departmental investigation to determine if the peace officer is within established policy and procedures.

**Comment 3D:** Commenter asks if the language in subsection 3412(d)(1) “introductory training” refers to the training an officer receives in the Academy.

**Response to Comment 3D:** Subsection 3412(d)(1) refers to Penal Code section 832 introductory training that is provided at the Basic Correctional Officer Academy and a pre-requisite to becoming a correctional peace officer.

**Comment 3E:** In regards to subsection 3412(d)(4), Commenter asks what qualifies as “training on safe handling... firearm storage”. Commenter asks if the department is developing curriculum that will be offered at the institution, and online for those whose job is outside of an institution in the field or Headquarters.

**Response to Comment 3E:** The department intends to develop curriculum accessible to applicable peace officers.

**Comment 3F:** Commenter states that many questions will be asked regarding retired officers and these regulations, and acknowledges that these proposed regulations are specific to “employees” “off-duty” and “active.” Commenter offers that current laws both inside and outside of California address requirements for retired peace officers.

**Response to Comment 3F:** The proposed regulations are specific to peace officers employed by the department. Retirees will not be addressed in response to the proposed regulations.

#### **Commenter #4**

**Comment 4A:** Commenter questions the wording in subsection 3412(c)(2), “...prevents the visible identification” of the firearm. Commenter asks if a person who is carrying the concealed firearm would be a violation of the regulation if the firearm is “printed,” (visible).

**Response to Comment 4A:** “Printing” is an informal term referring to showing an outline of a concealed carry firearm. This usually occurs when attire is worn too tightly, while carrying a concealed firearm. A peace officer must wear attire that reasonably prevents the identification of a firearm. If a firearm can be identified through attire (i.e. printing), it would be a violation of the regulation.

#### **Commenter #5**

**Comment 5A:** Commenter states that this regulatory action is an accident waiting to happen in light of the current situation with “BLM/George Floyd, and a lot of PR/media attention,” including the new rash of mass murders by firearm users. Commenter states that the department has enough liability as it is, and the very language of section 3412

makes it clear that CDCR peace officers are creating concerns about illegal, improper, and unsafe handling of department-authorized concealed weapons. Commenter further states that existing Penal Codes are sufficient to regulate firearm laws.

**Response to Comment 5A:** The proposed regulations are in compliance with California laws and provide departmental expectations and requirements for its peace officers to carry firearms.

The regulations establish when a peace officer's privilege to carry a firearm may be suspended or revoked for violating state or federal law, or departmental policy.

**Comment 5B:** Commenter states that if passed this regulation creates another severe liability for CDCR and the taxpayers at a time when COVID-19 is destroying this economy. Commenter states that concealed weapons cause panic in society. Commenter states that if a clerk or security guard "catches a peek at someone's hidden gun they may create panic and unnecessary problems". Commenter states that they have years of experience with all types of weapons and states that exposed guns do more to stop crime, just by the threat they represent in lawful hands. Commenter states that nobody fears a threat that is unseen, and a concealed weapon is only useful after the bomb has dropped, which gets both good and bad people killed.

Commenter states that using a firearm is tricky business that causes a chain reaction of chaos that ends in death, with CDCR in the spotlight. Commenter states this is "bad timing" for these regulations.

**Response to Comment 5B:** In developing these proposed regulations, public safety was taken into consideration. California law does not permit open carry of firearms by the general public. The proposed regulations provide CDCR's expectations for firearms being carried concealed by its peace officers and describe when those privileges may be suspended or revoked.

**Comment 5C:** Commenter states that the mere title of "Peace Officer" is no sign of perfection and there are criminals working for CDCR as well as all government agencies. Commenter states that there are CDCR officers who are highly stressed due to a variety of job related reasons, and that all people "go off, lose our temper, or develop a need to get even". Commenter states that Post-Traumatic Stress Disorder is a well-known fact of life for CDCR officers and inmates.

**Response to Comment 5C:** Although the comment does pertain to some aspect of the proposed regulations, the comment is of such a generalized nature that no meaningful response can be formulated to refute or accommodate it

**Comment 5D:** Commenter states that we should consider the number of litigations against CDCR officers each year, the number of crimes committed by CDCR officers, and the millions of dollars paid in settlements by CDCR. Commenter asks if we should be pouring fuel on the existing fire at this severe time. Commenter states that over 1000 CDCR staff (per year) are involved in DUI's, domestic violence, sex charges, speeding/reckless driving, and even assault and murder; and questions if CDCR wants more people walking around in public areas with hidden guns. Commenter states that the fiscal impact of CCR, Title 15, Division 3, section 3412 goes far beyond the bluntly assumed laundry list.

**Response to Comment 5D:** The proposed regulations are in compliance with California law and require training for CDCR peace officers in the responsibilities of carrying off-duty concealed firearms as well as their safe handling and storage.

**Comment 5E:** Commenter states that they have witnessed CDCR officers do unlawful things, and due to their controlled environment, and solidarity, generally escape punishment for their actions. Commenter states that if they carry concealed weapons outside of the CDCR environment on a large scale, that they will not be above the law, and commenter doesn't think they are capable of understanding that.

**Response to Comment 5E:** Although the comment does pertain to some aspect of the proposed regulations, the comment is of such a generalized nature that no meaningful response can be formulated to refute or accommodate it.

### **Comment Received During the Renotice Comment Period**

**Renotice Comment 1A:** Commenter cites concerns that CDCR staff with a history of various conditions, such as mental illness, medical, drug abuse, anger, or violence will not properly be considered before an off-duty officer is allowed to carry a concealed weapon.

**Response to Renotice Comment #1A:** Although the comment does pertain to some aspect of the proposed regulations, the comment is of such a generalized nature that no meaningful response can be formulated to refute or accommodate it.

**Renotice Comment 1B:** Commenter states that many people without a history of conditions have committed mass murders with firearms and explosives, and that it is easy to slip below the radar and pass qualification for a concealed weapon. Commenter adds that they have met and observed numerous CDCR officers who pose a risk of violent behavior with a firearm, and commenter states that they have seen several inmates killed or injured by these so called "qualified officers."

**Response to Renotice Comment 1B:** Although the comment does pertain to some aspect of the proposed regulations, the comment is of such a generalized nature that no meaningful response can be formulated to refute or accommodate it.

**Renotice Comment 1C:** Commenter states that no officer should carry a concealed weapon after drinking alcohol or taking drugs of any quantity.

**Response to Renotice Comment 1C:** The proposed regulations are in compliance with California law and require training for CDCR peace officers in the responsibilities of carrying off-duty concealed firearms as well as their safe handling and storage. CDCR does not condone the carrying of a firearm while consuming any substance which has impaired its employee's judgment or skills. Such acts will be cause for disciplinary action.