



Department of Corrections and Rehabilitation NOTICE OF CHANGE TO REGULATIONS

Sections: 3404	NCR Number: 23-16	Publication Date: January 5, 2024	Effective Date: To be Determined
--------------------------	-----------------------------	---	--

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendment of Section 3404 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding the Hiring of Ex-Offenders.

PUBLIC COMMENT PERIOD

The public comment period will close on **February 22, 2024**. Any person may submit written comments about the proposed regulations by mail to the California Department of Corrections and Rehabilitation (CDCR), Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received or postmarked no later than **February 22, 2024**.

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held on **February 22, 2024**, from **10:00 a.m. to 11:00 a.m.** in Room 150, located at 1515 S Street, Sacramento, CA 95811. The purpose of the hearing is to receive comments about these proposed regulations. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written comments submitted during the prescribed comment period are given the same significance and weight as oral comments presented at the hearing. This hearing site is accessible to the mobility impaired.

POSTING

This Notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each department facility and field office not later than five calendar days after receipt. Also, institutions and facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. CDCR Form 621-A (Rev. 05/19), Certification of Posting, shall be returned to RPMB by mail or email. See Department Operations Manual Section 12010.6.7 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this Notice should be directed to Renee Rodriguez, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 916-445-2220, or e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to Matthew Freeland, Division of Adult Institutions, at (916) 324-7001.

Original signed by:

TAMMY FOSS
Undersecretary, Operations
California Department of Corrections and Rehabilitation

Attachments

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

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or department), proposes to amend section 3404 of Title 15, Division 3, Chapter 1, regarding the Hiring of Ex-Offenders.

PUBLIC COMMENT PERIOD

The public comment period begins **January 5, 2024** and closes on **February 22, 2024**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rpmb@cdcr.ca.gov, before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

CONTACT PERSONS

Primary Contact

Renee Rodriguez
Telephone: 916-445-2220
Regulation and Policy
Management Branch
P.O. Box 942883
Sacramento, CA 94283-0001

Back-Up

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

Program Contact

Matthew Freeland
Telephone: 916-324-7001
Division of Adult Institutions
P.O. Box 94283-0001
Sacramento, CA 94283-0001

PUBLIC HEARING

Date and Time:	February 22, 2024 – 10:00 a.m. to 11:00 a.m.
Place:	Department of Corrections and Rehabilitation Room 150 1515 S Street – North Building Sacramento, CA 95811

AUTHORITY AND REFERENCE

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

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

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

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The proposed regulations will eliminate the requirement of written approval by the Secretary for consecutive or promotional appointments of ex-offenders. Existing regulations require approval of the Secretary for all appointments of ex-offenders, whether for initial appointment or subsequent appointment by lateral transfer or promotion. The proposed regulations will still require the Secretary's written approval for initial appointment of an ex-offender, but will not require Secretary's approval for consecutive (lateral transfer) or promotional appointment, unless the position will require an ex-offender to be assigned to an area which enables access to employee records or inmate personal or medical information.

This action will:

- Remove the need for signed authorization by the Secretary for consecutive or promotional appointments of ex-offenders, except as identified in subsection 3404(b).
- Streamline the hiring process for ex-offenders by reducing redundant processes and improving administrative efficiency.

DOCUMENTS INCORPORATED BY REFERENCE

None

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The department anticipates the proposed regulations will benefit existing employees with ex-offender status seeking to promote or transfer within the department, by eliminating unnecessary steps from the hiring process, consequently removing a potential barrier to success for ex-offenders.

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the department has concluded that these are the only regulations that concern the hiring of ex-offenders.

LOCAL MANDATES

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

FISCAL IMPACT STATEMENT

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

EFFECT ON HOUSING COSTS

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

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of

California businesses to compete with businesses in other states, because the proposed regulations place no obligations or requirements on any business.

EFFECT ON SMALL BUSINESSES

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

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California. The benefits to the health and welfare of California residents are specifically to employees who are ex-offenders who will potentially gain from the removal of administrative approval requirements that could otherwise be barriers to their success. The department has determined that the proposed regulation will have no effect on worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

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

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

AVAILABILITY OF CHANGES TO PROPOSED TEXT

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

TEXT OF PROPOSED REGULATIONS

In the following text, ~~strikethrough~~ indicates deleted text; underline indicates added text.

California Code of Regulations, Title 15, Crime Prevention and Corrections

Division 3. Adult Institutions, Programs, and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 5. Personnel

Article 2. Employees

Section 3404. Hiring of Ex-Offenders.

Subsection 3404(a) is amended to read:

(a) The Secretary's written approval is required for the initial appointment of an ex-offender to any position within the department.

Subsection 3404(b) is unchanged, but shown for reference.

(b) Ex-offenders shall not, without the Secretary's written approval, be assigned to areas which enable them to access:

- (1) Employee records.
- (2) Inmate personal or medical information.

New subsection 3404(c) is adopted to read:

(c) After an ex-offender's initial appointment, the Secretary's written approval shall not be required for appointment to any consecutive or promotional position within the department, except as identified in subsection 3404(b).

Existing subsection 3404(c) is renumbered to 3404(d), but is otherwise unchanged.

(~~ed~~) An ex-offender shall not be appointed to any position requiring a background clearance until such clearance is received.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR or the department) proposes to amend Section 3404 of the California Code of Regulations (CCR), Title 15, Division 3, regarding the hiring of ex-offenders. The proposed regulations will eliminate the requirement of written approval by the Secretary for consecutive or promotional appointments of ex-offenders, except as identified in subsection 3404(b).

Existing regulations require approval of the Secretary for all appointments of ex-offenders, whether for initial appointment or subsequent appointment by lateral transfer or promotion. The proposed regulations will still require the Secretary's written approval for initial appointment of an ex-offender, but will not require the Secretary's approval for consecutive (lateral transfer) or promotional appointment, unless the position will require an ex-offender to be assigned to an area which enables access to employee records or inmate personal or medical information.

CONSIDERATION OF ALTERNATIVES:

In accordance with Government Code Section 11346.5(a)(13), the department must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Currently, no reasonable alternatives have been brought to the attention of the department that would alter the department's initial determination.

ECONOMIC IMPACT ASSESSMENT:

In accordance with Government Code Section 11346.3(b), the department has made the following assessments regarding the proposed regulations: This action will not have a significant adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations place no obligations or requirements on any business.

Significant Adverse Economic Impact on Business

The department has made an initial determination that the proposed regulatory action will not have a significant adverse economic impact on business. Additionally, there have been no facts, evidence, documents, testimony, or other evidence provided that would alter the department's initial determination. The proposed regulations do not have a direct impact on California businesses as the proposed regulations affect the internal management of CDCR only.

Creation of New or the Elimination of Existing Jobs within the State of California

The department has determined that the proposed regulations will not have an impact on the creation of new or the elimination of existing jobs within California as the proposed regulations affect the internal management of CDCR only.

Creation of New, Expansion or the Elimination of Existing Businesses Currently Doing Business within the State of California

The department has determined that the proposed regulations will not have an impact on the creation of new or elimination of existing businesses within California or affect the expansion of businesses currently doing business in California as the proposed regulations affect the internal management of the CDCR only.

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

The department has determined that the proposed regulations will have no impact on the health and welfare of California residents, worker safety, or the State's environment.

BENEFITS OF THE REGULATIONS:

The department anticipates the proposed regulations will benefit existing employees with ex-offender status seeking to promote or transfer within the department, by eliminating unnecessary steps from the hiring process, consequently removing a potential barrier to success for ex-offenders. Reducing redundant processes and improving administrative efficiency will save time for both the department and employees.

MATERIALS RELIED UPON:

In proposing additions and amendments to these regulations, the department has neither identified, nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

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

Subsection 3404(a) is amended to specify that the Secretary's written approval is required only for the "initial" appointment of an ex-offender "to any position within the department." This change is necessary to eliminate unnecessary hiring steps as the department has determined there is no increased risk to safety or security to departmental facilities, staff, or the incarcerated population by removing the requirement of the Secretary's approval for consecutive or promotional appointments outside of the exceptional criteria identified in subsection 3404(b).

New subsection 3404(c) is adopted to clarify that appointment to any consecutive or promotional position within the department shall not require the Secretary's written approval unless the exceptional criteria identified in subsection 3404(b) apply. This change is necessary because it allows for the Secretary's initial approval to hire an ex-offender to be sufficient for future consecutive appointments (lateral transfer) or promotions without additional Secretary review or approval, unless assigned to areas identified in subsection 3404(b). This amendment improves administrative efficiency by eliminating unnecessary steps from the hiring process consequently removing a potential barrier to success for ex-offenders.

Existing subsection 3404(c) is renumbered to 3404(d) due to the proposed adoption of new subsection 3404(c), but is otherwise unchanged.