



Department of Corrections and Rehabilitation

NOTICE OF CHANGE TO REGULATIONS

Sections:	NCR Number:	Publication Date:	Effective Date:
3298, 3298.1, 3298.2	24-01	January 26, 2024	To Be Determined

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed adoption of sections 3298, 3298.1 and 3298.2 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding Hunger Strike.

PUBLIC COMMENT PERIOD

The public comment period will close on **March 13, 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 **March 13, 2024**.

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held on **March 13, 2024**, from 10:00 a.m. to 11:00 a.m. in Room 150N, located at 1515 S Street, Sacramento, CA 95811. The purpose of the hearing is to receive comments about the 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 A. Colavita, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 322-8344, or e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to T. Ramsey, Division of Adult Institutions (DAI), at (916) 445-8282.

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 the department), proposes to adopt sections 3298, 3298.1 and 3298.2 into Title 15, Division 3, Chapter 1, regarding Hunger Strikes.

PUBLIC COMMENT PERIOD

The public comment period begins **January 26, 2024** and closes on **March 13, 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

A. Colavita
Telephone: (916) 322-8344
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 Contacts

T. Ramsey
Telephone: (916) 445-8282
Division of Adult Institutions
P.O. Box 942883
Sacramento, CA 94283-0001

PUBLIC HEARING

Date and Time: **March 13, 2024 – 10:00 a.m. to 11:00 a.m.**
Place: Department of Corrections and Rehabilitation
Room 150N
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 include establishing the rules custody staff shall follow when incarcerated persons engage in hunger strikes.

This action will:

- Define hunger strike terms for clarity to ensure understanding of terms and standardized usage.
- Require use of new CDCR Form 128-HS, Initial Hunger Strike Chrono (12/23) to capture important data that will be utilized by health care and custody staff.

DOCUMENTS INCORPORATED BY REFERENCE

- CDCR Form 128-HS (12/23), Initial Hunger Strike Chrono.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

Defining hunger strike terminology and providing departmental rules for hunger strikes resolves ambiguities and clarifies standardized processes for department staff. CDCR Form 128-HS will capture important data regarding the reasons why an incarcerated person is on hunger strike, which will be utilized by health care and custody staff to help resolve and prevent future hunger strikes.

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 Hunger Strikes.

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 this action will not have a significant statewide adverse economic impact on business, including the ability of California businesses to compete with businesses in other states because the proposed regulations affect the internal management of CDCR only, and place no requirements or restrictions on businesses.

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, or effect the expansion of businesses currently doing business in California. The department has determined that the proposed regulation will have no effect on worker safety or the state's environment.

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, underline indicates newly added text.

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

Division 3. Adult Institutions, Programs, and Parole

Subchapter 4. General Institution Regulations.

New Article 3.5 is adopted to read:

Article 3.5. Hunger Strike

New section 3298 is adopted to read:

3298. Definitions

The following terms are defined for the purposes of this section:

(a) Hunger Strike is a method of non-violent resistance or pressure in which an incarcerated person refuses to consume food or fluids with the objective of achieving a specific goal.

(b) Hunger Strike Participant is an incarcerated person who has refused nine consecutive meals, either individually or as part of a mass hunger strike, with the objective of achieving a specific goal.

(c) Initiation of Hunger Strike is the day the incarcerated person has refused their ninth consecutive meal.

(d) Mass Hunger Strike is three or more hunger strike participants assigned to an area united with a common goal or set of demands disrupting institution operations and requiring statewide or institutional mobilization.

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

New section 3298.1 is adopted to read:

3298.1. Individual Hunger Strike

(a) When a staff member becomes aware of an incarcerated person who has refused nine consecutive meals, they shall immediately notify the respective facility or unit Sergeant or Lieutenant where the hunger strike participant is housed.

(b) The same day, the facility or unit Sergeant or Lieutenant shall interview the hunger strike participant, shall make every effort to resolve the hunger strike, and shall document initial hunger strike information on CDCR Form 128-HS (12/23), Initial Hunger Strike Chrono, which is incorporated by reference.

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

New section 3298.2 is adopted to read:

3298.2. Mass Hunger Strike

During a mass hunger strike, institutions shall follow the procedure detailed in section 3298.1 for each individual hunger strike participant.

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

INITIAL HUNGER STRIKE CHRONO
 CDCR 128-HS (12/23)

NAME

CDCR#

HOUSING

MH LEVEL OF CARE

DDP CODE

DPP CODE

Instructions

This Chrono shall be utilized in the following scenarios:

1. Incarcerated person refused nine consecutive meals.
2. Incarcerated person participating in an individual or mass hunger strike.

The following shall happen:

1. Immediately notify the respective Facility (or Unit) Sergeant, or Lieutenant where the incarcerated person is housed. The Lieutenant will in turn notify their Facility (or Unit) Captain, or Administrator of the Day (AOD) during non-business hours. **The Associate Director (AD) of their respective mission, shall be notified no later than 24 hours or the first business day of all hunger strikes.**
2. Document the date, time of discovery by staff, and first meal missed on this CDCR 128-HS. In the case of mass hunger strike, document this information on this form (one per participating incarcerated person), as well as in an Incident Report in Strategic Offender Management System. If the hunger strike occurs in a Restricted Housing Unit, document meal refusals on the Automated Restricted Housing Record.
3. Refer the incarcerated person for an urgent Mental Health referral.
4. Once this form is completed, a copy shall be sent to the Facility (or Unit) Captain, or Associate Warden (AW), Warden, incarcerated person's Facility (or Unit) Clinic Registered Nurse (RN), Chief Executive Office (CEO), Chief Medical Executive (CME), Chief Nurse Executive (CNE), Chief of Mental Health (CMH), Chief Psychiatrist, Records, Public Information Officer (PIO) and if after hours or on weekends or holidays, the Triage Treatment Area (TTA) nursing staff. A copy shall also be filed in the Electronic Health Records Systems (EHRS), Electronic Records Management System (ERMS), and sent the hunger strike email distribution list. Subject of email shall state, "Hunger strike, incarcerated person's name, CDCR number and housing unit".
5. Answer all questions on this form.

Additional space for comments is provided at the end of this Chrono.

Date:

INITIAL HUNGER STRIKE CHRONO

Institution or Facility:

NAME

CDCR#

HOUSING

MH LEVEL OF CARE

DDP CODE

DPP CODE

1. Hunger Strike Participant Interview:

- a) What is the reason for the hunger strike? _____
- b) What is the incarcerated person requesting to end their hunger strike? _____
- c) When was the last meal the incarcerated person consumed (Date/meal)? _____
- d) Has the incarcerated person participated in past hunger strikes in the past 12 months?
- 1) If yes, how many? _____
- 2) When did the prior hunger strike(s) occur? _____
- 3) What were the reasons? _____

2. Incarcerated Person Information:

- | | YES | NO | REFUSED |
|--------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|
| a) Was the incarcerated person weighed? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| If yes, Date: _____ Time: _____ Weight: _____ | | | |
| b) Is the incarcerated person still drinking water or liquids? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| If no, notify Facility (or Unit) Captain, or AW. | | | |
| c) Were the incarcerated person's vital signs checked? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Date: _____ By who: _____ | | | |
| d) Is the incarcerated person taking medication as prescribed? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

3. Canteen

- | | YES | NO | REFUSED |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|
| a) Have all food items been removed from the incarcerated person's cell? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Date: _____ By who: _____ | | | |
| b) Were the food items inventoried on a CDCR Form 1083, Inmate Property Inventory, or within the departmental approved record keeping system, and secured in an area where only the Supervisor or Property Officer has access? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Date:

INITIAL HUNGER STRIKE CHRONO

Institution or Facility:

DISTRIBUTION

Original: ERMS File **Copies:** Warden, Facility AW, Facility Captain, Facility Lieutenant, Unit AW, Unit Captain, Unit Lieutenant, PIO, CEO, CNE, CME, CMH, Chief Psychiatrist, Facility/Unit RN, EHRS, TTA, and Records

NAME

CDCR#

HOUSING

MH LEVEL OF CARE

DDP CODE

DPP CODE

4. Additional Information

- a) Unit Lieutenant notified by: **Name:** _____ **Date:** _____ **Time:** _____
- b) Watch Commander notified by: **Name:** _____ **Date:** _____ **Time:** _____
- c) Mental Health Referral Chrono
CDCR 128-MH5 requested by: **Name:** _____ **Date:** _____ **Time:** _____
- d) Email with CDCR Form 128-HS sent
by: **Name:** _____ **Date:** _____ **Time:** _____

Additional Comments:

Signature: _____

Name: _____

Title: _____

Date:

INITIAL HUNGER STRIKE CHRONO

Institution or Facility:

DISTRIBUTION

Original: ERMS File **Copies:** Warden, Facility AW, Facility Captain, Facility Lieutenant, Unit AW, Unit Captain, Unit Lieutenant, PIO, CEO, CNE, CME, CMH, Chief Psychiatrist, Facility/Unit RN, EHRS, TTA, and Records

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR or the department) proposes to adopt Article 3.5, sections 3298, 3298.1 and 3298.2, regarding hunger strikes, in the California Code of Regulations (CCR), Title 15, Division 3.

This adoption establishes departmental regulations for custody staff to follow when incarcerated persons engage in hunger strikes. It is the responsibility of the department to monitor the health and welfare of incarcerated persons, and to ensure procedures are pursued to preserve life. The department provides every incarcerated person three meals per day or as otherwise authorized by a physician. When an incarcerated person refuses nine consecutive meals with the objective of achieving a specific goal, they are on a hunger strike. Hunger strike participants shall be provided health care (including assessment, monitoring, and treatment), regardless of the reason for their hunger strike.

During a hunger strike, custody staff shall continue to offer every hunger strike participant their regular provision of state-issued food at every regularly scheduled meal serving time. Staff shall ensure hunger strike participants have access to water at all times. Every effort shall be made to promptly resolve the matter which led to the hunger strike, if applicable. CDCR Form 128-HS (12/23), Initial Hunger Strike Chrono, which is incorporated by reference in these regulations, is for statewide use to standardize the information recorded that relates to an incarcerated person while on hunger strike. A custody supervisor shall document information on CDCR Form 128-HS, such as the hunger strike participant's name and CDCR number, the reason(s) for the hunger strike, what the hunger strike participant is requesting to end the hunger strike, when the hunger strike participant initiated the hunger strike, and whether the hunger strike participant is refusing food, fluids, or both. Data collected from CDCR Form 128-HS is utilized by health care and custody staff to help resolve and prevent future hunger strikes.

Prior to the CDCR Form 128-HS, custody staff utilized the CDC Form 128-B (Rev. 4/74), General Chrono, to document the reason why an incarcerated person was on hunger strike. The CDC Form 128-B is a General Chrono that assists staff in documenting information about an incarcerated person, but the General Chrono lacks the specific data entry prompts related to a hunger strike that are now included in CDCR Form 128-HS.

CONSIDERATION OF ALTERNATIVES:

In accordance with Government Code section 11346.5, subdivision (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 the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, 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 CDCR that would alter CDCR's initial determination.

ECONOMIC IMPACT ASSESSMENT:

In accordance with Government Code Section 11346.3, subdivision (b), CDCR 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.

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

The department has determined the proposed regulations will not have an impact on the creation of new jobs or elimination of existing jobs within California as the proposed regulations affect the internal management of prisons only, and place no requirements or restrictions on businesses inside or outside of California.

Creation of New Businesses or Elimination or Expansion of Existing Businesses within the State of California

The department has determined the proposed regulations will not have an impact on the creation of new or the 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 prisons only, and place no requirements or restrictions on businesses inside or outside of California.

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

The department has determined the proposed regulations will have no impact on the health and welfare of California residents, other than improving CDCR incarcerated persons' lives by resolving hunger strikes in progress and preventing future hunger strikes with the data collected from previous hunger strikes. The proposed regulations will have no impact on worker safety or the State's environment, as the proposed regulations only affect the internal management of CDCR prisons.

Significant Adverse Economic Impact on Business

The department has made an initial determination that this action will not have a significant statewide adverse economic impact on business, including the ability of California businesses to compete with businesses in other states because the proposed regulations affect the internal management of CDCR only, and place no requirements or restrictions on businesses.

BENEFITS OF THE REGULATIONS:

Defining hunger strike terminology and providing departmental rules for hunger strikes resolves ambiguities and clarifies standardized processes for department staff. CDCR Form 128-HS will capture important data for the reason why an incarcerated person is on hunger strike, which will be utilized by health care and custody staff to help resolve and prevent future hunger strikes. Standardizing the initiation of a hunger strike also ensures staff are documenting every initial hunger strike accurately, and hunger strike participants are provided with mandated health care assessments, monitoring, and treatment to ensure the health and wellbeing of the incarcerated person.

FORMS INCORPORATED BY REFERENCE:

- CDCR Form 128-HS (12/23), Initial Hunger Strike Chrono

DOCUMENTS RELIED UPON:

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

LOCAL MANDATES:

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.

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

Section 3298 is adopted to define hunger strike, hunger strike participant, initiation of a hunger strike, and mass hunger strike. These definitions are necessary for clarity to ensure understanding of terms and standardized usage.

It is necessary to define hunger strike as non-violent resistance as the hunger strike participant is not inflicting suffering on others. The hunger strike definition also includes the objective to achieve a specific goal, as achieving or drawing attention to this goal is typically the primary purpose of a hunger strike.

An incarcerated person refusing nine consecutive meals defines both a hunger strike participant, and initiation of the hunger strike, because after 72 hours of not eating, it is necessary to provide the incarcerated person on hunger strike with mandated health care assessments, monitoring, and treatment to ensure the health and wellbeing of the incarcerated person. Additionally, refraining from eating for 72 hours is consistent with the definition of an incarcerated person on a hunger strike in the Code of Federal Regulations, Title 28, section 549.61.

It is necessary to define a mass hunger strike as including three or more hunger strike participants because it would disrupt facility operations and would require statewide or institutional mobilization to resolve.

Section 3298.1 is adopted to direct staff on the procedures they shall follow once they become aware of an incarcerated person on a hunger strike. This subsection incorporates by reference CDCR Form 128-HS (12/23), Initial Hunger Strike Chrono, and a copy is provided in this rulemaking. CDCR Form 128-HS is necessary to provide a standardized tool for capturing information related to each initial hunger strike participant. These regulations are necessary to provide statewide, standardized processes, and appropriate documentation that is required while an incarcerated person is on an individual hunger strike with the goal of capturing important data for the reason why an incarcerated person is on hunger strike. This data will be utilized by health care and custody staff to help resolve and prevent future hunger strikes.

Section 3298.2 is adopted to direct staff on the procedures they shall follow should there be a mass hunger strike. A custody supervisor shall document information relating to each individual incarcerated person who is participating in a mass hunger strike on a CDCR Form 128-HS. CDCR Form 128-HS is necessary to provide a standardized tool for capturing information related to each initial hunger strike participant. These regulations are necessary to provide statewide standardized processes, and appropriate documentation that is required while an incarcerated person is on a mass hunger strike with the goal of capturing important data for the reason why an incarcerated person is on hunger strike. This data will be utilized by health care and custody staff to help prevent future hunger strikes.