

**State of California
Office of Administrative Law**

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

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections:

Amend sections: 3315, 3044, 3090, 3176.4,
3177, 3190, 3269.1, 3375

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2024-0124-01

OAL Matter Type: Regular (S)

In this rulemaking action, the California Department of Corrections and Rehabilitation (CDCR) requires that inmates shall have an opportunity to review non-confidential audio and/or video recordings which are directly relevant to their alleged serious rules violation report at least twenty-four hours before a serious disciplinary hearing.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 7/1/2024.

Date: March 7, 2024



Sam Micon
Attorney

For: Kenneth J. Pogue
Director

Original: Jeffrey Macomber, Secretary
Copy: Dmitriy Kostyuk

NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

REGULAR

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2023-0908-02	REGULATORY ACTION NUMBER 2024-0124-015	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

OFFICE OF ADMIN. LAW
2024 JAN 24 PM1:54ENDORSED - FILED
in the office of the Secretary of State
of the State of California

MAR 07 2024

2:00 PM

AGENCY WITH RULEMAKING AUTHORITY

California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (If any)
23-23

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	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER 2023-39-Z	PUBLICATION DATE 9/29/23

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Audio & Video for Serious RVRs		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
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	
TITLE(S) 15		AMEND 3315, 3044, 3090, 3176.4, 3177, 3190, 3269.1, 3375	
REPEAL		PER AGENCY REQUEST SAM	
3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> 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)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify)			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal			
<input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Dmitriy Kostyuk		TELEPHONE NUMBER (916) 445-2276	FAX NUMBER (Optional) E-MAIL ADDRESS (Optional) Dmitriy.Kostyuk@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.

DocuSigned by: SIGNATURE OF AGENCY HEAD OR DESIGNEE Tammy Foss		DATE 1/22/2024
TYPED NAME AND TITLE OF SIGNATORY Tammy Foss, Undersecretary, Operations		

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 07 2024

Office of Administrative Law

TEXT OF ADOPTED REGULATIONS

In the following, all new language is indicated by underline and deleted text is indicated by ~~strikethrough~~.

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 4. General Institution Regulations

Article 5. Inmate Discipline

3315. Serious Rules Violations.

[Subsections 3315(a) through 3315(e) remain unchanged.]

[New subsection 3315(f) is adopted to read]:

(f) In addition to the California Code of Regulations Title 15, Division 3, section 3320(c)(1) criteria, prior to a disciplinary hearing for a serious Rules Violation Report (RVR), inmates shall have the opportunity to review non-confidential portions of audio or video recording(s) which are directly relevant to their serious RVR offense.

(1) Audio or video recording(s) reviewed by an inmate shall be considered as evidence and included in the disciplinary hearing process.

(2) The SHO shall not deny an inmate the ability to review non-confidential audio or video recording(s) unless it contains materials mentioned in subsection 3321 (a). Denial of confidential portions of audio or video recordings will be disclosed on the automated Confidential Information Disclosure Form (Rev. 7/23) which is hereby incorporated by reference.

(3) Inmates shall be allowed to review the audio or video recording(s) at least 24 hours prior to a serious disciplinary hearing, unless waived by the inmate in accordance with Title 15, section 3320(c)(2).

[Existing subsections 3315(f) through (i) are renumbered to 3315(g) through (j).]

[Renumbered subsection 3315(g)(5)(N)2. is amended to read:]

2. Second offense and subsequent offense violation(s) shall result in loss of any or all of the following for up to 180 days: canteen, appliances, inmate packages, telephone privileges, and personal property, and referral to a classification committee for review and determination for program failure. An inmate who is deemed a program failure by a classification committee is subject to having ~~his/her~~their personal property/appliances stored by the institution pending removal of program failure designation.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 295, 295.1, 295.2, 296, 296.1, 296.2, 297, 298, 298.1, 298.2, 298.3, 299, 299.5, 299.6, 299.7, 300, 300.1, 300.2, 300.3, 314, 530, 532, 646.9, 647, 653, 2931, 2932, 2933, 4501.1, 4573.6, 4576, 5054 and 5068, Penal Code.

Article 3.4. Inmate Work and Privileges

3044. Inmate Work Groups and Privilege Groups.

[Subsections 3044 (a) through 3044 (e) are unchanged.]

[Subsection 3044 (f)(1)(B)4. is amended to read:]

4. Upon adjudication of the RVR, the temporary Privilege Group C no longer applies and the Senior Hearing Officer may determine appropriate Privilege Group placement pursuant to subsection 3315(fg)(5)(C).

[Subsection 3044 (f)(1)(B)5. through 3044 (j) are unchanged.]

NOTE: Authority cited: Cal. Const., Art. I, Sec. 32(b); and Sections 2700, 2701 and 5058, Penal Code. Reference: Cal. Const., Art. I, Sec. 32(a)(2); Sections 2932, 2933, 2933.05, 2933.3, 2933.6, 2935, 5005, 5054 and 5068, Penal Code; and *In re Monigold*, 205 Cal.App.3d 1224 (1988).

Subchapter 2. Inmate Resources

Article 1. Canteens

3090. Inmate Canteen Establishment and Draw Limits.

[Subsections 3090 (a) through 3090 (c) are unchanged.]

[Subsection 3090 (d) is amended to read:]

(d) An inmate's trust account deductions for canteen purchases shall not be restricted beyond limits established by the Secretary for all inmates in like work groups, except by formal disciplinary action for a violation involving canteen or the intentional or negligent destruction, damage, or misuse of state property, for violations of subsections 3016(a), 3016(b), 3016(d), or 3290(d), or in accordance with subsections 3315(fg)(5)(K) and 3315(fg)(5)(M).

[Subsection 3090 (e) is unchanged.]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5005 and 5054, Penal Code.

Article 7. Visiting

3176.4. Restriction, Revocation or Suspension of an Inmate's Visits.

[Subsections 3176.4 (a) through 3176.4 (b) are unchanged.]

[Subsections 3176.4 (c) is amended to read:]

(c) Upon a finding of guilt of a drug related offense, as described in subsections 3323(c)(6) and/or 3323(d)(7), the official conducting a disciplinary hearing, shall suspend and restrict an inmate's visiting privileges pursuant to subsections 3315(fg)(5)(H) and 3315(fg)(5)(I).

[Subsections 3176.4 (d) through 3176.4 (g) are unchanged.]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2086, 2772, 2790, 4502, 4535, 4571, 4573, 4573.5, 4573.6 and 5054, Penal Code; and *In re French*, 106 Cal.App.3d 74 (1980).

3177. Family Visiting (Overnight).

[Subsection 3177 introduction through 3177 (b)(2)(F) are unchanged.]

[Subsection 3177 (b)(2)(G) is amended to read:]

(G) Guilty of distribution of a controlled substance while incarcerated in a state prison, under subsection 3016(d). Loss of family visiting (overnight) in accordance with subsection 3315(fg)(5)(H).

[Subsection 3177 (b)(3) through 3177 (g) are unchanged.]

NOTE: Authority cited: Sections 5058 and 6404, Penal Code. Reference: Section 297.5, Family Code; and Section 5054, Penal Code.

Article 9. Personal Property and Religious Personal Property

3190. General Policy.

[Subsection 3190 (a) through 3190 (m)(1) are unchanged.]

[Subsection 3190 (m)(2) is amended to read:]

(2) Inmates assigned to Privilege Group C may not possess entertainment appliances and/or a musical instrument. Inmates placed on Privilege Group C pursuant to a disciplinary action pursuant to subsections 3314(e)(3), 3315(fg)(5)(C), or classification committee action shall have the disallowed property stored at the inmate's institution.

Inmates assigned to Privilege Group C by a classification committee as a result of being deemed a program failure as defined in Section 3000 who receive one or more additional Administrative or Serious Rules Violation Reports shall be required to mail out, return, donate, or dispose of disallowed property in accordance with Subsection 3191(c).

[Subsection 3190 (m)(3) through 3190 (w) are unchanged.]

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 2086, 2601, 5006 and 5054, Penal Code; *In re Alcala*, Marin County Superior Court, No. 117925, December 20, 1984; *Armstrong v. Davis* Court Ordered Remedial Plan, Amended January 3, 2001; *In re Armstrong*, N.D. Cal, No. C 94-02307, March 20, 1998; and *Quine v. Beard*, No. C 14-02726 JST, *Rhoades v. Montgomery*, No. EHC01917, *Taylor v. Hubbard*, No. CV-00404-BAM PC, *Rouser v. White* Settlement Agreement, No. CV-0767-LKK-GGH(PC); and Religious Land Use and Institutionalized Persons Act, 42 United States Code Sections 2000cc et seq.

Subchapter 4. General Institution Regulations

Article 1.6. Inmate Housing

3269.1. Integrated Housing.

[Subsection 3269.1 (a) through 3269.1 (g) are unchanged.]

[Subsection 3269.1 (h) is amended to read:]

(h) The suspension of privileges based on a finding of guilt in a disciplinary hearing shall be assessed as set forth in subsections 3315(fg)(5)(M)1 and (M)2.

[Subsection 3269.1 (i) is unchanged:]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Johnson v. California* (2005) 543 U.S. 499 [125 S. Ct. 1141], remand of *Johnson v. California*, (9th Cir. 2007) [Dock. No. CV 95-1192 CBM(BQR)].

Article 10. Classification

3375. Classification Process.

[Subsection 3375 (a) through 3375 (b) are unchanged.]

[Subsection 3375 (c) is amended to read:]

(c) Each determination affecting an inmate's placement within an institution or facility, transfer between facilities, program participation, privilege groups, or custody designation

shall be made by a classification committee composed of staff knowledgeable in the classification process. Exceptions include waiting list placements and assignments to Cognitive Behavioral Interventions (CBI) which can be made without a classification committee action based upon a health care services referral; or a guilty finding pursuant to subsection 3315(fg)(5)(J)2. or 3315(fg)(5)(J)3.

[Subsection 3375 (d) through 3375 (l) are unchanged.]

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1203.8, 3020, 5054, 5068 and 11191, Penal Code; Sections 8550 and 8567, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *Wright v. Enomoto* (1976) 462 F. Supp. 397; *Stoneham v. Rushen* (1984) 156 Cal.App.3d 302; and *Castillo v. Alameida*, et al., (N.D. Cal., No. C94-2847).



CALIFORNIA DEPARTMENT OF
Corrections and Rehabilitation

CONFIDENTIAL INFORMATION DISCLOSURE FORM

CDC NUMBER:

INMATE NAME:

INSTITUTION:

1) Use of Confidential Information.

Information received from a confidential source(s) has been considered in the:

- a) ☐ CDC Form 115, Rules Violation Report (log number ____) dated ____ submitted by

STAFF NAME

TITLE

- b) ☐ CDC Form 114-D, Order and Hearing for Placement in Segregated Housing dated ____.

- c) ☐ Validation Package as a ____ of the ____ Security Threat Group.

2) Reliability of Source.

The identity of the source(s) cannot be disclosed without endangering the source(s) or the security of the institution.

This information is considered reliable because:

- a) ☐ This source has previously provided confidential information which proved to be true.
- b) ☐ Other confidential source has independently provided the same information.
- c) ☐ This source participated in and successfully completed a Polygraph examination.
- d) ☐ The information provided by the confidential source is self-incriminating.
- e) ☐ Part of the information provided is corroborated through investigation or by information provided by non-confidential sources.
- f) ☐ The confidential source is the victim.
- g) ☐ Other (Explain)

3) Disclosure of information received.

The information received indicated the following:

- 4) Type and current location of documentation, (i.e., CDC Form 128B of 5/15/2010 in the confidential section of the central file).

STAFF SIGNATURE

TITLE

DATE DISCLOSED

FINAL STATEMENT OF REASONS

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

UPDATES TO THE INITIAL STATEMENT OF REASONS:

On September 29, 2023, the California Department of Corrections and Rehabilitation (CDCR or the department) published the Notice of Change to Regulations for audio or video recordings during the disciplinary process, which began the public comment period. The department's Notice of Change to Regulations #23-10 was mailed the same day to individuals who had requested to be on the department's mailing list for regulation changes, was posted on the department's website, and copies were posted in CDCR institutions. Two written public comments were received during the public comment period. The comments are summarized and responded to below under the heading *Summaries and Responses to Written Public Comments Received During the Initial Comment Period*. A public hearing was held on November 20, 2023; there were no attendees.

After the public comment period closed, the department incorporated non-substantive changes within the California Code of Regulations (CCR) to update subsections that reference to 3315(f). Subsections that were amended to update the correct reference citation were, subsection 3044(f)(1)(B)4., 3090(d), 3176.4(c), 3177(b)(2)(G), 3190(m)(2), 3269.1(h) and 3375(c).

In the final text the department repealed the term "if they exist" in proposed subsection 3315 (f) and "or to stipulate" in proposed subsection 3315 (f)(2) due to this being superfluous language.

Additionally, the department is clarifying that it is currently using the CDCR Confidential Information Disclosure form in other places and the form being adopted in the rulemaking package is automating the existing form and making the following changes:

Inmate number has been replaced with CDC number. Inmate number and CDC number are the same identification numbers. The department has changed the name from inmate number to CDC number, therefore incorporated the change in the automated form.

Institution has been added as a fillable field because the database that maintains the automated forms is institutions based.

Part 1 option (a) "(log number)" was added as part of the automation of the form for consistency with record keeping.

Part 1 option (c) "validation package as a ____ of the ____ Security threat group adopted to connect the form to a validation package if applicable.

Part 2 option (b) in the adopted automated Information Disclosure Form was renumbered from (c), inadvertently during the automation process, and was non-substantively paraphrased.

Part 2 option (c) in the adopted automated Information Disclosure Form was renumbered from (b) inadvertently during the automation process and was left unchanged.

Part 2 option (d) substantively remained the same but amended to for equity compliance and removal of superfluous language.

Part 2 option (e) substantively remained the same but was amended to specify the type of sources.

Part 2 option (f) was amended to include “confidential source is the victim”, the necessity for this change is to keep the victim’s identity anonymous for their safety. Existing Part 2 option (f) stating “Other (Explain)” was renumbered to (g) and was unchanged.

Part 3 the terminology “if additional space need, attach another sheet.” was repealed due to the form being automated and will accommodate more space if required.

The adopted automated form does not have a distribution list at the bottom because it will automatically be distributed through the system.

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 department’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 (GC).

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.

The department, in proposing the adoption of these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

The department has relied upon the results of the Economic Impact Assessment, which can be found in the Notice of Proposed Regulations and is available for review as part of the rulemaking file.

It would be unduly cumbersome, expensive, and impractical to publish the automated Confidential Information Disclosure Form in the CCR, therefore the department is incorporating the by reference.

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

COMMENTS #1

Comment 1A: Commenter states that CDCR's existing due process obligations already requires the department to provide the accused inmates with video or audio evidence against them before a disciplinary hearing making the proposed regulations an insignificant change. Commenter cites court cases; *Wolff v. McDonnell*, 418 U.S.539, 566, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974), *Revis v. Diaz*, No. 18-15151 (9th Cir. Dec. 21, 2018), *Parnell v. Martinez*, No. 19-16393 (9th Cir. Sep. 16, 2020), *Wilkins v. Peters*, No.17-35657 (9th Cir. Apr. 16, 2018), *In re Adams*, No. C087521 (Cal. Ct. App. Mar. 27, 2020), *People v. Bland*, B284205 (Cal. Ct. App. Oct. 2, 2018) and *Bass v. Civil Serv. Bd. of Fresno*, F06383 I (Cal. Ct. App. Dec. 21, 2012) to support his comment.

Response to Comment 1A:

The commenter does not seem to be asking for any change to the proposed regulations. The proposed regulations establish that inmates shall have the opportunity to review audio or video recording(s) if they exist, directly relevant to their serious rules violation offense prior to a serious rules violation disciplinary hearing which will be provided by the Senior Hearing Officer (SHO). This change will ensure a fair and equitable disciplinary hearing process for inmates, by providing inmates with the opportunity to review all non-confidential portions of audio or video recording(s) (i.e. Audio-Visual Surveillance System (AVSS), Body Worn Cameras, etc.) directly relevant to the offense, at least 24 hours in advance of a serious rules violation hearing.

Comment 1B: Commenter states that the proposed regulations are an attempt to withhold evidence that the department deems "confidential information" as cited in CCR, Title 15, section 3321(a). Section 3321(a) includes the following five definitions of "confidential information:"

- "(1) Information which, if known to the inmate, would endanger the safety of any person.
- (2) Information which would jeopardize the security of the institution.
- (3) Specific medical or psychological information which, if known to the inmate, would be medically or psychologically detrimental to the inmate.
- (4) Information provided and classified confidential by another governmental agency.
- (5) A Security Threat Group debrief report, reviewed and approved by the debriefing subject, for placement in the confidential section of the central file."

Commenter believes three of the five definitions are incredibly vague. Specifically, the lack of parameters concerning what is or is not a security threat can include anything, and a security threat can be used to deny the accused access to audio and video evidence that they would use to defend themselves on the basis that the security threat is

confidential information. Commenter cites court cases *Melnik v. Dzurenda*, 14 F.4th 981 (9th Cir. 2021), and *Casey v. Lewis*, 837 F. Supp. 1009 (D. Ariz. 1993) to support his comment.

Response to Comment 1B:

The proposed regulations do not change any rules or regulations before a disciplinary hearing if the proposed regulations are implemented. The disciplinary process is not changing. The department has adopted statewide regulations regarding conduct that all institutions and staff shall adhere to.

The issue raised by the commenter is not directed at the rulemaking action in that the proposed regulatory change does not modify regulations that address confidential information. Regulations addressing confidential information are set forth in Title 15, CCR section 3321(a).

Comment 1C: Commenter states that the use of check boxes on the Confidential Information Disclosure Form allows CDCR to unilaterally conclude that revealing the source of information would pose a security risk without providing any further explanation. The prison disciplinary committee must establish the reliability of the information and explain why revealing the informant's name would be unsafe.

Commenter demands that CDCR live up to its legal obligations and provide inmates with access to all evidence, even that deemed confidential, used against them in disciplinary and parole hearings.

Response to Comment 1C:

The issue raised by the commenter is not directed at the rulemaking action in that the proposed regulatory change does not modify regulations that address confidential information. Regulations addressing confidential information are set forth in Title 15, CCR section 3321(a).

Although the comment is directed at the Notice of Change, the comment is of such a generalized nature that no meaningful response can be formulated to refute or accommodate the comment. The department maintains that it is fulfilling its legal obligations. If the department makes a determination the audio or video recording contains confidential portions, the confidential portions will not be provided as it could jeopardize the safety and security of the institution, other inmates, or staff. The inmate shall be provided a confidential disclosure form. The form provides the inmate with as much information without jeopardizing the safety of any person.

COMMENTS #2

Comment 2A: Commenter commends this regulatory change, which now provides an avenue for incarcerated people to review audio or video recording(s), if they exist, that are relevant to their serious rules violation offense prior to their disciplinary hearing. However, commenter is concerned about how staff determine what length of video

footage is “directly relevant” to the serious RVR event. For the process to be fair, this regulatory change must include clear guidance and expectations for CDCR staff regarding determinations of relevancy of the audio or video clips to the RVR event and there is a need to produce the complete and relevant clips as requested by the accused. Commenter notes that they have heard dozens of reports that the accused were provided only partial video footage for their RVR hearing, but not the entirety of the event. There are reports of multiple examples of CDCR staff producing incomplete or irrelevant clips of footage to dispel staff misconduct investigations. Commenter cites court cases, *Armstrong v. Newsom*, N.D. Cal., Case No. C94 2307 CW, and Joint Case Status Statement, November 15, 2023, ECF No. 3526.

Response to Comment 2A:

As provided in the proposed subsection 3315(f), inmates will “have the opportunity to review non-confidential portions of audio or video recordings if they exist, which are *directly relevant* to their serious RVR.” The Department believes this is clear enough to notify staff that they should not provide only partial video footage of the incident in question. Failure to adhere to the “directly relevant” standard set in 3315 would be a staff misconduct issue, and staff misconduct is addressed in 15 CCR section 3392.5.

Comment 2B: Commenter notes that the regulations provide an exception for cases where video is considered confidential pursuant to CCR Title 15, section 3321(a), which provides five types of confidential information (see Comment 1B for the list of five types of confidential information). Commenter is concerned about the broad power to deny access to video to incarcerated people under this exception if it is deemed to “jeopardize the security of the institution.” There have been reports from accused incarcerated persons that they are already being denied footage based on the footage being classified as confidential. This regulatory change must be accompanied by clear guidance and expectations for CDCR staff limiting and defining instances when staff might be able to exclude footage based on confidentiality.

Response to Comment 2B: See Response to Comment 1B.

If the department makes a determination the audio or video recording contains confidential portions, the confidential portions will not be provided as it could jeopardize the safety and security of the institution, other inmates, or staff. The inmate shall be provided a confidential disclosure form. The form provides the inmate with as much information without jeopardizing the safety of any person.

The issue raised by the commenter is not directed at the rulemaking action in that the proposed regulatory change does not modify regulations that address confidential information. Regulations addressing confidential information are set forth in Title 15, CCR section 3321(a).