

**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: 3000, 3312

Repeal sections:

NOTICE OF APPROVAL OF REGULATORY
ACTION

Government Code Section 11349.3

OAL Matter Number: 2024-0223-04

OAL Matter Type: Regular (S)

This regular rulemaking action by the California Department of Corrections and Rehabilitation amends sections 3000 and 3312 of Title 15 of the California Code of Regulations regarding the stacking of Rules Violation Reports.

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

Date: April 8, 2024



Jenifer Ryan
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Jeffrey Macomber, Secretary
Copy: Rachel Orr

NOTICE PUBLICATION/REGULATIONS

REGULAR

For use by Secretary of State only

STD. 400 (REV. 10/2019)

per agency request

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2023-0928-02	2024-0223	-04 S

For use by Office of Administrative Law (OAL) only

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

APR 08 2024 [Signature]

OFFICE OF ADMIN. LAW 2024 FEB 23 PM 3:26

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY
California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)
23-09

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

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2023 36-2	PUBLICATION DATE 9/8/23	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Stacking of Rules Violation Reports	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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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.) 3000 and 3312
TITLE(S) 15

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)
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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 Rachel Orr	TELEPHONE NUMBER (916) 445-2229	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Rachel.Orr@cdcr.ca.gov
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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.

DocuSigned by:
SIGNATURE OF AGENCY HEAD OR DESIGNEE
[Signature: Tammy Foss]
914C404835B04EA
TYPED NAME AND TITLE OF SIGNATORY
Tammy Foss, Undersecretary, Operations

DATE
2/7/2024

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 08 2024

Office of Administrative Law

TEXT OF ADOPTED REGULATIONS

In the following text, ~~strikethrough~~ indicates deleted text and underline indicates added or amended 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

Article 1. Behavior

Section 3000 is amended to alphabetically merge the definition below with existing definitions within the section and is amended to read:

Section 3000. Definitions.

Stacking means issuing multiple RVRs to an inmate for an event that warrants a single RVR, i.e., when there is a nexus between multiple rules violations that occur as a part of a single event.

NOTE: Authority cited: Sections 243(f)(4), 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 600, 646.9, 653, 832.5, 1170.05, 1203(b)(1), 1203.8, 1389, 2080, 2081.5, 2084, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3007.05, 3020, 3450, 3550, 4570, 4576, 5005, 5009, 5050, 5054, 5068, 7000 et seq., 7286.5, 11180 and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Sections 11007, 11351, 11352, 11378 and 11379, Health and Safety Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; *Madrid v. Cate* (USDC ND Cal. C90-3094 TEH); *Sassman v. Brown* (E.D. Cal. 2015) 99 F.Supp.3d 1223; *Mitchell v. Cate*, USDC ED 2:08-CV-01196-TLN-EFB; *In re Garcia* (2012) 202 Cal.App.4th 892; and *Quine v. Beard*, No. C 14-02726 JST.

Subchapter 4. General Institution Regulations

Article 5. Inmate Discipline

Section 3312. Disciplinary Methods.

Subsection 3312(a) is unchanged.

New Subsection 3312(b) is adopted to read:

(b) Stacking of RVRs is prohibited. If two or more rules violations are related during a single event, the inmate shall be charged with and issued a single RVR for the most serious of the related rules violations. Other related rules violation(s) shall be noted in the RVR as supporting evidence. When staff are authoring RVRs, staff shall ensure that they

are not stacking RVRs. The reviewing supervisor shall ensure that stacking of RVRs has not taken place.

Existing Subsection 3312(b) is renumbered to Subsection 3312(c) and amended to read:

~~(b)~~ (c) Chief Disciplinary Officer (CDO) Review of Disciplinary Actions. All disciplinary methods and actions shall be reviewed by the ~~chief disciplinary officer~~ CDO, who shall be the institution head or a designee not below the level of Correctional Aadministrator or Parole Aadministrator I.

Existing Subsection 3312(b)(1) is renumbered to Subsection 3312(c)(1) and amended to read:

(1) The ~~chief disciplinary officer~~ CDO shall affirm, reverse, or modify the disciplinary action ~~and/or credit forfeiture, or combine any of these actions.~~ The ~~chief disciplinary officer~~ CDO may order a different action, order a different method of discipline, dismiss a charge, order a rehearing of the charge, or combine any of these actions.

Existing Subsection 3312(b)(2) is renumbered to Subsection 3312(c)(2).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2932 and 5054, Penal Code.

FINAL STATEMENT OF REASONS

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

UPDATES TO THE INITIAL STATEMENT OF REASONS:

On September 8, 2023, the California Department of Corrections and Rehabilitation (CDCR or the department) published the Notice of Change to Regulations for Stacking of Rules Violation Reports, which began the public comment period. The department's Notice of Change to Regulations #23-09 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. The department received two comments. A public hearing was held on October 23, 2023; there were no attendees.

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. 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.

EXPLANATION OF CHANGES TO REGULATION TEXT

To clarify, the inclusion of the language "or combine any of these actions" in Subsection 3312(c)(1) serves as a replacement for the discretion of "and/or" now that "and/" has been deleted.

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

Commenter #1:

Comment 1: The commenter is an inmate and requests that the meaning of “stacking” be clarified. The commenter states that at the institution in which the commenter is housed, an inmate can be written up for the same offense every thirty days; the commenter inquires as to whether this would constitute “stacking.”

Response 1: The term “stacking” is defined in the proposed regulatory text and the department justified the definition thereof in the ISOR. The number of RVRs issued to an inmate for the same offence over a given period, e.g., 30 days, is outside the scope of the proposed regulations in that specific timeframes are not included in the definition of “stacking.” RVRs are issued on a case-by-case basis.

Commenter #2:

Comment 2: The commenter proposes PC Section 654 as an alternative to the proposed regulations, stating that this section “provides for certain prescriptions against multiple punishment.”

Response 2: Stacking of RVRs is prohibited, so in accordance with the definition established in these regulations, an inmate will not be charged with multiple RVRs for an event that warrants a single RVR. PC Section 654 is not applicable to the content of these regulations.