

**State of California
Office of Administrative Law**

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

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections: 3298

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2024-1016-02

OAL Matter Type: Regular Resubmittal (SR)

This resubmittal action adopts regulations for custody staff to follow when an incarcerated person engages in a hunger strike.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 11/26/2024.

Date: November 26, 2024



Digitally signed by Mark
Storm
Date: 2024.11.26 11:43:33
-08'00'

**Mark Storm
Senior Attorney**

**For: Kenneth J. Pogue
Director**

**Original: Jeffrey Macomber, Secretary
Copy: Alison Colavita**

RESUBMITTAL

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STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW
NOTICE PUBLICATION/REGULATION SUBMISSION

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2024-0110-01	REGULATORY ACTION NUMBER 2024-1016-02	EMERGENCY NUMBER SR
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

For use by Secretary of State only

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

NOV 26 2024
AB 1:54 PM

OFFICE OF ADMIN. LAW
2024 OCT 16 PM 3:44

AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation	AGENCY FILE NUMBER (If any) 23-18
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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 Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2024, 4-2	PUBLICATION DATE 1/26/24	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Hunger Strike	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2024-0517-03S
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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.)	ADOPT 3298
	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 checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)		<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<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"/> 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) 15-Day Renotice 04/17/24 - 05/02/24; Second 15-Day Renotice 09/06/24 - 09/22/24

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 Ally Colavita	TELEPHONE NUMBER (279) 223-2314	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Alison.Colavita@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
Tammy Foss

DATE
10/16/2024

TYPED NAME AND TITLE OF SIGNATORY
Tammy Foss, Undersecretary, Operations

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

NOV 26 2024

Office of Administrative Law

FINAL TEXT OF REGULATIONS

In the following text, underline indicates additional text and ~~strikethrough~~ indicates deleted 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. Hunger Strike.

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

(1) Hunger Strike Participant is an incarcerated person who has refused to consume any food, including canteen, for nine consecutive meals, either individually or as part of a mass hunger strike, with the objective of achieving a goal.

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

(b) When a staff member becomes aware of an incarcerated person who has refused to consume any food for nine consecutive meals, the staff member shall notify the respective facility or unit Sergeant or Lieutenant where the incarcerated person is housed prior to being relieved from duty.

(c) Prior to being relieved from duty, the facility or unit Sergeant or Lieutenant shall:

(1) Interview the incarcerated person,

(2) Make every effort to resolve the hunger strike, and

(3) Document initial hunger strike information on CDCR Form 128-HS (07/24), Initial Hunger Strike Chrono, which is incorporated by reference.

(d) If the hunger strike participant has resumed eating, the staff member who observed the incarcerated person eat shall document the conclusion of the hunger strike on a CDC Form 128-B (Rev. 04/74), General Chrono, which is incorporated by reference. The staff member shall complete and distribute the CDC Form 128-B to their supervisor, the facility or unit Sergeant or Lieutenant, and the clinic Registered Nurse or Health Care Staff designee prior to being relieved of duty.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and Section 549.61, Title 28, Code of Federal Regulations.

NAME

CDCR#

HOUSING

MH LEVEL OF CARE

DDP CODE

DPP CODE

Instructions

This Chrono shall be utilized when incarcerated person refused nine consecutive meals.

The following shall happen:

1. The respective facility (or unit) Sergeant, or Lieutenant where the incarcerated person is housed shall complete this form and interview the incarcerated person prior to being relieved of duty. The Lieutenant shall 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 of all hunger strikes no later than 24 hours or one business day after an incarcerated person has refused nine consecutive meals.**
2. Document the date, time of discovery by staff, and first meal missed on this CDCR 128-HS. 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 a Mental Health Assessment to be completed within 72 hours of referral.
4. Answer all questions on this form.
5. 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 Officer (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 send the completed form as an email attachment to the hunger strike email distribution list. Subject of email shall state, "Hunger strike, incarcerated person's name, CDCR number and housing unit".

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? ☐ ☐ ☐

If yes, Date: _____ Time: _____ Weight: _____

- b) Is the incarcerated person still drinking water or liquids? ☐ ☐ ☐

If no, notify Facility (or Unit) Captain, or AW.

- c) Were the incarcerated person's vital signs checked? ☐ ☐ ☐

Date: _____ By whom: _____

- d) Is the incarcerated person taking medication as prescribed? ☐ ☐ ☐

3. Canteen

- a) All food items shall be removed from the incarcerated person's cell and inventoried within the departmental approved record keeping system, and secured in an area where only the Supervisor or Property Officer has access. Inventory completed and food items secured by:

Name: _____ Date: _____ Time: _____

Date:

INITIAL HUNGER STRIKE CHRONO

Institution or Facility:

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:

FINAL STATEMENT OF REASONS

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

UPDATES TO THE INITIAL STATEMENT OF REASONS:

On January 26, 2024, the California Department of Corrections and Rehabilitation (CDCR or the department) published the Notice of Change to Regulations for hunger strike, which began the public comment period. The department's Notice of Change to Regulations #24-01 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 March 13, 2024; there were no attendees.

After publication of the Notice of Proposed Regulations, it was determined that additional changes to the proposed regulations were necessary. The amendments to the originally proposed text and the reasons for these revisions are explained below under the heading Notice of Change to Text as Originally Proposed – Renotice. The Notice of Change to Text as Originally Proposed (Renotice) was distributed on April 17, 2024, to those who provided comments during the public comment period or expressed an interest in receiving notice of changes to the proposed regulations concerning Hunger Strike, and was posted on the department's website the same day. The department accepted public comments from this date through May 2, 2024. The department received one comment during the Renotice comment period, which is included below under Summaries and Responses to the 15-Day Renotice Comment Period.

After publication of the first 15-Day Renotice, it was determined that additional changes were necessary to address clarity and consistency issues in the regulation text, CDCR Form 128-HS, and ISOR. The changes were presented to the public by issuance of a second 15-Day Renotice which also included an Addendum to the Initial Statement of Reasons to further explain the necessity for each of the changes reflected in the Notice of Change to Text as Originally Proposed – Second 15-Day Renotice. The second 15-Day Renotice was distributed on September 6, 2024, to those who provided comments during the public comment periods and was posted to the department's website the same day. The department accepted public comments from this date through September 22, 2024. No comments were received during this period.

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.

NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED – RENOTICE:

Section 3298 is renumbered to add “(a)” to the first paragraph, which resulted in a renumbering of subsequent subsections in this section.

Subsection 3298(a), the word “section” was replaced with “article” to clarify that the definitions apply to Article 3.5, not just the section.

Subsection 3298(a)(1), “or fluids” was removed from the definition of a hunger strike to clarify that refusing fluids would not be considered a hunger strike.

Subsection 3298.2 is renumbered to add “(a)” to be consistent with other numbering within Title 15.

Revisions to CDCR Form 128-HS, Initial Hunger Strike Chrono:

After further review, the department determined that an additional revision to the CDCR Form 128-HS was necessary for clarity and corrective purposes. CDCR Form 128-HS instruction number “3” on page 1, which read “Refer the incarcerated person for an urgent Mental Health referral,” is revised to “Refer the incarcerated person for a Mental Health Assessment to be completed within 72 hours of referral.” This revision is necessary to clarify the time frame for completion of the Mental Health Assessment. Additionally, this revision aligns with existing regulations in CCR Title 15, Division 3, Chapter 2, subsection 3999.427(c)(3)(B), which states that when custody staff identifies that an incarcerated person is a hunger strike participant, “Within 72 hours, mental health staff shall conduct a mental health evaluation for patients in the Mental Health Services Delivery System (MHSDS) or Developmental Disability Program (DDP).”

NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED – SECOND RENOTICE:

Subsections 3298(a) through (a)(2) are adopted to define hunger strike participant and initiation of a hunger strike. Originally proposed definitions of hunger strike and mass hunger strike are deleted.

Formerly proposed section 3298.1 is now integrated into section 3298, with the subsequent addition of subsections 3298(b) through (d).

Formerly proposed subsection 3298.1(a) is now 3298(b) and is amended to add the language “prior to being relieved from duty” and delete “immediately.” The language “on a hunger strike” is deleted.

Formerly proposed subsection 3298.1(b) is moved to subsection 3298(c). The existing proposed subsection text is subdivided into subsections 3298(c) through (c)(3). Due to the subdivision of the 3298(c) into a list, the following edits are made for proper grammar and word usage: the lowercase “i” in subsection (c)(1) is changed to an uppercase “I” and the word “shall” is deleted, the lowercase “m” in subsection (c)(2) is changed to an uppercase “M” and the word “shall” is deleted, and the lowercase “d” in subsection (c)(3) is changed to an uppercase “D.” Subsection 3298(c) is further amended to add the language “As soon as practical, prior to being relieved from duty” and delete “The same day.” The term “hunger strike participant” is deleted and replaced with “incarcerated person.”

Subsection 3298(d) is adopted to direct staff on the procedures they shall follow if the staff member observes the hunger strike participant consume food, and ending their hunger strike.

Formerly proposed section 3298.2 regarding mass hunger strikes is deleted.

Revisions to CDCR Form 128-HS, Initial Hunger Strike Chrono:

After further review, the department determined that an additional revision to the CDCR 128-HS was necessary for clarity and corrective purposes. CDCR 128-HS has been revised from the originally noticed form by changing the Instructions introduction on page 1, which read “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.” to “This Chrono shall be utilized when incarcerated person refused nine consecutive meals.”

CDCR 128-HS instruction number “1” on page 1, which read “Immediately notify the respective Facility (or Unit) Sergeant, or Lieutenant where the incarcerated person is housed,” to “The respective Facility (or Unit) Sergeant, or Lieutenant where the incarcerated person is housed shall complete this form and interview the incarcerated person as soon as practical, prior to being relieved of duty.”

CDCR 128-HS instruction number “2” on page 1 has the following verbiage deleted: “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.” This deletion is necessary as the procedures for a mass hunger strike do not differ from an individual hunger strike, and the removal of mass hunger strike from the regulation text should be consistent with the form text.

CDCR 128-HS instruction number “3” on page 1, which read “Refer the incarcerated person for an urgent Mental Health referral,” to “Refer the incarcerated person for a Mental Health Assessment to be completed within 72 hours of referral.”

CDCR 128-HS instruction number “4” is renumbered to “5” and originally proposed number “5” is renumbered to “4.”

CDCR 128-HS instruction number “5” on page 1, which read “and sent the hunger strike email distribution list,” is changed to “and send the completed form as an email attachment to the hunger strike email distribution list.”

CDCR Form 128-HS prompt “3” regarding Canteen on page 2, read as “yes” or “no” questions regarding canteen food removal (in section “a”) and the completion of a property inventory and securing the property (in section “b”), is revised to a single directive “a” to staff to remove food items from the incarcerated person’s cell, inventory the items, and secure the items in a limited access area.

Addendum – Initial Statement of Reasons:

After publication of the initial Notice of Change to Text as Originally Proposed and also the 15-Day Renotice Text of Proposed Regulations, it was determined that revisions to the ISOR were necessary for correction purposes and to further comply with the Necessity and Clarity standards of the Administrative Procedure Act (APA). The Addendum to the ISOR is incorporated by reference.

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

COMMENTER #1

Comment: Commenter states that the definition in the proposed regulations of “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,” does not account for an individual’s decision-making capacity. Commentor states that adding decision-making capacity would align with other definitions of Hunger Strike as presented in the attachment *The physician and prison hunger strikes: reflecting on the experience in Turkey*, Oguz & Miles, 2005.

Commentor states that proposed CDCR Form 128-HS, Initial Hunger Strike Chrono, and its content presume that all food refusals for nine consecutive days are, by default, a

hunger strike. Commentor states that the title of the form suggests that the requirement of an “objective” is incidental, and the form assumes that all food refusal is done by individuals with decision-making capacity. The commentor further states that the determinations of decision-making capacity are the province of physicians and licensed mental health professionals.

The commentor requests that the department amend both the regulations and CDCR Form 128-HS to include a definition of “Food Refusal” and reserve “Hunger Strike” to describe food refusal among capacitated people who have an “objective.” The commentor also requested that CDCR Form 128-HS include a checkbox regarding consultation with a physician or medical health care professional regarding the decision-making capacity of the incarcerated person, and that officers do not automatically remove food from the cells of incarcerated people who do not possess decision-making capacity.

Commenter states that the department should consider the risks of misclassifying a “Food Refusal” as “Hunger Strike,” which includes: 1) misclassifying a food refusal due to a mental or physical illness poses the risk of discrimination; 2) the increased legal exposure of interviewing officers drawing conclusions beyond their scope instead of the decision being made by a health care professional; and 3) the possible punishment of people without capacity and the implications to *Coleman v. Newsom*.

Response to Comment: The department did not include the definition of “food refusal” within these regulations due to food refusal not being recognized as a hunger strike, as a hunger strike requires an objective of achieving a specific goal. The instructions section of CDCR Form 128-HS, Initial Hunger Strike Chrono, directs staff to refer the incarcerated person for a mental health assessment who has refused nine consecutive meals, and section “4.c)” of CDCR Form 128-HS requires the staff name, date, and time a Mental Health Referral Chrono was requested. Additionally, sections “1.a)” and “1.b)” of CDCR Form 128-HS is prompting staff to try and determine the goal for the hunger strike by indicating the reason for the hunger strike (“1.a”), and what the incarcerated person is requesting in order to end their hunger strike (“1.b”). CDCR Form 128-HS is distributed to medical staff for review. If medical staff determine that the incarcerated person is not eating due to mental health reasons, the incarcerated person will not be considered as a hunger strike participant and will be under the care of medical staff.

COMMENTER #2

Comment 2A: Commenter asks that the definition of hunger strike include flexibility to (1) clarify that nine missed meals is ordinarily, but not exclusively, the threshold for a hunger strike, and (2) that staff have the discretion to initiate a hunger strike sooner than nine missed meals in order to start the hunger strike procedures sooner, specifically the medical and mental health evaluations.

Response to Comment 2A: CCR, Title 15, section 3050 requires incarcerated persons to be provided 3 meals each day, therefore 9 meals equate to 72 hours, which is the ordinary threshold for a hunger strike in the Code of Federal Regulations. Tracking meal

counts is an efficient and clear way for staff to monitor potential hunger strike participants, and decreases the likelihood of any mistakes. The threshold of nine missed meals also provides clarity to the incarcerated population for when a hunger strike is initiated. Staff always have the ability and the obligation to initiate a medical or mental health evaluation, should the situation warrant it, regardless of whether an incarcerated person is a hunger strike participant or not. Staff can complete a CDCR Form 128-MH5, Mental Health Referral Chrono, to initiate a mental health evaluation at any time and does not need to wait the 72 hours (nine missed meals) for the initiation of a hunger strike. CDCR Form 128-MH has “Poor appetite” as a reason for a mental health referral.

Comment 2B: Commenter asks that the definition of hunger strike makes clear that a no-fluids strike warrants the attention and evaluations sooner than a standard hunger strike.

Response to Comment 2B: The comment is fully accommodated. Subsection 3298(a)(1), “or fluids” was removed from the definition of a hunger strike to clarify that refusing fluids would not be considered a hunger strike. Should an incarcerated individual refuse fluids, staff would notify medical or mental health and submit an urgent referral for evaluation.

Comment 2C: Commenter asks, does a mental health evaluation start (a) 72 hours after the first meal, or (b) 72 hours after the incarcerated person misses their ninth meal (6 days before a mental health evaluation)?

Response to Comment 2C: The comment is fully accommodated. CDCR Form 128-HS instruction number “3” on page 1, which read “Refer the incarcerated person for an urgent Mental Health referral,” is revised to “Refer the incarcerated person for a Mental Health Assessment to be completed within 72 hours of referral.” Therefore, the hunger strike participant shall have a mental health evaluation within 72-hours after their ninth missed meal. This 72-hour mental health assessment timeframe aligns with existing regulations in CCR Title 15, Division 3, Chapter 2, subsection 3999.427(c)(3)(B), which states that when custody staff identifies that an incarcerated person is a hunger strike participant, “Within 72 hours, mental health staff shall conduct a mental health evaluation for patients in the Mental Health Services Delivery System (MHSDS) or Developmental Disability Program (DDP).”

Comment 2D: Commenter states that in June 2023 they received a draft of the Health Care Department Operations Manual (HCDOM) section 4.1.1. Hunger Strike or Food Refusal Event, which states that incarcerated people in inpatient settings should be evaluated sooner. The commentor asks that sooner evaluations for patients in the Enhanced Outpatient Program (“EOP”) be incorporated into these regulations.

Response to Comment 2D: This is a draft policy for the California Correctional Health Care Services (CCHCS) and not a regulation. The threshold for initiation of a hunger strike and a mental health referral is nine missed meals. However, staff always have the

ability and the obligation to initiate a medical or mental health evaluation, should the situation warrant it, regardless of whether a hunger strike participant is in an EOP or not.

Comment 2E: Commenter supports the proposed regulation language that states, “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,” and wants to ensure that language applies in all cases, including hunger strike participants in a Religious Diet Program. The commentor is concerned that a hunger strike participant in a Religious Diet Program would be in violation of the provision that if the incarcerated person fails to pick up their Religious Meat Alternative (RMA) or Religious Kosher (RK) meals that they would possibly be removed from the Religious Diet Program for a second violation for six months. Commenter suggests that the following language be added to the proposed regulations, “Custody staff shall not issue a CDC 128-B as a Religious Diet Program violation against any incarcerated person engaged in a hunger strike, nor shall any incarcerated person on a Religious Diet Program be removed from their Religious Diet Program as a result of the hunger strike.” Commenter suggests that a field be added to CDCR Form 128-HS indicating whether the hunger strike participant is on an RMA or RK Diet Program.

Response to Comment 2E: Hunger strike participants will be offered their regular provision of state-issued food at every regularly scheduled meal serving time. The department does not believe it is necessary to add language to the proposed regulations regarding Religious Personal Ethical Diet (RPED) compliance violations. None of the hunger strike procedures dictate staff to initiate an RPED compliance violation using CDC Form 128-B (Rev. 04/74). The department does not believe it is necessary to amend the proposed CDCR Form 128-HS to indicate if the hunger strike participant is on an RMA or RK Diet Program, as this information is readily available in Strategic Offender Management System (SOMS).

Summaries and Responses to the 15-Day Renotice Comment Period:

Renotice Commenter #1

Renotice Comment 1: Commenter states that the mental health referral should be emergency (4 hours), urgent (24 hours), or routine (5 business days), and that the 72-hour timeline is not aligned with current mental health referral timelines. Commenter suggests the wording to be changed to “Routine unless otherwise indicated.”

Response Renotice Comment #1: See Response to Comment 2C in the Summaries and Responses to Written Public Comments Received During the Initial Comment Period. The 72-hour timeline for the mental health assessment is necessary to comply with existing CCHCS regulations, and does align with CCHCS mental health referral timelines regarding hunger strikes.