

**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: 3404

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

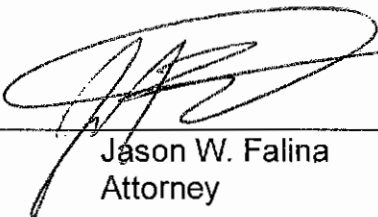
OAL Matter Number: 2024-0627-02

OAL Matter Type: Regular (S)

This action by the California Department of Corrections and Rehabilitation amends the existing hiring of ex-offenders regulation under Title 15 section 3404 of the California Code of Regulations by requiring secretary approval for the initial hiring of an ex-offender only, unless the position enables the ex-offender access to employee records or incarcerated individuals personal or medical information.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/1/2024.

Date: August 6, 2024



Jason W. Falina
Attorney

**For: Kenneth J. Pogue
Director**

**Original: Jeffrey Macomber, Secretary
Copy: Renee Rodriguez**

NOTICE PUBLICATION/REGULATION SUBMISSION

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2023-1222-02	REGULATORY ACTION NUMBER 2024-0627-025	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW
2024 JUN 27 PM2:41

NOTICE

REGULATIONS

For use by Secretary of State only

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

AUG 06 2024

3:16 PM

AGENCY WITH RULEMAKING AUTHORITY
California Department of Corrections and RehabilitationAGENCY FILE NUMBER (If any)
23-16

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 Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2024-1-3	PUBLICATION DATE 1/5/2024

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Hiring of Ex-Offenders		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 AMEND 3404 REPEAL		
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"/> File & Print <input type="checkbox"/> Print Only			
<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"/> 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 Renee Rodriguez		TELEPHONE NUMBER 916-445-2220	FAX NUMBER (Optional) E-MAIL ADDRESS (Optional) Renee.Rodriguez@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.

Decided by:
SIGNATURE OF AGENCY HEAD OR DESIGNEE

Tammy Foss

DATE

5/7/2024

Typed Name and Title of Signatory

Tammy Foss, Undersecretary, Operations

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

AUG 06 2024

Office of Administrative Law

FINAL TEXT OF ADOPTED REGULATIONS

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

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

Division 3. Adult Institutions, Programs, and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 5. Personnel

Article 2. Employees

Section 3404. Hiring of Ex-Offenders.

Subsection 3404(a) is amended to read:

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

Subsection 3404(b) is unchanged.

New subsection 3404(c) is adopted to read:

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

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

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

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

FINAL STATEMENT OF REASONS

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

UPDATES TO THE INITIAL STATEMENT OF REASONS:

On January 5, 2024, the California Department of Corrections and Rehabilitation (CDCR or the department) published the Notice of Proposed Regulations for the Hiring of Ex-offenders, which began the public comment period. The department's Notice of Change to Regulations (NCR) #23-16 was also mailed the same day to individuals who had requested to be on the department's mailing list for regulation changes. In addition, they were posted on CDCR internet website, and copies were also posted in CDCR institutions. Public comments were accepted through February 22, 2024; and a public hearing was held on February 22, 2024. There were no commenters at the public hearing.

During the public comment period, the department received 4 written comments which are included below under *Summaries and Responses to the Written Public Comments Received During the Initial Comment 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.

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

Commenter #1

Comment 1A: Commenter is an incarcerated person and provided a list of their accomplishments and thanked all persons involved for their efforts and hard work to make this change to regulation possible.

Response 1A: Although the above comment does regard some aspect or aspects of the proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the department in refutation of or accommodation to the comment.

Commenter #2

Comment 2A: Commenter is an incarcerated person and provided a list of their accomplishments.

Response 2A: Although the above comment does regard some aspect or aspects of the proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the department in refutation of or accommodation to the comment.

Commenter #3

Comment 3A: Commenter is an incarcerated person, and provided his qualifications as a potential candidate for employment within the CDCR in Regulation and Policy Management Branch, the Office of Personnel, or other prisons throughout the State of California. Additionally, commenter provided personal references, and certification documents.

Response 3A: Although the above comment does regard some aspect or aspects of the proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the department in refutation of or accommodation to the comment.

Commenter #4

Comment 4A: Commenter states section 3034(a)[sic] text should be changed to “a position in the department” instead of the proposed text of “any position within the

department”. Commenter states this change would better convey the meaning in the Notice (pg. 2) and the ISOR (pgs. 1-2).

Response 4A: The department acknowledges the commenter’s opposition to the proposed regulations; however, the department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reason. The term “any” conveys and ensures that the Secretary’s approval is required for the initial appointment of ex-offenders for all positions within the department, without exceptions.

Comment 4B: Commenter suggests eliminating the subset of job assignments under subsection 3404(b).

Response 4B: The department acknowledges the commenter’s suggestion to the proposed regulations; however, the department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reason. This subsection is included for reference only.

Comment 4C: Commenter suggests instituting some standard guiding the Secretary’s discretion and/or some express mechanism of *delegating* the Secretary’s authority in acting pursuant to subsection (b), present relevant alternatives.

Response 4C: See response 4B.

Comment 4D: Commenter is suggesting section 3404(b) to read: (b) ~~Ex-offenders~~ ***Persons with conviction records shall not may be denied assignment to areas which enable them to access employee records or the personal or medical information of incarcerated persons only if without the Secretary’s or the hiring authority written approval certifies, by a preponderance of the evidence, that the assignment poses a substantial risk to the security and privacy of:***

(1) Employee records.

(2) Inmate personal or medical information.

Response 4D: See response 4B.

Comment 4F: Commenter requests the use of “ex-offender” be changed to “person with a conviction record”, which would be more respectful towards members of the department’s staff to whom the rules apply.

Response 4F: The department acknowledges the commenter’s opposition to the term used in proposed regulations; however, the department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reason. The term “ex-offender” is currently defined in Title 15, section 3000.

Comment 4G: Commenter states section 3404.1 is not directly relevant and not mentioned in NCR 23-16, but the use of “ex-offender” should be changed here as well.

Response 4G: See response 4B and 4F.