

P.O. Box 942883
Sacramento, CA 94283-0001



February 19, 2016

2nd NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED

The full text of the original proposed amendments to the California Code of Regulations that concern Inmate Religious Personal Items and Sanctuaries is provided in its original single underline and ~~strikethrough~~ format.

Changes that were provided in the 1st Notice of Change to Text, are indicated by bold double underlining for additional added text, and bold ~~double strikethrough~~ for deleted text to the originally proposed text. The comment period on the 1st 15-Day Re-Notice text changes is closed.

The changes provided in this 2nd Notice of Change to Text are indicated by dotted bold underline for additional added text and ~~dotted bold strikethrough~~ for additional deleted text to the originally proposed text. In addition, any changes to the 1st 15-Day Re-Notice text which originally appeared in bold double underline and ~~bold double strikethrough~~, will now be indicated by dotted bold underline in italics for additional added text, and ~~dotted bold strikethrough in italics~~ for additional deleted text to the 1st 15-Day Re-Notice text changes. Only those comments relating directly to these 2nd Notice of Change amendments that are indicated by the dotted bold underline, ~~dotted bold strikethrough~~, dotted bold underline in italics, or ~~dotted bold strikethrough in italics~~ will be considered.

A Supplemental Initial Statement of Reasons (ISOR) is included with this 2nd Notice of Change to Text. This Supplemental ISOR is added to the rulemaking record to address deficiencies with the Initial Statement of Reasons which lacked clarity and necessity standards in connection with the Administrative Procedures Act.

As determined by the California Department of Corrections and Rehabilitation (CDCR), the attached text contains the following changes:

Section 3000: The definition for “Outdoor Religious/Spiritual Grounds” is changed to provide clarity and remove any perception that inmates who use the Native American Sweat Lodge Grounds are not permitted to use the Outdoor Religious/Spiritual Grounds. These changes also make the definition consistent with the new term “Native American Sweat Lodge Grounds” as added in this section.

Section 3000: In the definition for “Statewide Religious Review Committee” the word “means” is removed and replaced with “is.” This language better establishes a definition of the Statewide Religious Review Committee.

Section 3000: The definition for “Sweat Lodge” is added to the regulatory amendments for this proposed change of regulations as it was inadvertently omitted. Changes to the definition are necessary to provide consistency with the new term “Native American Sweat Lodge Grounds” which is now being used.

Section 3213(a): Language is revised to remove the word “unauthorized” to avoid confusion over what items can or cannot be brought into a facility without prior written approval. The language is now similar to the original language, except for the addition of “ceremonial drink,” and specifies that “prior written approval... shall be required for any person to bring... into a facility.” These changes provide clarity and a better understanding of this subsection.

Section 3213(b): Language is added to reference the location of the Religious Personal Property Matrix (RPPM), which is incorporated by reference in existing subsection 3190(b). This provides assistance for any person who needs to refer to the RPPM, which is the list of approved religious personal property that inmates may possess.

Section 3213(c): For proper grammar, and keeping within the singular tense verbiage of the paragraph, the word “Inmates” is changed to “The inmate.”

The 2nd 15-day comment period on these changes shall close on March 5, 2016. Submit any comments to Timothy M. Lockwood, Chief, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001; fax to (916) 324-6075; or e-mail to rpmb@cdcr.ca.gov before the close of the public comment period. Comments must be received no later than 5:00 p.m. on March 5, 2016.

Only those comments relating directly to the enclosed post-hearing changes that are indicated by **dotted bold underline**, ~~**dotted bold strikethrough**~~, **dotted bold underline in italics**, or ~~**dotted bold strikethrough in italics**~~ will be considered.

Original signed by:

TIMOTHY M. LOCKWOOD, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation

Attachment

2nd 15-DAY RE-NOTICE TEXT OF PROPOSED REGULATIONS

In the following, 2nd 15-Day changes will appear in dotted bold underline which indicates additional added text, and ~~dotted bold strikethrough~~ which indicates additional deleted text to the originally proposed text which appears or appeared in single underline and ~~strikethrough~~ format. Changes will also appear in ~~*dotted bold strikethrough in italics*~~ for deleted text to the 1st 15-Day Re-Notice text which appears or appeared in bold double underline and bold ~~double strikethrough~~.

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. Definitions.

Section 3000 is amended to alphabetically merge the definitions below with those that exist in the regulations, and amended to read:

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Outdoor Religious/Spiritual Grounds are an outside area ~~where all interested inmates, at an institution designated to be used for any approved religious/spiritual group activities, with the exception of inmates who use Native American Sweat Lodge Grounds, Outdoor Religious/Spiritual Grounds does not include Native American Sweat Lodge Grounds, as defined in this section can perform their approved religious/spiritual practices.~~

Statewide Religious Review Committee (SRRC) ~~means is~~ a committee established to ensure that a framework for religious/spiritual program policy exists, and that program continuity from institution to institution is maintained. The SRRC also provides an avenue for addressing statewide inmate religious/spiritual issues and offers recommendations to the Director of the Division of Adult Institutions (DAI) for consideration of policy development and/or enactment. The SRRC is comprised of the following: Associate Director, DAI (General Population-Males); one Warden from each mission within DAI; Headquarters Community Resources Manager (HCRM), Religious Programs; one CRM from each mission within DAI; a Captain; a designee from the Office of Legal Affairs; the departmental Food Administrator, and other stakeholders as required.

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Native American Sweat Lodge Grounds ~~means a are native American Indian ceremonial but~~ an outside area at an institution designated to be used for approved Native American religious/spiritual group activities.

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Note: Authority cited: Sections 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, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq. 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; and 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; 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; Section 11007, Health and Safety Code; and *Madrid v. Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH).

Subchapter 3. INMATE ACTIVITIES

Article 1. Religious Program

Section 3213 Title heading is amended to read:

3213. Stipulations Regarding ~~Religious Items~~ Sacramental Wine Ceremonial Drink, ~~Sanctuaries~~ Religious Items, and ~~Sacramental Wine~~ Sanctuaries.

Subsection 3213(a) is amended to read:

(a) Prior written approval of the institution head or their designee shall be required for ~~the following: any person to bring~~ a ceremonial drink, such as sacramental wine, or any ~~unauthorized~~ religious item into a facility.

Existing subsection 3213(a)(1) is deleted.

~~(1) For any person to bring sacramental wine or any religious item into a facility.~~

Existing subsection 3213(a)(2) is deleted.

~~(2) For an inmate to be provided any religious item.~~

Existing subsection 3213(a)(3) is deleted.

~~(3) For an inmate to wear or carry an approved religious item at any time other than during their regular religious or sweat events, or facility approved special events.~~

Existing subsection 3213(b) is renumbered and relocated to 3213(c).

New subsection 3213(b) is adopted to read:

(b) An inmate may possess any religious item authorized in the Religious Personal Property Matrix (RPPM) (Rev. 6/27/13), which is incorporated by reference in subsection 3190(b). As defined in the RPPM, and subject to **reasonable** search by staff, an inmate may wear or carry at any time, the following: beaded headband, beaded wrist band, beaded choker, religious medallion and chain, religious headgear, medicine bag, **prayer beads**, and tallit katan/tsitsit.

Existing subsection 3213(b) is renumbered 3213(c), and amended to read:

(bc) Medicine bags shall be constructed of soft leather or other natural material without a lining and shall not exceed 2 x 3 inches in diameter. The bag shall, be constructed to in the presence of staff, either be closed with a drawstring, or sewn shut in such a manner as to permit subsequent searches of the bag's contents by in the presence of staff. During a search of an inmate's medicine bag, the inmate shall empty the medicine bag of its contents in the presence of staff. Staff shall then visually inspect the medicine bag and its contents for contraband. Any contraband items that are found shall be disposed of in accordance with subsection 3191(c). The inmates shall return any non-contraband items into the medicine bag.

Existing subsection 3213(c) is renumbered 3213(d).

(ed) Except as specified in subsection 3213(c), All religious items shall be subject to reasonable searches by staff.

Existing subsection 3213(d) is renumbered and relocated to 3213(f).

New subsections 3213(e) through 3213(e)(2) are adopted to read:

(e) The institution head or designee retains the authority pursuant to section 3006(d), to remove or restrict use of an approved religious item in accordance with subsection 3006(d), based on security/operational need and/or inmate misconduct a serious threat to facility security or to the safety of inmates and staff, and to the degree necessary to eliminate the threat, for a period of up to 30 calendar days. The removal or restriction may continue for a period of up to 30 calendar days and shall be documented on a CDC Form 128-A (Rev. 4/74), Custodial Counseling Chrono, pursuant to section 3312. Removal or restriction of an approved religious item for longer than 30 calendar days shall require approval by the Associate Director of the Statewide Religious Review Committee (SRRC), as defined in section 3000. At the end of the removal or restriction period, either of the following will occur:

(1) If the Associate Director of the SRRC does not approve an extension, the restriction shall be lifted and the item(s) shall be returned to the inmate and documented on the CDC Form 128-A.

(2) If the Associate Director of the SRRC does approve an extension, the restriction will continue, and the issue sent for review to the SRRC to determine the appropriate response or restriction.

Existing subsection 3213(d) is renumbered 3213(f), and amended to read:

(df) Sanctuaries (e.g., chapels), Native American sSweat H Lodges Grounds, Outdoor Religious/Spiritual Grounds, and other areas designated for religious/ or spiritual use shall be subject to reasonable searches by staff.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5009 and 5054, Penal Code; and Section 1996, Title 42, United States Code.

SUPPLEMENTAL - INITIAL STATEMENT OF REASONS:

After publication of the Initial Statement of Reason (ISOR), the Department became aware that further amendments to the ISOR were necessary to meet the clarity and necessity standards of the Administrative Procedures Act. Listed below are the amendments to the ISOR in ~~striketrough~~ and underline, for each section requiring amendments.

Specific Purpose and Rationale, per Government Code 11346.2(b)(1):

3000. Definitions

Statewide Religious Review Committee (SRRC) is defined to provide a standardized description of the term for staff and inmates. The SRRC was established to address inmate religious/spiritual grievances and requests. The lack of standardized religious/spiritual policies governing religious accommodation and the lack of consistency with regards to approved religious personal property items from institution to institution have generated numerous administrative appeals and lawsuits. With the establishment of the SRRC, lawsuits and grievances should decline. The SRRC ensures that a framework for religious policy exists statewide and that this policy is applied consistently throughout all CDCR institutions.

3213. Stipulations Regarding Ceremonial Drink, Religious Items, and Sanctuaries.

New subsection 3213(b) is adopted to add new language that specifies “An inmate may possess any religious item authorized in the RPPM (~~RPPM~~) (Rev. 6/27/13).” Additionally, language specifies “As defined in the RPPM, and subject to search by staff, an inmate may wear or carry at any time, the following: beaded head band, beaded wrist band, beaded choker, religious medallion and chain, religious headgear, medicine bag, and tallit katan/tsitsit.” These items were determined by the Division of Adult Institutions as the items most commonly needed by inmates to be worn or carried throughout the institution that did not present a safety or security issue, and were necessary to carry out the inmate’s religious activities or beliefs. This language provides clarity to inmates and staff regarding inmates’ ability to wear or carry religious headgear and other religious items throughout the institution.

New subsections 3213(e) through 3213(e)(2) are adopted regarding removal or restriction of a religious item. This language ensures the safety, security, and operational needs of the institution are retained, and provides instruction to inmates and staff regarding removal or restriction of a religious item. The Division of Adult Institutions determined that 30 days is a reasonable amount of time for an institution to determine whether a religious item poses a potential threat to safety and security. To safeguard against undue delays on restrictions of religious items, and to ensure that an institutional determination about the matter is lawful, a removal or restriction of an approved religious item for longer than 30 days shall require approval at the statewide level by the Associate Director of the SRRC. Note: reference to the CDC Form 128-A is carried over from existing regulations, it is already established in CCR subsections 3084.7(b)(1), 3312(a)(2), 3314(f), and 3326(c) and is not being revised in this rulemaking action, therefore, a copy of the 128-A is not included in the Notice or made available for public review.