

**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: 3290, 3315

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6, and Penal Code Section 5058.3**

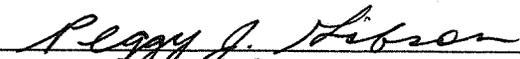
OAL File No. 2014-0307-03 EON

The California Department of Corrections and Rehabilitation (CDCR) is amending sections 3290, and 3315 in Title 15 of the California Code of Regulations. This emergency regulatory action submitted to the Office of Administrative Law (OAL) pursuant to Penal Code section 5058.3 as operationally necessary, amends these sections to implement a department wide, standardized Mandatory Random Urinalysis Program and increase sanctions for drug use in prison. The regulations are intended to enhance the safety and security of inmates and staff by providing a stronger deterrent to the use of illicit drugs in prison; by standardizing and randomizing testing methods, and increasing sanctions; such as loss of pay in a paid job assignment.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code, and section 5058.3 of the Penal Code.

This emergency regulatory action is effective on 3/18/2014 and will expire on 8/26/2014. The Certificate of Compliance for this action is due no later than 8/25/2014.

Date: 3/18/2014



Peggy J. Gibson
Senior Counsel

For: DEBRA M. CORNEZ
Director

Original: Jeffrey Beard
Copy: Anthony Carter

EMERGENCY

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

(See instructions on reverse)

For use by Secretary of State only

ENDORSED FILED
IN THE OFFICE OF

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2014-0307-03EON
For use by Office of Administrative Law (OAL) only		2014 MAR -7 PM 3:26	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Department of Corrections and Rehabilitation			AGENCY FILE NUMBER (if any) 14-0004

2014 MAR 18 PM 1:59

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

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	PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Testing for Controlled Substances and Inmate Discipline		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 3290, 3315	
		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"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)		<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> File & Print	
<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)		<input checked="" type="checkbox"/> Other (Specify) <u>OP Necessity- PC 5058.3</u>	
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 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)	
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"/> Other (Specify)		<input type="checkbox"/> State Fire Marshal	
7. CONTACT PERSON Anthony Carter		TELEPHONE NUMBER 916-445-2220	FAX NUMBER (Optional) 916-324-6075
		E-MAIL ADDRESS (Optional) Anthony.Carter@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.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Martin Hoshino</i>	DATE 2/28/14
TYPED NAME AND TITLE OF SIGNATORY Martin Hoshino, Undersecretary-Operations, CDCR	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 18 2014

Office of Administrative Law

TEXT OF PROPOSED REGULATIONS

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

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs, and Parole

Subchapter 4, General Institution Regulations

Article 2. Security

§ 3290. Methods for Testing of Controlled Substances or for Use of Alcohol.

Subsection 3290(a) is unchanged but included as reference.

(a) The department shall prescribe the products, equipment, and methods for testing suspected controlled substances or for the use of alcohol. "Field" or on-site testing shall be conducted only by trained personnel.

Subsection 3290(b) is amended to read:

(b) Field tests may be performed on any suspected substance found on institution property or in the possession or under the control of any inmate, or in the possession or under the control of persons other than inmates who come on institution property. Field tests of urine samples may be performed as a screening process prior to laboratory testing.

Subsections 3290(c) through 3290(c)(3) remain unchanged but are included for reference.

(c) The securing of a urine sample from an inmate, for the purpose of testing for the presence of controlled substances or for use of alcohol may be done for the following reasons:

- (1) When there is reasonable suspicion to believe the inmate has possessed, distributed, used, or is under the influence of a controlled substance or alcohol.
- (2) When mandatory random testing is known to the inmate to be a condition for the inmate's participation in a specific program, assignment, or activity.
- (3) As part of an authorized disposition of a disciplinary hearing.

Subsection 3290(c)(4) is amended to read:

(4) The inmate is selected by the ~~institution's/facility's~~ department's mandatory standardized random drug testing selection process.

(A) A small percentage of inmates will be randomly selected at predetermined regular intervals (e.g. weekly) from a data file produced from the department's Strategic Offender Management System.

(B) Inmates shall be tested each time they are selected; however, shall not be subject to additional disciplinary action for a positive test if that positive test is cumulative evidence of a previously charged disciplinary action.

Subsection 3290(d) remains unchanged.

New Subsection 3290(e) is adopted to read:

(e) On-site testing of urine samples are presumptive in nature; however, the results may be used to charge an inmate with a serious rules violation. Disciplinary action for possession of a controlled substance or use of a controlled substance based solely on the field test shall not include the loss of work/behavior credits or pay, or loss of a paid work assignment unless a laboratory has confirmed the results of a positive field test or the inmate has admitted to possessing the controlled substance, accepts the results of a positive field test, waives the requirement of testing by a laboratory, and has signed a CDCR 128-B, General Chrono to that effect.

Existing subsection 3290(e) is renumbered and amended to read:

~~(e)~~ (f) Field testing of seized substances that are suspected of being a controlled substance ~~shall be conducted for "screening" purposes only~~ are presumptive, however the results may be used to charge an inmate with a serious rules violation. Disciplinary action for possession of a controlled substance based solely on a field or on-site test shall not include the loss of work/behavior credits, or pay, or loss of paid work assignment unless a laboratory has confirmed that the suspected substance is in fact a controlled substance, or the inmate has admitted to possessing the controlled substance, accepts the results of a field test, and waives the requirement of testing by a laboratory, and has signed a document to that effect.

Existing subsections 3290(f) through 3290(h) are renumbered:

~~(f)~~ (g)

~~(g)~~ (h)

~~(h)~~ (i)

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2932, 4573.6 and 5054, Penal Code.

Article 5. Inmate Discipline

§ 3315. Serious Rule Violations.

Subsections 3315(a) through 3315(f)(5)(I)(3) remain unchanged.

Subsection 3315(f)(5)(J) is amended to read:

(J) Violation of subsections 3016(a), 3016(c), and 3290(d) shall result in:

1. For the first offense the inmate shall be required to attend Alcoholic Anonymous or Narcotic Anonymous meetings or assigned to a substance abuse education and/or treatment programs to the extent such programs are available in the institution/facility and loss of pay for 90 days from a paid work assignment.
2. For the second offense, the inmate shall be referred for endorsement to a substance abuse treatment program, provided that program eligibility criteria is met and loss of pay for 180 days from a paid work assignment.
3. For the third offense, the inmate shall be referred for endorsement to a substance abuse treatment program, provided that program eligibility criteria is met, and mandatory treatment shall be a condition of parole. Additionally, the inmate shall be referred for removal from paid work assignment for one year for the third offense.

Subsections 3315(f)(5)(K) through 3315(g) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 295-300.3, 314, 530, 532, 646.9, 647, 653m, 2931, 2932, 2933, 4501.1, 4573.6, 4576, 5054, 5068 and 12020, Penal Code.