

**State of California
Office of Administrative Law**

In re:
Department of Corrections and
Rehabilitation

Regulatory Action:

Title 15, California Code of Regulations

Amend section: 3413

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

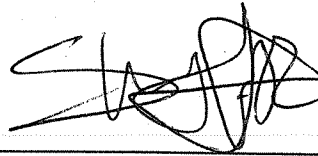
OAL Matter Number: 2021-0324-03

OAL Matter Type: Regular (S)

In this regular rulemaking, the Department of Corrections and Rehabilitation is repealing a prohibition against using workgroup computer technologies to publish, display or transmit information that encourages the use of prescribed controlled substances.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/29/2021.

Date: April 29, 2021



**Steven J. Escobar
Senior Attorney**

Original: Kathleen Allison, Secretary
Copy: DeAnna Gouldy

For: Kenneth J. Pogue
Director

REGULAR

NOTICE PUBLICATION/REGULATION SUBMISSION See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

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| OAL FILE NUMBERS | NOTICE FILE NUMBER Z-2020-0813-01 | REGULATORY ACTION NUMBER 2021-0324-03S | EMERGENCY NUMBER |
|------------------|---|--|------------------|

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

APR 29 2021
2:24pm

For use by Office of Administrative Law (OAL) only

2021 MAR 24 P 4: 29

OFFICE OF
ADMINISTRATIVE LAW

| | |
|---|-----------------------------|
| AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation | AGENCY FILE NUMBER (If any) |
|---|-----------------------------|

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 2020, No. 35-2 | PUBLICATION DATE 8/28/2020 |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

| | |
|---|--|
| 1a. SUBJECT OF REGULATION(S) Incompatible Activities | 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.) | ADOPT |
| | AMEND 3413 |
| | 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"/> 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 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 DeAnna Gouldy | TELEPHONE NUMBER 916-691-0323 | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) DeAnna.Gouldy@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>Kathleen Allison</i> | DATE 3/5/2021 |
| TITLE OF SIGNATORY Kathleen Allison, Secretary, California Department of Corrections and Rehabilitation | |

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 29 2021

Office of Administrative Law

FINAL TEXT OF REGULATIONS

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

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

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 5. Personnel

Article 2. Employee

Section 3413 is amended to read:

3413. Incompatible Activity

(a) Employees of the department shall not engage in any other employment or activity inconsistent or incompatible with employment by the department. Conduct deemed to fall in such categories includes, but is not limited to the following:

- (1) Using the prestige or influence of the state or the department for private gain or advantage.
- (2) Employment or participation in any activity of an illegal nature.
- (3) Any employment or other activity which will prevent the employee from doing his or her job as an employee of the department in an efficient and capable manner, or represents a potential conflict of interest or the appearance of a conflict of interest with his or her job.
- (4) Employment which will prevent a prompt response to a call to report to duty in an emergency or when otherwise required to be present by his or her supervisor or the warden or superintendent.
- (5) Using for private gain the time, facilities, equipment or supplies of the state.
- (6) Using workgroup computer technologies to do any of the following:
 - (A) Publish, display, or transmit information that:
 1. Violates or infringes on the rights of other persons, including the right of privacy.
 2. Contains defamatory, intentionally false, obscene, pornographic, profane, sexually harassing, threatening, racially offensive, or other unlawfully discriminatory material.
 3. Encourages the use of unprescribed controlled substances.
 - (B) Conduct activities not related to the mission or work tasks of the department.
 - (C) Solicit the performance of activities prohibited by law.
 - (D) Transmit material, information, or software in violation of departmental policies, or local, State, or Federal Law.
 - (E) Conduct electioneering or engage in political activities.
 - (F) Engage in non-government related fund raising or public relations activities.
 - (G) Conduct personal business activities or activities for personal monetary gain.
 - (H) Purchase or sell unauthorized goods or services.
- (7) Providing confidential information to persons to whom issuance of such information has not been authorized, or using such information for private gain or advantage.
- (8) Receiving or accepting money or any other consideration from anyone other than the state for performance of an act which the employee would be required or expected to render in the

regular course or hours of his or her employment, or as a part of his or her duties as a state employee.

(9) Receiving or accepting, directly or indirectly, any gift, including money, any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value, from anyone who is doing or is seeking to do business of any kind with the state or whose activities are regulated or controlled in anyway by the state, under circumstances from which it reasonably could be inferred that the gift was intended as a reward or for the purpose of influencing any official action on the employee's part.

(10) Consulting or testifying as a specialist or an expert witness, based on expertise gained in the course of their duties, in any administrative, civil, or criminal action without having given reasonable notice, as defined in section 3413(a)(10)(A), to the chief deputy general counsel of the office of legal affairs.

(A) An employee who is contacted by a fellow employee, ~~and/or~~ their representative, ~~and/or~~ attorney regarding ongoing or anticipated administrative, civil, or criminal proceedings for the purpose of eliciting expert testimony, as defined in Evidence Code section 720, shall, within one business day, notify in writing the chief deputy general counsel of the office of legal affairs. The written notification shall include all relevant information concerning the contact and a synopsis of the employee's anticipated testimony. The employee whose testimony is sought shall also forward any subpoena served upon them within one business day of service.

(B) The chief deputy general counsel or designee retains the discretion to seek to quash the subpoena on any substantive or procedural grounds before the judicial body through whose authority the subpoena was issued.

(C) This subsection shall not apply when an employee has been requested to testify regarding an event or transaction which he or she has perceived or investigated in the course of his or her duties or when an employee has been requested to testify as an expert witness by the department.

(b) Before engaging in any outside employment, activity or enterprise, including self-employment, the employee ~~must~~ shall submit a statement to his or her division administrator or to the warden or superintendent, naming the prospective employer, if any, the employer's address and phone number, and an outline of the proposed duties or activities. This ~~must~~ shall be in sufficient detail to enable the division administrator or the warden or superintendent to determine whether the proposed activity falls in the prohibited class. The division administrator or the warden or superintendent ~~must~~ shall notify the employee of findings.

(c) Violation of these provisions may result in disciplinary actions up to and including termination of employment with the department or civil action. Criminal prosecution may result from conduct which violates Penal Code Section 502.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 19572, Government Code; and Section 5054, Penal Code.