

OFFICE OF ADMINISTRATIVE LAW

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Sacramento, CA 95814
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ENDORSED FILED
IN THE OFFICE OF

2013 APR -4 PM 1:



DEBRA M. CORNEZ
Director

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

Date: April 4, 2013
To: Cory Pepper
From: Chapter Two Compliance Unit
Subject: **2013 OAL DETERMINATION NO. 3 (S)**
(CTU2013-0206-01)

(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5;
Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation a memo titled "Inmate Religious Personal Property and Religious Grounds" issued by the California Department of Corrections and Rehabilitation (CDCR), Division of Adult Institutions (DAI)

On February 6, 2013, the Office of Administrative Law (OAL) received your petition asking for a determination as to whether an Inmate Religious Personal Property and Religious Grounds memo issued by CDCR (DAI) constitutes an underground regulation. Specifically, you challenge whether the Religious Property Matrix was duly adopted pursuant to the Administrative Procedure Act (APA). The memo was signed by Kathleen L. Dickinson, Director of DAI, on October 19, 2012. It is attached hereto as Exhibit A.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600,¹ which should have been, but was not adopted pursuant to the APA. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment.

If a rule meets the definition of a regulation in Government Code section 11342.600, but was not adopted pursuant to the APA, it may be an "underground regulation" as defined in California Code of Regulations, title 1, section 250:

The following definitions shall apply to the regulations contained in this chapter:

- (a) "Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not

¹ "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

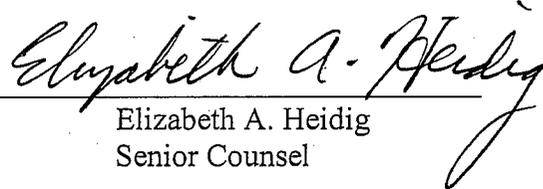
subject to an express statutory exemption from adoption pursuant to the APA.

On February 6, 2013, California Department of Corrections and Rehabilitation submitted an emergency by operational necessity rulemaking (Penal Code section 5058.3) to OAL. The submission included the Religious Property Matrix (12/1/2012), incorporated by reference into section 3190(b) of title 15 (OAL file number 2013-0206-01EON). This emergency rulemaking, OAL file number 2013-0206-01EON, was approved by the OAL and filed with the Secretary of State on February 21, 2013. It is attached as Exhibit B. The rulemaking was effective on filing with the Secretary of State. Therefore, the Religious Property Matrix (12/1/2012) was duly adopted pursuant to the APA.

For the reasons discussed above, we find that the rule challenged by your petition is not an underground regulation.²

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.


Debra M. Cornez
Director


Elizabeth A. Heidig
Senior Counsel

Copy: Dr. Jeffrey Beard
Timothy Lockwood

² The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

- (f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.
- (2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:
- (A) The challenged rule has been superseded.
 - (B) The challenged rule is contained in a California statute.
 - (C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.**
 - (D) The challenged rule has expired by its own terms.
 - (E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule. (Emphasis added.)

Exhibit A

Memorandum

PEPPER

Date : October 19, 2012

To : Associate Directors, Division of Adult Institutions
Wardens
Community Resource Managers
Chaplains

Subject: **INMATE RELIGIOUS PERSONAL PROPERTY AND RELIGIOUS GROUNDS**

The California Department of Corrections and Rehabilitation's (CDCR) Inmate Religious Personal Property guidelines are located in the California Code of Regulations (CCR), Title 15 and referenced in two separate chapters of the Department Operations Manual (DOM). Current policy governing religious personal property is vague and inconsistent; therefore the Division of Adult Institutions (DAI) and the Religious Warden's Advisory Group (WAG) are in the process of updating the regulations and policy so they are uniformly applied.

In the interim, the attached proposed Inmate Religious Property Matrix will provide staff and inmates a uniform process to acquire, possess, and dispose of personal and congregate religious items in a consistent manner. It will also reduce inmate appeals and lawsuits that result from inconsistent policies based on individual interpretation of safety and security concerns related to inmate religious items. Requests for items not listed on the matrix shall be processed through the local Chaplains and Religious Review Committees (RRC) for recommendation, and then forwarded to the Religious WAG to determine if there are statewide implications prior to approval.

Any religious item that has been previously approved through a local RRC and is currently in an inmate's possession, but is not included on the proposed Religious Property Matrix, shall be granted a wear out period not to exceed one year from the date of this memorandum, unless there is a legitimate penological interest to deny. This will also provide the inmate and local RRC an opportunity to review and forward a recommendation for inclusion should it be deemed appropriate.

Establishing new Outdoor Worship areas are not authorized. Individual requests for Outdoor Worship areas will continue to be reviewed on a case by case basis through the Religious WAG. Any Outdoor Worship areas that have been established through court order or other means shall remain in place.

Associate Directors, Division of Adult Institutions
Wardens
Community Resource Managers
Chaplains
Page 2

If you have any questions, please contact Albert Chamberlin, Captain, General Population Males at (916) 323-2160.



KATHLEEN L. DICKINSON

Director

Division of Adult Institutions

Attachment

cc: Terri McDonald, Undersecretary, Operations
Kathleen Allison, Deputy Director (A), Facility Support
M. D. Stainer, Deputy Director, Facility Operations
T. L. Gonzalez, Associate Director, General Population Males
Albert Chamberlin, Captain, General Population Males

RELIGIOUS PERSONAL PROPERTY FOR LEVEL I, II, III, IV, CAMP AND CCF INMATES

- INMATES ARE ONLY PERMITTED PERSONAL RELIGIOUS ITEMS LISTED IN THIS SCHEDULE. FACILITIES MAY SUBMIT REQUESTS TO BE EXEMPTED FROM THE RELIGIOUS PROPERTY ITEMS DETAILED IN THIS MATRIX. REQUESTS FOR ITEMS NOT LISTED ON THIS MATRIX SHALL BE PROCESSED THROUGH THE LOCAL CHAPLAINS AND RELIGIOUS REVIEW COMMITTEE (RRC) FOR RECOMMENDATION, AND FORWARDED TO THE STATEWIDE RRC/ WARDENS ADVISORY GROUP (WAG) PRIOR TO APPROVAL. ALL REQUESTS MUST INCLUDE RATIONALE AND SUPPORTING DATA. EXEMPTIONS SHALL BE GRANTED ONLY IN RARE INSTANCES, IF AT ALL, BASED ON A COMPELLING NEED.
- INMATES ARE PERMITTED TO WEAR AND OR POSSESS SOLID COLORED RELIGIOUS GARMENTS ONLY UNLESS OTHERWISE INDICATED.
- INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING PERSONAL RELIGIOUS CLOTHING ITEMS IN ANY SHADE OR TINT OF GREEN, BLACK, BROWN, TAN, RED, OR BLUE UNLESS OTHERWISE INDICATED.
- INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING PERSONAL RELIGIOUS CLOTHING WITH HOODS, PICTURES, DECORATIVE ZIPPERS, INSIDE POCKETS, OR ZIPPED POCKETS.
- INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING ANY ITEMS WITH ANY DESIGN, SIGN, SYMBOL, OR ILLUSTRATION IDENTIFIED AS BEING ASSOCIATED WITH A SECURITY THREAT GROUP.
- ALL INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING ITEMS WHICH ARE OBSCENE, AS DESCRIBED IN CCR, TITLE 15 SECTION 3008, OR WHICH HAVE LOGOS, CODED MESSAGES, LETTERING, PICTURES WHICH ADVERTISE OR DEPICT ALCOHOL, SECURITY THREAT GROUPS, PROFANITY, SEX, WEAPONS, DRUGS, OR DRUG PARAPHERNALIA.
- MALE INMATES SHALL NOT RECEIVE OR POSSESS ITEMS OF RELIGIOUS CLOTHING DESIGNED AND MANUFACTURED SPECIFICALLY FOR WOMEN UNLESS AUTHORIZED FOR MEDICAL REASONS.

Item Description With additional requirements and restrictions.	General Population			ASU/ PSU
	PRIVILEGE GROUP			
	A	B	C	D
ALTAR CLOTH- Maximum size 24" x 24". One item per inmate. White or light gray only.	1	1	1	0
ASSORTED HERBS- Mint, Cedar, Lavender, Sweet grass, and Sage. Herb orders shall not exceed one ounce per quarter. Combined total quantity limited to four ounces or less at any time.	4 OZ	4 OZ	4 OZ	0
BEADED WRIST BAND/HEAD BAND/CHOKER- Shall be multicolored. Allowable colors include: Orange, brown, turquoise, purple, yellow, white, or gray. One of each item per inmate.	1	1	1	0
BOWLS- 4" diameter wood or plastic.	1	1	1	0
CHALK- Limited to one box containing 12 sticks of white non toxic chalk.	1	1	1	0
RELIGIOUS MEDALLION AND CHAIN - Chain not to exceed 24" in length, medallion shall not exceed 1.5" in diameter, obtainable as a set only, value not to exceed \$100. One set per inmate.	1	1	1	1
DREAM CATCHER- Sinew/simulated sinew hoop shall not exceed 4".	1	1	1	0
FEATHERS- Bird feathers are allowed up to a maximum length of 12". Feathers from an eagle may be obtained only via the U.S. Department of the Interior.	6	6	6	0
HEAD GEAR -Males- Including, But Not Limited To, Yarmulke (kippah), Kufi, Bandana, Fez, Patka, Rastafarian Crown. Maximum size 24" x 24". One item per inmate. White or light gray only.	1	1	1	1
HEAD GEAR -Females- Including, But Not Limited To, Scarf, Hijab, Bandana. Maximum size 24" x 24". One item per inmate. White or light gray only.	1	1	1	1
MEDICINE BAG- Shall not exceed 2" x 3". Soft leather or other natural material without a liner.	1	1	1	0
MISWAK - Small twig, not to exceed 7/8", used for oral hygiene.	1	1	1	0
POWDERS- (drawing powder) Limited to eggshell powder. Orders shall not exceed one ounce per quarter. Total quantity limited to four ounces or less at any time.	4 OZ	4 OZ	4 OZ	0
PRAYER BEADS- e.g., Mala, Dhikr, or Rosary. Wood or plastic only. Chain, Sinew, or String not to exceed 24". Not to exceed \$25.00 in value.	1	1	1	1
PRAYER CARDS- Not to exceed 4" x 6".	10	10	10	0
PRAYER OIL (Non alcoholic/non flammable oil). Allowable fragrances include: Kyphi, Frankinmyrrh, Sage, Cedar, and Lavender. Combined total quantity limited to four ounces or less at any time.	4 OZ	4 OZ	4 OZ	0
PRAYER RUG- 28" x 48" or smaller. Rug may be multicolored. Allowable colors include: Mustard, turquoise, brown, white, or gray.	1	1	1	0
RUNE TILES / COWRIE SHELLS -Runes/ Cowrie shells shall not to exceed 3/4" x 3/4". One set per inmate with instruction book. Set shall not exceed 25 pieces. Runes shall be wood or plastic.	1 SET	1 SET	1 SET	0
SEA SALT (white or black). Combined total quantity limited to four ounces or less at any time.	4 OZ	4 OZ	4 OZ	0
STONES -Set of 5, no larger than 1" in diameter, or set of 10, no larger than 1/2" in diameter.	1 SET	1 SET	1 SET	0
TALLIT KATAN / TSITSIT- Worn under one's shirt. White or light gray only.	1	1	1	0
TAROT/DIVINATION/RUNECARDS One set/deck per inmate.	1 SET	1 SET	1 SET	0
TEFILLIN/PHYLACTERIES- Purchase value not to exceed \$300.00.	1	1	1	0
WAND (soft wood, not to exceed 7/8" inches long by 1/2 inch wide) If soft material is unavailable a pliable twig may be utilized.	1	1	1	0

Exhibit B

EMERGENCY

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW (OAL) REGULATORY ACTION SUBMISSION (See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-		2013-0206-01EON

For use by Office of Administrative Law (OAL) only

2013 FEB -6 AM 11:29

OFFICE OF ADMINISTRATIVE LAW

ENDORSED FILED
IN THE OFFICE OF

2013 FEB 21 PM 1:47

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

California Dept. of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)

I. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
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	

II. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

a. SUBJECT OF REGULATION(S) inmate Religious Property	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
--	--

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 3000, 3190, 3213, 3334
	REPEAL 5

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 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 checked="" type="checkbox"/> Other (Specify) <u>Emergency Op. Necessity PC 5058.3</u>	

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)

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)

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)		

CONTACT PERSON Sarah Pollock	TELEPHONE NUMBER 916 445-2266	FAX NUMBER (Optional) 916 324-6075	E-MAIL ADDRESS (Optional) Sarah.Pollock@cdcr.ca.gov
---------------------------------	----------------------------------	---------------------------------------	--

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.

NATURE OF AGENCY HEAD OR DESIGNEE 	DATE
PRINTED NAME AND TITLE OF SIGNATORY RRI MCDONALD, Undersecretary, Operations	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

FEB 21 2013

Office of Administrative Law

NOTICE PUBLICATION/REGULATORY ACTION SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD-400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	For use by Office of Administrative Law (OAL) only		
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY			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/Submitted <input type="checkbox"/> Approved/Modified <input type="checkbox"/> Disapproved/Withdrawn	*NOTICE REGISTER NUMBER	*PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Inmate Religious Property	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 3000, 3190, 3213, 3334
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"/> Resubmittal of disapproved or withdrawn non-emergency 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"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
	<input type="checkbox"/> File & Print
	<input checked="" type="checkbox"/> Other (Specify) <u>Emergency 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, 544 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 Sarah Pollock	TELEPHONE NUMBER 916 445-2266
	FAX NUMBER (Optional) 916 324-6075
	E-MAIL ADDRESS (Optional) Sarah.Pollock@cdr.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

DATE

TERRI MCDONALD
TERRI MCDONALD, Undersecretary, Operations

2/4/2013

For use by Office of Administrative Law (OAL) only

TEXT OF PROPOSED REGULATIONS

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

Title 15, Crime Prevention and Corrections

Division 3, Adult Institutions, Programs and Parole

TABLE OF CONTENTS, Subchapter 2. INMATE RESOURCES, Article 9. Personal Property, title heading is amended to read:

Personal Property and Religious Property

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

3000. Definitions.

Section 3000 is amended to read:

*
*
*

Religious ~~Artifact~~ Item means any bag, cross, medallion, totem, ~~bible~~, pipe, or other item in which the possessor places religious or spiritual significance.

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*
*

NOTE: Authority cited: Sections 2717.3, 3000.03, 5058 and 5058.3, 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), 3550, 4570, 5009, 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; Section 8550 and 8567, 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 2, Article 9 title is amended to read:

Personal Property and Religious Property

3190. General Policy.

Subsection 3190(a) is amended to read:

(a) Inmates shall be permitted to possess in their quarters/living area, state-issued property items, and authorized personal/religious property items based upon privileges in section 3044 and/or assigned security level and/or institution mission, and subject to disciplinary provisions in sections 3314 and 3315.

Subsection 3190(b) is amended to read:

(b) Specific items of personal and religious property shall be established by a consensus of individual facilities within each of five mission-based regions of the Division of Adult Institutions. A An Authorized Personal Property Schedule, identifying a list of allowable property, not including religious property, shall be developed and updated by each mission-based region no more frequently than twice yearly. Local exceptions to the individual mission-based property lists shall also be identified. All changes to the Authorized Personal Property Schedule shall be adopted in accordance with the rulemaking requirements of the Administrative Procedure Act (Government Code Sections 11340 through 11364).

The Religious Property Matrix (12/1/12) identifies a separate list of allowable religious property, and is incorporated by reference. The Religious Property Matrix shall be developed and updated by the Wardens Advisory Group/Religious Review Committee no more frequently than twice yearly. Local exceptions to the Religious Property Matrix shall also be identified. All changes to the Religious Property Matrix shall be adopted in accordance with the rulemaking requirements of the Administrative Procedure Act (Government Code Sections 11340 through 11364).

The following five mission-based regional property lists are incorporated by reference:

Subsection 3190(b)(1) is amended to read:

(1) Authorized Personal Property Schedule-Reception Centers (Rev. ~~2/1/08~~12/1/12). This personal property schedule applies to the following facilities:

Subsections 3190(b)(1)(A) through 3190(b)(1)(I) are unchanged.

Subsection 3190(b)(2) is amended to read:

(2) Authorized Personal Property Schedule-Levels I, II, III, Male Conservation Camps, California Out Of State Facilities (COCF) and Community Correctional Facilities (Rev. ~~2/1/08~~12/1/12). This personal property schedule applies to the following facilities:

Subsections 3190(b)(2)(A) through 3190(b)(2)(DD) are unchanged.

Subsection 3190(b)(3) is amended to read:

(3) Authorized Personal Property Schedule-Levels III and IV (Rev. ~~2/1/08~~12/1/12). This personal property schedule applies to the following facilities:

Subsections 3190(b)(3)(A) through 3190(b)(3)(I) are unchanged.

Subsection 3190(b)(4) is amended to read:

(4) Authorized Personal Property Schedule-High Security and Transitional Housing (Rev. 2/1/0812/1/12). This personal property schedule applies to the following facilities:

Subsections 3190(b)(4)(A) through 3190(b)(4)(G) are unchanged.

Subsection 3190(b)(5) is amended to read:

(5) Authorized Personal Property Schedule-Female Offenders Programs (Rev. 2/1/0812/1/12). This personal property schedule applies to the following facilities:

Subsections 3190(b)(5)(A) through 3190(i)(3) are unchanged.

Subsection 3190(i)(4) is amended to read:

(4) Religious Items, as listed within the Religious Property Matrix ~~subject to approval by institutional Chaplain and designated custody staff.~~

Subsections 3190(i)(5) through 3190(t) are unchanged.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 2086, 2601, 5006 and 5054, Penal Code; *In re Alcala*, Marin County Superior Court, No. 117925, December 20, 1984 and *Armstrong v. Davis Court Ordered Remedial Plan*, Amended January 3, 2001; *In re Armstrong*, N.D. Cal, No. C 94-02307, March 20, 1998.

Subchapter 3. INMATE ACTIVITIES

Article 1. Religious Program

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

Subsection 3213(a) is unchanged.

Subsection 3213(a)(1) is amended to read:

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

Subsection 3213(a)(2) is amended to read:

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

Subsection 3213(a)(3) is amended to read:

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

Subsection 3213(b) is amended to read:

(b) Medicine bags shall be constructed of soft leather or other natural material without a lining and shall not exceed ~~1-1/2~~ 2 x 3 inches in diameter. The bag shall, 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 staff.

Subsection 3213(c) is amended to read:

(c) All religious ~~artifacts~~ items shall be subject to searches by staff.

Subsection 3213(d) is unchanged.

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

Subchapter 4. GENERAL INSTITUTION REGULATIONS

Article 6.5. Behavior Management Unit

3334. Behavior Management Unit.

Subsections 3334(a) through 3334(g)(1)(A) are unchanged.

Subsection 3334(g)(1)(B) is amended to read:

(B) Religious Medal and Chain, as identified within the Religious Property Matrix ~~(not to exceed \$100 maximum declared value, chain not to exceed 18" in length, obtainable as a set only. Chains may not be purchased separately from medal), one.~~

Subsection 3334(g)(1)(C) is amended to read:

(C) Religious Items, as identified within the Religious Property Matrix ~~(as approved by the local religious review committees, e.g., kufi caps, yarmulkes, prayer rugs, etc.).~~

Subsections 3334(g)(1)(D) through 3334(k) are unchanged.

NOTE: Authority cited: Section 5058 and 5058.3, Penal Code. Reference: Sections 5054, Penal Code.

RELIGIOUS PROPERTY MATRIX

(12/1/12)

- INMATES ARE ONLY PERMITTED PERSONAL RELIGIOUS ITEMS LISTED IN THIS MATRIX. FACILITIES MAY SUBMIT REQUESTS TO BE EXEMPTED FROM THE RELIGIOUS PROPERTY ITEMS DETAILED IN THIS MATRIX. REQUESTS SHALL BE SUBMITTED TO THE STANDARDIZED PROCEDURES UNIT WITH A COPY TO THE APPROPRIATE MISSION BASED ASSOCIATE DIRECTOR. ALL REQUESTS MUST INCLUDE RATIONALE AND SUPPORTING DATA. EXEMPTIONS SHALL BE GRANTED ONLY IN RARE INSTANCES, IF AT ALL, BASED ON A COMPELLING INSTITUTIONAL NEED.
- INMATES ARE PERMITTED TO WEAR AND OR POSSESS SOLID COLORED PERSONAL RELIGIOUS CLOTHING ITEMS ONLY UNLESS OTHERWISE INDICATED.
- INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING PERSONAL RELIGIOUS CLOTHING ITEMS IN ANY SHADE OF GREEN, BLACK, BROWN, TAN, RED, OR BLUE UNLESS OTHERWISE INDICATED. MULTICOLORED ITEMS SHALL NOT APPEAR TO BE PREDOMINANTLY ONE OF THE RESTRICTED COLORS PREVIOUSLY LISTED.
- INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING PERSONAL RELIGIOUS CLOTHING ITEMS WITH HOODS, PICTURES, DECORATIVE ZIPPERS, INSIDE POCKETS, OR ZIPPED POCKETS.
- INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING ANY ITEMS WITH ANY DESIGN, SIGN, SYMBOL, OR ILLUSTRATION IDENTIFIED AS BEING ASSOCIATED WITH A SECURITY THREAT GROUP.
- ALL INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING ANY ITEMS WHICH ARE OBSCENE, AS DESCRIBED IN CCR, TITLE 15 SECTION 3008, OR WHICH HAVE LOGOS, CODED MESSAGES, LETTERING, PICTURES WHICH ADVERTISE OR DEPICT ALCOHOL, SECURITY THREAT GROUPS, PROFANITY, SEX, WEAPONS, DRUGS, OR DRUG PARAPHERNALIA.
- THE RELIGIOUS PROPERTY MATRIX APPLIES TO BOTH MALE AND FEMALE INMATES, AND REFLECTS PERSONAL RELIGIOUS PROPERTY THAT INMATES MAY POSSESS. CONGREGATE/GROUP RELIGIOUS ITEMS WILL BE DETERMINED BY THE LOCAL RELIGIOUS REVIEW COMMITTEE.
- MALE INMATES SHALL NOT RECEIVE OR POSSESS PERSONAL RELIGIOUS CLOTHING ITEMS DESIGNED AND MANUFACTURED SPECIFICALLY FOR WOMEN UNLESS AUTHORIZED FOR MEDICAL REASONS.
- DETERMINATIONS CONCERNING RELIGIOUS PROPERTY ITEMS FOR INDIVIDUAL INMATES IN SPECIALIZED HOUSING UNITS (ASU/PSU/SHU) MAY BE MADE ON A CASE-BY-CASE BASIS BASED UPON THE INMATE'S BEHAVIOR/MENTAL HEALTH STATUS/SAFETY/SECURITY NEEDS. DECISIONS MUST BE APPROVED BY THE RESPECTIVE HIRING AUTHORITIES OR DESIGNEES.

Item Description With additional requirements and restrictions.	General Population			ASU/ PSU/SHU
	PRIVILEGE GROUP			
	A	B	C	D
ALTAR CLOTH - Maximum size 24" x 24". One item per inmate. White or light gray only.	1	1	1	0
ASSORTED HERBS - Mint, Cedar, Lavender, Sweet Grass, and Sage. Herb orders shall not exceed one ounce per quarter. Combined total quantity limited to four ounces or less at any time.	4 OZ	4 OZ	4 OZ	0
BEADED HEAD BAND, WRIST BAND, AND CHOKER - Shall be multicolored. One of each item per inmate.	1	1	1	0
BOWLS - 4" diameter wood or plastic.	1	1	1	0
CHALK - Limited to one box containing 12 sticks of white non toxic chalk.	1	1	1	0
RELIGIOUS MEDALLION AND CHAIN - Chain/Sinew/Leather not to exceed 24" in length, medallion shall not exceed 1.5" in diameter, obtainable as a set only, value not to exceed \$100. One set per inmate.	1	1	1	1
DREAM CATCHER - Sinew/simulated sinew hoop shall not exceed 4".	1	1	1	0
FEATHERS - Bird feathers are allowed up to a maximum length of 12". Feathers from an eagle may be obtained only via the U.S. Department of the Interior.	6	6	6	0
HEAD GEAR - Males - Including, but not limited to: Yarmulke (kippah), Kufi, Bandana, Fez, Patka, Rastafarian Crown. Maximum size 24" x 24". Two per inmate. White, gray, or multicolored (no red or blue).	2	2	2	2
HEAD GEAR - Females - Including, but not limited to: Scarf, Hijab, Bandana. Maximum size 24" x 24". Two per inmate. White, gray, or multicolored (no red or blue).	2	2	2	2
MEDICINE BAG - Shall not exceed 2" x 3". Soft leather or other natural material without a liner.	1	1	1	0
MISWAK - Small twig, not to exceed 7/8", used for oral hygiene.	1	1	1	0
POWDERS - (Drawing powder). Limited to eggshell powder. Orders shall not exceed one ounce per quarter. Total quantity limited to four ounces or less at any time.	4 OZ	4 OZ	4 OZ	0
PRAYER BEADS - e.g., Mala, Dhikr, or Rosary. Wood or plastic only. Chain, Sinew, or String not to exceed 24". Not to exceed \$25.00 in value.	1	1	1	1
PRAYER/HOLY CARDS - Not to exceed 4" x 6".	10	10	10	0
PRAYER OIL - (Non alcoholic/non flammable oil). Allowable fragrances include: Kyphi, Frankinmyrrh, Sage, Cedar, Musk, and Lavender. Orders shall not exceed one ounce per quarter. Combined total quantity limited to four ounces or less at any time.	4 OZ	4 OZ	4 OZ	0
PRAYER RUG - 28" x 48" or smaller. Rug may be multicolored (no red or blue).	1	1	1	1
PRAYER SHAWL (TALLIT) - White or light gray only.	1	1	1	1

Proposed revisions to Authorized Personal Property Schedule – Reception Centers

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MISCELLANEOUS ITEMS FOR RECEPTION CENTER INMATES

Item Description	Reception Center		ASU
	Privilege Group		
	(Initial intake)	(Processing)	
With additional requirements and restrictions	U	U	D
RELIGIOUS ITEMS (As approved by the local religious review committees, i.e., kufi caps, yamikas, prayer rugs, etc.).	YES	YES	YES

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OTHER REGISTERABLE ITEMS FOR RECEPTION CENTER INMATES

Item Description	Reception Center		ASU
	Privilege Group		
	(Initial intake)	(Processing)	
With additional requirements and restrictions	U	U	D
RELIGIOUS MEDAL AND CHAIN (Not to exceed \$100, chain not to exceed 18" in length, Obtainable as a set only, chains may not be purchased separately from medal).	±	±	0

Proposed revisions to Authorized Personal Property Schedule – Levels I, II, III, Male Conservation Camps, California Out Of State Facilities (COCF) and Community Correctional Facilities.

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MISCELLANEOUS ITEMS FOR LEVEL I, II, III, CAMP AND CCF MALE INMATES

Item Description	General Population			ASU
	Privilege Group			
	A	B	C	D
With additional requirements and restrictions				
RELIGIOUS ITEMS (As approved by the local religious review committees, i.e., kufi caps, yamikas, prayer rugs, etc.).	YES	YES	YES	YES

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OTHER REGISTERABLE ITEMS FOR LEVEL I, II, II, CAMP AND CCF MALE INMATES

Item Description	General Population			ASU
	Privilege Group			
	A	B	C	D
With additional requirements and restrictions				
RELIGIOUS MEDAL AND CHAIN (Not to	±	±	±	0

exceed \$100, chain not to exceed 18" in length, Obtainable as a set only, chains may not be purchased separately from medal).				
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Proposed revisions to Authorized Personal Property Schedule – Levels III and IV

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MISCELLANEOUS ITEMS FOR LEVEL III AND IV MALE INMATES

Item Description With additional requirements and restrictions	General Population			SHU	ASU
	Privilege Group			Privilege Group	
	A	B	C	D	
RELIGIOUS ITEMS (As approved by the local religious review committees, i.e., kufi caps, yamikas, prayer rugs, etc.).	YES	YES	YES	YES	YES

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OTHER REGISTERABLE ITEMS FOR LEVEL III AND IV MALE INMATES

Item Description With additional requirements and restrictions	General Population			SHU	ASU
	Privilege Group			Privilege Group	
	A	B	C	D	
RELIGIOUS MEDAL AND CHAIN (Not to exceed \$100, chain not to exceed 18" in length, Obtainable as a set only, chains may not be purchased separately from medal).	±	±	±	0	0

Proposed revisions to Authorized Personal Property Schedule – High Security and Transitional Housing

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MISCELLANEOUS ITEMS FOR HIGH SECURITY AND TRANSITIONAL HOUSING MALE INMATES

Item Description With additional requirements and restrictions	General Population			SHU	ASU
	Privilege Group			Privilege Group	
	A	B	C	D	
RELIGIOUS ITEMS (As approved by the local religious review committees, i.e., kufi caps, yamikas, prayer rugs, etc.).	YES	YES	YES	YES	YES

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OTHER REGISTERABLE ITEMS FOR HIGH SECURITY AND TRANSITIONAL HOUSING MALE INMATES

Item Description With additional requirements and restrictions	General Population			SHU	ASU
	Privilege Group			Privilege Group	

	A	B	C	D	
RELIGIOUS MEDAL AND CHAIN (Not to exceed \$100, chain not to exceed 18" in length, Obtainable as a set only, chains may not be purchased separately from medal).	1	1	1	0	0

Proposed revisions to Authorized Personal Property Schedule – Female Offenders Programs

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MISCELLANEOUS ITEMS FOR FEMALE INMATES

Item Description With additional requirements and restrictions	Reception Center		General Population			SHU	ASU
	Privilege Group		Privilege Group			Privilege Group	
	(Initial Intake) U	(Processing) U	A	B	C	D	
RELIGIOUS ITEMS (As approved by the local religious review committees, i.e., kufi caps, yamikas, prayer rugs, etc.).	YES	YES	YES	YES	YES	YES	YES

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OTHER REGISTERABLE ITEMS FOR FEMALE INMATES

Item Description With additional requirements and restrictions	Reception Center		General Population			SHU	ASU
	Privilege Group		Privilege Group			Privilege Group	
	(Initial Intake) U	(Processing) U	A	B	C	D	
RELIGIOUS MEDAL AND CHAIN (Not to exceed \$100, chain not to exceed 18" in length, Obtainable as a set only, chains may not be purchased separately from medal).	1	1	1	1	1	0	0