

**State of California
Office of Administrative Law**

In re:
Department of Corrections and
Rehabilitation

NOTICE OF APPROVAL OF REGULATORY
ACTION

Regulatory Action:

Government Code Section 11349.3

Title 15, California Code of Regulations

OAL File No. 2010-0706-02 SR

Adopt sections: 3349.1.1, 3349.1.2,
3349.1.3, 3349.1.4,
3349.2.1, 3349.2.2,
3349.2.3, 3349.2.4, 3349.3,
3349.3.1, 3349.3.2,
3349.3.3, 3349.3.4,
3349.3.5, 3349.3.6,
3349.3.7, 3349.4.1,
3349.4.2, 3349.4.3,
3349.4.4, 3349.4.5,
3349.4.6

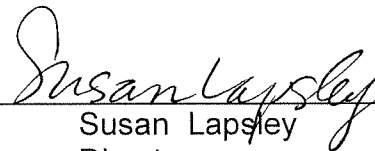
Amend sections: 3349

Repeal sections:

In this regulatory action, the California Department of Corrections and Rehabilitation amends and adopts regulations in Title 15 of the California Code of Regulations to establish the procedures for execution of death sentences by lethal injection at San Quentin State Prison.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 8/29/2010.

Date: 7/30/2010



Susan Lapsley
Director

Original: Matthew Cate
Copy: Randy Marshall

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

FD-400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z- 2009-0417-01	REGULATORY ACTION NUMBER 2010-0706-02SR	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED FILED IN THE OFFICE OF

2010 JUL 30 PM 3: 34

2010 JUL -6 PM 3: 13

OFFICE OF ADMINISTRATIVE LAW

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)
08-0069

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 Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2009/1182	PUBLICATION DATE 5/2009

SUBMISSION OF REGULATIONS (Complete when submitting regulations)

a. SUBJECT OF REGULATION(S) Lethal Injection Process	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2010-0429-04 S
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SPECIFY CALIFORNIA CODE OF REGULATIONS TITLES AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	See Form 400 Attachment
TITLE(S)	REPEAL

<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 checked="" 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) _____	

ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF PUBLISHED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs., title 1, §44 and Gov. Code §11347.1)
January 4, 2010 - January 20, 2010; June 11, 2010 - June 25, 2010

EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	<input checked="" type="checkbox"/> Effective 30th day after filing with Secretary of State	<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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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 Randy Marshall	TELEPHONE NUMBER (916) 255-5785	FAX NUMBER (Optional) (916) 255-5601	E-MAIL ADDRESS (Optional) Randall.marshall@cdcr.ca.gov
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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>Brett H. Morgan</i>	DATE 7/6/10
TYPED NAME AND TITLE OF SIGNATORY BRETT H. MORGAN, Chief of Staff	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 30 2010

Office of Administrative Law

FORM 400, ATTACHMENT

Subject: Title 15, Division 3, Subchapter 4, Lethal Injection Process

Adopts sections: 3349.1.1, 3349.1.2, 3349.1.3, 3349.1.4, 3349.2.1, 3349.2.2, 3349.2.3, 3349.2.4, 3349.3, 3349.3.1, 3349.3.2, 3349.3.3, 3349.3.4, 3349.3.5, 3349.3.6, 3349.3.7, 3349.4.1, 3349.4.2, 3349.4.3, 3349.4.4, 3349.4.5, and 3349.4.6.

TEXT OF PROPOSED REGULATIONS

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

Subchapter 4. GENERAL INSTITUTION REGULATIONS

Title to Article 7.5 is amended to read:

Article 7.5. ~~Execution~~ Administration of Death Penalty

Section 3349 is amended to read:

3349. Method of Execution.

(a) Inmates sentenced to death shall have the opportunity to choose ~~elect~~ to have the punishment imposed by lethal gas or lethal injection. Upon being served with the warrant of execution, the inmate shall be served with California Department of Corrections and Rehabilitation (CDCR) Form 1801-B (4/98 Rev. 06/10), Service of Execution Warrant, Warden's Initial Interview, which is incorporated by reference. The completed CDCR Form 1801-B shall be transmitted to the ~~warden~~ Warden.

(b) The inmate shall be notified of the opportunity for such choice ~~selection~~ and that, if the inmate does not choose either lethal gas or lethal injection within ten days after being served with the execution warrant, the penalty of death shall be imposed by lethal injection. The inmate's attestation to this service and notification shall be made in writing and witnessed utilizing the CDCR Form 1801 (Rev. 4/98 01/09), Notification of Execution Date and Choice of Execution Method, which is incorporated by reference. The completed CDCR Form 1801 shall be transmitted to the ~~w~~Warden.

(c) The inmate's choice ~~selection~~ shall be made in writing and witnessed utilizing the CDCR Form 1801-A (Rev. 4/98 01/09), Choice of Execution Method, which is incorporated by reference. The completed CDCR Form 1801-A shall be transmitted to the ~~w~~Warden.

(d) The inmate's choice ~~selection~~ shall be irrevocable, with the exception that, if the inmate sentenced to death is not executed on the date set for execution and a new execution date is subsequently set, the inmate person ~~again~~ shall have the opportunity to choose ~~elect~~ to have the punishment imposed by lethal gas or lethal injection, according to the procedures set forth in subsections (a), (b), and (c) of this section.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3603, 3604, and 5054, Penal Code.

NOTICE TO PRINTER: DELETE PICTURES OF REVISED 4/98 COPIES OF CDC FORMS 1801, 1801-A, AND 1801-B.

New Section 3349.1.1 is adopted to read:

3349.1.1. Definitions

For the purpose of Subchapter 4, Article 7.5, the following definitions shall apply:

(a) Adjustment Center means one of four housing units at San Quentin State Prison that houses condemned inmates who are placed under administrative segregation based on their custodial behavior, notoriety and/or protective needs.

- (b) *Alienists* means the physicians who treat mental disorders and who specialize in related legal matters.
- (c) *Assistant Secretary* means one of several executive positions within the Department of Corrections and Rehabilitation.
- (d) *Assistant Team Leader* means the individual who is the second line supervisor of the Lethal Injection Team.
- (e) *Associate Warden-Specialized Housing Division* is the designated Correctional Administrator of the East Block Adjustment Center, North Segregation and Administrative Segregation units at San Quentin who reports to the Warden.
- (f) *Case Records Manager* means the individual responsible for all inmate files at San Quentin.
- (g) *Chaplain* means an individual duly designated by a religious denomination to discharge specified religious duties, including a Native American Indian spiritual leader.
- (h) *Correctional Food Manager* means the individual manager responsible for all food service within San Quentin State Prison.
- (i) *Crisis Response Team Commander* means the individual who supervises and coordinates all security for San Quentin on the day of the execution.
- (j) *East Block* means one of four housing units at San Quentin State Prison that houses condemned inmates.
- (k) *East Gate* means the east entrance into San Quentin State Prison.
- (l) *Emergency Operations Center* means the command post established within San Quentin State Prison by the Chief Deputy Warden.
- (m) *Facility Captain* means the custodial manager assigned to the specialized housing division.
- (n) *Infusion Control Room* means the space allocated to accommodate the Infusion Sub-Team, designated members of the Intravenous Sub-Team, the Security Sub-Team and the chemical mixing area.
- (o) *Infusion Sub-Team* means the Lethal Injection Team Members who are responsible for receiving the chemicals, mixing the chemicals, drawing the chemicals into syringes, labeling and color coding the syringes and infusing the Lethal Injection Chemicals.
- (p) *Intravenous Sub-Team* means the Lethal Injection Team Members who are responsible for placing electronic monitoring sensors, inserting the intravenous catheters, performing a consciousness check, monitoring the intravenous lines, and crimping and uncoupling the intravenous lines.
- (q) *Lethal Injection Chemicals* means the three chemicals used to perform an execution, Sodium Thiopental, Pancuronium Bromide and Potassium Chloride.
- (r) *Lethal Injection Facility* means the dedicated structure consisting of three witness viewing rooms, one holding cell, an Infusion Control Room, Security Sub-Team areas, restrooms and Lethal Injection Room.

- (s) Lethal Injection Facility Holding Area means the cell and associated area where the inmate is held prior to an execution.
- (t) Lethal Injection Room means the room where the inmate is executed.
- (u) Lethal Injection Team means the individuals that comprise the four sub-teams described in this article.
- (v) Main Control Room means the area where the key control is maintained at San Quentin.
- (w) Master Execution File means the permanent record of all documents related to an execution that is maintained in the Warden's office complex.
- (x) North Segregation means one of four housing units at San Quentin State Prison that houses condemned inmates.
- (y) Official Witness means any member of the public selected by the Warden to be present at the execution.
- (z) Personnel Assignment Officer means the Lieutenant who is in charge of assigning correctional staff to individual duty positions within San Quentin.
- (aa) Public Information Officer means the San Quentin staff member responsible for responding to media inquiries.
- (bb) Record Keeping Sub-Team means the Lethal Injection Team members who are responsible for documenting each element of the lethal injection process and for assembling all documents pertaining to the lethal injection process for inclusion in the Master Execution File.
- (cc) Selection Panel means the Warden, the Associate Director-Reception Centers, the Team Administrator, and the Team Leader.
- (dd) Security Sub-Team means the Lethal Injection Team members who are responsible for ensuring the security of the Lethal Injection Facility, providing direct constant supervision of the inmate in the final hours prior to an execution, and restraining and escorting the inmate to the execution room.
- (ee) Security Team Area means a location in the Lethal Injection Facility consisting of an observation post near the holding cell, a search area, a preparation area and a staff restroom.
- (ff) Special Visiting Team means custody staff who are available to facilitate visiting.
- (gg) Spiritual Advisor means a person who, by profession or practice, provides spiritual advice, assistance, or guidance.
- (hh) Team Administrator means the Associate Warden who is responsible for providing managerial oversight and supervision of the Lethal Injection Team's training, preparation and performance during an execution.
- (ii) Team Leader means the Lethal Injection Team member who is responsible for providing direct supervision of the Lethal Injection Team during training, preparation, and the implementation of the lethal injection procedure.

(jj) *Visiting Lieutenant* means the officer assigned to oversee inmate visiting at the institution.

(kk) *Warden* means the Warden of San Quentin State Prison.

(ll) *West Gate* means the west entrance into San Quentin State Prison (main entrance).

(mm) *Witness Areas* means the three separate viewing rooms for the official witnesses, media and all other witnesses to an execution.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections, 190, 3600, 3601, 3602, 3603, 3605, 3607, 3700, 3700.5, 3701, 3702, 3703, 3704 and 5054, Penal Code; *Baze v. Rees* (2008) 553 U.S. 35.

New Section 3349.1.2 is adopted to read:

3349.1.2. Selection, Recruitment and Annual Review of Lethal Injection Team Members.

(a) Recruitment and Selection Process.

(1) With the assistance of the Director, Division of Adult Institutions (DAI), the Warden shall coordinate the recruitment and selection of Lethal Injection Team members from employees of San Quentin. The Lethal Injection Team shall consist of a minimum of 20 members, including the Team Leader who shall serve at the pleasure of the Warden. The total number of Lethal Injection Team members shall be determined by the Warden. Names of the members of the Lethal Injection Team shall remain confidential.

(2) Any vacancy of the Team Leader position shall be filled prior to the recruitment and selection of any other vacant team positions. The Warden shall also select an Associate Warden to serve as the Team Administrator. The Team Administrator is not a member of the Lethal Injection Team, but the factors set forth in subsections (b)(2) and (3) and (e)(1)-(7) shall apply. The Warden shall coordinate the recruitment and selection of potential candidates. The Warden, with the DAI's assistance, shall hold interviews of prospective candidates.

(3) In the event the Warden is unable to recruit and select a sufficient number of qualified Lethal Injection Team members from employees at San Quentin, the Warden shall contact the Director, DAI to coordinate the identification of additional potential candidates for team membership from other CDCR locations or outside of CDCR. Source locations for prospective team members shall be selected as determined appropriate by the Director, DAI.

(4) The hiring authorities from locations designated by the Warden shall select prospective team members from personnel assigned to their respective areas of responsibility consistent with the selection process established in this article. The hiring authorities shall forward the names and classifications of prospective team members to the Director, DAI.

(A) A Selection Panel comprised of the Warden, Associate Director-Reception Centers, the Team Administrator, and the Team Leader (Selection Panel) shall review qualifications, interview prospective candidates, and select the Lethal Injection Team members. The Warden shall chair the Selection Panel and be responsible for the selection of Lethal Injection Team members consistent with the criteria established in this article. After the Selection Panel selects the lethal injection team members, the Team Leader shall assign each member to a sub-team.

(B) If necessary, the Warden may contract with medical personnel to be members of the Lethal Injection Team, or to serve as the physician attending the execution.

(b) Screening of Lethal Injection Team Candidates.

(1) The Selection Panel shall screen all candidates to ensure that each candidate meets the criteria established for either that of the Team Leader or for membership on one of the four designated sub-teams as set forth in (e) and (f) below.

(2) The Selection Panel screening process shall include:

(A) Review of all the available candidate's performance evaluations.

(B) Review of the candidate's personnel, supervisory, and training files.

(C) Review of the candidate's current Criminal Investigation and Information (CI&I) Report from the California Department of Justice.

(3) As part of the screening process, the Selection Panel shall interview each candidate to determine the following:

(A) Personal history and background.

(B) Professional experience, including, but not limited to, the following:

1. Professional experiences that would aid the candidate in performing this duty.

2. Professional characteristics which made this individual a candidate for membership on the team.

(c) The Selection Panel shall identify and maintain a list of pre-qualified employees that meet the criteria for membership on the Lethal Injection Team. The Director, DAI shall ensure that a minimum number of 10 qualified employees will be maintained. It is the responsibility of the Warden to notify the Director, DAI of the necessity to fill vacancies.

(d) When appointing a person to fill a vacant position from the list of screened candidates, the Selection Panel shall review the person's background, qualifications and work performance to determine whether that person meets the required criteria, as described in subsections 3349.1.2(e) and (f), even if that person has previously been screened by the Selection Panel.

(e) Criteria for Lethal Injection Team membership. Each team member shall be selected based on their qualifications and expertise to effectively carry out the duties in one of the specialized functions. The following criteria shall be utilized in the selection of all Lethal Injection Team members:

(1) Demonstrated professional job performance and demeanor.

(2) Good attendance record.

(3) No prior stress claims.

(4) No corrective action in the past three years.

(5) No sustained adverse action as reflected in the CDCR and State Personnel Board records and as substantiated by the candidate.

(6) The most recent annual permanent employee performance evaluation meets or exceeds expected standards.

(7) Must not be on probation in the candidate's current classification. This does not apply to promotions made subsequent to initial placement on the Lethal Injection Team.

(8) Must agree that if selected to be a member of the Lethal Injection Team, they can no longer work or be assigned to any condemned housing unit, either full or part-time. This includes any overtime.

(f) In addition to the general selection criteria as described above in subsection 3349.1.2(e), each member in a specific Lethal Injection Team category, as follows, shall meet the following criteria:

(1) The Team Leader must be a Correctional Lieutenant or Captain and have:

(A) Five years of supervisory experience.

(B) Proven ability to make sound decisions and effectively direct the actions of others.

(C) Demonstrated proficiency in the transportation of inmates and the application of restraints.

(D) Good physical condition.

(2) The Assistant Team Leader must be a Sergeant or Lieutenant and have:

(A) Three years of supervisory experience.

(B) Proven ability to make sound decisions and effectively direct the actions of others.

(C) Demonstrated proficiency in the transportation of inmates and the application of restraints.

(D) Good physical condition.

(3) The Security Sub-Team members must be Correctional Officers or Sergeants and have:

(A) Three years of line experience.

(B) Proven ability to make sound decisions.

(C) Demonstrated proficiency in the transportation of inmates and the application of restraints.

(D) Good physical condition.

(4) Intravenous Sub-Team members have no rank requirement, but shall:

(A) Maintain current certification and license to insert intravenous catheters into peripheral veins.

(B) Maintain a current certification and license for placement of the Electrocardiogram (ECG) leads used during the lethal injection process.

(C) Demonstrate ability to insert an intravenous catheter or catheters into an appropriate vein or veins of an inmate.

(D) Demonstrate ability to set up intravenous lines and intravenous drip.

(E) Qualified in the appropriate placement of the ECG leads utilized during this process.

(F) Regularly set up intravenous lines in the performance of their job duties, unrelated to their duties on the Lethal Injection Team.

(G) Have a basic understanding of the effects of the three chemicals used in the lethal injection process.

(5) Infusion Sub-Team members have no rank requirement, but shall:

(A) Be able to follow the directions provided by the manufacturer in mixing the lethal injection chemicals.

(B) Possess the organizational skills necessary to appropriately label and color code the chemicals used during the lethal injection process.

(6) Record Keeping Sub-Team members have no rank requirement, but shall:

(A) Understand the critical need to keep accurate records during the lethal injection process.

(B) Demonstrate expertise in report writing and record keeping.

(g) Annual Review. In order to ensure that the Lethal Injection Team members maintain their qualifications pursuant to the selection criteria, an annual compliance review shall be conducted by the Warden. This shall be completed annually in the month of June. This review shall include, but not be limited to, the following:

(1) Review of the personnel, supervisory and training files.

(2) Review of the most recent performance evaluation.

(3) Review of the Criminal Investigation and Information (CI&I) Report from the California Department of Justice.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27.

New Section 3349.1.3 is adopted to read:

3349.1.3. Lethal Injection Team Duties.

(a) Duties performed by the Lethal Injection Team members may include, but not be limited to the following:

(1) Security.

(2) Intravenous Access.

(3) Infusion of Lethal Injection Chemicals.

(4) Record keeping.

(b) The Team Administrator shall ensure that the Lethal Injection Team is trained pursuant to section 3349.1.4 and prepared to carry out their specific duties.

(c) The Team Leader shall assign each of the Lethal Injection Team members to one of the following Sub-Teams:

(1) Security Sub-Team. The Security Sub-Team shall perform the following tasks:

(A) Ensure the security of the Lethal Injection Facility.

(B) Provide direct and constant supervision of the inmate in the final six hours prior to the scheduled execution.

(C) Place the inmate in appropriate restraints and escort the inmate into the execution room prior to the scheduled execution.

(2) Intravenous Sub-Team. The Intravenous Sub-Team shall perform the following tasks:

(A) Assist in preparing the inmate by placing the electronic monitoring on the inmate prior to the scheduled execution.

(B) Insert the intravenous catheters into appropriate veins in the inmate as set forth in section 3349.4.5.

(C) Perform consciousness checks as specified in section 3349.4.5.

(D) Monitor the intravenous lines to ensure patency of the lines as required by section 3349.4.5.

(E) Crimp and uncouple the intravenous lines after the inmate has expired.

(3) Infusion Sub-Team. The Infusion Sub-Team shall perform the following tasks:

(A) Receive the Lethal Injection Chemicals from the Team Administrator and Team Leader after removal from the Lethal Injection Facility safe/refrigerator prior to the scheduled execution.

(B) Mix the Lethal Injection Chemicals in accordance with the manufacturer's instructions and draw the needed chemicals into the appropriate syringes.

(C) Label and color code the syringes.

(D) Infuse the Lethal Injection Chemicals in accordance with this article.

(4) Record Keeping Sub-Team.

(A) One member of the Record Keeping Sub-Team shall be assigned to, and keep records for, each of the following sub-teams:

1. Security Sub-Team.

2. Intravenous Sub-Team.

3. Infusion Sub-Team.

(B) One member of the Record Keeping Sub-Team shall be assigned to the Team Administrator and to the Team Leader to keep records for both.

(C) The Record Keeping Sub-Team shall perform the following tasks and shall document each element of the Lethal Injection process:

1. The Record Keeping Sub-Team member assigned to the Infusion Sub-Team shall complete the CDCR Form 2177 (01/09), San Quentin State Prison Execution Log Lethal Injection Infusion Sub-Team, which is incorporated by reference.

2. The Record Keeping Sub-Team member assigned to the Intravenous Sub-Team shall complete the CDCR Form 2179 (01/09), San Quentin State Prison Execution Log Lethal Injection Intravenous Sub-Team, which is incorporated by reference.

3. The Record Keeping Sub-Team member assigned to the Security Sub-Team shall complete the CDCR Form 2180 (01/09), San Quentin State Prison Execution Log Lethal Injection Security Sub-Team, which is incorporated by reference.

4. The Record Keeping Sub-Team members assigned to the Team Administrator and to the Team Leader shall complete the CDCR Form 2181 (01/09), San Quentin State Prison Execution Log Lethal Injection Team Administrator/Team Leader, which is incorporated by reference.

(D) Upon completion of the execution, the Record Keeping Sub-Team shall assemble all documents pertaining to the lethal injection process for inclusion in the Master Execution File.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27.

New Section 3349.1.4 is adopted to read:

3349.1.4. Lethal Injection Team Training.

(a) The Team Administrator shall have direct responsibility to ensure that relevant quality training is provided to each member of the Lethal Injection Team.

(b) Each Lethal Injection Team member, as described in subsection 3349.1.3(c), shall undergo specific training relevant to their assigned duties during an execution.

(c) Training for Lethal Injection Team members.

(1) Monthly training shall occur and shall include, but not be limited to, the following:

(A) A simulation of an execution by lethal injection.

(B) Training on potential problems and recommendations for avoidance or resolution.

(2) Training for the Team Leader and the Security Sub-Team shall include, but not be limited to, the following:

(A) Application of restraints.

(B) Escort and transportation of inmates.

(C) Inmate/staff relations.

(D) Effective communication, as defined in section 3000.

(E) Appropriate methods of securing the inmate so the restraints do not interfere with the intravenous lines.

(F) Departmental Use of Force pursuant to section 3268 et seq. and use of force options.

(G) Potential problems and recommendations for avoidance or resolution.

(H) Security of the Lethal Injection Facility.

(I) Direct and constant supervision of the inmate.

(3) Intravenous Sub-Team training shall include, but not be limited to, the following:

(A) Use of an electronic monitor for vital signs.

(B) Setting up intravenous lines and intravenous drip.

(C) The different sizes of intravenous catheters and determination of the proper size of the catheter(s) to be used, dependent on the size of the vein.

(D) Potential problems and recommendations for avoidance or resolution.

(E) Performance of consciousness checks.

(F) Monitoring intravenous lines to ensure patency.

(G) Crimping and uncoupling intravenous lines.

(4) Infusion Sub-Team training shall include, but not be limited to, the following:

(A) Appropriate mixing of the chemicals used in the lethal injection process.

(B) Proper level and rate of infusion of the chemicals into the intravenous lines established by the Intravenous Sub-Team.

(C) Proper sequence of infusion of the three chemicals used in the lethal injection process and the physical effects each chemical can have on the inmate as they are administered.

(D) Numbering and color coding of the syringes used in the lethal injection process to ensure each chemical is administered in appropriate order.

(E) Proper handling and accountability of controlled substances.

(F) Potential problems and recommendations for avoidance or resolution.

(5) Record Keeping Sub-Team training shall include, but not be limited to, the following:

(A) Accurate record keeping.

(B) Report writing.

(C) Specific records used to document an execution.

(d) Periodic Training Requirements.

(1) Training shall be conducted monthly, as provided in subsection (c) of this section, for the Lethal Injection Team members. Specific training dates will be scheduled by the Team Leader and approved by the Warden.

(2) When a Death Warrant has been served on an inmate, the Team Leader shall schedule training in the 30 calendar days immediately preceding the scheduled execution date.

(3) Except for those Lethal Injection Team members described in subsection 3349.1.2(a)(4)(B), the Lethal Injection Team shall train at least once per month for a minimum of eight hours, and shall also attend additional training as directed by the Team Leader. Any team member described in subsection 3349.1.2(a)(4)(B) shall train with the Lethal Injection Team at least once every six months. All Lethal Injection Team members must attend all training, as specified, unless on approved vacation/sick leave.

(4) Except for those team members described in subsection 3349.1.2(a)(4)(B), the Lethal Injection Team members must attend at least six training sessions prior to being assigned duties during an execution. This includes a minimum of three training sessions in the six months immediately preceding a scheduled execution, and participation in each of the three daily training sessions immediately preceding the scheduled execution. Any team member described in subsection 3349.1.2(a)(4)(B) must attend at least one training session in the six months immediately preceding a scheduled execution, and participate in each of the three daily training sessions immediately preceding the scheduled execution.

(e) Training Documentation and Records.

(1) The Team Leader shall maintain a lethal injection process training file. This training file shall contain a record of all lethal injection process training sessions.

(2) Lethal injection process logs, CDCR Forms 2177, 2179, 2180, and 2181, as described in section 3349.1.3, shall be completed by the Team Leader or designee during each training session to document that appropriate training was conducted and a complete walk-through of the lethal injection process was conducted.

(3) In-Service Training sign-in sheets, the CDC Form 844 (Rev. 4/98), In-Service Training Sign-In Sheet, which is incorporated by reference, shall not be completed during training sessions and the names of the Lethal Injection Team members shall not be included in the training file.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27.

New Section 3349.2.1 is adopted to read:

3349.2.1. Execution Site Operation.

(a) Security. All staff entering the Lethal Injection Facility must have prior oral or written approval of the Warden, or acting Warden in the Warden's absence.

(b) The Infusion Control Room shall have sufficient space to accommodate the Infusion Sub-Team and designated members of the Intravenous Sub-Team and the Security Sub-Team. There shall be a mixing area located in the Infusion Control Room.

(c) The Lethal Injection Facility safe and refrigerator shall be permanently mounted within the Infusion Control Room.

(1) Combination numbers to the Infusion Control Room safe shall be known only by the Warden, Team Administrator and the Team Leader.

(2) The combination to the Infusion Control Room safe shall be changed after each execution to maintain quality control, accountability, and security of lethal injection chemicals.

(3) The refrigerator shall be secured within a lockable, heavy gauge, steel enclosure to prevent unauthorized access. Access to the keys for the enclosure shall be limited to the Warden, Team Administrator, and the Team Leader.

(4) The temperature of the refrigerator shall be monitored and documented to ensure that the storage temperature of the pancuronium bromide is maintained according to the manufacturer's directions.

(5) The refrigerator shall be connected to a power supply which is connected to the institution's back-up generator to ensure the integrity of the chemicals in the event of a power outage.

(d) Key Procedure.

(1) The keys for the Lethal Injection Facility shall be located in the San Quentin's Main Control Room, in a locked box secured under glass. All access must be approved by the Warden.

(2) Keys allowing access to the locked box shall only be issued to the Warden, Team Administrator, or the Team Leader.

(3) Each person authorized to draw these keys shall be required to sign the key control log noting the time, reason for entry into the Lethal Injection Facility, and time of return.

(4) Each person authorized to draw the keys to the Lethal Injection Facility shall personally return the keys to the Main Control Room to ensure that the keys are properly secured in the locked box under glass. Under no circumstances shall the keys be returned by someone other than the person authorized to draw the keys.

(5) Any emergency access to the Lethal Injection Facility shall be documented in a CDCR Form 837-A (Rev. 07/05), Crime/Incident Report Part A-Cover Sheet, which is incorporated by reference, and forwarded to the Warden as an unusual occurrence at the institution. The Warden (or Administrative Officer of the Day during weekends, holidays, and 1st and 3rd watches) shall be notified immediately of the reasons access to the Lethal Injection Facility was required.

(e) Maintenance.

(1) The Team Administrator, Chief of Plant Operations, and the Team Leader shall ensure that documented inspections of the Lethal Injection Facility are conducted on a monthly basis.

(2) The Team Administrator shall work with the Team Leader to complete documented security inspections of the Lethal Injection Facility.

(A) The Team Leader shall:

1. Inspect all keys, locking devices, security systems, sanitation, electrical, and other physical plant systems in the Lethal Injection Facility to ensure that the Lethal Injection Facility is fully operational at all times.

2. Immediately report any discrepancy to the Team Administrator.

3. Coordinate with the plant operations staff at San Quentin for the immediate repair of any noted discrepancies and for scheduled maintenance as needed.

4. Submit a written report to the Team Administrator after each monthly inspection attesting to the security readiness of the Lethal Injection Facility.

(B) The Chief of Plant Operations shall note any discrepancies, schedule immediate repairs as necessary, and shall report directly to the Warden the status of any repairs.

(3) Thirty calendar days prior to a scheduled execution, the Team Administrator shall schedule weekly inspections of the Lethal Injection Facility.

(A) The Team Administrator shall coordinate with the Team Leader to conduct weekly security inspections of the Lethal Injection Facility.

(B) The Team Leader shall follow the procedures identified in subsection (e)(2)(A) above for these weekly inspections.

(4) Five calendar days prior to a scheduled execution, the Team Administrator shall schedule daily inspections of the Lethal Injection Facility and shall ensure that daily inspections of the Lethal Injection Facility are conducted as identified in subsection (e)(2)(A) above.

(5) The Team Administrator shall confirm that all items (including but not limited to clothing, personal hygiene items, television, radio) needed to re-house the inmate in the Lethal Injection Facility Secured Holding Area are present prior to re-housing the inmate in the Lethal Injection Facility.

(6) On the morning before a scheduled execution, the Team Administrator, Chief of Plant Operations, and the Team Leader shall make a final inspection of the Lethal Injection Facility. All discrepancies and a plan of correction shall be reported directly to the Warden.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604, 3605 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27.

New Section 3349.2.2 is adopted to read:

3349.2.2. Lethal Injection Record Keeping and Documentation.

(a) The Litigation Coordinator, shall be responsible for the security of all documents generated prior to, during, and after the lethal injection process. Each Associate Warden is responsible to ensure that all documents generated by staff are accurate, completed in a timely manner, and forwarded to the Litigation Coordinator. The Team Administrator shall ensure that all documents generated by the Lethal Injection Team are accurate, completed in a timely manner, and forwarded to the Litigation Coordinator. The Litigation Coordinator shall maintain the Master Execution File in the Warden's office complex. The Master Execution File shall serve as a permanent record of all documents related to the execution.

(b) Each procedure in the lethal injection process shall be documented by a staff member of the Record Keeping Sub-Team assigned to maintain records of the lethal injection process.

(c) A Correctional Counselor II shall collect and log all documents from the inmate on the Correctional Counselor's Pre-Execution Log. All documents received from the inmate as well as the Correctional Counselor's Pre-Execution Log will be forwarded to the Litigation Coordinator for inclusion in the Master Execution File.

(d) The Litigation Coordinator shall maintain a copy of and log all documents and notices transmitted between San Quentin State Prison and California Department of Corrections and Rehabilitation headquarters, or any other agency or organization, pertaining to a scheduled execution.

(e) The Team Leader shall ensure documentation of the following:

(1) All training of the Lethal Injection Team.

(2) All inspections of the Lethal Injection Facility.

(3) All activities regarding the lethal injection process.

(4) All inmate activities after the inmate is re-housed in the Lethal Injection Facility Holding Area.

(f) The Team Leader shall assign a member of the Record Keeping Sub-Team to the Team Administrator, Team Leader, the Security Sub-Team, the Intravenous Sub-Team, and to the Infusion Sub-Team to ensure that these teams' actions are documented without distracting the team members from their duties.

(g) Immediately following the execution, the Team Leader shall complete the CDCR Form 2182 (01/09), San Quentin State Prison Execution Report-Part A, which is incorporated by reference.

(1) Each team member shall complete a CDCR Form 2183 (01/09), San Quentin State Prison Execution Report - Part B, which is incorporated by reference, documenting their actions and observations during the execution.

(2) Team members shall use identifiers assigned to their specific position (duties), rather than their names and classifications, when completing the Execution Report - Part B.

(3) The Team Leader shall assemble the complete Execution Report for review by the Team Administrator. The Execution Report shall include all appropriate supplemental reports.

(h) All the records of the execution shall be processed by the Team Administrator. The Team Administrator shall personally meet with the Record Keeping Sub-Team following the execution to evaluate and critique all records submitted for inclusion in the Master Execution File.

(i) The Public Information Officer shall ensure that the Litigation Coordinator is provided copies of any press releases regarding the lethal injection process.

(j) Documents to be maintained. Each sub-file within the Master Execution File shall contain the following documentation.

(1) Notifications to inmate and involved agencies:

- (A) People's Application for Appointment of Execution Date.
 - (B) Death Warrant.
 - (C) CDCR Form 1801 (Rev. 01/09), Notification of Execution Date and Choice of Execution Method
 - (D) CDCR Form 1801-B (Rev. 06/10), Service of Execution Warrant-Warden's Initial Interview.
 - (E) Notice to Director, Division of Adult Institutions.
 - (F) Notice to Governor's Legal Affairs Secretary.
 - (G) Memo to Director, DAI, Identifying Alienist Panel.
 - (H) CDCR Form 1801-A (Rev. 01/09), Choice of Execution Method.
 - (I) CDCR Form 2172 (01/09), Thirty Day Notification San Quentin State Prison, signed by inmate. The CDCR Form 2172 (01/09) is incorporated by reference.
 - (J) Media Notification of Scheduled Execution.
- (2) Medical Review Documentation:
- (A) CDCR 2173 (06/10), 20-Day Pre-Execution Report, which is incorporated by reference, pursuant to Penal Code section 3700.5.
 - (B) Medical Status Report.
 - (C) CDCR Form 2175 (06/10), 7-Day Pre-Execution Report, which is incorporated by reference.
 - (D) The CDCR Form 2174 (01/09), Notification By Warden to Marin County District Attorney Concerning Sanity of Condemned Inmate (Penal Code section 3700), which is incorporated by reference.
- (3) Inmate Visiting Records:
- (A) Inmate Visiting File.
 - (B) Inmate Visiting History.
 - (C) Request for Approval of Visitors from CDCR Form 2172.
- (4) Inmate's completed attachments from CDCR Form 2172.
- (A) Request for Approval of Witnesses.
 - (B) Disposition of Property.
 - (C) Next of Kin Notification.
 - (D) Last Meal Request.

(E) Release of Remains and Burial Arrangements.

(5) Pre-Execution Logs and Logs:

(A) CDC Form 128-B General Chronos, as defined in section 3000.

(B) Lethal Injection Facility Activity Logbook.

(C) Condemned Unit 15 Minute Log.

(D) Correctional Counselor's Pre-Execution Log.

(6) Equipment and Controlled Substance Accountability Reports:

(A) Pre and Post Lethal Injection Supply Inventories.

(B) Pre and Post Lethal Injection Controlled Substance Inventories.

(C) Controlled Substance Chain of Custody Reports.

(D) Security Equipment Inventories.

(7) Execution Records:

(A) CDCR Form 2180 (01/09), San Quentin State Prison Execution Log-Lethal Injection Security Sub-Team.

(B) CDCR Form 2179 (01/09), San Quentin State Prison Execution Log-Lethal Injection Intravenous Sub-Team.

(C) CDCR Form 2177 (01/09), San Quentin State Prison Execution Log-Lethal Injection Infusion Sub-Team.

(D) CDCR Form 2181 (01/09), San Quentin State Prison Execution Log-Lethal Injection Team Administrator/Team Leader.

(E) Electrocardiogram (ECG) Tape.

(F) Lethal Injection Facility Announcements.

(G) Emergency Operations Center Log.

(8) Post Execution Logs and Records:

(A) Death Certificate.

(B) CDCR Form 2178 (01/09), Return On Warrant of Death, which is incorporated by reference.

(9) Legal Documents:

(A) Execution Related Pleadings.

(B) Clemency Petition.

(C) Clemency Denial.

(k) Correspondences. If additional documentation is generated as a result of the lethal injection process, those documents shall be added to the appropriate sub-file category.

(l) Review of the Master Execution File.

(2) After an execution has been concluded, the Team Administrator shall review the Master Execution File to ensure that all documents are accounted for and appropriately categorized.

(3) If force was utilized at any point during the lethal injection process, the Execution Report shall be available to the Executive Use of Force Review Committee. When the Committee has completed their review of the Use of Force, the Executive Use of Force Review Committee findings and all associated documentation shall be added to the Master Execution File.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27.

New Section 3349.2.3 is adopted to read:

3349.2.3. Witnesses, Observers, Media, and Information Releases.

(a) Selection of Witnesses.

(1) The Warden shall invite the Attorney General, members of the immediate family of the victim or victims and at least 12 reputable citizens, that are to be selected by the Warden.

(2) The Warden shall, at the request of the inmate, permit no more than two spiritual advisors, including but not limited to Chaplains, as the inmate may name, and any persons, relatives or friends, not to exceed five, to be present at the execution.

(b) The Warden shall authorize those peace officers or other CDCR employees as he or she may deem necessary to witness the execution.

(c) Number of persons permitted in the witness areas.

(1) A maximum of 50 persons shall be permitted in the witness areas including:

(A) Members of the Victim(s)'s Immediate Family.

(B) Official Witnesses, and news media witnesses as provided in subsection (e), all of whom shall be reputable citizens to be selected by the Warden in accordance with Penal Code section 3605. The inmate's attorney shall be considered an official witness solely for purposes of this section consistent with Penal Code section 3605.

(C) Attorney General.

(D) San Quentin security staff.

(E) Spiritual advisor (not to exceed 2).

(F) Inmate's family/friends (not to exceed 5).

(2) If the number of victim(s)'s immediate family exceeds the available spaces in the witness viewing room, then the institution may make whatever arrangements are necessary including, but not limited to, video conferencing or any other electronic means available to permit them to view the execution from a remote location.

(d) The Offices of the Governor, the Inspector General and the Attorney General shall each be permitted one reputable citizen selected by the Warden in accordance with Penal Code section 3605 to be present in the Infusion Control Room of the Lethal Injection Facility during an execution in locations designated by the Warden. No other observers will be permitted.

(e) News Media Witnesses.

(1) When an execution is scheduled, the California Department of Corrections and Rehabilitation (CDCR), Assistant Secretary, Office of Public and Employee Communications, shall notify the media and establish a ten-day filing period in which media may request to witness the execution.

(A) Requests may only be accepted during the designated ten-day filing period.

(B) All media requests to witness an execution shall be directed to the CDCR, Assistant Secretary, Office of Public and Employee Communications, 1515 S. Street, Sacramento, California, 94283-0001.

(C) Requests shall only be considered for the scheduled execution and shall not be kept on file as a standing request.

(2) The Assistant Secretary, Office of Public and Employee Communications, and the San Quentin Public Information Officer shall consult with the Warden regarding selection of the members of the news media to witness an execution. All media witnesses must agree to the use of a pool method and all media witnesses must agree to release information simultaneously to all other news agencies at a press conference held after the execution.

(f) Confidentiality of Witnesses. The names of the witnesses shall not be released.

(g) Processing of Witnesses.

(1) All witnesses must arrive at the institution's West Gate at the time designated by the Warden.

(2) Parking will be in the designated parking area.

(3) All witnesses will be screened per existing procedures outlined in section 3261.1, Media Access to Facilities, to include the following:

(A) All witnesses must have a valid identification as outlined in subsections 3173(c)(1) through (c)(6).

(B) No blue jeans, and no jeans-style blue, black, or grey pants for security purposes so that visitors are not confused with inmates by institution staff.

(C) No cameras, cell phones, blackberries, tape recorders, recording devices, electronic devices, drawing implements, or other similar equipment, shall be permitted in the witness area, except that media witnesses shall be provided with pencils and notepads.

(h) Witness Accommodation Prior to Execution.

(1) There shall be three designated witness staging areas; one for official/victim witnesses, one for media witnesses, and one for the inmate's witnesses.

(2) After screening, each group shall be escorted to their respective staging area.

