

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



January 4, 2010

NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS

Pursuant to the requirements of Government Code section 11346.8 (c), and section 44 of Title 1 of the California Code of Regulations, the California Department of Corrections and Rehabilitation (CDCR) is providing notice of changes made to proposed California Code of Regulations Title 15 sections 3349, 3349.1.1, 3349.2.3, 3349.3.4, 3349.3.6, 3349.4.4, 3349.4.5, and 3349.4.6 dealing with lethal injection which were the subject of a regulatory hearing on June 30, 2009. These changes are in response to comments received regarding the originally proposed regulation text.

You are receiving this notice because you provided written comments during the original comment period, commented at the public hearing, or requested notice of changes to CDCR amendments to the regulations concerning the lethal injection.

If you have any comments regarding the proposed changes, CDCR will accept written comments between January 4, 2010 and January 20, 2010. All written comments must be submitted to CDCR no later than 5:00 p.m. on January 20, 2010.

CDCR
Regulation and Policy Management Branch,
P.O. Box 942883, Sacramento, CA 94283-0001
by fax at (916) 255-5601; or by email at RPMB@cdcr.ca.gov

Text of Modified Regulations

CDCR has illustrated changes to the originally proposed text in the following manner: regulation language originally proposed is single underlined (example); deletions from the existing language are shown in single strikeout (~~example~~); new additions to the language originally proposed are **bold and double-underlined** (**example**); and new deletions from the existing language or the language originally proposed is shown in **bold with double strikeout** (**~~example~~**). Unchanged text surrounding these changes has been provided for context.

In the attached modified text, CDCR is making the following changes:

Subsection 3349(d) is amended to change the word “person” to “inmate” for consistency.

Subsection 3349.1.1(b) is amended to remove the “s” from “treats” and “specializes” for better grammar.

Subsection 3349.1.1(f) is amended to add a definition for Chaplain. This definition is added to clarify the meaning of “Chaplain” so as to distinguish it from “Spiritual Advisor”.

Subsections 3349.1.1(g) through 3349.1.1(o) are renumbered in order to incorporate the addition of new subsection 3349.1.1(f) that defines “Chaplains”.

Subsection 3349.1.1 (p) is renumbered to (q) and the title “legal injection room” is capitalized to match the definition added in new subsection 3349.1.1(s).

Subsection 3349.1.1 (q) is renumbered to (r) to incorporate the additions of new subsection 3349.1.1(f).

Subsection 3349.1.1(s) is amended to add a definition for Lethal Injection Room for clarity.

Subsections 3349.1.1(t) through 3349.1.1(jj) are renumbered in order to incorporate the addition of new subsection 3349.1.1(s) that defines the “Legal Injection Room”.

Subsection 3349.1.1(dd) is amended to add a definition for Spiritual Advisor. This definition is added to clarify the meaning of “Spiritual Advisor” so as to distinguish it from “Chaplain”.

Subsections 3349.1.1(bb) through 3349.1.1(jj) are renumbered to incorporate the addition of new subsection 3349.1.1(dd).

Subsection 3349.2.3(i)(1) is amended to add the phrase “the inmate’s witnesses” after the words “official witnesses”, and the word “inmate’s” is removed from the second sentence, for clarity. The public comments indicated that there were concerns that the inmate’s witnesses were treated differently than the victim’s witnesses. This change will clarify that these witnesses will be processed and transported in the same manner.

Subsection 3349.3.4(a)(1) is amended for clarity to delete the phrase “he or she” and replace it with the phrase “the inmate”. “Inmate” is a gender-neutral word that includes all those delivered to the department for incarceration by the courts; in this specific instance all those under a death penalty sentence .

Subsection 3349.3.4(c)(9) is amended to add the phrase “with the exception of Chaplains and approved Spiritual Advisors” to the first sentence. This change will clarify that both Chaplains and Spiritual Advisors have access to the inmate’s cell front to perform spiritual functions after the inmate is moved to the Lethal Injection Facility. The public comments indicated that the original language did not adequately explain this fact.

Subsection 3349.3.4(e)(2) is amended to capitalize “spiritual advisor” to match the new definition added in Subsection 3349.1.1(dd).

Subsection 3349.3.4(e)(3) is amended to add the words “state-employed and pre-approved” and “non-state.” This change will clarify that both state and pre-approved non-state Spiritual Advisors have access to the inmate’s cell front to perform spiritual functions. The public comments indicated confusion and that the original language did not adequately explain this fact.

Subsection 3349.3.6(e) is added to provide information about female inmates. The public comments indicated that there were no specific provisions for female inmates. This change is made to clarify when a female inmate will be transferred to San Quentin and where she will be housed until the time of her execution.

Subsection 3349.4.4(a)(6) is added to provide additional information about the viewing room curtains. The public comments indicated that there was confusion as to whether the curtains in the respective areas are open from the time that the inmate enters the execution chamber until the inmate is pronounced dead. This addition is intended to clarify that the curtain is open throughout the entire execution process until the inmate is declared dead.

Subsections 3349.4.4(a)(6) & (7) are renumbered to incorporate the addition of new subsection 3349.4.4(a)(6) regarding the curtains in the Lethal Injection Room.

Subsections 3349.4.4(e) through 3349.4.4(e)(2) are amended to clarify that the inmate’s witnesses and the victim’s witnesses will be escorted to their designated witness areas in the same manner. The public comments indicated that there were concerns that the inmate’s witnesses were treated differently than the victim’s witnesses.

Subsection 3349.4.4(f)(3) is amended to change “Visitor Processing Center” to lower case.

Subsection 3349.4.5(g)(2) is amended to remove the wording “and restarted after the last syringe has been administered”. This language was removed to properly reflect that the saline drip in the designated primary infusion catheter will be stopped before the first Lethal Injection Chemicals syringe is injected.

Subsection 3349.4.6(f)(2) is amended to substitute the word “moved” for the word “removed”. This change is made to clarify that Lethal Injection Team members will move the inmate’s body from the gurney and place it in a post-mortem bag.

TEXT OF PROPOSED REGULATIONS

In the following, **bold type** in double underline indicates an addition to the originally proposed text, and **bold type** in double ~~strike through~~ indicates a deletion to the originally proposed 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 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. 01/09), 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 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 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 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 ~~person inmate~~ inmate again shall have the opportunity to choose to have the punishment imposed by lethal gas or lethal injection, according to the procedures set forth in Sections (a), (b), and (c).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 3604, 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 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) *Case Records Manager* means the individual responsible for all inmate files at San Quentin.

(f) *Chaplain* means an individual duly designated by a religious denomination to discharge specified religious duties, including a Native American Indian spiritual leader.

(g) *Correctional Food Manager* means the individual manager responsible for all food service within San Quentin State Prison.

(h) *Crisis Response Team Commander* means the individual who supervises and coordinates all security for San Quentin on the day of the execution.

(i) *East Block* means one of four housing units at San Quentin State Prison that houses inmates.

(j) *East Gate* means the east entrance into San Quentin State Prison.

(k) *Emergency Operations Center* means the command post established within San Quentin State Prison by the Chief Deputy Warden.

(l) *Facility Captain* means the custodial manager assigned to the specialized housing division.

(ml) 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.

(nm) 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.

(on) 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.

(pe) Lethal Injection Chemicals means the three chemicals used to perform an execution, Sodium Thiopental, Pancuronium Bromide and Potassium Chloride.

(qp) 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 ~~L~~ethal ~~I~~njection ~~R~~oom.

(rq) Lethal Injection Facility Holding Area means the cell and associated area where the inmate is held prior to an execution.

(s) Lethal Injection Room means the room where the inmate is executed.

(tf) Lethal Injection Team means the individuals that comprise the four sub-teams described in this article.

(us) Main Control Room means the area where the key control is maintained at San Quentin.

(vt) Master Execution File means the permanent record of all documents related to an execution that is maintained in the Warden's office complex.

(wu) North Segregation means one of four housing units at San Quentin State Prison that houses inmates.

(xv) Personnel Assignment Officer means the Lieutenant who is in charge of assigning correctional staff to individual duty positions within San Quentin.

(yw) Public Information Officer means the San Quentin staff member responsible for responding to media inquiries.

~~(z*)~~ *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.

~~(aay)~~ *Selection Panel* means the Warden, the Associate Director, Reception Centers, the Team Administrator, and the Team Leader.

~~(bbz)~~ *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.

~~(ccaa)~~ *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.

~~(ddbb)~~ *Spiritual Advisor* means a person who, by profession or practice, provides spiritual advice, assistance, or guidance.

~~(eebb)~~ *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.

~~(ffcc)~~ *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.

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

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

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

~~(jjcc)~~ *Witness Areas* means the three separate viewing rooms for the official 12 witnesses, media and all other witnesses to an execution.

NOTE: Authority cited: Sections 3602 and 5058, Penal Code. Reference: Section 5054, Penal Code.

Sections 3349.1.2 through 3349.2.2 remain unchanged.

New Section 3349.2.3 is adopted to read:

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

(a) Selection of Witnesses.

(1) 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 viewing rooms.

(1) A maximum of 50 persons will be approved within the following designations:

Members of the Victim(s)'s Immediate Family
Official Witnesses: (at least 12 reputable citizens, to be selected by the Warden)
Attorney General
Governor's Office
Inspector General
San Quentin security staff
News media witnesses
Spiritual Advisor (not to exceed 2)
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 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 observer 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 to select 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.

(3) All witnesses shall view an execution orientation video in their respective staging area.

(4) At a time directed by the Warden, the witnesses shall be escorted to their respective designated witness rooms within the Lethal Injection Facility.

(i) Witness Accommodation after Execution.

(1) After the announcement of death, the official witnesses, ~~the inmate's witnesses,~~ and victim's witnesses shall be escorted back to their designated staging area. The ~~inmate's~~ witnesses shall be transported to the West Gate and processed out of the institution.

(2) The media witnesses shall be transported to the media area to await the Warden's press conference which will be conducted approximately one hour after the execution.

(j) Selection and accommodations of media not selected to witness the execution.

(1) The San Quentin Public Information Officer, under the direction of the Warden, in conjunction with the Assistant Secretary, Office of Public and Employee Communications, is responsible for the selection, accommodation, and coordination of news media personnel not selected to witness the execution.

(2) News media representatives, as defined in subsection 3261.5(a)(1), shall be allowed on San Quentin grounds on the day and time specified by the Warden.

(3) Requests must be made to the Assistant Secretary, Office of Public and Employee Communications via the process outlined in the media advisory.

(4) A maximum of 125 non-witness news media personnel shall be permitted to remain in the media area during and after the execution.

(5) Parking will be in the designated parking area. Media broadcast vans will be admitted to the institution grounds on a space-available basis with prior written approval. Requests for such accommodations should be made when requesting to cover the scheduled execution. All media members must have a valid State of California photo I.D. as outlined in subsections 3173(c)(1) through (c)(6).

(6) The non-witness media members shall be processed through a security check at the West Gate and escorted to the media area.

(7) After the execution, the media witnesses will join the non-witness media as soon as possible at the media area for the media press conference, where they will relate what they witnessed to the non-witness media.

(8) No more than 30 minutes after the conclusion of the Warden's press conference, the escorting of all media personnel to the West Gate shall begin.

(k) In the event media request to interview an inmate, all interviews shall be consistent with departmental rules pursuant to subsections 3261.5(a) through (g).

(l) Information Releases.

(1) The names of the 12 official witnesses shall not be released for safety and security purposes.

(2) The names of Lethal Injection Team members shall not be released, nor shall they be available for interviews or photographs for safety and security purposes.

Sections 3349.2.4 through 3349.3.3 remain unchanged.

New Section 3349.3.4 is adopted to read:

3349.3.4. Five Days Prior to a Scheduled Execution.

(a) The Warden shall:

(1) Order the inmate to be moved to the designated security housing area of Condemned Row where ~~he or she~~ the inmate will be under observation 24-hours a day by an officer assigned for that purpose. The Warden may authorize the move at any time following receipt of the death warrant or when, in the opinion of the Warden, it is necessary to maintain the safety and security of the public, the institution and/or the inmate.

(2) Ensure that the inmate's behavior be continuously monitored by unit staff for the final five days prior to a scheduled execution with documentation completed every 15 minutes.

(A) If the inmate displays unusual or inappropriate behavior, the Warden shall be notified immediately by institutional staff.

(B) The Warden shall take necessary steps to evaluate any reported changes including utilizing the provisions of Penal Code section 3701. Results shall be reported to the Secretary of the CDCR in writing via the Director, DAI.

(b) The Team Administrator shall:

(1) Confirm that the inmate is moved to the designated security housing area of Condemned Row and place the inmate under 24-hour a day observation by an officer assigned for that purpose.

(2) Conduct the daily inspections of the Lethal Injection Facility with the Team Leader.

(3) Direct that all personal property, with the exception of legal material, belonging to the inmate be removed from the inmate's cell and placed under the security of the officer stationed outside the security cell. The inmate will be given the use of items by the officer as he needs them, and then the inmate shall return them to the officer's care.

(4) In the event of a stay of execution, the Team Administrator shall return the inmate's property and initiate return of the inmate to the inmate's former housing status.

(5) Along with the Food Manager, interview the inmate to ascertain what request, if any, the inmate may have for a last meal.

(A) Determine if Food Service will be able to fulfill the request or make arrangements to obtain the requested menu items.

(B) Accommodations for the last meal will be made up to 50 dollars (\$50.00).

(c) The Visiting Lieutenant shall ensure:

(1) Grade B inmates will continue to receive non-contact visits during designated visiting hours.

(2) The visitor(s)/attorney(s) will be required to clear the walk-through metal detector and a clothed body search. Refusal to comply with the above search procedures will be grounds for denial of a visit.

(3) The inmate will visit in waist restraints.

(4) The inmate and the visitor(s) may briefly embrace or shake hands at the beginning and end of the visit. No other physical contact shall be allowed.

(5) In the event there is a scheduled attorney visit, the following procedures shall apply:

(A) Attorneys and other approved visitors of the inmate will not be permitted to visit with the inmate simultaneously.

(B) For an attorney/client confidential visit, the attorney shall be allowed to bring the following items:

1. One pen or pencil.

2. One notepad.

3. Necessary legal materials.

(6) For attorney/client confidential visits, the inmate shall be removed from the conference room and shall proceed with the attorney to visit in designated visiting area under constant visual observation by the special visiting team.

(7) Visitors are informed by a posted notice or Warden's Bulletin that visiting will be closed the day preceding a scheduled execution as well as the day of a scheduled execution.

(8) The family visiting quarters shall be vacant the day before and the day of a scheduled execution.

(9) All visiting, **with the exception of Chaplains and approved Spiritual Advisors**, shall cease once the inmate is placed in the secured holding cell in the Lethal Injection

Facility. Attorneys may have access to their client by phone as requested by either the attorney or the inmate.

(d) The Condemned Row Correctional Counselor II shall:

(1) Interview the inmate to discern any special requests as to the disposition of his property. The inmate shall package and label any property to be sent out of the institution.

(2) Maintain a signed inventory receipt of all packaged property for mailing the first weekday following the execution.

(3) In the event of an indefinite stay of execution, return the property to the inmate with a signed receipt.

(4) Arrange for the monitoring of all telephone calls made by the inmate on an institutional telephone.

(A) Legal calls will not be monitored but shall be facilitated by staff.

(B) All calls shall be logged on the pre-execution activity log.

(C) The inmate shall have 24-hour access to a telephone for attorney contact.

(5) Obtain clothing sizes from the inmate and ensure that appropriate clothing is available.

(6) Begin daily briefings for the Warden, Chief Deputy Warden, Associate Warden, Specialized Housing Division, and Facility Captain as to the inmate's needs, requests, and behavior.

(e) Religious accommodations.

(1) State employed Chaplains selected by the inmate shall be allowed to perform their spiritual functions at the inmate's cell front on either second or third watch.

(2) Non-state employed ~~Ss~~piritual ~~Aa~~dvisors may visit the inmate utilizing the visitor process outlined in this article.

(3) Once the inmate is moved to the ~~in the~~ Lethal Injection Facility, **state-employed and pre-approved non-state ~~Ss~~piritual ~~Aa~~dvisors** may visit the inmate in the Lethal Injection Facility Holding Area.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1193, 1217, 1227, 3600, 3601, 3602, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704, 3704.5, 3705, 3706 and 5054, Penal Code; United States Constitution, Amendment VIII.

Section 3349.3.5 remains unchanged.

New Section 3349.3.6 is adopted to read:

3349.3.6. Three Days Prior to a Scheduled Execution.

(a) The Team Administrator shall:

(1) Assume direct supervision of all Lethal Injection Team responsibilities.

(2) Coordinate and discuss with the Team Leader the specific Lethal Injection Team assignments to:

(A) Ensure Lethal Injection Team members are available.

(B) Confirm Lethal Injection Team members are properly trained and capable of carrying out specific assignments.

(C) Confirm other Lethal Injection Team members are properly assigned as back ups and that each back up is properly trained and capable to perform the assigned functions.

(D) Begin conducting daily inspections of the Lethal Injection Facility.

(E) Confirm the facility remains fully operational and stocked with appropriate supplies.

(b) The Team Leader shall:

(1) Activate all members of the Lethal Injection Team and schedule daily training and preparedness exercises on each of the three days prior to the scheduled execution.

(2) Ensure that all items that will come into contact with the inmate are properly searched.

(3) Ensure that continuous security is provided at the Lethal Injection Facility.

(4) Ensure that Lethal Injection Team members assigned to specific functions begin daily training on their specific assignments, and all team members assigned as back-ups are also involved in training for their specific back-up functions.

(c) The Correctional Captain, Central Services Division, shall:

(1) Establish an internal support team to assist as needed to maintain the smooth operation of the institution. The internal support team members will be located in an area designated by the Central Services Division Correctional Captain.

(2) Ensure witness and media staging areas are clean and sanitized.

(d) The Public Information Officer (PIO) shall:

(1) Activate the media center at the appropriate time commensurate with the day and hour of the scheduled execution in the designated area, and staff it with one Correctional Sergeant and six Correctional Officers assigned by the Watch Sergeants for that purpose.

(A) Address the needs of media representatives that may be operating out of the media center. The assigned staff will release no information or offer any commentary unless specifically authorized by the PIO.

(B) Give regular updates to any media gathered, and will notify the Assistant Secretary, Office of Public and Employee Communications of this action.

(2) Work with the Assistant Secretary, Office of Public and Employee Communications to prepare a biographical and general information sheet on the inmate for briefing notes for the media, including CDCR identification photo. A copy of this biographical and general information sheet will be sent to the Assistant Secretary.

(3) Designate a cut-off time for the media to arrive per the Warden's direction.

(e) Female inmates shall be transported to San Quentin no sooner than 72 hours prior to the scheduled execution and no later than 6 hours prior to the scheduled execution. The inmate will be secured in the Lethal Injection Facility Holding Area.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1193, 1217, 1227, 3600, 3601, 3602, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704, 3704.5, 3705, 3706 and 5054, Penal Code; United States Constitution, Amendment VIII.

Sections 3349.3.7 through 3349.4.3 remain unchanged.

New Section 3349.4.4 is adopted to read:

3349.4.4. During The Day of a Scheduled Execution.

(a) The Warden shall confirm the following activities:

(1) Approximately two hours prior to a scheduled execution, ensure all witnesses are appropriately accommodated.

(2) Accompanied by the Team Administrator, meet with the inmate in the Lethal Injection Facility Holding Area.

(A) Advise the inmate that a written last statement can be prepared, to be made available after the execution.

(B) Inform the inmate that a sedative is available. Upon request, a sedative will be administered under the direction and approval of a clinician.

(3) The official witnesses are ushered to their assembly area and given final instructions as needed.

(4) Approximately 45 minutes before a scheduled execution, the Warden shall instruct the Lethal Injection Team to prepare the inmate.

(5) Ensure open dedicated phone contact with the Governor's Office, the Office of the Attorney General and the California State Supreme Court is established.

(6) Ensure that the curtain is open on the viewing windows prior to the witnesses' arrival. The curtain will remain open throughout the execution process until the inmate is pronounced dead.

~~(76)~~ Approximately 25 minutes before a scheduled execution, instruct staff to admit the witnesses to their designated areas.

~~(87)~~ Approximately 15 minutes before a scheduled execution, order the inmate brought into the execution room and secured to the gurney.

(b) The Chief Deputy Warden shall:

(1) Place the institution on lockdown at the appropriate time commensurate with the day and hour of a scheduled execution.

(2) Assume command of the Emergency Operations Center.

(c) The Team Administrator shall:

(1) Approximately two hours prior to a scheduled execution, accompany the Warden into the Lethal Injection Facility to meet with the inmate.

(2) During the execution, take a position in the Infusion Control Room and provide direct supervision of the infusion of the Lethal Injection Chemicals and saline.

(d) The Litigation Coordinator shall:

(1) Take a position at the Lethal Injection Facility telephones 15 minutes prior to a scheduled execution to ensure constant communication with the Governor's Office, the State Attorney General and the State Supreme Court.

(2) Relay all calls to the Warden and the Team Administrator.

(e) The Warden's Administrative Assistant shall, **at the time designated by the Warden:**

(1) ~~At the time designated by the Warden, Assign a correctional officer to~~ escort all witnesses, except those invited by the inmate, to their respective areas.

(2) Assign a correctional officer to escort inmate witnesses ~~and invited by the inmate and/or~~ the inmate's attorney to their designated witness area. ~~The correctional officer shall remain with these witnesses.~~

(3) During the execution, remain in the Lethal Injection Facility witness area to assist the Public Information Officer.

(f) The Public Information Officer shall:

(1) At the time designated by the Warden, identify the media witnesses and escort them from the media center to their designated witness viewing room.

(2) Instruct the media witnesses regarding items that are not permitted in the Lethal Injection Facility. These items will be deposited at the media center for later retrieval. No equipment shall be allowed in the witness gallery. Pencils and notepads will be provided.

(3) Utilize the metal detector at the ~~v~~Visitor ~~p~~Processing ~~c~~Center or any other search method deemed necessary and reasonable.

New Section 3349.4.5 is adopted to read:

3349.4.5. Administration of the Lethal Injection Chemicals.

(a) Inmate preparation. Upon direction of the Warden to prepare the inmate, the Team Leader shall:

(1) Direct the Security Sub-Team to conduct an unclothed body search.

(2) Place the inmate in restraints and remove the inmate from the Lethal Injection Facility Holding Area.

(3) Observe the Intravenous Sub-Team place the electronic monitoring sensors on the inmate.

(b) Resistive inmates.

(1) In the event that an inmate refuses to comply with staff's orders to be placed in restraints or to exit their assigned cell or the Lethal Injection Facility Holding Area, or any other area where the inmate may be held, the Team Leader shall advise the Warden and Team Administrator.

(2) The Team Administrator shall speak to the inmate in an attempt to gain the inmate's cooperation.

(3) If the inmate continues to refuse to comply with orders, an emergency cell extraction will be authorized.

(4) Staff shall follow the universal precautions when performing an extraction including, but not limited to, the following:

(A) Disposable gowns.

(B) Face/head protection.

(C) Rubber gloves.

(D) Padded gloves.

(E) Leg protection.

(5) Any use of force shall be noted in the Lethal Injection Facility Activity Log as well as the CDCR Form 2182, San Quentin State Prison Execution Report – Part A and CDCR Form 2183, San Quentin State Prison Execution Report, Part B.

(c) The Security Sub-Team shall:

(1) Escort the inmate from the Lethal Injection Facility Holding Area to the execution room.

(2) Secure the inmate to the gurney with restraints.

(3) Secure the inmate's hands to the arm rests on the gurney with medical tape along with the following:

(A) Ensure that the inmate's hands are secured palm up to allow the Intravenous Sub-Team access to the necessary veins.

(B) Secure the inmate's fingers to the gurney in the extended position.

(d) The Team Leader shall:

(1) Ensure that the inmate is properly secured.

(2) Ensure the restraints do not inhibit the inmate's circulation.

(3) Excuse the Security Sub-Team to wait on standby in an adjacent room.

(4) Remain in the room to supervise the insertion of the catheters by the Intravenous Sub-Team.

(5) Exit the execution room and report to the Infusion Control Room to monitor the execution.

(e) The Intravenous Sub-Team shall:

(1) Enter the execution room immediately after the Security Sub-Team exits.

(2) Inspect the restraints to ensure that they do not restrict the inmate's circulation or interfere with the insertion of the catheters.

(3) Insert two catheters into pre-designated veins, as identified in subsection 3349.3(c)(3).

(4) As each catheter is inserted, inform an Intravenous Sub-Team member in the Infusion Control Room to initiate the intravenous drip.

(5) Designate primary and back-up intravenous lines.

(6) Inform the Warden when the intravenous lines have been successfully established.

(7) One Intravenous Sub-Team member shall exit the execution room and report to the Infusion Control Room to continuously monitor the saline drips.

(8) One Intravenous Sub-Team member shall remain in the execution room to continuously monitor the intravenous lines. This Intravenous Sub-Team member shall stand next to the inmate and assess the consciousness of the inmate throughout the execution.

(f) The Warden shall:

- (1) Take a position in the execution room in close proximity to the inmate.
- (2) Confirm with both the State Supreme Court and the Attorney General's Office there is no matter pending before any court that precludes the execution from proceeding.
- (3) Confirm with the Governor's Office that there is no matter pending that precludes the execution from proceeding.
- (4) Ensure a statement is read detailing the court order mandating the execution.
- (5) Provide an opportunity for the inmate to make a brief final statement on the public address system. After the statement is made, the public address system will be turned off.
- (6) Direct the Infusion Sub-Team to administer the Lethal Injection Chemicals and saline.

(g) Infusion.

- (1) The infusion of Lethal Injection Chemicals and saline shall begin with Tray A using the intravenous catheter designated as primary.
- (2) The saline drip in the intravenous catheter that was designated primary infusion will be stopped prior to the injection of the first syringe, ~~and restarted after the last syringe has been administered.~~ The saline drip in the back-up intravenous line will be continually maintained.
- (3) If at any time during the infusion of the Lethal Injection Chemicals and saline, the primary intravenous catheter fails, the Warden shall be notified and direct that the lethal injection process using the primary intravenous catheter and the chemicals on Tray A be discontinued and the entire sequence begin again using the back-up intravenous catheter and the Lethal Injection Chemicals and saline on Tray B in the same sequence as noted below.
- (4) A Record Keeping Sub-Team members in the Infusion Control Room shall initiate a ten minute count down at the start of the infusion of syringe #1 (sodium thiopental).
- (5) Beginning with Tray A and using the primary intravenous catheter, the Lethal Injection Chemicals and saline shall be administered as follows:
 - (A) #1-60cc syringe: 1.5 grams sodium thiopental shall be administered, followed by a consciousness assessment of the inmate; the Intravenous Sub-Team member shall brush the back of his/her hand over the inmate's eyelashes, and speak to and gently

shake the inmate. Observations shall be documented. If the inmate is unresponsive, it will demonstrate that the inmate is unconscious. The process shall continue as follows:

(B) #2-60cc syringe: 1.5 grams sodium thiopental shall be administered.

(C) #3-60cc syringe: 50 cc saline flush shall be administered, followed by another assessment of consciousness as outlined above. Observations shall be documented. At this point if the inmate is determined to be unconscious, the Warden shall authorize the lethal injection process to proceed in the following sequence:

(D) #4-60cc syringe: 50 milligrams pancuronium bromide.

(E) #5-60cc syringe: 50cc saline flush.

(F) #6-60cc syringe: 100 milliequivalents potassium chloride.

(G) #7-60cc syringe: 100 milliequivalents potassium chloride.

(H) #8-60cc syringe: 50cc saline flush.

(6) If, following the administration of syringe #2 and syringe #3, the assessment indicates the inmate is not unconscious, the Warden shall direct that the injection through the primary intravenous catheter be discontinued and the entire sequence re-initiated with the Lethal Injection Chemicals and saline on Tray B using the designated back-up intravenous catheter.

(7) The inmate's heart activity shall be monitored by an electronic monitor.

(8) Death shall be determined and declared by a physician.

(9) If, in the event all eight syringes from Tray A have been administered, ten minutes has elapsed and death has not been determined, the Record Keeping Sub-Team member shall advise the Team Administrator, who will advise the Warden. The Warden shall then direct that the lethal injection process be repeated using the back-up intravenous catheter and the chemicals from Tray B in exactly the same sequence as noted above.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1193, 1217, 1227, 3600, 3601, 3602, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704, 3704.5, 3705, 3706 and 5054, Penal Code; United States Constitution, Amendment VIII.

New Section 3349.4.6 is adopted to read:

3349.4.6. Post Execution Procedure.

(a) Immediately following the determination of death of the inmate, the Warden shall:

(1) Read a prepared statement notifying the witnesses the execution is complete.

(2) Have the curtains on the viewing windows closed and direct staff to escort the witnesses from the Lethal Injection Facility.

(b) Approximately one hour after the execution, the Warden shall issue a statement to the media advising the sentence has been carried out and announcing the time of death. At that time, the Warden shall make available the inmate's statement as described in subsection 3349.4.4(a)(2)(A).

(c) Following the official statement by the Warden at the press conference, the Warden shall exit the media center.

(d) The Public Information Officer shall:

(1) Immediately upon the Warden's announcement of death, usher the media witnesses directly to the media center where they will give pool commentary to the other assembled media.

(2) Accompany the Warden to the post-execution press conference and, after the Warden leaves, respond to questions that follow the Warden's official statement.

(3) Read the inmate's last statement to the press or announce that the inmate did not have a last statement.

(4) As soon as possible, but no longer than 30 minutes after commencement, conclude the press conference and usher all media off the prison grounds.

(5) Secure the media center and go to the Warden's office to field telephone inquiries.

(e) The Litigation Coordinator shall assemble all appropriate reports and maintain the Master Execution File of records regarding the execution in the Warden's Office complex.

(f) After all witnesses have been escorted out of the Lethal Injection Facility:

(1) The Intravenous Sub-Team shall crimp closed and disconnect all intravenous lines, but shall not remove the lines from the inmate. Intravenous lines shall remain in place to allow review by the Marin County Coroner as necessary.

(2) Under the supervision of the Team Leader, the inmate's body shall be **moved removed** with care and dignity and placed in a post-mortem bag pending removal as pre-arranged with the contract mortuary.

(g) The Lethal Injection Facility shall be cleaned thoroughly after the inmate's body has been removed.

(h) The Security Sub-Team shall conduct a security inspection of the Lethal Injection Facility to ensure that all doors are secured and that no items were left behind.

(i) All unused chemicals shall be documented on the CDCR Form 2176 (01/09), Lethal Injection Chain of Custody-San Quentin State Prison and noted as to why they were not used. The Infusion Sub-Team shall transfer the unused chemicals to the Team Administrator who shall place them in the Lethal Injection Facility safe or refrigerator, as appropriate, to await proper disposal and note their transfer on the Chain of Custody form.

(j) The Intravenous Sub-Team shall complete a post-execution inventory of all supplies and equipment that were used by the Intravenous Sub-Team during the execution. The Intravenous Sub-Team shall give the inventory to the Team Administrator, who shall arrange for replacement and replenishment of supplies.

(k) The Team Leader shall:

(1) Secure the Lethal Injection Facility and return the keys to Main Control.

(2) Report directly to the Warden that the Lethal Injection Facility has been secured.

(l) Debriefing.

(1) The Team Administrator shall hold a debriefing and critique with all Lethal Injection Team members. All documents and records concerning the execution shall be collected by the Team Administrator for review.

(2) The Team Administrator shall assess the Lethal Injection Team members for the need for post trauma.

(3) As soon as possible but no later than 24 hours after the execution, the Warden shall arrange for a confidential individual debriefing by appropriate staff with each Lethal Injection Team member. The purpose of the debriefing is to provide a confidential forum for the team member to discuss the impact of the execution on him or her and provide access to counseling services. A team member may be accompanied by a person of his or her choosing to the individual debriefing.

(m) Documentation - Managerial Oversight.

(1) Immediately following the execution, the Team Leader shall complete a CDCR Form 2182, San Quentin State Prison Execution Report – Part A.

(2) Each team member shall complete a CDCR Form 2183, San Quentin State Prison Execution Report – Part B, documenting their actions and observations during the execution.

(3) Team members shall use identifiers assigned to their specific position (duties), rather than their names and/or classifications, when they submit their reports.

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

(A) Following review by the Associate Warden, the Execution Report shall be routed through the Chief Deputy Warden for the Warden's review and signature.

(B) Any use of force shall be specifically documented and reviewed according to existing CDCR policy.

(5) A copy of the Execution Report shall be delivered to the Director, Division of Adult Institutions for review and follow up as needed.

(6) The original Execution Report shall be retained at San Quentin as part of the Master Execution File.

(7) The Record Keeping Sub-Team shall meet with the Team Leader, and ensure that all documentation has been completed. The documentation shall be reviewed and approved by the Team Administrator, and shall be hand delivered to the Warden for inclusion in the Master Execution File.

(n) Critique.

(1) Within 72 hours, the Warden shall conduct an after-action critique of the execution. The purpose of the critique will be to evaluate the execution from all operational perspectives, including compliance with this regulation.

(2) The critique shall be documented for inclusion in the Master Execution File.

(o) Return on Warrant of Death. After receipt of the Certificate of Death, the Warden shall complete the CDCR Form 2178 (01/09), Return on Warrant of Death, and forward it to the county from which the inmate was under sentence of death along with a copy of the Certificate of Death.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1193, 1217, 1227, 3600, 3601, 3602, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704, 3704.5, 3705, 3706 and 5054, Penal Code; United States Constitution, Amendment VIII.

Non-substantive formatting and typographical errors and/or omissions are corrected throughout the document to ensure clarity and consistency.

The following is a study that the Department included within those posted to the Department Website under the heading "Supplemental documents/reports utilized and/or relied upon:", subheading "Supplemental Documents (Assorted) #2". It is now removed in its entirety. This study was posted on the Department's website by mistake. The Department did not rely on the document in the development of the proposed regulations.

Alberta College of Paramedics – EMT – Intraosseous infusion module: The Alberta College of Paramedics, Alberta Occupational Competency Profile (AOCP) Updated “Gap” Training Program, Emergency Medical Technologist-Paramedic (EMT-P), Intraosseous Infusion Module, Study Guide

There were three studies that were included in the supplemental studies relied upon by the Department, but were not listed in the Initial Statement of Reasons. These three studies were posted on the department’s website and available for public review during the public comment period, and are as follows:

* Intraosseous infusion: PALMed, Emergency Vascular Access: N. John Bosomworth

* Lethal Reflection; Santa Rosa doctor Jay Chapman; RANDI ROSSMANN, THE PRESS DEMOCRAT, April 29, 2007.

Arkansas Dept. of Corrections procedure for execution: Administrative Office of the U.S. Courts, PACER Service Center

The modified text and the documents added to the rulemaking file are available for public inspection at the Regulation and Policy management Branch office located at 9838 Old Placerville Road, Sacramento, CA, 95827, from January 4, 2010 and ending January 20, 2010, between 8:00 a.m. and 5:00 p.m.

The comment period on these changes and documents added shall close on January 20, 2010 at 5 p.m. Submit any comments to Timothy M. Lockwood, Chief, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001; fax to (916) 255-5601; or by e-mail at rpmb@cdcr.ca.gov before the close of the public comment period. Comments must be received no later than 5:00 p.m. on January 20, 2010.

Please Note: Only those comments relating directly to the enclosed post-hearing changes that are indicated by **bold face type** with **double underlining** and ~~double strikethrough~~, and to the additional documents, will be considered.

Original signed by:

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

Enclosure