

INITIAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (Department) proposes to amend Sections 3052 and 3062 of the California Code of Regulations (CCR), Title 15, Division 3, concerning the allowable length of an inmate's facial hair.

Currently, subsection 3062(h) reads as: "Facial hair, including short beards, mustaches, and sideburns are permitted for male inmates and shall not extend more than one-half inch in length outward from the face."

On February 25, 2011, Inmate Sukhjinder S. Basra, an inmate housed at the California Men's Colony filed a Complaint for Declaratory and Injunctive Relief and Nominal Damages regarding the institution's interference with his practice of religion. Inmate Basra practices Sikhism and maintains his hair and beard uncut and unshaved. He claims that a fundamental requirement of the Sikh religion is that practitioners maintain unshorn hair (Kesh) on their bodies, a requirement that includes facial hair.

The result of Inmate Basra's action is that the Department entered into a settlement agreement filed on June 5, 2011, which stipulated the following:

"Within 90 days of the Effective Date of this Settlement Agreement, Defendants shall begin the process of initiating a change to Section 3062 (h) in accordance with the Administrative Procedures Act to eliminate the facial hair length restrictions. The Parties acknowledge that compliance with the Administrative Procedures Act can be a lengthy process, which typically takes more than a year. Defendants will act in good faith in accordance with the Administrative Procedures Act to change Section 3062 (h) to eliminate the facial hair length procedures. Nothing in this Agreement shall prevent Defendants from requiring that inmates maintain their facial hair in a neat and clean manner. Until Defendants amend Section 3062 (h), Defendants shall not discipline any inmate for the length of his facial hair."

These regulations are necessary in order to comply with the settlement agreement.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action, or would be as effective as and less burdensome to affected private persons, than the action proposed.

The Department in proposing amendments to these regulations has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

The proposed changes are as follows:

Article 4. Food Services

3052. Health and Safety Standards

Subsection 3052 (a) through (e) remains unchanged.

Subsection 3052 (f) is amended to add the text “and/or facial hair,” after “their hair.” This is necessary in order to incorporate facial hair into this subsection due to the changes necessitated by the revision of section 3062, as described below, resulting from the settlement agreement.

Subsections (g) and (h) remain unchanged.

Article 5. Personal Cleanliness

Section 3062 is amended to incorporate the terms of this settlement agreement into the grooming standards which eliminates restrictions related to the length of facial hair, however it still subjects facial hair to the same maintenance standards for hair within this section.

3062. Inmate Grooming Standards.

Subsection 3062 (a) is amended to add “and facial hair” after “An inmate’s hair.” This change is necessary to ensure inmate facial hair is held to the same standards as hair related to hygiene and grooming standards defined within this subsection.

Subsection 3062 (b) is amended to add “and facial hair” after “An inmate’s hair.” This change is necessary to ensure inmates don’t cut, shape, or alter their facial hair’s natural growth pattern as defined for hair in this subsection.

Subsection 3062 (c) is amended to add “/facial hair” after “his/her hair.” This change is necessary to ensure inmates do not alter the color of their facial hair, reducing the potential for them to alter their appearance as defined for hair in this subsection. This is necessary to ensure inmate accountability and escape prevention.

Subsection 3062 (d) remains unchanged.

Subsection 3062 (e) is amended. For text consistency, the wording “or facial hair” is added after the word “hair” and the wording “The hair and/or facial hair shall not” is added to begin a