

**State of California
Office of Administrative Law**

In re:

**California Department of Corrections
and Rehabilitation**

**Regulatory Action: Title 15
California Code of Regulations**

Amend Section: 3349

**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, and
3349.4.6.**

**DECISION OF DISAPPROVAL OF
REGULATORY ACTION**

Government Code Section 11349.3

OAL File No. 2010-0429-04 S

DECISION SUMMARY

On April 29, 2010, the California Department of Corrections and Rehabilitation ("Department") submitted to the Office of Administrative Law ("OAL") the proposed amendment of section 3349 and the proposed adoption of 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 for inclusion into Article 7.5, Subchapter 4, Chapter 1, Division 3 of Title 15 of the California Code of Regulations ("CCR") regarding the lethal injection process for inmates condemned to death.

On June 8, 2010, OAL notified the Department that OAL disapproved the proposed amended and adopted regulations for failure to comply with specified standards and

procedures of the California Administrative Procedures Act (“APA”). The reasons for the disapproval are summarized below:

A. the proposed regulations fail to comply with the consistency standard of Government Code section 11349.1(a)(4);

B. the proposed regulations fail to comply with the clarity standard of Government Code section 11349.1(a)(3) and 1 CCR section 16(a);

C. the proposed regulations fail to comply with the necessity standard of Government Code section 11349.1(a)(1) and 1 CCR section 10(b);

D. the proposed regulations fail to comply with the standards for Authority and Reference Citations of Government Code section 11349.1(a)(2) and (5) and 1 CCR section 14(a) and (b), respectively; and

E. the agency failed to comply with APA procedural requirements regarding:

(1) the incorporation of documents by reference pursuant to Title 1 CCR Section 20;

(2) the contents of the Initial Statement of Reasons pursuant to Government Code section 11346.2(b)(3)(A);

(3) the contents of the Final Statement of Reasons pursuant to Government Code section 11346.9(a)(3); and

(4) the contents of the Statement of Mailing Notice pursuant to Government Code section 11346.4(a).

All APA issues must be resolved prior to OAL approval of any resubmission.

BACKGROUND

Capital punishment is authorized by California Constitution, Art. 1, Section 27, and Penal Code section 190. Penal Code section 3603 requires that capital punishment be carried out at San Quentin State Prison.

San Quentin State Prison (“San Quentin”) developed Operation Procedure (“OP”) 770 to govern the lethal injection process, including the use of three intravenously injected chemicals. In 2006, inmates challenged OP 770 on the grounds that its implementation constituted cruel and unusual punishment. In *Morales v. Tilton* (N.D. Cal. 2006) 465 F.Supp.2d 972, the court found that there was evidence that OP 770 did not function as intended and that plaintiffs had raised a question of fact as to whether, as implemented, OP 770 constituted cruel and unusual punishment. The court found that in six of 13 recent executions, poorly illuminated visual observations, as well as poorly recorded

breathing and electrocardiogram readings, suggested that inmates may not have been sufficiently unconscious before the second and third chemicals were administered. The *Morales* court made it clear that capital punishment, lethal injection, and the use of the three chemicals chosen by the Department did not, in and of themselves, violate constitutional prohibitions on cruel and unusual punishment. However, the court found that OP 770, and the way San Quentin implemented it, suffered from five deficiencies in the areas of: 1) screening of execution team members, 2) training, supervision, and oversight of execution teams, 3) record keeping, 4) mixing, preparing, and administering Sodium Thiopental by the execution team, and 5) poor lighting, overcrowded conditions, and the design of the lethal injection facility. The court ordered a thorough review of OP 770.

As a result, executions were halted and the Governor ordered a review of all aspects of the lethal injection process and its implementation. During this period, the U.S. Supreme Court found that Kentucky's use of these three chemicals did not constitute cruel and unusual punishment. *Base v. Rees* (2008) 128 S.Ct. 1520. Also in 2008, a state appellate court found that OP 770 should have been adopted pursuant to the APA, because it was a rule of general application and that the Penal Code section 5058(c)(1) single-prison exception to the APA did not apply. The court also rejected, as untimely, the argument that OP 770 was exempt from the APA under the internal management exception. *Morales v. CDCR* (2008) 168 Cal.App.4th 729.

This rulemaking action proposes to amend one section and add 22 sections to title 15 of the California Code of Regulations to establish the process for the execution of death sentences by lethal injection in California. The rulemaking also incorporates by reference five amended and twelve adopted forms used in the process.

DISCUSSION

Any regulation amended or adopted by a state agency through its exercise of quasi-legislative power delegated to it by statute to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute expressly exempts the regulation from APA review. (Government Code sections 11340.5 and 11346.) OAL reviews regulatory actions for compliance with the standards for administrative regulations in Government Code section 11349.1. Generally, to satisfy the standards, a regulation must be legally valid, supported by an adequate record, and easy to understand. In its review, OAL may not substitute its judgment for that of the rulemaking agency with regard to the substantive content of the regulation. OAL review is an independent executive branch check on the exercise of rulemaking powers by executive branch agencies and is intended to improve the quality of rules and regulations that implement, interpret and make specific statutory law, and to ensure that required procedures are followed in order to provide meaningful public opportunity to comment on rules and regulations before they become effective.

A. CONSISTENCY.

OAL must review regulations for compliance with the consistency standard of the APA, in accordance with Government Code section 11349.1(a)(4). Section 11349(d) of the Government Code provides that "consistency" means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law. Government Code section 11342.2 further provides that whenever by express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

(1) Proposed section 3349.2.3(c)(1) and (d) conflict with Penal Code section 3605.

Proposed section 3349.2.3 governs the process and requirements for the selection of witnesses to the execution, among other provisions. Subsection (c)(1) provides as follows:

(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).

Relevant to this discussion is the fact that the proposed regulation permits one representative from the Governor's Office, one representative from the Inspector General's Office, and members of the news media to witness the execution from the witness viewing rooms.

Penal Code section 3605 provides as follows:

3605. (a) The Warden of the state prison where the execution is to take place shall be present at the execution and shall, subject to any applicable requirement or definition set forth in subdivision (b), invite the presence of the Attorney General, the members of the immediate family of the victim or victims of the defendant, and at least 12 reputable citizens, to be selected by the Warden. The Warden shall, at the request of the defendant, permit those ministers of the

Gospel, not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with those peace officers or any other Department of Corrections employee as he or she may think expedient, to witness the execution. But no other persons than those specified in this section may be present at the execution [emphasis added], nor may any person under 18 years of age be allowed to witness the execution.

(b) (1) For purposes of an invitation required by subdivision (a) to members of the immediate family of the victim or victims of the defendant, the Warden of the state prison where the execution is to take place shall make the invitation only if a member of the immediate family of the victim or victims of the defendant so requests in writing. In the event that a written request is made, the Warden of the state prison where the execution is to take place shall automatically make the invitation 30 days prior to the date of an imminent execution or as close to this date as practicable.

(2) For purposes of this section, "immediate family" means those persons who are related by blood, adoption, or marriage, within the second degree of consanguinity or affinity.

(c) No physician or any other person invited pursuant to this section, whether or not employed by the Department of Corrections, shall be compelled to attend the execution, and any physician's attendance shall be voluntary. A physician's or any other person's refusal to attend the execution shall not be used in any disciplinary action or negative job performance citation.

Penal Code section 3605(a) specifically limits who may be present for the execution to the individuals and officials listed in section 3605. Representatives of the Governor's Office, Inspector General's office, and news media are not listed in section 3605 but are permitted to witness the execution pursuant to proposed section 3349.2.3(c)(1). As it is currently written, the proposed regulation is, therefore, inconsistent with the statute it purports to implement, interpret, or make more specific and violates Government Code sections 11349.1(a)(4) and 11342.2.

In addition, proposed section 3349.1.2(d) provides as follows:

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.

OAL has determined that the Infusion Control Room is a different room from any of the witness viewing rooms but that it contains a window to the lethal injection room looking out over the gurney on which the condemned inmate lies. To the extent that subsection (d) permits additional execution witnesses, who are excluded by Penal Code section

3605, namely representatives from the offices of the Governor and Inspector General, subsection (d) conflicts with Penal Code section 3605.

If the Department intends that the Governor's Office and Inspector General's Office witnesses, who are listed in subsection (c)(1) as witnessing the execution from the witness viewing rooms, be the same individuals described in subsection (d) but that they actually witness the execution from the infusion control room, then the regulation does not clearly establish that. Rather, subsection (d) appears to provide for an additional Governor's Office witness and Inspector General's Office witness, in addition to those in the witness viewing rooms, who will witness the execution, albeit from the infusion control room. In any event, subsection (d) itself conflicts with Penal Code section 3605(a), because it authorizes individuals, excluded by the statute, to witness the execution.

The proposed regulation also permits members of the news media to witness the execution. Members of the news media are not listed as authorized witnesses in Penal Code section 3605. Penal Code section 3605(a), therefore, excludes them. The Department lists Penal Code section 3605 as a Reference citation for proposed section 3349.2.3. Pursuant to title 1 CCR section 14(d), OAL shall presume the constitutionality of the statutes cited by an agency as authority or reference absent an appellate court decision to the contrary. OAL was unable to locate an appellate court decision which determined that Penal Code section 3605 is unconstitutional as it applies to excluding members of the news media as witnesses to executions.

(2) Incorporated CDCR Form 2173 (01/09), 20-Day Pre-Execution Report is inconsistent with Penal Code Section 3700.5.

Three alienists¹ are appointed to examine an inmate approximately 45 days prior to his execution regarding the inmate's sanity, consistent with Penal Code section 3700.5. The alienists must report their findings to the Warden within sufficient time for the Warden to complete his/her 20-day pre-execution report which is purportedly required by Penal Code section 3700.5. [But see section (4) below.] Proposed section 3349.3.1(d)(1) requires the alienists to include in their written reports to the Warden CDCR Form 2173 (01/09), 20-Day Pre-Execution Report.

Penal Code section 3700.5 provides:

It is the duty of the alienists so selected and appointed to examine such defendant and investigate his or her sanity, and to report their opinions and conclusions [emphasis added] thereon, in writing, to the Governor, to the Warden of the prison at which the execution is to take place...at least 20 days prior to the day appointed for the execution of the judgment of death upon the defendant.

The governing statute calls for the opinions and conclusions of the alienists to be reported in writing to the Warden and Governor. CDCR Form 2173 (01/09) 20-Day Pre-

¹ Alienists are physicians who treat mental disorders and who specialize in related legal matters.

Execution Report is a fill-in-the-blank form which precludes reporting, on the form, opinions and conclusions which are contrary to those that appear on the form. The form finds, among other things, that the inmate is calm and cooperative, does not evidence psychic or motoric agitation, and that his speech is normal and form of thought fully linear and coherent. Even if an alienist's contrary opinions and conclusions were stated in a separate accompanying psychiatric report, they would conflict with the required use and submission of this form. The form, and the required submission of the form to the Warden and Governor, are inconsistent with the duties of the alienist to report his/her opinions and conclusions in all cases where his/her opinions and conclusions are that the inmate is legally incompetent to undergo execution.

(3) Incorporated CDCR Form 2175 (01/09), 7-Day Pre-Execution Report is inconsistent with proposed section 3349.3.3(e).

Approximately 10 days prior to the execution, the three designated alienists must re-interview and re-evaluate the inmate, compare their current evaluations with their previous findings, and submit a CDCR Form 2175 (01/09), 7-Day Pre-Execution Report to the Warden. Section 3349.3.3(e) requires the alienists to report "their findings" to the Warden regarding "their current evaluations" in comparison with their previous findings and pertaining to "the inmate's" mental state.

Form CDCR Form 2175 (01/09), 7-Day Pre-Execution Report is a fill-in-the-blank form which precludes the reporting, on the form, of the alienists' findings or a comparison of their current evaluations with their previous findings if those findings are contrary to those that appear on the form. The form finds, among other things, that the inmate is polite and cooperative and evidences no impaired reality testing such as hallucinatory experiences or delusional beliefs. Even if an alienist's contrary findings were contained in a separate accompanying psychiatric report, it would conflict with the requirement to also use and submit this form. The form, and the required use and submission of the form to the Warden, are inconsistent with the duties of the alienists to report "their findings" in all cases where their findings are that "the inmate" is not considered mentally competent and does not meet the criteria for execution of his death sentence as scheduled.

(4) Proposed Section 3349.3.1(d)(1) is inconsistent with Penal Code Section 3700.5.

Penal Code section 3700.5 provides the designated alienists shall report their opinions and conclusions to the Governor and Warden regarding the inmate's sanity at least 20 days prior to the execution date. Proposed section 3349.3.1(d)(1) requires the alienists to interview and examine the inmate within sufficient time to evaluate the findings and give written reports, including the CDCR Form 2173 (01/09), 20-Day Pre-Execution Report, to the Warden within the Warden's 20-day report deadline. This subsection presumably authorizes the Warden to require that the alienists submit their reports to him/her sooner than the date that is 20 days before the execution which is allowed by the statute. To the extent that this proposed section shortens the ability of the alienist to

take up to the maximum period of up to 20 days prior to the execution date, it is, therefore, in conflict with Penal Code section 3700.5.

It should also be noted that to the extent that proposed sections 3349.3.1(d)(1) and 3349.3.1(a)(2) and the Department's description of section 3349.3.1 in the Initial Statement of Reasons are based on an assumption that Penal Code section 3700.5 requires the Warden to prepare and submit a 20-Day Pre-Execution Report to any state official or entity 20 days prior to the execution, the assumption is not correct.

(5) Proposed Section 3349.3(a)(1)(B) is inconsistent with CDCR Form 1801-B, Service of Execution Warrant, Warden's Initial Interview.

Section 3349.3(a)(1)(B) provides that: "The Warden shall: ... (B) Together with the Correctional Counselor II, Litigation Coordinator, and the Associate Warden, Specialized Housing Division, interview the inmate to be executed, serve the warrant of execution, and document the interview on a CDCR Form 1801-B (Rev. 01/09), Service of Execution Warrant-Warden's Initial Interview."

CDCR Form 1801-B (Rev. 01/09), Service of Execution Warrant-Warden's Initial Interview is inconsistent with proposed section 3349.3(a)(1)(B) because the regulation requires that the Warden perform the specified tasks and complete the Form 1801-B. Form 1801-B, however, allows for the Warden's designee to, presumably, interview the inmate, serve the warrant of execution, document the interview and sign the Form 1801-B.

B. CLARITY.

In adopting the APA, the Legislature found that the language of many regulations was unclear and confusing to persons who must comply with the regulations. (Government Code section 11340(b).) Government Code section 11349.1(a)(3) requires that OAL review all regulations for compliance with the clarity standard. Section 11349(c) of the Government Code defines "clarity" to mean "...written or displayed so that the meaning of the regulations will be understood by those persons directly affected by them." Title 1 CCR section 16 states in pertinent part that:

In examining a regulation for compliance with the 'clarity' requirement of Government Code section 11349.1, OAL shall apply the following standards and presumptions:

(a) A regulation shall be presumed not to comply with the "clarity" standard if any of the following conditions exist:

(1) the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning; or

(2) the language of the regulation conflicts with the agency's description of the effect of the regulation; or

(3) the regulation uses terms which do not have meanings generally familiar to those "directly affected" by the regulation, and those terms are defined neither in the regulation nor in the governing statute; or

(4) ...

(5) the regulation presents information in a format that is not readily understandable by persons "directly affected";...

As discussed below, OAL determined that a number of the proposed regulatory provisions did not satisfy the "clarity" standard.

(1) Proposed Section 3349.3.1(d)(1).

Proposed section 3349.3.1(d)(1) requires that:

The Alienists shall provide the following: (1) Interview and examine the inmate within sufficient time to evaluate the findings and give written reports, to include the CDCR Form 2173 (01/09), 20-Day Pre-Execution Report, which is incorporated by reference, to the Warden within the Warden's 20-day report deadline.

Penal Code section 3700.5 provides in part: "It is the duty of the alienists so selected and appointed to examine such defendant and investigate his or her sanity, and to report their opinions and conclusions thereon, in writing, to the Governor, to the Warden of the prison at which the execution is to take place...at least 20 days prior to the day appointed for the execution of the judgment of death upon the defendant."

It is unclear from the text of proposed section 3349.3.1(d)(1) and from the Department's description of this section in the Initial Statement of Reasons whether this section is limiting the duty of the alienists to submission of their reports only to the Warden. The reports must also be submitted to the Governor, and it may not be readily understood by the alienists directly affected by this section that this additional reporting requirement exists.

(2) Proposed Section 3349.1.2(e)(6).

Proposed section 3349.1.2(e)(6) provides:

(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:

...

(6) Annual permanent employee performance evaluations that meet or exceed expected standards.

This subsection is unclear as to how many meet-or-exceed performance evaluations an employee must have in order to be selected for Lethal Injection Team membership. The subsection could be interpreted as requiring any plural number, such as two. Therefore, a twenty-five year employee could have two evaluations which meet or exceed expected standards and 23 that do not and be qualified to serve on the Lethal Injection Team. At the other extreme, the section could be interpreted as requiring that all of an employee's performance evaluations must meet or exceed expected standards. In that event, an exemplary 25-year employee, whose most recent 24 performance evaluations meet or exceed expected standards, would be unqualified to serve on the lethal injection team on the basis of a single poor evaluation 24 years ago.

(3) Proposed Section 3349.2.3(j)(3).

Proposed section 3349.2.3(j)(3) provides:

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

...

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

It is unclear in this subsection what the "media advisory" is. It is not a document incorporated by reference or included in the rulemaking file, and OAL could not locate the term in an existing Title 15 regulation. OAL was able to locate three execution-related media advisories on the Department's website for executions scheduled for February 23, 1996, December 13, 2005, and January 17, 2006. The reference to the "media advisory" is unclear because the contents of the document, in terms of the rules governing news media entities and the requirements for access to execution proceedings at San Quentin State Prison, can apparently change over time. See also the discussion of the "media advisory" below under "PROCEDURAL REQUIREMENTS OF THE APA."

(4) Proposed Section 3349.3(a)(1)(B), (c)(1), (e)(1) & (f)(2) and CDCR Form 1801-B, (Rev. 01/09), Service of Execution Warrant, Warden's Initial Interview.

Collectively, these sections provide that the Warden, Associate Warden of the Specialized Housing Division, Condemned Unit Correctional Counselor II, and Litigation

Coordinator shall, together, interview the inmate, serve the warrant of execution, and document the interview on CDCR Form 1801-B, (Rev. 01/09), Service of Execution Warrant, Warden's Initial Interview.

It is unclear how each official will carry out each of the duties assigned by these subsections and how each will document the interview using the Form 1801-B and which, if any of the four, is ultimately responsible for one or more of these duties. The description of proposed section 3349.3 in the Initial Statement of Reasons is limited to the following sentence:

Section 3349.3 is adopted to establish the events that occur upon receipt of an execution order. Additionally, this section identifies the responsibilities of specific staff, including the Warden, Chief Deputy Warden, Associate Warden, Specialized Housing Division, Team Leader, Condemned Unit Correctional Counselor II, Litigation Coordinator, Warden's Administrative Assistant, Public Information Officer, and Visiting Lieutenant, upon receipt of an execution order.

It is unclear whether four CDCR Form 1801-Bs will be completed, one by each of the four officials, and what the significance would be, if any, in the event the contents of the completed forms differed. If the Department's intent is that only one Form 1801-B shall be completed by the Warden or his/her designee, it is unclear how the other three officials will document the interview on the CDCR Form 1801-B. Form 1801-B only provides signature lines for the Warden or his/her designee and one witness.

It should be noted that subsections (a)(1)(B) and (c)(1) of proposed section 3349.3 refer to the Correctional Counselor II, while subsections (e)(1) and (f)(1) refer to the Condemned Unit Correctional Counselor II. See also section 3349.2.2(c). It should also be noted that sections 3349.3(g)(2), 3349.3.1(a)(2)(C) and (f)(1), 3349.3.3(g), and 3349.3.4(d) introduce the term Condemned Row Correctional Counselor II. It is unclear whether all references to Correctional Counselor II are to the same Department position.

(5) Proposed Section 3349.3.2.

Proposed subsection (a) of this section provides:

(a) Sanity Review Request.

(1) Attorneys may submit in writing for the Warden's review, any current information that they believe may have a bearing on evaluating the sanity of an inmate with a scheduled execution date. This information will be accepted within 30 days and up to 7 days prior to the scheduled execution.

(2) Information submitted more than 30 days will be accepted for consideration by the panel of Alienists. The panel of Alienists shall consider this information in preparation of the 20-day pre-execution sanity report. [Emphasis added.]

The regulation indicates that inmate's attorneys may submit sanity-related information prior to 30 days before an execution and it will be accepted for consideration by the alienists. The regulation further provides that such information may be submitted later than 30 days, and up to seven days, before an execution for the Warden's review. A commenter requested that the regulation be amended to allow inmate attorneys to submit sanity-related information to the alienists as long as the alienists' duties continue. (Alienists' duties continue up to seven days prior to an execution pursuant to section 3349.3.3(e)(2).) The Department responded to the commenter as follows:

Any information made available by the inmate's counsel at any time will be furnished to the alienists so long as their duties continue. The alienists will be provided with the most current information. In addition, the Department will consider any information that the inmate's attorney feels is pertinent to the assessment of the inmate's sanity past the designated seven-day submission timetable. [Response to Commenter #944.]

Notwithstanding the Department's response to the commenter, the regulation specifies that information submitted [by inmates' attorneys] more than 30 days [prior to the scheduled execution] will be accepted for consideration by the alienists. It is reasonable to assume that the regulation does not contain superfluous language and that the statement in subsection (a)(2): "Information submitted more than 30 days [prior to the scheduled execution] will be accepted for consideration by the panel of Alienists" means that inmates' attorneys must submit any such information more than 30 days prior to the scheduled execution in order for it to be accepted for consideration by the panel of Alienists, and that information submitted later than 30-days-prior to the scheduled execution will not be accepted for such consideration. For the same reason, it is reasonable to assume that the statement in subsection (a)(1): "This information [information bearing on the inmate's sanity and submitted in writing for the Warden's review] will be accepted within 30 days and up to 7 days prior to the scheduled execution" means that inmates' attorneys must submit any such information to the Warden between 30 and up to 7 days prior to the scheduled execution, and that any such information submitted more than 30 or less than 7 days prior to the scheduled execution will not be reviewed by the Warden.

Proposed subsection (a)(1) and (2) is, therefore, unclear because the language of the regulation conflicts with the Department's description of the effect of the regulation. See 1 CCR section 16(a)(2).

(6) Proposed Sections 3349.1.1(v) and 3349.3(f)(5)(A)&(B).

Proposed section 3349.3(f)(5)(A)&(B) require that the Litigation Coordinator construct "a" Master Execution File containing five specified documents and "any other pertinent" information, and that "This" Master Execution File is to be kept in the Litigation Coordinator's office, unless the execution is stayed, in which case the file is to be closed and filed in the Warden's Office complex.

