

FINAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend and or adopt sections 3040, 3043, 3043.6, 3044, and 3045.1 of the California Code of Regulations (CCR), Title 15, Division 3, governing inmate credit earning.

On January 25, 2010, emergency regulations governing inmate credit earning went into effect based on Senate Bill (SB) X3-18, which was signed into law by Governor Schwarzenegger on October 11, 2009.

On August 4, 2010, a Certificate of Compliance was issued making permanent the emergency regulatory action (OAL file no. 2010-0104-02EON) which incorporated and implemented new and revised rules governing inmate credit earning based on SB X3-18.

This action will clarify existing language which has been found to create confusion to field staff, inmates and the public regarding inmate credit earning. In addition, new language will be adopted which will enable eligible inmates who participate in the Mental Health Services Delivery System (MHSDS) at the Enhanced Outpatient Program (EOP) level of care to participate in a Substance Abuse Program (SAP).

The MHSDS is a program that operates under a Court Order reached in the Coleman v. Wilson (now referred to as Coleman v. Brown) lawsuit filed in 1990. Policies and procedures governing this program can be found in the Mental Health Program Guide. The MHSDS provides inmates access to mental health services under 4 separate levels of care. It is designed to provide the appropriate level of treatment and to promote individual functioning within the clinically least restrictive environment consistent with the safety and security needs of both the inmate and the institution. The goals of treatment in MHSDS are to help inmates adjust to the prison environment, optimize appropriate personal functioning, and to help inmates accept responsibility for their behavior.

The specific level of care known as Enhanced Outpatient program (EOP) provides care to mentally disordered inmates who would benefit from the structure of a therapeutic environment that is less restrictive than inpatient settings. Typically, structured programs and therapeutic services are administered to the EOP inmates in their designated housing unit. Previous practice excluded inmates in the MHSDS at the EOP level of care from participating in a SAP because the programs were offered outside of the facilities designated for EOP housing and treatment. The thinking was that mental health treatment was the priority for the EOP inmate rather than removing them from the designated housing area for placement in a SAP which could distract or impede the mental health treatment. A re-evaluation determined that EOP inmates in need of a rehabilitative drug program would benefit from receiving SAP treatment in addition to their mental health treatment plan. Therefore, the Department has established co-locations within the designated EOP housing facilities where an EOP inmate may receive both the court mandated mental health treatment in addition to the SAP treatment.

This change will afford eligible EOP inmates the opportunity to receive Milestone Completion Credits upon successful completion of the approved SAP rehabilitative program. Such credits are obvious incentives for participation in substance abuse treatment.

An overview of the MHSDS, is available for public review on CDCR's internet website at:

<http://www.cdcr.ca.gov/DCHCS/docs/Mental%20Health%20Program%20Guide.pdf>

DETERMINATION:

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.

ASSESSMENTS, MANDATES AND FISCAL IMPACT:

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, and less burdensome to affected private persons than the action proposed.

SPECIFIC PURPOSE OF EACH SECTION PER GOVERNMENT CODE 11346.2(b)(1):

Existing text from subsection 3040.1(a) secondary and third sentences are removed, relocated and renumbered to new subsection 3040.1(a)(1). This is necessary for clarity purposes due to changes in inmate eligibility to participate in a Substance Abuse Program (SAP).

New subsection 3040.1(a)(1) is relocated in part from existing subsection 3040.1(a) and is amended to include the phrase "Except as provided in subsection (a)(2)". This is necessary to clarify that an exception exists to allow inmates who participate in the Mental Health Services Delivery System (MHSDS) at the Enhanced Outpatient Program (EOP) level of care may be eligible to participate in a SAP if the criteria listed in new subsection (a)(2) is met.

New subsection 3040.1(a)(2) is adopted to establish criteria which may allow inmates enrolled in the Enhanced Outpatient Program (EOP) who have a co-occurring dual diagnosis of substance abuse to be considered for assignment to a SAP where it is a component of the mental health program. This is necessary to clarify that MHSDS participants at the EOP level of care may be eligible to participate in a SAP.

Subsections 3040.1(b) through 3040.1(c)(5) remain unchanged.

(c) Inmates with the following case factors shall not be placed in an SAP:

Subsection 3040.1(c)(6) is amended to include the phrase “Except as provided in subsection (a)(2)”. This is necessary to clarify that an exception exists to allow inmates who participate in the Mental Health Services Delivery System (MHSDS) at the Enhanced Outpatient Program (EOP) level of care may be eligible to participate in a SAP if the criteria listed in new subsection (a)(2) is met.

Subsections 3040.1(d) through 3040.1(i) remain unchanged.

Section 3043 Presentence through subsection 3043(c)(1) remain unchanged.

(c) Milestone completion credits.

(1) Milestone means the achievement of a distinct objective of a rehabilitative program as established by CDCR in the Milestone Completion Credit Schedule (see 3043(c)(6)). If an inmate is eligible for program credits pursuant to PC section 2933.05, reaching a milestone allows for awarding of such credits.

New subsection 3043(c)(1)(A) is adopted to establish that inmates already possessing a GED, high school equivalency/diploma or college degree shall not be eligible to receive Milestone completion credits for GED academic achievements. This is necessary to ensure that inmates are not awarded Milestone Completion Credits for passing the GED program when they have already completed a GED course or equivalent prior to participating in the CDCR rehabilitative program.

New subsection 3043(c)(1)(B) is adopted to establish that Milestone Completion Credits (MCC) shall only be awarded one time per course per inmate with the exception of college units and High School electives. This is necessary to ensure that inmates are not awarded MCC's for courses which they have already successfully completed and received credit for. In addition, this language serves to promote inmates to complete as many separate courses and obtain as many certificates as possible to aide in their successful reintegration into society.

New subsection 3043(c)(1)(C) is adopted to establish that all inmates must sign the CDCR Form 2233, Inmate Declaration For GED Eligibility, which is hereby incorporated by reference, prior to taking any portion of the GED exam. This is necessary to ensure that inmates are not awarded Milestone Completion Credits for passing the GED program when they have already completed a GED course or equivalent prior to participating in the CDCR rehabilitative program.

Subsections 3043(c)(2) through 3043(c)(5) remain unchanged.

Subsection 3043(c)(6) is amended to establish the new revision date of the Milestone Completion Credit Schedule as (Rev. 05/11) which is incorporated by reference. The existing Milestone Completion Credit Schedule (12/09) is amended, in accordance with rulemaking

requirements of the Administrative Procedures Act (Government Code sections 11340 through 11364), to delete specific programs due to those programs being no longer available or no longer offering accredited certifications for purposes of completion credits. Additional programs are being added to the schedule to provide more opportunity for eligible inmates to earn milestone completion credit. For clarity and consistency purposes, college programs have been consolidated into one program title reflecting 1 week of credit earned for each 3 semester or 5 quarter units completed. Lastly, some milestone credit increments were either increased or decreased in an effort to more accurately reflect the appropriate amount of milestone completion credit each program shall receive upon successful achievement of the distinct objective listed. For example: Successful completion of Level I – Literary Braille Transcribing was changed from 1 week credit to 4 weeks of credit based on the length of time to complete the course and the degree of education required to pass the certification. Because there are over 1,400 forms/material for use within the Department and its adult operations, with the vast majority of these forms/material used by staff and/or internal management, the Department pursuant to Title 1, section 20(c)(1) has determined that it is impractical, cumbersome, unduly expensive and unnecessary to publish the Milestone Completion Credit Schedule in the CCR. With an established form/material ordering and distribution process already in place, neither staff nor inmates would have a need for, and would not have to utilize the CCR in order to have access to this schedule. As is the case with the existing Milestone Completion Credit Schedule, staff and inmates already have the ability to obtain and utilize the material as necessary. A copy of the revised Milestone Completion Schedule (Rev. 05/11) has been made available for public view. Likewise inmates can view copies of the revised schedule upon request.

Subsections 3043(c)(7) through 3043(h) remain unchanged.

Subsections 3043.6(a) through 3043.6(a)(2) remain unchanged.

(a) Non-adverse transfers.

Subsection 3043.6(a)(3) is amended to expand the waiting list process to incorporate inmates in any work assignment, not just those rehabilitative programs previously listed. This is necessary in order to clearly establish waiting list placement criteria with regard to placement of transferring inmates onto non-rehabilitative program waiting lists.

Subsections 3043.6(a)(3)(A) through 3043.6(a)(3)(E) remain unchanged.

New subsection 3043.6(a)(4) is adopted to specify waiting list placement criteria with regard to placement of transferring inmates onto rehabilitative programs waiting lists. Rehabilitative program waiting lists have the California Static Risk Assessment (CSRA) score, as identified in the California Code of Regulations, Title 15, Division 3, Section 3768.1, as additional placement criteria. The CSRA is the CDCR approved risk assessment tool required to meet the requirements of the Expert Panel’s California Logic Model. The model required CDCR to place those inmates with the highest risk to recidivate into rehabilitative programs as a priority over inmates with a lower assessed risk, therefore making it necessary to incorporate the CSRA into the current regulations.

Subsections 3043.6(b) through 3043.6(f) remain unchanged.

Subsections 3044(a) through 3044(b)(5) remain unchanged.

(b) Consistent with the provisions of section 3375 of these regulations, all assignments or reassignments of an inmate to a work group shall be by a classification committee action in accordance with this section.

(5) Work Group C: Disciplinary unassigned. Zero credit.

Subsection 3044(b)(5)(A) is amended to add (s) at the end of the sentence to have it read: Any inmate who refuses to accept or perform in an assignment, or who is deemed a program failure as defined in section 3000, shall be placed in Work Group C for a period not to exceed the number of disciplinary credits forfeited due to the serious disciplinary infraction(s). This is necessary in that an inmate may receive more than one disciplinary infraction that may be used for justification as a program failure. Clarification was needed to make clear that placement into Work Group C shall not exceed the number of disciplinary credits forfeited for each rule violation report received and in which the inmate was found guilty and assessed credit forfeiture.

Subsections 3044(b)(5)(B) through 3044 (b)(6)(C) remain unchanged.

Subsection 3044(b)(7) is amended to delete the word “misconduct” and replace it with the phrase “disciplinary related offense”. In addition, the phrase “due to” was deleted and replaced with the phrase “following the commission of”. Infraction was changed to reflect infraction(s). inmates placed in SHU, PSU, or ASU for serious disciplinary related offenses described in Penal Code section 2933.6 or upon validation as a prison gang member or associate shall be placed into Work Group D-2: Lockup Status, and are ineligible to earn credits during placement in SHU, PSU, or ASU. Inmates placed in SHU, PSU, or ASU following the commission of any other serious disciplinary infraction(s) are ineligible to earn credits for a period not to exceed the number of disciplinary credits forfeited. Zero credit. These changes are necessary to provide clarification and further define the rationale for an inmate being placed into a SHU, PSU or ASU under circumstances in accordance to Penal Code Section 2933.6 or for any other serious disciplinary infraction.

Subsections 3044(b)(7)(A) through 3044 (b)(7)(B) remain unchanged.

Subsection 3044(b)(7)(C) is adopted to include old language which was inadvertently deleted in rulemaking file 2010-0104-02EON. This language is reintroduced and amended to establish that an inmate in, ASU, SHU, or PSU, on indeterminate or determinate lockup status, who is deemed a program failure as defined in section 3000, may be assigned Work Group D-2 by a classification committee. An inmate assigned to Work Group C at the time of placement in ASU, SHU, or PSU, or who refuses to accept or perform work assignments, shall be assigned Work Group D-2. An inmate released from ASU, SHU, or PSU may be placed back into Work Group C by a classification committee not to exceed the remaining number of disciplinary credits forfeited due to the serious disciplinary infraction(s). This language is necessary to be compliant with Penal Code Section 2932.

Existing Subsection 3044(b)(7)(C) is renumbered and relocated to new subsection 3044(b)(7)(D) and remains unchanged.

Subsections 3044(b)(8) through 3044 (d)(1)(C) remain unchanged.

(d) Privilege Group A:

Subsection 3044(d)(2) is amended to reflect “May” rather than “Shall”. Any inmate classified and assigned to Privilege Group A may receive a red CDC 130 Privilege Card with photo. This change is necessary due to privilege cards are issued based on local institution operational procedures approved by the Warden. Inmates that do not receive a red privilege card shall still receive privileges in accordance with their specified privilege group.

Subsections 3044(d)(3) through 3044(i) remain unchanged.

Subsections 3045.1(a) through 3045.1(a)(1) remain unchanged.

(a) A classification committee shall evaluate the reasons for an inmate's administrative segregation (ASU) placement to ensure appropriate credits are awarded the inmate. If the placement was for:

Subsection 3045.1(a)(2) is amended to delete the term “and a SHU term assessed” and to include the term “whether or not a SHU term was assessed” at the end of the paragraph. This is necessary to clarify that a SHU term may or may not be assessed upon a guilty finding of a disciplinary infraction described in Section 3043.4. This language change is necessary to be compliant with Penal Code Section 2933.6.

PUBLIC HEARING COMMENTS:

Public Hearing: Held October 26, 2011 at 09:00 a.m.

SUMMARIES AND RESPONSES TO ORAL COMMENTS AT THE PUBLIC HEARING:

SPEAKER #1:

Comment 1A: Commenter states she is opposed to the proposed regulation change regarding the amendment of subsection 3043(c)(6) because college courses are valuable for helping the inmates to re-enter society and not to return to corrections, which is a savings of tax dollars. The commenter indicated that the process is already extremely difficult because of limited online resources and inmates are not allowed to be on waiting list. Commenter feels this will further reduce available seats because the inmates will have to stay enrolled for one year rather than one semester in order to earn six weeks of credit and will reduce the incentive for inmates to enroll in classes.

Accommodation: None.

Response 1A: The Department disagrees with commenter. The changes to the milestones for college classes was based in part by the confusion caused in identifying the appropriate milestone code for the correct combination of college units completed.

The change to 1 week of sentence reduction per every unit of college credit completed is consistent with the sentence reduction for other education achievements. Offenders participating in education programs currently receive credit reductions based upon approximately 15 hours of classroom instruction per week. One week of milestone credit is earned after approximately 4 – 6 months in program. Completion of a 3-unit college class, taking 4 – 6 months to complete, with approximately 18 hours per week of instruction, would be consistent with the one week credit reduction received by offender participants in other educational rehabilitative programs.

The remainder of the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

SUMMARIES AND RESPONSES TO WRITTEN COMMENTS:

COMMENTER #1

Comment 1A: Commenter indicated he received a 3-year sentence with the eligibility for half-time credit and under Penal Code 2933.05, he has been in the Reception Center (RC) too long without receiving a school or work assignment and has filed an appeal referencing California Code of Regulations, Title 15, Sections 3043.6, 3375(A)(B), 3043.1 and 3043.6.

Accommodation: None.

Response 1A: The Department disagrees with commenter. The commenter indicated he is currently in a RC serving a three (3) year prison sentence and is receiving half time credit per Penal Code 2933. Therefore, there is no adverse effect relevant to the length of his prison term. Additionally, he will be placed on several waiting lists according to his rehabilitative needs upon his arrival to the receiving institution during his initial classification hearing.

The remainder of the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

COMMENTER #2

Comment 2A: Commenter is opposed to the proposed regulation change regarding to the amendment of subsection 3043(c)(6). Commenter indicated the current policy of 1-unit to 1-milestone is both clear and consistent with the work effort of other programs. Changing Section 3043(c)(6) to 3-semester or 5-quarter units is confusing and will increase state cost and keep

inmate numbers higher when we need to be lowering cost and reducing inmates. College-level classes are more difficult than vocational classes.

Accommodation: None.

Response 2A: Please refer to Speaker #1, Response 1A.

The remainder of the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

COMMENTER #3

Comment 3A: Commenter is concerned that SNY inmates and/or out-of-state inmates do not qualify to earn milestone credits as other inmates do.

Accommodation: None.

Response 3A: The Department disagrees with commenter. Inmates sentenced by the courts that are eligible for credits under Penal Code 2933, regardless of their housing/custody status shall receive the same credits as the other inmates who qualify. Inmates earning Milestone Completion Credits (MCC's) that are eligible under PC 2933.5, regardless of their SNY status shall receive the credits upon completion of approved rehabilitative programs and in accordance with the Milestone Completion Credit Schedule. Approved rehabilitative programs on the Milestone Completion Credit Schedule are also available to CDCR inmates housed in out-of-state facilities.

The remainder of the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

COMMENTER #4

Comment 4A: Commenter indicated that she is impressed with the inclusion of the mental health and substance abuse treatment to the inmate credit earning process and fully supports such actions and thinks it is a positive step in reducing recidivism in the California correctional system. However, the commenter is opposed to the reduction of credit weeks for completed college courses due to the process of enrolling in college courses being extremely difficult for incarcerated students, policy of not allowing incarcerated inmates to be on a class waiting list and a lack of inmate access to online resources. Commenter feels that the reduction of in credits, is removing incentives to the importance of completing college coursework.

Accommodation: None.

Response 4A: Please refer to Speaker #1, Response 1A.