

**State of California  
Office of Administrative Law**

**In re:**  
Department of Corrections and  
Rehabilitation

**Regulatory Action:**

**Title 15, California Code of Regulations**

**Adopt section: 3329.5**

**NOTICE OF APPROVAL OF CERTIFICATE OF  
COMPLIANCE**

**Government Code Sections 11349.1 and  
11349.6(d)**

**OAL Matter Number: 2019-0227-02**

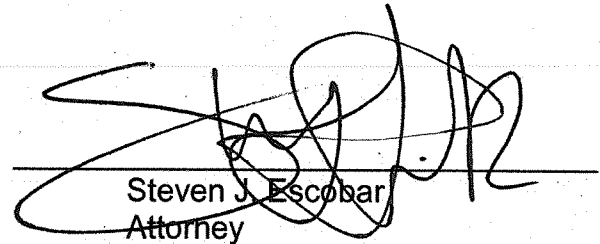
**OAL Matter Type: Certificate of Compliance  
(C)**

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This Certificate of Compliance by the Department of Corrections and Rehabilitation (the "Department") adopts an alternative Good Conduct Credit restoration process for certain Division "D", "E", and "F" offenses discovered by Department staff on or after May 1, 2017.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

**Date: April 3, 2019**

  
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Steven J. Escobar  
Attorney

**Original: Ralph Diaz, Secretary  
Copy: Sarah Pollock**

NOTICE PUBLICATION/REGULATION SUBMISSION

CERT

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2018-1128-01</b>	REGULATORY ACTION NUMBER <b>2019-0227-02c</b>	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED  
in the office of the Secretary of State  
of the State of California

APR 03 2019

3:11 pm

2019 FEB 27 P 2:32  
OFFICE OF  
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)  
17-0177

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER <b>2018, 50-2</b>	PUBLICATION DATE <b>12/14/2018</b>

per agency request  
6/13/18

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Automatic Restoration of Forfeited Credits	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2018-1012-01EON
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT 3329.5
AMEND
TITLE(S) 15
REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Sarah Pollock	TELEPHONE NUMBER 916 445-2308	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) sarah.pollock@cldr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 2.25.19
TYPED NAME AND TITLE OF SIGNATORY RALPH M. DIAZ, Secretary (A), CDCR	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 03 2019

Office of Administrative Law

## **TEXT OF ADOPTED REGULATIONS**

### **California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs and Parole**

#### **Chapter 1. Rules and Regulations of Adult Operations and Programs**

#### **Subchapter 4. General Institution Regulations**

**[Article 5.5 heading is amended to read:]**

#### **Article 5.5. Restoration of Forfeited Credits**

**[New Section 3329.5 is adopted to read:]**

#### **3329.5. Automatic Restoration of Forfeited Credits.**

(a) Notwithstanding sections 3327, 3328, and 3329, Good Conduct Credit shall be restored for a Division "D," "E," or "F" offense discovered by department staff on or after May 1, 2017, if an inmate remains disciplinary-free for a period of 90 calendar days.

(b) The "90 calendar day" period shall commence immediately following the date and time an inmate is identified as committing a rules violation, meaning the date and time that sufficient information was discovered by department staff to identify the inmate as the person responsible for the offense.

(c) "Disciplinary-free" means the inmate is not found guilty of a subsequent administrative or serious rules violation that was discovered during the 90 calendar day period.

(d) This section is not applicable to inmates found guilty of a rules violation for unauthorized possession or constructive possession of a cellular telephone or wireless communication device capable of making or receiving wireless communications.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 3058.6, 3058.9 and 5054, Penal Code.

## **FINAL STATEMENT OF REASONS:**

The Initial Statement of Reasons (ISOR) is incorporated by reference.

## **UPDATES TO THE INITIAL STATEMENT OF REASONS**

On December 14, 2018, the Notice of Proposed Regulations for Automatic Restoration of Forfeited Credits was published, which began the public comment period. The Department's Notice of Change to Regulations #18-11 was also mailed the same day to individuals who had requested to be on the Department's mailing list for regulation changes. In addition, they were posted on the California Department of Corrections and Rehabilitation (CDCR) internet website, and copies posted in CDCR institutions. The Department received two written comments which are included below under *Summaries and Responses to the Written Public Comments Received During the Initial Comment Period*. A public hearing was held on February 1, 2019, there were no attendees at the public hearing.

## **DETERMINATION**

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the adopted regulations, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. This determination was reached by a consensus of the Division of Adult Institutions (DAI).

Except as set forth and discussed in the summary and response to the comments received, no other alternatives have been proposed or otherwise brought to the Department's attention that would alter the Department's decision.

## **LOCAL MANDATES**

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

## **SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS RECEIVED DURING THE INITIAL COMMENT PERIOD**

### **Commenter #1**

**Comment 1A:** Commenter states CDCR has failed to state whether or not Section 3329.5 is retroactive. Commenter asks that CDCR please advise.

**Accommodation:** none

**Response 1A:** Section 3329.5 is retroactive to May 1, 2017. Section 3329.5(a) clearly identifies the effective date for restoration of forfeited credits for a Division "D," "E," or "F" offense, which is **May 1, 2017**, for those offenses that are discovered by department staff on or after this date. Additionally, these regulations became effective on an emergency basis on November 1, 2018.

## **Commenter #2**

**Comment 2A:** Commenter opposes the regulation change. Commenter states he has been incarcerated for 21 years, and he has seen too much coddling towards inmates. Commenter feels if a rule has been violated that warrants credit reduction then the reduction should be on a permanent issue.

**Accommodation:** none

**Response 2A:** Pursuant to California Code of Regulations (CCR) Sections 3327, 3328, and 3329, an avenue for an inmate to have forfeited credits restored once it has been determined the inmate remained disciplinary-free for an identified timeframe was already in place prior to the implementation of CCR Section 3329.5, therefore the comment is insufficiently related to the proposed action.

**Comment 2B:** Commenter states that if the reduced credits are to be returned, then the inmate should have to request it in writing. To automatically return the credit is no kind of a punishment at all. There are no consequences now for poor judgment of their actions. On the 91<sup>st</sup> day of being free of any other violations they are free to violate again and automatically get their credit back. The inmate needs to be held to a higher standard as part of their rehabilitation process. Commenter states he has been violation free his entire term, but was not allowed good time credit because he was a lifer, but repeat violators get credit. Commenter feels everyone should be held to a higher standard like he has done.

**Accommodation:** none

**Response 2B:** With the implementation of CCR Section 3329.5, CDCR is ensuring consistent application of restoration of forfeited credits, which will occur in real-time without an inmate needing to initiate a request or a classification committee needing to take any action. Inmates are only eligible for the restoration of forfeited credits after having completed the required disciplinary-free period, demonstrating their correction in behavior. By automating the credit restoration process CDCR also helps to ensure that those offenders who might otherwise be unable to request restoration, due to medical or mental health conditions, receive their credit restorations.