



Department of Corrections and Rehabilitation

NOTICE OF CHANGE TO REGULATIONS
Section: 3329.5

Number:

18-11

Publication Date:

December 14, 2018

Effective Date:

November 1, 2018

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed adoption of Section 3329.5 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into Division 3, Chapter 1, provisions regarding Automatic Restoration of Forfeited Credits.

IMPLEMENTATION

November 1, 2018

PUBLIC COMMENT PERIOD

The public comment period will close on **February 1, 2019 at 5:00 p.m.** Any person may submit written comments about the proposed regulations by mail to the California Department of Corrections and Rehabilitation (CDCR), Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received or postmarked no later than **5:00 p.m. on February 1, 2019.**

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held **on February 1, 2019, from 10:00 a.m. to 11:00 a.m. in the Conference Room 100N, located at 1515 S Street, North Building, Sacramento, CA 95811.** The purpose of the hearing is to receive comments about this action. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written comments submitted during the prescribed comment period are given the same significance and weight as verbal comments presented at the hearing. This hearing site is accessible to the mobility impaired.

POSTING

This Notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each Department facility and field office not later than five calendar days after receipt. Also, institutions and facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. CDCR Form 621-A (Rev. 04/18), Certification of Posting, shall be returned to RPMB by mail or email. See Department Operations Manual Sections 12010.12.1 and 12010.12.2 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this Notice should be directed to S. Pollock, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2269, or e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to Chris Hees, Division of Adult Institutions, at (916) 327-8987.

Original signed by:

RALPH M. DIAZ
Secretary (A)
California Department of Corrections and Rehabilitation

Attachments

NOTICE OF PROPOSED REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or Department), proposes to adopt new Section 3329.5 into Title 15, Division 3, Chapter 1, regarding Automatic Restoration of Forfeited Credits.

PUBLIC HEARING:

Date and Time: **February 1, 2019 – 10:00 a.m. to 11:00 a.m.**
Place: Department of Corrections and Rehabilitation
Conference Room 100N
1515 S Street – North Building
Sacramento, CA 95811
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period begins **December 14, 2018** and closes on **February 1, 2019 at 5:00 p.m.** Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rmb@cdr.ca.gov, before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

CONTACT PERSONS:

<u>Primary Contact:</u>	<u>Back-Up:</u>	<u>Program Contact:</u>
S. Pollock	Y. Sun	Chris Hees
Telephone: (916) 445-2308	Telephone: (916) 445-2269	Division of Adult Institutions
Regulation and Policy	Regulation and Policy	(916) 327-8987
Management Branch	Management Branch	
P.O. Box 942883	P.O. Box 942883	
Sacramento, CA 94283-0001	Sacramento, CA 94283-0001	

AUTHORITY AND REFERENCE:

Government Code Section 12838.5 provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as: Department of Corrections, Department of the Youth Authority, and Board of Corrections.

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5055 provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend rules and regulations for the administration of prisons and for the administration of the parole of persons.

PC Section 5058.3 authorizes the Director to certify in a written statement filed with Office of Administrative Law that operational needs of the Department require adoption, amendment, or repeal of a regulation on an emergency basis.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

The proposed regulations align with new regulations for Good Conduct Credit, which established a new credit earning scheme and criteria effective May 1, 2017 that awards good conduct credit to inmates who comply with the rules and regulations of the prison. These proposed regulations will allow for automatic restoration of an inmate’s forfeited credit for a Division “D,” “E,” or “F” offense discovered on or after May 1, 2017, with the exception of an offense for possession or constructive possession of a cellular telephone or wireless communication device capable of making or receiving wireless communications. Through the use of the Strategic Offender Management System (SOMS), those inmates who meet the criteria to have their forfeited credit restored, will automatically receive the credit. In addition, the proposed regulations will standardize and make consistent the disciplinary-free periods for the Division “D,” “E,” and “F” offenses committed on or after May 1, 2017 to 90 days.

This action provides the following:

- Makes a Division “D,” “E,” or “F” offense committed on or after May 1, 2017 (excluding offenses for possession or constructive possession of a cellular telephone or wireless communication device capable of making or receiving wireless communications) automatically restorable if the inmate remains disciplinary-free for 90 calendar days.
- Provides standardization and consistency for the disciplinary-free periods for a Division “D,” “E,” or “F” offense committed on or after May 1, 2017.
- Defines “Disciplinary-Free” for the puposes of this section.
- Specifies that new Section 3329.5 will not apply 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.

BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

The proposed regulatory action will benefit CDCR staff and inmates by fully automating the credit restoration process for Division “D,” “E,” and “F” offenses discovered on or after May 1, 2017, and applying the restoration of forfeited credit automatically once the qualifications are met; therefore eliminating the need for a committee action or any further request from the inmate. This will allow the process of restoration of credit to occur in real-time, without necessitating the need for the inmate to initiate a request, nor be scheduled for a committee hearing at a later date. Automating the process for restoration of forfeited credit will ensure consistent application, and provide staff and inmates with the most accurate and up to date release date information for those inmates deemed eligible to receive restoration of forfeited credit. The proposed regulatory action will encourage positive programming by not only providing a consistent disciplinary-free period, but also an avenue for those inmates to receive credit for offenses which were otherwise deemed ineligible under the prior policy.

EVALUATION OF CONSISTENCY/COMPATIBILITY WITH EXISTING LAWS/REGULATIONS:

The Department has determined that these proposed regulations are consistent and compatible with existing State laws and regulations. The Department reached this conclusion by researching existing statutes and regulations regarding the restoration of forfeited good conduct credit.

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.

FISCAL IMPACT STATEMENT:

- **Cost to any local agency or school district that is required to be reimbursed pursuant to 17500 et seq.:** *none*
- **Cost or savings to any State agency:** *none*
- **Other nondiscretionary cost or savings imposed on local agencies:** *none*

- **Cost or savings in federal funding to the State:**

none

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

RESULTS OF ECONOMIC IMPACT ASSESSMENT:

Effect on Jobs/Businesses

The Department has made an initial determination that the proposed regulations will not have an impact on the creation of new or the elimination of existing businesses or jobs within California, or affect the expansion of businesses currently doing business in California, as the proposed regulations affect only the internal management of CDCR prisons.

Effect on the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The Department has made an initial determination that the proposed regulations will have no impact on worker safety, or the State's environment as the proposed regulations only affect the internal management of CDCR prisons. Any benefits to the health and welfare of California residents would only be to the extent of incentivizing inmates to take responsibility for their own rehabilitation and remain disciplinary free, which in turn will provide greater success for their long term rehabilitation and reintegration back into society once released, breaking the cycle of recidivism, and creating safer communities in which they live.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT AFFECTING BUSINESSES:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations will not affect small businesses. It is determined that this action has no significant adverse economic impact on small business as the regulations pertain to the internal management of prisons, and the prison population does not have a significant effect on small businesses.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, 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 proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based, is available to the public upon request directed to the Department's contact

person. The proposed text, ISOR, and Notice of Proposed Regulations will also be made available on the Department's website <http://www.cdcr.ca.gov>.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

TEXT OF PROPOSED REGULATIONS

In the following, underline indicates additional text and ~~strikethrough~~ indicates deleted text.

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 ~~Worktime~~ 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.

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to adopt new Section 3329.5 into the California Code of Regulations (CCR), Title 15, Division 3, concerning the Automatic Restoration of Forfeited Credits.

Current policy denoted in Section 3327 pertains to the process by which an inmate becomes eligible to receive restoration of forfeited credit due to receiving a Rules Violation Report (RVR). Section 3328 pertains to the disciplinary-free periods that must be adhered to for the different division offenses. And Section 3329 pertains to any extraordinary circumstances which may apply. When inmate misconduct is identified as a violation of state law or of CDCR regulations, these infractions are reported on a RVR. The RVR will then be classified as either an administrative or serious offense per CCR Sections 3314 and 3315. If the RVR is classified as a serious violation, the seriousness of the offense will dictate the division offense. The divisions range from the most serious (Division A-1) to the least serious (Division F). The various division offenses can be referenced in Section 3323, Disciplinary Credit Forfeiture Schedule. Upon a finding of guilt, credit forfeiture is assessed based on the ranges specified by each division. As a result, the inmate's release date will be extended to reflect the loss of credit. CDCR provides inmates an opportunity to earn forfeited credits back if the inmate maintains good conduct and remains disciplinary-free. Disciplinary-free means without any finding of guilt of a disciplinary infraction filed on a RVR classified as either administrative or serious. The disciplinary-free period commences immediately following the date and time the rules violation is discovered by departmental staff.

CDCR is proposing to automate the credit restoration process from the current manual procedure by utilizing the Strategic Offender Management System (SOMS) for Division "D," "E," and "F" offenses discovered on or after May 1, 2017. SOMS is an offender database used for timely and reliable delivery of accurate offender information to CDCR executives, staff, and partners. Through the use of SOMS CDCR has increased efficiency and effectiveness by consolidating and compiling previous paper processes.

In addition to automating the process through the use of SOMS for Division "D," "E," or "F" offenses that are discovered on or after May 1, 2017, these regulations also propose that the process will be automatic (for those "D," "E," or "F" offenses discovered on or after May 1, 2017), meaning that once the inmate has met the qualifications to have their credit restored, it will be applied automatically. The inmate will no longer need to request from their Correctional Counselor that their credit be restored, fill out a form, or attend a classification committee hearing in order to have their credit restored. A classification committee is a process by which staff meet with an inmate and discuss his or her case factors, requests, and overall housing and custodial needs. With automatic restoration of forfeited credit, a classification committee will no longer be required or necessary, as SOMS will automatically be updated once the requirements are met.

The proposed regulations also standardize the time frame for which an inmate must be disciplinary-free following a guilty finding for any serious rules violation classified as a Division "D," "E" or "F" offense committed on or after May 1, 2017, with the exception of possession or constructive possession of a cellular telephone or wireless communication device capable of making or receiving wireless communications. The Department has determined that offenses involving cell phones and wireless communication devices pose a serious threat to safety and security and therefore should not be restorable. The disciplinary-free period for Division "D" and "E" offenses will be reduced from 180 calendar days to 90 calendar days. The disciplinary-free period for Division "F" offenses will remain at 90 calendar days. These changes ensure the consistent application of credit restoration to all inmates for all Division "D," "E," and "F" offenses discovered on or after May 1, 2017, with the exception of possession or constructive possession of a cellular telephone or wireless communication device capable of making or receiving wireless communications. All inmates who meet the disciplinary-free

period will receive automatic restoration of forfeited credit, provided the inmate does not receive another RVR during the disciplinary-free period.

These proposed regulations will apply to all qualifying offenses which are discovered by the Department on or after May 1, 2017. The May 1, 2017 date was chosen to align with regulations regarding Good Conduct Credit Earning. The Department has determined this date is necessary to keep the date consistent with Section 3043.2, Good Conduct Credit, which established a new credit earning scheme and criteria effective May 1, 2017 that awards good conduct credit to inmates who comply with the rules and regulations of the prison.

The proposed revisions standardize the statewide process and provide authority and direction for the automatic restoration of an inmate's forfeited credit within SOMS for Division "D," "E," and "F" offenses discovered on or after May 1, 2017.

Consideration of Alternatives:

The Department must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Currently, no reasonable alternatives have been brought to the attention of the Department that would alter the Department's initial determination.

ECONOMIC IMPACT ASSESSMENT

In accordance with Government Code Section 11346.3(b), the Department has made the following assessments regarding the proposed regulations:

Creation of New or Elimination of Existing Jobs within the State of California:

The Department has determined that the proposed regulations will not have an impact on the creation of new or elimination of existing jobs within California as the proposed regulations affect the internal management of prisons only.

Creation of New, Expansion or the Elimination of Existing Businesses Currently Doing Business within the State of California:

The Department has determined that the proposed regulations will not have an impact on the creation of new or the elimination of existing businesses within California, or affect the expansion of businesses currently doing business in California as the proposed regulations affect the internal management of prisons only.

Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Department has determined that the proposed regulations will not have an impact on worker safety or the State's environment. Any benefits to the health and welfare of California residents would only be to the extent of incentivizing inmates to take responsibility for their own rehabilitation and remain disciplinary-free, which in turn will provide greater success for their long term rehabilitation and reintegration back into society once released, breaking the cycle of recidivism, and creating safer communities in which they live.

Significant Adverse Economic Impact on Business:

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

The proposed regulations do not have a direct impact on California businesses as the proposed regulations affect the internal management of prisons only.

Benefits of the Regulations:

The proposed regulatory action will benefit CDCR staff and inmates by fully automating the credit restoration process for Division "D," "E," and "F" offenses discovered on or after May 1, 2017, and applying the restoration of forfeited credit automatically once the qualifications are met; therefore eliminating the need for a committee action or any further request from the inmate. This will allow the process of restoration of credit to occur in real-time, without necessitating the need for the inmate to initiate a request, nor be scheduled for a committee hearing at a later date. The Department has determined this automated system will ensure consistent application, therefore providing staff and inmates with the most accurate and up-to-date release date information for those inmates deemed eligible to receive restoration of credit. The proposed regulatory action will encourage positive programming by not only providing a consistent disciplinary-free period, but also an avenue for those inmates to receive credit for offenses which were otherwise deemed ineligible under the prior policy.

Materials Relied Upon:

In proposing additions and/or amendments to these regulations, the Department has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

Specific Purpose and Rationale for each Section, per Government Code Section 11346.2(b)(1)

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 4. General Institution Regulations

Article 5.5. Restoration of Forfeited Credits

Article 5.5 heading title is amended to remove the word "Worktime" in order to reduce confusion associated with credits earned only through work.

New Section 3329.5. Automatic Restoration of Forfeited Credits

New Subsection 3329.5(a) is adopted to establish that 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. This change provides standardization and makes the time period that the inmate is required to remain disciplinary-free consistent and uniform for Division "D," "E," and "F" offenses discovered on or after May 1, 2017. The Division "D" and "E" offense disciplinary-free periods is reduced from "180" days to "90" days, which is consistent with Division "F" offenses. Standardizing the 90-day disciplinary-free behavior is necessary to provide uniformity in the restoration of forfeited credit process as well as providing a deterrent to inmates from continual violation of CDCR rules, policies, and procedures, and will encourage positive programming while maintaining the safety and security of the inmates, staff and the institutions. The proposed regulations modify the disciplinary-free criteria for new violations discovered on or after May 1, 2017 by allowing for disciplinary offenses which are not allowed in Section 3327(a)(4)(A)-(D). The rule violations specified in Section 3327(a)(4)(A)-(D) are

associated with in-custody individual substance abuse issues and violations considered not to be a serious threat to the safety and security of the institution. The Department's intent is to incentivize inmates to take responsibility for their own rehabilitation by encouraging inmates to pursue rehabilitation and remain disciplinary-free. These changes will provide these inmates the opportunity to have their credit restored, and discourage them from engaging in these types of negative behaviors. By providing incentive it will assist them in addressing their substance abuse issues. Additionally, the Department feels that moving toward more treatment based responses rather than punitive responses is more productive in resolving inmates' issues. This will provide greater success for their reintegration back into society, breaking the cycle of recidivism, and will create safer communities in which they live.

Subsection 3329.5(b) is adopted to clarify and specify when the time frame in which the disciplinary-free period shall commence. There may be instances where evidence of an inmate's violation is not established until a date after the violation occurred. In this case, the date of the violation is the date information was received providing staff with enough information to charge the inmate with the violation; therefore, the 90 calendar days would start with the date and time of discovery. An example of this could be: An inmate committed a violation on 1/5/19; however, following an investigation, evidence the inmate committed the violation was received on 1/10/19, the violation date would be 1/10/19, and the 90 calendar days would start on 1/10/19. This language is necessary to provide clarity to inmates and staff regarding the rules for the disciplinary-free period.

Subsection 3329.5(c) is adopted to provide a definition of the disciplinary-free period. Defining the disciplinary-free period provides clarity to staff and inmates regarding the criteria for inmates who meet eligibility for restoration of forfeited credit.

Subsection 3329.5(d) is adopted to specify that Section 3329.5 will not apply 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. The Department has determined that offenses involving cell phones and wireless communication devices pose a serious threat to safety and security within the institutions and therefore should not be restorable. This section is necessary to clarify the rules regarding the restoration of forfeited credits.