



Department of Corrections and Rehabilitation
NOTICE OF CHANGE TO REGULATIONS

Sections: 3043, 3043.3, 3043.4, and 3043.5	Number: 19-04	Publication Date: July 12, 2019	Effective Date: January 9, 2019
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INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendment of Sections 3043, 3043.3, 3043.4, and 3043.5 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into Division 3, Chapter 1, regarding Supplemental Reforms to Credit Earning.

PUBLIC COMMENT PERIOD

The public comment period will close on **August 30, 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 August 30, 2019.**

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held **on August 30, 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 Anthony Carter, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2220, or e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to C. LeSieur, Division of Adult Institutions, at (916) 324-0794.

Original Signed By:

RALPH M. DIAZ
Secretary
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 amend Sections 3043, 3043.3, 3043.4 and 3043.5 into Title 15, Division 3, Chapter 1, regarding Supplemental Reforms to Credit Earning.

PUBLIC HEARING

Date and Time: **August 30, 2019 – 10:00 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 July 12, 2019 and closes on August 30, 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@cocr.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>
Anthony Carter Telephone: (916) 445-2220 Regulation and Policy Management Branch P.O. Box 942883 Sacramento, CA 94283-0001	Y. Sun Telephone: (916) 445-2269 Regulation and Policy Management Branch P.O. Box 942883 Sacramento, CA 94283-0001	C. LeSieur Telephone: (916) 324-0794 Division of Adult Institutions

AUTHORITY AND REFERENCE

Subdivision (b) of Section 32 of Article 1, of the California Constitution authorizes the Secretary to prescribe and amend regulations for the administration of credit earning programs.

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.

Reference: Cal. Const., art. 1, sec. 32(a); Penal Code sections 667, 667.5, 1170.2, 2930, 2933.05, 3041, and 3051.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The proposed rulemaking action amends existing regulations concerning credit earning which were promulgated after the passage of The Public Safety and Rehabilitation Act of 2016 (Proposition 57). Revisions to the credit earning regulations will provide inmates with additional incentives to take responsibility for their own rehabilitation by encouraging them to participate in educational and rehabilitative programs, which will better prepare them for their eventual return to society.

This action will:

1. Advance the existing 60-day release restriction for inmates who meet specified criteria.
2. Allow the Division of Juvenile Justice to consider all of the credit earning potential of each inmate housed in one of their facilities when calculating whether a transfer to adult prison is required by statute.
3. Increase the award of credit for inmates who complete 52 hours of programming under the Rehabilitative Achievement Credit Program from 7 days to 10 days.
4. Increase the award of credit for inmates who earn a High School Diploma or High School Equivalent during their current terms of incarceration from 90 days to 180 days.

DOCUMENTS INCORPORATED BY REFERENCE

N/A

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The Department anticipates that these proposed regulations will benefit our criminal justice system and communities by continuing to create incentives and opportunities for inmates to take responsibility for their conduct and encouraging inmates to pursue educational and rehabilitative opportunities which will help better prepare them to find employment upon release, thus reducing recidivism. In addition, these incentives will improve inmate behavior and reduce violence in prisons; making conditions safer for inmates and Department staff.

EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING LAWS AND REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the Department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern this specific area of credit earning.

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 or savings to any state agency: *None*
- Cost to any local agency or school district that is required to be reimbursed: *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.

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 ON BUSINESS

The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations place no obligations or requirements on any business.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small business because they place no obligations or requirements on any business.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department has determined that the proposed regulations will have no effect on the creation of new, or the elimination of existing jobs, or businesses within California, or effect the expansion of businesses currently doing business in California. The Department has determined that the proposed regulations may have a positive impact on the Health and Welfare of California residents, worker safety, and the State's environment by protecting and enhancing public safety by encouraging and motivating inmate rehabilitation, and reducing prison overcrowding.

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 regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are 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 has prepared and 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 (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website: www.cdcr.ca.gov.

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.

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, amends or repeals 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 at least 15 days after the date on which they are made available.

CERTIFICATION OF PUBLIC SAFETY COMPLIANCE
[Per California Constitution, Article I, Section 32]

This rulemaking action amends existing regulations concerning credit earning which was promulgated after the passage of The Public Safety and Rehabilitation Act of 2016 (hereafter referred to as Proposition 57 or the Act). Proposition 57 provided that the “Department of Corrections and Rehabilitation adopt regulations in furtherance of [the Act], and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety.” (Cal. Const., art. 1, § 32(b).)

Accordingly, in my role as the Secretary of the Department, I have been granted broad rulemaking authority under the California Constitution to adopt, amend, or repeal regulations in furtherance of the Act (notwithstanding other provisions of law) and I hereby invoke that constitutional grant of authority in support of this rulemaking action.

The proposed regulations will advance the existing 60-day release restriction for inmates who meet specified criteria; allow the Division of Juvenile Justice to consider all of the credit earning potential of each inmate housed in one of their facilities when calculating whether a transfer to adult prison is required by statute; increase the award of credit for inmates who complete 52 hours of programming under the Rehabilitative Achievement Credit Program from 7 days to 10 days; and increase the award of credit for inmates who earn a High School Diploma or High School Equivalent during their current terms of incarceration from 90 days to 180 days.

The Department proposes amendments to the Supplemental Reforms to Credit Earning regulations with the goal to make prisons and communities safer by encouraging and motivating inmates to participate in rehabilitative programs and service opportunities that create skills and employability to lead improved inmate behavior and a safer prison environment for inmates and Department staff.

I, Ralph M. Diaz, Secretary of the Department, do certify that these regulations protect and enhance public safety for all Californians in compliance with the courts order and Section 32 of Article I of the California Constitution.

/ Original signed by /

07/01/2019

RALPH M. DIAZ
Secretary
Department of Corrections and Rehabilitation

Date

TEXT OF PROPOSED REGULATIONS

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

California Code of Regulations, Title 15. Crime Prevention and Corrections

Division 3, Rules and Regulations of Adult Institutions, Programs and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 3.5 Credits.

Section 3043. Credit Earning.

Subsections 3043(a) and 3043(b) are unchanged but shown for reference:

(a) General. Inmates are expected to work or participate in rehabilitative programs and activities to prepare for their eventual return to society. Inmates who comply with the regulations and rules of the department and perform the duties assigned to them shall be eligible to earn Good Conduct Credit as set forth in section 3043.2 of this article. Unless otherwise precluded by this article, all inmates who participate in approved rehabilitative programs and activities, including inmates housed in administrative segregation housing units, in security housing units, in psychiatric services units, or in other segregated housing placement units, shall be eligible to earn Milestone Completion Credit, Rehabilitative Achievement Credit, and Educational Merit Credit as set forth in sections 3043.3, 3043.4, and 3043.5 of this article. The award of these credits, as well as Extraordinary Conduct Credit as set forth in section 3043.6 of this article, shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole. Inmates who do not comply with the regulations and rules of the department or who do not perform the duties assigned to them shall be subject to credit forfeiture as provided in this article.

(b) Inmate Participation in Credit Earning Programs and Activities. All eligible inmates shall have a reasonable opportunity to earn Good Conduct Credit, Milestone Completion Credit, Rehabilitative Achievement Credit, and Educational Merit Credit in a manner consistent with the availability of staff, space, and resources, as well as the unique safety and security considerations of each prison. No credit shall be awarded for incomplete, partial, or unsatisfactory participation in the credit earning programs or activities described in this article, nor shall credit be awarded for diplomas, degrees, or certificates that cannot be verified after due diligence by department staff.

Subsections 3043(c) through 3043(e) are amended to read:

(c) Release Date Restriction.

(1) The following Release Date Restriction took effect on April 13, 2017. Under no circumstance shall a determinately sentenced inmate be awarded credit or have credit restored by the department which advances his or her release to a date less than 60 calendar days from the date the award or restoration of such credit is entered into the department's information technology system, except pursuant to a court order.

(2) The following Release Date Restriction shall commence on May 1, 2019 and supersede the Release Date Restriction in subsection (c)(1). Under no circumstance shall a determinately sentenced inmate be awarded credit or have credit restored by the Department which advances his or her release to a date less than 15 calendar days from the date the award or restoration of such credit is entered into the Department's information technology system, except pursuant to a court order. This restriction shall instead be 45 calendar days for all inmates convicted of an offense subject to the provisions found in subdivision (a) of section 3058.9 of the Penal Code, and 60 calendar days for all inmates serving a term for a violent felony, defined in subdivision (c) of section 667.5 of the Penal Code, except pursuant to a court order.

(d) Participation by Inmates Sentenced as Adults and Housed In the Division of Juvenile Justice or Placed In an Alternative Custody Setting. Inmates sentenced as adults and housed in a facility administered by the department's Division of Juvenile Justice or placed in an alternative custody setting prior to parole, including a pre-parole or re-entry program, are eligible to participate in Good Conduct Credit, Milestone Completion Credit, Rehabilitative Achievement Credit, Educational Merit Credit, and Extraordinary Conduct Credit. Placement in an alternative custody setting means transfer of an inmate, prior to parole, to serve the remainder of his or her term of incarceration in a community based re-entry facility administered by the department in lieu of confinement in a state prison or Department of Forestry and Fire Protection fire camp. For purposes of calculating when an inmate's period of incarceration will be completed pursuant to subdivision (c)(3) of section 1731.5 and subdivision (b) of section 1731.7 of the Welfare and Institutions Code, commencing January 1, 2019, the Department shall consider the Good Conduct Credit, Milestone Completion Credit, and Rehabilitative Achievement Credit that may be earned during the inmate's incarceration.

(e) Participation by Inmates Housed In A Different Jurisdiction. Inmates serving criminal sentences under California law but housed in a different jurisdiction, including those participating in the Western Interstate Corrections Compact, participating in the Interstate Corrections Compact Agreement, housed in a facility administered by a county sheriff, housed in a facility administered by the California Department of State Hospitals, or housed in a facility administered by the Federal Bureau of Prisons, are only eligible to participate in

Good Conduct Credit, Educational Merit Credit, ~~and~~ Extraordinary Conduct Credit as described in this article, subject to the criteria set forth in subsection (b) ~~of this section~~.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Sections 5054 and 5058, Penal Code.
Reference: Cal. Const., art. 1, sec. 32(a)(2); and Sections 3041 and 3051, Penal Code.

Section 3043.3. Milestone Completion Credit.

Subsections 3043.3(a) through 3043.3(e) are unchanged but shown for reference:

(a) The award of Milestone Completion Credit requires the achievement of a distinct objective of approved rehabilitative programs, including academic programs, substance abuse treatment programs, social life skills programs, Career Technical Education programs, Cognitive Behavioral Treatment programs, Enhanced Outpatient Program group module treatment programs, or other approved programs with similar demonstrated rehabilitative qualities. To be awarded such credit, the inmate shall participate in all required classroom activities for the duration of the program, to include any subcomponents required in the curriculum for that program. Passing an exam alone shall not qualify for the award of such credit.

(b) Milestone Completion Credit for completing academic courses related to a high school diploma shall not be awarded to inmates already possessing a high school diploma, high school equivalency approved by the California Department of Education, or college degree.

(c) Notwithstanding any other authority to award or limit credit, effective August 1, 2017, all inmates eligible for Good Conduct Credit pursuant to section 3043.2 shall be eligible for Milestone Completion Credit pursuant to this section. The award of Milestone Completion Credit shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole. Milestone Completion Credit shall be awarded in increments of not less than one week, but no more than twelve weeks in a twelve-month period. Milestone Completion Credit earned in excess of this limit shall be awarded to the inmate on his or her next credit anniversary, defined as one year after the inmate completes his or her first Milestone Completion Credit program, and each year thereafter. Upon release to parole, release to community supervision, or discharge from parole, any excess credit under this section shall be deemed void. If instead an inmate completes one term and immediately begins serving a consecutive term, any excess credit awarded under this section shall be applied to that consecutive term. One week is equivalent to seven calendar days.

(d) A Milestone Completion Credit Schedule (REV 07/18) is hereby incorporated by reference. The schedule identifies all of the approved Milestone Completion Credit programs, the corresponding credit reduction for successful completion of each program, and whether credit

for repeating the program is authorized. The department may authorize a program be repeated for credit if there are significant rehabilitative benefits to be gained by those inmates who retake the program.

(e) Standard Performance Criteria. Standard performance criteria for the award of Milestone Completion Credit include the mastery or understanding of course curriculum by the inmate as demonstrated by completion of assignments, instructor evaluations, and testing processes. Within ten business days of completion of an approved credit earning program under this section, the instructor shall verify completion of the program in the department's information technology system. Within ten additional business days, a designated system approver shall verify the inmate's eligibility for such credit.

Subsections 3043.3(f)(1) and 3043.3(f)(2) are amended to read:

(f) Modified Performance Criteria.

(1) In lieu of the ~~above~~ standard performance criteria, ~~participants~~ inmates housed in a facility administered by the Department's Division of Juvenile Justice, in an approved prison housing units with structured, full-time rehabilitative programming, or in an approved alternative custody settings shall be awarded credit under this section in the following increments: three weeks of credit (the equivalent of 21 calendar days) for completion of every three months of program plan activities up to a maximum of twelve weeks of credit in a twelve-month period. Within ten business days of completing three months of program plan activities under this subsection a designated system approver shall be responsible for verifying and awarding credit to such participants.

(2) In lieu of the ~~above~~ standard performance criteria, ~~eEnhanced~~ ~~oOutpatient~~ ~~pProgram~~ participants, ~~dDevelopmentally~~ ~~dDisabled~~ ~~pProgram~~ participants, and participants in an approved mental health inpatient program, excluding those in a mental health crisis bed, shall be awarded credit under this section upon successfully completing scheduled, structured therapeutic activities in accordance with their mental health treatment plan or, if applicable, their ~~dDevelopmentally~~ ~~dDisabled~~ ~~pProgram~~, in the following increments: one week of credit (the equivalent of seven calendar days) for every 60 hours completed up to a maximum of six weeks of credit for 360 hours completed in a twelve-month period. Within ten business days of completing 60 hours of scheduled, structured therapeutic activities under this subsection the Chief of Mental Health at each institution shall be responsible for verifying and awarding credit to such participants.

Subsections 3043.3(g) and 3043.3(h) are unchanged but shown for reference:

(g) For purposes of placement in an alternative custody setting the department shall consider the Milestone Completion Credit that may be earned during the inmate's incarceration.

(h) Credit Forfeiture and Restoration. Milestone Completion Credit shall be forfeited in whole-day increments upon a finding of guilt of a serious rule violation in accordance with section 3323, only after all Good Conduct Credit is exhausted. Forfeited credit under this section shall be restored if the disciplinary action is reversed pursuant to an administrative appeal or court of law.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Sections 5054 and 5058, Penal Code.
Reference: Cal. Const., art. 1, sec. 32(a)(2); and Sections 2933.05 and 3041, Penal Code.

Section 3043.4. Rehabilitative Achievement Credit.

Subsections 3043.4(a) and 3043.4(b) are unchanged but shown for reference:

(a) The award of Rehabilitative Achievement Credit requires verified attendance and satisfactory participation in approved group or individual activities which promote the educational, behavioral, or rehabilitative development of an inmate. To qualify for credit under this section, the purpose, expected benefit, program materials, and membership criteria of each proposed activity, as well as any affiliations with organizations or individuals outside of the department, must be pre-approved by the institution. The meeting frequency and location of each activity shall only be approved under safe and secure conditions. Inmate participation in such activities shall be consistent with his or her custodial classification, work group assignment, privilege group, and other safety and security considerations.

(b) Notwithstanding any other authority to award or limit credit, effective August 1, 2017, all inmates eligible for Good Conduct Credit pursuant to section 3043.2 shall be eligible for Rehabilitative Achievement Credit pursuant to this section. The award of Rehabilitative Achievement Credit shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a) (2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole.

Subsections 3043.4(c) through 3043.4(g) are amended to read:

(c) Standard Award Increments.

(1) The following Standard Award Increment took effect on August 1, 2017. Rehabilitative Achievement Credit shall be awarded in the following increments: one week of credit for every 52 hours of participation in approved rehabilitative activities up to a maximum of four weeks of credit for 208 hours of participation in a twelve-month period.

(2) The following Standard Award Increment shall commence on May 1, 2019 and supersede the Standard Award Increment in subsection (c)(1). Rehabilitative Achievement Credit shall be awarded in the following increments: 10 calendar days of credit for every 52 hours of

participation in approved rehabilitative activities up to a maximum of 40 calendar days of credit for 208 hours of participation in a twelve-month period.

(d) Modified Award Increments.

(1) The following Modified Award Increment took effect on August 1, 2017. Rehabilitative Achievement Credit shall be awarded to inmates housed in a facility administered by the department's Division of Juvenile Justice or placed in an alternative custody setting prior to parole, including a pre-parole or re-entry program, in the following increments: one week of credit for every three months of participation up to a maximum of four weeks of credit in a twelve-month period.

(2) The following Modified Award Increment shall commence on May 1, 2019 and supersede the Modified Award Increment in subsection (d)(1). Rehabilitative Achievement Credit shall be awarded to inmates housed in a facility administered by the Department's Division of Juvenile Justice or placed in an alternative custody setting prior to parole, including a pre-parole or re-entry program, in the following increments: 10 calendar days of credit for every three months of participation up to a maximum of 40 calendar days of credit in a twelve-month period.

(e) Award of Excess Credit.

(1) Rehabilitative Achievement Credit earned prior to May 1, 2019, in excess of the four-week limit identified in subsections (c)(1) and (d)(1) of this section during a single year (which shall commence after the inmate earns his or her first week of such credit and each year thereafter) shall be deemed void awarded to the inmate pursuant to subsection 3043.4(e)(2). Upon release to parole, release to community supervision, or discharge from parole, any excess credit under this section shall also be deemed void. One week is equivalent to seven calendar days.

(2) Commencing May 1, 2019, Rehabilitative Achievement Credit earned in excess of 40 calendar days in a twelve-month period, as identified in subsections (c)(2) and (d)(2), shall be awarded to the inmate on his or her next credit anniversary, defined as one year after the inmate earns his or her first Rehabilitative Achievement Credit, and each year thereafter. Upon release to parole, release to community supervision, or discharge from parole, any excess credit under this section shall be deemed void. If instead an inmate completes one term and immediately begins serving a consecutive term, any excess credit awarded under this section shall be applied to that consecutive term.

(f) Under the direction of the Secretary and in conjunction with the Director of the Division of Adult Institutions, every wWarden shall periodically (but no less than once per year) issue a separate local rule in compliance with subdivision (c) of section 5058 of the Penal Code for each particular prison or other correctional facility identifying the Rehabilitative Achievement

Credit activities which comply with subsection (a) ~~of this section~~ and are approved at that location.

(g) Within ten business days of completing 52 hours of approved activity under this section, staff designated by the wWarden at each institution shall verify the inmate's completion of the hours necessary for this credit, confirm the inmate's eligibility to receive this credit, and ensure the credit is awarded to the inmate in the department's information technology system.

Subsections 3043.4(h) and 3043.4(i) are unchanged but shown for reference:

(h) For purposes of placement in an alternative custody setting the department shall consider the Rehabilitative Achievement Credit that may be earned during the inmate's incarceration.

(i) Credit Forfeiture and Restoration. Rehabilitative Achievement Credit shall be forfeited in whole-day increments upon a finding of guilt of a serious rule violation in accordance with section 3323, only after all Good Conduct Credit is exhausted. Forfeited credit under this section shall be restored if the disciplinary action is reversed pursuant to an administrative appeal or court of law.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Sections 5054 and 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2); and Section 3041, Penal Code.

Section 3043.5. Educational Merit.

Subsection 3043.5(a) is unchanged but shown for reference:

(a) The award of Educational Merit Credit requires the achievement of a significant academic accomplishment which will provide inmates with life-long rehabilitative benefits. Specifically, the achievement of a high school diploma (or high school equivalency approved by the California Department of Education), a collegiate degree (at the associate, bachelor, or post-graduate level), or a professional certificate as an Alcohol and Drug Counselor shall entitle an inmate to the benefits of this credit.

Subsections 3043.5(b) and 3043.5(c) are amended to read:

(b) Notwithstanding any other authority to award or limit credit, effective August 1, 2017, all inmates eligible for Good Conduct Credit pursuant to section 3043.2 shall be eligible for Educational Merit Credit pursuant to this section. The award of Educational Merit Credit shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole. Educational Merit Credit shall be awarded in the increments set forth in the schedule below upon demonstrated completion of the corresponding diploma, certificate, or degree:

Category	Description	Credit
1	High School Diploma or High School Equivalency approved by the California Department of Education	90 <u>calendar</u> days (<u>took effect August 1, 2017</u>) 180 <u>calendar</u> days (<u>effective May 1, 2019</u>)
2	Offender Mentor Certification Program (alcohol and other drug counselor certification recognized and approved by the California Department of Health Care Services)	180 <u>calendar</u> days
3	Associate of Arts or Science Degree	180 <u>calendar</u> days
4	Bachelor of Arts or Science Degree	180 <u>calendar</u> D days
5	Post-Graduate Degree	180 <u>calendar</u> days

(c) Credit for each category listed in subsection (b) ~~of this section~~ shall only be awarded once to an inmate upon proof the diploma, certificate, or degree was conferred during the inmate's current term of incarceration. Educational Merit Credit for achieving a high school diploma or high school equivalency as approved by the California Department of Education shall not be awarded to inmates already possessing a high school diploma, approved equivalent, or college degree prior to the date the inmate was received in prison for his or her current period of incarceration. Educational Merit Credit shall not be awarded for an associate, bachelor, or post-graduate degree, unless the inmate earned at least 50 percent of the units necessary for that degree while serving his or her current term, the degree was conferred by a regionally accredited institution, and the inmate arranged for an official, sealed copy of their transcript to be sent by the educational institution directly to the Principal at the inmate's institution. Credit for such degrees ~~earned before August 1, 2017, but during an inmate's current term of incarceration,~~ shall be effective on the date the credit is entered into the department's information technology system. Commencing May 1, 2019, inmates who earned a High School Diploma or High School Equivalency that was entered into the Department's information technology system on or after August 1, 2017, through April 30, 2019, shall be awarded an additional 90 calendar days of credit.

Subsections 3043.5(d) through 3043.5(f) are unchanged but shown for reference:

(d) Within 30 calendar days of receiving documentation from an inmate indicating completion of an Educational Merit Credit, during the inmate's current term of incarceration, department staff shall verify completion of the diploma, certificate, or degree in the department's information technology system.

(e) Upon release to parole, release to community supervision, or discharge from parole, any excess credit under this section shall be deemed void. If instead an inmate completes one

term and immediately begins serving a consecutive term, any excess credit shall be applied to that consecutive term.

(f) Credit Forfeiture. Educational Merit Credit shall not be forfeited due to disciplinary action.

Note: Authority cited: Cal. Const., art. 1, sec. 32 (b); and Sections 5054 and 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2); and Sections 2053.1 and 3041, Penal Code.

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR or Department) proposes to amend California Code of Regulations (CCR), Title 15, Division 3, Sections 3043, 3043.3, 3043.4, and 3043.5, regarding Supplemental Reforms to Credit Earning. The proposed regulations amend existing regulations concerning credit earning which were promulgated after the passage of The Public Safety and Rehabilitation Act of 2016.

The proposed regulations reduce the existing 60-day release restriction for inmates who meet specific criteria. In addition, the proposed regulations allow the Division of Juvenile Justice to consider all of the potential credit an inmate in their custody can earn pursuant to these regulations when calculating whether state law requires they be transferred to adult prison.

The proposed regulations also expand the Rehabilitative Achievement Credit, allowing inmates to earn more credit for participating in approved rehabilitative programs, self-help activities, and volunteer-led groups; as well as allowing inmates who earn excess credit to receive that credit the next year.

California Penal Code section 2053.1 requires the Department to implement programs that, in part, focus on increasing the reading ability of all inmates to the 9th grade level and obtaining a high school diploma, general education development certificate, or its equivalent. The proposed regulations would increase the credit earned by inmates who accomplish any of the above: from 90 calendar days currently to 180 calendar days in the future (and retroactively).

These proposed revisions to the credit earning regulations will allow for inmates to take responsibility for their own rehabilitation by encouraging inmates to participate in rehabilitative programs which will better prepare them for their eventual return to society.

Anticipated Benefits of the Regulations

The Department anticipates that these proposed regulations will benefit our criminal justice system and communities by continuing to create incentives and opportunities for inmates to take responsibility for their conduct and encouraging inmates to pursue educational and rehabilitative opportunities which will help better prepare them to find employment upon release, thus reducing recidivism. In addition, these incentives will improve inmate behavior and reduce violence in prisons; making conditions safer for inmates and Department staff.

Economic Impact Assessment

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

Significant Adverse Economic Impact on Business

The Department has made an initial determination the proposed regulations 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 proposed regulations affect the internal operations of the Department only, and place no requirements or restrictions on businesses.

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 jobs or the elimination of existing jobs within California as the proposed regulations affect the internal operations of prisons only.

Creation of New Businesses or Elimination or Expansion 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 businesses 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 operations 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 may have a positive impact on the Health and Welfare of California residents, worker safety, and the State's environment by providing eligible inmates with the incentives to participate in rehabilitative and educational programming, which will better prepare inmates to find employment upon release, and reduce prison overcrowding.

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 and equally effective in implementing The Public Safety and Rehabilitation Act of 2016.

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

Local Mandates

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.

Materials Relied Upon

In proposing additions 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))

Section 3043. Credit Earning.

Subsections 3043(a), 3043(b), and 3043(c) are unchanged but shown for reference.

Subsection 3043(c)(1) is amended to make clear that the 60-day release restriction date that took effect on April 13, 2017, will remain in effect until April 30, 2019. This amendment is necessary so staff and inmates are aware that the original criteria will remain in effect until April 30, 2019, and the effective date for the new criteria is not until May 1, 2019, as outlined in subsection 3043(c)(2).

Subsection 3043(c)(2) is adopted to establish that effective May 1, 2019, inmates who meet specified criteria will be subject to a shorter release day restriction. When the existing Credit Earning regulations went into effect April 13, 2017, the Department determined the “release date restriction” should last for 60 calendar days to give staff enough time to prepare the necessary paperwork, parole plans, and notifications to victims and law enforcement officials for a successful transition to the community. Since implementation of the existing regulations, staff have determined that the time period required to complete the necessary steps can be reduced to 15 calendar days without compromising public safety. However, those convicted of certain offenses against minors under Penal Code section 3058.9 will be subject to a 45 calendar day release restriction as required by statute and those convicted of a violent offense, as defined in Penal Code section 667.5(c), will be subject to a 60 calendar day release restriction, also required by statute. These release date restrictions will continue to be usurped by any applicable court orders. It was necessary for this amendment to become effective May 1, 2019, to allow the Department sufficient time to adapt the information technology system to calculate the correct release date.

Subsection 3043(d) is amended to establish that effective January 1, 2019, the Division of Juvenile Justice (DJJ) will consider Good Conduct Credit, Milestone Completion Credit, and Rehabilitative Achievement Credit of each inmate housed in one of their facilities when calculating whether a transfer to adult prison is required by statute. This change to the calculation methodology will better reflect all of the potential credit an inmate housed at DJJ can earn while incarcerated. This provision encourages inmates housed with the DJJ to take advantage of all their rehabilitative programming opportunities and thus avoid

transferring to adult prison. This provision allowing some inmates to remain housed at DJJ longer will avoid disrupting rehabilitative programming. The Secretary has determined that public safety will not be compromised by retroactively applying this change to January 1, 2019.

Subsection 3043(e) is amended to improve grammar and change the word “or” to “and” in order to clarify that those inmates housed in a different jurisdiction and who meet the criteria are eligible to participate in all of the following credit earning schemes: Good Conduct Credit, Educational Merit Credit, and Extraordinary Conduct Credit. Existing regulations use the word “or” which would suggest that inmates would only be eligible to participate in one of the credit earning programs listed above. The amended language is necessary to clarify that inmates who meet the criteria pursuant to this section are eligible for all three credit earning opportunities.

Section 3043.3. Milestone Completion Credit.

Subsections 3043.3(a) through 3043.3(e) are unchanged but shown for reference.

Subsection 3043.3(f) is unchanged but shown for reference.

Subsection 3043.3(f)(1) is amended to clarify this section applies to inmates housed in Division of Juvenile Justice (DJJ) and inmates housed within the Division of Adult Institutions (DAI). The language of the existing regulations does not clearly specify that the “Modified Performance Criteria” apply to inmates housed in the Division of Juvenile Justice. This amendment is necessary to make it clear to staff and inmates that the “Modified Performance Criteria” are applicable to inmates housed in DJJ and DAI.

Subsection 3043.3(f)(2) is amended to improve grammar within this subsection.

Subsections 3043.3(g) and 3043.3(h) are unchanged but shown for reference.

Section 3043.4. Rehabilitative Achievement Credit.

Subsections 3043.4(a), 3043.4(b), and 3043(c) are unchanged but shown for reference.

Subsection 3043.4(c)(1) is amended to make clear that regulations regarding the “Standard Award Increment” that took effect on August 1, 2017, will remain in effect until

April 30, 2019. This amendment is necessary so staff and inmates are aware that the effective date for the new criteria is not until May 1, 2019, as outlined in subsection 3043.4(c)(2).

Subsection 3043.4(c)(2) is adopted to increase the “Standard Award Increment.” This increase is intended to further incentivize participation in self-help groups, facilitate inmate rehabilitation, and promote positive behavior. It is necessary for this amendment to become effective May 1, 2019, to allow the Department sufficient time to adapt its information technology system to perform the correct calculation.

Subsection 3043.4(d) is unchanged but shown for reference.

Subsection (d)(1) is amended to make clear that regulations regarding the “Modified Award Increment” that took effect on August 1, 2017, will remain in effect until April 30, 2019. This amendment is necessary so staff and inmates are aware that the effective date for the new criteria is not until May 1, 2019, as outlined in Section 3043.4(d)(2).

Subsection 3043.4(d)(2) is adopted to increase the “Modified Award Increment.” This increase is intended to further incentivize participation in self-help groups, facilitate inmate rehabilitation, and promote positive behavior. It is necessary for this amendment to become effective May 1, 2019, to allow the Department sufficient time to adapt its information technology system to perform the correct calculation.

Subsection 3043.4(e) is amended to add the title “Award of Excess Credit.” This is necessary because the original subsection will be further subdivided into two separate subsections falling under the same title.

Subsection 3043.4(e)(1) is amended to make clear that credit earned by inmates prior to May 1, 2019, in excess of the previous cap for Rehabilitation Achievement Credit participation, as noted in subsections 3043.4(c)(1) and (d)(1), will be awarded to inmates. This proposed amendment will allow inmates who earned excess credit prior to May 1, 2019, the same opportunity and benefit as inmates who earn excess credit pursuant to new subsection 3043.4(e)(2).

Subsection 3043.4(e)(2) is adopted to allow Rehabilitative Achievement Credit earned in excess of 40 calendar days in a twelve-month period to be awarded to the inmate on their next credit anniversary, defined as one year after the inmate earns their first Rehabilitative Achievement Credit, and each year thereafter. Existing regulations established a four-week annual cap on Rehabilitative Achievement Credit. The

Department believes that allowing inmates to apply excess credit in future years will further incentivize inmates to participate in these educational and rehabilitative programs. It is necessary for this amendment to become effective May 1, 2019, to allow the Department sufficient time to adapt its information technology system to perform the correct calculation.

Subsections 3043.4(f) and 3043.4(g) are amended to improve grammar within these subsections.

Subsections 3043.4(h) and 3043.4(i) are unchanged but shown for reference.

Section 3043.5. Educational Merit Credit.

Subsection 3043.5(a) is unchanged but shown for reference.

Subsections 3043.5(b) and (c) are amended to improve grammar within this section and to establish that effective May 1, 2019, there will be an increase in credit for inmates who earn a High School Diploma (HSD) or High School Equivalency (HSE) during their current terms of incarceration: that increase will be from 90 calendar days to 180 calendar days. Furthermore, the word “calendar” is added to ensure clarity and accuracy in the calculation of this credit and to keep the language consistent throughout the text of the proposed regulations. The Department believes this amendment will provide inmates with more incentive to participate in literacy programs and to continue their educational programming. This amendment is to be applied retroactively to allow inmates who received the previous 90 calendar days of education credit the same opportunity and benefit as those inmates who will receive the new 180 calendar days of education credit. It is necessary for this amendment to become effective May 1, 2019 to allow the Department sufficient time to adapt its information technology system to perform the correct calculation.

Subsections 3043.5(d) through (f) are unchanged but shown for reference.