



**Department of Corrections and Rehabilitation**  
**NOTICE OF CHANGE TO REGULATIONS**

<b>Sections:</b> 3044, 3190, 3314, 3315, and 3376	<b>NCR Number:</b> 20-04	<b>Publication Date:</b> May 1, 2020	<b>Effective Date:</b> TBD
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**INSTITUTION POSTING AND CERTIFICATION REQUIRED**

This Notice announces the proposed amendment of Sections 3044, 3190, 3314, 3315, and 3376 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding Work Group and Privilege Group C.

**PUBLIC COMMENT PERIOD**

The public comment period will close on **June 19, 2020**. 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](mailto:RPMB@cdcr.ca.gov). All written comments must be received or postmarked no later than **June 19, 2020**.

**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 Section 12010.6.7 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](mailto:RPMB@cdcr.ca.gov). Inquiries regarding the subject matter of these regulations should be directed to Douglas Snell, Division of Adult Institutions, at (916) 323-2356.

*/ Original signed by /*

JEFFREY MACOMBER  
Undersecretary, Administration  
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 3044, 3190, 3314, 3315, and 3376 into Title 15, Division 3, Chapter 1, regarding Work Group and Privilege Group C.

**PUBLIC COMMENT PERIOD**

The public comment period begins **May 1, 2020** and closes on **June 19, 2020**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to [rpmb@cdcr.ca.gov](mailto:rpmb@cdcr.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.

No public hearing is scheduled for these proposed regulations; however, pursuant to Government Code Section 11346.8, any interested person or their duly authorized representative may request a public hearing, no later than 15 days prior to the close of the written comment period.

**CONTACT PERSONS**

Primary Contact

Anthony Carter  
Telephone: (916) 445-2220  
Regulation and Policy  
Management Branch  
P.O. Box 942883  
Sacramento, CA 94283-0001

Back-Up

Y. Sun  
Telephone: (916) 445-2269  
Regulation and Policy  
Management Branch  
P.O. Box 942883  
Sacramento, CA 94283-0001

Program Contact

Douglas Snell  
Telephone: (916) 323-2356  
Mental Health Compliance  
Team  
Division of Adult Institutions  
P.O. Box 942883  
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 regulation on an emergency basis.

**INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW**

The reason for these amendments is to provide a standardized statewide approach that identify processes that shall be followed when an inmate is placed on Privilege Group C or deemed a program failure. Existing language lacks specificity, which can lead to disparate application of the rules concerning the privileges an inmate on Privilege Group C or those deemed a program failure may receive. These proposed regulations are consistent with the Department's commitment to provide

inmates with a pathway to truly earn a second chance to succeed, while at the same time ensuring public safety and reducing recidivism. The CDCR is committed to making prisons safer by promoting education, rehabilitation, and good conduct through credit-earning incentives and earned privileges through positive programming.

**This action will:**

- Standardize out-of-cell activities for inmates placed in Privilege Group C.
- Provide additional consequences for those inmates who choose not to abide by departmental regulations, thereby incentivizing the need to program appropriately.
- Ensure all Privilege Group C or program failure inmates continue to participate in scheduled therapeutic programming activities, to include religious services and self-help groups.
- Notify the Interdisciplinary Treatment Team when an inmate who is a participant in the Mental Health Services Delivery System at the Enhanced Outpatient Program level of care or higher is placed in Privilege Group C as a result of a disciplinary hearing.

**DOCUMENTS INCORPORATED BY REFERENCE**

None

**SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS**

CDCR has determined the proposed regulations may have a positive impact on public safety, the health and welfare of California’s residents, worker safety, and on inmates by ensuring the safe incarceration of offenders. The proposed regulations also provide direction to CDCR staff and inmates of the new procedure for inmates assigned to Privilege Group C or deemed a program failure. The CDCR is committed to making prisons safer by promoting education, rehabilitation, mental health services, good conduct through credit-earning incentives, and earned privileges through positive programming. The proposed regulatory action provides additional consequences for those inmates who choose not to abide by departmental rules and regulations as a means of motivating inmates to take advantage of incentives received as a result of programming positively. Additionally, the regulations comply with the Special Master’s Twenty Seventh Round Monitoring Report -*Coleman v. Brown* affirmation order.

**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 CDCR has concluded that these are the only regulations that concern the Work and Privilege Group C.

**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 regulation 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 regulation will have no effect on worker safety or the state's environment. These regulations may benefit the welfare of California residents by helping to make CDCR institutions safer for inmates, staff, and visitors. Additionally, safer institutions may provide an environment more conducive to rehabilitation, thereby reducing recidivism.

## **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 Regulations will also be made available on the Department's website: [www.cdcr.ca.gov](http://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.

## TEXT OF PROPOSED REGULATIONS

In the following text, ~~strikethrough~~ indicates deleted text; underline indicates added text.

California Code of Regulations, Title 15, Crime Prevention and Corrections, Division 3, Adult Institutions, Programs and Parole.

Chapter 1 Rules and Regulations of Adult Operations and Programs.  
Article 3.5. Credits

**3044. Inmate Work Groups and Privilege Groups.**

**Subsections 3044(a) through 3044(c)(4) remain unchanged.**

**Subsection 3044(c)(5) is amended to read:**

(c) Privileges. Privileges for each work group shall be those privileges earned by the inmate. Inmate privileges are administratively authorized activities and benefits required of the secretary, by statute, case law, governmental regulations, or executive orders. Inmate privileges shall be governed by an inmate's behavior, custody classification and assignment. A formal request or application for privileges is not required unless specified otherwise in this section. Institutions may provide additional incentives for each privilege group, subject to availability of resources and constraints imposed by security needs.

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(5) No inmate or group of inmates shall be granted privileges not equally available to other inmates of the same custody classification and assignment who would otherwise be eligible for the same privileges, except as determined by Subsections 3376(d)(3)(E)(1) through 3376(d)(3)(E)(6).

**Subsection 3044(c)(6) through 3044(e) remains unchanged.**

**Subsections 3044(f)(1) through 3044(f)(2)(A) are unchanged but shown for reference.**

(f) Privilege Group C:

(1) Criteria, any of the following:

(A) The inmate who twice refuses to accept assigned housing, or who refuses to accept or perform in an assignment, or who is deemed a program failure as defined in section 3000.

(B) A hearing official may temporarily place an inmate into the group as a disposition pursuant to section 3314 or 3315.

(C) A classification committee action pursuant to section 3375 places the inmate into the group. An inmate placed into Privilege Group C by a classification committee action may apply to be removed from that privilege group no earlier than 30 days from the date of placement. Subsequent to the mandatory 30 days placement on Privilege Group C, if the inmate submits a written request for removal, a hearing shall be scheduled within 30 days of receipt of the written request to consider removal from Privilege Group C.

(2) Privileges and non-privileges for Privilege Group C are as follows:

(A) No family visits.

**Subsection 3044(f)(2)(B) is amended to read:**

(B) One-fourth the maximum monthly canteen draw and items shall be limited to stationery, stationary supplies, personal hygiene, vitamins and medications as authorized by the secretary. Inmates may maintain their current canteen items, which must be verified with a current receipt. Any subsequent canteen purchases while on Privilege Group C or program failure status shall be limited to stationery, stationary supplies, personal hygiene, vitamins and medications.

**Subsection 3044(f)(2)(C) is unchanged but shown for reference:**

(C) Telephone calls on an emergency basis only as determined by institution/facility staff.

**Subsection 3044(f)(2)(D) is amended to read:**

(D) ~~Yard access limited by local institution/facility security needs.~~ Institutions shall offer no less than ten hours of exercise in an outdoor, covered or enclosed setting each week. No access to any other recreational or entertainment activities.

**Subsection 3044(f)(2)(E) is unchanged but shown for reference:**

(E) No inmate packages. Inmates may receive special purchases, as provided in subsections 3190(j) and (k).

**New Subsections 3044(f)(2)(F) through 3044(f)(2)(J) are adopted to read:**

(F) Participation in their designated religious service within the chapel or other approved locations once per week.

(G) Participation in one self-help group per week.

(H) Inmates placed on Privilege Group C pursuant to a disciplinary action or classification committee action shall have disallowed property stored at the inmate's institution, pending removal from Privilege Group C.

(I) Inmate participants in the Mental Health Services Delivery System shall continue to participate in all scheduled structured therapeutic programming activities, which shall not be counted towards the ten hours of exercise per week.

(J) Inmate's assigned to Privilege Group C as a result of a classification committee action or disciplinary action, who participate in the Mental Health Services Delivery System at the Enhanced Outpatient Program (EOP) level of care or higher, shall be referred to the Interdisciplinary Treatment Team (IDTT) via CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono, for a program review. The IDTT may recommend certain privileges granted to the inmate on a case-by-case basis when it is determined suspension of privileges would cause decompensation or would be detrimental to the inmate's mental health status.

**Subsections 3044(g)(1) through 3044(j) are unchanged.**

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Sections 2700, 2701 and 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2); Sections 2932, 2933, 2933.05, 2933.3, 2933.6, 2935, 5005, 5054 and 5068, Penal Code; and *In re Monigold*, 205 Cal.App.3d 1224 (1988).

## Subchapter 2. Inmate Resources

### Article 9. Personal Property and Religious Personal Property

#### 3190. General Policy.

**Subsections 3190(a) through 3190(k) are unchanged.**

**Subsection 3190(l)(1) is unchanged but shown as reference.**

(l) Inmates may be allowed to possess appliances and one musical instrument as follows:

(1) Inmates assigned to Privilege Groups A or B may possess up to three approved appliances in their quarters/living area, facility physical plant limitations permitting, and shall not exceed the six cubic feet maximum limitation. One musical instrument with case not exceeding 46" x 24" x 12" may be substituted as one of the three appliances.

**Subsections 3190(l)(2) through 3190(l)(3) are amended to read:**

(2) Inmates assigned to Privilege Group C may not possess entertainment appliances and/or a musical instrument. Inmates placed on Privilege Group C pursuant to a disciplinary action pursuant to subsections 3314(e)(3), 3315(f)(5)(C), or classification committee action shall have the disallowed property stored at the inmate's institution until which time the placement is affirmed by a classification committee.

Inmates assigned to Privilege Group C by a classification committee as a result of being deemed a program failure as defined in Section 3000 who receive one or more additional Administrative or Serious Rules Violation Reports shall be required to mail out, return, donate, or dispose of disallowed property in accordance with Subsection 3191(c). Upon placement in Privilege Group C by the classification committee, the inmate shall be afforded the allowable property identified in the APPS for Privilege Group C and will be required to dispose of the non-allowable property in accordance with subsection 3191(c).

(3) Inmates assigned to Administrative Segregation Unit/Security Housing Unit/Psychiatric Services Unit (ASU/SHU/PSU) or other segregated housing units may possess or acquire one television, or one radio, or one television/radio combination unit, through the Special Purchase process, facility physical plant limitations permitting, and shall not exceed the six cubic feet maximum limitation. Inmates assigned to ASU are authorized one entertainment appliance. Inmates assigned to SHU/PSU are authorized two entertainment appliances. Eligibility to possess an entertainment appliance commences on the date of Privilege Group D assignment. An inmate who is deemed to be a program failure, as defined in Section 3000, based on conduct prior to or while in the ASU/SHU/PSU, or other segregated housing units, shall have his or her entertainment appliance disposed of stored by the institution pending removal of program failure designation. Inmates deemed a program failure as defined in Section 3000 who receive one or more additional Administrative or Serious Rules Violation Reports while assigned to program failure status shall be required to mail out, return, donate or dispose of disallowed property in accordance with subsection 3191(c). An inmate who has not been deemed a program failure, but who is found guilty of any Rules Violation Report based on conduct while in the ASU/SHU/PSU or other segregated housing units, is subject to temporary loss of the entertainment appliance as follows: (1) thirty days for the first offense; (2) sixty days for the second offense; and (3) ninety days for the third and subsequent offenses. Inmates assigned to Privilege Group D shall not possess a musical instrument.

**Subsections 3190(l)(4) through 3190(l)(5) are unchanged but shown for reference.**

(4) Inmates assigned to Privilege Group U shall not possess any appliances or musical instruments.

(5) Inmates housed at conservation camps shall not possess a television or television/radio combination.

**New Subsection 3190(l)(6) is adopted to read:**

(6) An inmate deemed to be a program failure, based on conduct prior to or while in the ASU, SHU, PSU, or other segregated housing units, shall have his or her maximum monthly canteen draw items limited to stationery, stationery supplies, personal hygiene, vitamins and medications. Inmates may maintain their current canteen items; which must be verified with a current receipt. Any subsequent canteen purchases while deemed a program failure shall be limited to stationery, stationery supplies, personal hygiene, vitamins and medications.

**Subsections 3190(m) through 3190(v) are unchanged.**

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 2086, 2601, 5006 and 5054, Penal Code; *In re Alcala*, Marin County Superior Court, No. 117925, December 20, 1984 and *Armstrong v. Davis Court Ordered Remedial Plan*, Amended January 3, 2001; *In re Armstrong*, N.D. Cal, No. C 94-02307, March 20, 1998; and *Quine v. Beard*, No. C 14-02726 JST.

**Subchapter 4. General Institution Regulations**

**Article 5. Inmate Discipline**

**3314. Administrative Rule Violations.**

**Subsections 3314(a) through 3314(d) are unchanged.**

**Subsections 3314(e)(1) through 3314(e)(2) are unchanged but shown for reference.**

(e) The hearing official may find the inmate guilty and order one or more of the following dispositions:

- (1) Counseling, with or without a reprimand.
- (2) Suspension of privileges specified by the hearing official for no more than a 30-day period starting the date the rule violation report was adjudicated, except as authorized in section 3314(e)(10).

**Subsection 3314(e)(3) is amended to read:**

(3) Placement into privilege group B or C for no more than a 30-day period starting the date the rule violation report was adjudicated. Inmates placed into Privilege Group C as a result of a disciplinary action who are participating in the Mental Health Services Delivery System at the Enhanced Outpatient Program level of care or higher shall be referred to the Interdisciplinary Treatment Team by the hearing official by documenting the information on a CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono, as a routine referral for program review.

**Subsections 3314(e)(4) through 3314(e)(j) are unchanged.**

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

### **3315. Serious Rule Violations.**

**Subsections 3315(a) through 3315(f)(5)(B) are unchanged.**

**Subsection 3315(f)(5)(C) is amended to read:**

(C) Placement into privilege group B or C for no more than a 90-day period starting from the date the rule violation report was adjudicated. Inmates placed into Privilege Group C as a result of a disciplinary action who are participating in the Mental Health Services Delivery System at the Enhanced Outpatient Program level of care or higher shall be referred to the Interdisciplinary Treatment Team by the hearing official by documenting the information on a CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono, as a routine referral for program review.

**Subsections 3315(f)(5)(D) through 3315(f)(5)(K) are unchanged.**

**Subsection 3315(f) (5)(L) is amended to read:**

(L) Inmates placed in ASU, SHU, PSU, or other segregated housing units on Privilege Group D, who are deemed to be program failures, as defined in section 3000, based on conduct while in the ASU/SHU/PSU, or other segregated housing units, shall have their entertainment appliance disposed of in accordance with subsection 3191(c) not possess personal entertainment appliances. An inmate who is deemed a program failure by a classification committee is subject to having their personal property appliances stored by the institution pending removal of program failure designation. Inmates deemed a program failure who receive one or more additional Administrative or Serious Rules Violation Reports while assigned to program failure status shall be required to mail out, return, donate or dispose of disallowed property in accordance with Subsection 3191(c). Inmates who are not deemed to be program failures, but who are found guilty of any RVR per this section based on their conduct while in the ASU/SHU/PSU or other segregated housing units, are subject to temporary loss of their entertainment appliances as follows:

1. Thirty days for the first offense.
2. Sixty days for the second offense.
3. Ninety days for the third and subsequent offenses.

**Subsection 3315(f)(5)(M) is unchanged but shown for reference.**

(M) Violation of Refusing to Accept Assigned Housing of sections 3005(c) and 3269.1 shall result in:

1. First offense violation shall result in loss of any or all of the following for up to 90 days: canteen, appliances, inmate packages, telephone privileges, and personal property.
2. Second offense and subsequent offense violation(s) shall result in loss of any or all of the following for up to 180 days: canteen, appliances, inmate packages, telephone privileges, and personal property.

**Subsection 3315(f)(5)(N) is amended to read:**

(N) Violation of Refusing to Accept an Inmate Housing Assignment of Subsection 3005(c) shall result in:

1. First offense violation shall result in loss of any or all of the following for up to 90 days: canteen, appliances, inmate packages, telephone privileges, and personal property.
2. Second offense and subsequent offense violation(s) shall result in loss of any or all of the following for up to 180 days: canteen, appliances, inmate packages, telephone

privileges, and personal property, and referral to a classification committee for review and determination for program failure. An inmate who is deemed a program failure by a classification committee is subject to having their personal property/appliances stored by the institution pending removal of program failure designation. ~~disposed of in accordance with departmental procedure.~~

**Subsections 3315(f)(5)(O) through (h) are unchanged.**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 295, 295.1, 295.2, 296, 296.1, 296.2, 297, 298, 298.1, 298.2, 298.3, 299, 299.5, 299.6, 299.7, 300, 300.1, 300.2, 300.3, 314, 530, 532, 646.9, 647, 653m, 2931, 2932, 2933, 4501.1, 4573.6, 4576, 5054 and 5068, Penal Code

**Article 10. Classification**

**3376. Classification Committees.**

**Subsections 3376(a) Through 3376(d)(3)(D) are unchanged.**

**Subsection 3376(d)(3)(E) is unchanged but shown for reference.**

(d) Classification committee functions:

\*

(3) Institution and Facility Classification Committees shall:

\*

(E) Change an inmate's work/privilege group.

**Subsections 3376(d)(3)(E)(1) through 3376(d)(3)(E)(6) are adopted to read:**

(1) Inmates assigned to Privilege Group C as a result of a classification committee action or disciplinary action, who participate in the Mental Health Services Delivery System at the Enhanced Outpatient Program (EOP) level of care or higher, shall be referred to the Interdisciplinary Treatment Team (IDTT) via CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono, for a program review.

(2) Within five working days, IDTT may recommend certain privileges be granted to the inmate on a case-by-case basis when it is determined suspension of privileges would cause decompensation or would be detrimental to the inmate's mental health status. In this event, the correctional counselor attending IDTT shall refer the inmate to the classification committee for consideration of reinstating privileges.

(3) Each time the classification committee reinstates privileges the attending correctional counselor shall ensure housing unit staff are made aware of any privileges reinstated to the inmate or if the removal of Privilege Group C has occurred. Any changes shall be documented on a CDC Form 128-B (Rev. 04/74), General Chrono, and distributed to the housing unit and the inmate following the classification committee and shall be effective immediately.

(4) The primary clinician is required to monitor the inmate's mental health status. At any time if it is determined the mental health of an inmate placed into Privilege Group C has declined as a result of suspension of privileges, the Primary Clinician shall refer the inmate to IDTT for a program review. IDTT may recommend documentation of concerns and findings and a copy will be provided to the assigned correctional counselor for referral to the classification committee. The primary clinician shall communicate with the classification committee clinician prior to the classification committee commencement,

ensuring the recommendation noted on the CDC 128-C (Rev. 01/96), Medical-Psychiatric-Dental Chrono, is reviewed, discussed and documented.

(5) The classification committee shall consider the input provided by the primary clinician via the CDC 128-C (Rev. 01/96), when determining whether an inmate will be removed from Privilege Group C and document the findings on the Classification Committee Chrono (Rev. 05/19).

(6) An inmate deemed a program failure, as defined in Section 3000, who is permanently transferred to another institution shall be returned to the privilege group he or she had before being placed on Privilege Group C.

**Subsections 3376(d)(3)(F) through 3376(d)(5)(D) are unchanged.**

Note: Authority cited: Sections 3303 and 3309, Welfare and Institutions Code; and Sections 5058 and 6252, Penal Code. Reference: Sections 2933, 5054 and 5068, Penal Code.

## INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend sections 3044, 3190, 3314, 3315, and 3376 of the California Code of Regulations (CCR), Title 15, Division 3, Chapter 1, governing Work Group C or Privilege Group C. Inmates are typically placed in Work Group C when they meet the definition of a program failure, which means they have repeatedly been found guilty for violating departmental rules. Inmates placed in Work Group C are unable to earn credit toward reducing their prison term. Inmates, who refuse to program, may also be placed in Privilege Group C, which will result in receiving fewer privileges than programming inmates.

The reason for these amendments is to provide a standardized statewide approach that identify processes that shall be followed when an inmate is placed in Privilege Group C or deemed a program failure. Existing language lacks specificity, which can lead to disparate application of the rules concerning the privileges an inmate in Privilege Group C or those deemed a program failure may receive. For example, existing language does not identify a mandatory minimum number of exercise hours offered to Privilege Group C or those deemed program failure inmates, nor does it state that the exercise has to be outside. As a result, some institutions are offering less than 10 hours of access to the exercise yard each week, or are counting indoor dayroom time as exercise time. The proposed regulations will ensure all inmates assigned to Privilege Group C or those deemed a program failure are offered a minimum of 10 hours of exercise each week in an outdoor setting or in a gymnasium type setting.

Furthermore, these proposed regulations are consistent with the Department's commitment to provide inmates with a pathway to truly earn a second chance to succeed, while at the same time ensuring public safety and reducing recidivism. The CDCR is committed to making prisons safer by promoting education, rehabilitation, and good conduct through credit-earning incentives and earned privileges through positive programming. The proposed regulatory action provides additional consequences for those inmates who choose not to abide by departmental rules and regulations, thereby incentivizing the need to program appropriately, while at the same time establishing acceptable minimum levels for certain privileges.

The Department and the *Coleman* class members, working with the Special Master, agreed upon revising CDCR's Work Group C and Privilege Group C Program. The revision standardizes out-of-cell activities for inmates placed in Group C, and in addition, for Mental Health Services Delivery System (MHSDS) inmates, permits the Interdisciplinary Treatment Team (IDTT) to recommend on a case-by-case basis that certain privileges not be suspended if it would be detrimental to an inmate's mental health status to suspend them. This is consistent with the Department's practice to monitor all inmates for signs of decompensation when placed in a restrictive setting or on restrictive privileges. The proposed regulations will standardize privileges an inmate may receive while assigned to Privilege Group C, including property they are allowed to purchase or keep.

The proposed regulations will ensure all Privilege Group C or program failure inmates continue to participate in scheduled therapeutic programming activities, to include religious services and self-help groups. In an effort to provide positive programming

opportunities for an inmate in Privilege Group C who permanently transfers to another institution, the proposed regulations also allow the receiving institution to remove the inmate from Privilege Group C.

#### **ANTICIPATED BENEFITS OF THE REGULATIONS:**

CDCR has determined the proposed regulations may have a positive impact on public safety, the health and welfare of California's residents, worker safety, and on inmates by ensuring the safe incarceration of offenders. The proposed regulations also provide direction to CDCR staff and inmates of the new procedure for inmates assigned to Privilege Group C or deemed a program failure. The CDCR is committed to making prisons safer by promoting education, rehabilitation, mental health services, good conduct through credit-earning incentives, and earned privileges through positive programming. The proposed regulatory action provides additional consequences for those inmates who choose not to abide by departmental rules and regulations as a means of motivating inmates to take advantage of incentives received as a result of programming positively. Additionally, the regulations comply with the Special Master's 27th Round Monitoring Report - *Coleman v. Brown* affirmation order.

#### **ECONOMIC IMPACT ASSESSMENT:**

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

##### **No Significant Adverse Economic Impact on Business**

The CDCR 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 CDCR's initial determination. The proposed regulations affect the internal management of CDCR only, and place no requirements or restrictions on businesses.

##### **No Creation of New Jobs or Elimination of Existing Jobs**

CDCR 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 management of prisons only.

##### **No Creation of New Businesses or Elimination or Expansion of Existing Businesses**

CDCR 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 management of prisons only.

#### **CONSIDERATION OF ALTERNATIVES:**

CDCR has determined that no reasonable alternatives considered or that have 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.

CDCR has made an initial determination that no reasonable alternatives to the regulations have been identified or brought to the attention of the department that would lessen any adverse impact on small businesses.

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

**MATERIALS RELIED UPON:**

The Department, in proposing amendments to these regulations, relied upon in part, the affirmation order in regards to the Special Master's 27th Round Monitoring Report - *Coleman v. Brown* (No. 2:90-cv-0520 KJM DB P) U.S. District Court, Eastern District.

**SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE 11346.2(B)(1):**

**Section 3044. Inmate Work Groups and Privilege Groups.**

**Subsection 3044(c)(5) is amended** to allow for an inmate in a specified Privilege Group to be afforded more or additional privileges than another inmate within the same Privilege Group through Classification Committee action. This is necessary to comply with the affirmation order for the Special Master's 27th Round Monitoring Report - *Coleman v. Brown* in which specified inmates would be referred to the Interdisciplinary Treatment Team for review and possible referral to a Classification Committee.

**Subsection 3044(f)(2)(B) is amended** to limit the one-fourth maximum monthly canteen draw items to only stationery, stationery supplies, personal hygiene, vitamins and medications. Items no longer allowed to be purchased from the canteen by an inmate assigned to Privilege Group C or those deemed a program failure include food items (excluding vitamins) and personal clothing. Inmates assigned to Privilege Group C or those deemed a program failure, will not. Inmates assigned to Privilege Group C or those deemed program failure, are allowed to maintain canteen items previously purchased and verified with a purchase receipt. Each inmate who purchases canteen items is provided a printed receipt upon receiving the selected items. Any subsequent canteen purchases while deemed a program failure or placed in Privilege Group C are limited to stationery, stationery supplies, personal hygiene, vitamins and medications. Allowing inmates to maintain their currently purchased items allows them an opportunity to consume or use the products, as storing perishable items will result in expired or rotting of most items. This restriction of canteen choices for inmates assigned to Privilege Group C or those deemed a program failure is implemented to remind inmates there are consequences for failing to program, and to serve as an incentive to promote positive programming. An inmate who has been placed in Privilege Group C or those deemed a program failure and subsequently desires to program appropriately, may submit a written request to be considered for removal from this status.

**3044(f)(2)(D) is amended** to ensure all inmates assigned to Privilege Group C are offered a minimum of 10 hours of exercise each week in an outdoor setting or in a gymnasium, and access to a dayroom shall not be counted towards the 10 hours of exercise. A dayroom is considered a common area where inmates can gather to watch television and play table games. Existing language does not identify a mandatory minimum number of

exercise hours offered to Privilege Group C inmates, nor does it state that the exercise has to be outside or gymnasium type setting. As a result, some institutions are offering less than 10 hours of access to exercise each week, or are counting indoor dayroom time as exercise. In addition, the 10-hour minimum is consistent with the minimum hours allotted for inmates in an administrative segregation unit (ASU) or a Segregated Program Housing Unit (SPHU) setting. Thus limiting the impact program failures have on yard access available to inmates assigned to Privilege Groups A and B during their non-working hours. This amendment is necessary to ensure all inmates assigned to Privilege Group C or those deemed a program failure, are offered exercise consistent with accepted Department standards. Institutions may offer more than 10 hours; however, access to exercise will be based on an institution's security needs, with programming inmates receiving preferential consideration during their non-working/training hours.

**New Subsection 3044(f)(2)(F) is adopted** to ensure inmates in Privilege Groups C or those deemed a program failure are offered weekly access to their designated religious service. Religious services are commonly held in the institution's chapel or other approved locations. Due to Privilege Group C or those deemed a program failure being provided fewer privileges than the rest of the inmate population, some institutions have failed to offer Privilege Group C or those deemed program failure inmates with consistent access to religious services. These changes are necessary to ensure statewide standardization and equal access to a designated religious service.

**New Subsection 3044(f)(2)(G) is adopted** to ensure inmates placed in Privilege Group C or those deemed a program failure receive access to self-help group activities at least once per week. Once per week is a reasonable accommodation for an inmate who is deemed a program failure and reiterates that there are consequences for continued misbehavior. Once per week also provides the inmate an opportunity to earn milestone credits. The Department recognizes participation in departmental approved self-help group activities is beneficial to the inmate. The existing language for all privilege groups is silent regarding inmates accessing self-help group activities. However, due to Privilege Group C or those deemed a program failure receiving fewer privileges than the rest of the inmate population, some institutions have failed to provide Privilege Group C or those deemed a program failure with consistent access to self-help groups. These changes are necessary ensure statewide standardization and equal access to self-help group activities at least once per week.

**New Subsection 3044(f)(2)(H) is adopted** to establish upon placement into Privilege Group C by a classification committee, the inmate's disallowed property, shall be stored at the inmate's institution and returned to the inmate upon his or her removal from Privilege Group C. This new language, and revisions to language in Subsection 3190, amends the Department's current process, which requires the property be disposed of pursuant to Subsection 3191(c). These changes lessen the financial hardship often experienced by the inmate's family members, who are asked by the inmate to provide him or her with additional funds to buy replacement property once removed from Privilege Group C status. These changes also serve as an incentive to promote positive programming, as the inmate can be reunited with their property once they are removed from Privilege Group C status.

**New Subsection 3044(f)(2)(I) is adopted** to clarify to staff and inmates, that inmates assigned to Privilege Group C who participate in the Mental Health Services Delivery System (MHSDS) shall continue to participate in all scheduled structured therapeutic programming activities. Structured therapeutic programming activities are necessary for the mental health of the inmate as they are instructor or clinician lead. This Subsection is necessary to ensure these activities are not counted towards the inmate's 10 hours of exercise specified in Subsection 3044(f)(2)(D).

**New Subsection 3044(f)(2)(J) is adopted** to ensure that an Interdisciplinary Treatment Team (IDTT) is notified when an inmate who is a participant in the Mental Health Services Delivery System (MHSDS) at the Enhanced Outpatient Program (EOP) level of care or higher is placed in Privilege Group C as a result of a disciplinary hearing. If an inmate is placed in Privilege Group C, resulting from a disciplinary hearing, staff shall document this information on a CDCR form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono, and refer the inmate to IDTT for review. The IDTT is comprised of staff from several disciplines, including, but not limited to, medical staff, mental health staff, and custody staff. The inmate also participates in the IDTT process. This IDTT review is necessary to determine whether the suspension of privileges is likely to be detrimental to the inmate's mental health status. In the event it is determined placement in Privilege Group C will have a detrimental impact on the inmate, IDTT may recommend appropriate changes to restrictions of privileges to a classification committee. This revision is necessary to comply with the affirmation order in regards to the Special Master's Twenty Seventh Round Monitoring Report - *Coleman v. Brown* (No. 2:90-cv-0520 KJM DB P) U.S. District Court, Eastern District, that permits the IDTT, on a case by case basis to recommend that certain privileges not be suspended based upon the factors above.

### **Section 3190. General Policy.**

**Subsection 3190(I)(2) is amended** to establish that an inmate who is placed in Privilege Group C and is found guilty of subsequent violations of departmental rules, shall be required to dispose of the non-allowable property pursuant to Subsection 3191(c). New language proposed in Subsection 3044(f)(2)(H) and changes to language in this Subsection amends the Department's current process which requires all disallowed property for inmates in Privilege Group C to be immediately disposed of pursuant to Subsection 3191(c). The proposed regulations, allow for inmate's assigned to Privilege Group C as a result of being deemed a program failure, to have disallowed property stored and returned to the inmate upon his or her removal from program failure status, unless the inmate is found guilty of additional violations requiring the inmate to either, send the property home, dispose of it or donate. While the Department encourages inmates to program positively through good conduct credit-earning incentives, and earning privileges, CDCR will not tolerate continued misconduct. The proposed regulatory action provides consequences for those inmates who continue to engage in misconduct.

**Subsection 3190(I)(3) is amended** to establish that an inmate assigned to Administrative Segregation Unit/Security Housing Unit/Psychiatric Services Unit (ASU/SHU/PSU) or other segregated housing unit who is deemed to be a program failure as a result of misconduct prior to placement in or while housed in a segregated housing unit shall have his or her entertainment appliance stored by the institution. New language proposed in Subsections 3044(f)(2)(H) and changes to language in this Subsection amends the

Department's current process which requires all disallowed property for inmates identified as program failures to be immediately disposed of pursuant to Subsection 3191(c). The entertainment appliance can be returned to the inmate upon his or her removal from program failure status. An inmate deemed a program failure who receives one or more additional Administrative or Serious Rules Violation Reports while deemed a program failure shall be required to mail out, return, donate the item or dispose of all disallowed property pursuant to Subsection 3191(c). While the Department encourages inmates to program positively through good conduct, credit-earning incentives, and earning privileges, the CDCR will not reward continued misconduct. The proposed regulatory action provides additional consequences for those inmates who continue to engage in misconduct.

**New Subsection 3190(I)(6) is adopted** to ensure an inmate who is deemed to be a program failure, based on conduct prior to placement in or while housed in a ASU, SHU, PSU, or other segregated housing unit shall have his or her maximum monthly canteen draw items limited to stationery, stationery supplies, personal hygiene, vitamins and medications. The items no longer allowed for purchase from the canteen by an inmate in Privilege Group C or deemed a program failure include; food items (excluding vitamins) and personal clothing. Inmates assigned to Privilege Group C or those deemed program failure, are allowed to maintain canteen items previously purchased and shall be verified with a purchase receipt. Each inmate who purchases canteen items is provided a printed receipt upon receiving the items. Any subsequent canteen purchases while deemed a program failure are limited to stationery, stationery supplies, personal hygiene, vitamins and medications. Allowing inmates to maintain their currently purchased items allows them an opportunity to consume or use the products, as storing perishable items will result in expired or rotting of most items. This restriction of canteen choices for Privilege Group C or those deemed program failures is implemented to reinforce, there are consequences for inmate's who fail to program, and to serve as an incentive to promote positive programming.

#### **Section 3314. Administrative Rule Violations.**

**Subsection 3314(e)(3) is amended** to require that an Interdisciplinary Treatment Team (IDTT) be notified when an inmate who is a participant in the Mental Health Services Delivery System (MHSDS) at the Enhanced Outpatient Program level of care or higher is placed in Privilege Group C as a result of a disciplinary hearing. If an inmate is placed in Privilege Group C status as a result of a discipline hearing, staff shall document this information on a CDCR form 128-MH5 (Rev. 05/14), and refer the inmate to IDTT for review. The IDTT is comprised of staff from several disciplines, including, but not limited to, medical staff, mental health staff, and custody staff. The inmate also participates in the IDTT process. This IDTT review is necessary to determine whether the suspension of privileges is likely to be detrimental to the inmate's mental health status. In the event it is determined placement in Privilege Group C will have a detrimental impact on the inmate, IDTT may recommend appropriate changes to restrictions of privileges to a classification committee. Based on the committee action taken, inmates may or may not have specific privileges reinstated.

#### **Section 3315. Serious Rule Violations.**

**Subsection 3315(f)(5)(C) is amended** to require that an Interdisciplinary Treatment Team (IDTT) be notified when an inmate who is a participant in the Mental Health Services Delivery System (MHSDS) at the Enhanced Outpatient Program level of care or higher is placed in Privilege Group C as a result of a disciplinary hearing. If an inmate is placed in Privilege Group C as a direct result of a disciplinary hearing, staff shall document this information on a CDCR form 128-MH5 (Rev. 05/14), and refer the inmate to IDTT for review. This IDTT review is necessary to determine whether the suspension of privileges is likely to be detrimental to the inmate's mental health status. In the event it is determined placement in Privilege Group C will have a detrimental impact on the inmate, IDTT may recommend appropriate changes to restrictions of privileges to a classification committee. Based on the committee action taken, inmates may or may not have privileges reinstated.

**Subsection 3315(f)(5)(L) is amended** to establish an inmate assigned to an ASU, SHU, PSU or other segregated housing unit who is deemed a program failure resulting from misconduct prior to or while housed in a segregated housing unit, shall have his or her entertainment appliance stored by the institution along with their other disallowed property. Property is given back upon their removal from the program failure designation. New language proposed amends the Department's current process, which requires all disallowed property for inmates deemed program failures to be immediately disposed of pursuant to Subsection 3191(c). However, an inmate deemed a program failure, and is found guilty of one or more Administrative or Serious rule violations while assigned to program failure status shall be required to mail out , return, donate or dispose of all disallowed property, including their personal entertainment appliance, pursuant to Subsection 3191(c). While the Department encourages inmates to program positively through good conduct, credit-earning incentives, and earning privileges, the CDCR will not reward continued misconduct. The proposed regulatory action provides consequences for those inmates who continue to engage in misconduct.

**Subsection 3315(f)(5)(N)(2) is amended** to establish that inmate property will no longer be disposed of as a result of being deemed a program failure by a classification committee. These changes lessen the financial hardship often experienced by the inmate's family members, who are asked by the inmate to provide them with additional funds to buy replacement property once removed from Privilege Group C. These changes also serve as incentives to promote positive programming, as the property can be given back to the inmate once they are removed from Privilege Group C, thus, giving them a second chance to positively program.

#### **Section 3376. Classification Committees.**

**New subsection 3376(d)(3)(E)(1) is adopted** to require that Interdisciplinary Treatment Team (IDTT) be notified when an inmate, who is a participant in the Mental Health Services Delivery System (MHSDS) at the Enhanced Outpatient Program level of care or higher, is placed into Privilege Group C status as a result of a classification committee action or disciplinary action. Since Privilege Group C is the most restrictive privilege group, the proposed regulations include allowances when it is determined the suspension of privileges would be detrimental to the inmates' mental health status. The IDTT will review the higher acuity inmates within the MHSDS when their privileges are affected due to their placement in Privilege Group C.

**New subsection 3376(d)(3)(E)(2) is adopted** to allow the IDTT, on a case by case basis, to recommend removal of an inmate placed in Privilege Group C, when it is determined suspension of privileges would be detrimental to the inmate's mental health status. When this occurs, the correctional counselor attending the IDTT shall refer the inmate to the classification committee to consider removal of Privilege Group C. This is consistent with the Department's practice to monitor all inmates for signs of decompensation when placed in a restrictive setting or restrictive privileges, and is necessary to ensure an inmate's mental health is taken into consideration.

**New subsection 3376(d)(3)(E)(3) is adopted** to ensure housing unit staff are made aware when a classification committee restores an inmate's privileges that were removed as a result of them being placed in Privilege Group C. The correctional counselor attending the classification committee is directed to ensure that this notice occurs, and specifies the process by which the notification shall be documented. This section is necessary to ensure the classification committees' reinstatement of privileges is followed and housing unit staff is aware of the reinstatement.

**New subsection 3376(d)(3)(E)(4) is adopted** to require the primary clinician of an inmate placed in Privilege Group C to notify staff when the inmate's mental health status has declined as a result of him or her being placed in Privilege Group C and having privileges suspended. The primary clinician shall document their concerns and findings and forward a copy to the assigned correctional counselor for referral to the classification committee. This is consistent with the Department's practice to monitor all inmates for signs of decompensation when placed in a restrictive setting or on restrictive privileges, and is necessary to ensure an inmate's mental health is taken into consideration.

**New subsection 3376(d)(3)(E)(5) is adopted** to direct the classification committee to consider the input provided by the primary clinician when notified that an inmate's mental health status has declined as a result of him or her being placed in Privilege Group C and having privileges suspended. The classification committee shall document their findings regarding whether to remove the inmate from Privilege Group C. This is consistent with the Department's practice to monitor all inmates for signs of decompensation when placed in a restrictive setting or on restrictive privileges, and is necessary to ensure an inmate's mental health is taken into consideration.

**New subsection 3376(d)(3)(E)(6) is adopted** to direct the classification committee to remove a transferring inmate from Privilege Group C. For inmates who receive a permanent transfer to another institution, a classification committee shall return the inmate to their previous privilege group status prior to being placed in Privilege Group C. This is consistent with the Department's commitment to provide inmates with a pathway to truly earn a second chance to succeed, while at the same time ensuring public safety and reducing recidivism.