

REGULATION AND POLICY MANAGEMENT BRANCH

P.O. Box 942883
Sacramento, CA 94283-0001



October 6, 2020

NOTICE OF CHANGE TO RULEMAKING ACTION AS ORIGINALLY PROPOSED

Pursuant to the provisions of Government Code Sections 11346.8(c) and 11349.4, and Section 44 of Title 1 of the California Code of Regulations (CCR), the California Department of Corrections and Rehabilitation (CDCR) is providing notice of proposed changes made to CCR Sections 3044, 3190, 3314, 3315, and 3376, regarding Work Group and Privilege Group C.

You are receiving this notice because you provided written comment (including comments sent via email or fax), or requested notice of changes.

To provide notice of the proposed changes to the public, this Notice will be posted on the CDCR Internet website at: [Notice of Change to Rulemaking Action as Originally Proposed](#).

The proposed regulatory text is amended as part of this renounce. The Initial Statement of Reasons (ISOR) is also amended to include additional explanatory and necessity statements regarding initial proposed text. Revisions are reflected by double underline for added text and double strikethrough for deleted text.

Submission of Public Comments

The comment period for these revisions will close on October 23, 2020. Please submit comments by e-mail to RPMB@cdcr.ca.gov; in writing to Anthony Carter, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001, before the close of the public comment period. Comments must be received or postmarked no later than October 23, 2020. Only those comments relating directly to the enclosed amendments indicated in this Notice of Change to Rulemaking Action as Originally Proposed will be considered.

Original signed by

YING SUN, Associate Director
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation

Attachment

Text revisions and reasoning

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

(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)(4)1. through 3376(d)(3)(E)(6)6..

This revision is necessary to reflect appropriate numbering to retain consistency with existing regulatory format.

3044(f)(2)(D) through 3044(f)(2)(J) are renumbered to (f)(2)(E) through (f)(2)(K):

~~(D)(E)~~ 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.

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

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

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

~~(H)(I)~~ 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)(J)~~ 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)(K)~~ 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.

These revisions are necessary to reflect to an approved emergency regulatory action (OAL Matter Number 2020-0706-02) adopted during this regulatory effort which causes the necessary renumbering.

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

~~(4)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)~~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)~~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)~~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)~~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)~~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.

These revisions are necessary to reflect appropriate numbering to retain consistency with existing regulatory format.

Further Revisions to the Statement of Reasons

Subsection 3044(f)(2)(B) is amended to remove an incomplete sentence and reads: 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.

Subsection 3376(d)(3)(E)(2) is amended 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. The five working days in which the IDTT may recommend certain privileges be restored and removal from Privilege Group C is reflected as a "routine" referral, as outlined in the Mental Health Care Program Guide (Section C- "Referrals to Mental Health", page-12-1-5). This Program Guide was implemented by Court Order No.: Civ S 90-0520 LKK-JFM, RALPH COLEMAN VS ARNOLD SCHWARZENEGGER. The CDCR has implemented this guide, as ordered, since 2009.