

**State of California  
Office of Administrative Law**

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

**Regulatory Action:**

**Title 15, California Code of Regulations**

**Adopt sections:**

**Amend sections:** 3000, 3040.3, 3378.2

**Repeal sections:**

**NOTICE OF APPROVAL OF REGULATORY  
ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2022-0923-03**

**OAL Matter Type: Regular (S)**

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This action by the Department of Corrections and Rehabilitation amends standardized testing requirements for assessing adult literacy to remove references to specific test vendors.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on January 1, 2023.

**Date:** November 4, 2022



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Nicole C. Carrillo  
Senior Attorney

**For:** Kenneth J. Pogue  
Director

**Original:** Kathleen Allison, Secretary  
**Copy:** Rosie Ruiz

NOTICE PUBLICATION/REGULATION SUBMISSION

REGULAR

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER 212022-0503-03	REGULATORY ACTION NUMBER 2022-0923-03	EMERGENCY NUMBER 5
For use by Office of Administrative Law (OAL) only			
per agency request		OFFICE OF ADMIN. LAW 2022 SEP 23 PM4:18	
NOTICE		REGULATIONS	

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

NOV 04 2022  
3:14 PM

AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation	AGENCY FILE NUMBER (If any) 21-02
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2022, 19-2	PUBLICATION DATE 5/27/2022

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Standardized Testing for Assessing Adult Literacy	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) per agency request
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	ADOPT
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	AMEND 3000, 3040.3, 3378.2
TITLE(S) 15	REPEAL

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

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

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)			

7. CONTACT PERSON Rosie Ruiz	TELEPHONE NUMBER (916) 445-2244	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Rosie.Ruiz@cdcr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE DocuSigned by: Jeffrey Macomber	DATE 9/6/2022
TYPED NAME AND TITLE OF SIGNATORY 5957F5D0C55F473... Jeff Macomber, Undersecretary, Operations	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

NOV 04 2022

Office of Administrative Law

## Text of Adopted Regulations

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

### Title 15. Crime Prevention and Corrections

#### Division 3. Adult Institutions, Programs and Parole

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

#### 3000. Definitions.

Section 3000 is amended to read:

...

Drugs means substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease, and as defined in Health and Safety Code section 11014.

Effective communication means providing the inmates, to the extent possible or as required by federal law, the communication assistance necessary to allow them to understand and participate in programs, services and activities. For inmates with disabilities, staff may provide assistive devices or other methods of accommodation. For inmates with other communications needs (including Limited English Proficiency (LEP)), staff are responsible for providing other forms of assistance. For due process events, staff are subject to additional requirements: If the inmate is LEP, has a verified disability or has a ~~Test of Adult Basic Education (TABE)~~ reading level score of 4.0 or lower, the employee is also required to accurately identify the communication need, to document the provision of any assistance provided that is consistent with the inmate's communication need, and to document the method staff used to determine the inmate understood. In instances where a staff member cannot achieve effective communication, despite the provision of relevant accommodations or assistance, staff shall document their efforts and their inability to achieve effective communication and shall notify the facility's ADA/LEP Coordinator.

Electronic Communication means any transfer of signs, signals, writings, images, sound, data or intelligence of any nature, transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric or photo-optical system.

...

Note: Authority cited: Sections 243(f)(4), 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 600, 646.9, 653, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4501.1, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq., 11180 and 11191, Penal Code; Sections 1132.4, 1132.8 and 1203(b)(1), Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Section 11007, Health and Safety Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; *Madrid v. Cate* (USDC ND Cal. C90-3094 TEH); *Sassman v. Brown* (E.D. Cal. 2015) 99 F.Supp.3d 1223; *Mitchell v. Cate*, USDC ED 2:08-CV-01196-TLN-EFB; *In re Garcia* (2012) 202 Cal.App.4th 892; and *Quine v. Beard*, No. C 14-02726 JST.

## **Article 3. Work and Education**

### **3040.3 Education Assignments.**

**Section 3040.3(a) is unchanged, but shown for reference:**

(a) Institutions shall establish Adult Basic Education (ABE), Adult Secondary Education (ASE), Post-Secondary Education, Career Technical Education (CTE), Computer Related Technologies (CRT), and Transition courses that focus on increasing literacy and employability of inmates in preparation for release from state prison. Every effort shall be made to assign inmates concurrently to education programs, rehabilitative programs, and work assignments. Every effort shall be made to reasonably accommodate inmates with disabilities to enable their participation to the best of their abilities. Assignments to education programs shall be for the prescribed length of participation required to complete the course, and in accordance with the following criteria:

**Subsections 3040.3(a)(1) through 3040.3(a)(1)(A) are unchanged.**

**Section 3040.3(a)(1)(B) is amended to read:**

(B) Inmates shall be assigned to the course in the order in which they appear on the waiting list, subject to space availability. Placement into the appropriate course shall be in accordance with the inmate's most recently assessed reading level, as mandated by the California Department of Education per Welfare and Institutions Code sections 19011 and 19012 ~~on the Test of Adult Basic Education (TABE) or the Comprehensive Adult Student Assessment System (CASAS)~~. The following chart corresponds the inmate's course placement with their reading level:

**The pictured chart is unchanged.**

**Subsections 3040.3(a)(1)(C) through 3040.3(a)(3) are unchanged.**

**Subsection 3040.3(a)(3)(A) is amended to read:**

(A) Inmates with language and cultural barriers or developmental, cognitive, or physical impairments shall be mainstreamed in CTE courses and are offered additional assistance with course assignments.

**Subsections 3040.3(a)(4) through 3040.3(b)(2)(A) are unchanged.**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2053 and 2053.1, Penal Code, Sections 19011 and 19012, Welfare and Institutions Code.

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

### **Article 10. Classification**

#### **3378.2 Security Threat Group Validation Process.**

**Sections 3378.2 through 3378.2(c)(4) are unchanged.**

**Subsection 3378.2(c)(5) is amended to read:**

(5) The interview shall be documented to include an evaluation and conclusion on each item for which the inmate has provided a rebuttal. The assigned staff shall record this information, via CDCR Form 128-B5 (40/4704/21), Security Threat Group Validation Chrono, which is incorporated by reference. If through the review and interview process, a source item is determined to not have merit, the assigned staff shall document that further investigation shows no merit on the CDCR Form 128-B5. Staff will provide a copy to the subject within 14 calendar days and prior to submission of the validation package to the OCS.

**Subsections 3378.2(c)(6) through 3378.2(d)(1)(D)5. are unchanged.**

**Subsection 3378.2(d)(1)(E) is amended to read:**

(E) CDCR Form 128-B3 (11/13), Security Threat Group Identification Score Sheet, CDCR Form 128-B4 (10/17), Evidence Disclosure and Interview Notification, and CDCR 128-B5 (10/17), ~~Security Threat Group Validation Chrono~~ with attached Inmate's Rebuttal are present in the file.

**Subsections 3378.2(d)(1)(F) through 3378.2(e)(1)(C) are unchanged.**

**Subsection 3378.2(e)(1)(D) is amended to read:**

(D) Although the inmate meets the criteria for placement in the SHU SDP, in accordance with CCR sections 3378.2 or 3378.4 ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining placement in the SDP or continued management within a general population setting. If ICC determines placement in the SDP is warranted, the offender shall be placed at the beginning of Step 1.

**Subsections 3378.2(e)(2) through 3378.2(e)(2)(C) are unchanged.**

**Subsection 3378.2(e)(2)(D) is amended to read:**

(D) Although the inmate meets the criteria for placement in the SHU SDP, in accordance with CCR sections 3378.2 or 3378.4, ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining placement in the SDP or continued management within a general population setting. If ICC determines placement in the SDP is warranted, the offender shall be placed at the beginning of Step 1.

**Subsection 3378.2(e)(3) is unchanged.**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint v. Yockey* (9<sup>th</sup> Cir. 1984) 722 F.2d 1490; and *Castillo v. Alameida, et al.* (N.D. Cal., No. C94-2847).

SECURITY THREAT GROUP VALIDATION CHRONO

CDCR 128-B5 (Rev. 04/21)

SECURITY THREAT GROUP VALIDATION CHRONO

NAME: NUMBER: HOUSING:

On \_\_\_\_\_, the Security Threat Group (STG) Investigations Unit completed an investigation of Inmate \_\_\_\_\_ (CDC #) regarding his current STG status. (Hereafter \_\_\_\_\_ will be referred to as SUBJECT) Per the California Code of Regulations (CCR) Title 15, Section 3378, there is sufficient evidence to refer SUBJECT to the STG Unit Classification Committee for consideration of validation as Member/Associate of the \_\_\_\_\_ STG.

The following documents are being submitted relative to this investigation:

- 1) Source Document \_\_\_\_\_
2) Source Document \_\_\_\_\_
3) Source Document \_\_\_\_\_

DISCLOSURE AND NOTIFICATION

Mental Health Assessment: Subject is/is not a participant in the MHSDS. Subject's reading level is \_\_\_ as indicated on \_\_\_\_\_ (DECS, Reading Level). Staff assistant was/was not assigned. If assigned Staff Assistant: Staff member's name/title, met with Subject at least 24 hours prior to the source item interview and was/was not present during the interview. Effective communication was achieved by \_\_\_\_\_.

On \_\_\_\_\_, at \_\_\_\_\_ hours all information was being disclosed to SUBJECT being utilized in the validation process. If applicable, confidential information was disclosed to SUBJECT via CDC Form 1030, Confidential Information Disclosure Form. SUBJECT was further advised an interview regarding the information obtained during this investigation would be held not less than 72-hours from the time of the disclosure.

INTERVIEW

On \_\_\_\_\_, at approximately \_\_\_\_\_ hours SUBJECT was interviewed regarding the documents utilized in the validation package. SUBJECT provided/did not provide a written response addressing all documents used in the review process.

SUBJECT provided the following verbal information related to the identified source items. (Investigator to provide summary of validation interview).

Subject was informed that any SHU eligible STG related behavior which occurs after the conclusion of the STG validation interview will be documented, and if they are determined to be accountable for the behavior, it will be considered by the Institution Classification Committee for possible placement in the Step Down Program.

CONCLUSION

Upon reviewing the written response and after a thorough review of the evidence, it was determined SUBJECT'S claims have/have no merit and warrant/do not warrant further investigation.

The STG Investigator has concluded there is/is not sufficient evidence to support referral to OCS and the STG Unit Classification Committee for consideration of validation as a member/associate of the \_\_\_\_\_ STG.

The aforementioned information will be forwarded to the Office of Correctional Safety for review of SUBJECT'S STG validation.

STG Investigator (Print & Sign)

STG Lieutenant (Print & Sign)

DATE:

## **FINAL STATEMENT OF REASONS**

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

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

The Notice of Change to Regulations was published in the California Notice Register on May 27, 2022, which began the public comment period through July 12, 2022. On the same day, Notice of Change to Regulations (NCR) 22-07, including the text of the regulations and the ISOR, was mailed to persons who requested to be placed on the department's mailing list to receive notifications of rulemaking actions and posted on the California Department of Corrections and Rehabilitation (CDCR or the department) "Pending Changes to Department Regulations" website. Two written public comments were received during the public comment period. The comments are summarized and responded to below under the heading *Summaries and Responses to Written Public Comments Received During the Initial Comment Period*. A public hearing was held on July 14, 2022. There were no speakers at the public hearing.

Non-substantive formatting changes and typographical corrections are made throughout for additional clarity.

Subsection 3040.3(a)(1)(B) is amended to establish that Welfare and Institutions Code sections 19011 and 19012 mandate the California Department of Education (CDE) to comply with all requirements when in the receipt of federal Workforce Innovation and Opportunity Act funds. CDE requires the department use federally approved reading assessments when assessing adult literacy. The cross-reference is included as a reference in the Note section. The cross-reference is added for additional clarity and does not materially alter the requirements, rights, responsibilities, conditions, prescriptions or other regulatory elements of the original text.

Subsection 3040.3(a)(3)(A) was originally going to be amended to correct an inadvertent error, changing "barrfers" to "barriers," however the Office of Administrative Law (OAL) contacted the publisher to correct this misprint as this is a printer error and the strikethrough-underline is removed.

Similarly, subsections 3378.2(e)(1)(D) and 3378.2(e)(2)(D) were going to be amended to correct an error in reference to subsection 3378.2. The second number "3" was missing from the reference so that it incorrectly read "378.2." OAL advised this printing error would also be corrected by the publisher and strikethrough-underline is removed.

CDCR Form 128-B5, Security Threat Group Validation Chrono, which is incorporated by reference into the proposed regulations, and is referenced in subsections 3378.2(c)(5) and 3378.2(d)(1)(E) was amended to replace reference to the reading vendor, "Test of Adult Basic Education," under the section, "Disclosure and Notification." This change is made for additional clarity as the proposed regulations remove reference to specific reading vendors when conducting adult literacy assessments, and does not materially alter the requirements, rights, responsibilities, conditions, prescriptions or other regulatory elements of the original text

### **DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:**

The department has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the action proposed. No such alternatives were proposed or brought to the department's attention during the adoption of this rulemaking action.

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

The department has determined that 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.

The department has determined that no reasonable alternatives to the regulation have been identified or brought to the attention of the department that would lessen any adverse impact on affected private persons or small businesses than the action planned.

### **FORMS INCORPORATED BY REFERENCE**

The department referenced CDCR Form 128-B5 (Rev. 04/21), Security Threat Group Validation Chrono, throughout the proposed regulation text: CDCR Form 128-B5 was made available to the public throughout the rulemaking process, and will continue to be made available upon request.

The department uses over 1,500 regulatory forms, including the above-referenced form. Because of this high volume, it would be unduly cumbersome, expensive, and impractical to print all the forms in the Title 15 due to the space needed for these forms and the high cost of printing all of these forms. Therefore, department forms are incorporated by reference into the Title 15 within their relevant section, when appropriate.

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

#### **COMMENTS #1**

Commenter supports the removal of standardized testing for assessing adult literacy "as the TABE is being" used against inmates at California Men's Colony during the appeal process.

**Response to Comment 1:** The department thanks the commenter for the comments and CDCR seeks to more efficiently and effectively assess ways to support justice involved with men and women in their educational advancement.

#### **COMMENTS #2**

Regarding the terms "electromagnetic," "photoelectric," and "photo-optical system" that are included in the definition of "electronic communication," Commenter asks if the department possesses apparatuses or systems that can read people's minds or thoughts. Commenter is aware this technology exists and asks if CDCR or California Correctional Health Care Services (CCHCS) are already using this technology.

**Response to Comment 2:** The sections referenced in the comments have not been changed or effected by the change from the title TABE score to the title reading level. The commenter is encouraged to contact CCHCS to assist in answering these questions.