

**State of California  
Office of Administrative Law**

In re:  
Department of Corrections and  
Rehabilitation

Regulatory Action:

Title, California Code of Regulations

Adopt sections:

Amend sections: 3043.3, 3043.5

Repeal sections:

NOTICE OF APPROVAL OF REGULATORY  
ACTION

Government Code Section 11349.3

OAL Matter Number: 2023-0302-01

OAL Matter Type: Regular Resubmittal (SR)

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This rulemaking action by the Department of Corrections and Rehabilitation adopts procedures for evaluating an inmate's educational history.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/11/2023.



Date: April 11, 2023

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Lindsey S. McNeill  
Senior Attorney

For: Kenneth J. Pogue  
Director

Original: Jeffrey Macomber, Secretary  
Copy: Sarah Pollock

# RESUBMITTAL

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2022-0301-01</b>	REGULATORY ACTION NUMBER <b>2023-0302-01</b>	EMERGENCY NUMBER <b>SR</b>
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

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

**APR 11 2023**

**2:03 pm**

AGENCY WITH RULEMAKING AUTHORITY  
California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)  
22-04

### 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)
<b>OAL USE ONLY</b> <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER <b>2022,10-2</b>		PUBLICATION DATE <b>3/11/22</b>

### B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Program and Credit Earning Revisions	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) See attached
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT
AMEND 3043.3, 3043.5
REPEAL
TITLE(S) 15

3. TYPE OF FILING			
<input 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 checked="" 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 type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" 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 checked="" 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 Sarah Pollock	TELEPHONE NUMBER (916) 445-2308	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Sarah.Pollock@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 <b>Jeffrey Macomber</b>	DATE 3/1/2023
TYPED NAME AND TITLE OF SIGNATORY Jeff Macomber, Secretary, California Dept. of Corrections and Rehabilitation	

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

**APR 11 2023**

**Office of Administrative Law**

**FINAL TEXT OF PROPOSED REGULATIONS, For Previously Withdrawn Sections 3043.3(b)(1)-(3) and 3043.5(c)(1)-(3)**

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

**Article 3.3 Credits**

**3043.3. Milestone Completion Credit.**

**[New subsections 3043.3(b)(1)-(3) are adopted to read:]**

(1) Office of Correctional Education staff shall conduct a review for any information located in the Strategic Offender Management System (SOMS) and the Electronic Records Management System (ERMS) indicating the inmate has received their high school diploma, High School Equivalency (HSE) certificate, or college degree conferred by an educational institution accredited by an accrediting agency approved by the United States Department of Education. This review shall also include review for any claims by the inmate that they have received a high school diploma, HSE certificate, or college degree.

(2) Office of Correctional Education staff shall verify the inmate's receipt of a high school diploma or college degree by obtaining the official transcript from the school from which the inmate claims to have graduated. Office of Correctional Education staff shall verify the inmate's receipt of a HSE certificate by obtaining the inmate's HSE certificate from any general educational development database or obtaining a letter from the high school from which the inmate took the HSE exam that confirms the inmate received a HSE certificate.

(3) Office of Correctional Education staff shall document their review and verification of an inmate's educational history in the education section of SOMS. Documentation of the review and verification shall include: the date of the request for the release of the transcript, HSE certificate, or letter confirming the inmate received a HSE certificate; the name of the entity to which the request was submitted; the date that the transcript, HSE certificate, or letter confirming the inmate received a HSE certificate was received; whether the inmate earned their high school diploma, HSE certificate, or college degree; and the date, time, and name of any staff person who entered any of the above information into SOMS. Office of Correctional Education staff shall scan a copy of the transcript, HSE certificate, or letter confirming the inmate received a HSE certificate into ERMS. If Office of Correctional Education staff cannot verify the inmate's receipt of a high school diploma or HSE certificate, the inmate shall be eligible to participate in a high school diploma or high school equivalency program, which shall allow them to earn MCC awards.

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

### **3043.5. Educational Merit Credit.**

**[New subsections 3043.5(c)(1)-(c)(3) are adopted to read:]**

(1) Office of Correctional Education staff shall conduct a review for any information located in the Strategic Offender Management System (SOMS) and the Electronic Records Management System (ERMS) indicating the inmate has received their high school diploma, High School Equivalency (HSE) certificate, or college degree conferred by an educational institution accredited by an accrediting agency approved by the United States Department of Education. This review shall also include review for any claims by the inmate that they have received a high school diploma, HSE certificate, or college degree.

(2) Office of Correctional Education staff shall verify the inmate's receipt of a high school diploma or college degree by obtaining the official transcript from the school from which the inmate claims to have graduated. Office of Correctional Education staff shall verify the inmate's receipt of a HSE certificate by obtaining the inmate's HSE certificate from any general educational development database or obtaining a letter from the high school from which the inmate took the HSE exam that confirms the inmate received a HSE certificate.

(3) Office of Correctional Education staff shall document their review and verification of an inmate's educational history in the education section of SOMS. Documentation of the review and verification shall include: the date of the request for the release of the transcript, HSE certificate, or letter confirming the inmate received a HSE certificate; the name of the entity to which the request was submitted; the date that the transcript, HSE certificate, or letter confirming the inmate received a HSE certificate was received; whether the inmate earned their high school diploma, HSE certificate, or college degree; and the date, time, and name of any staff person who entered any of the above information into SOMS. Office of Correctional Education staff shall scan a copy of the transcript, HSE certificate, or letter confirming the inmate received a HSE certificate into ERMS. If Office of Correctional Education staff cannot verify the inmate's receipt of a high school diploma or HSE certificate, the inmate shall be eligible to participate in a high school diploma or high school equivalency program, which shall allow them to earn Education Merit Credit awards.

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

## **FINAL STATEMENT OF REASONS - ADDENDUM**

The Initial Statement of Reasons (ISOR) and the Final Statement of Reason are incorporated by reference.

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

As stated in the Final Statement of Reasons, due to clarity issues, subsections 3043.3(b)(1)-(3) and 3043.5(c)(1)-(3) were withdrawn by the Department of Corrections and Rehabilitation (CDCR or department) from the initial final submission regulations in order to amend text for better clarity, and on August 31, 2022 the Office of Administrative Law partially approved the initial final submission regulations, which included the other sections that were previously included in Notice of Change to Regulations #22-04.

The department provided a Re-Notice to the public on December 19, 2022 to correct subsections 3043.3(b)(1)-(3) and 3043.5(c)(1)-(3). The amendments to the originally proposed text and the reasons for these revisions are explained below under the heading *Notice of Change to Text as Originally Proposed – Re-Notice*. The Notice of Change to Text as Originally Proposed (Re-Notice) was distributed on December 19, 2022 to those who provided comments during the public comment period/day of the public hearing and to those that requested to receive the notice of changes to text as originally proposed. The Re-Notice was posted on the department's website the same day it was distributed. The department accepted public comments from December 19, 2022 through January 3, 2023. No comments were received during the Re-Notice period.

### **DETERMINATION:**

The department has determined that no alternative considered 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 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, than the action proposed. This determination was reached by a consensus of the department's Division of Adult Institutions and Division of Rehabilitative Programs.

Except as set forth and discussed in the summary and response to the comments received contained in the Final Statement of Reasons, no other alternatives have been proposed or otherwise brought to the department's attention that would alter the department's decision.

### **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.

## **NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED – RE-NOTICE:**

In subsection 3043.3(b)(1) it was determined that the previously listed documents that Correctional Education staff shall review in the Strategic Offender Management System (SOMS) and Electronic Records Management System (ERMS), for any documentation that an inmate received their high school diploma, high school equivalency, or college degree, may or may not always be available. As such, those specific documents were removed to allow for review of any documents indicating the inmate has received a high school diploma, high school equivalency certificate, or college degree. The word “thorough” was also removed because it is unnecessary and does not add any additional clarity to the regulation. It was also determined that the word “certificate” should be added after “high school equivalency” for clarity purposes. The words “high school equivalency” were given the acronym “HSE” for ease of reading purposes due to the multiple references. For consistency with subsection 3043.5(b), and also to correct and clarify that the high school diploma, high school equivalency certificate, or college degree, is not received from an *accrediting agency* but rather from an *educational institution accredited by an accrediting agency*, it was determined that this language should be revised. Therefore, language in this subsection was revised to indicate that “Office of Correctional Education staff shall conduct a review for any information located in the SOMS and ERMS indicating the inmate has received their high school diploma, high school equivalency certificate, or college degree conferred by an educational institution accredited by an accrediting agency approved by the United States Department of Education.” This language provides a more accurate description of the process used to attempt to locate any information that an inmate has received a high school diploma, high school equivalency certificate, or college degree, and provides clarity, and consistency with language outlined in subsection 3043.5(b). The subsequent sentence also removes language referring to the “above mentioned documentation,” replacing it with language that provides consistency with the aforementioned language revision, and provides better clarity.

Subsection 3043.3(b)(2) was amended to better clarify the process to verify the inmate’s receipt of a high school diploma or college degree, by obtaining the official transcript from the school from which the inmate claims to have graduated. Additional language in this subsection was revised to clarify the verification process for the inmate’s receipt of a high school equivalency certificate. Language was added to specify that the high school equivalency certificate is the documentation that is to be obtained utilizing any general educational development database, or obtaining a letter from the high school from which the inmate took the high school equivalency exam that confirms the inmate received a high school equivalency certificate. The addition of this language provides a more accurate description of the process used to verify an inmate’s completion of a high school equivalency certificate, which complies with education industry standards. Capitalization for the words “General Educational Development” was revised to lower case, for corrective purposes, as it was determined to be a generalized reference.

Subsection 3043.3(b)(3) was amended to replace the word “completion” with “history” for better accuracy; and the acronym “ERMS” was replaced with “SOMS” for correction

purposes, as this was an inadvertent error. Additional language was added in this subsection to specify what the documented review and verification of an inmate's educational history shall include. It was determined that it was necessary to add this language in order to provide evidence of what was done by department staff to verify that an inmate has or has not received a high school diploma, high school equivalency certificate, or college degree. The last sentence was amended for clarity and to align with the revised text. Language now provides clarity to specify that if Office of Correctional Education staff cannot verify an inmate's receipt of a high school diploma or high school equivalency certificate, the inmate shall be eligible to participate in a high school diploma or high school equivalency program, which shall allow them to earn MCC awards.

In subsection 3043.5(c)(1) it was determined that the previously listed documents that Correctional Education staff shall review in the Strategic Offender Management System (SOMS) and Electronic Records Management System (ERMS), for any documentation that an inmate received their high school diploma, high school equivalency, or college degree, may or may not always be available. As such, those specific documents were removed to allow for review of any documents indicating the inmate has received a high school diploma, high school equivalency certificate, or college degree. The word "thorough" was also removed because it is unnecessary and does not add any additional clarity to the regulation. It was also determined that the word "certificate" should be added after "high school equivalency" for clarity purposes. The words "high school equivalency" were given the acronym "HSE" for ease of reading purposes due to the multiple references. For consistency with subsection 3043.5(b), and also to correct and clarify that the high school diploma, high school equivalency certificate, or college degree, is not received from an *accrediting agency* but rather from an *educational institution accredited by an accrediting agency*, it was determined that this language should be revised. Therefore, language in this subsection is revised to indicate that "Office of Correctional Education staff shall conduct a review for any information located in the SOMS and ERMS indicating the inmate has received their high school diploma, high school equivalency certificate, or college degree conferred by an educational institution accredited by an accrediting agency approved by the United States Department of Education." This language provides a more accurate description of the process used to attempt to locate any information that an inmate has received a high school diploma, high school equivalency certificate, or college degree, and provides clarity, and consistency with language outlined in subsection 3043.5(b). The subsequent sentence also removes language referring to the "above mentioned documentation," replacing it with language that provides consistency with the aforementioned language revision, and provides better clarity.

Subsection 3043.5(c)(2) was amended to better clarify the process to verify the inmate's receipt of a high school diploma or college degree, by obtaining the official transcript from the school from which the inmate claims to have graduated. Additional language in this subsection was revised to clarify the verification process for the inmate's receipt of a high school equivalency certificate. Language was added to specify that the high school equivalency certificate is the documentation that is to be obtained utilizing any general educational development database, or obtaining a letter from the high school from which

the inmate took the high school equivalency exam that confirms the inmate received a high school equivalency certificate. The addition of this language provides a more accurate description of the process used to verify an inmate's completion of a high school equivalency certificate, which complies with education industry standards. Capitalization for the words "General Educational Development" was revised to lower case, for corrective purposes, as it was determined to be a generalized reference.

Subsection 3043.5(c)(3) was amended to replace the word "completion" with "history" for better accuracy; and the acronym "ERMS" was replaced with "SOMS" for correction purposes, as this was an inadvertent error. Additional language was added in this subsection to specify what the documented review and verification of an inmate's educational history shall include. It was determined that it was necessary to add this language in order to provide evidence of what was done by department staff to verify that an inmate has or has not received a high school diploma, high school equivalency certificate, or college degree. The last sentence was amended for clarity and to align with the revised text. Language now provides clarity to specify that if Office of Correctional Education staff cannot verify an inmate's receipt of a high school diploma or high school equivalency certificate, the inmate shall be eligible to participate in a high school diploma or high school equivalency program, which shall allow them to earn Education Merit Credit awards.