



Department of Corrections and Rehabilitation
NOTICE OF CHANGE TO REGULATIONS

Section: 3041.2	NCR Number: 23-11	Publication Date: October 6, 2023	Effective Date: To Be Determined
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INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendment of Section 3041.2 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding Inmate Pay Rates, Schedules, and Exceptions.

PUBLIC COMMENT PERIOD

The public comment period will close on November 22, 2023. Any person may submit written comments about the proposed regulations by mail to the California Department of Corrections and Rehabilitation (CDCR), Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received or postmarked no later than November 22, 2023.

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held November 22, 2023, from 10:00 a.m. to 11:00 a.m. in Room 150N, located at 1515 S Street, Sacramento, CA 95811. The purpose of the hearing is to receive comments about the proposed regulations. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written comments submitted during the prescribed comment period are given the same significance and weight as oral comments presented at the hearing. This hearing site is accessible to the mobility impaired.

POSTING

This Notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each department facility and field office not later than five calendar days after receipt. Also, institutions and facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. CDCR Form 621-A (Rev. 05/19), 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 S. Pollock, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2308, or e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to Tracy Johnson, Division of Adult Institutions, at (916) 324-6808.

Original signed by:

Tammy Foss
Undersecretary, Operations
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 Section 3041.2 into Title 15, Division 3, Chapter 1, regarding Inmate Pay Rates, Schedules, and Exceptions.

PUBLIC COMMENT PERIOD

The public comment period begins **October 6, 2023** and closes on **November 22, 2023**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to 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.

CONTACT PERSONS

<u>Primary Contact</u>	<u>Back-Up</u>	<u>Program Contact</u>
S. Pollock	Y. Sun	T. Johnson
Telephone: (916) 445-2308	Telephone: (916) 445-2269	Telephone: (916) 985-2561
Regulation and Policy Management Branch	Regulation and Policy Management Branch	Division of Adult Institutions
P.O. Box 942883	P.O. Box 942883	P.O. Box 942883
Sacramento, CA 94283-0001	Sacramento, CA 94283-0001	Sacramento, CA 94283-0001

PUBLIC HEARING

Date and Time: **November 22, 2023 – 10:00 a.m. to 11:00 a.m.**
Place: Department of Corrections and Rehabilitation
Room 150N
1515 S Street – North Building
Sacramento, CA 95811

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

Current regulations provide for inmate pay schedules based on minimum and maximum hourly and monthly rates and skill levels. Inmate pay schedules have remained unchanged for the past 30 years and are also not adjusted for inflation.

The proposed regulations will provide an increase in inmate pay across all levels of inmate jobs statewide. The new increase will result in two different pay scales: the General Pay Scale and the Conservation Camp Pay Scale. There will no longer be a monthly maximum of pay, but an hourly payment for hours worked. Furthermore, the Director of Division of Adult Institutions (DAI) or designee shall approve any exceptions to the pay scales.

This action will:

- Amend the General Pay Schedule and adopt a new Conservation Camp Pay Scale.
- Revise payments inmates receive for work completed from a monthly maximum to actual hours worked.
- Establish the Director of DAI or designee shall approve any exceptions to the pay scales.

DOCUMENTS INCORPORATED BY REFERENCE

None

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The department anticipates that the proposed regulatory action will have a long-term beneficial effect on CDCR's inmate population by incentivizing the population to accept and retain jobs during their incarceration, allowing them more buying power in efforts to normalize their daily living and pay toward any restitution. Additionally, vacancies will be filled, availing additional workforce to assist the State workforce, which has high vacancy rates in areas assisted by inmate workers.

It is the responsibility of CDCR to ensure its inmate population is treated with dignity and has the resources and skills needed to transition back to society. This responsibility extends to fair compensation for jobs performed while incarcerated, therefore the department is proposing changes to regulations which will increase inmate pay commensurate with the job skill level and also be deemed fiscally responsible based on inflation.

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the department has concluded that these are the only regulations that concern revising inmate pay rates, schedules, and exceptions.

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

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| • Cost or savings to any state agency: | <i>None</i> |
| • Cost to any local agency or school district that is required to be reimbursed: | <i>None</i> |
| • Other nondiscretionary cost or savings imposed on local agencies: | <i>None</i> |
| • Cost or savings in federal funding to the state: | <i>None</i> |

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 businesses 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.

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 or amended 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. Work and Education

Section 3041.2. Inmate Pay Rates, Schedules, and Exceptions.

Section 3041.2(a) is unchanged.

Section 3041.2(a)(1) is amended to read:

(1) General Pay Schedule

<i>Skill Level</i>	<i>Minimum/Maximum Hourly</i>	<i>Minimum/Maximum Monthly</i>
Level 1		DOT Skill Level 9
Lead Person	\$0.32-\$0.37	\$48-\$56
Level 2		DOT Skill Levels 7-8
Special Skill	\$0.19-\$0.32	\$29-\$48
Level 3		DOT Skill Levels 5-6
Technician	\$0.15-\$0.24	\$23-\$36
Level 4		DOT Skill Levels 3-4
Semi-Skilled	\$0.11-\$0.18	\$17-\$27
Level 5		DOT Skill Levels 1-2
Laborer	\$0.08-\$0.13	\$12-\$20

<u>Pay Scale Levels</u>	<u>Minimum/Maximum Per Hour for Hours Worked</u>
<u>Level 1 (DOT 9)</u>	
<u>Lead Person</u>	<u>\$0.64-\$0.74</u>
<u>Level 2 (DOT 7-8)</u>	
<u>Special Skill</u>	<u>\$0.38-\$0.64</u>
<u>Level 3 (DOT 5-6)</u>	
<u>Technician</u>	<u>\$0.30-\$0.48</u>
<u>Level 4 (DOT 3-4)</u>	
<u>Semi-Skilled</u>	<u>\$0.22-\$0.36</u>
<u>Level 5 (DOT 1-2)</u>	
<u>Laborer</u>	<u>\$0.16-\$0.26</u>

[Subsection 3041.2(a)(2) is amended to read:]

(2) Conservation Camp Pay Schedule

<u>Grade Inmates (Firefighters)</u> <u>Grade</u>	<u>Max Daily Rate</u>
<u>Grade 1</u>	<u>\$10.24</u>
<u>Grade 2</u>	<u>\$7.80</u>
<u>Grade 3</u>	<u>\$6.68</u>
<u>Grade 4</u>	<u>\$5.80</u>

[The rest of subsection 3041.2 (a)(2) is renumbered to 3041.2 (a)(3) and amended to read.]

~~(3) Monthly Pay rates shall apply to full-time employment in the job classifications and shall be paid from the support budget or inmate welfare funds. Hourly rates shall apply to half-time and partial full-time paid employment.~~

[Subsection 3041.2 (b) is amended to read:]

(b) Exceptions to the above schedules may be made in extraordinary circumstances. A wage comparable to that paid to inmates in the Prison Industry Authority inmate pay program may be paid for special projects or assignments that require a high degree of skill or expertise. Other exceptions may also be made in order to fill positions when recruitment or retention of inmate workers is a problem. Any exceptions based upon this subsection shall require approval, review and justification on an annual basis by the institution head and Director of Division of Adult Institutions or designees.

[Subsection 3041.2 (c) is amended to read:]

(c) Pay increases shall not be automatic or based on the inmate's longevity in an assignment. Increases or reductions in the pay rate shall be based on available funding, the work/training supervisor's recommendation, and the inmate's work/training performance reports, subject to review and approval of the inmate assignment authority.

[Subsections 3041.2 (d) through 3041.2 (f) remain unchanged.]

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2079, 2811 and 5054, Penal Code.

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR or the department) proposes to amend California Code of Regulations (CCR), Title 15, Division 3, Section 3041.2, regarding Inmate Pay Rates, Schedule, and Exceptions. The proposed changes to regulations will provide an increase in inmate pay across all levels of inmate jobs statewide for general pay schedules and a new conservation camp pay schedule.

Inmate pay is the compensation received by inmates engaged in productive work, as specified in Penal Code Section 2700. Paid work assignments provide the inmate population incentive to program, perform at satisfactory levels, be responsible for specific job duties, be held accountable to a supervisor and accountable to the institutional society by completing relied-upon obligations. The self-worth gained by inmate employment is essential to the rehabilitative goals of the department. The monetary compensation is intended to incentivize work for the aforementioned benefits to the inmate population. The current wages do not incentivize the inmate population to retain a job, as is reflected in the statewide vacancy rates.

The inmate pay schedule has remained unchanged for the past 30 years, with the exception of the 2018 increase for Plant Operations and Conservation Camp positions. The current pay schedule correlates with the skill levels required for the specific job: Level 1 (Lead Person) requiring the highest skill level, Level 2 (Special Skill), Level 3 (Technician), Level 4 (Semi-skilled), and Level 5 (Laborer). The Bureau of Labor Statistics Consumer Price Index inflation calculator reflects the CDCR's mid-pay schedule hourly rate of \$.20 in 1993, which has the same buying power as \$.42 in June 2022. In 2017, the national average hourly state inmate pay was \$.39, with California well below average. The current pay scale is not adjusted for inflation. Currently, restitution is taken from inmate wages at a rate of 50 percent, further lowering the dollars available to purchase non-institution items used to normalize incarceration. Therefore, the department is proposing these regulations to increase inmate worker pay by providing better incentives to accept and retain jobs. Increased pay amounts will increase restitution payments for victims of crime and allow inmates to save more money in preparation for release. In addition to a paycheck, work assignments build technical and social skills, instill accountability and responsibility, and prepare inmates for careers after incarceration. These regulation changes aim to elevate the remuneration provided to inmates to a level deemed fiscally responsible based on inflation.

CDCR operates the Conservation Camp Program in conjunction with CAL FIRE and the Los Angeles County Fire Department to provide essential fire protection services throughout California. CDCR's ability to recruit inmates for the voluntary conservation camp was impacted by Chapter 15, Statutes of 2011 (AB 109) and 2014's Proposition 47, which placed low-level offenders at county and local jails rather than state prisons. Furthermore, Proposition 57 shortened the length of stay for inmates and created new Rehabilitative Achievement Credits, milestone opportunities, education classes, and leisure time activity groups that are not all available at Conservation Camps.

CDCR recruits from the low-level offender population for the Conservation Camp Program as they are closer to the end of their sentences and pose less of a risk to public safety. The Conservation Camp Program provides about 3 million hours of response to fires and emergencies, and 7 million hours in community service projects, performing a wide range of duties, such as clearing brush and fallen trees to reduce the chance of fire, maintaining parks, sandbagging, flood protection, and reforestation.

Currently, camp firefighter pay ranges from \$2.90 per day to \$5.12 per day, depending on the job classification, plus an additional \$1 per hour when they are on an active fire. The proposed regulations increase the inmate pay rates in the Conservation Camp Program to enhance

recruitment efforts, provide additional incentives to apply for the program, and provide California with more firefighting personnel. If inmates can earn twice the current rates, they will be able to pay more toward restitution and save more money to assist with reintegration upon parole or release.

CONSIDERATION OF ALTERNATIVES:

In accordance with Government Code Section 11346.5, subdivision (a)(13), the department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action 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 no reasonable alternatives to alter the department's initial determination.

ECONOMIC IMPACT ASSESSMENT:

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

Significant Adverse Economic Impact on Business

The department has made an initial determination that the proposed regulations will not have a significant adverse economic impact on business. Additionally, there have been no facts, evidence, documents, testimony, or other evidence provided that would alter the department's initial determination. The proposed regulations affect the internal management of CDCR only, and place no requirements or restrictions on businesses.

Creation of New Jobs or Elimination of Existing Jobs within the State of California

The department has determined that the proposed regulations will have no impact on the creation of new jobs or elimination of existing jobs within California as the proposed regulations only affect the internal management of prisons.

Creation of New Businesses or Expansion or the Elimination of Existing Businesses within the State of California

The department has determined that the proposed regulations will not have an impact on the creation of new or the elimination of existing businesses within California, or affect the expansion of businesses currently doing business in California as the proposed regulations only affect the internal management of prisons.

Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The department has determined that the proposed regulations will have no impact on the health and welfare of California residents, worker safety, or the State's environment.

BENEFITS OF THE REGULATIONS:

The department anticipates that the proposed regulatory action will have a long-term beneficial effect on CDCR's inmate population by incentivizing the population to accept and retain jobs during their incarceration, allowing them more buying power in efforts to normalize their daily living and pay toward any restitution. Additionally, vacancies will be filled, availing additional workforce to assist the State workforce, which has high vacancy rates in areas assisted by inmate workers.

It is the responsibility of CDCR to ensure its inmate population is treated with dignity and has the resources and skills needed to transition back to society. This responsibility extends to fair compensation for jobs performed while incarcerated, therefore the department is proposing changes to regulations which will increase inmate pay commensurate with the job skill level and also be deemed fiscally responsible based on inflation.

MATERIALS RELIED UPON:

In proposing additions and amendments to these regulations, the department has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

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

Subsection 3041.2(a) is unchanged.

Subsection 3041.2 (a)(1) is amended to state “General” pay schedule because these are general support assignments based on the United States Department of Labor Dictionary of Occupational Titles (DOT) used when determining skill levels. The DOT skill level is used to determine the pay scale levels to ensure standardization and consistency among the work assignments. The schedule is being amended to reflect the increase of pay rates for general pay positions to assist with recruitment and retention of those inmates for those positions. Moreover, there will no longer be a monthly maximum of pay, but an hourly payment for hours worked. Currently, inmates cannot be paid above the maximum monthly cap even for hours worked; however, this change allows the inmate to be paid for actual hours worked.

Existing subsection 3041.2(a)(2) is renumbered to subsection 3041.2(a)(3).

New subsection 3041.2(a)(2) is adopted to establish a Conservation Camp Pay Schedule. The purpose of the schedule is to provide an incentive for inmates to join a fire crew with pay levels that recognize the lifesaving work responding to fires, floods, and other disasters.

New Subsection 3041.2(a)(3) is amended to establish that inmates will no longer have monthly pay rates, but instead will be paid an hourly wage. The department determined all inmates shall be paid hourly for actual hours worked. Currently, inmates cannot be paid above the maximum monthly cap even for hours worked; however, this change allows the inmate to be paid for actual hours worked.

Subsection 3041.2(b) is amended to specify “schedules,” in plural tense, as there will be more than one pay schedule with this proposed regulation. Furthermore, the Director, Division of Adult Institutions, or their designee, shall approve any exceptions based on this subsection. There are positions paid above the general pay schedule in extraordinary circumstances. The wage is comparable to that paid to inmates in the Prison Industry Authority. These exceptions may be paid for special projects or assignments that require a high degree of skill or expertise. To ensure exceptional positions meet the above-stated requirements, they must be approved by the Director or designee prior to being established and filled.

Subsection 3041.2(c) is amended to add the requirement that pay increases are contingent on available funding. This requirement will ensure that work assignments will not be established or pay will not be increased above the available funding that would place the department into a deficiency.

Subsections 3041.2.(d) through 3041.2.(f)(2) are unchanged.