

FOR COURT USE ONLY

FILED
Superior Court Of California,
Sacramento
05/26/2021
iramo2
By _____, Deputy
Case Number:
34-2021-00301253

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, S. number, and address):

Alissa Kubochi, SBN 319680
901 G Street
Sacramento, CA 95814

TELEPHONE NO.: 916-874-8049

FAX NO. (Optional):

ATTORNEY FOR (Name): Anne Marie Schubert et al.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

STREET ADDRESS: 720 9th Street

MAILING ADDRESS: 720 9th Street

CITY AND ZIP CODE: Sacramento, 95814

BRANCH NAME: Gordon D. Schaber County Courthouse

CASE NAME:

Anne Marie Schubert et al. v. CDCR and Kathleen Allison

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000)
Limited (Amount demanded is \$25,000)

Complex Case Designation

Counter Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 34-2021-00301253

JUDGE:

DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

Auto (22)
Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Product liability (24)
Medical malpractice (45)
Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

Business tort/unfair business practice (07)
Civil rights (08)
Defamation (13)
Fraud (16)
Intellectual property (19)
Professional negligence (25)
Other non-PI/PD/WD tort (35)

Employment

Wrongful termination (36)
Other employment (15)

Contract

Breach of contract/warranty (06)
Rule 3.740 collections (09)
Other collections (09)
Insurance coverage (18)
Other contract (37)

Real Property

Eminent domain/Inverse condemnation (14)
Wrongful eviction (33)
Other real property (26)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38)

Judicial Review

Asset forfeiture (05)
Petition re: arbitration award (11)
Writ of mandate (02)
Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)

Antitrust/Trade regulation (03)
Construction defect (10)
Mass tort (40)
Securities litigation (28)
Environmental/Toxic tort (30)
Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

Enforcement of judgment (20)

Miscellaneous Civil Complaint

RICO (27)
Other complaint (not specified above) (42)

Miscellaneous Civil Petition

Partnership and corporate governance (21)
Other petition (not specified above) (43)

2. This case is [x] is [] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. [x] Large number of separately represented parties
b. [x] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. [] Substantial amount of documentary evidence
d. [] Large number of witnesses
e. [] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court

3. Remedies sought (check all that apply): a. [] monetary b. [x] nonmonetary; declaratory or injunctive relief c. [] punitive

4. Number of causes of action (specify): 1: declaratory relief and injunctive relief

5. This case [] is [x] is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 26, 2021

Alissa Kubochi

(TYPE OR PRINT NAME)

[Signature]

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
File this cover sheet in addition to any cover sheet required by local court rule.
If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

State of California, Department of Corrections and Rehabilitation

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Anne Marie Schubert et al.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
FILED
Superior Court Of California,
Sacramento
05/26/2021
irromo2
By _____, Deputy
Case Number:
24-2021-0020-250

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Gordon D. Schaber County Courthouse
720 9th Street
Sacramento, CA 95814

CASE NUMBER: (Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Alissa Kubochi, 901 G Street, Sacramento, CA 95814, (916) 874-8049

DATE: May 26, 2021
(Fecha)

Clerk, by I. ROMO, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): California Department of Corrections and Rehabilitation
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify): CCP 416.50: CDCR- Office of Legal Affairs
- by personal delivery on (date):

**SUMMONS
(CITACION JUDICIAL)**

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05/26/2021
irono2
By _____, Deputy
Case Number:
24-2021-00201-253

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Kathleen Allison, in her official capacity as Secretary of the California Department of Corrections and Rehabilitation

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Anne Marie Schubert et al.

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Alissa Kubochi, 901 G Street, Sacramento, CA 95814, (916) 874-8049

DATE: May 26, 2021
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 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

FILED
Superior Court Of California,
Sacramento
Filing Fee Exempt
(Gov. Code, § 6103)
05/26/2021
irono2
By _____, Deputy
Case Number:
34-2021-00301253

1 ANNE MARIE SCHUBERT
2 District Attorney of Sacramento County
3 ROD NORGAARD
4 Chief Deputy
5 MICHAEL M. BLAZINA
6 Assistant District Attorney
7 ALISSA KUBOCHI
8 Deputy District Attorney
9 State Bar No. 319680
10 901 G Street
11 Sacramento, CA 95814-1858
12 Telephone: (916) 874-6218
13 Fax: (916) 321-2201
14 E-mail: KubochiA@sacda.org
15 *Attorneys for Plaintiffs*

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SACRAMENTO

14 ANNE MARIE SCHUBERT (District Attorney
15 of Sacramento County); KRISHNA ABRAMS
16 (District Attorney of Solano County); JASON
17 ANDERSON (District Attorney of San
18 Bernardino County); KIRK ANDRUS (District
19 Attorney of Siskiyou County); MICHAEL
20 ATWELL (District Attorney of Alpine County);
21 MATT BEAUCHAMP (District Attorney of
22 Colusa County); STEPHANIE BRIDGETT
23 (District Attorney of Shasta County); CLINT
24 CURRY (District Attorney of Yuba County);
25 DAN DOW (District Attorney of San Luis
26 Obispo County); JOYCE DUDLEY (District
27 Attorney of Santa Barbara County); KEITH
28 FAGUNDES (District Attorney of Kings
County); BIRGIT FLADAGER (District
Attorney of Stanislaus County); MAGGIE
FLEMING (District Attorney of Humboldt
County); LORI FRUGOLI (District Attorney of
Marin County); MORGAN GIRE (District
Attorney of Placer County); SANDRA
GROVEN (District Attorney of Sierra County);

Case No.

**VERIFIED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

(Gov. Code, §11350; Code Civ.
Proc., § 1060.)

1 ALLISON HALEY (District Attorney of Napa
2 County); MICHAEL HESTRIN (District
3 Attorney of Riverside County); DAVID
4 HOLLISTER (District Attorney of Plumas
5 County); CANDICE HOOPER (District
6 Attorney of San Benito County); AMANDA
7 HOPPER (District Attorney of Sutter County);
8 CASSANDRA JANECKE (District Attorney of
9 Tuolumne County); TIM KENDALL (District
10 Attorney of Mono County); SUSAN KRONES
11 (District Attorney of Lake County);
12 KATHERINE MICKS (District Attorney of Del
13 Norte County); SALLY MORENO (District
14 Attorney of Madera County); ERIK
15 NASARENKO (District Attorney of Ventura
16 County); CLIFF NEWELL (District Attorney of
17 Nevada County); GILBERT G. OTERO
18 (District Attorney of Imperial County);
19 JEANNINE PACIONI (District Attorney of
20 Monterey County); VERN PIERSON (District
21 Attorney of El Dorado County); MIKE
22 RAMSEY (District Attorney of Butte County);
23 JEFF REISIG (District Attorney of Yolo
24 County); TODD RIEBE (District Attorney of
25 Amador County); MELYSSAH RIOS (District
26 Attorney of Lassen County); MATT ROGERS
27 (District Attorney of Tehama County); LISA
28 SMITTCAMP (District Attorney of Fresno
County); TODD SPITZER (District Attorney of
Orange County); SUMMER STEPHAN (District
Attorney of San Diego County); DWAYNE
STEWART (District Attorney of Glenn County);
WALTER WALL (District Attorney of
Mariposa County); TIM WARD (District
Attorney of Tulare County); BARBARA YOOK
(District Attorney of Calaveras County); and
CYNTHIA ZIMMER (District Attorney of Kern
County) ON BEHALF OF THE PEOPLE OF
THE STATE OF CALIFORNIA,

Plaintiffs,

v.

STATE OF CALIFORNIA, DEPARTMENT OF
CORRECTIONS AND REHABILITATION;

1 and KATHLEEN ALLISON, in her official
2 capacity as Secretary of the California
3 Department of Corrections and Rehabilitation;
4 DOES 1-10, inclusive,

Defendants.

5
6 **INTRODUCTION**

7 1. Plaintiffs seek a judicial declaration invalidating the regulations promulgated in
8 OAL File No. 2021-0408-04EON¹ (“the Regulations”) due to a substantial failure to comply
9 with the Administrative Procedure Act (“APA”). (Gov. Code, §11350, subd. (a).)

10 2. In 2016, Proposition 57 was approved by California voters and amended the
11 California Constitution authorizing the California Department of Corrections and Rehabilitation
12 (“CDCR”) to award credits earned for good behavior and approved rehabilitative or educational
13 achievements. (Cal. Const., art. I, § 32.)

14 3. The APA was enacted to establish basic minimum procedural requirements for
15 the adoption, amendment, or repeal of administrative regulations promulgated by administrative
16 agencies. (*Morales v. California Dept. of Corrections & Rehabilitation* (2008) 168 Cal.App.4th
17 729, 735-736 (*Morales*) citing Gov. Code, §11346; *Grier v. Kizer* (1990) 219 Cal.App.3d 422,
18 431, disapproved on other grounds in *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14
19 Cal.4th 557, 577.)

20 4. Penal Code section 5058.3 was enacted to afford CDCR an exception to the APA
21 procedures in order to quickly adopt regulations as operational needs require. The CDCR
22 Secretary must, in writing, explain the “the operational need to use the emergency rulemaking
23 procedure.” (Pen. Code, §5058.3, subd. (a)(2).) The included statement of legislative intent of
24 the law was to “authorize the department to expedite the exercise of its power to implement
25

26 ¹ In OAL File No. 2021-0408-04EON, the Department of Corrections and Rehabilitation adopted California Code of
27 Regulations, title 15, section 3043.7 and amended sections 3043, 3043.2, 3043.3, 3043.4, 3043.5, 3043.6, 3044, 3045.1,
28 3043.7 [Renumbered to 3044.1], 3043.8 [Renumbered to 3044.2], 3047 [Renumbered to 3046.1].

1 regulations as its unique operational circumstances require.” (Pen. Code, §5058.3, subd. (b).)

2 5. On April 8, 2021, the Office of Administrative Law (“OAL”) received CDCR’s
3 rulemaking file. (Exhibit A.) The proposed regulations were filed only as an emergency by
4 operational necessity pursuant to Penal Code section 5058.3. (*Ibid.*) On April 28, 2021, the
5 OAL approved the emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the
6 Government Code and section 5058.3 of the Penal Code. (Exhibit B.) The emergency regulatory
7 action became effective on May 1, 2021, and will expire on February 8, 2022. (*Ibid.*)

8 6. The purpose of the emergency procedure outlined in Penal Code section 5058.3
9 is to immediately put into place operational regulations on an emergency basis. Operational is
10 commonly defined as “relating to the routine functioning and activities of a business or
11 organization.” (Oxford Dictionaries. Oxford University Press.
12 https://premium.oxforddictionaries.com/us/definition/american_english/operational (accessed
13 via Oxford Dictionaries Online on May 20, 2021).) In contrast to this intent, the Regulations are
14 credit earning provisions that have the effect of significantly shortening the length of sentences
15 for 76,000 offenders including violent and serious crimes; an expansive new public policy
16 rather than a regulation that goes to an operational need or circumstance of CDCR.

17 7. The APA codifies the proper procedures for such broad and far reaching changes
18 and those procedures should be respected.

19 8. This Court should, therefore, declare the Regulations approved in OAL File No.
20 2021-0408-04EON to be invalid and permanently enjoin the enforcement of these regulations.

21 9. This Court should also grant a stay, temporary restraining order, preliminary
22 injunction, and permanent injunction prohibiting CDCR from enforcing the Regulations during
23 the pendency of these proceedings.

24 **PARTIES**

25 10. Plaintiffs Anne Marie Schubert (District Attorney of Sacramento County); Krishna
26 Abrams (District Attorney of Solano County); Jason Anderson (District Attorney of San Bernardino
27 County); Kirk Andrus (District Attorney of Siskiyou County); Michael Atwell (District Attorney of

1 Alpine County); Matt Beauchamp (District Attorney of Colusa County); Stephanie Bridgett
2 (District Attorney of Shasta County); Clint Curry (District Attorney of Yuba County); Dan Dow
3 (District Attorney of San Luis Obispo County); Joyce Dudley (District Attorney of Santa Barbara
4 County); Keith Fagundes (District Attorney of Kings County); Birgit Fladager (District Attorney of
5 Stanislaus County); Maggie Fleming (District Attorney of Humboldt County); Lori Frugoli (District
6 Attorney of Marin County); Morgan Gire (District Attorney of Placer County); Sandra Groven
7 (District Attorney of Sierra County); Allison Haley (District Attorney of Napa County); Michael
8 Hestrin (District Attorney of Riverside County); David Hollister (District Attorney of Plumas
9 County); Candice Hooper (District Attorney of San Benito County); Amanda Hopper (District
10 Attorney of Sutter County); Cassandra Janecke (District Attorney of Tuolumne County); Tim
11 Kendall (District Attorney of Mono County); Susan Krones (District Attorney of Lake County);
12 Katherine Micks (District Attorney of Del Norte county); Sally Moreno (District Attorney of
13 Madera County); Erik Nasarenko (District Attorney of Ventura County); Cliff Newell (District
14 Attorney of Nevada County); Gilbert G. Otero (District Attorney of Imperial County); Jeannine
15 Pacioni (District Attorney of Monterey County); Vern Pierson (District Attorney of El Dorado
16 County); Mike Ramsey (District Attorney of Butte County); Jeff Reisig (District Attorney of Yolo
17 County); Todd Riebe (District Attorney of Amador County); Melyssah Rios (District Attorney of
18 Lassen County); Matt Rogers (District Attorney of Tehama County); Lisa Smittcamp (District
19 Attorney of Fresno County); Todd Spitzer (District Attorney of Orange County); Summer Stephan
20 (District Attorney of San Diego County); Dwayne Stewart (District Attorney of Glenn County);
21 Walter Wall (District Attorney of Mariposa County); Tim Ward (District Attorney of Tulare
22 County); Barbara Yook (District Attorney of Calaveras County); and Cynthia Zimmer (District
23 Attorney of Kern County) on behalf of the People of the State of California.

24 11. Defendants CDCR and Kathleen Allison, in her official capacity as Secretary of
25 CDCR. Secretary Allison is and at all material times was the Secretary of CDCR. Plaintiffs are
26 informed and believe and thereon allege that Secretary Allison was responsible for drafting,
27 issuing, and enforcing the Regulations that are the subject of this action.

1 required by law in order to file this Complaint. (Gov. Code, § 11350, subd. (a).) The relief sought
2 in this Complaint is ripe and not moot because plaintiffs seek a judicial declaration that the
3 Regulations do not substantially comply with the provisions of the APA. Specifically, plaintiffs are
4 seeking a declaration that any regulation that has the effect of reducing sentences is not within the
5 scope of Penal Code section 5058.3. Any such regulation must be adopted through the APA
6 rulemaking process (Gov. Code, §11340 et seq.).

7 **FACTUAL ALLEGATIONS**

8 **A. Rulemaking Procedures**

9 17. Penal Code section 5058, subdivision (a) requires the CDCR Secretary to
10 promulgate rules and regulations for the administration of prisons pursuant to the APA, unless
11 enumerated exceptions apply. (*Morales, supra*, 168 Cal.App.4th at p. 735.)

12 18. Penal Code section 5058.3, subdivision (a)(2) states in relevant part:

13 Notwithstanding subdivision (b) of Section 11346.1 of the Government
14 Code, no showing of emergency is necessary in order to adopt, amend,
15 or repeal an emergency regulation if the director instead certifies, in a
16 written statement filed with the Office of Administrative Law, that
17 operational needs of the department require adoption, amendment, or
18 repeal of the regulation on an emergency basis. The written statement
19 shall include a description of the underlying facts and an explanation of
20 the operational need to use the emergency rulemaking procedure. This
21 paragraph provides an alternative to filing a statement of emergency
22 pursuant to subdivision (b) of Section 11346.1 of the Government Code.
23 It does not preclude filing a statement of emergency. This paragraph
24 only applies to the initial adoption and one readoption of an emergency
25 regulation.

26 Subdivision (b) provides that:

27 It is the intent of the Legislature, in authorizing the deviations in this
28 section from the requirements and procedures of Chapter 3.5
(commencing with Section 11340) of Part 1 of Division 3 of Title 2 of
the Government Code, to authorize the department to expedite the
exercise of its power to implement regulations as its unique operational
circumstances require.

1 19. The OAL website states that the APA

2 establishes rulemaking procedures and standards for state agencies in
3 California. The requirements set forth in the APA are designed to
4 provide the public with a meaningful opportunity to participate in the
5 adoption of state regulations and to ensure that regulations are clear,
6 necessary and legally valid. The APA is found in the California
7 Government Code, commencing with section 11340. State regulations
8 must also be adopted in compliance with regulations adopted by OAL
(Cal. Code Regs., tit. 1, §§ 1-120).

8 (<<https://oal.ca.gov/faq/>>)

9 20. Under the regular rulemaking process webpage of the OAL, it summarizes that:

10 The vast majority of regulations adopted pursuant to the APA are
11 submitted to OAL as “regular” rulemakings. Unless a proposed
12 rulemaking action is submitted to OAL as an “emergency”
13 rulemaking or is exempted from the APA, the regular rulemaking
14 process must be complied with when an agency undergoes a
15 rulemaking action. The regular rulemaking process includes
16 comprehensive public notice and comment requirements. It also
17 requires that documents and information on which the rulemaking
18 action is based are available for review and inspection. This
19 comprehensive process is intended to further the goal of public
20 participation in the rulemaking process and to create an adequate
21 rulemaking record for review by OAL and the courts.

18 (<https://oal.ca.gov/rulemaking_process/regular_rulemaking_process/>)

19 21. The OAL website informs the public that:

20 To initiate a formal rulemaking action, an agency publishes a notice of
21 proposed action in the California Regulatory Notice Register. The
22 agency must also mail the notice of proposed action to those persons
23 who have requested notice of regulatory actions, and post the notice of
24 proposed action, express terms, and initial statement of reasons on the
25 agency’s website. (Gov. Code, § 11346.5.) Once the notice of proposed
26 action is published in the California Regulatory Notice Register, the
27 APA rulemaking process is officially started and the agency has one
28 year within which to complete the rulemaking process and submit the
completed rulemaking file to OAL.

27 (<https://oal.ca.gov/rulemaking_participation/>)

1 22. The APA requires a minimum 45-day period for the public to comment to the
2 agency in writing on the proposed regulation. (*Ibid.*) The notice of proposed action specifies the
3 rulemaking agency name, contact person and address where the comments must be directed and
4 the date the written comment period closes. (*Ibid.*) Members of the public should not submit
5 written comments on regular rulemaking actions to OAL. (*Ibid.*)

6 23. The OAL website further provides that:

7 Under the APA, a rulemaking agency has the option whether to hold a
8 public hearing on a proposed rulemaking action. If an agency does not
9 schedule a public hearing, any interested person can submit a written
10 request for a hearing to be held. The written request for a hearing must
11 be submitted at least 15 days prior to the close of the written public
12 comment period. If timely requested, the agency must hold a public
13 hearing. (Gov. Code, § 11346.8.) If a public hearing is held, the hearing
14 must be scheduled for a date at least 45 days after the notice of proposed
15 action was published. At the public hearing, both written and oral
16 comments must be accepted.

17 (*Ibid.*)

18 24. A rulemaking agency must summarize and respond to timely comments that are
19 directed at the proposal or at the procedures followed by the agency during the rulemaking action.
20 (*Ibid.*) For each comment, the agency must include either an explanation of how the proposed
21 action has been changed to accommodate the comment or state the reasons for rejecting the
22 comment. (*Ibid.*) In summarizing and responding to public comments, the agency must
23 demonstrate that it understood and considered the comment. (*Ibid.*) The summary and response to
24 comments is included as part of the rulemaking file in a document called a Final Statement of
25 Reasons (Gov. Code, § 11346.9.). (*Ibid.*)

26 25. A rulemaking agency must transmit a rulemaking action to OAL for review within
27 one year from the date that the notice was published in the California Regulatory Notice Register.
28 (*Ibid.*) Once submitted, OAL has 30 working days to conduct a review of the rulemaking record to
ensure that the agency satisfied the requirements of the APA and OAL's regulations. (*Ibid.*) OAL
will then either approve the rulemaking action and file the proposed regulation with the Secretary

1 of State or disapprove the rulemaking action. (*Ibid.*)

2 **B. Rulemaking History**

3 26. On April 8, 2021, the OAL received CDCR's rulemaking file. (Exhibit A.) The
4 proposed regulations were filed only as Operational Necessity pursuant to Penal Code section
5 5058.3. (*Ibid.*) On April 28, 2021, the OAL approved the emergency regulatory action pursuant to
6 sections 11346.1 and 11349.6 of the Government Code and section 5058.3 of the Penal Code.
7 (Exhibit B.) The emergency regulatory action became effective on May 1, 2021, and will expire
8 on February 8, 2022. (*Ibid.*)

9 **FIRST CAUSE OF ACTION**

10 **(Declaratory Relief)**

11 27. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 26,
12 inclusive, of this Complaint as if fully set forth herein.

13 28. An actual controversy has arisen and now exists between Plaintiffs and Defendants.
14 Plaintiffs contend that the APA required Defendants to file the Regulations under the regular (Gov.
15 Code, §11346) or emergency (Gov. Code, §11346.1) rulemaking process contained in the APA
16 (Gov. Code, §11340 et seq.) because the operational needs of CDCR did not require adoption of
17 the Regulations on an emergency basis. Defendants specifically avoided the emergency rule
18 making process required under Government Code section 11346.1 because there is no actual
19 emergency, and they cannot meet those emergency requirements.

20 29. A judicial declaration invalidating the Regulations for failing to substantially
21 comply with the APA is necessary and appropriate at this time, as Defendants are currently
22 enforcing such Regulations.

23 30. The purpose of the emergency procedure outlined in Penal Code section 5058.3
24 is to immediately put into place regulations on an emergency basis. The Regulations, however,
25 are credit earning provisions that have the effect of shortening the length of a person's sentence
26 rather than a regulation that goes to an operational need or circumstance of the department. As
27 such, the operational needs or circumstances of the department did not require adoption of the

1 proposed regulations on an emergency basis.

2 31. Further, there is no “description of the underlying facts and an explanation of the
3 operational need to use the emergency rulemaking procedure” in the proposed regulations as
4 required by Penal Code section 5058.3, subdivision (a)(2). In the rulemaking file submitted to
5 the OAL, CDCR Secretary Allison cited the need to “Comply with the direction outlined in the
6 Governor’s Budget Summary, *May Revision 2020-2021*.”² (Exhibit A.) Nowhere in the
7 supporting documents is there an explanation of how *last year’s* budget has become an
8 operational need for adoption of the Regulations on an emergency basis.

9 32. Because there is no operational need for the Regulations, Defendants must comply
10 with the regular (Gov. Code, §11346) or emergency (Gov. Code, §11346.1) rulemaking process
11 contained in the APA. (Gov. Code, §11340 et seq.) The emergency rule making process under
12 Government Code section 11346.1, subdivision (b)(2) states in pertinent part:

13 A finding of emergency based only upon expediency, convenience, best
14 interest, general public need, or speculation, shall not be adequate to
15 demonstrate the existence of an emergency. If the situation identified in
16 the finding of emergency existed and was known by the agency
17 adopting the emergency regulation in sufficient time to have been
18 addressed through nonemergency regulations adopted in accordance
19 with the provisions of Article 5 (commencing with Section 11346), the
20 finding of emergency shall include facts explaining the failure to
21 address the situation through nonemergency regulations.

22 33. Plaintiffs are therefore entitled to a judicial declaration pursuant to Government
23 Code section 11350 and Code of Civil Procedure section 1060 that the Regulations are invalid for
24 substantially failing to comply with the APA and unenforceable.

25 34. A stay, temporary restraining order, preliminary injunction, and permanent

26 ² The Governor’s May 2020 Budget Summary was issued on *May 14, 2020*, wherein the Governor recommended
27 increased Good Conduct credits stating, “CDCR will pursue changes to good conduct credits that will be applied
28 prospectively. While the changes are still being developed, they will be informed by preliminary recidivism data
associated with existing good conduct credit.” (See <<http://www.ebudget.ca.gov/2020-21/pdf/Revised/BudgetSummary/FullBudgetSummary.pdf>>)

1 injunction is also necessary to prohibit CDCR from enforcing the Regulations during the pendency
2 of these proceedings. Without such injunction, CDCR will continue to enforce the Regulations that
3 have the effect of reducing sentences including for violent and serious crimes.

4 35. Further, harm from the Regulations lies in the subversion of the democratic
5 values the APA was intended to serve. The notice, comment, and review procedures of the APA
6 were enacted to secure the public benefits of openness, accessibility, and accountability in the
7 formulation of rules that implement legislative enactments. Irreparable harm to these important
8 public benefits occurs whenever a state agency unlawfully adopts a regulation as CDCR has
9 done here. The Regulations became effective on May 1, 2021, and will expire on February 8,
10 2022. (Exhibit B.) Unless enjoined by order of this Court, Plaintiffs will continue to suffer great
11 and irreparable harm because the challenged regulations violate the public's ability to comment
12 about the proposed regulations in violation of the APA for a period of no less than 10 months.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs pray for relief as follows:


- 15 1. For a declaration that CDCR's Regulations are invalid and unenforceable;
- 16 2. For a stay, temporary restraining order, preliminary injunction, and permanent
17 injunction prohibiting Defendants from enforcing the Regulations; and
- 18 3. For such other and further relief as this Court deems just and proper.

19 ///
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27 ///

1 Dated: May 26, 2021

Respectfully Submitted,

2
3 ANNE MARIE SCHUBERT
4 District Attorney of Sacramento County
5 ROD NORGAARD
6 Chief Deputy

7 
8 _____
9 Alissa Kubochi
10 Deputy District Attorney
11 *Attorneys for Petitioner*
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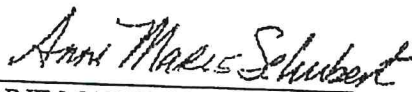
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VERIFICATION

I, Anne Marie Schubert, am the Sacramento County District Attorney in the above-entitled action. I have read the foregoing VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, and know the contents thereof. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 26th day of May 2021, in Sacramento, California.


ANNE MARIE SCHUBERT
DISTRICT ATTORNEY
SACRAMENTO COUNTY

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **ANNE MARIE SCHUBERT et al. v. STATE OF CALIFORNIA,
DEPARTMENT OF CORRECTIONS AND REHABILITATION AND
KATHLEEN ALLISON, CDCR SECRETARY**

Case No.:

I declare:

I am employed in the Sacramento County District Attorney's Office, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Sacramento County District Attorney's Office for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Sacramento County District Attorney's Office is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On May 26, 2021, I served the attached **VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Sacramento County District Attorney's Office at 901 G Street, Sacramento, California 95814-1858 addressed as follows:

Kathleen Allison
CDCR
Office of the Secretary
P.O. BOX 942883
Sacramento, CA 94283-0001
Defendant

CDCR
Office of Legal Affairs
P.O. BOX 942883
Sacramento, CA 94283-0001
Counsel for Defendant

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 26, 2021, at Sacramento, California.

Megan Caster
Declarant

Megan J. Caster
Signature

EXHIBIT A

(OAL Rulemaking File)

NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation			AGENCY FILE NUMBER (If any) 20-0048

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	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Minimum Security Credit and Inmate Credit Earning		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
---	--	--

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 3043.7
	AMEND See attachment.
TITLE(S)	REPEAL
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 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 checked="" type="checkbox"/> Other (Specify) <u>Op. Necessity PC 5058.3</u>	

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)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) Effective on filing with Secretary of State \$100 Changes Without Regulatory Effect Effective other (Specify) May 1, 2021

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660) Fair Political Practices Commission State Fire Marshal

Other (Specify) _____

7. CONTACT PERSON Josh Jugum	TELEPHONE NUMBER (916) 445-2266	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) joshua.jugum@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.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DocuSigned by: <i>Kathleen Allison</i>	DATE 4/7/2021
TYPED NAME AND TITLE OF SIGNATORY KATHLEEN ALLISON, SECRETARY		

ECONOMIC AND FISCAL IMPACT STATEMENT (REGULATIONS AND ORDERS)

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME Corrections and Rehabilitation	CONTACT PERSON Janel Campbell	EMAIL ADDRESS Janel.Campbell@cdcr.ca.gov	TELEPHONE NUMBER 916-324-2711
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Minimum Security Credit and Inmate Credit Earning			NOTICE FILE NUMBER Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- a. Impacts business and/or employees
- b. Impacts small businesses
- c. Impacts jobs or occupations
- d. Impacts California competitiveness
- e. Imposes reporting requirements
- f. Imposes prescriptive instead of performance
- g. Impacts individuals
- h. None of the above (Explain below):

*If any box in Items 1 a through g is checked, complete this Economic Impact Statement.
If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.*

2. The _____ (Agency/Department) estimates that the economic impact of this regulation (which includes the fiscal impact) is:

- Below \$10 million
- Between \$10 and \$25 million
- Between \$25 and \$50 million
- Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: _____

Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

4. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

5. Indicate the geographic extent of impacts: Statewide
 Local or regional (List areas): _____

6. Enter the number of jobs created: _____ and eliminated: _____

Describe the types of jobs or occupations impacted: _____

7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here? YES NO

If YES, explain briefly: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT (CONTINUED)

B. ESTIMATED COSTS *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

d. Describe other economic costs that may occur: _____

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements.
Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted. \$ _____

4. Will this regulation directly impact housing costs? YES NO

If YES, enter the annual dollar cost per housing unit: \$ _____

Number of units: _____

5. Are there comparable Federal regulations? YES NO

Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: _____

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?

Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ _____ Cost: \$ _____

Alternative 1: Benefit: \$ _____ Cost: \$ _____

Alternative 2: Benefit: \$ _____ Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives:

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? YES NO

Explain: _____

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.*

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? YES NO

*If YES, complete E2. and E3
If NO, skip to E4*

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____
Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

YES NO

If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

The incentive for innovation in products, materials or processes: _____

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

a. Funding provided in _____
Budget Act of _____ or Chapter _____, Statutes of _____

b. Funding will be requested in the Governor's Budget Act of _____
Fiscal Year: _____

2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

a. Implements the Federal mandate contained in _____

b. Implements the court mandate set forth by the _____ Court.
Case of: _____ vs. _____

c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____
Date of Election: _____

d. Issued only in response to a specific request from affected local entity(s).
Local entity(s) affected: _____

e. Will be fully financed from the fees, revenue, etc. from: _____
Authorized by Section: _____ of the _____ Code;

f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

3. Annual Savings. (approximate)

\$ _____

4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

5. No fiscal impact exists. This regulation does not affect any local entity or program.

6. Other. Explain

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

FISCAL IMPACT STATEMENT (CONTINUED)

B. FISCAL EFFECT ON STATE GOVERNMENT *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:

a. Absorb these additional costs within their existing budgets and resources.

b. Increase the currently authorized budget level for the _____ Fiscal Year

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any State agency or program.

4. Other. Explain _____

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

4. Other. Explain _____

FISCAL OFFICER SIGNATURE

 Eric Swanson

Digitally signed by Eric Swanson
Date: 2021.02.18 08:48:48 -08'00'

DATE

February 18, 2021

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY



DocuSigned by:

Kathleen Allison

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DATE

4/7/2021

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER



DATE

CERTIFICATION OF OPERATIONAL NECESSITY
[Per Penal Code Section 5058.3]

This rulemaking action amends existing regulations concerning credit earning which were promulgated after the passage of The Public Safety and Rehabilitation Act of 2016 (hereafter referred to as Proposition 57 or the Act). Proposition 57 was approved overwhelmingly by California voters on November 8, 2016, and gives the California Department of Corrections and Rehabilitation (CDCR or Department) broad powers to promulgate regulations that award credits earned for good conduct and approved rehabilitation or educational achievements. The Act provides that the "Department of Corrections and Rehabilitation adopt regulations in furtherance of [the Act], and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety." (Cal. Const., art. 1, § 32(b).)

With the immediate implementation of new and revised rules for inmate credit earning, the Department seeks to comply with direction outlined in the Governor's Budget Summary, May Revision, 2020-21, which directs CDCR to pursue changes to Good Conduct Credits (GCC) to be applied prospectively. The Department proposes amendments to the Supplemental Reforms to Credit Earning regulations to increase the credit earning rate for violent offenders from one day of credit for every four days of incarceration to one day of credit for every two days of incarceration. CDCR will discontinue the practice of increasing the amount of the GCC on an effective date due to being placed in Workgroup M or F and will instead apply a credit award after the offender has successfully served/programmed for 30 continuous days in Workgroup M or F. Disciplinary issues will be handled through the amount of credit loss assessed by limiting privilege groups instead of limiting the credit earning at zero days. The Department proposes amendments to the Supplemental Reforms to Credit Earning regulations and increase the credit earning rate for non-violent offenders sentenced under the Three Strikes law from one day of credit for every two days of incarceration to one day of credit for every day of incarceration.

I, Kathleen Allison, Secretary of the Department of Corrections and Rehabilitation, certify that these regulations protect and enhance public safety and that the constitutional changes made by Proposition 57, as well as the operational need of the Department, require the immediate amendment of California Code of Regulations Title 15, Division 3, sections 3043, 3043.2, 3043.3, 3043.4, 3043.5, 3043.6, 3044, 3045.1; the renumbering and amending of sections 3043.7 to 3044.1, 3043.8 to 3044.2 and 3047 to 3046.1; and the adoption of new section 3043.7 concerning inmate credit earning opportunities.

DocuSigned by:
Kathleen Allison
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4/7/2021

KATHLEEN ALLISON

Secretary

Department of Corrections and Rehabilitation

Date

FINDING OF EMERGENCY
(Government Code section 11346.1(b)(2))

AUTHORITY AND REFERENCE CITATIONS (Government Code section 11346.5(a)(2))

Pursuant to the authority granted by Government Code section 12838.5, Penal Code section 5055, and the rulemaking authority granted by Penal Code sections 5058 and 5058.3 (in order to implement, interpret and make specific Penal Code section 5054), the California Department of Corrections and Rehabilitation (CDCR or Department) proposes to amend California Code of Regulations (CCR), Title 15, Division 3, sections 3043, 3043.2, 3043.3, 3043.4, 3043.5, 3043.6, 3044, 3045.1, renumbering and amending 3043.7 to 3044.1, 3043.8 to 3044.2 and 3047 to 3046.1, and to adopt new section 3043.7 regarding Minimum Security Credit. The proposed regulations amend credit earning provisions which were promulgated after the passage of the Public Safety and Rehabilitation Act of 2016 (Proposition 57), and amend existing provisions regarding classification that are tied to credit earning.

Penal Code section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections, in this or any other code, refers to the California Department of Corrections and Rehabilitation.

Penal Code 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 California Department of Corrections and Rehabilitation.

Penal Code 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 California Department of Corrections and Rehabilitation.

Penal Code section 5058 authorizes the Secretary of the California Department of Corrections and Rehabilitation to prescribe and amend regulations for the administration of prisons.

INFORMATIVE DIGEST (Government Code section 11346.5(a)(3))

The proposed regulations amend existing regulations concerning credit earning which were promulgated after the passage of the Public Safety and Rehabilitation Act of 2016 (Proposition 57), and amend existing regulations regarding classification that are tied to credit earning.

The proposed regulations increase the Good Conduct Credit earning rate of violent offenders and non-violent offenders sentenced under the Three Strikes Law, under subdivision (c) of section 1170.12 of the Penal Code or under subdivision (c) or (e) of section 667 of the Penal Code; removes any increase to the Good Conduct Credit for

inmates assigned to Minimum A Custody or Minimum B Custody (Work Groups M and F) or who are trained as firefighters or working in a fire camp, ; and adds new provisions that eligible inmates assigned to Work Group M or F shall instead be awarded Minimum Security Credit. The new Minimum Security Credits are promulgated under the authority of Proposition 57 and appear in this article.

These proposed revisions to the credit earning regulations will continue to award credits for inmates working in fire camps, trained as firefighters, and assigned to minimum custody, while simplifying the calculation by awarding the credits as earned on a monthly basis instead of increasing the Good Conduct Credit earning rate, which is the existing practice. These proposed revisions will also increase Good Conduct Credit for violent offenders and non-violent second strikers. The proposed revisions will continue to give credits for inmates placed in dangerous situations and in minimum custody, which allows inmates to take responsibility for their own behavior and rehabilitation which will better prepare them for their eventual return to society.

POLICY STATEMENT OVERVIEW (Government Code section 11346.5(a)(3)(C))

This rulemaking action will:

- Establish a new type of credit called Minimum Security Credit that inmates may earn to advance the inmate's release date. Inmates assigned to specified workgroups are eligible to earn these credits, which shall be awarded in increments of 30 days.
- Increase the rate at which eligible inmates may earn Good Conduct Credit to advance the inmate's release date, beginning May 1, 2021.
- Establish that Educational Merit Credit, which previously could not be forfeited, is now forfeitable based upon a finding of guilt for specified rule violations.

Documents Incorporated By Reference

None

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS (Government Code section 11346.5(a)(3)(C))

The Department anticipates these proposed regulations will benefit our criminal justice system and communities by continuing to create incentives and opportunities for inmates to positively program. In addition, these incentives will improve inmate behavior and reduce violence in prisons, making conditions safer for inmates and Department staff.

EVALUATION OF CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS (Government Code section 11346.5(a)(3)(D))

The Department has determined that these proposed regulations are not inconsistent or incompatible with existing regulations or other state laws.

**STATUTORY REQUIREMENTS, IF ANY, SPECIFIC TO AGENCY
(Government Code section 1346.5(a)(4))**

Not applicable

LOCAL MANDATE DETERMINATION (Government Code section 11346.5(a)(5))

This action imposes no mandates on local agencies or school districts, nor a mandate which requires reimbursement of costs or savings pursuant to Government Code sections 17500 through 17630.

**FISCAL IMPACT STATEMENTS OF COST OR SAVINGS FOR THE FOLLOWING
(Government Code section 11346.5(a)(6))**

- Cost to any local agency or school district requiring reimbursement: *None*
- Cost or savings to any state agency: *None*
- Cost or savings in federal funding to the state: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*

**TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR
DOCUMENTS RELIED UPON**

Not applicable

ADDENDUM TO THE FINDING OF EMERGENCY

The California Department of Corrections and Rehabilitation (CDCR or Department) proposes to amend California Code of Regulations (CCR), Title 15, Division 3, sections 3043, 3043.2, 3043.3, 3043.4, 3043.5, 3043.6, 3044, 3045.1, renumber and amend section 3043.7 to 3044.1, section 3043.8 to 3044.2 and section 3047 to 3046.1, and to adopt new section 3043.7, regarding Minimum Security Credit and Inmate Credit Earning. The proposed regulations amend existing regulations concerning credit earning which were promulgated after the passage of the Public Safety and Rehabilitation Act of 2016 (Proposition 57), and amend existing regulations regarding classification that are tied to credit earning.

The proposed regulations increase the Good Conduct Credit earning rate of violent offenders and non-violent offenders sentenced under the Three Strikes Law, under subdivision (c) of section 1170.12 of the Penal Code or under subdivision (c) or (e) of section 667 of the Penal Code, removes any increase to the Good Conduct Credit for inmates assigned to Minimum A Custody or Minimum B Custody (Work Groups M and F) or who are trained as a firefighter or working in a fire camp, and adds new provisions that eligible inmates assigned to Work Group M or F shall instead be awarded Minimum Security Credit. The new Minimum Security Credits are promulgated under the authority of Proposition 57 and appear in this article.

These proposed revisions to the credit earning regulations will continue to award credits for inmates working in fire camps, trained as firefighters, and assigned to minimum custody, while simplifying the calculation by awarding the credits as earned on a monthly basis instead of increasing the Good Conduct Credit earning rate, which is the existing practice. These proposed revisions will also increase Good Conduct Credit for violent offenders and non-violent offenders sentenced under the Three Strikes Law. The proposed revisions will continue to give credits for inmates placed in dangerous situations and in minimum custody, which allows inmates to take responsibility for their own behavior and rehabilitation, which will better prepare them for their eventual return to society.

Anticipated Benefits of the Regulations

The Department anticipates these proposed regulations will benefit our criminal justice system and communities by continuing to create incentives and opportunities for inmates to positively program. In addition, these incentives will improve inmate behavior and reduce violence in prisons; making conditions safer for inmates and departmental staff.

Economic Impact Assessment

In accordance with Government Code section 11346.3, subdivision (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 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 Department's initial determination. The proposed regulations affect the internal operations of the Department only and place no requirements or restrictions on businesses.

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

The Department has determined 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 operations of prisons only.

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

The Department 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 operations of prisons only.

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

The Department has determined that the proposed regulations may have a positive impact on the Health and Welfare of California residents, worker safety, and the State's environment by reducing prison overcrowding.

Consideration of Alternatives

The Department must determine no reasonable alternative considered, 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 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 and equally effective in implementing The Public Safety and Rehabilitation Act of 2016. Currently, no reasonable alternatives have been brought to the attention of the Department, which would alter the Department's initial determination.

Local Mandates

The Department has determined this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (section 17561) of Division 4.

Materials Relied Upon

In proposing additions or 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 Section 11346.2(b)(1))

Section 3043. Credit Earning.

Subsection 3043(a) is amended to introduce the new term Minimum Security Credit and reference the newly added section 3043.7, which describes Minimum Security Credit. The Minimum Security Credit will allow inmates placed in dangerous situations (fire camps) to earn credits and will also allow all eligible inmates assigned to Workgroups M and F to earn these credits. All eligible inmates will have a reasonable opportunity to earn Minimum Security Credits. The application of credits shall advance an inmate's release date as long as their release date is not within the 15, 45, or 60-day release date restriction timelines as set forth in subdivision (c)

Subsections 3043(b) is amended to include Minimum Security Credit and remove Good Conduct Credit (GCC) as GCCs are not a program or activity that inmates participate in. GCCs are earned as delineated in section 3043.2.

Subsection 3043(c) is amended to improve grammar and to make clear that the 60-day restriction applies to those inmates that have been convicted of and not just serving a term for a violent felony.

Subsection 3043(d) is amended to included Minimum Security Credit language. This language has been added to establish that inmates sentenced as adults and housed by the Division of Juvenile Justice or placed in an alternative custody setting are eligible to earn Minimum Security Credit.

Section 3043.2. Good Conduct Credit

Subsection 3043.2(a) is unchanged but shown for reference.

Subsections 3043.2(b) and 3043.2(b)(1) are amended to improve grammar.

Subsection 3043.2(b)(2) is amended and subsections 3043.2(b)(2)(A) and (b)(2)(B) are adopted to establish that the Good Conduct Credit rate for violent offenders that took effect on May 1, 2017 will remain in effect through April 30, 2021. This amendment is necessary so staff and inmates are aware the original credit rate criteria will remain in effect through April 30, 2021. This amendment increases Good Conduct Credits for violent offenders, effective May 1, 2021. Providing violent offenders a higher credit earning rate will result in earlier releases and potentially a reduced inmate population. The phrase "qualifies under paragraph (4)(B) of this section" is removed because violent offenders will no longer have their Good Conduct Credit rate increased when they are working in a fire camp or trained as a firefighter. Instead, they will earn the new Minimum Security Credits. The phrase "this article or" is added because inmates serving a determinate or indeterminate term for a felony are currently eligible and will continue to be eligible for credits that are authorized by various sections of the Penal Code and by regulations in this article that are promulgated under the authority of Proposition 57.

Subsection 3043.2(b)(3) is amended and subsections 3043.2(b)(3)(A) and (b)(3)(B) are adopted to establish that the Good Conduct Credit rate for non-violent offenders

sentenced under the Three Strikes Law, under subdivision (c) of section 1170.12 of the Penal Code, or under subdivision (c) or (e) of section 667 of the Penal Code that took effect on May 1, 2017, will remain in effect through April 30, 2021. This amendment is necessary so staff and inmates are aware the original credit rate criteria will remain in effect through April 30, 2021. This amendment increases Good Conduct Credits for non-violent offenders sentenced under the Three Strikes Law, under subdivision (c) of section 1170.12 of the Penal Code or under subdivision (c) or (e) of section 667 of the Penal Code, effective May 1, 2021. Currently, non-violent offenders sentenced under the Three Strikes Law earn 50% good time credit on their actual time served in custody prior to being sentenced to state prison. Once the inmate is sentenced, the offender's credit earning amount reduces to 33.3%. By CDCR changing the credit earning of the good conduct credit from 33.3% to 50%, the credit earning will be consistently applied for all non-violent offenders once they are sentenced to serve a state prison term regardless of serving the time in state prison or the county jail. Providing non-violent offenders sentenced under the Three Strikes Law a higher credit earning rate, will result in earlier releases and potentially a reduced inmate population. Language is stricken at the end of the paragraph because inmates serving non-violent terms who were sentenced under the Three Strikes Law and who work in a fire camp or are trained as firefighters will no longer have their Good Conduct Credit rate increased. Rather, these inmates will earn the new Minimum Security Credits. This change will simplify the calculation and ensure the credit awarded impacts the calculation of the inmate's release date.

Subsection 3043.2(b)(4) is amended to improve grammar and subsections 3043.2(b)(4)(B) and (C) are deleted. Offenders serving a determinate term for a violent felony who are working in a fire camp or trained as firefighters will no longer have their Good Conduct Credit rate increased. Rather, these inmates will earn the new Minimum Security Credits. This change will simplify the calculation and ensure the credit awarded impacts the calculation of the inmate's release date.

Subsections 3043.2(b)(5) through 3043.2(b)(5)(C) are repealed Rather than earning the prior higher rate of Good Conduct Credit, the following inmates will earn the new Minimum Security Credits: inmates eligible for day-for-day credit who are assigned Minimum A or B Custody and inmates serving determinate terms who have completed firefighting training or are housed at a fire camp. The proposed change will simplify the calculation and ensure the credit awarded impacts the calculation of the inmate's release date.

Subsection 3043.2(c) is repealed. Workgroups will no longer have an impact on the Good Conduct Credit (GCC) and an inmate's GCC rate may change after placement in an alternative custody setting based upon a change to their commitment.

Subsection 3043.2(c) is renumbered and amended. This section has been renumbered from Subsection 3043.2(d). This section removes language referencing a zero credit workgroup. Currently, inmates in Workgroups C and D-2 do not earn Good Conduct Credit for a specified time period. Proposed amendments

to section 3044 remove the zero credit earning language for inmates placed in Workgroups C and D-2. Assignment to Workgroups C and D-2 will no longer be assigned as “zero credit earning.” Disciplinary issues will be addressed through the assessment of credit loss or by assigning privilege groups to limit privileges for the length of the credit loss. This fortifies the concept of incentivizing behavior and will impact the inmate’s ability to earn program credits based on behavior. Inmates will now continue to earn Good Conduct Credit when placed in Work Group C or D-2. A finding of guilt of a serious rule violation will continue to trigger forfeiture of Good Conduct Credits. Removing the workgroup impact to the Good Conduct Credit will simplify the calculation.

Section 3043.3. Milestone Completion Credit.

Subsection 3043.3(c) is amended to improve grammar and to make clear the application of credits shall advance an inmate’s release date as long as their release date is not within the 15, 45, or 60-day release date restriction timeframe as set forth in subdivision (c) of section 3043.

Subsection 3043.3(h) is amended.

When an inmate has lost more credit than Good Conduct Credit earned, as a result of disciplinary action, they have a negative GCC balance. Milestone Completion Credits can be lost when there is a negative GCC balance. Milestone Completion Credits can be restored if a disciplinary action is reversed. The same goes for Good Conduct Credits. However, GCC for many disciplinary actions can also be restored another way, by being disciplinary-free for a time period and meeting other regulatory requirements under sections 3327 through 3329.5. This recommended change adds this method of restoration for Milestone Completion Credits. This recommended change promotes positive programming by allowing inmates to have forfeited Milestone Completion Credits restored by being disciplinary-free for a period and meeting the other regulatory requirements. It provides another way for an inmate to get out of a negative credit balance situation.

Section 3043.4. Rehabilitative Achievement Credit.

Subsection 3043.4(b) is amended to make clear the application of credits shall advance an inmate’s release date as long as their release date is not within the 15, 45, or 60-day release date restriction timeframe as set forth in subdivision (c) of section 3043.

Subsection 3043.4(e)(2) is amended to improve grammar and to use more accurate terminology. There has been no change to the meaning or effect of this subsection.

Subsection 3043.4(i) is amended.

When an inmate has lost more credit than Good Conduct Credit (GCC) earned, as a result of disciplinary action, they have a negative GCC balance. Rehabilitative Achievement Credits can be lost when there is a negative GCC balance. Rehabilitative Achievement Credits can be restored if the disciplinary action is reversed. The same goes for Good Conduct Credits. However, Good Conduct Credits for many disciplinary actions can also

be restored another way, by being disciplinary-free for a time period and meeting other regulatory requirements under sections 3327 through 3329.5. This recommended change adds this method of restoration for Rehabilitative Achievement Credits. This recommended change promotes positive programming, allowing inmates to have forfeited Rehabilitative Achievement Credits restored by being disciplinary-free for a period and meeting the other regulatory requirements. It provides another way for an inmate to get out of a negative credit balance situation.

Section 3043.5. Educational Merit Credit.

Subsection 3043.5(b) is amended to make clear the application of credits shall advance an inmate's release date as long as their release date is not within the 15, 45, or 60-day release date restriction timeframe as set forth in subdivision (c) of section 3043.

Subsection 3043.5(e) is amended to improve grammar and to use more accurate terminology. There has been no change to the meaning or effect of this subsection.

Subsection 3043.5(f) is amended.

Educational Merit Credits will be treated the same as other credits. Inmates can earn them, forfeit them, and have them restored.

Section 3043.6. Extraordinary Conduct Credit.

Subsection 3043.6(b) is amended to make clear the application of credits shall advance an inmate's release date as long as their release date is not within the 15, 45, or 60-day release date restriction timeframe as set forth in subdivision (c) of section 3043.

Subsection 3043.6(c) is amended to improve grammar and to use more accurate terminology. There has been no change to the meaning or effect of this subsection.

Subsection 3043.6(d) is amended.

Extraordinary Conduct Credits will be treated the same as other credits. Inmates can earn them, forfeit them, and have them restored.

New Section 3043.7 Minimum Security Credit is adopted

Subsection 3043.7(a) is adopted to establish that effective May 1, 2021, eligible inmates assigned to Minimum Custody A or Minimum Custody B shall be awarded Minimum Security Credit. Instead of increasing the Good Conduct Credit earning rate, CDCR will apply a credit award after the inmate has successfully served/programmed for 30 continuous days in workgroup M or F. Good Conduct Credits are projected, meaning they are counted when an inmate's Earliest Possible Release Date (EPRD) or Minimum Eligible Parole Date (MEPD) are calculated. Minimum Security Credits will not be projected. They will be earned in real-time, like Milestone Completion Credit, Rehabilitative Achievement Credit, Educational Merit Credit, and Extraordinary Conduct

Credit. This fortifies the concept of positive programming. Inmates sentenced to death or life without parole are ineligible for credits.

Subsection 3043.7(b) is adopted to establish that the award of such credit shall advance an inmate's release date as long as their release date is not within the 15, 45, or 60-day release date restriction timeframe as set forth in subdivision (c) of section 3043.

Subsection 3043.7(c) is adopted to establish how many days of Minimum Security Credits an eligible inmate will receive after 30 consecutive days in Work Group M or F. Instead of increasing the Good Conduct Credit earning rate, the Department will apply a credit award of 30 days after the inmate has successfully served/programmed for 30 continuous days in workgroup M or F. This would apply to all inmates assigned to workgroup M or F. This fortifies the concept of positive programming.

Subsection 3043.7(d) is adopted to require processing of earned credits within a particular timeframe. To be consistent with current regulations as set forth in sections 3043.3(e) and 3043.4(g) for Milestone Completion Credits and Rehabilitative Achievement Credits, the Department has determined 10 days is a reasonable time for this process to occur due to staff workload.

Subsection 3043.7(e) is adopted to establish when excess credits received under this section shall be deemed void or when it shall be applied to a consecutive term. This is consistent with Milestone Completion Credits, Rehabilitative Achievement Credits, Educational Merit Credits, and Extraordinary Conduct Credits.

Subsection 3043.7(f) is adopted to provide that Minimum Security Credits can be forfeited and restored in the same ways that other credits are forfeited and restored.

Section 3044. Inmate Work Groups and Privilege Groups.

Subsections 3044(b)(4), (b)(4)(A) and (b)(4)(B) are amended to improve grammar and remove language regarding zero credit earning and removes language referencing not to award Good Conduct Credit (GCC). Assignment to Work Group C will no longer be assigned as "zero credit earning." Inmates placed in Work Group C will continue to earn Good Conduct Credit. Workgroups will no longer have an impact on GCC. Disciplinary issues will be addressed through the assessment of a credit loss or by assigning privilege groups to limit privileges for the length of the credit loss. This makes a more straightforward link between behavior and credit loss, incentivizing good behavior.

Subsection 3044(b) (6) through (b)(6)(D) are amended to remove language regarding zero credit earning. Assignment to Work Group D-2 will no longer be assigned as "zero credit earning." Inmates placed in Work Group D-2 will continue to earn GCC. Workgroups will no longer have an impact on GCC. Disciplinary issues will be addressed through the assessment of a credit loss or by assigning privilege groups to limit privileges for the length of the credit loss. This makes a more straightforward link between behavior and credit loss, incentivizing good behavior. Subdivision (D) is removed because it is not

necessary; inmates will not be placed in zero credit earning and therefore will not need to earn these credits back. The credit loss imposed as part of a disciplinary proceeding for a finding of guilty on a serious rule violation continues to be subject to restoration per section 3327.

Subsections 3044(b)(7) through (b)(7)(E) are amended to improve grammar and remove language regarding zero credit and Good Conduct Credit (GCC), as workgroups will no longer have an impact on GCC. Assignment to Work Group C or D-2 will no longer be assigned as “zero credit earning.” Disciplinary issues will be addressed through the assessment of a credit loss or by assigning privilege groups to limit privileges for the length of the credit loss. This makes a more straightforward link between behavior and credit loss, incentivizing good behavior.

Subsection 3044(b)(7)(F) is repealed

Currently, in order for an inmate to retain their Work Group F when transferred to an alternative custody setting from a Fire Camp, the inmate would need to have been housed in a Fire Camp for at least 12 months. If removed from a Fire Camp and transferred to an alternative custody setting earlier than 12 months, their Work Group F would be removed and their EPRD would change. With the proposed changes set out in section 3043.7 regarding Minimum Security Credits, inmates assigned to both Work Group M and Work Group F will now earn the same amount of Minimum Security Credits. Work Group F will now be designated to only represent inmates housed in Fire Camps.

Subsections 3044(b)(8) through (b)(8)(G) are amended to improve grammar and remove language regarding Good Conduct Credit (GCC), as workgroups will no longer have an impact on GCC. Work Groups M and F will no longer result in a higher GCC rate; rather, they will allow inmates to earn Minimum Security Credit.

Section 3044.1. Special Assignments

Subsections 3044.1(d) through (d)(2)(B) are amended to improve grammar, correct the name of a form, and correct a referenced regulation section and to remove credit earning language. Existing section 3043.7 has been renumbered to 3044.1. Workgroups will no longer have an impact on credit earning status (being placed in a zero-credit earning status), or on the Good Conduct Credit earning rate.

Section 3044.2. Impact of Transfer Upon Work Groups. This section has been renumbered from 3043.8 and the title amended. The renumbering and renaming of this section better identify that this section covers the change and impact to workgroups when an inmate is transferred.

Subsection 3044.2(a)(2) is amended.

Inmates that are removed from fire camp for non-adverse reasons will have their workgroup changed from Work Group F to Work Group M. These inmates will still be eligible to receive Minimum Security Credit.

Subsection 3044.2(c) is amended to remove language regarding credit earning, as workgroups will no longer have an impact on credit earning status (being placed in zero-credit earning status) or the Good Conduct Credit earning rate.

Subsections 3044.2(e) through (e)(2) are amended to remove language, as this section references the old section 3043.4. In 2017, section 3043.4 Non-Credit Earning was repealed and replaced with Rehabilitative Achievement Credits, which have nothing to do with SHU, PSU or ASU or workgroup placements.

Section 3045.1. Timekeeping and Reporting.

Subsection 3045.1 is amended to remove language, as this section references the old section 3043.4. In 2017, section 3043.4 Non-Credit Earning was repealed and replaced with Rehabilitative Achievement Credits, which have nothing to do with workgroup placements.

CERTIFICATION OF PUBLIC SAFETY COMPLIANCE
[Per California Constitution, Article I, Section 32]

This rulemaking action amends existing regulations concerning credit earning which were promulgated after the passage of The Public Safety and Rehabilitation Act of 2016 (hereafter referred to as Proposition 57 or the Act). Proposition 57 was approved overwhelmingly by California voters on November 8, 2016, and gives the California Department of Corrections and Rehabilitation (CDCR or the Department) broad powers to promulgate regulations that award credits earned for good conduct and approved rehabilitation or educational achievements. The Act provides that the "Department of Corrections and Rehabilitation adopt regulations in furtherance of [the Act], and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety." (Cal. Const., art. 1, § 32(b).)

Accordingly, in my role as the Secretary of the Department, I have been granted broad rulemaking authority under the California Constitution to adopt, amend, or repeal regulations in furtherance of the Act (notwithstanding other provisions of law) and I hereby invoke that constitutional grant of authority in support of this rulemaking action.

With the immediate implementation of new and revised rules for inmate credit earning, the Department seeks to comply with direction outlined in the Governor's Budget Summary, May Revision, 2020-21, which directs CDCR to pursue changes to Good Conduct Credits (GCC) to be applied prospectively. The Department proposes amendments to the Supplemental Reforms to Credit Earning regulations to increase the credit earning rate for violent offenders from one day of credit for every four days of incarceration to one day of credit for every two days of incarceration. CDCR will discontinue the practice of increasing the amount of the GCC on an effective date due to being placed in Workgroup M or F and will instead apply a credit award after the offender has successfully served/programmed for 30 continuous days in Workgroup M or F. Disciplinary issues will be handled through the amount of credit loss assessed by limiting privilege groups instead of limiting the credit earning at zero days. The Department proposes amendments to the Supplemental Reforms to Credit Earning regulations and increase the credit earning rate for non-violent offenders sentenced under the Three Strikes law from one day of credit for every two days of incarceration to one day of credit for every day of incarceration.

I, Kathleen Allison, Secretary of the Department of Corrections and Rehabilitation, certify that these regulations protect and enhance public safety and that the constitutional changes made by Proposition 57, as well as the operational need of the Department, require the immediate amendment of California Code of Regulations Title 15, Division 3, Sections 3043, 3043.2, 3043.3, 3043.4, 3043.5, 3043.6, 3044, 3045.1; the renumbering and amending of Sections 3043.7 to 3044.1, 3043.8 to 3044.2 and 3047 to 3046.1; and the adoption of new Section 3043.7 concerning inmate credit earning opportunities.

DocuSigned by:

Kathleen Allison

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4/7/2021

KATHLEEN ALLISON

Secretary

Department of Corrections and Rehabilitation

Date

Attachment to Form STD. 400

Part B. Section 2.

Sections adopted:

3043.7

Sections amended:

3043, 3043.2, 3043.3, 3043.4, 3043.5, 3043.6, 3044, 3045.1; section 3043.7 is renumbered to 3044.1 and amended, section 3043.8 is renumbered to 3044.2 and amended, and section 3047 is renumbered to 3046.1 and amended.

Sections repealed:

None

EXHIBIT B

(OAL Approved Regulations)

**State of California
Office of Administrative Law**

In re:
Department of Corrections and
Rehabilitation

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections: 3043.7
Amend sections: 3043, 3043.2, 3043.3,
3043.4, 3043.5, 3043.6,
3044, 3045.1, 3043.7
[Renumbered to 3044.1],
3043.8 [Renumbered to
3044.2], 3047
[Renumbered to 3046.1]

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

Government Code Sections 11346.1 and
11349.6, and Penal Code Section 5058.3

OAL Matter Number: 2021-0408-04

OAL Matter Type: Emergency Operational
Necessity (EON)

In this emergency by operational necessity the Department of Corrections and Rehabilitation amends regulations concerning inmate credit earning and minimum security credit.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code, and section 5058.3 of the Penal Code.

This emergency regulatory action is effective on 5/1/2021 and will expire on 2/8/2022. The Certificate of Compliance for this action is due no later than 2/7/2022.

Date: April 28, 2021



Amy R. Gowan
Attorney

For: Kenneth J. Pogue
Director

Original: Kathleen Allison, Secretary
Copy: Josh Jugum

NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

EMERGENCY

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-	2021-0408-04	EON

For use by Office of Administrative Law (OAL) only

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

APR 28 2021
1:21 P.M.

2021 APR -8 P 3:37
OFFICE OF
ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY
California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)
20-0048

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	PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Minimum Security Credit and Inmate Credit Earning	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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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 3043.7
	AMEND See attachment.
TITLE(S) 15	REPEAL

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 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 checked="" type="checkbox"/> Other (Specify) Op. Necessity PC 5058.3		

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 type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) May 1, 2021

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 Josh Jugum		TELEPHONE NUMBER (916) 445-2266	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) joshua.jugum@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: Kathleen Allison	DATE	4/7/2021
TYPED NAME AND TITLE OF SIGNATORY KATHLEEN ALLISON, SECRETARY			

For use by Office of Administrative Law (OAL) only
ENDORSED APPROVED
APR 28 2021
Office of Administrative Law

Attachment to Form STD. 400

Part B. Section 2

Sections adopted:

3043.7

Sections amended:

3043, 3043.2, 3043.3, 3043.4, 3043.5, 3043.6, 3044, 3045.1; section 3043.7 is renumbered to 3044.1 and amended, section 3043.8 is renumbered to 3044.2 and amended, and section 3047 is renumbered to 3046.1 and amended.

Sections repealed:

None

NONSUBSTANTIVE

NOTICE PUBLICATION REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

For use by Secretary of State only

OAL FILE NUMBERS Z-	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER 2021-0507-03N	EMERGENCY NUMBER
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

MAY 11 2021

1:15 PM

2021 MAY -7 P 4:44
 OFFICE OF
 ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY
 California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (If any)
20-0048

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	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)
 Minimum Security Credit and Inmate Credit Earning

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

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
15	3043.7, 3044
	REPEAL

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 checked="" 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, 11345.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(e))

Effective on filing with Secretary of State

\$100 Changes Without Regulatory Effect

Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)

Fair Political Practices Commission

State Fire Marshal

Other (Specify)

7. CONTACT PERSON

Josh Jugum	TELEPHONE NUMBER (916) 445-2266	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) joshua.jugum@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 5/7/2021

TYPED NAME AND TITLE OF SIGNATORY
 JEFF MACOMBER, Undersecretary, Operations

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAY 11 2021

Office of Administrative Law

TEXT OF PROPOSED REGULATIONS

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

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 3.35 Credits. Article number amended; title remains unchanged.

Section 3043. Credit Earning. *Amended as follows:*

Subsection 3043(a) is amended.

(a) General. Inmates are expected to work or participate in rehabilitative programs and activities to prepare for their eventual return to society. Inmates who comply with the regulations and rules of the Ddepartment and perform the duties assigned to them shall be eligible to earn Good Conduct Credit as set forth in section 3043.2 of this article. Unless otherwise precluded by this article, all inmates who participate in approved rehabilitative programs and activities, including inmates housed in administrative segregation housing units, in security housing units, in psychiatric services units, or in other segregated housing placement units, shall be eligible to earn Milestone Completion Credit, Rehabilitative Achievement Credit, and Educational Merit Credit as set forth in sections 3043.3, 3043.4, and 3043.5 of this article. The award of these credits, as well as Extraordinary Conduct Credit as set forth in section 3043.6 of this article, shall advance an inmate's release date if sentenced to a determinate term subject to subdivision (c) of this section or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole. Minimum Security Credits shall advance an inmate's release date, if eligible, as set forth in section 3043.7 of this article and subject to subdivision (c) of this section. Inmates who do not comply with the regulations and rules of the Ddepartment or who do not perform the duties assigned to them shall be subject to credit forfeiture as provided in this article.

Subsection 3043(b) is amended.

(b) Inmate Participation in Credit Earning Programs and Activities. All eligible inmates shall have a reasonable opportunity to earn ~~Good Conduct Credit~~, Milestone Completion Credit, Rehabilitative Achievement Credit, ~~and Educational Merit Credit~~, and Minimum Security Credit in a manner consistent with the availability of staff, space, and resources, as well as the unique safety and security considerations of each prison. No credit shall be awarded for incomplete, partial, or unsatisfactory participation in the credit earning programs or activities described in this article, nor shall credit be awarded for diplomas, degrees, or certificates that cannot be verified after due diligence by Ddepartment staff.

Subsection 3043(c) is amended.

(c) Release Date Restriction.

(1) The following Release Date Restriction took effect on April 13, 2017. Under no circumstance shall a determinately sentenced inmate be awarded credit or have credit restored by the Department which advances ~~his or her~~ their release to a date less than 60 calendar days from the date the award or restoration of such credit is entered into the Department's information technology system, except pursuant to a court order.

(2) The following Release Date Restriction shall commence on May 1, 2019 and supersede the Release Date Restriction in subsection (c)(1). Under no circumstance shall a determinately sentenced inmate be awarded credit or have credit restored by the Department which advances ~~his or her~~ their release to a date less than 15 calendar days from the date the award or restoration of such credit is entered into the Department's information technology system, except pursuant to a court order. This restriction shall instead be 45 calendar days for all inmates convicted of an offense identified in subject to the provisions found in subdivision (a) of section 3058.9 of the Penal Code, and 60 calendar days for all inmates serving a term for a violent felony, defined in subdivision (c) of section 667.5 of the Penal Code convicted of an offense identified in section 3058.6 of the Penal Code, except pursuant to a court order.

Subsection 3043(d) is amended.

(d) Participation by Inmates Sentenced as Adults and Housed In the Division of Juvenile Justice or Placed In an Alternative Custody Setting. Inmates sentenced as adults and housed in a facility administered by the Department's Division of Juvenile Justice or placed in an alternative custody setting prior to parole, including a pre-parole or re-entry program, are eligible to ~~participate in~~ earn Good Conduct Credit, and participate in programs to earn Milestone Completion Credit, Rehabilitative Achievement Credit, Educational Merit Credit, ~~and~~ Extraordinary Conduct Credit, and Minimum Security Credit. Placement in an alternative custody setting means transfer of an inmate, prior to parole, to serve the remainder of ~~his or her~~ their term of incarceration in a community based re-entry facility administered by the Department in lieu of confinement in a state prison or Department of Forestry and Fire Protection fire camp. For purposes of calculating when an inmate's period of incarceration will be completed pursuant to subdivision (c)(3) of section 1731.5 and subdivision (b) of section 1731.7 of the Welfare and Institutions Code, commencing January 1, 2019, the Department shall consider the Good Conduct Credit, Milestone Completion Credit, and Rehabilitative Achievement Credit that may be earned during the inmate's incarceration. Commencing May 1, 2021, the Department shall consider the Minimum Security Credit that may be earned during the inmate's incarceration.

Subsection 3043(e) is unchanged.

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 3041, 3051, 3058.6 and 3058.9, Penal Code.

Section 3043.1. Pre-Sentence Credit. *Remains unchanged.*

Section 3043.2 Good Conduct Credit. *Amended as follows:*

(a) The award of Good Conduct Credit requires that an inmate comply with Ddepartmental regulations and local rules of the prison and perform the duties assigned on a regular and satisfactory basis.

(b) Notwithstanding any other authority to award or limit credit, effective May 1, 2017, the award of Good Conduct Credit shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole pursuant to the following schedule:

(1) No credit shall be awarded to an inmate sentenced to death or a term of life without the possibility of parole;

(2) ~~The following Good Conduct Credit rate One day of credit for every four days of incarceration (20%) shall be awarded to an inmate serving a determinate or indeterminate term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code, unless the inmate qualifies under paragraph (4)(B) of this section or is statutorily eligible for greater credit pursuant to this article or the provisions of Article 2.5 (commencing with section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code;~~

(A) One day of credit for every four days of incarceration (20%), beginning May 1, 2017 through April 30, 2021; and then

(B) One day of credit for every two days of incarceration (33.3%), beginning May 1, 2021.

(3) ~~The following Good Conduct Credit rate One day of credit for every two days of incarceration (33.3%) shall be awarded to an inmate sentenced under the Three Strikes Law, under subdivision (c) of section 1170.12 of the Penal Code, or under subdivision (c) or (e) of section 667 of the Penal Code, who is not serving a term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code; unless the inmate is serving a determinate sentence and qualifies under paragraph (5)(B) of this section;~~

(A) One day of credit for every two days of incarceration (33.3%), beginning May 1, 2017 through April 30, 2021; and then

(B) One day of credit for every day of incarceration (50%), beginning May 1, 2021.

Subsection 3043.2(b)(4)(A) is incorporated into subsection 3043.2(b)(4) and is amended.

(4) One day of credit for every day of incarceration (50%) shall be awarded to: ~~(A) An inmate not otherwise identified in paragraphs (1)-(3) above;~~

~~(B) An inmate serving a determinate term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code who has successfully completed the requisite physical~~

~~fitness training and firefighting training to be assigned as a firefighter to a Department of Forestry and Fire Protection fire camp or as a firefighter at a Department of Corrections and Rehabilitation firehouse; or~~

~~(C) An inmate serving a determinate term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code who is housed at a Department of Forestry and Fire Protection fire camp in a role other than firefighter.~~

~~(5) Two days of credit for every day of incarceration (66.6%) shall be awarded to:~~

~~(A) An inmate eligible to earn day for day credit (50%) pursuant to paragraph (4)(A) above who is assigned to Minimum A Custody or Minimum B Custody pursuant to section 3377.1;~~

~~(B) An inmate serving a determinate sentence who is not serving a term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code who has successfully completed the requisite physical fitness training and firefighting training to be assigned as a firefighter to a Department of Forestry and Fire Protection fire camp or as a firefighter at a Department of Corrections and Rehabilitation firehouse; or~~

~~(C) An inmate serving a determinate sentence who is not serving a term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code who is housed at a Department of Forestry and Fire Protection fire camp in a role other than firefighter.~~

~~(c) For purposes of placement in an alternative custody setting the department shall consider the Good Conduct Credit that may be earned during the inmate's incarceration. An inmate who is placed in an alternative custody setting, including a pre-parole or re-entry program, shall be awarded the same Good Conduct Credit that the inmate earned prior to that placement.~~

~~(cd) Credit Forfeiture and Restoration. Good Conduct Credit shall be forfeited in whole-day increments upon placement in a zero-credit work group pursuant to subsection 3044(b)(4) or 3044(b)(6) or a finding of guilt of a serious rule violation in accordance with section 3323. Forfeited credit under this section shall be restored if the disciplinary action is reversed pursuant to an administrative appeal or court of law. Forfeited credit may also be restored in accordance with Article 5.5 of Subchapter 4 of Chapter 1 of Division 3 of Title 15 of the California Code of Regulations.~~

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 667, 667.5, 1170.2, 2930 and 3041, Penal Code.

Section 3043.3. Milestone Completion Credit. Amended as follows:

Subsections 3043.3(a) and 3043.3(b) are unchanged.

Subsection 3043.3(c) is amended.

(c) Notwithstanding any other authority to award or limit credit, effective August 1, 2017, all inmates eligible for Good Conduct Credit pursuant to section 3043.2 shall be eligible for Milestone Completion Credit pursuant to this section. The award of Milestone Completion Credit shall advance an inmate's release date if sentenced to a determinate

term subject to subdivision (c) of section 3043 or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole. Milestone Completion Credit shall be awarded in increments of not less than one week, but no more than twelve weeks in a twelve-month period. Milestone Completion Credit earned in excess of this limit shall be awarded to the inmate on ~~his or her~~ their next credit anniversary, defined as one year after the inmate completes ~~his or her~~ their first Milestone Completion Credit program, and each year thereafter. Upon release to parole, ~~release~~ discharge including discharge to community supervision and, or discharge from parole based on a court order, any excess credit under this section shall be deemed void. If instead an inmate ~~completes~~ finishes serving one term and immediately begins serving a consecutive term, any excess credit awarded under this section shall be applied to that consecutive term. One week is equivalent to seven calendar days.

Subsections 3043.3(d) through 3043.3(g) are unchanged.

Subsection 3043.3(h) is amended.

(h) Credit Forfeiture and Restoration. Milestone Completion Credit shall be forfeited in whole-day increments upon a finding of guilt of a serious rule violation in accordance with section 3323, only after all Good Conduct Credit is exhausted. Forfeited credit under this section shall be restored if the disciplinary action is reversed pursuant to an administrative appeal or court of law. Forfeited credit may also be restored in accordance with Article 5.5 of Subchapter 4 of Chapter 1 of Division 3 of Title 15 of the California Code of Regulations.

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.

Section 3043.4 Rehabilitative Achievement Credit. Amended as follows:

Subsection 3043.4(a) is unchanged.

Subsection 3043.4(b) is amended

(b) Notwithstanding any other authority to award or limit credit, effective August 1, 2017, all inmates eligible for Good Conduct Credit pursuant to section 3043.2 shall be eligible for Rehabilitative Achievement Credit pursuant to this section. The award of Rehabilitative Achievement Credit shall advance an inmate's release date if sentenced to a determinate term subject to subdivision (c) of section 3043 or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole.

Subsections 3043.4(c) through 3043.4(e)(1) are unchanged.

Subsection 3043.4(e)(2) is amended.

(2) Commencing May 1, 2019, Rehabilitative Achievement Credit earned in excess of 40 calendar days in a twelve-month period, as identified in subsections (c)(2) and (d)(2), shall be awarded to the inmate on ~~his or her~~ their next credit anniversary, defined as one year after the inmate earns ~~his or her~~ their first Rehabilitative Achievement Credit, and each year thereafter. Upon release to parole, ~~release discharge including discharge to community supervision and, or discharge from parole based on a court order,~~ any excess credit under this section shall be deemed void. If instead an inmate ~~completes~~ finishes serving one term and immediately begins serving a consecutive term, any excess credit awarded under this section shall be applied to that consecutive term.

Subsections 3043.4(f) through 3043.4(h) are unchanged.

Subsection 3043.4(i) is amended.

(i) Credit Forfeiture and Restoration. Rehabilitative Achievement Credit shall be forfeited in whole-day increments upon a finding of guilt of a serious rule violation in accordance with section 3323, only after all Good Conduct Credit is exhausted. Forfeited credit under this section shall be restored if the disciplinary action is reversed pursuant to an administrative appeal or court of law. Forfeited credit may also be restored in accordance with Article 5.5 of Subchapter 4 of Chapter 1 of Division 3 of Title 15 of the California Code of Regulations.

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 Section 3041, Penal Code.

Section 3043.5. Educational Merit Credit. Amended as follows:

Subsection 3043.5(a) is unchanged.

Subsection 3043.5(b) is amended.

(b) Notwithstanding any other authority to award or limit credit, effective August 1, 2017, all inmates eligible for Good Conduct Credit pursuant to section 3043.2 shall be eligible for Educational Merit Credit pursuant to this section. The award of Educational Merit Credit shall advance an inmate's release date if sentenced to a determinate term subject to subdivision (c) of section 3043 or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole. Educational Merit Credit shall be awarded in the increments set forth in the schedule below upon demonstrated completion of the corresponding diploma, certificate, or degree:

Note: the table under subsection 3043.5(b) is unchanged and is omitted for clarity and brevity.

Subsections 3043.5(c) through 3043.5(d) are unchanged.

Subsection 3043.5(e) and 3043.5 (f) are amended.

(e) Upon release to parole, ~~release~~ discharge including discharge to community supervision ~~and, or discharge from parole based on a court order~~, any excess credit under this section shall be deemed void. If instead an inmate finishes serving ~~completes~~ one term and immediately begins serving a consecutive term, any excess credit shall be applied to that consecutive term.

(f) Credit Forfeiture and Restoration. Educational Merit Credit shall ~~not~~ be forfeited ~~due to disciplinary action in whole-day increments upon a finding of guilt of a serious rule violation in accordance with section 3323, only after all Good Conduct Credit is exhausted. Forfeited credit under this section shall be restored if the disciplinary action is reversed pursuant to an administrative appeal or court of law. Forfeited credit may also be restored in accordance with Article 5.5 of Subchapter 4 of Chapter 1 of Division 3 of Title 15 of the California Code of Regulations.~~

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.

Section 3043.6. Extraordinary Conduct Credit. Amended as follows:

Subsection 3043.6(a) is unchanged.

Subsection 3043.6(b) is amended.

(b) The award of such credit shall advance the inmate's release date if sentenced to a determinate term subject to subdivision (c) of section 3043 or advance the inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole.

Subsections 3043.6(c) and 3043.6(d) are amended.

(c) Upon release to parole, ~~release~~ or discharge including discharge to community supervision ~~and, or discharge from parole based on a court order~~, any excess credit under this section shall be deemed void. If instead an inmate finishes serving ~~completes~~ one term and immediately begins serving a consecutive term, any excess credit shall be applied to that consecutive term.

(d) Credit Forfeiture and Restoration. Extraordinary Conduct Credit shall ~~not~~ be forfeited ~~due to disciplinary action in whole-day increments upon a finding of guilt of a serious rule violation in accordance with section 3323, only after all Good Conduct Credit is exhausted. Forfeited credit under this section shall be restored if the disciplinary action is~~

reversed pursuant to an administrative appeal or court of law. Forfeited credit may also be restored in accordance with Article 5.5 of Subchapter 4 of Chapter 1 of Division 3 of Title 15 of the California Code of Regulations.

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 2935 and 3041, Penal Code.

Existing Section 3043.7 is renumbered to 3044.1

New Section 3043.7. Minimum Security Credit. Added as follows:

(a) Notwithstanding any other authority to award or limit credit, effective May 1, 2021, all inmates eligible for Good Conduct Credit pursuant to section 3043.2 and assigned to Work Group M ("Minimum Custody or otherwise eligible for Minimum Custody") or Work Group F ("Minimum B Custody and Firefighting or Non-Firefighting Camp Placement") as described in Article 3.4, section 3044, shall be eligible for Minimum Security Credit pursuant to this section. No credit shall be awarded to an inmate sentenced to death or a term of life without the possibility of parole.

(b) The award of such credit shall advance the release date of eligible inmates, subject to section 3043(c).

(c) Minimum Security Credit shall be awarded in increments of 30 days upon completion of 30 consecutive calendar days in Work Group M or F.

(d) Within ten business days of completing 30 consecutive calendar days in Work Group M or F, staff designated by the Warden at each institution shall ensure the credit is awarded to the inmate in the Department's information technology system.

(e) Upon release to parole, discharge including discharge to community supervision, and discharge based on a court order, any excess credit under this section shall be deemed void. If instead an inmate finishes serving one term and immediately begins serving a consecutive term, any excess credit shall be applied to that consecutive term.

(f) Credit Forfeiture and Restoration. Minimum Security Credit shall be forfeited in whole-day increments upon a finding of guilt of a serious rule violation in accordance with section 3323, only after all Good Conduct Credit is exhausted. Forfeited credit under this section shall be restored if the disciplinary action is reversed pursuant to an administrative appeal or court of law. Forfeited credit may also be restored in accordance with Article 5.5 of Subchapter 4 of Chapter 1 of Division 3 of Title 15 of the California Code of Regulations.

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).

Article 3.4. Inmate Work and Privileges. New Article Title adopted.

Section 3044. Inmate Work Groups and Privilege Groups. Amended as follows:

Subsections 3044(a) through 3044(b)(3) are unchanged

Subsection 3044(b)(4) is amended.

(4) Work Group C (Disciplinary Unassigned; ~~Zero Credit~~).

(A) Any inmate who twice refuses to accept assigned housing, who refuses to accept or perform in an assignment, or who is deemed a program failure as defined in section 3000 by a classification committee shall be assigned to Work Group C for a period not to exceed the number of disciplinary credits forfeited due to the serious disciplinary infraction(s) or 180 days, whichever is less, except when the inmate qualifies for assignment to Work Group D-2 in accordance with subsection 3044(b)(6)(C).

(B) An inmate assigned to this work group shall ~~not be awarded Good Conduct Credit, as described in section 3043.2, for a period not to exceed the number of disciplinary credits forfeited or 180 days, whichever is less, and shall revert to his or her~~ their previous work group upon completion of the assignment to Work Group C ~~credit forfeiture~~, unless the inmate no longer qualifies for assignment to Work Group F or Work Group M due to the totality of their case factors. In such exceptional circumstances, the inmate shall be assigned to another work group in accordance with this section. The inmate shall also be referred to a classification committee for placement on an appropriate waiting list.

Subsection 3044(b)(5) is unchanged.

Subsection 3044(b)(6) is amended.

(6) Work Group D-2 (Lockup Status; ~~Zero Credit~~).

(A) Unless the exceptional criteria specified in section 3044(b)(6)(B) are met, an inmate serving an imposed SHU term pursuant to section 3341.9(e) in segregated housing shall be assigned to Work Group D-2, effective the date of the Rules Violation Report, for a period not to exceed the number of whole-day credits forfeited for the rule violation or 180 days, whichever is less, up to the Minimum Eligible Release Date or the date the Institution Classification Committee suspends the remainder of the SHU term. Following completion of the period of assignment to Work Group D-2 ~~of credit forfeiture~~, the inmate shall be re-evaluated by a classification committee for assignment to another work group.

(B) An inmate serving an imposed SHU term pursuant to section 3341.9(e) in segregated housing due to a guilty finding for a Division A-1 offense, as designated in subsection 3323(b), and which involved serious bodily injury on a non-prisoner, shall be assigned to Work Group D-2, effective the date of the Rules Violation Report, for a period not to exceed the number of whole-day credits forfeited for the rule violation or 360 days, whichever is less, up to the Minimum Eligible Release Date or the date the Institution Classification Committee suspends the remainder of the SHU term. Following completion of the period of assignment to Work Group D-2 ~~credit forfeiture~~, the inmate shall be re-evaluated by a classification committee for assignment to another work group.

(C) An inmate in ASU, SHU, PSU, or other segregated housing, who is deemed a program failure as defined in section 3000, may be assigned Work Group D-2 for non-SHU assessable Rules Violation Report(s) by a classification committee for a period not to exceed the number of credits forfeited for the rules violation(s) or 180 days, whichever is

less. An inmate assigned to Work Group C at the time of placement in ASU, SHU, PSU, or other segregated housing, or who refuses to accept or perform work assignments, shall be assigned Work Group D-2. An inmate released from ASU, SHU, PSU, or other segregated housing, may be assigned Work Group C by a classification committee, not to exceed the remaining number of disciplinary credits forfeited due to the serious disciplinary infraction(s) or 180 days, whichever is less.

~~(D) If the administrative finding of misconduct is overturned or if the inmate is criminally prosecuted for the misconduct and is found not guilty, Good Conduct Credit shall be restored.~~

Subsection 3044(b)(7) is amended.

(7) Work Group F (Minimum B Custody and Firefighting or Non-Firefighting Camp Placement). Assignment to Work Group F awards ~~Good Conduct Credit~~ Minimum Security Credits pursuant to sections ~~3043.2(b)(4)(B), 3043.2(b)(4)(C), 3043.2(b)(5)(A), 3043.2(b)(5)(B), and 3043.2(b)(5)(C)~~ 3043.7.

(A) An inmate assigned to Minimum B Custody who has successfully completed the requisite physical fitness training and firefighting training to be assigned as a firefighter to a Department of Forestry and Fire Protection fire camp or as a firefighter at a Department of Corrections and Rehabilitation firehouse shall be assigned to Work Group F.

(B) An inmate assigned to Minimum B Custody who is placed in a Department of Forestry and Fire Protection fire camp for assignment to a non-firefighter position shall be assigned to Work Group F.

(C) An inmate placed in Work Group F who is 1) found guilty of a serious rule violation as defined in sections 3323(b), 3323(c), or 3323(d), 2) found guilty of a rule violation involving use or possession of any unauthorized communication device or of any narcotic, drug, drug paraphernalia, controlled substance, alcohol, or other intoxicant, as defined in sections 3323(e), 3323(f), 3323(g), or 3323(h), 3) placed in ~~a zero-credit w~~Work Group C pursuant to sections 3044(b)(4) or Work Group D2 pursuant to section 3044(b)(6), or 4) otherwise removed from this assignment due to safety or security considerations, shall be assigned to another work group consistent with the remaining provisions of this section and shall be ineligible to receive ~~Good Conduct Credit pursuant to sections 3043.2(b)(4)(B), 3043.2(b)(4)(C), 3043.2(b)(5)(A), 3043.2(b)(5)(B), or 3043.2(b)(5)(C)~~ Minimum Security Credits pursuant to section 3043.7. An inmate who has been removed from this assignment under the circumstances described above may be re-assigned to Work Group F, after an appropriate period of time, by a classification committee.

(D) An inmate assigned to Work Group F who 1) is temporarily placed in an ASU or other segregated housing placement unit, 2) designated by the Institution Classification Committee as non-disciplinary segregation pursuant to section 3335(a), and 3) who otherwise remains eligible for continued assignment to Work Group F pursuant to sections 3044(b)(7)(A) or 3044(b)(7)(B), shall continue to be assigned Work Group F for the duration of ~~his or her~~ their non-disciplinary segregation.

(E) An inmate initially assigned to Work Group D-1 by the Institution Classification Committee due to placement in ASU, SHU, PSU, or other segregated housing unit pursuant to section 3044(b)(5) and who 1) was not designated for non-disciplinary

segregation by the Institution Classification Committee, 2) otherwise eligible for the assignment to Work Group F pursuant to sections 3044(b)(7)(A) or 3044(b)(7)(B) during the period of segregated housing, and 3) was not found guilty of the serious rule violation which was the reason for ASU or other segregated housing placement, shall be made whole by retroactive assignment to Work Group F beginning with the effective date that Work Group D-1 was originally imposed and for the same number of days that he or she was ~~they were~~ assigned to Work Group D-1.

~~(F) An inmate assigned to Work Group F pursuant to section 3044(b)(7) for a cumulative period of twelve months or more on his or her current term of incarceration shall continue to earn Good Conduct Credit pursuant to sections 3043.2(b)(4)(B), 3043.2(b)(4)(C), 3043.2(b)(5)(A), 3043.2(b)(5)(B), or 3043.2(b)(5)(C) upon transfer to an alternative custody setting as defined in section 3043(d).~~

Subsection 3044(b)(7)(G) is renumbered to 3044(b)(7)(F) due to the repeal of former subsection 3044(b)(7)(F).

~~(GF)~~ An inmate may be assigned Minimum B Custody and Work Group F, if the inmate meets the criteria noted above and all of the following are true:

Subsections 3044(b)(7)(F)1. through 3044(b)(7)(F)4. (formerly 3044(b)(7)(G)1. through 3044(b)(7)(G)4.) are unchanged.

Subsection 3044(b)(8) is amended.

(8) Work Group M (Minimum Custody or otherwise eligible for Minimum Custody). Assignment to Work Group M awards ~~Good Conduct Credit pursuant to section 3043.2(b)(5)(A)~~ Minimum Security Credits pursuant to section 3043.7.

(A) Effective January 1, 2018, an inmate assigned to Minimum A Custody or Minimum B Custody who does not qualify for assignment to Work Group F pursuant to section 3044(b)(7) shall be assigned to Work Group M. Work Group M may be assigned retroactively to May 1, 2017. However, ~~Good Conduct Credit~~ Minimum Security Credit awarded pursuant to section ~~3043.2(b)(5)(A)~~3043.7 shall be limited in accordance with section 3043(c).

(B) Effective January 1, 2018, an inmate otherwise eligible for assignment to Minimum A Custody or Minimum B Custody whose eligibility for such assignment is limited solely due to their 1) placement in the Mental Health Services Delivery System at the Enhanced Outpatient level of care or higher level and/ or 2) medical or mental health status which requires additional clinical and custodial supervision as determined by the ~~Institution~~ Classification ~~Committee~~, shall be assigned to Work Group M. Work Group M may be assigned retroactively to May 1, 2017. However, ~~Good Conduct Credit~~ Minimum Security Credit awarded consistent with section ~~3043.2(b)(5)(A)~~3043.7 shall be limited in accordance with section 3043(c).

(C) Effective January 1, 2018, an inmate may be assigned Minimum A or Minimum B Custody and/ or Work Group M, which may be applied retroactively to May 1, 2017, if the inmate meets the criteria noted above and all of the following, are true:

1. The inmate is wanted for a felony by an out-of-state law enforcement agency (other than a Federal agency).
2. The agency does not have a detainer placed with the Department for the felony.
3. The inmate's central file documents that the agency communicated to the Department that they will not extradite the inmate for the purpose of prosecution of the felony.
4. The totality of the inmate's remaining case factors does not preclude the assignment of Minimum A and Minimum B Custody or the inmate is otherwise eligible for assignment to Minimum A or Minimum B Custody as described in section 3044(b)(8)(B).

(D) An inmate assigned to Work Group M who is 1) found guilty of a serious rule violation as defined in sections 3323(b), 3323(c), or 3323(d), 2) found guilty of a rule violation involving use or possession of any unauthorized communication device or of any narcotic, drug, drug paraphernalia, controlled substance, alcohol, or other intoxicant, as defined in sections 3323(e), 3323(f), 3323(g), or 3323(h), 3) placed in a zero-credit ~~Work Group C~~ pursuant to sections 3044(b)(4) or Work Group D2 pursuant to section 3044(b)(6), or 4) otherwise removed from this assignment due to safety or security considerations, shall be re-assigned to another work group consistent with the remaining provisions of this section and shall be ineligible to receive ~~Good Conduct Credit~~ Minimum Security Credits pursuant to sections ~~3043.2(b)(4)(B), 3043.2(b)(4)(C), 3043.2(b)(5)(A), 3043.2(b)(5)(B), or 3043.2(b)(5)(C)~~ 3043.7. An inmate who has been removed from this assignment under the circumstances described above may be assigned to Work Group M again, after an appropriate period of time, by a classification committee.

(E) An inmate eligible for initial assignment to Work Group M or who is assigned to Work Group M who 1) is temporarily placed in an ASU or other segregated housing placement unit, 2) designated by the Institution Classification Committee as non-disciplinary segregation pursuant to section 3335(a), and 3) who otherwise remains eligible for initial or continued assignment to Work Group M pursuant to sections 3044(b)(8)(A) or 3044(b)(8)(B), shall be assigned Work Group M for the duration of ~~his or her~~ their non-disciplinary segregation.

(F) An inmate initially assigned to Work Group D-1 by the Institution Classification Committee due to placement in ASU, SHU, PSU, or other segregated housing unit pursuant to section 3044(b)(5) and who 1) was not designated for non-disciplinary segregation by the Institution Classification Committee, 2) was otherwise eligible for the assignment to Work Group M pursuant to sections 3044(b)(8)(A) or 3044(b)(8)(B) during the period of segregated housing, and 3) was not found guilty of the serious rule violation which was the reason for ASU or other segregated housing placement, shall be made whole by retroactive assignment to Work Group M beginning with the effective date that Work Group D-1 was originally imposed and for the same number of days ~~he or she was~~ they were assigned to Work Group D-1.

(G) Except when otherwise precluded by this section, an inmate 1) who undergoes reception center processing with a permanent disability that impacts placement or who is receiving dialysis treatment, 2) who, as determined by a classification committee, experienced an extended stay in the reception center beyond 60 days solely due to the disability, and 3) qualifies for the assignment of Work Group M pursuant to this section, shall be assigned Work Group M effective the 61st day of the stay at the reception center. Work Group M may be assigned retroactively to May 1, 2017. However, ~~Good Conduct~~

~~Credit Minimum Security Credits~~ awarded consistent with section ~~3043.2(b)(5)(A)~~ 3043.7 shall be limited in accordance with section 3043(c).

Subsections 3044(b)(9) 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).

Section ~~3043.7~~ 3044.1, Special Assignments. Section moved from Section 3043.7; title remains unchanged. Amended as follows:

Subsections 3044.1(a) through 3044.1(c) are unchanged.

Subsection 3044.1(d) is amended.

(d) Medical or mental health care status determination:

(1) When an inmate has a disability that limits ~~his or her~~ their ability to participate in a work, academic, Career Technical Education program or other such program, medical or mental health staff shall document the nature, severity, and expected duration of the inmate's limitations on a CDC Form 128-C (Rev. 1/96), ~~Chrono~~-Medical, Psychiatric, Dental (Chrono). The medical or mental health staff shall not make program assignment recommendations or decisions on the form. The CDC Form 128-C shall then be forwarded to the inmate's assigned correctional counselor who shall refer the inmate to a classification committee for review. The classification committee shall have sole responsibility for making program assignment and work group status decisions. Based on the information on the CDC Form 128-C and working in conjunction with staff from the affected work area, academic program, Career Technical Education program, and the Inmate Assignment Lieutenant, the classification committee shall evaluate the inmate's ability to participate in work, academic, Career Technical Education program, or other programs and make a determination of the inmate's program assignment and work group status.

(2) Only when the inmate's documented limitations are such that the inmate, even with reasonable accommodation, is unable to perform the essential functions of any work, academic, Career Technical Education or other such program, will the inmate be placed in one of the two following categories by a classification committee:

(A) Temporary medical or psychiatric unassignment. Except as provided in section ~~3043.7~~ 3044.1(e)(2)(A), when a disabled inmate is unable to participate in any work, academic, Career Technical Education program or other program, even with reasonable accommodation, because of a medically determinable physical or mental impairment that is expected to last for less than six months, the classification committee shall place the inmate on temporary medical or psychiatric unassignment. An inmate on temporary medical or psychiatric unassignment status shall be scheduled for classification review any time there is a change in ~~his or her~~ their physical or mental impairment, or no less than every six months for reevaluation. ~~The credit-earning work~~

group status of an inmate on temporary medical or psychiatric unassignment for less than six months shall be in accordance with section 3044(b)(2), Work Group A-2, unless the inmate is assigned Work Group M in accordance with section 3044(b)(8). If the inmate's condition lasts six months and the classification committee still cannot assign the inmate due to ~~his or her~~ their impairment, the ~~credit-earning~~ work group status shall be changed to be in accordance with subsection 3044(b)(1), Work Group A-1 and appropriate privilege group retroactive to the first day of the temporary medical or psychiatric unassignment, unless the inmate is assigned Work Group M in accordance with subsection 3044(b)(8).

(B) Medically disabled. When an inmate is unable to participate in any assigned work, academic, Career Technical Education program, or other such program activity, even with reasonable accommodation, because of a medically determinable physical or mental impairment that is expected to result in death or last six months or more, the classification committee shall place the inmate on medically disabled status. The inmate ~~credit-earning~~ work group status shall be in accordance with section 3044(b)(1), Work Group A-1 and Privilege Group A, unless the inmate is assigned Work Group M in accordance with subsection 3044(b)(8).

Subsections 3044.1(e) through 3044.1(h) are unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2933, 2933.05, 2933.3, 2933.6, 5054 and 5068, Penal Code.

Section ~~3043.8~~ 3044.2. Impact of Transfer on Work Groups ~~on Credit Earning~~. Section renumbered from Section 3043.8; Title amended. Section amended as follows:

Subsections 3044.2(a) and 3044.2(a)(1) are unchanged.

Subsection 3044.2(a)(2) is amended.

(2) With the exception of inmates assigned to Work Group F, an inmate transferred for non-adverse reasons shall retain their work and privilege group status. Inmates assigned to Work Group F shall revert to Work Group ~~A-1~~ M effective the date removed from camp or institution fire fighter assignment or as appropriate per CCR 3044.

Subsections 3044.2(a)(3) through 3044.2(b)(2) are unchanged.

Subsection 3044.2(c) is amended.

(c) Adverse transfers.

(1) Adverse transfers are defined as a transfer resulting from any in-custody documented misbehavior or disciplinary that may or may not have resulted in an inmate's removal from current program.

(2) If an inmate is removed from a program for adverse reasons and is subsequently exonerated of the charges, the ~~credit-earning status~~ work group shall be designated as though the inmate had not been removed from the assignment.

(3) Effective on the date of transfer an inmate in Work Group A-1 or F who receives an adverse transfer shall be reclassified to Work Group A-2 by the sending institution. The inmate shall remain in Work Group A-2 until reclassified by the receiving institution.

(4) An inmate in Work Group A-2, C or D at the time of transfer shall be retained in that group status until reclassified at the receiving institution.

Subsection 3044.2(d) is unchanged

Subsection 3044.2(e)(2) is deleted.

(e) Special housing unit transfers.

(1) Inmates found guilty of a credit loss offense which could result in a security housing unit (SHU) determinate term shall be evaluated for SHU assignment by a classification committee.

~~(2) Inmates placed in a SHU, PSU, or in ASU for reasons specified in section 3043.4 shall be placed in workgroup D-2. All other inmates in SHU, PSU, or ASU shall be placed in Work Group D-1. The effective date of both workgroups shall be the first day of placement into SHU, PSU, or ASU.~~

Subsection 3044.2(f) is unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1203.8, 1364, 2684, 2690, 2933, 2933.05, 2933.3, 2933.6, 5054 and 5068, Penal Code.

Article 3.5. Inmate Work Timekeeping. *Article added.*

Section 3045. Timekeeping and Reporting. Shown for reference; Title and text remain unchanged.

Note: Authority cited: Sections 2700, 2701 and 5058, Penal Code. Reference: Sections 2932, 2933, 2933.05, 2933.6, 2935, 5005, 5054 and 5068, Penal Code; and *In re Monigold*, 205 Cal.App.3d 1224.

Section 3045.1. Timekeeping for Inmates in Administrative Segregation. Amended as follows:

(a) A classification committee shall evaluate the reasons for an inmate's administrative segregation (ASU) placement to ensure appropriate credits are awarded the inmate. If the placement was for: ~~(1) A~~ disciplinary infraction for which the finding was not guilty or pending an investigation where the inmate was released, the inmate shall retain their work group status at the time of their placement in ASU unless otherwise impacted by a classification or disciplinary action.

~~(2) A disciplinary infraction for misconduct described in section 3043.4 for which the finding was guilty, the inmate shall remain in Work Group D-2 for the period of the credit loss assessment effective the date of their placement in ASU, whether or not a SHU term was assessed.~~

Note: Authority cited: Sections 2700, 2701 and 5058, Penal Code. Reference: Sections 2932, 2933, 2933.05, 2933.6, 2935, 5005, 5054 and 5068, Penal Code; and *In re Monigold*, 205 Cal. App. 3d 1224.

Article 3.6. Inmate Work Benefits. *Article added.*

Section 3046. Workers' Compensation for Inmates. Shown for reference; title and text remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2601(i), 5054 and 5069, Penal Code; and Sections 3370 and 3351, Labor Code.

Section ~~3046.1.3047.~~ Unemployment Compensation and Disability Insurance. [Repealed] Section number amended; title and text remain unchanged.

EXHIBIT C

(Letter to CDCR Secretary
Kathleen Allison)



Sacramento County District Attorney's Office

ANNE MARIE SCHUBERT
District Attorney

Rod Norgaard
Chief Deputy

Michael M. Blazina
Assistant District Attorney

May 17, 2021

Kathleen Allison
Office of the Secretary
Department of Corrections and Rehabilitation
PO Box 942883
Sacramento, CA 94283-0001

Dear Secretary Allison:

Pursuant to Government Code sections 11340.6 and 11340.7, I, Anne Marie Schubert, District Attorney of Sacramento County, along with the forty (40) undersigned Elected District Attorneys across California, hereby petition to repeal the temporary emergency regulations contained in the Minimum Security Credit and Inmate Credit Earning rulemaking action filed with the Office of Administrative Law (OLA) on April 8, 2021. The reason for this request is that the proposed emergency regulations and their supporting documents contained in regulatory action number 2021-0408-04EON do not comply with the requirements under Penal Code section 5058.3.

Penal Code section 5058.3, subdivision (a)(2) states in relevant part:

Notwithstanding subdivision (b) of Section 11346.1 of the Government Code, no showing of emergency is necessary in order to adopt, amend, or repeal an emergency regulation if the director instead certifies, in a written statement filed with the Office of Administrative Law, that operational needs of the department require adoption, amendment, or repeal of the regulation on an *emergency basis*. The written statement shall include a description of the underlying facts and an explanation of the operational need to use the emergency rulemaking procedure. This paragraph provides an alternative to filing a statement of emergency pursuant to subdivision (b) of Section 11346.1 of the Government Code. *It does not preclude filing a statement of emergency* [emphasis added]. This paragraph only applies to the initial adoption and one re-adoption of an emergency regulation.

Subdivision (b) provides that:

It is the intent of the Legislature, in authorizing the deviations in this section from the requirements and procedures of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, to authorize the department to expedite the exercise of its power to implement regulations as its unique operational circumstances require.

The purpose of the emergency procedure outlined in Penal Code section 5058.3 is to immediately put into place regulations on an *emergency basis*. However, the proposed regulations contained in the rulemaking file are credit earning provisions that have the effect of significantly shortening the length of sentence for 76,000 violent and serious offenders rather than a regulation that goes to an operational need or circumstance of the department.

Further, there is no “description of the underlying facts and an explanation of the operational need to use the emergency rulemaking procedure” in the proposed regulations as required by Penal Code section 5058.3(a)(2). In your Certification of Operational Needs, you cited the need to “Comply with the direction outlined in the Governor’s Budget Summary, *May Revision 2020-2021*.”¹ Nowhere in the supporting documents is there an explanation of how *last year’s* budget has become an operational need for adoption of the regulations on an emergency basis.² As such, the public was denied an adequate opportunity for public input and comment on these far reaching regulations.

Because there is no operational need for the proposed emergency regulations contained in regulatory action number 2021-0408-04EON, the department must comply with the regular (Gov. Code, §11346) or emergency (Gov. Code, §11346.1, subd. (b)) rulemaking process contained in the California Administrative Procedure Act (APA) (Gov. Code, §11340 et seq.). Furthermore, CDCR has the authority to repeal these emergency regulations pursuant to Government Code sections 11346, 11340.6, and 11340.7.

¹ The Governor’s May 2020 Budget Summary was issued on *May 14, 2020*, wherein the Governor recommended increased Good Conduct credits stating, “CDCR will pursue changes to good conduct credits that will be applied prospectively. While the changes are still being developed, they will be informed by preliminary recidivism data associated with existing good conduct credits.” See <http://www.ebudget.ca.gov/2020-21/pdf/Revised/BudgetSummary/FullBudgetSummary.pdf>

² Recently adopted department regulations on CDCR’s website show a notice of posting or public hearing including those adopted on an emergency basis; <https://www.cdcr.ca.gov/regulations/cdcr-regulations/new-rules-page/> In fact, in a previous Notice of Change of Regulations related to resentencing of inmates pursuant to Penal Code section 1170(d)(1), CDCR posted the notice and authorized public comment for 45 days. See https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2021/03/NCR_21-04_Master_File_for_posting_ADA.pdf?label=Notice%20of%20Change%20to%20Regulations%2021-04%20noticed%20to%20the%20public%20on%20March%2019.%202021&from=https://www.cdcr.ca.gov/regulations/cdcr-regulations/new-rules-page/

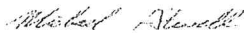
The regulations at issue here have no such notice of posting or public hearing on CDCR’s website.

Based upon the foregoing, we petition you to repeal these emergency regulations contained in the Minimum Security Credit and Inmate Credit Earning rulemaking action filed with the Office of Administrative Law (OLA) on April 8, 2021.

Sincerely,



Anne Marie Schubert
District Attorney
Sacramento County



Michael Atwell
District Attorney
Alpine County



Todd Riebe
District Attorney
Amador County



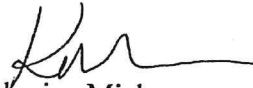
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Barbara Yook
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Matt Beauchamp
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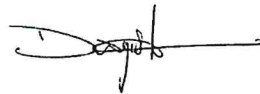
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Sandra Groven
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Sierra County

Erik Nasarenko
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Ventura County

Kirk Andrus
District Attorney
Siskiyou County

Jeff Reisig
District Attorney
Yolo County

*Clinton Curry**
Clint Curry
District Attorney
Yuba County

Cc: Josh Jugum, CDCR Regulation and Policy Management Branch