

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.