

**State of California
Office of Administrative Law**

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

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections: 3375.1(a)(4)(A),
3375.1(a)(4)(B),
3375.1(a)(4)(C),
3375.1(a)(4)(D)

Amend sections: 3377

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: 2015-0826-03

**OAL Matter Type: Emergency Operational
Necessity (EON)**

The California Department of Corrections and Rehabilitation proposed to amend sections 3375.1 and 3377 of title 15 of the California Code of Regulations regarding inmate placement and Level IV facilities pursuant to a certification under Penal Code section 5058.3 that the operational needs of the Department require these amendments on an emergency basis.

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 9/15/2015 and will expire on 2/23/2016. The Certificate of Compliance for this action is due no later than 2/22/2016.

Date: September 15, 2015

/s/ Craig Tarpenning

Craig S. Tarpenning
Assistant Chief Counsel

For: DEBRA M. CORNEZ
Director

Original: Jeffrey Beard Ph. D.
Copy: Laura Lomonaco

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

EMERGENCY

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2015-0826-03EON
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ENDORSED - FILED
in the office of the Secretary of State
of the State of California

SEP 15 2015

1:43 PM

For use by Office of Administrative Law (OAL) only

2015 AUG 26 P 4: 17

OFFICE OF ADMINISTRATIVE LAW

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY
California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)
15-0114

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 <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) Level IV 180/270 Housing Criteria/ Level IV 180/270 Housing Definition	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)						
<table border="1"> <tr> <td>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</td> <td>ADOPT 3375.1(a)(4)(A); 3375.1(a)(4)(B); 3375.1(a)(4)(C) and 3375.1(a)(4)(D).</td> </tr> <tr> <td></td> <td>AMEND 3377</td> </tr> <tr> <td>TITLE(S) Title 15</td> <td>REPEAL</td> </tr> </table>	SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 3375.1(a)(4)(A); 3375.1(a)(4)(B); 3375.1(a)(4)(C) and 3375.1(a)(4)(D).		AMEND 3377	TITLE(S) Title 15	REPEAL
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 3375.1(a)(4)(A); 3375.1(a)(4)(B); 3375.1(a)(4)(C) and 3375.1(a)(4)(D).					
	AMEND 3377					
TITLE(S) Title 15	REPEAL					

3. TYPE OF FILING
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <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"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input checked="" type="checkbox"/> Other (Specify) <u>Emergency Op. Necessity PC 5058.3</u> <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

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

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

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

7. CONTACT PERSON Laura Lomonaco	TELEPHONE NUMBER 916-445-2217	FAX NUMBER (Optional) 916-324-6075	E-MAIL ADDRESS (Optional) Laura.Lomonaco@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 	DATE 8-24-15
TYPED NAME AND TITLE OF SIGNATORY Scott Kernan, Undersecretary, Operations	

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ENDORSED APPROVED

SEP 15 2015

Office of Administrative Law

TEXT OF PROPOSED REGULATIONS In the following, underline indicates additional text, and ~~strikethrough~~ indicates deleted text.

*California Code of Regulations, Title 15: Crime Prevention and Corrections
Division 3. Rules and Regulations of Adult Institutions, Programs and Parole*

Subchapter 4. GENERAL INSTITUTION REGULATIONS

Article 10. Classification

3375.1. Inmate Placement

Subsections 3375.1(a) through 3375.1(a)(4) are unchanged but shown as reference.

(a) Except as provided in section 3375.2, each inmate shall be assigned to a facility with a security level which corresponds to the following placement score ranges:

- (1) An inmate with a placement score of 0 through 18 shall be placed in a Level I facility.
- (2) An inmate with a placement score of 19 through 35 shall be placed in a Level II facility.
- (3) An inmate with a placement score of 36 through 59 shall be placed in a Level III facility.
- (4) An inmate with a placement score of 60 and above shall be placed in a Level IV facility.

New Subsection 3375.1(a)(4)(A) through 3375.1(a)(4)(D) are adopted to read:

(A) Level IV facilities, as described in section 3377(d), include 180-design and 270-design housing. The criteria for housing an inmate in Level IV-180 design or Level IV-270 design housing includes:

1. Inmates who have served a determinate Security Housing Unit (SHU) term within the last three incarcerated years shall be excluded from Level IV 270-design housing for three years from the Minimum Eligible Release Date. The SHU Term must be assessed and served in a SHU or in an Administrative Segregation Unit (ASU).
2. Inmates found guilty of a Division A-1, A-2, or B disciplinary offense, as set forth in section 3323, within the last three incarcerated years shall be excluded from Level IV 270-design housing for three years from the date of arrival in general population (GP).
3. Inmates found guilty of one Rules Violation Report (RVR) for Inciting a Riot within a twelve month period shall be excluded from Level IV 270-design housing for one year from the date found guilty of the RVR for this offense.
4. Inmates found guilty of two or more RVRs for Battery on an Inmate within a twelve month period or found guilty of one RVR for Battery on an Inmate with direct Security Threat Group (STG) nexus shall be excluded from Level IV 270-design housing for one year from the date the inmate was found guilty of the most recent RVR for this offense.
5. Inmates released from SHU after serving an Administrative SHU Term shall be reviewed by ICC for 180-design or 270-design housing. Inmates excluded from Level IV 270-design housing shall be excluded for two years from the date of arrival into GP.

6. Inmates found guilty of two or more RVRs for Participation in a Riot within a twelve month period shall be reviewed by a classification committee for determination of Level IV 270-design housing. Inmates excluded from Level IV 270-design housing shall be excluded for one year from the date the inmate was found guilty of the most recent RVR for this offense.

7. If during Reception Center processing, and inmate is deemed a security concern and is potentially an ongoing threat to institutional safety and security, warranting more direct and constant supervision, the inmate shall be excluded from Level IV 270-design housing for one year from the date of the Classification Staff Representative endorsement.

8. Inmates excluded from Level IV 270-design housing but requiring exceptional placement may be housed in a Level IV 270-design facility. Exceptional placements, for purposes of this paragraph, are inmates who are in medical or mental health treatment programs, such as a developmental disability, Americans with Disabilities Act mobility impairment that impacts placement, or in need of specific medical programs which may not be available in Level IV 180-design facilities.

(B) If an RVR is pending for offense(s) listed in 3375.1(a)(4)(A)1 through 4, the classification committee may temporarily exclude an inmate from Level IV 270-design housing pursuant to the requirements set forth in subsections 3375.1(a)(4)(A) 1 through 4.

(C) Decisions for placement of inmates into 180-design or 270-design housing shall be documented pursuant to section 3375(g).

(D) The Institution Classification Committee may override placement of an inmate into 180-design or 270-design housing based upon: Department and institution's/facility's program security mission; public safety; and the inmate's needs and behavior.

Subsections 3375.1(b) through 3375.1(b)(2) are unchanged.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3020, 5054 and 5068, Penal Code; *Wright v. Enomoto* (1976) 462 F Supp. 397; and; and *Stoneham v. Rushen* (1984) 156 Cal. App. 3d 302.

3377. Facility Security Levels

Subsections 3377(a) through 3377(c) are unchanged but shown as reference.

Each camp, facility, or area of a facility complex shall be designated at a security level based on its physical security and housing capability. Reception centers are not facilities of assignment and are exempt from the security level designations except for the assignment of permanent work crew inmates. The security levels are:

- (a) Level I facilities and camps consist primarily of open dormitories with a low security perimeter.
- (b) Level II facilities consist primarily of open dormitories with a secure perimeter, which may include armed coverage.
- (c) Level III facilities primarily have a secure perimeter with armed coverage and housing units with cells adjacent to exterior walls.

Subsection 3377(d) is amended to read:

(d) Level IV facilities have a secure perimeter with internal and external armed coverage and housing units described in section 3377(c), or cell block housing with cells non-adjacent to exterior walls. A Level IV 180-design facility utilizes housing units comprised of two wings; each wing is partitioned into three self-contained “pods”, each “pod” has its own dayroom and control room. Each wing is linked by a dining facility and ancillary functions. The design of the housing unit allows a 180 degree view of all cells and dayrooms from the control room. A Level IV 270-design facility utilizes housing units comprised of three connected sections and one dayroom. Portions of first and third sections extend back behind the blind side of the control room. The design of the housing unit places cells within a 270 degree circumference of a circle with the control room in the center of the circle.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 5054 and 5068, Penal Code.