

**State of California  
Office of Administrative Law**

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

**Regulatory Action:**

**Title 15, California Code of Regulations**

**Adopt sections:**

**Amend sections: 3375.1, 3377**

**Repeal sections:**

**NOTICE OF APPROVAL OF CERTIFICATE OF  
COMPLIANCE**

**Government Code Sections 11349.1 and  
11349.6(d)**

**OAL Matter Number: 2016-0713-03**

**OAL Matter Type: Certificate of Compliance  
(C)**

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This rulemaking action makes permanent emergency regulation changes which established standards and procedures for the proper housing of Level IV inmates in accordance with individual case factors.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

Date: August 11, 2016



Dale P. Mentink  
Senior Attorney

For: Debra M. Cornez  
Director

Original: Scott Kernan  
Copy: Laura Lomonaco

**NOTICE PUBLICATION/REGULATION SUBMISSION**

**CERT**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2015-0918-02</b>	REGULATORY ACTION NUMBER <b>2016-0713-03C</b>	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) <b>15-0114</b>

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

**AUG 11 2016**

*1:48 PM*

2016 JUL 13 P 3:22

OFFICE OF ADMINISTRATIVE LAW

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
<b>OAL USE ONLY</b> <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER <b>2015 40-2</b>	PUBLICATION DATE <b>10/2/2015</b>

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

1a. SUBJECT OF REGULATION(S) <b>Level IV 180/270 Housing Criteria</b>	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) <b>2015-0826-03 (EON) and 2016-0202-02</b>
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT
	AMEND <b>3375.1, 3377</b>
TITLE(S) <b>15</b>	REPEAL

*DM*  
per agency request  
**8/10/16**

3. TYPE OF FILING	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" 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 nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print
	<input type="checkbox"/> Other (Specify) _____
	<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)	
<b>3/29/16 - 4/14/16</b>	<b>5/24/16 - 6/9/16</b>

*DM*  
per agency request  
**8/10/16**

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 type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission
<input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> State Fire Marshal

7. CONTACT PERSON <b>Laura Lomonaco</b>	TELEPHONE NUMBER <b>916 445 2217</b>	FAX NUMBER (Optional) <b>916 324 6075</b>	E-MAIL ADDRESS (Optional) <b>Laura.Lomonaco@cdcr.ca.gov</b>
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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 <b>6-29-16</b>
TYPED NAME AND TITLE OF SIGNATORY <b>RALPH M. DIAZ, Undersecretary, Operations</b>	

For use by Office of Administrative Law (OAL) only
<b>ENDORSED APPROVED</b>
<b>AUG 11 2016</b>
Office of Administrative Law

## TEXT OF ADOPTED REGULATIONS

### *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 amended to read:**

(A) Level IV facilities, as described in section 3377(d), include 180-design and 270-design housing. An inmate with a Level IV placement score may be housed in a Level IV 180-design facility in accordance with the following criteria ~~The criteria for housing an inmate in a Level IV 180-design facility in accordance with the following criteria or Level IV 270-design housing includes:~~

1. ~~Inmates who have served a~~ an assessed and imposed, suspended, and/or commuted determinate Security Housing Unit (SHU) term for a Division A-1, A-2, or B offense, which involves assaultive/violent behavior, weapons, or distribution of a controlled substance, pursuant to section 3323, within the last three incarcerated years, shall be excluded from Level IV 270-design housing for three years from the Minimum Eligible Release Date (MERD) or the date of the Institution Classification Committee (ICC) action suspending and/or commuting the SHU term, whichever comes first. ~~The SHU Term must be assessed and served in a SHU or in an Administrative Segregation Unit (ASU). If the inmate was not placed into Administrative Segregation Unit (ASU) for the offense, the inmate is not excluded from 270-design housing.~~

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. 2. Inmates found guilty of one Rules Violation Report (RVR) for Inciting a Riot any of the following Rules Violation Reports (RVRs) within the last a twelve months of incarceration period shall be excluded from Level IV 270-design housing for one year from the MERD or the date of the ICC action suspending and/or commuting the SHU term for the most current offense, whichever occurs first.

date found guilty of the RVR for this offense. If the inmate was not placed into ASU for the offense, the inmate is not excluded from 270-design housing.

- (i) One RVR for Inciting a Riot.
- (ii) One RVR for Participation in a Riot with a direct Security Threat Group (STG) nexus.
- (iii) Two or more RVR's for Participation in a Riot.
- (iv) One RVR for Assault on Non-Inmate.
- (v) One RVR for Battery on an Inmate with a direct STG nexus.
- (vi) Two or more RVRs for Battery on an Inmate.

~~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. 3. Inmates released from SHU or a Psychiatric Services Unit (PSU) 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. the ICC action.~~

~~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. 4. If during Reception Center processing, an 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. 5. 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~~ subsection, 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 ICC classification committee may temporarily exclude an inmate from Level IV 270-design housing pending adjudication of an RVR listed pursuant to the requirements set forth in subsections 3375.1(a)(4)(A) 1 through 4 2.~~

~~(C) Decisions for placement of inmates into a 180-design or 270-design housing shall be documented pursuant to section 3375(g). Level IV 270-design placement eligibility/exclusion and the reason(s) for such placement shall be clearly articulated. The documentation shall also address the rationale and justification for placement of an inmate in a lesser or more restrictive environment than otherwise consistent with the inmate's case factors.~~

(D) The ~~Institution Classification Committee~~ ICC 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.**

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 unchanged:**

(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.

## **FINAL STATEMENT OF REASONS**

The Initial Statement of Reasons (ISOR) is incorporated by reference.

## **UPDATES TO THE INITIAL STATEMENT OF REASONS**

The Notice of Emergency Proposed Regulations for “Level IV 180/270 Housing Criteria” was published in the California Regulatory Notice Register on October 2, 2015 which began the 45-day public comment period. The Notice of Change to Regulations (NCR) #15-08, including the text of the regulations, and the initial statement of reasons, was mailed the same day to persons who requested to be placed on the California Department of Corrections and Rehabilitation (CDCR) mailing list to receive notifications of rulemaking actions. The documents were also posted on the Department’s Internet and Intranet websites, and posted in CDCR institutions. A public hearing was held on November 20, 2015. No comments were received during the 45-day public comment period and no verbal comments received at the hearing.

CDCR determined that additional changes to the regulatory text were necessary, and in order to ensure adequate time remaining of temporary emergency authority, on February 2, 2016, CDCR submitted a request to the Office of Administrative Law (OAL) for an Emergency Readoption of these regulations that was approved on February 18, 2016.

A Notice of Change to Text as Originally Adopted (15-Day Renotice) dated March 29, 2016, was posted on the CDCR internet and intranet websites. The changes to the text and the reasons for them can be found below under the heading *Changes to the Text of Regulations (15-Day Re-notice)*. The public comment period ended on April 14, 2016 and there were no comments received.

CDCR determined that a Second Notice of Change to Text (2<sup>nd</sup> 15-Day Renotice) was necessary and it was posted on the CDCR internet and intranet website on May 24, 2016. The text of the regulation was amended to provide clarity and consistency for application of the regulation. The public comment period ended on June 9, 2016, and no comments were received. The changes to the text and the reasons for them can be found below under the heading *Second Notice of Change to Text (2nd 15-Day Renotice)*.

## **DETERMINATION**

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. This determination was reached by a consensus of the Division of Adult Institutions.

Except as set forth and discussed in the new text submitted, no other alternatives have been proposed or otherwise brought to the Department's attention that would alter the Department's decision.

### **FORMS INCORPORATED BY REFERENCE:**

No forms were incorporated.

### **LOCAL MANDATES**

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

### **NOTICE OF CHANGE TO TEXT AS ORIGINALLY ADOPTED (15-DAY RENOTICE)**

**Subsection 3375.1(a)(4)(A) is amended for clarification.** The original text did not identify Level IV inmates as the effected population. Such language is now included to specify the placement score as a criterion for placement on a Level IV 180-design facility.

**Subsection 3375.1(a)(4)(A)1 is amended for clarification and simplicity.** The word "served" is removed and replaced with assessed and imposed, suspended, and/or commuted. When an inmate is found guilty of a Rules Violation Report (RVR) for an offense that warrants a SHU term, the Institution Classification Committee (ICC) assesses and imposes the length of time to be spent in the SHU; the ICC may also assess, impose, and suspend or commute the SHU term. The amendment provides detailed language that field staff utilizes in the processing of Security Housing Unit (SHU) terms. Current text implies that all inmates who have served a determinate SHU terms within the last three incarcerated years are excluded from Level IV 270-design housing. The text is amended to specify the types of determinate SHU terms that exclude inmates from Level IV 270-design housing. To distinguish the most serious offenses, the exclusionary determinate SHU terms are now specified as division A-1, A-2, or B offenses, as set forth in section 3323, involving assaultive/violent behavior, weapons, or distribution of a controlled substance. These types of offenses are specified because inmates who commit these types of offenses are considered a serious threat to the safety of staff, inmates, and security of the institution; therefore, requiring housing in a more secure Level IV 180-design with direct supervision. Additionally, included is the language "Institution Classification Committee (ICC) action date assessing, imposing, suspending, and/or commuting a SHU term" to identify the start of the three year Level IV 270-design exclusionary period. The ICC is the only authority that administers SHU terms at the institution level. The ICC action date to suspend and/or commute the remainder of the SHU term was incorporated because all inmates who are serving a SHU term are reviewed prior to the Minimum Eligible Release Date (MERD) for early release consideration. The MERD is the minimum date an inmate can be released from SHU. The review consists of ICC considering available housing alternatives, the inmate's willingness to conform to CDCR rules, and demonstrated evidence of behavioral change. Consequently, the ICC action date is another instance that initiates the commencement of the three year exclusionary period from a 270-design facility. This benefits affected inmates by beginning the

three year Level IV 270-design exclusionary requirement earlier, at the MERD or the ICC action, whichever comes first, rather than the date of arrival in the institution general population (GP). The following text: “The SHU Term must be assessed and served in a SHU or in an Administrative Segregation Unit (ASU)”, is being changed from the original text because the wording was confusing. The following text, “If the inmate was not placed into Administrative Segregation Unit (ASU) for the offense, the inmate is not excluded from 270-design housing” is being amended to simplify and make clear that inmates who have not been placed in ASU or SHU are not categorically excluded from Level IV 270-design housing because if they were not deemed a significant enough threat to be placed in ASU, they are not a significant enough threat to warrant Level IV 270-design housing exclusion.

**Subsections 3375.1(a)(4)(A)2 is deleted and the provisions consolidated with 3375.1(a)(4)(A)1 for simplicity and clarification.** After implementation of the emergency regulation, field staff noted concerns regarding the wording and how Level IV housing criteria were organized in the original text. Therefore, the text is being amended and the criteria consolidated with 3375.1 (a)(4)(A)1. This will result in easier and more consistent application of the regulation. The intent is to include only A-1, A-2, or B offenses which are considered the most serious offenses involving assaultive/violent behavior, weapons, or distribution of a controlled substance as exclusionary criterion. The identification of these specific offenses is necessary because inmates who commit these types of offenses are considered a serious threat to the safety of staff, inmates, and security of the institution, requiring housing in a more secure Level IV 180-design facility with direct supervision. In addition, the original language identified the commencement of the exclusionary period as the date the inmate arrived in the General Population (GP). The proposed change results in the commencement of the three year exclusionary period from a 270-design facility as initiated at MERD or ICC action date to “suspend and/or commute” the SHU term. This benefits affected inmates by beginning the three year Level IV 270-design exclusionary requirement earlier, at the MERD or the ICC action, rather than the date of arrival in general population (GP).

**Subsection 3375.1(a)(4)(A)3 is renumbered to Subsection 3375.1 (a)(4)(A)2 and amended to simplify and consolidate subsections 3375.1(a)(4)(A)3, 3375.1(a)(4)(A)4, and 3375.1(a)(4)(A)6.** Additional offenses that necessitate a Level IV 270-design exclusionary period have been added, based on the inmate’s documented behavior. These were omitted from the original emergency regulations in error. The Rules Violation Reports (RVR) included in this subsection are listed for simplicity and easy reference. A SHU term assessed for any of the below criteria will result in exclusion from Level IV 270-design housing for the specified period of time. Included within this subsection as exclusionary criteria are the offenses of one Battery/Assault on a Non-Inmate and one RVR for Riot with a direct Security Threat Group (STG) nexus. RVRs for Battery/Assault on a Non-Inmate and for Riot with a direct STG nexus are considered violent offenses and inmates who commit these offenses are considered to be a threat to the safety of staff, inmates and security of the institution; therefore, requiring housing in a more secure Level IV 180-design with direct supervision.

- a. One RVR for Inciting a Riot. This offense was listed in the original text of the emergency regulation.

- b. One RVR for Participation in a Riot with a direct Security Threat Group (STG) nexus. This offense was previously omitted in error. The addition of this offense is necessary because inmates who commit these types of offenses are considered a threat to the safety of staff, inmates, and security of the institution; therefore, requiring housing in a more secure Level IV 180-design with direct supervision.
- c. Two or more RVR's for participation in a Riot. This offense was listed in the original text of the emergency regulation.
- d. One Battery/Assault on Non-Inmate. This offense was previously omitted in error. The addition of this offense is necessary because inmates who commit these types of violent offenses are considered a threat to the safety of staff, inmates, and security of the institution; therefore, requiring housing in a more secure Level IV 180-design with direct supervision.
- e. One RVR for Battery on Inmate with a direct STG nexus. This offense was listed in the original text of the emergency regulation.
- f. Two or more RVR's for Battery on Inmate. This offense was listed in the original text of the emergency regulation.

The text is also changed to state that the one year exclusionary period from a 270-design facility starts from the MERD or ICC action date, whichever comes first, to “suspend and/or commute” the SHU term. The original text identified the commencement as the date the inmate was found guilty of the most recent RVR. This was inconsistent with other text for similar offenses and consequently has been amended. The one year exclusionary period from a 270-design facility is initiated at MERD or ICC action date to “suspend and/or commute” the SHU term. As a result, the exclusionary period for the listed RVR'S may be lengthened. The increased exclusionary period occurs because the MERD or ICC action date, whichever comes first, to “suspend and/or commute” the SHU term takes place after the inmate is found guilty of an RVR.

**Subsection 3375.1(a)(4)(A)4 is deleted and consolidated with 3375.1 (a)(4)(A)2 for simplicity and clarification purposes.** Upon implementation of the emergency regulation field staff noted concerns regarding the wording and how Level IV housing criteria were organized. The original criteria were incorporated in subsection 3375.1(a)(4)(A)2 with the exception of the commencement of the one year exclusionary period from a 270-design facility. The original language identified the commencement as the date the inmate was found guilty of the most recent RVR. This was inconsistent with other text for similar offenses and consequently has been amended. The one year exclusionary period from a 270-design facility is initiated at MERD or ICC action date to “suspend and/or commute” the SHU term. As a result, the exclusionary period for two or more RVRs for Battery on Inmate within a twelve month period or one RVR for Battery on Inmate with a direct STG nexus may be lengthened. The increased exclusionary period occurs because the MERD or ICC action date, whichever comes first, to “suspend and/or commute” the SHU term takes place after the inmate is found guilty of an RVR.

**Subsection 3375.1(a)(4)(A)5 is renumbered to Subsection 3375.1 (a)(4)(A)3 and amended to provide clarification and consistency.** Included within this subsection is the Psychiatric Services Unit (PSU). PSU provides secure housing and care for inmates with diagnosed psychiatric disorders not requiring inpatient hospital care, but who require placement in housing equivalent to a SHU. This change excludes an inmate from 270-design housing for two years

from the date of the MERD or the ICC action, rather than date of arrival on a GP facility and is beneficial to affected inmates by beginning the three year Level IV 270-design exclusionary requirement earlier, at the MERD or the ICC action, rather than the date of arrival in GP.

**Subsection 3375.1(a)(4)(A)6 is deleted and consolidated with 3375.1 (a)(4)(A)2 for simplicity and clarification purposes.** Upon implementation of the emergency regulation, field staff noted concerns regarding the wording, and how Level IV housing criteria were organized. The original criteria were incorporated in subsection 3375.1 (a)(4)(A)2 with the exception of the commencement of the one year exclusionary period from a 270-design facility. The original text identified the commencement as the date the inmate was found guilty of the most recent RVR. This was inconsistent with other included similar offenses and consequently has been amended. The one year exclusionary period from a 270-design facility is initiated at MERD or ICC action date to “suspend and/or commute” the SHU term. As a result, the exclusionary period for two or more RVRs for Participation in a Riot within a twelve month period may be lengthened. The increased exclusionary period occurs because the MERD or ICC action date, whichever comes first, to “suspend and/or commute” the SHU term takes place after the inmate is found guilty of an RVR.

**Subsection 3375.1(a)(4)(A)7 is renumbered to Subsection 3375.1 (a)(4)(A)4** and is otherwise unchanged.

**Subsection 3375.1(a)(4)(A)8** is renumbered to Subsection 3375.1(a)(4)(A)5 and amended for grammar correction purposes. The word “paragraph” has been removed and replaced with “subsection” for grammatical purposes.

**Subsection 3375.1(a)(4)(B) is amended for clarification to incorporate deletions and amendments.** The original text explains that pending an RVR the classification committee may temporarily exclude an inmate from Level IV 270-design housing. The text is amended to identify the ICC as the classification authority that may temporarily exclude an inmate from Level IV 270-design housing for RVR’s pending adjudication/resolution for offenses listed in subsections 3375.1 (a)(4)(A) 1 through 2. This language is necessary noting that ICC is the only authority that administers SHU terms at the institution level. If an inmate is found guilty of any of these offenses, a SHU Term may be warranted. This provision applies only to subsections 3375.1 (a)(4)(A)1 through 2 because subsections 3375.1 (a)(4)(A)3 through 4 are not subject to the RVR adjudication process.

**Subsection 3375.1(a)(4)(C) is amended for clarification purposes and specifies necessary documentation required by field staff.** This change provides further direction of the requirement for documentation of the reason for placement of an inmate in a lesser or more restrictive environment that does not meet the inmate’s case factors. Case factors may include medical need, mental health need, disciplinary offenses and behavior history.

**Subsection 3375.1(a)(4)(D) is amended to provide consistency in language.** Institution Classification Committee is documented in its acronym form of ICC.

**Subsection 3377(d) is unchanged.**

## **SECOND NOTICE OF CHANGE TO TEXT (2<sup>ND</sup> 15-DAY RENOTICE)**

**Subsections 3375.1(a)(4)(A)2 text is amended.** Text is amended to add, “*If the inmate was not placed into ASU for the offense, the inmate is not excluded from 270-design housing.*” This is necessary to simplify and make clear that inmates who have not been placed in ASU are not categorically excluded from Level IV 270-design housing because if they were not deemed a significant enough threat to be placed in ASU, they are not a significant enough threat to warrant an exclusion from Level IV 270-design housing. This additional text provides consistency with text of Subsection 3375.1(a)(4)(A)(1), which contains the same language, and will be helpful to classification staff who must apply the regulations when making important inmate housing decisions.

**Subsection 3375.1(a)(4)2(d) is amended:** Text is amended to delete “*One Battery on Non-Inmate.*” This offense was added in error and conflicts with the treatment of offenses listed in Subsection 3375.1(a)(4)(A)(1). The change is necessary, because it is listed under Subsection 3375.1(a)(4)(A)(1) as a Division “B” offense which is considered a serious and violent offense, warranting a three year exclusion from Level IV-270 housing, and not a one year exclusion. Additionally, the words “*One RVR*” are added for consistency with the other listed offenses.

**Subsection 3377(d) is unchanged.**

## **SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS RECEIVED**

There were no comments received.