In this rulemaking action, the Department amends its regulations to modify some terms related to the privileges of inmates who are deemed a program failure or are placed in Privilege Group C.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/1/2021.

Date:       February 24, 2021

Thanh Huynh
Senior Attorney

For:        Kenneth J. Pogue
Director

Original:   Kathleen Allison, Secretary
Copy:       Anthony Carter
**STATE OF CALIFORNIA - OFFICE OF ADMINISTRATIVE LAW**

**NOTICE PUBLICATION/REGULATORY ACTION**

- **REGULAR**
  - See instructions on reverse

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**For use by Office of Administrative Law (OAL) only**

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**ENDORSED - FILED**

In the office of the Secretary of State of the State of California

FEB 24 2021
1:16 P.M.

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**AGENCY WITH RULEMAKING AUTHORITY**

Corrections and Rehabilitation

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

<table>
<thead>
<tr>
<th>1. SUBJECT OF NOTICE</th>
<th>TITLE(S)</th>
<th>FIRST SECTION AFFECTED</th>
<th>2. REQUESTED PUBLICATION DATE</th>
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<tbody>
<tr>
<td>5. 4. Additional</td>
<td>3. Work</td>
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<td>3. B.</td>
<td>2. Other</td>
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**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

**1a. SUBJECT OF REGULATION(S)**

Work and Privilege Group C

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

**SECTION(S) AFFECTED**

(List all section number(s) individually. Attach additional sheet if needed.)

<table>
<thead>
<tr>
<th>TITLES</th>
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**3. TYPE OF FILING**

- Regular Rulemaking (Gov. Code §11346)
- Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- Emergency (Gov. Code §11346.1(b))
- 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.
- Emergency Readopt (Gov. Code §11346.1(h))
- Changes Without Regulatory Effect (Cal. Code Regs. title 1, §100)
- File & Print
- Print Only
- Other (Specify)

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**4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE**

- 10/6/2020 - 10/23/2020
- 2/24/2021 (RH)

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**5. EFFECTIVE DATE OF CHANGES (Gov. Code §§11343.4, 11345.10, 11345.50, 11346.01, 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 (Specify)
- Effective other

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**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 §6680)
- Fair Political Practices Commission
- Office of the State Fire Marshal
- Other (Specify)

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**7. CONTACT PERSON**

- **Anthony Carter**
- **TELEPHONE NUMBER** (916) 445-2220
- **FAX NUMBER** (Optional) Anthony.Carter@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** 12/14/20

---

**TYPED NAME AND TITLE OF SIGNATORY**

Jeff Macomber, Undersecretary, Operations, CDCR
TEXT OF ADOPTED REGULATIONS

In the following text, strikethrough indicates deleted text; underline indicates added text.

California Code of Regulations, Title 15, Crime Prevention and Corrections, Division 3, Adult Institutions, Programs and Parole.
Chapter 1 Rules and Regulations of Adult Operations and Programs.
Article 3.5. Credits

3044. Inmate Work Groups and Privilege Groups.

Subsections 3044(a) through 3044(c)(4) remain unchanged.

Subsection 3044(c)(5) is amended to read:
(c) Privileges. Privileges for each work group shall be those privileges earned by the inmate. Inmate privileges are administratively authorized activities and benefits required of the Secretary, by statute, case law, governmental regulations, or executive orders. Inmate privileges shall be governed by an inmate's behavior, custody classification and assignment. A formal request or application for privileges is not required unless specified otherwise in this section. Institutions may provide additional incentives for each privilege group, subject to availability of resources and constraints imposed by security needs.

(5) No inmate or group of inmates shall be granted privileges not equally available to other inmates of the same custody classification and assignment who would otherwise be eligible for the same privileges, except as determined by Subsections 3376(d)(3)(E)1. through 3376(d)(3)(E)6.

Subsection 3044(c)(6) through 3044(e) remains unchanged.

Subsections 3044(f)(1) through 3044(f)(2)(A) are unchanged but shown for reference.
(f) Privilege Group C:
(1) Criteria, any of the following:
(A) The inmate who twice refuses to accept assigned housing, or who refuses to accept or perform in an assignment, or who is deemed a program failure as defined in section 3000.
(B) A hearing official may temporarily place an inmate into the group as a disposition pursuant to section 3314 or 3315.
(C) A classification committee action pursuant to section 3375 places the inmate into the group. An inmate placed into Privilege Group C by a classification committee action may apply to be removed from that privilege group no earlier than 30 days from the date of placement. Subsequent to the mandatory 30 days placement on Privilege Group C, if the inmate submits a written request for removal, a hearing shall be scheduled within 30 days of receipt of the written request to consider removal from Privilege Group C.
(2) Privileges and non-privileges for Privilege Group C are as follows:
(A) No family visits.

Subsection 3044(f)(2)(B) is amended to read:
(B) One-fourth the maximum monthly canteen draw and items shall be limited to stationery, stationery supplies, personal hygiene, vitamins and medications as authorized by the Secretary. Inmates may maintain their current canteen items, which must be verified with
Any subsequent canteen purchases while on Privilege Group C or program failure status shall be limited to stationery, stationery supplies, personal hygiene, vitamins and medications.

Subsection 3044(f)(2)(C) and (f)(2)(D) are unchanged but shown for reference:
(C) Telephone calls on an emergency basis only as determined by institution/facility staff.  
(D) No kiosk access.

Subsections 3044(f)(2)(D) through 3044(f)(2)(J) are renumbered to (f)(2)(E) through (f)(2)(K):
(E) Yard access limited by local institution/facility security needs. Institutions shall offer no less than ten hours of exercise in an outdoor, covered or enclosed setting each week. No access to any other recreational or entertainment activities.  
(F) No inmate packages. Inmates may receive special purchases, as provided in subsections 3190(j) and (k).  
(G) Participation in their designated religious service within the chapel or other approved locations once per week.  
(H) Participation in one self-help group per week  
(I) Inmates placed on Privilege Group C pursuant to a disciplinary action or classification committee action shall have disallowed property stored at the inmate’s institution, pending removal from Privilege Group C  
(J) Inmate participants in the Mental Health Services Delivery System shall continue to participate in all scheduled structured therapeutic programming activities, which shall not be counted towards the ten hours of exercise per week.  
(K) Inmates assigned to Privilege Group C as a result of a classification committee action or disciplinary action, who participate in the Mental Health Services Delivery System at the Enhanced Outpatient Program (EOP) level of care or higher, shall be referred to the Interdisciplinary Treatment Team (IDTT) via CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono, for a program review. The IDTT may recommend certain privileges granted to the inmate on a case-by-case basis when it is determined suspension of privileges would cause decompensation or would be detrimental to the inmate’s mental health status.

Subsections 3044(g)(1) 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).

Subchapter 2. Inmate Resources  
Article 9. Personal Property and Religious Personal Property  
3190. General Policy.

Subsections 3190(a) through 3190(k) are unchanged.

Subsection 3190(l)(1) is unchanged but shown as reference.  
(l) Inmates may be allowed to possess appliances and one musical instrument as follows:  
(1) Inmates assigned to Privilege Groups A or B may possess up to three approved appliances in their quarters/living area, facility physical plant limitations permitting, and shall not exceed the six cubic feet maximum limitation. One musical instrument with case
not exceeding 46” x 24” x 12” may be substituted as one of the three appliances.

Subsections 3190(l)(2) through 3190(l)(3) are amended to read:

(2) Inmates assigned to Privilege Group C may not possess entertainment appliances and/or a musical instrument. Inmates placed on Privilege Group C pursuant to a disciplinary action pursuant to subsections 3314(e)(3), 3315(f)(5)(C), or classification committee action shall have the disallowed property stored at the inmate’s institution until which time the placement is affirmed by a classification committee.

Inmates assigned to Privilege Group C by a classification committee as a result of being deemed a program failure as defined in Section 3000 who receive one or more additional Administrative or Serious Rules Violation Reports shall be required to mail out, return, donate, or dispose of disallowed property in accordance with Subsection 3191(c). Upon placement in Privilege Group C by the classification committee, the inmate shall be afforded the allowable property identified in the APPS for Privilege Group C and will be required to dispose of the non-allowable property in accordance with subsection 3191(c).

(3) Inmates assigned to Administrative Segregation Unit/Security Housing Unit/Psychiatric Services Unit (ASU/SHU/PSU) or other segregated housing units may possess or acquire one television or one radio or one television/radio combination unit, through the Special Purchase process, facility physical plant limitations permitting, and shall not exceed the six cubic feet maximum limitation. Inmates assigned to ASU are authorized one entertainment appliance. Inmates assigned to SHU/PSU are authorized two entertainment appliances. Eligibility to possess an entertainment appliance commences on the date of Privilege Group D assignment. An inmate who is deemed to be a program failure, as defined in Section 3000, based on conduct prior to or while in the ASU/SHU/PSU, or other segregated housing units, shall have his or her entertainment appliance disposed of or stored by the institution pending removal of program failure designation. Inmates deemed a program failure as defined in Section 3000 who receive one or more additional Administrative or Serious Rules Violation Reports while assigned to program failure status shall be required to mail out, return, donate or dispose of disallowed property in accordance with subsection 3191(c).

An inmate who has not been deemed a program failure, but who is found guilty of any Rules Violation Report based on conduct while in the ASU/SHU/PSU or other segregated housing units, is subject to temporary loss of the entertainment appliance as follows: (1) thirty days for the first offense; (2) sixty days for the second offense; and (3) ninety days for the third and subsequent offenses. Inmates assigned to Privilege Group D shall not possess a musical instrument.

Subsections 3190(l)(4) through 3190(l)(5) are unchanged but shown for reference.

(1) Inmates assigned to Privilege Group U shall not possess any appliances or musical instruments.

(2) Inmates housed at conservation camps shall not possess a television or television/radio combination.

New Subsection 3190(l)(6) is adopted to read:

(1) An inmate deemed to be a program failure, based on conduct prior to or while in the ASU, SHU, PSU, or other segregated housing units, shall have his or her maximum monthly canteen draw items limited to stationery, stationery supplies, personal hygiene, vitamins and medications. Inmates may maintain their current canteen items; which must be verified with a current receipt. Any subsequent canteen purchases while deemed a program failure shall be limited to stationery, stationery supplies, personal hygiene, vitamins and medications.
Subsections 3190(m) through 3190(v) are unchanged.


Subchapter 4. General Institution Regulations
Article 5. Inmate Discipline
3314. Administrative Rule Violations.

Subsections 3314(a) through 3314(d) are unchanged.

Subsections 3314(e)(1) through 3314(e)(2) are unchanged but shown for reference.
(e) The hearing official may find the inmate guilty and order one or more of the following dispositions:
(1) Counseling, with or without a reprimand.
(2) Suspension of privileges specified by the hearing official for no more than a 30-day period starting the date the rule violation report was adjudicated, except as authorized in section 3314(e)(10).

Subsection 3314(e)(3) is amended to read:
(1) Placement into privilege group B or C for no more than a 30-day period starting the date the rule violation report was adjudicated. Inmates placed into Privilege Group C as a result of a disciplinary action who are participating in the Mental Health Services Delivery System at the Enhanced Outpatient Program level of care or higher shall be referred to the Interdisciplinary Treatment Team by the hearing official by documenting the information on a CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono, as a routine referral for program review.

Subsections 3314(e)(4) through 3314(e)(k) are unchanged.


3315 Serious Rules Violations

Subsections 3315(a) through 3315(f)(5)(B) are unchanged.

Subsection 3315(f)(5)(C) is amended to read:
(C) Placement into privilege group B or C for no more than a 90-day period starting from the date the rule violation report was adjudicated. Inmates placed into Privilege Group C as a result of a disciplinary action who are participating in the Mental Health Services Delivery System at the Enhanced Outpatient Program level of care or higher shall be referred to the Interdisciplinary Treatment Team by the hearing official by documenting the information on a CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono, as a routine referral for program review.

Subsections 3315(f)(5)(D) through 3315(f)(5)(K) are unchanged.

Subsection 3315(f)(5)(L) is amended to read:
(L) Inmates placed in ASU, SHU, PSU, or other segregated housing units on Privilege
Group D, who are deemed to be program failures, as defined in section 3000, based on conduct while in the ASU/SHU/PSU, or other segregated housing units, shall have their entertainment appliance disposed of in accordance with subsection 3191(c) not possess personal entertainment appliances. An inmate who is deemed a program failure by a classification committee is subject to having their personal property appliances stored by the institution pending removal of program failure designation. Inmates deemed a program failure who receive one or more additional Administrative or Serious Rules Violation Reports while assigned to program failure status shall be required to mail out, return, donate or dispose of disallowed property in accordance with Subsection 3191(c). Inmates who are not deemed to be program failures, but who are found guilty of any RVR per this section based on their conduct while in the ASU/SHU/PSU or other segregated housing units, are subject to temporary loss of their entertainment appliances as follows:
1. Thirty days for the first offense.
2. Sixty days for the second offense.
3. Ninety days for the third and subsequent offenses.

**Subsection 3315(f)(5)(M) is unchanged but shown for reference.**

(L) Violation of Refusing to Accept Assigned Housing of sections 3005(c) and 3269.1 shall result in:
1. First offense violation shall result in loss of any or all of the following for up to 90 days: canteen, appliances, inmate packages, telephone privileges, and personal property.
2. Second offense and subsequent offense violation(s) shall result in loss of any or all of the following for up to 180 days: canteen, appliances, inmate packages, telephone privileges, and personal property.

**Subsection 3315(f)(5)(N) is amended to read:**

(L) Violation of Refusing to Accept an Inmate Housing Assignment of Subsection 3005(c) shall result in:
1. First offense violation shall result in loss of any or all of the following for up to 90 days: canteen, appliances, inmate packages, telephone privileges, and personal property.
2. Second offense and subsequent offense violation(s) shall result in loss of any or all of the following for up to 180 days: canteen, appliances, inmate packages, telephone privileges, and personal property, and referral to a classification committee for review and determination for program failure. An inmate who is deemed a program failure by a classification committee is subject to having their personal property/appliances disposed of in accordance with departmental procedure.

**Subsections 3315(f)(5)(O) through (h) are unchanged.**


**Article 10. Classification**

3376. Classification Committees.

**Subsections 3376(a) Through 3376(d)(3)(D) are unchanged.**

**Subsection 3376(d)(3)(E) is unchanged but shown for reference.**
(d) Classification committee functions:

(3) Institution and Facility Classification Committees shall:

(E) Change an inmate's work/privilege group.

Subsections 3376(d)(3)(E)1. through 3376(d)(3)(E)6. are adopted to read:

1. Inmates assigned to Privilege Group C as a result of a classification committee action or disciplinary action, who participate in the Mental Health Services Delivery System at the Enhanced Outpatient Program (EOP) level of care or higher, shall be referred to the Interdisciplinary Treatment Team (IDTT) via CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono, for a program review.

2. Within five working days, IDTT may recommend certain privileges be granted to the inmate on a case-by-case basis when it is determined suspension of privileges would cause decompensation or would be detrimental to the inmate’s mental health status. In this event, the correctional counselor attending IDTT shall refer the inmate to the classification committee for consideration of reinstating privileges.

3. Each time the classification committee reinstates privileges the attending correctional counselor shall ensure housing unit staff are made aware of any privileges reinstated to the inmate or if the removal of Privilege Group C has occurred. Any changes shall be documented on a CDC Form 128-B (Rev. 04/74), General Chrono, and distributed to the housing unit and the inmate following the classification committee and shall be effective immediately.

4. The primary clinician is required to monitor the inmate’s mental health status. At any time if it is determined the mental health of an inmate placed into Privilege Group C has declined as a result of suspension of privileges, the Primary Clinician shall refer the inmate to IDTT for a program review. IDTT may recommend documentation of concerns and findings and a copy will be provided to the assigned correctional counselor for referral to the classification committee. The primary clinician shall communicate with the classification committee clinician prior to the classification committee commencement, ensuring the recommendation noted on the CDC 128-C (Rev. 01/96), Medical-Psychiatric-Dental (Chrono), is reviewed, discussed and documented.

5. The classification committee shall consider the input provided by the primary clinician via the CDC 128-C (Rev. 01/96), when determining whether an inmate will be removed from Privilege Group C and document the findings on the Classification Committee Chrono (Rev. 05/19).

6. An inmate deemed a program failure, as defined in Section 3000, who is permanently transferred to another institution shall be returned to the privilege group he or she had before being placed on Privilege Group C.

Subsections 3376(d)(3)(F) through 3376(d)(5)(D) are unchanged.

Note: Authority cited: Sections 3303 and 3309, Welfare and Institutions Code; and Sections 5058 and 6252, Penal Code. Reference: Sections 2933, 5054 and 5068, Penal Code.
FINAL STATEMENT OF REASONS

The Initial Statement of Reasons is incorporated by reference.

UPDATES TO THE INITIAL STATEMENT OF REASONS:

On May 1, 2020 the Notice of Proposed Regulations for Work Group and Privilege Group C was published, which began the public comment period. The Department’s Notice of Change to Regulations #20-04 was also mailed the same day to individuals who had requested to be on the Department’s mailing list for regulation changes. In addition, they were posted on the California Department of Corrections and Rehabilitation (CDCR) website, and copies were posted in CDCR institutions. The Department received comments from 10 commenters each with multiple written comments, which are included below under. No public hearing was held.

On October 6, 2020 a 15 day re-notice was posted and mailed. The revision reflected in the re-notice concerned appropriate renumbering of text, and included additional explanatory and necessity statements in the Initial Statement of Reasons regarding the proposed text. During the 15-day re-notice, no comments were received.

DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law, than the action proposed. No such alternatives were proposed or brought to the Department’s attention during the adoption of this rulemaking action.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the CDCR’s initial determination.

The Department has determined that 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 of the Government Code.

The Department has determined that no reasonable alternatives to the regulation have been identified or brought to the attention of the Department that would lessen any adverse impact on affected private persons or small business than the action planned.

The Department, in proposing the adoption of these regulations, relied upon in part, the affirmation order in regards to the Special Master’s 27th Round Monitoring Report - Coleman v. Brown (No. 2:90-cv-0520 KJM DB P) U.S. District Court, Eastern District.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS RECEIVED DURING THE PUBLIC COMMENT PERIOD:
COMMENTER #E-1 (email):

Comment 1A: Commenter disagrees with the proposed revision to section 3376(d)(3)(E)(6). Commenter states that institutions see this policy abused by inmates who have been placed on program failure status (privilege group ‘C’) in that they frequently utilize the mental health system in order to effect transfer to an alternate facility, resulting in “fresh start” status at the new institution. For example, a CCCMS inmate is placed on C/C status by the facility UCC. The inmate approaches staff and states that he is feeling suicidal and may harm himself. As a result he is placed in the MHCB. While in the MHCB he is evaluated and subsequently discharged at the EOP LOC resulting in transfer to a facility that can accommodate his needs. Upon transfer, he becomes A1/A due to fresh start and EOP participation.

Response to 1A: The Department disagrees with the commenter. The commenter is speculating about the outcome of a policy which currently is not in practice. The revision is an addition and an expansion of the current process. The proposed revisions enhance due process and enhance the monitoring of the mental health of an inmate placed in Privilege Group C. The commenter states, “they (referring to inmates) frequently utilize the mental health system in order to effect transfer to an alternate facility”. Current regulations require qualified medical staff to assess and diagnose suicide risk. The mental health evaluation of an inmate’s behavior dictates the response. Mental health professionals evaluate and recommend placement for treatment. Several factors dictate the transfer of an inmate to include the medical and mental health needs.

Comment 1B: Commenter states that they believe this is a flaw in the system, which leads to abuse of valuable mental health resources and increased transportation costs. Commenter states that this situation could be mitigated by leaving the WG/PG determination to a classification committee. The classification committee should “consider” fresh start upon transfer but should not be required to approve a fresh start.

Response to 1B: The Department disagrees with the commenter. The commenter is asserting a flaw in the system leading to abuse of mental health resources and increased transportation cost; however, the commenter provides no facts, data, or statistics. Commenter’s statements appear to be a contradiction when referring to a classification committee and suggesting what the committee should or should not consider.

Commenter #1 (Letter)

Comment 1A: Commenter states that for the most part the changes to the regulations are “applaudable”, specifically regarding 10 hours of outdoor exercise.

Response to 1A: The Department acknowledges the commenter’s support of the proposed regulations. The expressed approval of the revision demonstrates the proposal’s thoughtfulness for the inmate population and the benefit it seeks to provide.

Comment 1B: Commenter states that language needs to be added to specify and clarify departmental procedures to authorize restrictive housing such as STRH/ASU and CCCMS/EOP access to entertainment appliances. Commenter refers to the restrictive nature of the Short Term Restricted Housing Units are not in modern 270 degree designed housing units, and that court decisions (Coleman) stipulate that CDCR should provide sustainable access to entertainment appliances.
Response to 1B: The revision is clear regarding access to entertainment appliances to inmates in restricted housing units. Subsection 3190(l)(3) states in part, “(3) Inmates assigned to Administrative Segregation Unit/Security Housing Unit/Psychiatric Services Unit (ASU/SHU/PSU) or other segregated housing units may possess or acquire one television or one radio or one television/radio combination unit. Inmates assigned to ASU are authorized one entertainment appliance. Inmates assigned to SHU/PSU are authorized two entertainment appliances. Eligibility to possess an entertainment appliance commences on the date of Privilege Group D assignment.”

Comment 1C: Commenter states that the requirement is not clear in the referral system to the Mental Health Department by custody for a disciplinary action; and that there is no timeline established. Commenter states that a gap (weeks or months) will emerge from the taking of the appliance to the reverse of the classification action that imposed the restriction.

Response to 1C: The Department disagrees with the commenter. The California Code of Regulations, Title 15, Section 3317, Mental Health Assessments for Disciplinary Hearings is explicit regarding the requirement and time constraints to complete and submit a CDCR Form 128-MH-5 Mental Health Referral Chrono and completing a CDCR Form 115-MH-A Rules Violation Report Mental Health Assessment. Specifically, Subsection 3317(f) states in part, “the reviewing custody supervisor shall request an assessment by completing a CDCR Form 115-MH-A and delivering it to the institution’s mental health program within two calendar days of the information leading to the charges being discovered by staff. The mental health program shall complete the assessment and return it to the reviewing supervisor within eight calendar days of receipt.”

Comment 1D: Commenter states that the nature of the pre-existing disciplinary sanctions for conduct before STRH/ASU placement is illogical; and not in session with the second chance language codified in Section 3376, et seq., which mandates that inmates previously on C status prior to transfers shall be placed back in their previous privilege group upon arrival at the new institution.

Response to 1D: The Department disagrees with the commenter. The comment is vague and lacking specifics. However, CDCR does not impose disciplinary sanctions for rule violations until the inmate has received a fair and impartial hearing by an impartial hearing official. To ensure due process and adherence to established law, CDCR’s disciplinary process requires numerous layers of review after the disciplinary hearing.

Comment 1E: Commenter states that there should be exemption or deterrent clauses in effect, for those who had previously imposed sanctions prior to STRH arrival with allowed appliance, save for no further infractions. Commenter states that if an infraction does occur; a system of retroactive sanctions may be imposed for the remaining duration of time originally imposed.

Response to 1E: The comment is unclear and lacking specifics. It appears the commenter is suggesting if a subject were to be housed in Short Term Restricted Housing (STRH) and commits a rule violation that could result in a penalty affecting the possession of an appliance, then that person should be exempt from disciplinary sanctions. Inmate misconduct will be reported on a Rule Violation Report (RVR) regardless of the inmates housing location or Work Group/Privilege Group. Disciplinary restrictions will be applied as a result of a disciplinary process in which inmates are afforded due process. The
suspension of privileges based on a finding of guilt in a disciplinary hearing shall be assessed as set forth in CCR Section 3315(f)(5).

**Comment 1F:** Commenter states that those currently in the mental health system should have a sustainable identification code that highlights the inherent likelihood of potential susceptibility towards decompensation. Commenter states this should be accounted for if these new regulations are imposed with disregard to the previous stipulations and are housed in environmentally restrictive units designed to remove basic human contact and interactions (e.g., windowless cells, caged exercise yards, no group interactions, etc.).

**Response to 1F:** The Commenter has suggested and described mental health processes similar to those currently in practice by CDCR. CDCR operates a comprehensive Mental Health Services Delivery System (MHSDS) with strict oversight and court monitoring. The MHSDS is constantly evolving to better serve the needs of patients. Currently, one goal of the MHSDS is to offer and provide inmates as much out of cell time as possible regardless of the inmates housing location. Each inmate is provided the following: exercise yard, group therapy, clinician contact, individual therapy, dayroom program, showers, self-help groups, and education. In addition, these patients have access to the law library as well as medical and dental services. Custody staff provide safe delivery of services to patients through constant observation and documentation of activities. It is the practice of CDCR to house all inmate/patients within a cell that provides easy viewing into the cell by a person standing outside of the cell; hence, the occupant of the cell can also see out of the cell. Routine and frequent interaction among staff and all inmates occurs daily including with inmates housed in restricted housing units. Some of those interactions include meal distribution, trash pick-up, routine count times, Random welfare checks, mental health check-ins, medication distribution, yard release, and other routine cell releases.

**Commenter #2**

**Comment 2A:** Commenter states that all regulations allowing CDCR to compel an inmate to “mail out, return, donate, or dispose of disallowed property, merely for being placed on Privilege Group C and receiving a rules violation are unlawful and violate both the California Constitution and the United States Constitution.

**Response to 2A:** Although the Department disagrees with the commenter’s perception that current regulations are unlawful, the Department believes the commenter has misunderstood the text of the proposal. The proposed regulation states in part, “Inmates placed on Privilege Group C pursuant to a disciplinary action pursuant to subsections 3314(c)(3) and 3315(f)(5)(C), or classification committee action shall have the disallowed property stored.” Therefore, the commenter’s understanding of the disposition of property resulting from a disciplinary action is categorically incorrect.

**Comment 2B:** Commenter states that inmate property is one of the most personal and prized means of individualism and relaxation, and that confiscating said property serves no legitimate penalogical interests, and is counterproductive. Commenter believes that this is solely punitive and allows CDCR officials to use C status as retaliation. Commenter gives a personal recollection of an alleged action that was taken against them.

**Response to 2B:** The Department disagrees with the commenter. The CDCR provides a graduated system of inmate discipline designed to be administered commensurate with
the seriousness of the offense. Discipline shall be so administered as to maintain control, conserve human values and individual dignity and promote socially desirable changes in attitude and behavior. The inmate disciplinary system incorporates statutory and constitutional mandates and provides essential due process guarantees to ensure fairness and equal application.

Commenter #3
Comment 3A: Commenter states that they have noted that CDCR always has a predetermined belief that proposed changes to regulations “may have a positive impact on public safety”….. “and on inmates by ensuring the safe incarceration of offenders”. Commenter states that the Department has consistently failed in its efforts to the State’s prohibition against discrimination or preferential treatment that is set forth in the California Constitution. Commenter states that earned privileges as stated in Section 3044 should be properly and uniformly enforced.

Response to 3A: The Department has acknowledged the comments provided and it appears the comment has three (3) parts. The first two (2) comments are either insufficiently related to the specific actions or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of those comments; therefore, the comments are irrelevant pursuant to Government Code, Section 11346.9(a)(3). The final comment is asserting that privileges are improperly assigned. The Department disagrees; privileges are governed by the inmate’s behavior. Privileges for each work group shall be those privileges earned by the inmate. Inmate privileges are administratively authorized activities and benefits required of the Secretary, by statute, case law, governmental regulations, or executive orders. Inmate privileges shall be governed by an inmate’s behavior, custody classification and assignment. A formal request or application for privileges is not required unless specified otherwise in this section. Institutions may provide additional incentives for each privilege group, subject to availability of resources and constraints imposed by security needs.

Comment 3B: Commenter states that NCR # 20-04 states a standardized approach; however, “fails to enforce the black letter meaning by allowing arbitrary deprivations and outright theft and seizure of a prisoner’s property even if there is no rule violation.

Response to 3B: The Department will comply with all provisions of law concerning the administration of inmate property and therefore disagrees with the commenter. The comment submitted is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment; therefore, the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Comment 3C: Commenter cites a specific alleged action where his property was taken without a rule being violated; which creates animus and promotes resentment. Commenter questions if resulting decompensation and psychological effects were being accounted for.

Response to 3C: The Department disagrees with the commenter. The proposed language contained within is an addition and an expansion of the current regulations. This
enhances the monitoring of the mental health of an inmate placed in Privilege Group C. The proposal further establishes the evaluation, intervention, and treatment by mental health staff of inmates in the Mental Health Services Delivery System.

**Comment 3D:** Commenter states that policy makers don’t pay attention to reason, and continue dumb practices irrespective of its detriment to the Department’s actual mission.

**Response to 3D:** The above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment; therefore, the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

**Commenter #4:**
**Comment 4A:** Commenter states that while they understand punishment to deter negative behavior, they do not think that withholding all food from privilege Group C inmates is a good or positive thing. Commenter gives example in which an inmate may be attempting to determine if they have a cholesterol or gluten allergy, and are eating oatmeal every day, and limiting all food does not serve a penological purpose.

**Response to 4A:** The Department disagrees with the commenter. The revision DOES NOT limit or withhold all food from inmates. The Department will continue to provide three (3) meals each day to all inmates regardless of their housing status. California Code of Regulation (CCR), Title 15, Section 3050 (a) states, “Each inmate shall be provided a wholesome, nutritionally balanced diet. Nutrition levels shall meet the Recommended Dietary Allowances and Dietary Reference Intakes as established by the Food and Nutrition Board of the Institute of Medicine, National Academy of Science.” See Response 4B.

**Comment 4B:** Commenter states the C status inmates be provided heart healthy choices supported by the Department. Commenter also suggested a list of choices for specific food items and number limit for each item. Commenter states that this will assist vegetarian inmates in supplementing their diet and also reinforces that C status inmates still can’t buy what non C status inmates can. Commenter suggests that it would be better to be placed in Administrative Segregation where an inmate can buy the same food and have the same program as C Status.

**Response to 4B:** The Department partially agrees with the commenter. CDCR will continue to abide by established law and regulations. The California Code of Regulations, Title 15, Article 4, Section 3050(a) states, “Each inmate shall be provided a wholesome, nutritionally balanced diet. Nutrition levels shall meet the Recommended Dietary Allowances and Dietary Reference Intakes as established by the Food and Nutrition Board of the Institute of Medicine, National Academy of Science.” CCR Section 3050(a)(1) states, “Inmates confined in segregated housing shall be served food representative of that being served to general population inmates. Food shall not be withheld nor standard menu varied as a disciplinary sanction for any inmate.” Furthermore, CCR Section 3050(a)(2) states, “Inmates shall be provided three meals each day, two of which shall be served hot.” CDCR has also established a Vegetarian Diet Program, CCR Section 3054.1.
Commenter #5
Comment 5A: Commenter writes in support of the revised regulations and believes the changes would improve the conduct of prisoners and make prisons safer and fairer.

Response to 5A: The Department acknowledges the commenter's support of the proposed regulations.

Comment #6
Comment 6A: Commenter disagrees with the changes to subsection 3044(f)(2)(B) which limits canteen purchases to inmates assigned to Privilege Group C. Commenter states that the well-being of an inmate is affected by the ability to purchase food items from the Canteen, when all other privileges are limited.

Response to 6A: The Department acknowledges the comment and partially agrees. The revision enhances the mental health intervention of inmates placed on C Status. See Response 3C.

Comment 6B: Commenter states that the amendment would not serve to create an incentive to positive programming, and would create an underground market for inmates to obtain food items from other inmates. Commenter states that this would create problems and possibly violence. Commenter asks that inmates on Privilege Group C not be barred from purchasing food items.

Response to 6B: The Department disagrees with the commenter. A purpose of placement in Privilege Group C is to promote positive programming as a means for the inmate to earn privileges. It is a Title 15 violation for inmates to engage in business or exchanging of items by any means. The Department will continue to hold inmates accountable through the disciplinary process for violations of any of the following California Code of Regulation (CCR), Title 15 Sections:
3024. Business Dealings by Inmates.
(a) Inmates shall not engage actively in a business or profession except as authorized by the institution head or as provided in Section 3104. For the purpose of this section, a business is defined as any revenue generating or profit making activity.
3192. Possession and Exchange.
An inmate’s right to inherit, own, sell or convey real and/or personal property does not include the right to possess such property within the institutions/facilities of the Department. An inmate may not exchange, borrow, loan, give away or convey personal property to or from other inmates. Violation(s) of this rule may result in disciplinary action, and confiscation and/or disposal of the personal property.

Commenter #7
Comment 7A: Commenter states that Section 3190(l)(6) violates equal protection and Penal Code Sections 2600 and 2601(a) in that purchasing and possessing food items does not threaten the safety security of any person or institution. Commenter states that Section 3044(f)(2)(B) is unlawful for the same reasons.

Response to 7A: The Department disagrees with commenter’s assertion that section 3190(l)(6) violates the California Penal Code. The CDCR will continue to operate in
obedience with all statutes and case law. California Penal Code gives the Secretary of CDCR the authority to administer privileges granted to inmates. Penal code Section 2600 states, “A person sentenced to imprisonment in a state prison may during that period of confinement be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests.” Penological interests refers to punishment, deterrence, rehabilitation, etc. Furthermore, Penal Code Section 5058 states in part, “(a) the director may prescribe and amend rules and regulations for the administration of the prisons.” California Penal Code Section 5054 states, “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 Department of Corrections and Rehabilitation.”

Comment 7B: Commenter states that 3044(f)(2)(G) is unlawful and that Privilege Group C inmates should not be allowed to attend self-help groups except “mandated NA or AA”. Commenter states that C status inmates are precluded from earning credit and they should not be permitted to take available space away from a programming inmate entitled to earn credit.

Response to 7B: The Department disagrees with the commenter. In response to the commenter’s assertion that 3044(f)(2)(G) is unlawful. See Response 7A. The CDCR is committed to making prisons safer by promoting education, rehabilitation, and good conduct through credit-earning incentives and earned privileges through positive programming. The Department recognizes participation in departmental approved self-help group activities is beneficial to the inmate. Once per week is a reasonable accommodation for an inmate who is deemed a program failure and reiterates that there are consequences for continued misbehavior. Once per week also provides the inmate an opportunity to earn milestone credits. These changes are necessary to ensure statewide standardization and equal access to self-help group activities at least once per week.

Comment 7C: Commenter states that “MHSDS” inmates should not be granted more exercise than other inmates. Commenter states that they (MHSDS inmates) are getting enough special treatment as it is. Commenter states that this regulation encourages further manipulation of the MHSDS program.

Response to 7C: The Department acknowledges the commenter’s opinion; however, participants of the Mental Health Services Delivery System (MHSDS) do not receive more exercise opportunities than other inmates. The proposal is needed to specify the difference between exercise activity and a therapeutic activity. Structured therapeutic programming activities are necessary for the mental health of the inmate as they are instructor or clinician lead. This Subsection is necessary to ensure these activities are not counted towards the inmate’s 10 hours of exercise specified in Subsection 3044(f)(2)(D).

Comment 7D: Commenter states that section 3044(f)(2)(J) is unlawful in that Privilege Group C is privilege Group C, and that MHSDS inmates should not be granted privileges not available to other Privilege Group C inmates. Commenter states that this encourages further manipulation of the MHSDS. Commenter states that this regulation does not permit or encourage behavioral changes. Commenter states that Subsections 3376(d)(3)(E)2. and 4. are unlawful for the same reasons.
**Response to 7D:** The Department disagrees with the assertion that Section 3044(f)(2)(J) is unlawful. See Response to 7A above. CDCR has determined the proposed regulations may have a positive impact on the health and welfare inmates by ensuring the safe incarceration of offenders. The proposal is consistent with the Department’s practice to monitor all inmates for signs of decompensation when placed in a restrictive setting or on restrictive privileges, and is necessary to ensure an inmate’s mental health is taken into consideration. This IDTT review is necessary to determine whether the suspension of privileges is likely to be detrimental to the inmate’s mental health status.

**Comment 7E:** Commenter states that the proposed regulations are contrary to the Department’s Statement of Reasons in that its commitment to provide inmates pathways to earn a second chance to succeed. Commenter states that the regulations encourage manipulation of the MHSDS and adds fake suicide claims since they prevent the loss of privileges and property if they are made.

**Response to 7E:** The Department disagrees with the commenter’s assertions. The commenter has failed to demonstrate how the proposed regulations are contrary to the Statement of Reasons; therefore, no meaningful response can be formulated by the Department in refutation of or accommodation to the comment. The Department disagrees with the commenter’s suggestion that the proposed regulations encourage manipulation of the MHSDS by inmates claiming to be in crisis and thereby preventing the loss of privileges and property. The suicide risk assessment process is completed and reviewed by Licensed Clinical professionals who take an active role in thorough screening, prevention, and treatment. The Inter Disciplinary Treatment Team (IDTT), comprised of multidisciplinary professionals, would meet and discuss the privileges beneficial to the welfare of the inmate. It’s through this collaborative effort the needs of the inmate are identified.

**Commenter #8**

**Comment 8A:** Commenter objects to the regulations upon grounds that forcing an inmate to mail out property of persons who are in Privilege Group C or ASU/SHU/PSU if they receive additional RVR's is prejudicial and wrong. Commenter states that staff will bring forth trumped up charges for inmates who are disliked or minorities.

**Response to 8A:** The Department disagrees with the commenter’s assertions regarding the disposition of personal property of a person placed in Privilege Group C and who continues to commit rule violations. The proposed regulations afford an inmate placed in Privilege Group C a second chance and opportunity to earn privileges. While the Department encourages inmates to program positively through good conduct credit-earning incentives, and earning privileges, CDCR will not tolerate continued misconduct. The proposed regulatory action provides consequences for those inmates who continue to engage in misconduct. The commenter has asserted Rule Violation Reports are written and issued to inmates with false and exaggerated claims. This assertion is preposterous. The inmate disciplinary process is conducted with numerous safeguards and review levels by correctional professionals. Hearing officials and others involved in the disciplinary process are impartial and uninvolved parties. Disciplinary Restrictions are applied as a result of a disciplinary action where inmates are afforded due process, pursuant to CCR Sections 3310 through 3326.
Comment 8B: Commenter states that this is a bad rule, bearing a high probability for abuse and misuse, including on a racially discriminatory basis. Commenter states that CDCR Appeal officials are effective at covering up abuses.

Response to 8B: The above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment; therefore, the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Commenter #9
Comment 9A: Commenter states that the changes to limit canteen access is a punishment on top of a punishment. Commenter states that this type of tool can be used by some staff to target an inmate in a negative way. Commenter also states that the limit is not only hurtful, but trains an individual to continue criminal thinking and negative ways.

Response to 9A: See Response 7A above.

Comment 9B: Commenter states that more thought needs to be done regarding Subsection 3044(f)(2)(D) in that language is the same as Ad-Seg and SHU. Commenter states that the goal should be, “how can individuals on C-status use the time out of their cell in a positive way?”

Response to 9B: The Department partially agrees with the commenter. This amendment is necessary to ensure all inmates assigned to Privilege Group C or those deemed a program failure, are offered exercise consistent with accepted Department standards. Existing language does not identify a mandatory minimum number of exercise hours offered to Privilege Group C inmates, nor does it state that the exercise has to be outside or gymnasium type setting. As a result, some institutions are offering less than 10 hours of access to exercise each week, or are counting indoor dayroom time as exercise. In addition, the 10 hour minimum is consistent with the minimum hours allotted for inmates in an Administrative Segregation Unit (ASU) or a Segregated Program Housing Unit (SPHU) setting.

Comment 9C: Commenter states that Section 3044(f)(2)(G) should read that on the reason for C status placement should align with a specific self-help group.

Response to 9C: The Department disagrees with the commenter. Rule violations committed by incarcerated individuals are issued for countless reasons and seldom does a nexus exist between the violation and a person’s reasons for group participation.

Comment 9D: Commenter states that revisions to the affected portions of Section 3190 “is a thin line allowing staff to control removing entertainment appliances. Commenter states that history has shown that staff have abused this discretion which has resulted in an individual harming themselves.

Response to 9D: The Department disagrees with the commenter's opinion. The commenter has made assertions without providing facts or data nor reference thereof. As previously provided in several above responses, the CDCR Inmate Disciplinary process does not involve discretion but rather is a system where inmate rights and due process are at its core. The disciplinary process requires adherence to established laws
and statutes. Sanctions, such as placing an inmate on C Status, are imposed by an impartial hearing officer.

**Comment 9E**: Commenter states that in regards to Subsection 3190(l)(6), that they cannot understand making a rule that leads to an individual feeling like they are starving.

**Response to 9E**: The above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment; therefore, the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

**Comment 9F**: Commenter states that revisions made to Subsection 3315(f)(5)(L) opens the door for some to misuse power that affects an inmate’s physical and mental wellbeing.

**Response to 9F**: The Department disagrees with the commenter. The revision enhances the monitoring of the mental health of an inmate placed in Privilege Group C by providing a comprehensive mental health evaluation of persons placed in a restricted housing. The Mental Health Services Delivery System (MHSDS) offers and provides inmates as much out of cell time as possible regardless of the inmates housing location. Each inmate is provided the following: exercise yard, group therapy, clinician contact, individual therapy, dayroom program, showers, self-help groups, and education. In addition, these patients have access to the law library as well as medical and dental services. Custody staff provide a safe delivery of services to patients through constant observation and documentation of activities.

**Comment 9G**: Commenter states that in regards to Subsection 3315(f)(5)(N), they believe that at the very least a “window” must exist that allows an individual 180 days to navigate and find a cellmate after initial refusal.

**Response to 9G**: The Department disagrees with the commenter. The Secretary of the Department of Corrections and Rehabilitation bears the responsibility for the supervision, management, and control of the discipline of persons confined in state prison. (California Penal Code Section 5054) The Secretary may prescribe and amend rules and regulations for the administration of the prison. (California Penal Code Section 5058)

**Comment 9H**: Commenter states that since they have been in prison they have faced a lot of pushback for voicing concerns with various prison operations, and that change needs to occur. Commenter states that if prisons were given something in return for every inmate that stayed out of prison for a number of years a lot more push to better those people’s life’s would occur.

**Response to 9H**: The above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment; therefore, the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).
Commenter # 10

Comment 10A: Commenter states that the intent of the regulations clear to hold an inmate’s property hostage to ensure good behavior; however, states that staff will maliciously discipline inmates to ensure loss of property.

Response to 10A: The Department disagrees with the commenter. The proposed regulations provide inmates placed in Privilege Group C additional opportunities to have their property stored by the facility rather than disposed of properly per existing regulations. See Responses 9D and 8A above.

Comment 10B: Commenter questions how well the regulations will work when an inmate is stripped of all they have and then told to behave.

Response to 10B: The above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment; therefore, the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Comment 10C: Commenter states that people who have lost their T.V. that was bought for them by a loved one who is now deceased, and has lost the TV due to placement on C status only become persistent problems. Commenter questions why long term inmates who have lost loved ones while being locked up, and now have lost everything, should care anymore.

Response to 10C: The above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment; therefore, the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

Comment 10D: Commenter states that by increasing time intervals of holding inmate’s property, the Department will avoid creating a perpetual program failure.

Response to 10D: The above comment is vague and lacking specifics; however, the revision is beneficial for all inmates and their families. These changes lessen the financial hardship often experienced by the inmate’s family members. These changes are an incentive to promote positive programming, as the inmate can be reunited with their property once they are removed from Privilege Group C status.

Comment 10E: Commenter states that current language in 3190(l)(3) is vaguely worded and that staff misinterpret and apply the regulations differently. Commenter states that the language should be reworded to make the intent absolutely clear with no room for false interpretation.

Response to 10E: The Department disagrees with the commenter. The proposed language in Subsection 3190(l)(3) is thoroughly specific. The proposed revisions provides an incentive to the inmate by providing an opportunity for the entertainment appliance to be returned to the inmate upon his or her removal from program failure status.