This rulemaking action by the Department of Corrections and Rehabilitation amends the administrative determinants used to determine housing assignments for inmates with a history of specific sex crimes and inmates serving a life term whose placement score is not consistent with a Level II security level.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/1/2020.

Date: August 31, 2020

Lindsey S. McNeill
Attorney

For: Kenneth J. Pogue
Director

Original: Ralph Diaz, Secretary
Copy: Sarah Pollock
ENDORSED - FILED
In the office of the Secretary of State of the State of California
AUG 31 2020
1:31pm

OAL FILE NUMBERS Z-2020-0408-01
REGULATORY ACTION NUMBER 2020-0721-045
EMERGENCY NUMBER

FOR USE BY SECRETARY OF STATE ONLY

STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW
NOTICE PUBLICATION/REGULATIONS

For use by Office of Administrative Law (OAL) only

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

2. REQUESTED PUBLICATION DATE

3. NOTICE TYPE

☐ Notice for Proposed Regulatory Action
☐ Other

☐ Disapproved/Withdrawn

☐ Approved as Submitted
☐ Approved as Modified

4. AGENCY CONTACT PERSON

TELEPHONE NUMBER

FAX NUMBER (Optional)

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B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATIONS

Administrative Determinants

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including Title 26, if toxics related)

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

ADOPT

AMEND

REPEAL

15

3. TYPE OF FILING

☐ Regular Rulemaking (Gov. Code §11346)

☐ Repeal of disapproved or withdrawn nonemergency filing (Gov. Code §§11346.3, 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., tits. 1, §100)

☐ Other (Specify)

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs., titles 1, §54 and Gov. Code, §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§11343.4, 11349.1(a), Cal. Code Regs., titles 1, §100)

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

☐ Effective on filing with the Secretary of State

☐ $100 Changes Without Regulatory Effect (Specify)

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

☐ Department of Finance (Form STD. 369) (SAM §6560)

☐ Fair Political Practices Commission

☐ State Fire Marshall

☐ Other (Specify)

7. CONTACT PERSON

TELEPHONE NUMBER

FAX NUMBER (Optional)

E-MAIL ADDRESS (Optional)

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

TYPED NAME AND TITLE OF SIGNATORY

KATHLEEN ALLISON, Undersecretary (A), Operations
TEXT OF ADOPTED REGULATIONS

In the following, underline indicates additional text and strikethrough indicates deleted text.

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

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 4. General Institution Regulations

Article 10. Classification

3375.2 Administrative Determinants

Subsections 3375.2(a) through (a)(1) are unchanged.

Subsection 3375.2(a)(2) is amended to read:

(2) An inmate with a history of sex crimes designated in Section 3377.1(b) shall not be housed in accordance with their placement score a Level I facility and shall not be assigned outside the security perimeter.

Subsections 3375.2(a)(3) through (a)(10)(I) are unchanged.

Subsection 3375.2(a)(11) is amended to read:

(11) An inmate serving a life term whose placement score is not consistent with a Level I or II security level shall not be housed in a Level I or Level II facility except when approved by the Departmental Review Board.

Subsections 3375.2(a)(12) through (b)(30) are unchanged.


3377.1 Inmate Custody Designations

Subsections 3377.1(a) through (b)(9) are unchanged.

Subsection 3377.1(b)(10) is amended to read:
(10) Inmates with “R” suffixes shall not be housed in accordance with their placement score a Level I facility and shall not be assigned outside the security perimeter.

Subsections 3377.1(b)(11) through (d)(3)(B) are unchanged.

FINAL STATEMENT OF REASONS

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

UPDATES TO THE INITIAL STATEMENT OF REASONS

On April 24, 2020, the Notice of Proposed Regulations for Administrative Determinants was published, which began the public comment period. The Department’s Notice of Change to Regulations #20-03 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) internet website, and copies posted in CDCR institutions. The Department received four written comments which are included below under Summaries and Responses to the Written Public Comments Received During the Initial Comment Period. No public hearing was scheduled for the proposed regulations due to the current state of emergency associated with COVID-19, and no hearing was requested.

DETERMINATION:

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

Except as set forth and discussed in the summary and response to the comments received, no other alternatives have been proposed or otherwise brought to the Department’s attention that would alter the Department’s decision.

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.

SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS RECEIVED DURING THE INITIAL COMMENT PERIOD

Commenter #1

Comment 1A: Not all sex offenders and prisoners who have an "R" suffix are violent and dangerous prisoners. The proposed change to the regulations lump all sex offenders and prisoners who have an “R” suffix into one category, which is wrong and not justified. While there are some sex offenders who should be restricted from Level I housing, I do not agree that all sex offenders should be restricted from Level I housing. The decision
should be made on a case-by-case basis depending on what the prisoner’s sex crimes were.

**Accommodation:** none

**Response 1A:** The proposed regulatory change does not look to change the process by which an “R” suffix is applied, or to change the criteria for review and mandatory minimum placement scores of “R” suffixes as delineated within existing California Code of Regulations (CCR). The proposed regulatory change looks to afford inmates with “R” suffixes a greater degree of housing placement options while still remaining within the confines of the mandatory minimum placement score of 19 affixed to inmates with “R” suffixes.

**Commenter #2**

**Comment 2A:** Many prisoners are trying to change their lot as best they can. No one can change the past, so we seek to change the future for the better. Every week there is a further restriction on a person titled sex offender, things other than safety of persons are being lumped in to disqualify them from all manner of activities, family visits, consideration for staff to recommend them for sentence reduction. All other groups have no such restrictions. The ability to go to a prison where one can survive and earn the atonement for past discretions should be available to all, otherwise the REHABILITATION on your system should not be there. Programming is something new to me and I think it gives a better look to positive things coming from those who are now given respect and a chance to evolve to a decent citizen.

**Accommodation:** none

**Response 2A:** See Response to Comment 1A.

**Comment 2B:** I have the same feeling as for 3377.1(b), those that show a desire to better themselves no matter their motivations should be given the opportunity to transform this penal system to a model for the country and the world. I would like to be able to go where there is no need for prison knives, safety for all, staff and prisoners alike. I have no objections to any of these persons being confined to secure facilities. I would like to be able to drop down levels if my behavior dictates I am a programming well rounded law and rules following person.

**Accommodation:** none

**Response 2B:** See Response to Comment 1A.

**Commenter #3**

**Comment 3A:** Commenter provides a lengthy recount of the proposed regulations and CDCR’s reasons for them. Commenter states Subsection 3377.1(b)(10) is a violation of
amendment VII Section 1: Cruel and Unusual Punishments, also his civil actions for protection of rights, prohibitions against conduct depriving persons of constitutional rights and privileges. Commenter provides a personal account of his case factors. Commenter asks why we are using Subsection 3377.1(b)(10) to discriminate by not providing him the possibility of a lower level security housing where he can have access to better rehabilitative services and programs, which will in turn improve his chances of success upon release to parole and into his community. Removing this language will allow him to be considered for level I housing, which will give him access to rehabilitative services and programs, like the inmates with the life term whose placement score is not consistent with a level II security level. Commenter states because of the “R” and due to PC 290, Subsection 3377.(b)(10) is discrimination. Commenter provides his CDCR Form 22s, Inmate/Parolee request for interview, and states he has no history of sex crimes, his placement score is 0, he is a nonviolent felony offense with credit earning of 50% and has been in prison over 25 years, he asks “where is just laws?”

Accommodation: none

Response 3A: The proposed regulatory change looks to afford inmates with “R” suffixes a greater degree of housing placement options while still remaining within the confines of the mandatory minimum placement score of 19 affixed to inmates with “R” suffixes. Similarly the proposed regulatory change will allow life inmates greater flexibility in movement from Level III to Level II institutions, affording greater programing opportunities for both life inmates as well as inmates with a “R” suffix. CDCR is mandated to follow CCR, Title 15 as it pertains to the housing and movement of Life inmates and those identified as having committed a crime as defined in Penal Code Section 290. Offenders’ individual case factors are evaluated by classification committees in accordance with the rules and regulations delineated within CCR and are uniformly applied.

Commenter #4

Comment 4A: Commenter requests NCR 20-03 be denied, section concerning lifers denies Commenter’s 602 appeals. Commenter makes note of his appeals, court filings, etc, but does not provide clear points regarding such, and portions of comments are unintelligible. Commenter submitted 22 pages of documents relating to his personal appeals, court case appeals, etc.

Accommodation: none

Response 4A: The Department acknowledges the Commenter’s opposition to the proposed regulations, however the Department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons. Regarding Commenter’s personal appeals, those comments are either insufficiently related to the specific action proposed or to the procedures followed by the Department in proposing or adopting these regulations, 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 those comments are irrelevant pursuant to Government Code, Section 11346.9(a)(3).