

**OFFICE OF ADMINISTRATIVE LAW**

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SUSAN LAPSLEY  
Director

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*Debra Bowen*  
DEBRA BOWEN  
SECRETARY OF STATE

Date: October 6, 2010

To: L. Porter

From: Chapter Two Compliance Unit

Subject: **2010 OAL DETERMINATION NO. 20 (S)**  
**(CTU2010-0901-01)**  
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5;  
Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation the limitation to one-half bar of soap per week for inmates in the Security Housing Unit and Administrative Segregation Unit at California Correctional Institute.

On September 1, 2010, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether the limitation to one-half bar of soap per week for inmates in the Security Housing Unit and Administrative Segregation Unit at California Correctional Institute constitutes an underground regulation. The rule is found in a letter to you from California Correctional Institute Chief Deputy Warden K. Holland, dated August 15, 2010. This letter is attached hereto as Exhibit A.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600,<sup>1</sup> which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).<sup>2</sup> Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

<sup>1</sup> "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

<sup>2</sup> Such a rule is called an "underground regulation" as defined in California Code of Regulations, title 1, section 250, subsection (a):

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

Generally, a rule which meets the definition of a "regulation" in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c), establishes exemptions expressly for the California Department of Corrections and Rehabilitation (CDCR):

(c) The following are deemed not to be "regulations" as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility....

This exemption is called the "local rule" exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4<sup>th</sup> 841, 845), the court discussed the nature of a "local rule" adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.

...

The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, the rule challenged by your petition applies solely to the inmates of the California Correctional Institution. It was issued by the Chief Deputy Warden at the California Correctional Institution. Inmates housed at other institutions are governed by those other institutions' criteria for limitations on supplies. The rule you challenged was issued by Chief Deputy Warden K. Holland at California Correctional Institute and applies only to inmates at the California Correctional Institute. Therefore, the rule is a "local rule" and is exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1). It is not an underground regulation.<sup>3</sup>

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<sup>3</sup> The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

- (f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.
- (2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:
- (A) The challenged rule has been superseded.
  - (B) The challenged rule is contained in a California statute.
  - (C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.
  - (D) The challenged rule has expired by its own terms.
  - (E) **An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule.** [Emphasis added.]

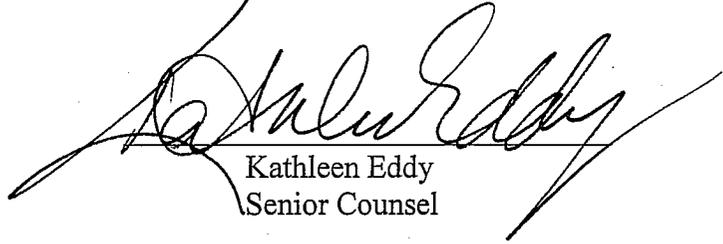
The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.



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SUSAN LAPSLEY

Director



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Kathleen Eddy

Senior Counsel

Copy: Matthew Cate  
Tim Lockwood

# Exhibit A

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DIVISION OF ADULT INSTITUTIONS  
CALIFORNIA CORRECTIONAL INSTITUTION  
P.O. Box 1031  
Tehachapi, CA 93581  
(61) 822-4402



August 15, 2010

L. Porter, E-68840  
California Correctional Institution  
IVB-8A-207L  
P.O. Box 1906  
Tehachapi, Ca. 93581

Dear Mr. Porter:

### SUPPLIES

This is in response to your letter addressed to F. Gonzalez, Warden, California Correctional Institution (CCI), dated August 8, 2010, regarding supplies. Your letter has been referred to my office for review and response.

You documented on August 7, 2010, you and all the other inmates on Unit IVB did not received your weekly issue of a bar of soap.

T. W. Steadman, Associate Warden, Units IVA and IVB, conducted an inquiry into this matter. The inquiry revealed Unit IVB did not receive their allotted supplies in time for various reasons. On August 15, 2010, you did receive one bar of soap, which is double the normal issuance. The current issue of soap for the CCI Security Housing Unit and Administrative Segregation Unit is ½ a bar of soap per week.

Associate Warden Steadman will be monitoring this issue to ensure the supplies are past out in a timely manner in the prescribed amount.

If you have any additional questions concerning this issue, please contact Associate Warden Steadman through institutional mail.

Sincerely,

  
K. HOLLAND  
Chief Deputy Warden  
Units IVA and IVB

cc: F. Gonzalez, Warden  
T. Steadman, Associate Warden, Unit IVA and IVB  
Central File  
10-220lt