

**OFFICE OF ADMINISTRATIVE LAW**

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ENDORSED FILED  
IN THE OFFICE OF

2012 DEC -5 AM 8: 23



*Debra Bowen*  
DEBRA BOWEN  
SECRETARY OF STATE

Date: December 5, 2012

To: Dino Monzo

From: Chapter Two Compliance Unit

Subject: **2012 OAL DETERMINATION NO. 11(S)**  
**(CTU2012-1107-01)**  
(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 Religious Matrix issued by Pleasant Valley State Prison

On November 11, 2012, the Office of Administrative Law (OAL) received your petition asking for a determination as to whether a document titled "Religious Matrix" constitutes an underground regulation. The "Religious Matrix" is a list of personal religious item permitted by Pleasant Valley State Prison.

There is no indication on the document showing whether the document was issued by Pleasant Valley State Prison or by the California Department of Corrections and Rehabilitation. Your petition states that the document was issued by a Community Partnership Manager and the Chaplains at Pleasant Valley State Prison. For purposes of this determination, we will assume that you are correct and the document was issued by officials at Pleasant Valley State Prison. The document 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

<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.

policy issues involved in the subject of this determination.

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 was issued by officials at Pleasant Valley State Prison and applies solely to the inmates of Pleasant Valley State Prison. 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> If, however, evidence established that the rule is not limited to Pleasant Valley State Prison and was issued by the California Department of Corrections and Rehabilitation, the "local rule" exemption would not apply.

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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.

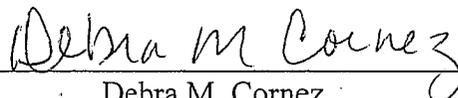
(B) The challenged rule is contained in a California statute.

(C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.

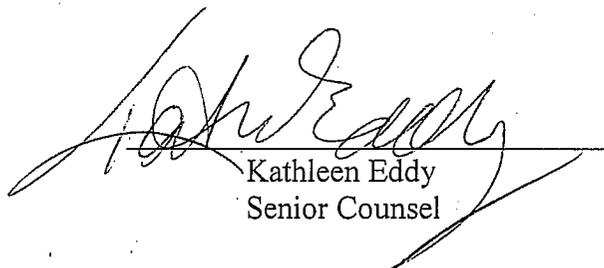
(D) The challenged rule has expired by its own terms.

**(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.



Debra M. Cornez  
Director



Kathleen Eddy  
Senior Counsel

Copy: Martin Hoshino  
Tim Lockwood

# Exhibit A

RELIGIOUS PERSONAL PROPERTY FOR LEVEL I, II, III, IV, CAMP AND DCF INMATES

- INMATES ARE ONLY PERMITTED PERSONAL RELIGIOUS ITEMS LISTED IN THIS SCHEDULE. FACILITIES MAY SUBMIT REQUESTS TO BE EXEMPTED FROM THE RELIGIOUS PROPERTY ITEMS DETAILED IN THIS MATRIX. REQUESTS FOR ITEMS NOT LISTED ON THIS MATRIX SHALL BE PROCESSED THROUGH THE LOCAL CHAPLAINS AND RELIGIOUS REVIEW COMMITTEE (RRC) FOR RECOMMENDATION, AND FORWARDED TO THE STATEWIDE RRC/ WARDENS ADVISORY GROUP (WAG) PRIOR TO APPROVAL. ALL REQUESTS MUST INCLUDE RATIONALE AND SUPPORTING DATA. EXEMPTIONS SHALL BE GRANTED ONLY IN RARE INSTANCES, IF AT ALL, BASED ON A COMPELLING NEED.
- INMATES ARE PERMITTED TO WEAR AND OR POSSESS SOLID COLORED RELIGIOUS GARMENTS ONLY UNLESS OTHERWISE INDICATED.
- INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING PERSONAL RELIGIOUS CLOTHING ITEMS IN ANY SHADE OR TINT OF GREEN, BLACK, BROWN, TAN, RED, OR BLUE UNLESS OTHERWISE INDICATED.
- INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING PERSONAL RELIGIOUS CLOTHING WITH HOODS, PICTURES, DECORATIVE ZIPPERS, INSIDE POCKETS, OR ZIPPED POCKETS.
- INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING ANY ITEMS WITH ANY DESIGN, SIGN, SYMBOL, OR ILLUSTRATION IDENTIFIED AS BEING ASSOCIATED WITH A SECURITY THREAT GROUP.
- ALL INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING ITEMS WHICH ARE OBSCENE, AS DESCRIBED IN CCR, TITLE 15 SECTION 3008, OR WHICH HAVE LOGOS, CODED MESSAGES, LETTERING, PICTURES WHICH ADVERTISE OR DEPICT ALCOHOL, SECURITY THREAT GROUPS, PROFANITY, SEX, WEAPONS, DRUGS, OR DRUG PARAPHERNALIA.
- MALE INMATES SHALL NOT RECEIVE OR POSSESS ITEMS OF RELIGIOUS CLOTHING DESIGNED AND MANUFACTURED SPECIFICALLY FOR WOMEN UNLESS AUTHORIZED FOR MEDICAL REASONS.

Item Description With additional requirements and restrictions.	General Population			ASU/ PSU
	PRIVILEGE GROUP			
	A	B	C	D
ALTAR CLOTH- Maximum size 24" x 24". One item per inmate. White or light gray only.	1	1	1	0
ASSORTED HERBS- Mint, Cedar, Lavender, Sweet grass, and Sage. Herb orders shall not exceed one ounce per quarter. Combined total quantity limited to four ounces or less at any time.	4 OZ	4 OZ	4 OZ	0
BEADED WRIST BAND/HEAD BAND/CHOKER- Shall be multicolored. Allowable colors include: Orange, brown, turquoise, purple, yellow, white, or gray. One of each item per inmate.	1	1	1	0
BOWLS- 4" diameter wood or plastic.	1	1	1	0
CHALK- Limited to one box containing 12 sticks of white non toxic chalk.	1	1	1	0
RELIGIOUS MEDALLION AND CHAIN - Chain not to exceed 24" in length, medallion shall not exceed 1.5" in diameter, obtainable as a set only, value not to exceed \$100. One set per inmate.	1	1	1	1
DREAM CATCHER- Sinew/simulated sinew hoop shall not exceed 4".	1	1	1	0
FEATHERS- Bird feathers are allowed up to a maximum length of 12". Feathers from an eagle may be obtained only via the U.S. Department of the Interior.	6	6	6	0
HEAD GEAR -Males- Including, But Not Limited To, Yarmulke (kippah), Kufi, Bandana, Bez, Patka, Rasufarian Crown. Maximum size 24" x 24". One item per inmate. White or light gray only.	1	1	1	1
HEAD GEAR -Females- Including, But Not Limited To, Scarf, Hijab, Bandana. Maximum size 24" x 24". One item per inmate. White or light gray only.	1	1	1	1
MEDICINE BAG- Shall not exceed 2" x 3". Soft leather or other natural material without a liner.	1	1	1	0
MISWAK - Small twig, not to exceed 7/8", used for oral hygiene.	1	1	1	0
POWDERS- (drawing powder) Limited to eggshell powder. Orders shall not exceed one ounce per quarter. Total quantity limited to four ounces or less at any time.	4 OZ	4 OZ	4 OZ	0
PRAYER BEADS- e.g., Mala, Dhikr, or Rosary. Wood or plastic only. Chain, Sinew, or String not to exceed 24". Not to exceed \$25.00 in value.	1	1	1	1
PRAYER CARDS- Not to exceed 4" x 6".	10	10	10	0
PRAYER OIL (Non alcoholic/non flammable oil). Allowable fragrances include: Kyphi, Frankincense, Sage, Cedar, and Lavender. Combined total quantity limited to four ounces or less at any time.	4 OZ	4 OZ	4 OZ	0
PRAYER RUG- 28" x 48" or smaller. Rug may be multicolored. Allowable colors include: Mustard, turquoise, brown, white or gray.	1	1	1	0
RUNE TILES / COWRIE SHELLS - Runes/ Cowrie shells shall not to exceed 1/4" x 1/4". One set per inmate with instruction book. Set shall not exceed 25 pieces. Runes shall be wood or plastic.	1 SET	1 SET	1 SET	0
SEA SALT (white or black). Combined total quantity limited to four ounces or less at any time.	4 OZ	4 OZ	4 OZ	0
STONES- Set of 5, no larger than 1" in diameter, or set of 10, no larger than 1/2" in diameter.	1 SET	1 SET	1 SET	0
TALLIT KATAN / TSITSIT- Worn under one's shirt. White or light gray only.	1	1	1	0
TAROT/DIVINATION/RUNE CARDS One set/deck per inmate.	1 SET	1 SET	1 SET	0
TEFILLIN/PHYLACTERIES- Purchase value not to exceed \$300.00.	1	1	1	0
WAND (soft wood, not to exceed 7 1/2 inches long by 1/2 inch wide) If soft material is unavailable a pliable twig may be utilized.	1	1	1	0