

## OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
(916) 323-6225 FAX (916) 323-6826

ENDORSED FILED  
IN THE OFFICE OF

2009 OCT 15 PM 3: 36



SUSAN LAPSLEY  
Director

*Debra Bowen*  
DEBRA BOWEN  
SECRETARY OF STATE

Date: October 15, 2009

To: Jon Christ

From: Chapter Two Compliance Unit

Subject: **2009 OAL DETERMINATION NO. 24(S)**  
**(CTU2009-0811-02)**  
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5;  
Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation DOM section 54030.10.4  
concerning handicraft articles

On August 11, 2009, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether specific language in Department of Operations Manual (DOM) section 54030.10.4 issued by the California Department of Corrections and Rehabilitation (CDCR) constitutes an underground regulation. DOM section 54030.10.4 deals with the possession of handicraft materials. A copy of DOM section 54030.10.4 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, which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).<sup>1</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.

On March 2, 2009, the warden of California State Prison, Solano, issued a memorandum titled "Inmate Personal Property Limitations." You specifically challenge the following language in the memorandum:

**DOM Section 54030.10.4 Inmate Handicraft** states in part: *"Inmates who participate in handicraft programs may possess in their quarters/living area,*

---

<sup>1</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.

*handicraft articles, and written and artistic material produced or created by that inmate, consistent with departmental regulations and within the six cubic feet limitation.*” (Emphasis in original memorandum.)

CDCR has adopted regulations governing the type and amount of personal property an inmate may possess. California Code of Regulations, title 15, section 3190 incorporates by reference the Authorized Personal Property Schedule (APPS). The APPS lists the allowable personal property items an inmate may possess in each of the five mission-based regions<sup>2</sup> of the Division of Adult Institutions.<sup>3</sup> The APPS is printed in Article 43 of the DOM. The APPS permits inmates in all of the regions to possess handicraft items upon institutional approval, depending on the level of security to which the inmate is assigned. For example, the APPS provides that inmates in security Levels I, II, III, and Male Conservation Camps, who are assigned to the general population, privilege groups A and B, may possess handicraft items. Inmates in the same institutions who are assigned to the Administrative Segregation Unit, privilege groups C and D, may not possess such items.

In addition to incorporating the APPS by reference, California Code of Regulations, title 15, section 3190(c) states:

The combined volume of state-issued and allowable personal property items shall not exceed six cubic feet, *except as specifically allowed in these regulations.* (Emphasis added.)

Section 3190(c) limits an inmate to no more than six cubic feet of personal property, unless an exception is provided for in title 15. Examples of exceptions from the six cubic foot limitation are section 3190(i)(1) that excepts health care appliances and section 3190(i)(2) that excepts legal material. We do not find, and you have not identified, an exception from the six cubic foot limitation for handicraft material. Handicraft material, therefore, is included in the general limitation of six cubic feet for personal property.

Since handicraft items are not specifically excluded by any other regulation in title 15, they are included in the limitation in section 3190(c) to six cubic feet of personal property. The language in DOM section 54030.10.4 that you challenge as an underground regulation refers specifically to handicraft materials, but does not further embellish on the limitation to six cubic feet of personal property items as set forth in California Code of Regulations, title 15, section 3190(c). The language you challenge in DOM section 54030.10.4 merely restates the general limitation in California Code of Regulations, title 15, section 3190(c). Section 3190(c) is a regulation duly adopted pursuant to the APA. The restatement of a properly adopted regulation is not an underground regulation.

---

<sup>2</sup>The five mission-based regions are:

- Reception Centers,
- Levels I, II, III, and Male Conservation Camps,
- California Out Of State Facilities and Community Correctional Facilities,
- Levels III and IV, High Security and Transitional Housing, and
- Female Offenders Programs.

<sup>3</sup>The Division of Adult Institutions is the division within CDCR responsible for the administration of California prisons.

For the reasons discussed above, we find that the rule challenged by your petition is not an underground regulation.<sup>4</sup>

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

  
SUSAN LAPSLEY  
Director

  
Kathleen Eddy  
Senior Counsel

Copy: Matthew Cate  
John McClure

---

<sup>4</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.

# Exhibit A

**DOM Section 54030.10.4 Inmate Handicraft**

*Inmates who participate in handicraft programs may possess in their quarters/living area, handicraft articles, and written and artistic material produced or created by that inmate, consistent with departmental regulations and within the six cubic feet limitation.* Facilities may designate additional storage for handicraft articles and materials based upon availability of space. Excess handicraft items, articles, or materials in an inmate's possession shall be confiscated and disposed of in accordance with Section 54030.12.2. Inmate donation of handicraft items, articles, tools, and materials to the institution is subject to provisions of Section 53080.14. Such articles shall be controlled by the handicraft manager, become the property of the State, and shall be utilized in the same manner as other State owned tools and materials. (Language challenged as an underground regulation is shown in italics.)