

**OFFICE OF ADMINISTRATIVE LAW**

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*Debra Bowen*  
DEBRA BOWEN  
SECRETARY OF STATE

May 16, 2011

The Honorable Debra Bowen  
Secretary of State  
1500 11th Street  
Sacramento, CA 95814

Re: Corrected 2011 OAL Determination No. 7 (S)  
(CTU 2011-0330-02)

Dear Secretary Bowen:

On May 13, 2011, the Office of Administrative Law filed 2011 OAL Determination No. 6 (S) with your office. Upon further review, the Office of Administrative Law realized 2011 OAL Determination No. 6 (S) should have been filed as 2011 OAL Determination No. 7 (S). Attached are copies of Corrected 2011 OAL Determination No. 7 (S). Please file this letter and the corrected determination with the determination filed on May 13, 2011.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathleen Eddy".

Kathleen Eddy  
Senior Counsel

Cc: Matthew Cate  
Timothy Lockwood

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[Correction: This determination was originally filed on May 13, 2011, as 2011 OAL Determination No. 6(S). The correct number is 2011 OAL Determination No. 7(S).]

Date: May 16, 2011

To: Michael Flanery

From: Chapter Two Compliance Unit

Subject: **2011 OAL DETERMINATION NO. 7 (S)**  
**(CTU2011-0330-02)**  
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5;  
Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation "Facility 'B' Daily Activity Schedule," from California Substance Abuse Treatment Facility and State Prison, Corcoran (SATF-CSP, Corcoran) dealing with the schedule of daily activities, including lighting of the facility.

On March 30, 2011, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether a document titled "Facility 'B' Daily Activity Schedule," from California Substance Abuse Treatment Facility and State Prison, Corcoran (SATF-CSP, Corcoran) dealing with the schedule of daily activities, including when the lights of the facility would be on, was an underground regulation. This document was issued by the associate warden of Complex 1 at the California Substance Abuse Treatment Facility and State Prison, Corcoran (SATF-CSP, Corcoran) and 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.

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<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), expressly establishes exemptions 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 California Substance Abuse Treatment Facility and State Prison, Corcoran (SATF-CSP, Corcoran) and applies solely to the inmates of Facility B of California Substance Abuse Treatment Facility and State Prison, Corcoran (SATF-CSP, Corcoran). 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.

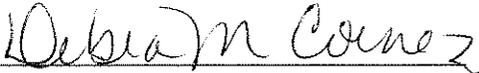
(B) The challenged rule is contained in a California statute.

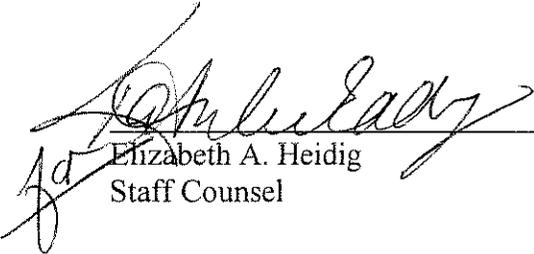
(C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.

(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.

  
Debra M. Cornez  
Assistant Chief Counsel/Acting Director

  
Elizabeth A. Heidig  
Staff Counsel

Copy: Matthew Cate  
Tim Lockwood

# Exhibit A

**FACILITY "B" DAILY ACTIVITY SCHEDULE**

**Weekends and Holidays**  
 The activity schedule for weekends and holidays will be the same as the weekday schedule with the following changes: C status and C privilege group, no yard. UHT inmates will return to their housing units immediately upon the announcement of UHT, unless they are in a climate controlled area, such as Medical, Chapel, or Education. Upon release from these areas, they will immediately return to their housing units. On holidays, no wakeup calls for vocation / education or meal releases.

**Dayroom Lighting**

Between the hours of 0630-2145 the following standard of lighting will be used; all pod day lights will be off, all pod night lights will be on, the small (2 lights) section of dayroom lights will be on, the large (8 lights) section of dayroom lights will be off. This lighting may be increased or decreased at the discretion of the Housing Unit Officers. On Supervisors, based on the ambient lighting conditions in the unit, or operational necessity. Staff should raise the lighting level when on the tier. In compliance with the Armstrong Remedial Plan (ARP) full lighting will be on in any pod, if requested by any visually impaired inmate living in that pod, during the above hours.

**Inclement Weather and Fog Conditions**

1. No yard activities.
2. Dayroom activities only with crash gates closed.
3. All inmates are escorted when outside of the housing units.

Staff will log all yard releases, inline / outlines, dayroom activities in the Housing Unit Logbooks. Any deviation from this schedule will be approved by the Program Lieutenant or above and be logged in the Housing Unit Logbook.

**Crash Gates**

Crash gates will be closed during RBS shifts, at times when there is one officer in the unit for more than about 15 minutes, during inclement weather, and as required by the Facility Supervisors. All other opening and closing of crash gates follow the DAs.

  
 J. CRONINGER  
 B Facility Captain  
 CSAITF/SP

  
 M. TANN  
 Associate Warden-Complex I  
 CSAITF/SP

0001	Institutional Count.	Personal Alarm Device testing non-housing units
0300	Institutional Count	
0330	Wake-Up for early Culinary Workers	
0415	Release early Culinary Workers.	
0500	Institutional Count; Showers available to early workers upon count clearing.	
0520	Dialysis inmates escorted to work change.	
0615	Wake-up for General Population, All Pod lights on.	
0630	Shift change / Security Check	
0650	(Earlier, if possible) Facility Breakfast release, Early Worker release. Dayroom lighting section in effect after release.	
0800	Breakfast concludes; clear culinary tool count. Vocation / Education begins. Upon return of staff assisting at dining, crash gates open.	
0900	Exercise yard release (contingent on culinary tool count). May be delayed due to training and yard maintenance.	
1000	5 minute inline followed by 5 minute outline, no two way traffic.	
1100	5 minute inline followed by 5 minute outline, no two way traffic.	
1130	Education Inline, lunch break	
1200	5 minute inline followed by 5 minute outline, no two way traffic.	
1300	5 minute inline followed by 5 minute outline, no two way traffic (1400-1600, Monday-Friday yard access for C/C status, no Holiday C status yard release). Yard Recall on 3/W RBS days (Close Crash Gates.)	
1400	Shift change / Security Check Vocations release begins, (dependant on number of instructors)	
1430	Education Release. Vocations Release complete. 5 minute inline followed by 5 minute outline, no two way traffic	
1500	Yard Recall	
1600	Dayroom Recall Close Crash gates	
1630	Institutional Count; Pod day lights on during count. Upon completion of the Institutional count, the evening meal releases will be conducted.	
1700	Return to dayroom lighting policy. Upon return of staff assisting at dining, crash gates open.	
1900	Evening Yard Release, contingent upon culinary tool count clearing.	
2000	5 minute inline followed by 5 minute outline, no two way traffic.	
2100	Yard Recall	
2115	Personal alarm testing. Dayroom Recall, Crash gates closed. Pod day lights on.	
2130	Institutional count, night lights turned on after count clears.	
2230	Shift change / security check.	
2345	Dayroom recall	