

**OFFICE OF ADMINISTRATIVE LAW**

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**DEBRA M. CORNEZ**  
Director

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California



**OCT -2 2015**

1:52 PM

Date: October 2, 2015

To: John Jackson

From: Chapter Two Compliance Unit

Subject: **2015 OAL DETERMINATION NO. 8 (S)**  
**(CTU2015-0803-01)**  
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5;  
Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation a document titled: "Pelican Bay State Prison Operations Manual Supplement – Section: 54030 Inmate Property"

On August 3, 2015, the Office of Administrative Law (OAL) received your petition asking for a determination as to whether the "Property Registration" section of the Pelican Bay State Prison Operations Manual Supplement – Section: 54030 Inmate Property constitutes an underground regulation (Property Registration Requirement). The rule is in the Pelican Bay State Prison Operations Manual Supplement dated July 2011. This Property Registration Requirement was issued by the warden at the Pelican Bay State Prison 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.

<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 was issued by Pelican Bay State Prison and applies solely to the inmates of Pelican Bay State Prison. Inmates housed at other institutions are governed by those other institutions' criteria for Property Registration. 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.

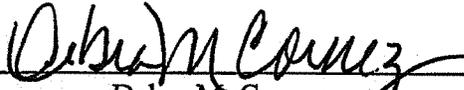
(B) The challenged rule is contained in a California statute.

(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  
Director

  
Elizabeth A. Heidig

Copy: Dr. Jeffrey Beard  
Tim Lockwood

# Exhibit A

 <p>Pelican Bay State Prison</p> <p><b>OPERATIONS MANUAL</b></p> <p><b>SUPPLEMENT</b></p> <p>Supersedes Operational Procedure dated January 2011</p>	<p><b>Chapter: 50000</b></p> <p><b>Custody and Security Operations</b></p>
	<p><b>Subchapter: 54030</b></p> <p><b>Inmate Property</b></p>
	<p><b>Section: 54030</b></p> <p><b>Inmate Property</b></p>

property until the property is delivered and accepted by the ASU Property staff.

### Property Registration

Once an item has been delivered to PBSP, the items are forwarded to the Support Warehouse. The Support Warehouse delivers packages to R&R and/or the Satellite Property Rooms on Monday, Wednesday, and Friday.

Once the ordered item(s) arrive at R&R/Satellite Property Room, Property Officers shall log each package for accountability.

All registerable property item(s) shall be noted on the property card along with the quantity, the style/brand and serial number (if applicable). Appliances shall be engraved with the inmate's last name, CDCR identification number, and four serial numbers. The registerable property shall be documented on the inmate's property card. This will be accomplished in R&R/Satellite Property Room prior to issuance.

The inmate is not required to be present during the search and inventory process of incoming property and packages.

Nonfunctional appliances discovered prior to issuance will be returned to the vendor at the vendor's expense. Any appliance that is determined nonfunctional after issuance is the sole responsibility of the inmate and subject to the warrantee and/or agreement for the specific appliance.

Upon the inmate's reassignment to a different privilege group, i.e., release to GP, detention in the SHU or PSU, a copy of all transaction material shall be forwarded to receiving facilities property room, where it will be integrated with the inmate's property card.

### Property Issuance

Personal property shall be issued first and has priority over all other property to include SPO and Personal Property Packages.

When issuing items of property to an inmate, whether originating from a SPO,