

OFFICE OF ADMINISTRATIVE LAW

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

DEBRA M. CORNEZ
Director



ENDORSED - FILED
In the office of the Secretary of State
of the State of California

MAR 23 2015

2:28 PM

Date: March 23, 2015

To: Anthony Jimenez

From: Chapter Two Compliance Unit

Subject: **2015 OAL DETERMINATION NO. 4 (S)**
(CTU2015-0120-02)
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5;
Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation a document titled:
"Ironwood State Prison, C-Status Population, November 2014" concerning
shopping at the prison canteen.

On January 20, 2015, the Office of Administrative Law (OAL) received your petition asking for a determination as to whether the document titled "Ironwood State Prison, C-Status Population, November 2014" concerning shopping at the prison canteen, constitutes an underground regulation. The document was issued by the Warden and the Prison Canteen Manager at Ironwood 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 11342.600,¹ which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).² 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.

¹ "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.

² 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.4th 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 Neil McDowell, Warden, at Ironwood State Prison and applies solely to the inmates of the Ironwood State Prison. Inmates housed at other institutions are governed by those other institutions' criteria for canteen shopping. 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.³

³ 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.

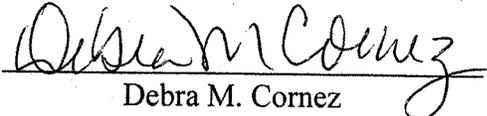
(B) The challenged rule is contained in a California statute.

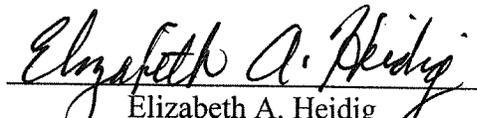
(C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.

(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
Senior Attorney

Copy: Dr. Jeffrey Beard
Tim Lockwood

Exhibit A

2 Copies

IRONWOOD STATE PRISON

C-STATUS POPULATION

NOVEMBER 2014

No Additions
No Returns
No Exceptions

All Sales are Final
No Warranties
No Exchanges

Inmate Name _____ CDC # _____ DRAW \$ _____ BLDG/CELL _____

Only current lists accepted. Prices, sizes, and brands are subject to change without notice.

X Currently not available -- New Item -- Price Increase -- Price Decrease -- C Contract Item -- Discontinued

COSMETICS / HAIR CARE

___ Creamy Baby Lotion		1.20
___ Shampoo, Suave		1.60
___ Conditioner, Suave		1.60
___ Dandruff Shampoo		1.50
___ Skin Care Lotion		1.60
___ Jergens, Lotion		4.65
___ Pomade, Murray's		3.10
___ Pomade, Lusty		1.50
___ Sulfur 8		4.70
___ Hair Food, Lusty		1.70
___ Brush, Military	N076	0.85
___ Comb, Palm	N069	0.50
___ Hair Pick	N065	0.20
___ Du Rag Gray		2.30
___ Comb, Pocket		0.25
___ Comb Thru Softener		4.25
___ Hair bands		1.30

STATIONERY

___ Envelopes Legal	N710	0.04
___ Envelopes Clasp 9x12	N714	0.15
___ Clear Barrel Pen	N723	0.30
___ Tablet	N725	1.00
___ Photo Ducat		2.00

VITAMINS / HEALTH CARE

___ Vitamin C Complex		2.45
___ Daily Multi Vitamins		2.40
___ Protein Supplement 500 MG		6.80
___ Aspirin		1.65
___ Ibuprofen		2.15
___ Antacid		3.70
___ Antifungal Cream		1.60
___ Cough Drops Sugar Free		1.55
___ Allergy Tablets		1.50

PERSONAL CARE

___ Baby Powder (Limit 2)		1.40
___ Dial Roll-on Antiperspirant		1.20
___ Antiperspirant Fresh Gel		2.75
___ Deodorant Active Fresh		2.80
___ Denture Cleaner		2.30
___ Razor, Single Blade	N200	0.15
___ Razor, Twin Blade		1.65
___ Denture Adhesive		3.60
___ Magic Shave		3.10
___ Q-Tips		0.95
___ Face Cream		1.55
___ Shaving Gel		1.55
___ After Shave Lotion		1.45
___ Ivory, 3.1 oz		0.65
___ Irish Spring		0.60
___ Dial Gold		0.80
___ Jergens		0.60
___ Colgate CPA 3		2.30
___ Colgate Whitening		3.50
___ Colgate Max Fresh		3.50
___ Toothbrush	N041	0.40
___ Mouthwash		1.20
___ Toothbrush Caps	N046	0.15
___ Reading Glasses	N671	3.40
___ Zote Laundry Soap		1.05
___ Simline Laundry Soap		1.55
___ Lip Balm (Chapstick)		1.00
___ Fingernail Clippers	N001	0.45
___ Wash Cloth	N000	0.50
___ Sun Block SPF 30		2.05
___ Photo Album		2.30
___ Baseball Cap	N648	3.05
___ Shower Shoes	N647	1.40
Postage		
___ Forever Stamp	N915	0.49

ISP
DEC 03 2014
APPEALS OFFICE

1st Draw 00-49
2nd Draw 50-99
Open Line

November 05 - 07
November 12 - 14
November 17 - 18

CISCO RASCON
Prison Canteen Manager II

4 NEIL MCDOWELL
Warden (A)