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DEBRA M. CORNEZ
Director

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

DEC 07 2018



1:43PM

Date: December 7, 2018

To: Samuel Anderson

From: Chapter Two Compliance Unit

Subject: **2018 OAL DETERMINATION NO. 6 (S)**
(CTU2018-1012-01)
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5;
Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation California State Prison, Los Angeles County Operational Procedure #555: Dining Hall Demeanor, developed November 2014 and revised December 2017

On October 12, 2018, the Office of Administrative Law (OAL) received your petition asking for a determination as to whether California State Prison, Los Angeles County Operational Procedure #555: Dining Hall Demeanor, hereafter referred to as CSP-LA OP #555, constitutes an underground regulation. The rule challenged by you regarding Dining Hall Demeanor is contained in CSP-LA OP #555, issued by the warden at the California State Prison, Los Angeles, and is attached as Exhibit A. It was developed in November 2014 and revised in December 2017. California State Prison, Los Angeles County, is one of the facilities operated by the Department of Corrections and Rehabilitation (Department).

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 an exemption expressly for the Department:

(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 California State Prison, Los Angeles County, and applies solely to the inmates of the California State Prison, Los Angeles County. Inmates housed at other facilities are governed by those other facilities' criteria for dining hall demeanor. 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.

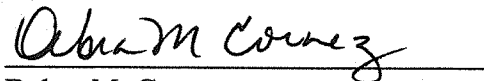
(C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.

(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.

December 7, 2018



Debra M. Cornez
Director



Elizabeth A. Heidig
Assistant Chief Counsel

Copy: Ralph M. Diaz, Secretary (A), CDCR
 Ying Sun, RPMB, CDCR

Exhibit A



**California
Department of Corrections
and Rehabilitation
California State Prison
Los Angeles County
Operational Procedure
#555**

**TITLE: Facility B & C Program and daily
Activity Schedule.**

DEVELOPED: November 2014

REVISED: December 2017

Return:

The following procedures will be followed during meal return:

- ADA inmates are authorized to use the paved roadway in front of the program area for meals, medical, work, etc. Inmates with wheelchairs, canes, walkers, etc, will not be forced to utilize the dirt track. Inmates may use the dirt track on their own if they choose.
- Inmates exit the Dining Hall they will not be allowed to loiter outside the Dining Hall, on the roadway or in front of the Housing Units. If they are not going to the medication disbursement line, they must report directly to their work assignment or back to their Housing Unit.
- Inmates entering their Housing Unit are required to proceed directly to their assigned cell and are not allowed to stop at cells other than their own.
- The inmates assigned to the lower tier will filter between the tables the "B" Section staircases.
- Inmates assigned to the upper tier will proceed to the "B" Section staircases to get to their assigned cells.
- During this recall the "A" and "C" Section staircases are to be considered out of bounds.

Dining Hall Demeanor

Inmate attire for the Dining Hall shall be as follows:

- State issued blues shall be worn (denim pants/chambray shirt).
- State issued jacket.
- Clothing shall be clean and appropriate for Dining Hall.
- Shirts are to be tucked inside pants upon entering the Dining Hall and remain tucked during meals.
- All state issued clothing shall be free of any alterations.
- Pants and shirts shall be free of any cuffing.
- Head coverings (including hair rollers) shall not be worn inside the Dining Hall and must be removed prior to entering Dining Hall.
- Religious headwear is approved as appropriate according to respective custom.
- Shorts shall not be worn during meals.
- Undershirts (tee-shirts) shall be worn under blue chambray shirts.
- Gloves shall not be worn in the Dining Hall.
- Sunglasses shall not be worn in the Dining Hall.
- Personal shoes are permitted in the Dining Hall.