

NOTICE OF PROPOSED REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections

Division 8 California Prison Industry Authority

NOTICE IS HEREBY GIVEN that the California Prison Industry Authority (CALPIA) and the Prison Industry Board (PIB) pursuant to the authority granted by Penal Code (PC) Sections 2801 and 2808 in order to implement, interpret and make specific PC Sections 2801, 2808, and 2809, propose to amend Section 8000 of Article 1, and adopt Sections 8100, 8101, 8102, 8103, 8103.1, 8104, 8104.1, 8105, 8106, 8107, 8108, 8108.1, 8109, 8110, 8111, 8112, 8113, 8114, 8115, 8116, 8117, 8118, 8119, 8120 and 8121, of new Article 6, Chapter 1, of the California Code of Regulations (CCR), Title 15, Division 8, concerning CALPIA Personnel.

PUBLIC HEARING:

Date and Time: May 15, 2013 – 10:00 am to 11:00 am
Place: CALPIA Central Office
560 East Natoma Street
Folsom, CA 95630
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close, **May 15, 2013 at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CALPIA, Legal Services Unit, Regulation and Policy Manager, 560 East Natoma Street, Folsom, CA 95630; by fax at (916) 358-2732; or by e-mail at CALPIAregs@calpia.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action or questions of substance of the proposed regulatory action to:

Ann Cunningham
Regulation Manager
California Prison Industry Authority
560 East Natoma Street, CA 95630
Telephone (916) 358-1711

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

Dawn Eger
Executive Assistant
California Prison Industry Authority
Telephone (916) 358-1711

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Sections 17500 through 17630.

FISCAL IMPACT STATEMENT:

- Cost to any local agency or school district that is required to be reimbursed in accordance with Government Code Sections 17500 through 17630: *None*
- Cost or savings to any state agency: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the State: *None*

EFFECT ON HOUSING COSTS:

The CALPIA under the authority of the PIB has made an initial determination that the proposed action will have no significant effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The CALPIA under the authority of the PIB has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states because they are not affected by the internal management of state prisons.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT:

The CALPIA, as a result of the economic impact assessment, has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California, or the State's environment. The CALPIA identified benefits of these proposed regulation on the health and welfare of California increasing the transparency in business and government, ensuring fairness for CALPIA employees and visitors, and promoting increased efficiency in prison industry operations and employee worker safety.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The CALPIA under the authority of the PIB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES:

The CALPIA under the authority of the PIB has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

CONSIDERATION OF ALTERNATIVES:

The CALPIA under the authority of the PIB must determine that no reasonable alternative considered by the CALPIA, or that has otherwise been identified and brought to the attention of the CALPIA, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The CALPIA under the authority of the PIB has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the CALPIA's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the CALPIA website <http://www.calpia.ca.gov>.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the PIB may adopt the proposed regulations substantially as described in this Notice. If the CALPIA under the authority of the PIB makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the PIB adopts the regulations as revised.

Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The CALPIA under the authority of the PIB will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the CALPIA's contact person.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Evaluation of Inconsistency/Incompatibility with Existing Regulations:

The CALPIA has determined that these proposed regulations are not inconsistent or incompatible with existing state laws and regulations.

Benefits of the Regulations:

The CALPIA has identified anticipated benefits from the proposed regulatory action. The CALPIA identified benefits of these proposed regulation on the health and welfare of California increasing the transparency in business and government, ensuring fairness for CALPIA employees and visitors, and promoting increased efficiency in prison industry operations, employee worker safety and clarity of CALPIA personnel rules and regulations.

Policy Statement Overview:

The California Prison Industry Authority (CALPIA) and the Prison Industry Board (PIB) propose to amend Section 8000 of Article 1 and adopt sections 8100, 8101, 8102, 8103, 8103.1, 8104, 8104.1, 8105, 8106, 8107, 8108, 8108.1, 8109, 8110, 8111, 8112, 8113, 8114, 8115, 8116, 8117, 8118, 8119, 8120 and 8121 of new Article 6, Chapter 1, of the California Code of Regulations (CCR), Title 15, Division 8, concerning CALPIA Personnel. This action is necessary to implement, interpret and make specific Penal Code (PC) section 2809 regarding the General Manager's authority to determine personnel rules for CALPIA employees. CALPIA enterprises are located within CDCR facilities and CALPIA employees work closely with CDCR employees. This close connection between CALPIA and CDCR may confuse staff; the public and other state agencies, such that CALPIA's independence from CDCR regarding personnel rules is often undistinguishable. These proposed regulations are necessary to clarify CALPIA's position as distinct from CDCR as is authorized by PC section 2809.

As part of the July 1, 2005 reorganization of CDCR, the Legislature, in SB 737, amended PC sections 2800 – 2816. Although the CALPIA continues its existence within the newly established CDCR, section 2809 provides the General Manager with the authority to establish recruiting, testing, hiring, promotion, disciplinary and dismissal procedures and practices that meet the unique personnel needs of the authority. The procedures and practices established shall apply to all employees working in enterprises under the jurisdiction of the authority. Statute states "The general manager shall be the appointing authority for all personnel of the authority other than the general manager." The CALPIA's rulemaking authority is established by PC sections 2801 and 2808, and reinforced by PC section 2809 which identifies the CALPIA general manager as the hiring authority for all CALPIA personnel. CALPIA employees work with CDCR employees within CDCR institutions and facilities where inmates participate in work training programs. CALPIA wants its employees to comply with the same or similar regulatory requirements as those imposed upon CDCR employees to maintain consistency and avoid disparate treatment in the workplace. Yet, CALPIA employees work under a hiring authority which is separate and distinct from the CDCR hiring authority and, therefore, require their own separate personnel rules. These proposed regulations set forth the personnel requirements for CALPIA employees which are consistent with, yet independent from, the personnel requirements for CDCR employees.

As specified in CCR, Title 1, section 12 (b) (1), the CALPIA and the PIB acknowledge that some language contained within these regulations is a re-statement of statute found in PC section 2809 and regulations found in CCR, Title 15, Division 3. In justifying the re-statement of statute and regulation, the CALPIA and the PIB contend the re-statement satisfies Government Code (GC) Section 11349.1(a)(3) by providing clarity to the General Manager's scope of authority and establishing personnel requirements for CALPIA employees that are separate from, yet consistent with, those of CDCR. This clarity eliminates any confusion with regards to CALPIA's autonomy from CDCR with regards to its authority given in PC section 2809, specific to CALPIA personnel. The construction of Chapter 6 of the PC may confuse or be misinterpreted by CALPIA staff, inmate workers and the public regarding the authority of the General Manager as the appointing authority for all personnel of CALPIA and CALPIA's status as an agency separate and independent from CDCR. Statutes specific

to CALPIA and the PIB are spread out and are not in one tightly woven format; therefore, re-statement of certain statutes and regulations within these proposed regulations provide a clearer, more condensed format, to alleviate any confusion and enable staff, inmates, and the public in general to more fully understand the CALPIA personnel requirements.

The policies of the CALPIA have been vetted through the public process of the PIB, as required in Penal Code section 2808, subsections (h) and (i), and now are being promulgated through the regulatory process as specified in the APA. The PIB approved the filing of these regulations at their Board Meeting on December 18, 2012. The PIB's Record of Vote and the applicable portion of the transcribed minutes are filed as an attachment to the Initial Statement of Reasons. Non-substantive renumbering of various section numbers were made for clarity purposes. The vote of the PIB was unanimous for the approval of the regulations to be filed with the Office of Administrative Law (OAL).

PC sections 2801 and 2808 provide CALPIA with implied rulemaking authority. PC section 2809 authorizes the CALPIA to recruit and employ civilian staff as necessary to carry out its purpose and establishes the General Manager as the appointing authority for all personnel of CALPIA. Further, CALPIA may also establish policies and procedures to recruit, test, hire, promote, discipline, and dismiss employees to encourage civilian employee involvement in the CALPIA productivity goals. Pursuant to section 2809, these policies and procedures shall apply to all employees working in enterprises under the jurisdiction of the CALPIA. This means that the policies and procedures apply to both civilian staff and civil service staff. However, as determined by the Office of the Attorney General (OAG) in 93 Ops. Cal. Atty. Gen. 35, the policies and procedures apply to civil service staff only to the extent that the policies and procedures are consistent with civil service laws and rules.

This action is necessary to create operational consistency and avoid disparate treatment within the CALPIA and its enterprises throughout CDCR institutions and facilities where CALPIA employees oversee inmates who participate in work training programs.

Section 8000 is amended to add the definitions and merge them alphabetically with those that currently exist in the regulations. This provides clarity and consistency and ease of reference for commonly used terms within Division 8 of Title 15.

New Section 8100 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically identifying the General Manager as the appointing authority for all personnel of the CALPIA.

New Section 8101 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically with regards to any situation that the General Manager or his or her designee, or the employee's supervisor deems to be an emergency.

New Section 8102 is adopted to implement an identification process for CALPIA employees. All CALPIA employees assigned to work or are engaged in work at any CALPIA enterprise or CDCR institution/facility may be issued an identification card granting access to prison grounds as required for the performance of their duties.

New Section 8103 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically with regards to persons not employed by CALPIA, but are assigned to or engaged in work at Central Office or any CALPIA enterprise.

New Section 8103.1 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically with regards to CALPIA employees who are assigned to or are engaged in work at any CDCR institution/facility.

Section 8104 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically the General Manager's authority to appoint ex-offenders.

Section 8104.1 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically ex-offender employee transactions.

New Section 8105 is adopted to implement, interpret or make specific provisions of PC 2809, specifically, that CALPIA employees shall practice appropriate conduct while at work in their dealings with inmates, parolees, fellow employees, visitors and members of the public while away from the workplace.

New Section 8106 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically, the reporting of arrest or conviction, or change in driving status.

New Section 8107 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically with regards to intoxicants and drugs.

New Sections 8108 through 8108.1 are adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, regarding wireless communication devices for CALPIA employees and visitors at CALPIA facilities.

New Section 8109 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically the prohibition against CALPIA employees becoming overly familiar with inmates, parolees, or the friends or family of inmates or parolees.

New Section 8110 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically the prohibition against familiarity in the form of sexual behavior between CALPIA employees and inmates or parolees.

New Section 8111 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, regarding employee and inmate/parolee transactions.

New Section 8112 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically CALPIA employees who know or become aware of any relative or person with whom the employee has or has had either a personal or business relationship is committed to or transferred to the jurisdiction of the CDCR.

New Section 8113 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically with regards vacations of CALPIA employees.

New Section 8114 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically with regards to hours of employment of CALPIA employees.

New Section 8115 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically with regards to personal information record access and amendment of CALPIA employees.

New Section 8116 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically with regards to in-service training of CALPIA employees.

New Section 8117 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically with regards to light duty assignment or reasonable accommodations for CALPIA employees.

New Section 8118 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically with regards to limited term light duty assignments.

New Section 8119 is adopted to implement provisions of Government Code Section 19990 regarding any state officer or employee's employment, activity or enterprise which is clearly inconsistent, incompatible, in conflict with, or hostile or unfriendly to his or her duties as a state officer or employee.

New Section 8120 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically with regards to Compensation for Witnesses.

New Section 8121 is adopted to implement, interpret and make specific provisions of PC 2809 regarding procedures and practices of the CALPIA, specifically with regards to grievances.