

## **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 and 2809, propose to amend Section 8000 of Article 1, and adopt Sections 8100, 8101, 8102, 8103, 8104, 8105, 8106, 8107, 8108, 8109, 8110, 8111, 8112, 8113, 8114, 8115, 8116, 8117, 8118, 8119, 8119.1, 8120 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: June 9, 2014 – 2:00 pm to 3:00 pm  
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, **June 9, 2014 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, comments must be received before the close of the comment period to: CALPIA, Legal Services Unit, 560 East Natoma Street, Folsom, CA 95630; by fax at (916) 358-2709; or by e-mail to [CALPIAregs@calpia.ca.gov](mailto:CALPIAregs@calpia.ca.gov).

#### **CONTACT PERSON:**

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

**Dawn Eger, Legal Assistant  
California Prison Industry Authority  
560 East Natoma Street, Folsom, CA 95630  
Telephone (916) 358-1711**

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

**Rachael McCord, Executive Assistant  
California Prison Industry Authority  
560 East Natoma Street, Folsom, CA 95630  
Telephone (916) 358-1711**

## **AUTHORITY AND REFERENCE**

PC Section 2800 provides that commencing July 1, 2005, there is hereby continued in existence within the Department of Corrections and Rehabilitation the Prison Industry Authority. As used in this article, "authority" means the Prison Industry Authority. Commencing July 1, 2005, any reference to the Department of Corrections shall refer to the Department of Corrections and Rehabilitation.

PC Section 2801 provides that the purposes of the authority are:

(a) To develop and operate industrial, agricultural, and service enterprises employing prisoners in institutions under the jurisdiction of the Department of Corrections, which enterprises may be located either within those institutions or elsewhere, all as may be determined by the authority.

(b) To create and maintain working conditions within the enterprises as much like those which prevail in private industry as possible, to assure prisoners employed therein the opportunity to work productively, to earn funds, and to acquire or improve effective work habits and occupational skills.

(c) To operate a work program for prisoners which will ultimately be self-supporting by generating sufficient funds from the sale of products and services to pay all the expenses of the program, and one which will provide goods and services which are or will be used by the Department of Corrections, thereby reducing the cost of its operation.

PC Section 2809 provides that notwithstanding any other provision of law, commencing July 1, 2005, the authority may recruit and employ civilian staff that may be necessary to carry out the purposes of this article, and shall establish recruiting, testing, hiring, promotion, disciplinary, and dismissal procedures and practices which will meet the unique personnel needs of the authority. The practices may include incentives based on productivity, profit-sharing plans, or other criteria which will encourage civilian employee involvement in the productivity goals of the authority. The procedures and practices shall apply to all employees working in enterprises under the jurisdiction of the authority. The general manager shall be the appointing authority for all personnel of the authority other than the general manager.

## **INFORMATIVE DIGEST/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, 8104, 8105, 8106, 8107, 8108, 8109, 8110, 8111, 8112, 8113, 8114, 8115, 8116, 8117, 8118, 8119, 8119.1, 8120 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 2809. PC Section 2809 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 employees should comply with the same or similar regulatory requirements as those imposed upon CDCR employees to maintain consistency and provide safety in the workplace. CALPIA employees work under a hiring authority which is separate and distinct from the CDCR hiring authority and, therefore, CALPIA requires its own separate personnel rules. These proposed regulations set

forth the personnel requirements for CALPIA employees that are as similar as possible to the personnel requirements for CDCR employees, yet they are independent.

As specified in CCR, Title 1, section 12 (b) (1), the CALPIA acknowledge that some language contained within these regulations is a re-statement of statute found in PC section 2809 and regulations found in California Code of Regulations (CCR), Title 15, Division 3, Chapter 1, Subchapter 5, Article 2. In justifying the re-statement of statute and regulation, the CALPIA 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 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 proposed CALPIA personnel regulations will be vetted through the public process of the PIB, as required in PC Section 2808, subsections (h) and (i), and are now being promulgated through the regulatory process as specified in the Administrative Procedure Act (APA). The PIB will review these regulations at the next board meeting held on June 25, 2014. Upon approval, the PIB's Record of Vote and the applicable portion of the transcribed minutes will be filed as an attachment to the Final Statement of Reasons. These documents will be filed with the Office of Administrative Law (OAL).

PC sections 2801 and 2809 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.

#### **SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS**

CALPIA anticipates the proposed regulatory action will benefit CALPIA employees and its visitors by providing clear and concise personnel rules while ensuring and promoting increased efficiency in prison industry operations.

#### **EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING REGULATIONS:**

During the process of developing these regulations and amendments, CALPIA has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

#### **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 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 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 CALPIA employees.

**ECONOMIC IMPACT ASSESSMENT**

In accordance with Government Code Section 11346.3(b), the California Prison Industry Authority has made the following assessments regarding the proposed regulation:

**Creation or Elimination of Jobs Within the State of California**

The proposed regulations will not create or eliminate jobs within the State of California. It is determined that this action has no significant adverse economic impact on jobs within the State of California because the jobs are not affected by the internal management of CALPIA employees. The benefits of new, proposed regulations will provide clear and concise personnel rules that will only affect CALPIA employees.

**Creation, Expansion, or Elimination of Existing Businesses (Small or Large) within the State of California**

The proposed regulations will not have an effect on the creation, expansion, or elimination, of small or large businesses within California. It is determined that this action has no significant adverse economic impact on small or large businesses within the State of California because businesses are not affected by the internal management of CALPIA employees. The benefits of new, proposed regulations will provide clear and concise personnel rules that will only affect CALPIA employees.

**Benefits of the Regulations**

The proposed regulatory action will benefit CALPIA employees by providing clear and concise personnel rules while ensuring that CALPIA is carrying out the requirements set forth in statute.

**COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:**

The CALPIA 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:**

CALPIA has determined that the proposed regulations will 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 CALPIA employees.

### **CONSIDERATION OF ALTERNATIVES:**

The CALPIA must determine that no reasonable alternative considered, nor has there been reasonable alternatives brought to the attention of the CALPIA that 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 action or would be more cost-effective to affected private persons, or equally effective in implementing the statutory policy or other provision of law than the proposed regulatory action. 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 has prepared, and will make available, the Initial Statement of Reasons (ISOR) and text of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based, is available to the public upon request directed to the CALPIA's contact person (see Page 1). 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 any modifications are made that 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 (see Page 1). The CALPIA 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. (see Page 1)