

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 2800, 2802, 2807, 2808, and 2809 in order to implement, interpret and make specific Penal Code 2808, propose to add Section 8003, Article 3, of the California Code of Regulations (CCR), Title 15, Division 8, concerning severability.

PUBLIC HEARING:

At this time, no public hearing has been scheduled concerning the proposed regulatory action. Anyone may request a public hearing by contacting the Contact Person set forth below. Requests for public hearings must be made no later than June 28, 2021.

SPECIAL ACCOMMODATION REQUEST

Consistent with California Government Code Section 7296.2, special accommodation or language needs may be provided, including any of the following:

- An interpreter to be available at a hearing.
- Documents made available in an alternate format or another language.
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact Roxanna Leffel at CALPIA at (916) 358-1721 or Roxanna.Leffel@calpia.ca.gov as soon as possible, but no later than 10 business days before a scheduled hearing.

Para solicitar estas adaptaciones especiales o servicios de idioma, puede contactar a CALPIA at (916) 358-1721 or Roxanna.Leffel@calpia.ca.gov lo más pronto possible y a más tarder 10 días hábiles antes de la fecha de la audiencia de la Junta (Board).

PUBLIC COMMENT PERIOD:

The public comment period will close on July 12, 2021, 45 days after the Publication in the Notice Register on May 28, 2021. Any person may submit public comments regarding the proposed changes in writing. To be considered, comments must be received before the close of the comment period. Use one of the following to submit:

MAIL or HAND DELIVER

Regulatory Manager
CALPIA/Legal Services Unit
560 East Natoma Street
Folsom, CA 95630

FAX

(916) 358-2709

E-MAIL

PIAregs@calpia.ca.gov

Due to limitations of the email system, emails larger than 15 megabytes (MB) may be rejected and will not be delivered and received by CALPIA. Therefore, emails larger than 15 MB should be submitted in several separate emails or another form of delivery should be used.

CALPIA requests but does not require that reports or articles in excess of 25 pages submitted with any comments include a summary of the reports or articles. This summary should include a concise overview of the report or article, describe the reason for submitting the report and describe the relevance of the reports or articles to the proposed regulation. Please note that under the California Public Records Act (Gov. Code Section 6250, *et. seq.*, your written and oral comments, attachments, and associated contact information (*e.g.*, your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

CONTACT PERSONS:

Please direct any inquiries regarding this action or questions of substance of the proposed regulatory action, or for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to the above-referenced persons to:

M. Doherty, Regulatory Manager
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:

C. Pesce, Executive Assistant
California Prison Industry Authority
560 East Natoma Street, Folsom, CA 95630
Telephone (916) 358-1711

AUTHORITY AND REFERENCE

Penal Code Section 2800: In 1982, the California Legislature restructured the Department of Corrections' industries and vocational training program for incarcerated individuals abolishing the Correctional Industries Commission and replacing it with the newly created Prison Industry Authority (PIA) (subsequently renamed CALPIA) under the direction of the Prison Industry Board.

Penal Code Section 2807(a): Section 2807(a) provides that CALPIA is authorized and empowered to operate industrial, agricultural, and service enterprises which will provide products and services needed by the state, or any political subdivision thereof, or by the federal government, or any department, agency, or corporation thereof, or for any other public use. By giving CALPIA these duties and power by statute, rulemaking authority is implicitly delegated to adopt those rules and regulations necessary for the due and efficient exercise of a duty or power expressly granted.

Penal Code Section 2802: Section 2802 provides for the existence of a Prison Industry Board (PIB).

Penal Code Section 2808: Section 2808 provides the PIB, in the exercise of its duties, all of the powers and do all of the things that the board of directors of a private corporation would do.

State Departments have been given "Quasi-Legislative" powers to adopt rules (regulations) that are consistent with state law so that they can run the programs they that are responsible for. One court

opinion described this as the power to “fill in the details” of the state statute(s) that empower a department to operate a program. *Helene Curtis, Inc. v. Assessment Appeals Bd.* (1999) 76 Cal.App.4th 124. By the implied terms of Penal Code Sections 2808, 2802, 2807, 2800, CALPIA has the authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of these statutes.

INFORMATIVE DIGEST:

This provision is necessary to make clear CALPIA's intention that if one or more provisions of these regulations is invalidated, either facially or as applied in a specific context, the remaining provisions shall continue in full force and effect to the extent possible without the severed provision(s). Although courts generally presume that statutes and regulations are severable – particularly where the scheme involved is long and complex – the severability statement is here intended to resolve any doubt as to the drafters' intent in this regard. Pursuant to Government Code section 11342.2, the proposed amendment is consistent with, and not in conflict with, PC sections 2801 through 2818. The proposed regulatory action is reasonably necessary to effectuate the purposes of PC section 2801 through 2818.

POLICY STATEMENT OVERVIEW:

As noted above in the benefits section, a severability clause is necessary to ensure that the portion of CALPIA's regulations affected by a successful and final legal challenge and severed does not affect the validity of the remaining portions of the regulations. The benefit is to avoid this type of problem in advance. In the 2018 case of *MJ Masters v. CDCR*, No. 1800580, Superior Court, County of Marin, a regulation was subject to challenge and remaining provisions did not survive challenge due to the lack of a severability clause.

Anticipated Benefits of the Proposed Regulation:

Anticipated benefits of the proposed regulatory action include the following. Severability clauses can help administrative agencies minimize the damage caused by judicial review and can make the regulatory environment more efficient, participatory, and predictable. Greater predictability in the law allows agencies to determine how to use rulemaking resources most efficiently. Without severability, the probability that a court will set aside any particular provision is partly a function of the probability that a court will set aside any other provision in the same rule. Thus, the assessment of how best to regulate or how best to comply is to some extent a function of how likely a court is to find potentially unlawful provisions severable.

The benefit of a severability clause is to ensure that the portion of CALPIA's regulations affected by a successful and final legal challenge and severed does not affect the validity of the remaining portions of regulations. In the 2018 case of *MJ Masters v. CDCR*, No. 1800580, Superior Court, County of Marin, a regulation was subject to challenge and remaining provisions did not survive challenge due to the lack of a severability clause.

As noted by Charles W. Tyler & E. Donald Elliott, in “Administrative Severability Clauses”, *The Yale Law Journal*, 124: 2286-2352 (2015) citing Thomas W. Merrill, *The Mead Doctrine: Rules and Standards, Meta-Rules and Meta-Standards*, 54 ADMIN. L. REV. 807, 822-23 (2002):

“Judicial deference to administrative severability clauses also promotes greater stability in regulatory schemes. A “remand-and-repromulgation cycle,” . . . occurs when a regulation

passes back and forth between an agency and the courts. If an agency could reliably influence how a reviewing court would make the severability decision by including a severability clause in a rule, then it could reduce the number of times it must re-promulgate a regulatory remainder that a court has erroneously invalidated.”

Evaluation of Inconsistency/Incompatibility with Existing Regulations:

During the process of developing this regulation, 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 laws and regulations. After conducting a review for regulations that would relate to or affect this area, CALPIA has concluded that these are the only CALPIA regulations that concern this exact processes and procedures for the adoption, amendment, and repeal of regulations by California state agencies.

Mandated by Federal Law or Regulations:

The proposed regulations are not federally mandated.

DISCLOSURES REGARDING THE PROPOSED ACTION

Local Mandates:

Mandate on local agencies and school districts: None. 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 or savings to any state agency: None
Cost to any local agency or school district that is required to be
reimbursed in accordance with Government Code Sections 17500
through 17630: None
Other nondiscretionary cost or savings imposed on local
agencies: None
Cost or savings in federal funding to the State: None
Cost impact on a representative private person or business: None

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.

Significant Statewide Adverse Economic Impact on Business:

CALPIA has initially determined that the proposed action 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.

Effect of Housing Costs:

CALPIA has determined that the proposed action will have no significant effect of housing costs.

Results of the Economic Impact Analysis/Assessment:

CALPIA concludes that it is unlikely that the proposed regulations will: (1) create or eliminate any jobs (2) create or eliminate any businesses; or (3) will result in the expansion of businesses currently doing business within the state.

In accordance with the Government Code Section 11346.3(b), the CALPIA has made the following assessments regarding the proposed regulation.

Benefits of Proposed Action:

As stated above under the Informative Digest and Policy Statement Overview, the benefits of the regulatory action include the following. Severability clauses can help administrative agencies minimize the damage caused by judicial review and can make the regulatory environment more efficient, participatory, and predictable. Greater predictability in the law allows agencies to determine how to use rulemaking resources most efficiently. Without severability, the probability that a court will set aside any particular provision is partly a function of the probability that a court will set aside any other provision in the same rule. Thus, the assessment of how best to regulate or how best to comply is to some extent a function of how likely a court is to find potentially unlawful provisions severable.

The benefit of a severability clause is to ensure that the portion of CALPIA's regulations affected by a successful and final legal challenge and severed does not affect the validity of the remaining portions of regulations. In the 2018 case of *MJ Masters v. CDCR*, No. 1800580, Superior Court, County of Marin, a regulation was subject to challenge and remaining provisions did not survive challenge due to the lack of a severability clause.

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"Judicial deference to administrative severability clauses also promotes greater stability in regulatory schemes. A "remand-and-repromulgation cycle," . . . occurs when a regulation passes back and forth between an agency and the courts. If an agency could reliably influence how a reviewing court would make the severability decision by including a severability clause in a rule, then it could reduce the number of times it must re-promulgate a regulatory remainder that a court has erroneously invalidated."

Thus, this proposed action benefits the public and general welfare.

Creation or Elimination of Jobs within the State of California:

CALPIA has determined that these regulatory changes will have no impact on the creation or elimination of existing jobs within California because those jobs are not affected by the because they are not affected by the management of CALPIA or severability of its regulations which address operations, staff, and incarcerated individuals.

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

This action will not create or eliminate existing 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 these jobs are not affected by CALPIA's proposed regulatory changes any differently than exists presently or there is no impact on existing jobs and therefore there is no impact with the adoption of this section.

Reports Relied Upon:

None.

Cost Impacts on Representative Private Persons or Businesses:

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 this action has no significant adverse economic impact on small business they are not affected by the management of CALPIA or severability of its regulations which address operations, staff, and incarcerated individuals.

Consideration of Alternatives:

In accordance with Government Code section 11346.5, subdivision (a)(13), CALPIA must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention 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 person than the proposed 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 may present statements or arguments with respect to alternatives to the proposed regulations to the aforementioned contact persons.

Availability of Statement of Reasons, Text of Proposed Regulations, and Rulemaking Documents, and other information upon which the rulemaking is based:

CALPIA will have the rulemaking file available for inspection and copying throughout the rulemaking process through its aforementioned contact persons at the office location identified above. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and all rulemaking documents (includes Form 399 and Form 400, special notice requests.)

As noted above, the Proposed Text, Initial Statement of Reasons, *and all the information upon which this proposal is based* have been placed in the rulemaking record, which is available to the public upon request directed to the CALPIA's contact person. The documents will also be made available on the CALPIA website: www.calpia.ca.gov.

Availability of Changes to Proposed Text:

After considering all timely and relevant comments received, the PIB may approve the proposed regulations substantially as described in this Notice. If CALPIA 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 reviews and approves the regulations as revised. CALPIA will accept written comments on the modified regulations for 15 days after the date on which they are made available. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice or can be viewed by visiting CALPIA's website: www.calpia.ca.gov.

Availability of the Final Statement of Reasons:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from CALPIA's contact person or by visiting the CALPIA website: www.calpia.ca.gov.

Availability of the Documents on the Internet:

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, other information upon which the rulemaking is based and the text of the regulations in underline and strikeout can be accessed through the website at www.calpia.ca.gov.