

INITIAL STATEMENT OF REASONS:

The California Prison Industry Authority (CALPIA) and the California Prison Industry Board (PIB) propose the following regulatory action. Pursuant to the authority granted by the Legislature to the Prison Industry Board (PIB) and the California Prison Industry Authority (CALPIA), CALPIA and the PIB propose to add section 8122 titled Employee Prohibition on Use of Nonpublic Information at Auctions, in the California Code of Regulations (CCR), Title 15, concerning the sale of surplus and discontinued goods and property by auction.

In Penal Code (PC) section 2808 the California Legislature provided the PIB with “*all powers to do all of the things that the board of directors of a private corporation would do . . .*” including approving CALPIA’s rulemaking proposals. According to Government Code section 11342.2, the proposed regulatory action is consistent and not in conflict with PC sections 2801 through 2808 (Prison Industry Authority) and is reasonably necessary to effectuate the purpose of PC sections 2801 through 2808.

The proposed regulatory action will be vetted through the public process of the PIB and promulgated through the regulatory process as specified in the Administrative Procedures Act (APA). All rulemaking documents will be filed with the Office of Administrative Law (OAL) and available to the public on CALPIA’s website.

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. These enterprises 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 and the PIB these duties and powers by statute, the Legislature implicitly delegated rulemaking authority to adopt those rules and regulations necessary for the exercise of powers expressly granted to CALPIA.

Penal Code Section 2802: Section 2802 provides for the existence and powers 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 of and to do all of the things that the board of directors of a private corporation would do.

Problem Statement

The proposed regulatory action is necessary to ensure ethical sales of surplus and discontinued goods and property.

Purpose and Necessity of Regulations

CALPIA is conducting auctions of surplus property and discontinued goods. In order to meet ethical standards, a prohibition is necessary against an employee using inside nonpublic information to obtain advantage bidding at an auction, or to assist another to do so. There must be fair and open access to the public for all auctions of CALPIA property and goods and this regulation provides guidance and a standard for employees.

Auctions are conducted online through the Department of Government Services' (DGS) on their Gov Deals website. DGS has now instructed CALPIA to sell the property directly. Any asset, equipment, raw materials, etc., is sold per the State Administrative Manual requirements.

CALPIA and the State is moving into the digital world/platform that itself is monitored. Best practices are having regulations that all parties may participate in auctions, whether online or in-person, as long as they do not have insider information. An example would be if an employee knows which lot of an item has holes in it, and bids on a different lot that does not have holes in it, and that information is not listed on the surplus sale.

This regulation is also important due to items in the news as on May 18, 2020, the National Law Journal reported the improper use of insider information for personal benefit at CalPERS. This regulation ensures that CALPIA is operating best practices to eliminate such a possibility with auctions.

Consideration of Alternatives that would Lessen Adverse Impact on Small Businesses

The proposed regulation is designed to apply to CALPIA staff. CALPIA has not identified any adverse impacts on small businesses. As such, reasonable alternatives that would lessen the impact on small businesses were not considered. No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made more specific.

ECONOMIC IMPACT ASSESSMENT:

Per Government Code Section 11346.3(b), CALPIA has made the following assessments regarding the proposed regulations:

Significant Statewide Adverse Economic Impact on Business:

CALPIA has determined that the proposed regulatory action will have no 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. As a result, there will be no significant statewide adverse economic impact on businesses.

Creation or Elimination of Jobs within the State of California:

The proposed regulation is not intended to create or eliminate any jobs or businesses within the State of California. It will only impact CALPIA staff and not private businesses.

Creation of New Businesses or Elimination of Existing Businesses within the State of California:

The proposed amendment will not expand or prevent the expansion of any existing businesses within California. The proposed regulation will only impact CALPIA staff and not private businesses.

Expansion of Businesses Currently Doing Business within the State of California:

CALPIA has determined the proposed regulatory action will have no effect on the expansion of businesses currently doing business within the State of California because they are not affected by the internal management of CALPIA. As a result, there will be no anticipated expansion of businesses currently doing business within the State of California as a result of this regulatory action.

Benefits of the Regulations:

The proposed regulatory action will provide the benefit of ensuring the ethical use of auctions and sales to dispose of surplus and discontinued goods and property.

Statement of Purpose and Issues Being Addressed:

The primary purpose and benefit of the proposed regulation is to ensure that CALPIA complies with federal and state laws prohibiting the misuse of material, nonpublic information, and that CALPIA staff have a clear understanding of CALPIA's ethical prohibition against the use of non-public information for personal benefit.

Specific Purpose and Rationale, Per Government Code 11346.2(b)(1):

Specific Regulatory Actions and Reasons:

Add Section 8122:

Section 8122 serves to prohibit employees from using nonpublic information in bidding at public auctions on discontinued and surplus goods and property to ensure ethical transactions and disposition of goods and property.

Forms Incorporated by Reference: None.

Duplication or Conflicts with Federal Regulations: None.

The proposed regulatory action does not conflict with any federal standards.

Technical, Theoretical, and/or Empirical Studies, Reports and Documents Relied Upon: None.