

## TEXT OF PROPOSED REGULATIONS

In the following text:

single underline indicates added or amended text

single strikethrough indicates deleted or moved text

Title 15. Crime Prevention and Corrections

Division 8. California Prison Industry Authority

Chapter 1. Rules and Regulations of California Prison Industry Authority

Article 6. Personnel

Section 8106.1 is amended to read:

### **8106.1 Substance Abuse Testing.**

(a) A CALPIA employee that is tested for substance abuse pursuant to Section 599.962 of Title 2 in the California Code of Regulations (CCR), shall be concurrently tested for additional substances not listed in subsections 599.963(b)(1) through (9) of Title 2 in the (CCR). The additional substances are detailed in subsection (b) of this section. The following California Department of Human Resources (CalHR) regulations continue to apply to CALPIA employees and will be followed: Title 2 CCR sections 599.960(a), (b)(1) - (2), (c), and (d); ~~599.964~~; 599.962; 599.963 (a) - (g), except as provided in subsection (c) of this section; 599.964; 599.965; and 599.966. Title 2 CCR section 599.963 (h) applies to CALPIA employees who possess a commercial driver's license and is administered through CDCR's Office of Employee Wellness. Random test draws are generated by CalHR. CALPIA does not have regulations to conduct its own random drug testing at this time. Title 2 CCR sections 599.960(e) and (f) do not apply to CALPIA because CALPIA does not employ Peace Officers. Title 2 CCR section 599.961 does not apply to CALPIA because sensitive positions are designated pursuant to Title 15 CCR section 8106.2.

(b) CALPIA employees meeting the criteria in subsection (a) of this section and subsection 8106.2(b) shall be concurrently tested for the following substances at specified cut-off levels:

	Initial test level (ng/mL)	Confirmatory test level (ng/mL)
(1) Buprenorphine &/or Metabolite	5	2
(2) Butorphanol	100	100
(3) Clonazepam Metabolite	300	300
(4) Fentanyl	300 pg/mL	500 pg/mL
(5) Flunitrazepam Metabolite	300	300
(6) Flurazepam Metabolite	300	300
(7) Hydrocodone	300	300
(8) Hydromorphone	300	300
(9) Ketamine &/or Metabolite	100	100
(10) Lorazepam	300	300
(11) Lysergic acid diethylamide (LSD)	.5	.2
(12) Meperidine &/or Metabolite	100	100
(13) Meprobamate	200	100
(14) Methadone	300	300
(15) Methylenedioxyamphetamine (MDA)	250	200
(16) Methylenedioxyethylamphetamine (MDMA/MDEA)	250	200
(17) Midazolam Metabolite	300	300
(18) Nordiazepam	300	300
(19) Oxycodone	100	100
(20) Oxymorphone	100	100
(21) Pentazocine	100	100
(22) Propoxyphene Metabolite	300	300
(23) Temazepam	300	300
(24) Tramadol	100	100
(25) Triazolam Metabolite	300	300
(26) Zolpidem	100	100

(c) Substance testing procedures for subsection (b) of this section shall be conducted as follows:

(1) Test samples will be collected pursuant to subsections 599.963 (e), (f), and (g) of Title 2 in the California Code of Regulations.

(2) Laboratories performing urinalysis under this section and subsections 599.963(b)(1) through (8) of Title 2 in the California Code of Regulations shall utilize an immunoassay screening test and all positive screening results shall be confirmed utilizing gas or liquid chromatography/mass spectrometry.

(3) Validity testing will be performed on urine samples to determine: consistency with normal human urine, whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted. Validity testing will be performed in compliance with the following sections of 49 Code of Federal Regulations:

Section 40.89 (73 FR 35970, June 25, 2008)

Section 40.91 (69 FR 64867, Nov. 9, 2004)

Section 40.93 (69 FR 64867, Nov. 9, 2004)

Section 40.95 (73 FR 35970, June 25, 2008)

Section 40.96 (73 FR 35970, June 25, 2008)

Test results indicating urine sample is substituted, adulterated, diluted, or tampered with shall be reported as positive. This subsection also applies to urinalysis performed pursuant to subsections 599.963(b)(1) through (8) of Title 2 in the California Code of Regulations.

(d) If a suspected employee attempts to impede or impedes any part of the testing process, he or she will be disciplined, up to and including, termination from civil service. For the purposes of this subsection, impede means the following:

(1) Refusal to cooperate or participate in any part of the testing process

(2) Failure to provide at least 45 mL of urine. Failure occurs 60 minutes after being directed by lab personnel to produce urine and a required medical evaluation determines there was no adequate medical explanation for the failure.

(3) Any other act by the employee which could prevent, interfere with, or defeat the purpose of testing.

(e) All positive test results shall be cause for discipline, up to and including, termination from civil service.

(f) Confirmed positive test results shall be subject to the Medical Review Officer provisions of 599.965 of Title 2 in the California Code of Regulations.

(g) Employees suspected of substance abuse, pursuant to subsection (a) of this section, will be entitled to all rights prescribed in section 599.964 of Title 2 in the California Code of Regulations.

(h) All records of the circumstances and results of an employee testing under this section shall be maintained and processed pursuant to section 599.966 of Title 2 in the California Code of Regulations.

Note: Authority cited: Sections 2801, 2808, and 2809, Penal Code. Reference: Sections 2801, 2808, and 2809, Penal Code, Executive Order D-58-86 (dated September 24, 1986), Code of Federal Regulations, Title 49, Part 40, Subpart F, Section 40.89 (73 FR 35970, June 25, 2008), Section 40.91 (69 FR 64867, Nov. 9, 2004), Section 40.93 (69 FR 64867, Nov. 9, 2004), Section 40.95 (73 FR 35970, June 25, 2008), and Section 40.96 (73 FR 35970, June 25, 2008)

New Section 8106.2 is adopted to read:

**§ 8106.2 Sensitive Positions.**

(a) This section shall prescribe the process for determining sensitive positions for CALPIA employees.

(b) CALPIA positions that are designated as sensitive will be subject to drug and alcohol testing when reasonable suspicion occurs. For this section and section 8106.1, reasonable suspicion is defined in section 599.962 in Title 2 of the California Code of Regulations (CCR).

(c) The General Manager shall designate sensitive positions under his/her jurisdiction that meet the following standards:

(1) their duties involve a greater than normal level of trust, responsibility for or impact on the health and safety of others; and

(2) errors in judgment, inattentiveness or diminished coordination, dexterity or composure while performing their duties could clearly result in mistakes that would endanger the health and safety of others; and

(3) employees in these positions work with such independence, or, perform such tasks that it cannot be safely assumed that mistakes such as those described in subsection (2) could be prevented by a supervisor or another employee.

(d) Filled positions shall be identified as sensitive through the following process:

(1) Employees serving in positions that will become designated as sensitive shall receive an initial notice from CALPIA. Employees shall be given 30 days to respond to the notice.

(2) After considering responses to the initial notice, CALPIA shall issue a final notice to the employees serving in the positions that have been identified as sensitive. This notice shall include all policies and regulations that will effect the designated employee in the event of a substance abuse testing. Existing practices in this area shall not change for any position until 60 days after the final notice concerning it is issued and the requirements of section (g) have been satisfied.

(e) Vacant positions shall be identified as sensitive through the procedures specified in subsection (c).

(f) Once a position has been designated sensitive, the General Manager shall take measures to reasonably ensure that future appointees to it are aware that it is sensitive and are informed of the provisions of this article.

(g) All positions that are designated by the General Manager as sensitive shall be listed on CALPIA's website.

Note: Authority cited: Sections 2808 and 2809, Penal Code. Reference: Sections 2808 and 2809, Penal Code, Executive Order D-58-86 (dated September 24, 1986)