

September 15, 2016

**15-Day Notice of Revisions to Regulatory Text
and Additions of Relied-Upon Documents to Rulemaking File
RE: CALPIA Employee Substance Abuse Testing**

In response to recommendations received by the Office of Administrative Law, changes are being made to the rulemaking record for matter 2016-0808-01S. The rulemaking record for matter 2016-0122-01S is incorporated by reference in its entirety.

The full text of the adoption to the California Code of Regulations (CCR) that concern CALPIA Employee Substance Abuse Testing is provided in its original single underline format. Changes to this original text, which are being proposed in this Notice, are indicated by double underline for added text and ~~double strikeout~~ for deleted text to the originally proposed text.

The following proposed changes are being made available for public comment from September 16, 2016 through October 3, 2016:

REVISIONS TO REGULATION TEXT:

New Subsection 8106.1(a) is amended to:

- Add text that provides more clarification regarding California Department of Human Resources (CalHR) regulations that are applicable (and not applicable) to CALPIA employees.

New Subsection 8106.1(c)(3) is amended to:

- Add dates for the Code of Federal Regulations (CFR) that are cited and referenced in this subsection. Specifying dates of the referenced CFR will ensure CALPIA's regulations will not change or become effected in the event changes are made to the CFR in the future.

New Subsection 8106.1(g) is deleted because:

If a dispute arises over the interpretation of a regulation and the interpretive question is close, deference is given to the agency and the scales are likely to tip in the agency's direction¹. It is unnecessary to regulate who reserves the right to interpret CALPIA regulations; therefore, this new subsection is unnecessary and is removed from the rulemaking file.

New Subsections 8106.1(h) and (i) were amended to:

- Make non-substantial grammatical changes and renumber. The renumbering was necessary due to the deletion of new subsection 8106.1(g). New Subsection 8106.1(h) is renumbered to new subsection 8106.1(g). New Subsection 8106.1(i) is renumbered to new subsection 8106.1(h).

¹ Asimow, the Scope of Judicial Review of Decisions of California Administrative Agencies (1995) 48 UCLA Law Review 1157,1195

Reference citations to New Section 8106.1 were amended to:

- Delete a vague reference to the Code of Federal Regulations (CFR). The reference was vague because it did not specify the dated version of the referenced CFR. To correct this error, CALPIA listed each referenced section and provided a specific date for clarity. CALPIA's reference to a dated version of the CFR remains the same even if changes occur to CFR in the future.

SUPPLEMENTAL TO THE INITIAL STATEMENT OF REASONS:

A Supplemental to the Initial Statement of Reasons was added to provide more necessity and clarification to the rulemaking file. It provides clarity for the initial proposed text while also updating the list of materials relied upon to create the rulemaking file.

Clarification for New Subsection 8106.1(d)(2) is provided to explain the time constraint for an employee to produce a urine sample.

Descriptive language that describes impediment of drug testing in new subsections 8106.1(d)(1)-(3) is amended.

For further details and information on these changes, please refer to the attached Supplemental to the Initial Statement of Reasons.

For clarification purposes, the following materials were cited in the original ISOR, included in initial notice, were relied upon, and should be supplemented under the heading 'Reports Relied Upon' in the original ISOR.

- **Federal Register, 73 FR 71858 (November 25, 2008)**
- **'Drugs of Abuse' 2015 Edition, Resource Guide: U.S. Department of Justice Drug Enforcement**
- **Governor's Executive Order D-58-86, dated September 24, 1986**
- **Standard Agreement Number S1150006, CalHR/Comprehensive Drug Testing, Inc. w/Amendment: Terms of Agreement (Feb 1, 2012 – June 30, 2017)**

All written comments must be received by 5:00 p.m. on October 3, 2016. Please limit your comments to the modifications proposed here. Submit comments to Dawn Eger, Legal Analyst, 560 East Natoma Street, Folsom, CA 95630; by fax to (916) 358-2709; or by e-mail to PIARegs@calpia.ca.gov before 5:00 p.m. on October 3, 2016.

DAWN EGER, Legal Analyst
(916) 358-1612 Telephone
(916) 358-2709 Fax
dawneger@calpia.ca.gov

**ATTACHMENTS: CHANGES TO THE TEXT AS ORIGINALLY PROPOSED
SUPPLEMENTAL TO THE INITIAL STATEMENT OF REASONS**