

Per California Code of Regulations, title 2, section 548.5, the following information will be posted to CalHR's Career Executive Assignment Action Proposals website for 30 calendar days when departments propose new CEA concepts or major revisions to existing CEA concepts. Presence of the department-submitted CEA Action Proposal information on CalHR's website does not indicate CalHR support for the proposal.

A. GENERAL INFORMATION

1. Date

1/6/17

2. Department

Corrections and Rehabilitation

3. Organizational Placement (Division/Branch/Office Name)

Division of Administrative Services, Regulation and Policy Management Branch

4. CEA Position Title

Associate Director, Regulation and Policy Management Branch

5. Summary of proposed position description and how it relates to the program's mission or purpose. (2-3 sentences)

The California Department of Corrections and Rehabilitation (CDCR) proposes to allocate the above position to the CEA category Level A within the Division of Administrative Services (DAS). The Associate Director, Regulation and Policy Management Branch (RPMB) will serve as the Chief Regulatory Officer (CRO) and principal consultant to department executive management on the governance of the department through its rulemaking (Title 15, Division 3, California Code of Regulations [CCR]) and development and adoption of statewide operational policies into the Department Operations Manual (DOM).

6. Reports to: (Class Title/Level)

Director, Administrative Services (Exempt)

7. Relationship with Department Director (Select one)

- Member of department's Executive Management Team, and has frequent contact with director on a wide range of department-wide issues.
- Not a member of department's Executive Management Team but has frequent contact with the Executive Management Team on policy issues.

(Explain): The CEA frequently interacts with CDCR Directors on policy level matters and is part of CDCR's Extended Executive Staff

8. Organizational Level (Select one)

- 1st
- 2nd
- 3rd
- 4th
- 5th (mega departments only - 17,001+ allocated positions)

B. SUMMARY OF REQUEST

9. What are the duties and responsibilities of the CEA position? Be specific and provide examples.

The Associate Director, RPMB will serve as the CRO and principal consultant to department executive management on the governance of the department through its rulemaking (Title 15, Division 3, CCR) and through development and adoption of effective statewide operational policies into DOM. The Associate Director will serve as a member of the CDCR Secretary's extended executive management team and will be responsible for managing all aspects of RPMBs collaboration of custody and non-custody staff, with assigned subject matter experts (SME) in various department divisions, offices, and programs, to develop, vet, and adopt revisions to: 1) regulations meeting the public adoption standards in rulemaking Government Codes (GC) 11340 through 11350.3 (Administrative Procedure Act [APA]); 2) statewide DOM (CDCR's statewide manual for operational policies and procedures) policy that meets department standards and are fully vetted with internal department stakeholders; and 3) department-wide forms management in compliance with GC 14772. The Associate Director will also serve as a liaison between the department and the Office of Administrative Law ([OAL] the state control agency over California regulations), the Office of the Attorney General (OAG), and CDCR's Office of Legal Affairs (OLA) for production of archived regulation, policy, and form adoption documents in response to litigation). The Associate Director will be the point of contact for the regulation and policy management functions of other California state agencies, correctional agencies in other states, and the Federal Bureau of Prisons.

The position will serve as a SME and advisor on administrative law (regulations) for department management by prioritizing, reviewing, and approving regulation (administrative law) packages for approval by the Secretary (authorized rulemaking delegate). In addition, the Associate Director will receive requests for adoption of revision of regulations from CDCR executive management. In collaboration with department executive management and program staff, advises and ensures that proposed department regulation revisions meet APA standards for: necessity, clarity, legal authority, legal reference, consistency, and non-duplication; coordinates timely department stakeholder review; and provides recommendations to the Secretary whether to approve/disapprove for submittal to OAL for public notice. The Associate Director will ensure the public notification, comment period, public hearing, and department response to comment activities of the state rulemaking process are met; and will certify, under penalty of perjury, on behalf of the Secretary, that all public rulemaking requirements have been met when the final rulemaking package is closed and submitted to OAL for final review and certification for adoption.

The Associate Director will receive proposed revisions to DOM from CDCR executive management; ensure proposed changes meet department requirements for clarity, legal reference, and consistency; supervise and coordinate timely department stakeholder review of proposed revisions; and provide recommendations to approve/disapprove revisions to CDCR Directors, Assistant Secretaries, Chiefs, or other executive management over major department divisions, offices, and programs. In addition, the Associate Director will assign and supervise revisions to the Restricted DOM (the department's most sensitive tactical correctional peace officer operational policies exempt from regulations and public disclosure [Penal Code (PC) 5058 (c) (1)(B) and GC 6254(f)]). In collaboration with CDCR executive management and assigned RPMB custody staff, the Associate Director will coordinate the development, review, and adoption of restricted department policies; have oversight and approval of Restricted DOM copies in the field; and approve executive requests for additional or reduced numbers of Restricted DOM holders. The Associate Director will be responsible for requesting, reviewing, and supervising field and headquarters audits regarding the Restricted DOM to ensure compliance with security and updating CDCR Restricted DOM policies; and manage the updating and maintenance of all archived Restricted DOM project records and revisions since their inception.

Through subordinate supervisors, the Associate Director will oversee the statewide forms coordination and catalog function for the department; work with the OAL Director and Assistant Chief Counsel to assess the validity of Petitions for Determination of underground regulations; and will provide guidance and information regarding existing department regulations and legal authority of rules being challenged to help dismiss petitions without merit. The Associate Director will initiate input from CDCR Divisions and Programs for regulation projects to be included in the Secretary's annual Rulemaking Calendar; ensure the calendar is reviewed and submitted timely to OAL for publication; and direct the annual ordering, update, and printing of the Title 15, Division 3 for distribution to inmates (PC 5058, 2080, 2930) and departmental staff.

The Associate Director will have oversight of RPMB budget including authorizing major expenditures. When necessary, initiate assignments to develop Budget Concepts and Budget Change Proposals and defend them with the Office of Fiscal Services and CDCR executive management.

B. SUMMARY OF REQUEST (continued)

10. How critical is the program's mission or purpose to the department's mission as a whole? Include a description of the degree to which the program is critical to the department's mission.

- Program is directly related to department's primary mission and is critical to achieving the department's goals.
- Program is indirectly related to department's primary mission.
- Program plays a supporting role in achieving department's mission (i.e., budget, personnel, other admin functions).

Description: RPMB is critical to the department's mission as it oversees the governance of the department through the Title 15, Division 3, CCR and statewide operational policy in DOM. Both Title 15 and DOM set standards for the day-to-day activities of all CDCR staff, inmates, and parolees per GC 11340 through 11350.3 which requires California state agencies to govern their operations through the use of "quasi-legislative" powers granted to them by the Legislature. These powers are manifested in the rulemaking (regulation) authority granted to heads of state agencies (Secretary, CDCR). State department regulations, by definition, implement, interpret, and make specific the law(s) a state agency is empowered or responsible for carrying out. In order for the Secretary to carry out the general mandate of PC 5054 to administer state prisons and supervise state parolees, the Secretary must adopt regulations (PC 5058), through a prescribed public process that ensures meaningful public participation in compliance with APA.

RPMB is responsible for ensuring that CDCR policies, with regulatory impact (i.e., custody, parole, rehabilitative programs), are properly adopted following the public process; teaming with department management and SME's to develop revisions to existing regulations; when needed, adopting new regulations to implement new programs and operations; and managing the public notice, comment, hearing, and department response phases of regulation adoption. On behalf of the Secretary and executive management, the Associate Director will work with OAL to certify regulations for permanent adoption.

B. SUMMARY OF REQUEST (continued)

11. Describe what has changed that makes this request necessary. Explain how the change justifies the current request. Be specific and provide examples.

The current position over RPMB is designated as a Staff Services Manager (SSM) II (Working Title: Chief) and is responsible for all aspects of managing the Department's regulation (administrative law) and operational policy development including ensuring proposed regulations meet the requirements of APA and the proposed revisions to DOM meet Department standards. The Chief ensures all regulations and policies are effectively vetted with department stakeholders, approved by executive management, comply with the public process required for regulations, and once approved, promulgated to department staff, inmates, and parolees. In addition, the Chief serves as a consultant to the department's executive management on regulations and policies, is responsible for the development and adoption of statewide policy regarding the department's operational policies, and manages the day-to-day activities of RPMB.

In the past, the duties of the Chief were assigned to the Correctional Administrator and Facility Captain classifications. However, in 2004 the Chief, RPMB position was reclassified to the SSM II classification due to budget reductions and department downsizing under state fiscal pressures. With the reclassification of the position came the realization that the oversight of RPMB's regulation and policy management function did not require a peace officer classification. This, however, did not reduce the Chief's administrative responsibilities and functions although it seemed to be a downgrade of the position.

The recent demand to make significant and timely changes to long-standing rules and practices due to legislation, realignment, and litigation make it clear there is a need for a more robust and influential regulation and policy development function. Such an undertaking begins with a commitment to branch leadership, at the appropriate CEA level, to serve as the Department's CRO and principal consultant. The current arrangement hinders the Chief's ability to provide needed advice to CDCR management on regulation project priorities and engaging in strategic planning for improving the Department's processes and effectiveness in developing its regulations and statewide operational policy. With the establishment of the CEA, will allow the SSM II to oversee the more routine day-to-day operations and being able to focus on such things as: 1) evaluating, prioritizing, and assigning requests from department programs for regulation, operational policy and form projects; 2) developing and revising the branch's internal operations manual; 3) managing the annual updates to the Department's two most important policy documents: regulations codified in Title 15, Division 3-Adult Institutions, Programs and Parole, and Statwide Operations Policies in the DOM; and 4) serving as training manager, mentor for new staff, and succession manager for the branch.

The establishment of the CEA will provide the incumbent to dedicate itself to higher level duties and serve as CDCR's CRO and principal consultant to executive management on the governance of the Department through its rulemaking. This would include developing and implementing procedures to improve the quality of the policy directives the Department produces and recommending methods to streamline the processes for regulation and policy development and adoption. The CEA will also serve as the chief policy maker over RPMB operations and as the chief liaison with critical entities such as OAL, OAG, and OLA. In addition, establishing a CEA over RPMB aligns it with its counterpart positions, which report directly to the Director, DAS. This CEA position also is necessary in order to recruit the needed leadership and skill set for the Branch and for future succession management.

C. ROLE IN POLICY INFLUENCE

12. Provide 3-5 specific examples of policy areas over which the CEA position will be the principle policy maker. Each example should cite a policy that would have an identifiable impact. Include a description of the statewide impact of the assigned program.

RPMB primarily serves the regulation and operational policy needs of CDCR divisions, offices, and programs and is responsible for co-writing regulation changes and DOM revisions impacting institution operations, safety and security, parole supervision, rehabilitative programs, and a full range of administrative activities. The Associate Director, RPMB will be responsible for setting project priorities, compiling the Secretary's annual Rulemaking Calendar, advising executive management on strategies for development and adoption of effective regulations and DOM, insuring that proposed policy changes are vetted with appropriate department stakeholders, and making final recommendations for approval/disapproval to executive management. The position will also serve as the CRO and liaison with OAL, submit proposed regulations to the OAL, open and close the rulemaking record, and ensure that all requirements for public adoption of regulations are met. In addition, the Associate Director has direct responsibility over, and is the SME, on the Department's regulation (Title 15) and DOM development and approval processes including the Restricted DOM (DOM Chapter 1, Article 6); and has oversight of the forms management function for CDCR in compliance with Government Code 14772.

Recent examples of significant regulations and DOM that have been successfully adopted include:

- Segregated Housing
- Security Threat Groups
- Inmate Personal Property
- Milestone Completion Credits
- Involuntary Psychiatric Medications
- Parole Revocation Realignment
- Inmate Religious Personal Property
- Use of Force Policy
- Level 4 Inmate Housing Criteria
- Long Term Offender Program
- Administrative Officer of the Day
- Canine Search Units and Controlled Substances and Drug Interdiction
- Control of Dangerous and Toxic Substances
- Prison Rape Elimination Act
- Inmate Library and Law Library
- Employee Wellness Programs

C. ROLE IN POLICY INFLUENCE (continued)

13. What is the CEA position's scope and nature of decision-making authority?

The Associate Director will serve as the CRO for CDCR and the principal consultant to CDCR executive management on administrative law (regulations); statewide operational policy development, review, and dissemination; and forms management. The subject matter of proposed regulations and operational policies can range from institutional custody and security operations, parole supervision, inmate rehabilitation programs, training to the full range of administrative functions. Regulations and operational policy can impact both the internal administration of a specific program (e.g., Human Resources) or impact the operations of prisons, its institutional staff, inmates, and parolees.

Properly adopted regulations have the force of law. To be adopted, proposed regulations and changes to existing regulations require meaningful public participation. RPMB, under the direction of the Associate Director, will team with the Department's program management, staff, and SME's to develop regulation text that, to the extent practicable, can be understood by the general public (PC 5058(a)). Each set of regulation changes must be accompanied by a detailed explanation articulating the Department's intent in making its regulation changes and the reasons why the changes are necessary. The Associate Director, personally and through subordinate supervisors and staff, will influence changes and revisions to the Department's administrative law (regulations) and its statewide operational policies working with program partners. In addition, the Associate Director will manage the review process, of proposed changes, by Department stakeholders and make adjustments as stakeholders offer recommended changes. Once vetted, the proposed regulations and/or statewide operational policies are forwarded to executive management with a recommendation for approval. The Associate Director, through subordinate staff, will have oversight of the public phase of regulation adoption including public notice, receiving public comment, hearings, and Department responses to the public comments received.

Examples of recent significant regulations and operational policy revisions include:

Regulations: Segregated Housing; Security Threat Groups; Level 4 Inmate Housing Criteria; Inmate Religious Items and Sanctuaries; Programming for Long Term Offenders; Inmate Credit Earning; Use of Force; and Involuntary Psychiatric Medication

DOM: Arrest; Search and Seizure; Administrative Officer of the Day; Employee Wellness Programs; and Toxic and Dangerous Substances

14. Will the CEA position be developing and implementing new policy, or interpreting and implementing existing policy? How?

Rulemaking and changes to statewide operational policy (DOM) both create new department rules and standardized procedures as well as modify existing ones. The Associate Director will influence the decisions made in how policy should be revised, where in Title 15 or DOM revisions should be made, and the standards that must be applied to the text (e.g., authority, legal reference, clarity, necessity, consistency). The position will present options to department executive management on strategies for adoption (emergency vs. regular rulemaking), placement in the Restricted DOM or regular DOM, and public perception of proposed changes to policy. The Associate Director's primary role will be to establish and revise rules, standards, and statewide policies across CDCR programs. The records kept of each regulation and DOM adoption are vital in preserving the Department's reasoning and intent; useful in developing training and audit tools; and defending against litigation.