

## **FINAL STATEMENT OF REASONS:**

The Initial Statement of Reasons (ISOR), submitted on May 17, 2012, is incorporated by reference.

The California Prison Industry Authority (CALPIA) and the California Prison Industry Board (PIB) propose to amend Section 8000, of Article 1, and adopt Sections 8004, 8004.1, 8004.2, 8004.3 and 8004.4 of new Article 3, Chapter 1, of the California Code of Regulations (CCR), Title 15, Division 8, concerning CALPIA Inmate Work/Training and Education. The Office of Administrative Law (OAL) has published a Determination regarding CALPIA policies (OAL File No. CTU2008-1014-01), determining that CALPIA job assignments meet the definition of a regulation pursuant to Government Code Section 11342.600. These regulations are meant to address this Determination by adopting regulations pursuant to the Administrative Procedure Act (APA), that specifically address CALPIA's Assignment Practices for Inmate Work and Training. Additionally, these regulations address OAL's Determination (OAL File No. CTU2010-1007-01) which determined that CALPIA GED Requirements meet the definition of a regulation pursuant to Government Code Section 11342.600. With the filing of regulations, CALPIA addresses CALPIA's GED requirement with regards to the hiring process and the educational requirement regarding inmate pay.

CALPIA's Notice of Proposed Regulations was filed with the Office of Administrative Law (OAL) on May 17, 2012 and was published on June 15, 2012. The public hearing was held on July 30, 2012. There were no public comments received at the public hearing. During the 45-day comment period, four written comments were received and are summarized and responded to below. These comments are discussed below under the heading "Comments Received During 45-Day Comment Period." During a review of these comments and upon further review of the text, it was determined that a change in text be included in a modified text. These changes and reasons for them are found below under the heading "Changes to Text of Proposed Regulations."

A 15-Day Renotice, which included the amended text, was distributed on August 28, 2012 to all four commenters who responded during the initial 45-day comment period and was posted on CALPIA's website on August 28, 2012. During the 15-Day Renotice comment period, no comments were received by CALPIA.

CALPIA originally filed the Final Rulemaking file with OAL on September 14, 2012 for review, approval and subsequent filing with the Secretary of State.

A second 15-Day Renotice, which included deleted and amended text, was distributed on October 19, 2012 to the four commenters who responded during the initial 45-day comment period and the women's prisons with CALPIA enterprises and was posted on CALPIA's website on October 19, 2012. CALPIA determined it would be best if the Rulemaking file was withdrawn from OAL so that the proposed regulations could then be submitted with changes to the Prison Industry Board for their review and approval of the file in its entirety, including non-substantial and substantial changes. Additionally, due to the recent resignation of Matthew L. Cate, Secretary, CDCR and Chairman of the PIB, CALPIA determined that the regulations

should be placed before the new Interim Secretary, Martin Hoshino for his review, since the regulations were originally approved under the leadership of Mr. Cate.

During the second 15-Day Renotice comment period from October 19, 2012 through November 4, 2012, there were no comments received by CALPIA.

The PIB approved the original filing of these regulations at their Board Meeting on October 21, 2011. Changes to the regulations including the two 15-Day Re-notices were approved by the PIB on December 18, 2012. The PIB also approved the re-submittal of the regulations to OAL. The PIB's Record of Vote and a portion of the transcript of the minutes are attached to the Final Statement of Reasons. These documents represent a true account of the PIB's meeting. The vote of the PIB was unanimous for the approval of the regulations to be filed with OAL.

### **DETERMINATION:**

The CALPIA and the PIB have determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

### **ASSESSMENTS, MANDATES AND FISCAL IMPACT:**

The CALPIA and the PIB have determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the CALPIA that would lessen any adverse impact on small business.

The CALPIA and the PIB have determined that the proposed regulations are not considered "major regulations" as defined in Government Code 11342.548. Additionally, CALPIA funding, (Prison Industries Revolving Fund) pursuant to Penal Code Section 2806, is not subject to the provisions of Articles 2 (commencing with Section 13320) and 3 (commencing with Section 13335) of Chapter 3 of Part 3 of Division 3 of Title 2 of the Government Code, and therefore is not required to prepare a standardized regulatory impact analysis as specified in Section 11342.548.

The CALPIA and the PIB have determined that the action may not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the CALPIA and the PIB's initial determination.

The CALPIA and the PIB have determined that this action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

The CALPIA and the PIB have determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

In accordance with Government Code Section 11346.3(b), the California Prison Industry Authority has made the following assessments regarding the proposed regulation:

**Creation or Elimination of Jobs Within the State of California**

The proposed adoption of regulation allows for inmates to meet their obligation under CDCR regulations and it allows CALPIA to carry out the requirements of PC 2801, which is part of CALPIA's statutory mandate to create and operate the various enterprises employing inmates. No new jobs in California will be created or eliminated.

**Creation of New or Elimination of Existing Businesses Within the State of California**

The proposed regulation will not have an effect on the creation of new, or the elimination of existing jobs, or businesses within California.

**Expansion of Businesses or Elimination of Existing Businesses Within the State of California**

In the adoption of the proposed regulation regarding CALPIA's Assignment Practices for Inmate Work and Training there will be no expansion of businesses doing business in California, or the health and welfare of California residents, worker safety, or the State's environment.

**Benefits of the Regulations**

The proposed regulatory action will benefit inmates and staff of CALPIA by providing the practices for inmate work and training in a clear and concise manner, ensuring also that CALPIA is carrying out the requirements set forth in Statute regarding the employment of inmates within the prison system.

In proposing these regulations, the CALPIA and the PIB have not identified or relied upon any technical, theoretical, or empirical study, report, or similar document.

**PUBLIC HEARING COMMENTS:**

**Public Hearing: Held July 30, 2012 at 10:00 a.m.**

**SUMMARIES AND RESPONSES TO ORAL COMMENTS AT THE PUBLIC HEARING:**

There were no speakers/commenters at the Public Hearing.

*Comments Received During the 45-Day Comment Period*

**SUMMARIES AND RESPONSES TO WRITTEN COMMENTS:**

**Commenter #1:**

**Comment 1:** Commenter states that he is a LWOP inmate and has been in prison for 31 years and for the past four years has worked in CALPIA industries. He states that his work performance reports have reflected “above average” or “exceptional” skills. He states that LWOP inmates have pride in their work, in the quality, production and stability. He states since prison is home, he has nothing else but his job to look forward to. He believes individuals with set dates care nothing about PIA, the equipment, the quality or the staff. He states this regulation will ultimately prove detrimental to the goals of rehabilitation. He states this regulation will result in catastrophic financial losses both in product and equipment, not to mention an unstable work force.

**Accommodation:** Yes. Section 8004(b)(1) was amended as a non-substantial change to the text, adding clarifying language that directs the reader to the exception found in Section 8004(d)(4).

**Response:** CALPIA recognizes the value of their existing workforce which includes LWOP inmates. CALPIA agrees with the commenter that pride in work quality, production and the stability of the worker are important. The purpose of CALPIA, as defined in statute Penal Code Section 2801, is to operate a work program for inmates, assuring inmates employed therein the opportunity to work productively, to earn funds, and to acquire or improve effective work habits and occupational skills. The purpose of learning work habits and occupational skills is so that upon their release from prison, CALPIA inmates are more likely to become productive members of society because they have the skill sets to find lasting and meaningful employment. Employment with CALPIA by inmates classified as “LWOP inmates” does not serve the purpose of the governing statutes. Prior to promulgation of these regulations, LWOP inmates had been hired by CALPIA to fill various positions within the institutions. However, after these regulations are in effect, inmates will not necessarily be removed from these positions, but the positions will be vacated through attrition or due to disciplinary or other actions, and the positions will not be refilled with LWOP inmates, pursuant to the new regulations. The original text does, however, contain an exception that allows LWOP inmates to work in CALPIA industries on a case-by-case basis. This exception is found in Section 8004(d)(4) which states “Institutions/facilities with a population resulting in inmate worker unavailability may utilize inmates with LWOP sentences with the approval of the Warden at the institution/facility on a case-by-case basis.” A 15-Day Renotice was mailed to all commenters providing notice that the text will be amended by adding the following language: Inmates serving life sentences without parole (LWOP); unless the inmate meets the exception found in 8004 (d)(4). This language was necessary in order to clarify and direct the reader to the exception found in the existing language in Section 8004(d)(4). This non-substantial change clarifies to both staff and inmates that there is an exception already built into the text of the regulations allowing LWOP’s to work at CALPIA when specific factors are considered on a case-by-case basis.

**Commenter #2:**

**Comment 1:** Commenter provides a list of reasons why the proposed regulations would not be good for CALPIA and the quality of products. He states that quality control will be an issue with these regulations; stating that quality is not a priority for inmates who will be paroling. He states that he works hard at meeting the work standards required by CALPIA ensuring the same quality merchandize coming from CALPIA no matter where the product is shipped. He states that

inmates who are getting close to going home will stop caring about quality control. He states that training will be an issue; stating that inmates will be coming and going faster than it is possible to train them properly. He states the revolving door of “short” inmates are being trained by Lifer inmates. He states that turnover of inmates will be a great cost in supplies and products. He further states that education will be an issue because a lot of inmates will be without high school education or GED. He also contends that most inmates do not want to work at PIA for various reasons. The commenter states that equipment is also an issue, in that inmates that have 2 to 5 years won’t care about equipment. He contends millions or thousands of dollars every year would be spent on equipment if CALPIA did not employ LWOP’s. Commenter states inmates other than LWOP’s won’t clean, use correctly or maintain the machinery or equipment with good care, resulting in breakdowns.

**Accommodation:** Yes. Section 8004(b)(1) was amended as a non-substantial change to the text, adding clarifying language that directs the reader to the exception found in Section 8004(d)(4).

**Response: See Commenter #1, Comment 1. Additionally,** CALPIA appreciates your work ethic and concern for the good of CALPIA and the quality of work; however, there are many CALPIA inmate workers that are non LWOP inmates. Inmates other than LWOP’s are productive workers. The Initial Statement of Reasons published on June 15, 2012 provided the reasoning for the proposed adoption of the regulations, specifically to your comment as follows: “Institutions/facilities with a population resulting in inmate worker unavailability may only utilize inmates with LWOP sentences by the Warden at the institution/facility on a case-by-case basis. Institutions such as Pelican Bay State Prison, Mule Creek State Prison, Valley State Prison for Women, etc. have a higher number of LWOP inmates. Institutions/facilities such as these may, at times, have difficulty assigning inmate workers that meet all of the specific standards and requirements stated in these regulations because of their specific populations; therefore, it would be necessary, by the Warden at the institution/facility, and only on a case-by-case basis, that LWOP inmates may be assigned to CALPIA positions when necessary for work production.” Since you are located at Mule Creek State Prison, this exception may apply to you and the Warden at your institution would consider LWOP inmate workers on a case-by-case basis.

**Comment 2:** Commenter states that he loves working for CALPIA and states he makes sure his quality control is perfect. He states he and other LWOP’s are the back bone of good hard workers already in CALPIA. He wants to stay in this workforce to train new inmates, and save the cost of repairs to equipment.

**Accommodation:** Yes. Section 8004(b)(1) was amended as a non-substantial change to the text, adding clarifying language that directs the reader to the exception found in Section 8004(d)(4).

**Response: See Commenter #1, Comment 1 and Commenter #2, Comment 1.**

**Commenter #3:**

**Comment 1:** Commenter states that he is a LWOP and in his 18<sup>th</sup> year without any disciplinary actions and has many CDC 101 work reports with above average scores and wonders why the

LWOP classification of inmate workers is being eliminated from CALPIA. He questions if anyone had thought about all the contributions LWOP inmates have provided to the CALPIA programs, which includes stability with their longevity. He states they are loyal and conscientious. He states that since LWOP's have been in prison for so many years, they rely on this program to sustain them financially. He also states that he believes the success of the program depends on the stability of LWOP's in the program. He states LWOP's buy into the pledges of the CALPIA commitment; however, with the writing of these regulations he feels CALPIA management is telling him that he and other LWOP's mean nothing.

**Accommodation:** Yes. Section 8004(b)(1) was amended as a non-substantial change to the text, adding clarifying language that directs the reader to the exception found in Section 8004(d)(4).

**Response:** See Commenter #1, Comment 1 and Commenter #2, Comment 1 above.

**Commenter #4:**

**Comment 1:** Commenter states that this proposed regulation has a direct effect on him as an LWOP inmate. He contends that this proposal will re-victimize the victims, it will victimize his family and he states CALPIA will lose dedicated and loyal workers. He states CALPIA is taking away one of the biggest incentives LWOP inmates possess to positively program. He states that the proposed regulations state that the goal of CALPIA is to help inmates develop skills and a work ethic that will aid them in reintegrating into society upon their release. He asks if this is not the goal of the entire CDCR? Commenter states CDCR's educational and vocational programs that are available to the general inmate population are not available to LWOP inmates.

**Accommodation:** Yes. Section 8004(b)(1) was amended as a non-substantial change to the text, adding clarifying language that directs the reader to the exception found in Section 8004(d)(4).

**Response:** See Commenter #1, Comment 1 and Commenter #2, Comment 1 above. **Additionally,** comments above regarding programs available at CDCR address an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to GC Section 11346.9(a)(3); however, they are either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by CALPIA in refutation of or accommodation to the comment.

**Comment 2:** Commenter states that being employed by CALPIA gives LWOP's the opportunity and ability to pay restitution. He contends that by banning LWOP's from working in CALPIA, the ability to pay victims their restitution is taken away. He states this re-victimizes their victims of their crimes. He states most LWOP's would like to be able to pay their debt to their victims and to society. He states LWOP's families would be victimized because of this regulation. The commenter states families are already burdened by their loved ones being in prison and if they are unable to work, then the families will be required to provide for them more than they already do. The ability to work at CALPIA affords them the ability to provide for themselves with such items as stamps, hygiene items, quarterly packages, etc.

**Accommodation:** Yes. Section 8004(b)(1) was amended as a non-substantial change to the text, adding clarifying language that directs the reader to the exception found in Section 8004(d)(4).

**Response:** See Commenter #1, Comment 1 and Commenter #2, Comment 1 above. **Additionally,** comments above regarding re-victimization of victims or family members must be summarized pursuant to GC Section 11346.9(a)(3); however, they are either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by CALPIA in refutation of or accommodation to the comment.

**Comment 3:** Commenter states that a newly implemented rule within CDCR allows LWOP's the privilege to have their custody level reduced to level 3, whereas before they were restricted exclusively to level 4 prisons. With this custody reduction there will be greater access to CALPIA jobs. He states that in order for LWOP's to receive this privilege they will have to have positively programmed for many years; however, because of CALPIA's proposed regulations, he states a large incentive for LWOP's to program is being taken away. He states that if this regulation is enacted, CALPIA will be eliminating an enormous willing, loyal, and dedicated work force who want to pay their debt to society.

**Accommodation:** Yes. Section 8004(b)(1) was amended as a non-substantial change to the text, adding clarifying language that directs the reader to the exception found in Section 8004(d)(4).

**Response:** See Commenter #1, Comment 1 and Commenter #2, Comment 1 above. **Additionally,** comments above regarding CDCR rules address an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to GC Section 11346.9(a)(3); however, they are either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by CALPIA in refutation of or accommodation to the comment.

## *Comments Received During the 15-Day Renotice*

### **SUMMARIES AND RESPONSES TO WRITTEN COMMENTS:**

There were no written comments received during the 15-Day Public Comment period.

## *Comments Received During the Second 15-Day Renotice*

### **SUMMARIES AND RESPONSES TO WRITTEN COMMENTS:**

There were no written comments received during the second 15-Day Public Comment period.

### **CHANGES TO THE TEXT OF PROPOSED REGULATIONS IN THE 15-DAY RENOTICE**

**Subsection 8004(b)(1) through 8004(b)(2) are amended.**

**Subsection 8004(b)(1)** has been amended by adding the following language: Inmates serving life sentences without parole (LWOP); **unless the inmate meets the exception found in 8004(d)(4).** This language was necessary in order to clarify and direct the reader to the exception found in the existing language in Section 8004(d)(4). This non-substantial change clarifies to both staff and inmates that there is an exception already built into the text of the regulations allowing LWOP's to work at CALPIA when specific factors are considered on a case-by-case basis. There is no criterion established for any exception that is considered on a case-by-case basis.

**Subsection 8004(b)(2)** has been amended by adding the following language: Inmates with a history of escape; **including, but not limited to an actual escape, an attempted escape, correspondence or any documentation describing an escape plan or escape contraband found in their living quarters including digging, cutting or other objects that could be used for escape;** This new language was necessary to better define what a history of escape entails. When participation in CALPIA work programs is initially considered, the inmate's C-file is reviewed and the documentation of any history of escape would be noted. This escape history is including, but not limited to an actual escape, an attempted escape, or any documentation describing an escape plan or escape contraband found in their living quarters including digging, cutting or other objects that could be used for escape. This is required because various CALPIA job assignments may be located outside of the secure internal perimeter of the institution; therefore, inmates with a history of escape would pose a threat to the safety and security of the general public. Inmates with a history of escape are not eligible for a CALPIA assignment.

### **CHANGES TO THE TEXT OF PROPOSED REGULATIONS IN THE SECOND 15-DAY RENOTICE**

**Article 3** has been amended by changing the title to **CALPIA ~~Work and Training~~ Inmate Work/Training and Education**. This title more appropriately fits the content of the various sections within the Article, including subject matter that includes inmate work/training and education issues.

**Subsection 8004(c)** has been amended by deleting the following language: Inmates ~~convicted of crimes specified below,~~ who are otherwise eligible for a CALPIA assignment shall be restricted as follows: It is necessary to delete this language because the restriction in subsection (c)(1) is not a specific crime as those that are listed in subsections (c)(2) and (3). Subsection 8004(c)(1)

is not a restriction due to a specific crime, but of PC 5071, which requires inmates who are employed to not have access to personal information of any private individuals. Therefore, the language was amended.

**Subsection 8004(d)(2)** has been amended by adding the following language: Inmates with Close B Custody designation may be considered for a CALPIA assignment that conforms with the requirements identified in California Code of Regulations (CCR), Title 15, Division 3, Section 3377.1(a)(4) ~~or (5)~~ on a case-by-case basis, with the approval of the Warden at the institution/facility. The reference to Close B Custody Female Inmates was inadvertently left off of the original text of the regulations. This section was intended to apply to all Close B Custody inmates both male and female specified in Section 3377.1, however, the original regulations only mentioned Section 3377.1(a)(4) which is specific to male inmates. This amendment remedies that by adding “or (5)” to the text. When determining the assignment or re-assignment of an inmate to a CALPIA program, Close B Custody female inmates may now be considered on a case-by-case basis, with the approval of the Warden at the institution/facility.

**Subsection 8004(d)(3)** has been amended to read as follows: Institutions/facilities with a transient population resulting in inmate worker unavailability may utilize inmates with Life sentences, but shall not exceed twenty-five ~~percent (25%)~~ of the workforce per institution/facility. This non-substantive change is meant to clarify and to change this specific subsection to be consistent with similar language in these regulations.

**Section 8004** has been amended to delete reference ~~290~~ in the Authority Citation and Reference section. This reference was not necessary.

**Subsection 8004.2(b)** has been amended to add the revision and the date of the revision to the text of the regulation as follows: The CALPIA Inmate Worker Application Form IEP-F002, *Rev. E, 9-24-2012*, which is incorporated by reference, shall be made available by CALPIA staff to the inmate population throughout facilities with CALPIA enterprises. This document is necessary because it allows for easy access to the form, enabling inmates to apply for a CALPIA position. This document is available to the public upon request; therefore, it would be cumbersome, unduly expensive, or otherwise impractical to publish in the CCR. This requirement is pursuant to Title 1, CCR, Section 20(c)(4), specifically, if the regulation text states that the document (Form IEP-F002) is incorporated by reference it must be identified by the document title and date of the publication or issuance.

**Subsection 8004.3(a)** has been amended to spell out the acronym (ISU) as follows: When there is reasonable suspicion to believe that a CALPIA inmate is under the influence of a controlled substance or alcohol, CALPIA shall contact the *Investigative Services Unit (ISU)* Lieutenant for the purpose of testing for the presence of controlled substances or for the use of alcohol. This is necessary to provide clarity to the text of the regulations.

**Subsection 8004.3(c)** is amended to add “which is incorporated by reference” to the text. The text of the regulations is amended as follows: Any CALPIA inmate found in violation of Section 3016 shall have a minimum of six (6) months of disciplinary/drug/alcohol-free conduct and a minimum of 90 days of satisfactory work as reported prior to reapplying for a CALPIA position

on an institutional Work Supervisor's Report, CDC 101 (1/92), *which is incorporated by reference.* This document is utilized by institutional supervisors within the California Department of Corrections and Rehabilitation (CDCR) who supervise inmate workers. To remain consistent with the operations of CDCR with regards to inmate supervision, CALPIA regards the CDC 101 as a means to view the reported progress of an inmate who is reapplying for a CALPIA position. This document was developed by the CDCR Departmental Forms Coordinator and copies are available to the public upon request by CALPIA; therefore, it would be cumbersome, unduly expensive, or otherwise impractical to publish in the CCR.