

## **INITIAL STATEMENT OF REASONS:**

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.

The policies of the CALPIA have been vetted through the public process of the PIB, as required in Penal Code (PC) 2808 (h) and (i), and now are being promulgated through the regulatory process as specified in the APA. The PIB approved the filing of these regulations at their Board Meeting on April 27, 2012. The PIB's Record of Vote is filed as an attachment to the Initial Statement of Reasons. The vote of the PIB was unanimous for the approval of the regulations to be filed with OAL.

PC Sections 2801 and 2808 provide CALPIA with implied rulemaking authority. PC Section 2801 establishes that CALPIA is to create and maintain working conditions within the enterprises as much like those which prevail in private industry as possible, to assure prisoners employed therein the opportunity to work productively, to earn funds, and to acquire or improve effective work habits and occupational skills.

This action is necessary to create operational consistency within the CALPIA enterprises throughout California Department of Corrections and Rehabilitation (CDCR) institutions and facilities where inmates participate in work training programs, and to prevent disparate treatment.

The CALPIA and the PIB must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected private persons, than the action proposed.

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 made an initial determination that the action will 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 of Title 2 of the Government Code.

The CALPIA and the PIB have determined that the proposed regulations will not have a 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 state prisons.

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

**Section 8000 is amended** to add the definitions and merge them alphabetically with those that currently exist in the regulations. This provides clarity and consistency and ease of reference for commonly used terms within Division 8 of the Title 15.

**New Section 8004 is adopted** to implement, interpret and make specific the provisions of PC 2801, specifically 2801(b) which states the purpose of CALPIA is to create and maintain working conditions within the enterprises ensuring inmates have the opportunity to work productively, earn funds and acquire or improve work habits and occupational skills. In **subsection (a)**, inmates committed to the custody of the CDCR are obligated to work, pursuant to CCR, Title 15, Division 3, Section 3040, and CALPIA provides an option for inmates to fulfill this obligation. Inmates, who have met the standards and requirements set forth in these regulations in section 8004.1, may be assigned to an appropriate work position within CALPIA. This 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.

**New subsection (b) provides** clarity for inmates regarding non-eligibility for a CALPIA assignment. (1) Inmates serving life sentences without the possibility of parole (LWOP) are not eligible for a CALPIA assignment. The purpose of CALPIA, as defined in statute PC 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 by CALPIA of 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. (2) Inmates with a history of escape are not eligible for a CALPIA assignment. 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. (3) Inmates convicted of arson, elements of arson, or possession or use of explosive material, are not eligible for a CALPIA work assignment, unless the arson conviction is more than 15 years prior to the date of application and all other eligibility requirements are met, then an exemption may be considered. Inmates convicted of the above listed crimes would not be able to perform the essential functions of various CALPIA positions, such as those using welding equipment, or use of hazardous material due to sentencing conditions, unless 15 years had passed. These eligibility requirements are necessary to assure that the enterprises are staffed with inmates suitable for the position and its duties. CALPIA successfully administers the program by carefully assessing the needs of each enterprises and then matching them carefully with inmates who meet the hiring standards in Section 8004.1(a), thus safeguarding the integrity of the program.

**New subsection (c) specifies** that inmates convicted of specific crimes, who are otherwise eligible for a CALPIA assignment, are to be restricted as follows: (1) pursuant to PC 5071, inmates who are employed shall not have access to personal information of any private individuals. Any production orders, such as those within the optical factory, that contain private personal information, are first processed through CALPIA staff and all personal information pertaining to MediCal prescriptions is removed. CALPIA safeguards private personal information from inmates as required by PC 5071; (2) inmates convicted of a PC 290 offense shall not be assigned to the CALPIA optical. The Department of Health Care Services (DHCS) contracts with CALPIA via an interagency agreement for the fabrication of lens products for the State of California MediCal program. Both DHCS and CALPIA determined that due to the nature of PC 290 crimes, it would not be appropriate for PC 290 inmates to work in a program where the production of women's and children's eyewear occurs; (3) to ensure the integrity of confidential documents, inmates convicted of forgery, fraud, or embezzlement shall not be assigned to CALPIA Specialty Print Plants; and (4) inmates convicted of computer related crimes shall not be assigned to CALPIA clerical positions due to the fact that many of the clerical positions require use of computers for inputting information relevant to enterprise operations purchase orders, scheduling, etc. Adherence to these regulations will ensure that the integrity of the program is safeguarded and security measures are followed. Safeguarding confidential personal information is a priority to CALPIA, and whatever measures are necessary to ensure confidentiality is protected will be implemented.

**New subsection (d)** lays out factors that shall be taken into consideration when determining, on a case-by-case basis, the assignment or re-assignment of an inmate to a CALPIA program. (1)

Inmates with a prior history of disciplinary actions, or disciplinary measures that resulted in removal from a CALPIA program. The work program requires inmates whose conduct does not hinder the production and on-time delivery of CALPIA products. A stable working environment is necessary; therefore, it is important that inmates assigned to a CALPIA enterprise do not have a recent history of any disciplinary action, having a minimum of six months of disciplinary-free conduct with a minimum of 90 days on an institutional assignment with satisfactory work reports. (2) Inmates with Close B Custody designation may, on a case-by-case basis, and with the approval of the Warden at the institution/facility, be considered for a CALPIA assignment; however, all assignments shall conform with the requirements identified in CCR, Title 15, Division 8, Section 3377.1(a)(4). This is necessary due to security restrictions of the Close B Custody inmate workers. These inmates are permitted to participate in program assignments during the hours of 0600 hours to 2000 in areas located within the facility security perimeter. There are other timeframes within Section 3377.1(a)(4)(B) that are allowed, and may be utilized by CALPIA on a case-by-case basis. CALPIA must conform to the requirement that the work supervisor shall provide direct and constant supervision of these inmates during their assigned work hours. Wardens determine on a case-by-case basis the CALPIA assignments of Close B Custody inmates. The CALPIA assignment of these inmates must be approved by the Warden at the institution/facility of the CALPIA enterprise. (3) Due to the production needs of CALPIA, it may be necessary to consider at institutions/facilities with transient populations an exemption to hire inmates sentenced to life with the possibility of parole. This is necessary because at institutions/facilities with transient populations, the inmate worker pool from which to draw eligible workers is limited and availability for a consistent workforce decreases causing the potential for a work slowdown or shut down for CALPIA. However, if CALPIA can draw from inmates sentenced to life with the possibility of parole, CALPIA production can continue. A restriction of 25 percent of the workforce is necessary to ensure that inmates with a greater possibility of parole and gaining employment beyond the prison are provided a greater opportunity, as this is in keeping with the mission statement of CALPIA. (4) 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.

**New subsection (e) specifies** that CALPIA inmates who are participating in work/training programs and are currently placed on Immigration and Customs Enforcement (ICE) Hold status shall not be issued external accredited certifications. CALPIA inmate workers receive work training and education, including certification certificates that will allow them to gain employment upon their release from prison. This work experience is meant to aid inmates upon their release. Those inmates, who are on ICE Hold status, unless their ICE Hold has been cleared pursuant to U.S. Immigration and Customs Enforcement procedures regarding immigration, will not have the opportunity to work in the U.S., but will be released into the country of residence outside of the U.S. Therefore, providing these inmates with a certificate that is for use by a U.S. employer would not be valid for an employer outside of the U.S.

**New Section 8004.1 is adopted** to implement, interpret and make specific the provisions of PC 2801(b), by creating hiring standards and requirements for inmate workers so that CALPIA, as made specific in **subsection (a)** is able to fill vacant job/training positions based upon the following standards: (1) Skill level as evidenced by the inmate's technical expertise, ability, and knowledge; (2) Behavior and relationships with others as evidenced by the inmate's ability to work with staff and other authority figures, work/training supervisors, and other inmates; (3) Attitude and adaptability as evidenced by the inmate's willingness to learn, take directions and orders; (4) Work/training habits evidenced by the inmate's punctuality, dependability, care of equipment, and safety practices; (5) Formal education and training evidenced by the inmate's preparation for the work/training assignment and the ability to read, write, and speak effectively; and (6) Ethnic Balance. Balance is achieved by assigning identified ethnicities for CALPIA work/training position in proportion to those represented within the inmate yard at the institution. These standards are similar to those used in CDCR's inmate work/training assignment criteria in Title 15, Division 3, Section 3041.1(a), attempting to ensure continuity of treatment for prison inmates. Additionally, these standards are also similar to those utilized by the California State Personal Board in their testing and recruitment processes. Workers are provided a list of standards and requirements such as skill level, adaptability, knowledge and abilities that must be met in order to perform the job they are applying for. Other standards and requirements have not been used because they do not provide a broad spectrum of an inmate's capability to perform the job as do the standards in subsection (a). These regulations are necessary to provide standards so that inmates, who seek to participate in CALPIA work/training programs, will understand the standards that will be required of them. CALPIA is required by statute to create and maintain working conditions within the enterprises as much like those which prevail in private industry as possible. The skill level of each work training position varies thereby allowing different skill levels of inmates to participate in CALPIA work/training programs. Inmates must be able to show evidence of their ability to work with staff and other authority figures work/training supervisors and other inmates. Inmate behavior and their relationships with others is vitally important along with their ability to adapt, which should be evidenced by the inmate willingness to learn, take directions, and orders. Since CALPIA's production depends upon its workers, it is vitally important that the inmate is punctual, dependable, takes care of the equipment, and follows safety practices at the jobsite. Inmates must be able to be prepared for the work assignment. To prepare for any job assignment an inmate may be required to read work instructions, or write/document information on the computer or be able to speak effectively enough to ask questions of their supervisor, or other inmate workers. Therefore, education and training evidenced by the ability to read, write, and speak effectively at a level that will enable them to learn and perform their duties is required. Reasonable accommodations will be considered; however, the inmate must have the ability to perform the essential functions required by the program in their specific job. CALPIA wants to provide inmates with effective work and training; however, as in private industry workers are required to work productively in order to earn funds, acquire work habits and occupational skills they can utilize after their release from prison.

**New subsection 8004.1(b) is adopted to establish** minimum intake requirements for any CALPIA assignment or apprenticeship/training position. To be eligible for assignment, inmates shall meet a minimum intake requirement of two years and a maximum of five years from the

earliest possible release date (EPRD), on the date of application. This is necessary to maintain production, but also to ensure development of skills necessary to perform duties and allow inmates a thorough skill set. CALPIA is to operate the enterprises much like those which exist in private industry, pursuant to PC 2801; therefore, acquiring workers that are able to remain in a position for a longer period of time will aid both CALPIA and the inmate. **New subsection (c) establishes** an alternate intake requirement for Reception Centers with temporary or transient populations resulting in inmate worker unavailability and for institutions with a Level 1 inmate population who are at the end of their sentences. This alternative is necessary as these transient populations may hinder CALPIA's production due to the decrease in or transient nature of the inmates at that specific institution or within a specific yard within a facility. There may be instances when there are few if any inmates that meet the criteria in subsection 8004.1(b) at these institutions. Inmates at Level 1 institutions are typically preparing for parole and to be released back into society, many have only a few months left on their prison sentences; therefore, to give them an opportunity to learn a skill during their last few months is not only beneficial for CALPIA but for the inmate and for society. CALPIA knows the importance of allowing inmates with as little as two months with a maximum of 60 months from their earliest EPRD to participate in CALPIA programs. Inmates may glean valuable work skills in a few months that may allow them to find employment upon their release and ultimately reduce recidivism rates. Typically it would be important for CALPIA to obtain inmates to work in their programs that meet the minimum qualifications of two years and a maximum of five due to the simple fact that training inmates for shorter periods of time and then having them released creates workload issues for CALPIA staff. However, it is important to have enterprises fully staffed and it is necessary at times to pull from an inmate pool meeting this alternative standards.

**New subsection (d)** establishes a minimum education requirement for inmates seeking assignment to CALPIA positions. Inmates shall meet a minimum education requirement of a Test of Adult Basic Education (TABE) score of 9.0 prior to assignment. The TABE score is defined in Section 8000 as meaning a test designed to assess reading, mathematics, language, and spelling skills. It also assesses basic skills in work-related contexts. Education is important at CALPIA, and the ability to read and understand work assignments is necessary for the completion of many work assignments. It has been determined by CALPIA leadership that an inmate with this TABE score typically shows they possess sufficient education to perform the required duties. A higher requirement would prohibit many inmates from participating in CALPIA programs as the average inmate reads at an 8<sup>th</sup> grade level. CALPIA works with CDCR who is developing measures to increase access to literacy for inmates. This will ensure that offenders who leave prison are able to function on a job and in society. In **subsection (e)** an alternative intake requirement allows institutions with inmate populations whose educational levels do not meet the above minimum education level and are unable to meet CALPIA workforce needs to utilize a TABE score of 7.0 upon assignment to a CALPIA position. Since the average inmate reads at an 8<sup>th</sup> grade level, a TABE score of 7.0 will allow inmates who are seeking to work and to improve the education level to be assigned to a CALPIA position while continuing to work on bettering their TABE score and eventually obtaining their GED or their High School diploma. This is necessary to allow CALPIA production levels to be maintained and to allow inmates who have not yet assessed at the higher TABE level to be assigned to a CALPIA position.

**Subsection (f)** establishes an exemption to subsection 8004.1(d) or (e), accommodating inmates with a qualified learning disability under the Americans with Disabilities Act (ADA) of 1990. Eligible inmates who complied with CCR, Title 15, Division 3, Section 3085, may be accommodated with an exemption, unless this accommodation would result in financial or administrative burden for CALPIA. If the inmate has a learning disability defined under the ADA and a reasonable accommodation has been provided, they shall be required to perform the duties of their position. CALPIA believes inmates with qualified learning disabilities can be productive members of the CALPIA inmate workforce, yet importance should be placed upon obtaining the education necessary to become productive citizens upon their release from prison.

**Subsection (g)** establishes a requirement that a written waiver of authorization shall be obtained annually from the CALPIA General Manager prior to utilizing any of the above alternate intake requirements. The reasoning for obtaining the waiver annually is to ensure that there is an annual review assessing the need for a waiver, ensuring that these alternate intake requirements and accommodations are not used unnecessarily. The General Manager's annual approval will provide oversight of the use of a specific population of inmate workers. Any institutions receiving this authorization shall be allowed to utilize alternative intake standards.

**Subsection (h)** establishes a requirement that within two years of initial CALPIA assignment, an inmate worker shall be required to complete their GED or high school diploma, regardless of the TABE score the possessed upon their assignment to CALPIA. CALPIA inmate workers shall remain in their current skill level, such as a Skill Level 5 "D" Laborer/Entry Trainee, as specified in Section 8006(d)(1), while completing a GED or high school diploma and shall not be allowed to promote to a higher pay skill level until this educational requirement is satisfied. This will provide encouragement and incentive for inmates to obtain their GED or high school diploma. CALPIA wants to stress the importance of having an education and the success it brings to inmates upon their release from prison. CALPIA is committed to the rehabilitation and training of the inmates assigned to CALPIA and believes that education is a vital part of an inmate's rehabilitation. CALPIA encourages inmates to work hard in seeking their education to become productive members of society once they parole into the community.

**New Section 8004.2 is adopted to make specific** PC Section 2801 regarding inmate recruitment and appointment process for CALPIA positions. **Subsection (a)** specifies that at each facility, the CALPIA Prison Industries Administrator/Lead Manager shall be responsible for coordinating the recruitment of inmates with the institutions correctional counseling staff or the classification services staff. The Administrator/Lead Managers are responsible to administer the inmate program at the individual institution/facility, and are in daily contact with the custody and administrative staff of the institution. This is necessary to have a point of contact for CALPIA with the institution's correctional staff.

**New subsection (b)** specifies that CALPIA staff shall make the CALPIA Inmate Worker Application Form, IEP-F002, which is incorporated by reference, available to the inmate population throughout facilities with CALPIA enterprises. This allows for easy access to the form, enabling inmates to apply for a CALPIA position.

**New subsection (c)** implements a requirement that inmates shall complete this form when applying for a CALPIA work/training position and shall submit it to the correctional counselor staff at the inmate's facility. The form provides the necessary information that will allow staff to begin to determine if the applicant (inmate) meets minimum hiring standards. Information such as education, job skills, employment history is requested so that a CALPIA supervisor will have enough information to review and approve or disapprove the inmate for employment with CALPIA.

**New subsection (d)** specifies that the Prison Industries Administrator/Lead Manager, in coordination with the correctional counselor staff, shall conduct a central file review, ensuring eligibility standards and requirements, pursuant to Section 8004, and 8004.1 are met. This step in the hiring process does not add an additional work load to the institution's correctional counselor staff as inmate reviews of this nature are already a part of the institution's work and education process. A review of the central file is necessary to check the inmate's application against their incarceration record. This will provide a more complete picture of the inmate, including any past and current experience and how they have conduct themselves while incarcerated, such as their ability to complete tasks given to them by staff, how they respond to correctional and other staff or their relationships with other inmates, all of which play an important factor in whether they are assigned to work in a CALPIA program.

**New subsection (e)** ensures that upon confirmation of program eligibility, inmates who have applied for a CALPIA position and have been placed into CALPIA's Inmate Candidate Pool (ICP) may be assigned to an appropriate work program in accordance with CCR, Title 15, Division 3, Section 3040(c). CDCR currently has regulations that govern how inmates are selected for work programs. CALPIA provides CDCR with the standards and requirements of the inmates who can work in their programs; it is CDCR staff who have the authority to initially screen inmates. This is not an additional responsibility or cost for CDCR as the institution/facility inmate Assignment Lieutenant is already responsible for screening inmates, and placing them into work assignments, and in the case of CALPIA, they are placed in the CALPIA Inmate Candidate Pool (ICP). This ICP is necessary so that those within CALPIA, such as supervisors or managers, who want to fill positions, will be able to begin their selection process quickly from a list of inmates who have already been reviewed by CDCR and deemed ready and able to work for CALPIA, if selected.

**New subsection (f)** makes specific the steps CALPIA staff shall follow upon the availability of a vacant CALPIA position, ensuring CALPIA staff continues to move forward in the appointment process. In subsection **(f)(1)** the first step is for the CALPIA staff to request a list of eligible inmates from the ICP from the facility assignment lieutenant. This allows CALPIA staff to begin **(f)(2)** interviewing inmates as CDCR has already screened inmates and placed those eligible inmates on the ICP. Inmates on the ICP shall be prioritized by the following educational achievements from 1 to 3; 1 being highest priority to 3 being the lowest priority: 1. High school diploma or GED; 2. Enrolled in GED program; and 3. No diploma/GED and not enrolled in an education program. CALPIA places a high priority on education and see the value of inmates who have or are in the process of obtaining their GED or high school diploma and beyond. CALPIA also places a high priority on helping to reduce recidivism rates. Having a GED or a high school diploma plays a major role in an inmate's successful re-entry into society; therefore,

CALPIA encourages inmates to strive to obtain an education, thereby increasing their chances of successful re-entry. **Subsection (f)(3)** requires the CALPIA enterprise staff to submit the final list of successful inmate applicants for assignment to a CALPIA position in writing to the institution's assignment lieutenant in charge of inmate assignments. This final step is necessary as it allows for the continued communication between CALPIA staff and CDCR staff ensuring that the proper procedures are followed and ensuring that inmates are selected in a manner that allows for the success of the mission of both CALPIA and CDCR.

**New Section 8004.3 is adopted** to make specific PC Section 2801 to create and maintain working conditions as much like those which prevail in private industry as possible; specifically, creating a condition of participation, such as drug/alcohol testing if there is a reasonable suspicion. A reasonable suspicion is when a reasonable or rational person makes an observation and has a suspicion or notion or good faith belief that, based upon certain observable facts, (such as dilated pupils, slurred speech, inability to walk in a controlled manner, or an inability to handle equipment, or other suspect behavior,) that would lead a reasonable person to suspect that, in this situation, the inmate, may be under the influence of a controlled substance or alcohol. This is necessary to ensure, as in any work place, the environment is a drug free environment.

**Subsection (a)** mandates that 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 ISU Lieutenant for the purpose of testing for the presence of controlled substances or for the use of alcohol. Although the inmate is participating in a CALPIA work/training program, the testing is conducted by the individual institution. The reasoning for this is because the institution employs trained personal, which conduct all inmate testing for the presence of controlled substances or for use of alcohol in accordance with CCR, Title 15, Division 3, Section 3290. The testing is coordinated with the institution's Investigative Services Unit (ISU) which has access to the inmate files, including their central file and medical files with the inmate's personal information. Duplicating the institution's testing effort would increase the cost of a CALPIA work/training program. **Subsection (b)** provides for the immediate removal from a CALPIA work/training program of any inmate that is found to be in violation of CCR, Title 15, Division 3, Section 3016. The inmate may be subject to the provisions of Section 3315, Serious Rule Violation. Being under the influence or use of controlled substances or use of alcohol is considered to be a Serious Rule Violation. **Subsection (c)** provides an avenue to inmates who have been found in violation of Section 3016, allowing them to reapply to a CALPIA work/training position. Prior to reapplying, the inmates shall have a minimum of six (6) months of disciplinary/alcohol/drug-free conduct and a minimum of 90 days of satisfactory work as reported on an institutional Work Supervisor's Report, CDC 101 (1/92).

**New Section 8004.4 is adopted to make specific** PC Section 2801 to create and maintain working conditions as much like those which prevail in private industry as possible; specifically, the allocation of the Inmate Workforce. This section is necessary to set forth the allocation of the inmate workforce through the APA, as determined pursuant to Government Code Section 11340.5 and as determined by OAL in 2009, OAL File No. CTU2008-1014-01. CALPIA operates a work program for inmates which is required by statute to be self-supporting by generating sufficient funds from the sale of products and services to pay all program expenses,

and provides goods and services which are or will be used by CDCR, thereby reducing the cost of CDCR's operation. CALPIA is required to run the operation much like businesses outside of the correctional setting, yet CALPIA must first and foremost consider all aspects of safety and security within the correctional setting. Normal business practices include operating in a manner that is best for CALPIA as a whole, the State of California, the public, staff, inmate workers, and yet it must also include remaining competitive within the correctional industry, satisfying customers and ultimately being a profitable organization. In **subsection (a)** Prison Industries Administrators/Lead Managers at each facility shall be responsible to determine the inmate workforce allocation for each enterprise within their scope of authority. The Prison Industries Administrators/Lead Managers, whose positions are much like a Plant Manager with the Administrator typically in charge of multiple industries and a Lead Manager being in charge of fewer industries, are tasked with administrating and managing their specific operation, which requires them as stated in **subsection (b)** to maintain adequate production levels that support the volume of sales orders and service contracts, inmate positions shall be staffed in accordance with inmate worker hiring standards in Section 8004.1. The Prison Industries Administrators/Lead Managers must closely monitor and remain fully aware of all aspects of the operations in order to, as required in **subsection (c)**, submit a workforce allocation plan each fiscal year through the CALPIA budget process.

**New subsection 8004.4(d)** establishes the process by which new or the revising of existing CALPIA inmate workforce allocations shall be accomplished. Regarding New Enterprises in new **subsection (d)(1)** – prior to the activation of a new enterprise the Prison Industries Administrators/Lead Managers shall submit an inmate workforce allocation plan to the CALPIA Assistant General Manager, Operations Division via their CALPIA Enterprise Branch Manager for approval. The plan shall be jointly approved by the institution/facility's Warden or their designee, and the CALPIA Assistant General Manager, Operations Division. The plan shall include: **(A)** The projected total allocation of inmate workers required for each shift; **(B)** A listing of positions designating no more than 25 percent of the total allocation of inmates in each of the skill level categories as specified in Section 8006(d)(1); and **(C)** The job description based on the Federal Bureau of Labor Statistics' Standard Occupational Classification (SOC) for each position. Good business practices require careful allocation of its workers, and CALPIA is required to conduct its operation much the same as private industry. If the allocation of inmates is proportioned at no more than 25 percent of the total allocation of inmates in each of the skill level categories, a fair and equitable distribution of work has been attempted. This allows for each level to share equally in CALPIA work positions. It also allows for the different levels a, b, c and d to be filled so that as inmate turnover occurs, such as an inmate moves up the pay/skill level and paroles out, or moves to a different facility, or is dismissed due to discipline issues, the lowest level will be filled and the other levels will advance, thereby keeping a fair distribution within the workforce.

**New subsection (d)(2)** establishes a process regarding Existing Enterprises with changes of 15 percent or more – prior to any changes of an existing inmate workforce allocation plan of 15 percent or more, the Prison Industries Administrators/Lead Managers shall submit changes to the CALPIA Enterprise Branch Manager for approval. The plan shall include: **(A)** the allocation of inmate workers required for each shift; **(B)** the SOC job description for each position; and **(C)**

the justification for revising an existing inmate allocation. The reasoning for this is that if the Prison Industries Administrators/Lead Managers determines that there is a need for a 15 percent or more change to existing inmate staffing allocation due to, for example, sales increase or decrease, or if there is a lockdown of a specific security level of inmates and there is an operational need for production to increase or decrease, CALPIA has a fair process in place that clearly outlines the process for changing the existing inmate workforce allocation plan.

**New subsection (d)(3)** establishes a process regarding Existing Enterprises with changes of less than 15 percent. Prior to any changes of an existing inmate workforce allocation plan of less than 15 percent, the Prison Industries Administrators/Lead Managers shall submit an informational copy of the changes justifying the revision in the inmate workforce allocation plan to their CALPIA Enterprise Branch Manager. This change entails much less in the way of necessary justification, since this is a small percentage change in the workforce allocation effecting less inmate workers. Justification is still necessary, but the Prison Industries Administrator/Lead Manager has the authority to make this type of change without upper management approval if the justification is made.

**New subsection (d)(4)** addresses changes for existing enterprises. These changes to the inmate workforce allocation plan shall be jointly approved by the institution/facility's Warden or their designee, and the Prison Industries Administrator/Lead Manager. Because CALPIA and the institutions work so closely in these enterprises, it is important that they coordinate with each other. Changes can affect the mission of either CALPIA or the institution, so it is vital that changes at existing enterprises in the inmate workforce allocation plan are jointly approved by the Warden or their designee and the CALPIA Prison Industries Administrator/Lead Manager.

**New subsection 8004.4(e)** makes specific exceptions from the inmate workforce staffing allocation. The exceptions include: (1) increase or decrease in the volume of sales orders or service contracts; (2) emergency facility lockdowns which prevents inmates from an entire skill level or security level from working at a specific enterprise; or (3) any security situations deemed as unsafe working conditions by CALPIA staff, including the facility Prison Industries Administrators/Lead Managers, Branch Managers, Assistant General Manager, Operations Division, General Manager, or the institution/facility staff including the Warden/Chief Deputy Warden or their designee. These exceptions are necessary so that CALPIA can continue to operate their industries and enterprises. When there is an unexpected increase or decrease in the volume of sales orders or service contracts, CALPIA executives and management must have the ability to make changes to the inmate workforce allocation, so that the workforce can meet the needs, such as needing more inmate workers or having the ability to decrease the workforce so as not to waste funds. Since most CALPIA enterprises operate within the walls of the institution/facility, security is a priority, and when emergency facility lockdowns occur in, for example in Facility A with level III workers, the institution staff, cannot allow those inmate workers out to their regular CALPIA worksites; and therefore, the institution staff typically must draw from a different workgroup, such as Facility B, level II workers. Also, if there are other security situations, such as if the CALPIA supervisor to inmate ratio cannot be sustained on any given day, (i.e. if there are normally two supervisors in a factory and one is called to another location or a supervisor is out on sick or emergency leave), this would create a security situation deemed as unsafe (lack of adequate supervision) within the factory; inmate workforce allocation

would in this situation need to be temporarily reduced. Also, exceptions from the staffing allocations apply if the institution/facility staff, including the Warden/Chief Deputy Warden or their designee deem there are unsafe working conditions, such as weather condition, (i.e. thick fog), or other institutional security situation.

**PRISON INDUSTRY BOARD MEETING**

**April 27, 2012**

**RECORD OF VOTE**

**AGENDA ITEM:** Adoption of Regulations Title 15, Division 8, Article 4 CALPIA Inmate Work/Training and Education Sections 8000, 8004, 8004.1, 8004.2, 8004.3 & 8004.4 [12-0427-334-AI]

**SUMMARY OF ACTION/MOTION:** Motion made by Member Singh to approve and seconded by Member Woodford. Motion passed 11-0.

**RECORD OF VOTE:**

<b>Member</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Member Almanza	X			
Member Chapjian	X			
Member Davison	X			
Member Kelly	X			
Member Masteller	X			
Member Saito	X			
Member Singh	X			
Member Steeb	X			
Member Trujillo	X			
Member Woodford	X			
Chair Cate	X			

1           With that, I'm going to have -- if there is  
2 any questions of me at this time?

3           I have staff here today and they are going to  
4 be transitioning in and out. They are going to be  
5 doing the presentations, and if there is any  
6 questions at any time, please interrupt or ask staff  
7 or me.

8           The first one, Jeff, our attorney is going to  
9 do action item number one or action Item A, adoption  
10 of regulations Title 15. Just to give an opening.  
11 We are going back in regulations, all the way back  
12 to when we were constituted in 1982 and instituting  
13 regulations based on what statute is or any policy  
14 this Board has passed. Currently, we have a couple  
15 legal actions -- one legal action against us. An  
16 inmate is looking to sue us for requiring that we  
17 require that they have a GED within two years.

18           What you see in the packet here is the  
19 application that we are requiring the inmates to  
20 fill out as well as the requirement for a GED. So  
21 I'm going to turn it over to Jeff who is Chief  
22 Counsel.

23           MR. SLY: Jeff Sly, General Counsel for  
24 Prison Industry Authority. As Chuck mentioned, we  
25 have four regs today we are asking for approval and

1 asking for approval to amend one, Section 8000, add  
2 six new definitions.

3         This set of regulations comes to you as a  
4 result of us, as Chuck mentioned, trying to go  
5 through and get regulations covering everything that  
6 the Office of Administrative Law and Administrative  
7 Procedures Act requires of a state agency when they  
8 are establishing policies that qualify as  
9 regulations. These four today are primarily to  
10 address two Determinations that the Office of  
11 Administrative Law made with regards to hiring  
12 practices and hiring criteria that the PIA uses with  
13 the inmates.

14         So Section 8000, we are just adding six new  
15 definitions to an already existing regulation. And  
16 8004 through 8004.4 basically spells out how PIA is  
17 going to recruit, how PIA is going to review the  
18 application process for inmates that would like to  
19 work for PIA. Also addresses issues that excludes  
20 some from being able to work for PIA, set a criteria  
21 for others, and, lastly, give the administrators the  
22 guidance they need for allocating their inmates  
23 between various enterprises at the institution.

24         That's kind of very brief, and I'm assuming  
25 you've had a chance to review them individually. If

1 you have any questions, feel free. Otherwise I  
2 would ask that you approve these so we can turn  
3 these in to OAL and start the public comment period  
4 time.

5 MR. PATTILLO: Jeff, will you describe what  
6 will happen after the vote of approval?

7 MR. SLY: Chuck will sign off on a couple  
8 documents that AOL needs to get the public notice  
9 process started and file these with OAL next week.  
10 That will start the 45-day public comment period.  
11 At the conclusion of that, if there are any issues  
12 that are raised that would cause us to decide we  
13 might want to change our language, if it was a  
14 substantive change, probably bring it back to you  
15 for review before we submit it to OAL for final  
16 approval. If a nonsubstantive change, just  
17 correction, some type of punctuation or something,  
18 we would just go ahead and make that change and  
19 submit it. Once OAL gets our final application,  
20 they have 30 days to review it and rule on it.

21 So far they have approved all of your regs  
22 each time as we've gotten to that point in the  
23 process.

24 CHAIR CATE: Mr. Pattillo, is there any  
25 substantive differences between our current

1 processes and what these regs spell out? Or is this  
2 kind of - codifying is the wrong word - delineating  
3 our current process?

4 MR. PATTILLO: Delineating current  
5 practices.

6 MR. SLY: Let me point out the application,  
7 Inmate Worker Application that is you Attachment B,  
8 was standardized during this process. There were  
9 different applications we used. We've come up with  
10 one uniform application that will be used statewide.

11 CHAIR CATE: Did you say that was Exhibit  
12 B?

13 MS. GUARE: Attachment Exhibit A2.

14 MR. SLY: I'm sorry.

15 CHAIR CATE: How is this substantively  
16 different, the application?

17 MR. PATTILLO: We just -- we had probably  
18 six different applications before. We have folks  
19 that are a little more advanced in IPE at some  
20 locations, so we've got one application, just to  
21 collect as much data as we can and adopt it  
22 systemwide within our system.

23 MR. WALKER: This change from the  
24 application has been effective for some time. Prior  
25 to that, every institution had their own twist on

1 how they did it. This application has been out  
2 there for some time. Just putting it all down,  
3 delineating this is the one and everybody is using  
4 it.

5 MR. PATTILLO: This is part of our ISO  
6 standards where everyone is involved and nobody  
7 could make any changes to it on their own.

8 MEMBER SINGH: Mr. Chairman.

9 CHAIR CATE: Mr. Singh.

10 MEMBER SINGH: I studied this very, very  
11 thoroughly. I think very, very nicely written, and  
12 I would like this. So I move this item for  
13 approval.

14 CHAIR CATE: Thank you, Mr. Singh.

15 We have a motion.

16 MEMBER WOODFORD: I second.

17 CHAIR CATE: And a second. Any further  
18 conversation or questions or comments?

19 Any public comment on this matter?

20 Hearing none -- normally we would just call  
21 for a voice vote and approve these by general  
22 acclamation. Because we have folks on the phone, we  
23 will have to go with a roll call vote.

24 Madam secretary.

25 MS. GUARE: Member Almanza.

1 MEMBER ALMANZA: Aye.  
2 MS. GUARE: Member Chapjian.  
3 MEMBER CHAPJIAN: Yes.  
4 MS. GUARE: Member Davidson.  
5 MEMBER DAVIDSON: Aye.  
6 MS. GUARE: Member Kelly.  
7 MEMBER KELLY: Yes.  
8 MS. GUARE: Member Masteller.  
9 MEMBER MASTELLER: Yes.  
10 MS. GUARE: Member Saito.  
11 MEMBER SAITO: Yes.  
12 MS. GUARE: Member Steeb.  
13 MEMBER STEEB: Yes.  
14 MS. GUARE: Member Singh.  
15 MEMBER SINGH: Yes.  
16 MS. GUARE: Member Trujillo.  
17 MEMBER TRUJILLO: Yes.  
18 MS. GUARE: Member Woodford.  
19 MEMBER WOODFORD: Yes.  
20 MS. GUARE: Chair Kate.  
21 CHAIR CATE: Yes.  
22 MS. GUARE: Thank you.  
23 CHAIR CATE: That will pass.  
24 Mr. Pattillo, our next item.  
25 MR. PATTILLO: Next item is a recommended