

## **FINAL STATEMENT OF REASONS:**

The Initial Statement of Reasons (ISOR) is incorporated by reference.

The California Prison Industry Authority (CALPIA) and the California Prison Industry Board (PIB) propose to adopt Chapter 1, Article 1, Sections 8000 through 8002 of the California Code of Regulations (CCR), Title 15, new Division 8, concerning CALPIA rules and regulations, specifically to clarify the scope of authority for CALPIA and the PIB. The scope of authority is set forth in two individual sections within these regulations, Section 8001 and 8002. Both the CALPIA and the PIB acknowledge that there is specific language within these regulations that restate law specific to CALPIA and PIB; however, it is necessary to lay out the duties of the CALPIA and the PIB in specific sections as set forth in these regulations. These regulations offer a clearer, more condensed format, in an attempt to alleviate any confusion, enabling staff, inmates, and the public in general to obtain reference to the specific duties of the CALPIA and the PIB.

The CALPIA and the PIB recognize the urgent need to standardize and codify policies and procedures adopted by the PIB. The policies of the CALPIA have been vetted through the public process of the PIB, as required in PC 2808 (h) and (i), and now are being promulgated through the regulatory process as specified in the Administrative Procedure Act (APA). The PIB initially approved the filing of these regulations at their Board Meeting on April 30, 2009. The PIB's Record of Vote was filed as an attachment to the ISOR.

The filing of regulations pursuant to the APA will allow the CALPIA work program to continue, ensuring enterprises are able to remain open and CALPIA inmates can continue to be taught various trades and learn necessary skills to aid in their rehabilitation. It is for this reason that CALPIA requests these regulations become effective upon filing with the Secretary of State.

This action adopts language into the CCR that clarifies, interprets, and makes specific provisions of statutes that apply to CALPIA and the PIB and have been approved by the PIB.

## **UPDATE TO THE INITIAL STATEMENT OF REASONS**

The Notice of Proposed Regulations was published on July 10, 2009. The Notice of Change to CALPIA Regulations was sent out the same day. The public hearing was held on August 28, 2009. There were no public comments received at the public hearing. During the 45-day comment period, there were no written comments received. CALPIA filed the Final Rulemaking File with the Office of Administrative Law (OAL) on September 22, 2009.

The regulations were subsequently withdrawn when it was determined that changes to the original text were necessary and additional justification was needed in the Final Statement of Reasons (FSOR) to clearly explain the changes to the regulations and the necessity in the restatement of law in these regulations.

The PIB, on January 28, 2010 voted to approve the necessary changes and justification to the regulations and the FSOR. A Record of Vote of the PIB's approval of the Resubmission of

Withdrawn Regulations is attached. A 15-Day Renotice was distributed on April 27, 2010. As there were no comments received during the initial 45-Day comment period, the Renotice was made available to the public, and was posted on the Internet and locations accessible to stakeholders. During the 15-Day Comment Period, CALPIA did not receive any comments to the modified regulations.

The Resubmission of Regulations is necessary to ensure that the policies and procedures of both CALPIA and the PIB are adopted pursuant to the APA. The CALPIA and the PIB acknowledge that language contained within these regulations is a restatement of law found in PC sections 2800, et seq. In acknowledging this, the CALPIA and the PIB contend the restatement of law would be helpful as it places specific duties in a clear format within specific sections, leading to a fuller understanding of specific duties. The PIB believes the construction of Chapter 6 of the Penal Code may tend to be confusing as it lays out the duties of the CALPIA and the PIB in a tightly woven format.

Additional language has been provided within each section below, expanding upon and providing justification and further clarifying the ISOR's rationale for the determination that these regulations are necessary and should be adopted as specified in the APA. This language gives a more complete picture of the common practices established by CALPIA and the PIB, many since 1982 and 1983. This additional language of the specific purpose and rationale of the adoption does not change the original meaning. Additional language is located below, specifically in the explanations in Chapter 1 title adoption; new Article 1 and new Sections 8000 through 8002.

**Title 15, Division 8, California Prison Industry Authority, Chapter 1 title is adopted to read Rules and Regulations of the California Prison Industry Authority.** This title is adopted to clearly identify that the rules and regulations contained within this Division and this Chapter are specific to CALPIA allowing it to carry out responsibilities as specified in statute. Both the CALPIA and the PIB acknowledge that there is specific language within these regulations that restate law specific to CALPIA and PIB. These regulations alleviate any confusion as to the specific duties of the CALPIA and the PIB.

**Article 1 is adopted to read Scope of Authority.** Within this Article the authority of both the California Prison Industry Authority (CALPIA) and the Prison Industry Board (PIB) are detailed. These regulations establish a base by which the CALPIA and the PIB will promulgate policies and procedures that were put in place to begin and continue the operation of the CALPIA as created by the Legislature. Both the CALPIA and the PIB acknowledge that there is specific language within these regulations that restate law specific to CALPIA and PIB (language restated from PC 2801, 2804, 2805, 2806, and 2808); however, it is necessary to lay out the duties of the CALPIA and the PIB in these specific sections. These regulations alleviate any confusion as to the specific duties of the CALPIA and the PIB. The CALPIA is a State-operated organization that was created by Chapter 1549, Statutes of 1982, PC Section 2800, to provide productive work assignments for inmates in California's adult correctional institutions. The PIB was established in 1983 to oversee the operations of the CALPIA, much like a corporate board of directors. The PIB oversees the performance of existing CALPIA industries; therefore determining which industries, or agricultural or services enterprises shall be established,

expanded, diminished or discontinued. The PIB also serves as a public hearing body, charged both with ensuring that CALPIA enterprises are self-sufficient and that they do not have a substantial adverse effect upon private enterprise. The Board actively solicits public input into the decisions it makes with regard to expanding existing or developing new prison industries.

The CALPIA, pursuant to statute, operates as a self-supporting business venture, and thus extends commitments to deliver its products within specific time frames. It is vitally important that the CALPIA operates and the PIB oversees these enterprises with the fullest cooperation between all entities involved, including complying with the APA to bring all policies and procedures into full compliance with the Government Code. The policies and procedures of the CALPIA and the PIB are common practice in the world of businesses that employ and/or train inmates or that work within the correctional setting. The regulations reflect business norms and take into consideration the safety and security of all parties involved. Many of the policies and procedures have been performed and carried out since 1982, some include new operational and business practices, while others are constantly evolving to reflect our State's current budget and fiscal crisis. The filing of regulations pursuant to the APA is necessary to guarantee CALPIA work and training programs continue, ensuring enterprises are able to remain open and CALPIA inmates can continue to be taught various trades and necessary skills to aid in their rehabilitation.

**New Section 8000 is adopted** as the definition section and is established for clarity, consistency and ease of reference for commonly used terms within Division 8 of the Title 15. Many of these definitions are a restatement of those found in statute; therefore it is necessary to amend this section and resubmit new text that does not merely duplicate statute but is necessary in order for the regulation to satisfy the requirements of the "Clarity" and "Nonduplication" standards. This definition section is necessary to provide definitions in a clear format, in a central location, specifically in Section 8000, to alleviate any confusion and misunderstanding to staff or the general public. A 15-day renote was distributed that amended the originally notice text of the regulations. Amendments include deletion of definitions that will be used in future regulatory filings, rewording of duplicative language and amendments to the Authority and Reference section.

**New subsection 8001(a) is adopted** to clarify PC 2801 regarding CALPIA's authority to develop and operate industrial, agricultural, and service enterprises employing prisoners within the jurisdiction of the CDCR. PC 2801 authorizes CALPIA to create and maintain working conditions within the enterprises. In carrying out the intent of the statute, the CALPIA operates as semi-autonomous within the CDCR. Much like those in private industry, working conditions must be maintained assuring inmate-employees the opportunity to work productively, earn funds and acquire or improve effective work habits and occupational skills. CALPIA and the PIB acknowledge that this section restates PC sections 2801 and 2805; however, the language would be helpful to have in one section to alleviate any confusion. This restatement of law is in a clearer format, not so tightly woven together and lays out the duties of the CALPIA in a helpful way for those relying upon the regulations to carry out the legislative intent of the CALPIA as overseen by the PIB. Amendments include deletion of the word "shall," amending .....

**New subsection 8001(b) is adopted** to state the requirements of statute with regards to CALPIA's operating work programs for the inmates in such a way that generates sufficient funds

enabling them to be self-supporting. Sufficient funds are generated from the sale of products and services which pay all of the program expenses. The work programs also provide goods and services which are or will be used by CDCR. This aids in reducing the operating costs of CDCR. The Prison Industries Revolving Fund shall be used to meet the following list of operating expenses: (A) purchasing of materials and equipment, (B) salaries, (C) construction, (D) cost of administration of the prison industries program, (E) refund deposits, as specified in PC 2806, and (F) the actual and necessary expenses of travel in the commission of PIB duties shall be paid from the Prison Industries Revolving Fund, as specified in PC 2804. CALPIA and the PIB acknowledge that this section restates PC sections 2801, 2804, and 2806; however, the language would be helpful to have in one section to alleviate any confusion.

**New subsection 8001(c) is adopted** to clarify PC 2801(b) which states the CALPIA shall 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. CALPIA and the PIB acknowledge that this section restates PC section 2801(b); however, the language would be helpful to have in one section to alleviate any confusion. Language has been added to acknowledge that CALPIA will promulgate any working conditions, standards criterion, manuals, instructions, etc. which is a regulation as defined in Section 11342.600 through the Administrative Procedure Act.

CALPIA carries out the wishes of the Legislature and the intent of the law by successfully operating a semi-autonomous industry that not only generates revenue, but carries out the mission of the CDCR, which is to rehabilitate inmates. Without the creation and maintenance of specific working conditions both staff and inmate workers may not be able to carry out work in a productive manner. Work habits and occupational skills may not improve if inmate workers are not given a work plan, or taught occupational skills in a professional manner. If working conditions are not conducive to work productivity, then earning potential could decrease.

A typographical error was made in the Initial Statement of Reasons wherein the document stated that it was making specific PC Section 2807; this incorrect citation is corrected in this revised statement.

**New subsection 8001(d) is deleted from the proposed text** as it is a duplication of PC Section 2805 and is not necessary to restate this section from statute. In PC 2805 the Legislature has given the CALPIA control over and power to buy and sell equipment, supplies and materials used in the operations over which it assumes control and jurisdiction. The statute establishes the authority for CALPIA to work as a semi-autonomous entity, and the ability to purchase necessary equipment, supplies and materials to operate their enterprises. There is no statutory requirement for CALPIA to secure or obtain authorization from other outside State departments such as the Department of General Services to begin or complete the purchase or sale of all equipment, supplies and materials used in its operations. All authority lies

**New subsection 8001(e) is renumbered to (d) and is adopted** to clarify PC 2808 (e) that CALPIA operates under a General Manager to serve as the chief administrative officer. CALPIA and the PIB acknowledge that this section restates PC section 2808(e); however, the language would be helpful to have in one section to alleviate any confusion as to who the PIB has appointed or contracted to operate CALPIA. The General Manager is required to have wide

and successful experience with a productive enterprise, and have a demonstrated appreciation of problems associated with prison management. This regulation is necessary to ensure that the CALPIA General Manager's position is clearly stated as one who has been appointed or contracted by the PIB. The PIB, pursuant to their ability to do all of the things that the board of directors of a private corporation would do, has determined the term "to contract to employ" in PC 2808(e) is defined as or to mean either appointed or contracted. It has been the common practice of the PIB in the past to either appoint the General Manager utilizing the civil service Exempt Position Appointment classification or to contract the position utilizing a Personal Services Contract. The General Manager has the authority to operate CALPIA and as the chief administrative officer ensures the operation is run efficiently and in accordance with not only statute, but with daily business practices of a private corporation.

**New subsection 8002 initial paragraph is adopted** for clarification and to make specific the requirements of the legislature regarding the authority of the PIB, specifically PC 2808. The PIB shall have all of the powers and do all of the things that the board of directors of a private corporation would do, except as specifically limited by statute. The PIB has been given broad authority by statute for oversight of the CALPIA. All required duties of the PIB are not specified in these regulations, but are listed at length in PC 2808 and include, but are not limited to, entering into contracts and leases, inventory and supply control of the CALPIA, review and approval of the annual budget, applying for and administering grants, the establishment, expansion, diminishment or discontinuance of industrial, agricultural and services enterprises under the CALPIA's jurisdiction, and reporting to the Legislature.

**New subsection 8002 (a) is adopted** to provide a list of the members so as to identify those individuals serving on the PIB. There are eleven individuals chosen to be members of the PIB. The PIB is a public board and is required to conduct business in a public forum; therefore, specifying the PIB members is important because it ensures the public is made aware of who the members represent and by whom they have been appointed, either by the Governor or by order of the Legislature. The broad spectrum of individuals seated on the PIB ensures that the people of the State of California are represented fairly. Additionally, these members provide a broad base of knowledge and experiences ensuring the wishes of the Legislature are carried out.

**New subsection 8002 (b) is adopted** to make specific and interpret PC 2803. The PIB is required to hold meetings on the call of the chairperson or the majority of the PIB, pursuant to PC 2803. On April 30, 2009 a quorum of the PIB, including the chairperson met (Record of Vote attached) to review and approve the filing of these regulations. In that meeting, it was determined by a unanimous vote of those members present that the PIB shall meet no less than four times during each fiscal year, or as deemed necessary. That decision is delineated in this subsection. These regulations also make specific the meeting requirements of the PIB as required in PC 2803. Six members of the PIB, including the chairperson, or their designee, shall be present in order to constitute a quorum. Additionally, these regulations interpret PC language "a majority of the members serving on the board is necessary for the transaction of the business of the board" to mean a vote of a majority of the quorum present is necessary for the transaction of business of the PIB. The PIB consists of eleven members; when six members are present that number constitutes a majority of members serving on the PIB. This subsection is consistent with

and follows Government Code Section 11120, et seq. which provides standards by which the PIB shall conduct official public meetings.

**New subsection 8002 (c) is adopted** to provide the basic required duties of the PIB. The PIB is charged with ensuring that CALPIA enterprises are self-sufficient and that they do not have a substantial adverse effect upon private enterprise. The PIB serves as a public hearing body and actively solicits public input into the decisions it makes regarding any affect enterprises may have on the public. Decisions regarding establishing new prison industries, expanding existing, diminishing or discontinuing industrial, agricultural and service enterprises under the CALPIA's jurisdiction are brought before the PIB. PC 2808 contains other duties that the PIB is required to perform. These duties may be addressed in future regulations to further clarify legislative intent.

**New subsection 8002 (d) is adopted** to make specific language in PC 2808(e) regarding the employment of a General Manager. The PIB has all of the powers necessary to employ a General Manager to serve as the chief administrative officer of the CALPIA. The PIB as a matter of common practice throughout the years have employed a General Manager by way of a civil service Exempt Position Appointment, or contracted the position utilizing a Personal Services Contract. Section 8001(e) above, clarifies the appointment method of and provides information regarding the position of General Manager.

#### **DETERMINATION:**

The CALPIA and the PIB have determined 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.

#### **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 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.

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 August 28, 2009 at 10:00 a.m.**

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

There were no speakers/comments at the Public Hearing.

**SUMMARIES AND RESPONSES TO WRITTEN COMMENTS:**

There were no written comments received during the 45-Day Public Comment period.

**ATTACHMENT TO THE FINAL STATEMENT OF REASONS**

**PRISON INDUSTRY BOARD MEETING**

**April 30, 2009**

**RECORD OF VOTE**

**AGENDA ITEM:** Adoption of Regulations, Title 15, Division 8, Article 1, Sections 8000, 8001, 8002. If approved, this is the set of foundation regulations regarding the California Prison Industry Authority's (CALPIA) giving CALPIA establishment and authority.

**SUMMARY OF ACTION/MOTION:** Motion made by Member Harvey and seconded by Member Singh. Motion passed 8-0.

**RECORD OF VOTE:**

<b>Member</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Chair Matthew Cate	X			
Chapjian, George				X
Tritz, Michael (delegate for Karin Fish)	X			
Frank, Larry	X			
Greenstone, Leonard	X			
Harvey, Scott	X			
Kelly, Curtis	X			
Ritter, Ira				X
Singh, Darshan	X			
Trujillo, Ray				X
Woodford, Jeanne	X			