

INITIAL STATEMENT OF REASONS

Description of Regulatory Action:

The California Prison Industry Authority (CALPIA) and the Prison Industry Board (PIB) pursuant to the authority granted by Penal Code (PC) Sections 2801 and 2808 in order to implement, interpret and make specific Penal Code Sections 2702, 2801, 2805, and 2808 propose to amend Sections 8004, 8004.2, 8004.3 and 8004.4 and adopt new section 8005 of Article 3, Chapter 1, of the California Code of Regulations (CCR), Title 15, Division 8, concerning CALPIA Inmate Recruitment and Hiring Processes.

This action is necessary to provide more detail to the current eligibility requirements used to assess inmates that are applying for the CALPIA program. This action will also add clarity to the current regulations that eliminate inmates from the CALPIA program. Due to the nature of the prison system, CALPIA is challenged with recruiting and assessing inmates who qualify to work in enterprises that have dangerous machinery and hazardous work environments. It is important and necessary to regulate the recruiting process to seek the most qualified inmates who understand and are capable of performing their jobs to the safest and best of their ability. Continuous operations of CALPIA enterprises are critical because CDCR relies on the products and services for incarcerated inmates. Hundreds of other goods produced by CALPIA are relied upon by other state agencies such as DMV (license plates), CALFIRE (protective clothing for firefighters), & Caltrans (road safety products for workers and the public), etc. Qualified, drug-free, cautious, competent inmates must be selected to support CALPIA's continuous productions and services that prisons, state agencies and Californians rely upon. This action is also necessary to create part-time jobs that can accommodate inmates while they participate in substance abuse programs or any other CDCR rehabilitating program to rehabilitate. These proposed regulations support CALPIA's mission to reduce recidivism and keep our workplaces safe for all inmates and staff.

The proposed amendments will be 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 APA. The PIB will vote on these proposed regulations at their Board Meeting on December 18, 2014. Upon approval, the PIB's Record of Vote and a portion of the transcript of the minutes will be placed in the final rulemaking file. These documents will be filed with the Office of Administrative Law (OAL).

PC Sections 2801 and 2808 provide CALPIA with implied rulemaking authority. PC Section 2801 establishes that CALPIA shall 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. PC Section 2808(h) establishes the PIB's duties to provide as much employment for inmates as is feasible, and to provide diversified work activities to minimize the impact on existing private industry in the state.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

As a result of the economic impact assessment and in accordance with Government Code Section 11346.3(b), the CALPIA has made the following assessments regarding the proposed regulation:

Creation or Elimination of Jobs within the State of California

This action will not create or eliminate existing jobs within the State of California. It is determined that this action has no significant adverse economic impact on jobs within the State of California because the jobs are not affected by the internal management of inmates in the prison system.

Creation, Expansion, or Elimination of Existing Businesses (Small or Large) within the State of California

This action will not have an effect on the creation, expansion, or elimination, of small or large businesses within California. It is determined that this action has no significant adverse economic impact on small or large businesses within the State of California because businesses are not affected by the internal management of inmates in the prison system.

Benefits of the Regulations:

This action will insure the most qualified and competent inmate are selected and remain in the CALPIA work program. This action supports CALPIA's mission to provide productive work and skill development opportunities to inmates which reduces recidivism, increases public/prison safety, and supports the critical, continuous operations of CALPIA.

Local Mandates:

CALPIA has 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.

Consideration of Alternatives:

CALPIA must determine that no reasonable alternatives considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Currently, no reasonable alternatives have been brought to the attention of CALPIA that would alter CALPIA's initial determination

Reports Relied Upon:

The CALPIA, in proposing these regulations, has not identified nor relied upon any technical, theoretical, or empirical study, report, or similar document.

Specific Purpose and Rationale for each Section, per Government Code 11346.2(b)(1):

Section 8004(b)(4)(A) and (B) is renumbering from Section 8004.3(c). This text is renumbered to place ineligible requirements into a list of the same category.

Section 8004(b)(4)(C) is necessary to require inmates who violate Section 3016 of Title 15 (use and/or possession of drugs/alcohol) to enroll, participate, and graduate from a substance abuse program before applying to CALPIA. Inmates willing to fulfill this requirement demonstrate their willingness to rehabilitate and are less likely to violate Section 3016 of Title 15 again. Fulfilling this requirement allows the inmate's to re-apply for an opportunity to secure a good job at CALPIA while incarcerated.

Section 8004(c)(1) is amended to add the word "All" to clarify and add emphasis that not a single inmate, not even with an exception, may be placed in a position that allows access to personal information of private individuals.

Section 8004(c)(3) is amended to add the word "counterfeiting" to clarify inmates that are convicted of counterfeiting will not be allowed access to printing plants. This is necessary to ensure the integrity of confidential documents.

Section 8004(c)(4) is amended to add clarity to specific crimes that cause inmates to be excluded from certain types of job placements. Pursuant to Penal Code (PC) Section 2702, conviction of specific computer or telephone fraud prohibits inmates to work on or have access to any computer system. Because CALPIA enterprises and workplaces have computers, this action is necessary amend previous language that only restricted inmates from clerical positions. Clarity needed to be added because computers are accessible in other areas beyond clerical positions. It is also necessary to exclude inmates with any occurrence of computer abuse after admittance to the prison system. Computer/telephone abuse committed while incarceration also excludes inmates from job placements that have access to any computer system.

Section 8004(e) is amended to specify eligibility criteria for inmates placed on Immigration and Customs Enforcement (ICE) Hold status. ICE Hold status means the inmate was not a legal citizen prior to incarceration. Current policy states inmates with ICE Hold status are not eligible to work for CALPIA. However, some institutions have been designated to house ICE Hold Inmates which creates a population resulting in worker unavailability. This amendment will allow the General Manager to authorize/approve exemptions for inmates with ICE Hold status on a case-by-case basis for individual inmates. If an institution has a population resulting in inmate worker unavailability, the institution may request an annual waiver from the General Manager to assign unlimited ICE Hold inmates to CALPIA.

Section 8004(e)(1)(A) through (B) is necessary to add eligibility criteria for ICE Hold inmates to receive external accredited certificates. CALPIA's mission is to reduce recidivism by helping inmates to acquire or improve effective work habits and occupational skills to become productive members of society when they are released. Inmates with an ICE Hold status will be deported upon release and unable to use

external accredited certificates. However, inmates that remove their ICE Hold status through administrative proceedings prior to finishing the CALPIA program are less likely to get deported and will need their external accredited certificates upon release. Changing the regulations to allow for this exception will support CALPIA's mission to reduce recidivism and keep California safe.

Section 8004.2(b) is amended to clarify types of information an inmate is required to submit prior to obtaining a work assignment at CALPIA. As CALPIA fulfills its mission to teach inmates how to acquire effective occupational skills, it will introduce inmates to documentation that's required by all citizens when applying for jobs. Inmates will be taught the importance of information given to employers prior to employment; the legalities of using real/true identity on pre-employment forms; and providing accurate background information regarding education and job skills for a potential employer to assess eligibility. Some inmates may not understand that falsifying documents to secure employment will result in job loss. Teaching inmates how to correctly and honestly apply for jobs in society will make a difference in their ability to secure a job and support themselves when they are released.

Section 8004.2(f)(3) is amended to clarify how inmates education achievements will be prioritized during the hiring process. CDCR provides CALPIA with a list of eligible candidates who have been screened by CDCR. The list is not prioritized by education achievements; therefore, it is the responsibility of CALPIA staff to make this prioritization and hire candidates based on the highest education levels achieved.

Section 8004.2(f)(A) through (C) is renumbered from numerical to alphabetical.

Section 8004.2(g) is necessary to give consideration to 'recovered' inmates during the hiring process. Pursuant to proposed text of new Section 8005, CALPIA will create part-time jobs for inmates that are enrolled and participating in substance abuse programs or any other CDCR rehabilitating programs. These new, part-time positions are designed to accommodate inmates with a job while he/she is trying to recover by attending/participating in a substance abuse program or any other CDCR rehabilitating program. Upon graduation/completion of these programs, CALPIA will consider the inmates as candidates when recruiting for full-time positions.

Section 8004.2(h) is necessary to bring CALPIA regulations in compliance with similar requirements as those imposed by CDCR as much as possible in order to maintain consistency and safety. Pursuant to Title 15, Section 3290(c)(2), the CDCR's Department Operations Manual (DOM) states a urinalysis test shall be conducted on newly hired CALPIA inmates within thirty (30) days of being hired. It is important and necessary to regulate drug testing processes for CALPIA inmates due to the nature of dangerous machinery and hazardous work environments of CALPIA. Without the ability to drug-test newly assigned inmates to CALPIA, it is impossible to detect and eliminate inmates that introduce substance(s) into their bodies that can impair their judgment. Placing an inmate who is under the influence of a substance, including prescription medication, in a dangerous work environment must be avoided. Drug testing will aid the

mission to maintain a drug-free environment which helps to ensure safety for inmates and CDCR/CALPIA staff while also supporting continuous operations.

Section 8004.3(a) is amended to add clarity and describe on how to request drug testing of inmates assigned to CALPIA.

Section 8004.3(a)(1) is added to list the circumstances that require drug testing of inmates assigned to CALPIA.

Section 8004.3(a)(2) is necessary to bring CALPIA regulations in compliance with similar requirements as those imposed by CDCR as much as possible in order to maintain consistency and safety. Pursuant to Title 15, Section 3290(c)(2), the CDCR's Department Operations Manual (DOM) states all inmates assigned to CALPIA shall remain subject to random drug testing for as long as they are assigned by CALPIA. Due to the nature of dangerous machinery and hazardous work environments of CALPIA, it is important and necessary to regulate drug testing processes for CALPIA inmates. Random drug testing may deter some or all inmates from introducing non-prescribed substance(s) into their bodies that can cause them to lose their CALPIA job assignment. Random testing is also necessary for detection of prescribed drugs than can impair inmate's abilities. This action will aid the mission to maintain a drug-free working environment which helps to ensure safety for inmates, CDCR/CALPIA staff, and support continuous operations.

Section 8004.3(a)(3) was amended to move some text to Section 8004.3(a).

Section 8004.3(b) is necessary to indicate certain circumstances of drug testing results will have different outcomes based on the results of the drug test.

Section 8004.3(b)(1) is necessary to bring CALPIA regulations in compliance with similar regulations as those imposed by CDCR as much as possible in order to maintain consistency for drug testing inmates. This action describes circumstances of using laboratory drug testing. Pursuant to Title 15, Section 3290(a), CDCR conducts all drug testing of inmates. CALPIA relies on CDCR to decide which products, equipment, and methods will be used for testing inmates and also relies on CDCR to inform CALPIA of the test results. In the event CDCR decides to utilize laboratory testing on a CALPIA inmate when there is reasonable suspicion to believe that the CALPIA inmate is under the influence of a controlled substance or alcohol, the laboratory results are not instant and may take a few days. It is a risk to all inmates and CALPIA/CDCR staff to allow a suspected CALPIA inmate to remain in a hazardous work environment of CALPIA until laboratory test results are complete. It is much safer to remove the suspected inmate until laboratory tests are final and determine if the inmate can return to CALPIA.

Section 8004.3(b)(2)(A) and (B) is necessary to bring CALPIA regulations in compliance with similar regulations as those imposed by CDCR as much as possible in order to maintain consistency for drug testing inmates. This action describes circumstances of using on-site drug testing. Pursuant to Title 15, Section 3290(a),

CDCR conducts all drug testing of inmates. CALPIA relies on CDCR to decide which products, equipment, and methods will be used for testing inmates and also relies on CDCR to inform CALPIA of the test results. In the event CDCR decides to utilize on-site drug testing for a CALPIA inmate when there is reasonable suspicion to believe that CALPIA inmate is under the influence of a controlled substance or alcohol, the on-site results are instant. A negative result will allow the inmate to remain at CALPIA. In the event an on-site drug test produces a positive result, further testing must be conducted in a laboratory to confirm the results. Laboratory results are not instant and may take a few days. It is a risk to all inmates and CALPIA/CDCR staff to allow a CALPIA inmate, who tests positive on-site, to remain in a hazardous work environment of CALPIA. Until laboratory testing can confirm the on-site testing, it is much safer to remove the inmate who tests positive when on-site tests are conducted. Further laboratory tests will confirm on-site testing and determine if the inmate can return to CALPIA.

Section 8004.3(c) was moved to Section 8004(b)(4)

Section 8005(a) was added and is necessary to create part-time jobs that can accommodate inmates while they participate in substance abuse programs or any other CDCR rehabilitating programs. These new job assignments will accommodate inmates as they recover and rehabilitate while also allowing them to work productively, earn funds, and acquire effective work habits and occupational skills. Full-time positions at CALPIA exclude recovering inmates that participate in substance abuse/rehabilitating programs because of time constraints. By creating part-time positions, CALPIA can fulfill its mission to reduce recidivism by providing work opportunities to recovering inmates so they have a better chance to become productive members of society when they are released.

Section 8005(b)(1) and (2) is necessary to clarify eligibility for part-time work at CALPIA. Upon graduation/completion of a substance abuse program or any other CDCR rehabilitating program, a part-time CALPIA inmate will no longer need his/her work hours to be reduced. After graduation/completion, part-time CALPIA inmates will be eligible for full-time positions. It's also necessary to clarify that enrollment and participation in a substance abuse program or any other CDCR rehabilitating program shall determine an inmate's part-time CALPIA assignment. Without enrollment/participation, part-time work is not allowed.

Section 8005(c) is necessary to make an exemption of education requirements for CALPIA part-time inmates who are participating in substance abuse programs or any other CDCR rehabilitating programs. Due to time constraints, it is not possible for an inmate to fulfill education requirements while simultaneously working and attending rehabilitating programs. This exemption will allow the inmate to focus on recovery and/or rehabilitation while working at CALPIA. Upon completion of rehabilitative program, the part-time inmate will be expected to reapply for a full-time CALPIA position. Full-time positions at CALPIA require inmates to finish education requirements within 2 years of their assignment to CALPIA. The education exemptions for part-time assignments do not apply to full-time assignments.