

## INITIAL STATEMENT OF REASONS:

The California Prison Industry Authority (CALPIA) and the California Prison Industry Board (PIB) propose to amend section 8004.2. In Penal Code (PC) section 2808 the California Legislature provided the PIB with “*all powers to do all of the things that the board of directors of a private corporation would do . . .*” including approving CALPIA’s rulemaking proposals. Pursuant to Government Code section 11342.2, the proposed amended regulation is consistent and not in conflict with PC sections 2801 through 2818 (Prison Industry Authority) and is reasonably necessary to effectuate the purpose of PC sections 2801 through 2818. Section 8004.2 is amended to require inmates serve a probationary period upon CALPIA assignment. The inmate assignment probationary period gives CALPIA an opportunity to review work performance and gives inmates time to become familiar with new job duties.

The proposed amended regulation will be vetted through the public process of the PIB and promulgated through the regulatory process as specified in the Administrative Procedures Act (APA). The PIB will vote on the proposed amended regulation and upon approval, the PIB’s Record of Vote will be placed in the final rulemaking file. All rulemaking documents will be filed with the Office of Administrative Law (OAL) and are all available to the public on CALPIA’s website.

### **Authority and Reference:**

**Penal Code Section 2800:** In 1982, the California Legislature restructured the Department of Corrections’ industries and vocational training program for inmates abolishing the Correctional Industries Commission and replacing it with the newly created Prison Industry Authority (PIA) (subsequently renamed CALPIA) under the direction of the Prison Industry Board.

**Penal Code Section 2807(a):** Section 2807(a) provides that CALPIA is authorized and empowered to operate industrial, agricultural, and service enterprises which will provide products and services needed by the state, or any political subdivision thereof, or by the federal government, or any department, agency, or corporation thereof, or for any other public use. Products may be purchased by state agencies to be offered for sale to inmates of the department and to any other person under the care of the state who resides in state-operated institutional facilities. Fresh meat may be purchased by food service operations in state-owned facilities and sold for onsite consumption. By giving CALPIA these duties and power by statute, rulemaking authority is implicitly delegated to adopt those rules and regulations necessary for the due and efficient exercise of a duty or power expressly granted.

**Penal Code Section 2802:** Section 2802 provides for the existence of a Prison Industry Board (PIB).

**Penal Code Section 2808:** Section 2808 provides the PIB, in the exercise of its duties, all of the powers and do all of the things that the board of directors of a private corporation would do.

State Departments have been given “Quasi-Legislative” powers to adopt rules (regulations) that are consistent with state law so that they can run the programs they that are responsible for. One court opinion described this as the power to “fill in the details” of the state statute(s) that empower a department to operate a program. *Helene Curtis, Inc. v. Assessment Appeals Bd.* (1999) 76 Cal.App.4<sup>th</sup> 124. By the implied terms of Penal Code Sections 2808, 2802, 2807, 2800, CALPIA has the authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of these statutes.

### **Problem Statement**

The problem addressed by this regulatory amendment is to carefully use limited resources for inmates to obtain skills to promote the likelihood of immediate employment upon release, and as a result, end a return to prison. According to the Legislative Analyst’s Office, it costs an average of \$81,000 per year to incarcerate an inmate in prison in California. Since 2010-11 the average annual cost has increased by about \$32,000 or 58 percent (58%). Conversely, \$81,000 per year is saved for each inmate that does not return to prison after release. CDCR tracked 74,875 people who were released from state prison between July 1, 2011, and June 30, 2012, for three years and found they had a three-year conviction rate of 54.3 percent. In contrast, with a recidivism rate of less than 10 percent, CALPIA’s CTE programs are among the CDCR’s most successful vocational training programs. This is a 44.3 percent difference by comparison. For example, CALPIA’s CTE program trains inmates in various construction skills that include welding and ironwork, general labor, and finished carpentry. CALPIA provides paroled graduates with a set of tools and a tool belt so they are ready for the first day of their new job. The Manhattan Institute conducted a study confirming that the sooner ex-offenders are employed, the less likely they will commit future crimes in further jail and prison time.

By instituting an inmate probationary period, inmates are given opportunity to learn the essential duties of the work, and also, may be removed during this period upon not meeting the probationary period requirements. Removing inmates who do not meet the probationary period requirements from CALPIA assignments focuses CALPIA’s resources to be able to increase the number of inmates successfully retrained for work after release.

In order to fully support CALPIA’s purpose to operate like a private, self-sustaining business and to function safely and efficiently, the proposed amended regulation is necessary. Pursuant to Government Code section 11342.2, the proposed amendment is consistent with, and not in conflict with, PC sections 2801; the proposed regulatory action is reasonably necessary to effectuate the purpose of PC section 2801(c) and amend the regulation to require inmates serve a probationary period upon CALPIA assignment. The inmate assignment probationary period gives CALPIA an opportunity to review work performance and gives inmates time to become familiar with new job duties.

### **Purpose and Necessity of Regulations**

In order for CALPIA to function safely and efficiently, the proposed regulatory action is needed to provide and enforce general standard workplace practices. CALPIA provides inmates with work opportunities to develop work skills and experience applicable upon release from custody. It is standard practice for employers to require staff serve a probationary period upon hire as this probationary period gives employers an opportunity

to review work performance and gives new staff time to become familiar with new job duties. This regulatory amendment provides inmates familiarity and experience with general standard workplace practices they will encounter upon release from custody and conditions of employment. The proposed amendments add a ninety (90) day period so as to allow three months with the first month to become acclimated and learn the duties of the assignment, the second month to become proficient, and a third month to demonstrate this proficiency. The categories of unsatisfactory, satisfactory, and above satisfactory are broad enough to encompass as many inmates as possible into two categories of satisfactory and above satisfactory, to promote the goals of training, work experience, and reducing recidivism for inmates. This provides a two-thirds (2/3<sup>rd</sup>) likelihood of achieving success and with a one-third (1/3<sup>rd</sup>) possibility of removal from a particular task or specific assignment. The above-satisfactory category allows a rating basis that could substantiate advancement to increasingly higher skill and level, which includes pay increases and the option of more diverse or complex assignments.

Therefore, CALPIA is amending Section 8004.2 to include this requirement.

### **Consideration of Alternatives**

CALPIA has determined that no reasonable alternatives considered, or that has otherwise been identified and brought to the attention of CALPIA, 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.

### **ECONOMIC IMPACT ASSESSMENT:**

In accordance with Government Code Section 11346.3(b), CALPIA has made the following assessments regarding the proposed regulations:

#### **Significant Statewide Adverse Economic Impact on Business:**

CALPIA has determined that the proposed amended regulation 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 CALPIA employees. There is no actual change expected to current operations. As a result, there will be no significant statewide adverse economic impact on business.

#### **Creation or Elimination of Jobs within the State of California:**

CALPIA has determined the proposed amended regulation will have no impact on the creation or elimination of existing jobs or businesses within California because those jobs or businesses are not affected by the internal management of CALPIA employees. There is no actual change expected to operations. As a result, there will be no creation or elimination of jobs within the State of California as a result of these regulatory additions and amendments.

**Creation of New Businesses or Elimination of Existing Businesses within the State of California:**

CALPIA has determined the proposed amended regulation will have no effect on the creation of new or elimination of existing businesses with the State of California because those businesses are not affected by the internal management of CALPIA. No actual change is expected to operations. As a result, there will be no creation or elimination of existing businesses within the State of California as a result of these regulatory additions and amendments.

**Expansion of Businesses Currently Doing Business within the State of California:**

CALPIA has determined the proposed amended regulation will have no effect on the expansion of businesses currently doing business within the State of California because they are not affected by the internal management of CALPIA employees. As a result, there will be no anticipated expansion of businesses currently doing business within the State of California as a result of these regulatory additions and amendments.

**Benefits of the Regulations:**

The proposed amended regulation will help to ensure that CALPIA operations are performed efficiently and without undue risk of costly personal injuries and property damage. Additional benefits are to:

- Protect and maintain CALPIA's purpose as an agency.
- Provide and enforce general standard workplace practices.
- Provide inmates familiarity and experience with general standard workplace practices they will encounter upon release from custody and post-custody employment.
- Provide inmates with work opportunities to develop work skills and experience applicable upon release from custody, including compliance with the standard practice for employers to require staff serve a probationary period.

**Statement of Purpose and Issues Being Addressed:**

**Specific Purpose and Rationale, Per Government Code 11346.2(b)(1):**

**Specific Regulatory Actions and Reasons:**

**Section 8004.2 is amended:**

This section is amended to require inmates serve a probationary period upon CALPIA assignment. The inmate assignment probationary period gives CALPIA an opportunity to review work performance and gives inmates time to become familiar with new job duties.

**Background and CALPIA's Operations**

CALPIA was created by Chapter 1549, Statutes of 1982 as a semiautonomous state agency to operate California's prison industries in a manner similar to private industry. CALPIA was established to:

- Develop and operate manufacturing, agricultural, and service enterprises that provide work opportunities for California Department of Corrections (CDCR) inmates.

- Operate inmate working conditions similar to private industry providing experience, earnings, and opportunities for developing good work habits occupational skills.
- Operate work programs for offenders that are self-supporting through the generation of sufficient funds from the sale of products and services to pay all its expenses.

CALPIA is a self-supporting, customer-focused business that provides productive work assignments for approximately 7,000 inmates within the CDCR institutions. CALPIA manages over 100 manufacturing, service, and consumable operations in CDCR institutions throughout California. The goods and services produced by CALPIA are sold predominately to departments of the State of California, as well as other government entities. CALPIA's goal is to train offenders with job skills, good work habits, basic education and job support in the community so when they parole they never return to prison.

#### CALPIA Reduces Recidivism and Increases Public Safety.

CALPIA prepares inmates for productive lives and reduces incarceration costs. Paroled inmates who participated in CALPIA programs are less likely to return to prison than general population inmates. Although other relevant factors may contribute to lowering recidivism, over a three-year period, beginning in FY 2007-08, CALPIA participants returned to prison, on average, 26 to 38 percent less often than inmates released from the CDCR general population, saving the General Fund millions in incarceration cost avoidance. CALPIA provides CDCR with inmate programming positions, thereby saving CDCR in General Fund costs for rehabilitation positions that CDCR does not have to fund.

The goods and services produced by CALPIA's enterprises are sold predominately to departments of the State of California as well as other government entities. CDCR is CALPIA's largest customer and accounted for 59.6 percent of all sales in FY 2014-15, up from 57.1 percent in FY 2013-14. Other major State customers include the Department of Motor Vehicles (DMV), the Department of State Hospitals (DSH), the Department of Health Care Services (DHS), the Department of Transportation (CalTrans), the Department of Forestry and Fire Protection (CAL FIRE), the California National Guard, the California Highway Patrol (CHP), the Department of Veteran Affairs (CDVA), the Department of General Services (DGS), the Department of the Military, and the Department of Parks and Recreation (DPR).

CALPIA offers programs for inmates that offer nationally recognized accredited certification such as dental technology, food handling, laundry, agriculture, welding, metal stamping, industrial safety and health, electrical systems, mechanical systems and maintenance. In FY 2014-15, 884 CALPIA participants received a certificate of proficiency and/or Standard Occupational Code Proficiency certification and 3,117 participants successfully completed an accredited certification program, a 129 percent increase from FY 2013-14. CALPIA inmate participants must be engaged in a General Education Development (GED) degree to continue participating in CALPIA.

CALPIA participants return to prison far less often than general population offenders. The lower recidivism rate of CALPIA participants saves the state General Fund annually. Additionally, according to a survey of 11 items by the Bureau of State Audits, CALPIA

products were less expensive than the private sector in six out of the 11 items sampled, which saved CALPIA's five largest state customers \$3.5 million in Fiscal Year 2009-10.

CALPIA supports California's economy through its operations and the purchase of raw materials from California businesses. According to a 2010 study by associates of the University of Nevada in 2010, if CALPIA did not exist, economic activity in California would decline by \$295 million, household income would decline by \$75 million, and more than 1,000 jobs would be lost statewide.

CALPIA participants contribute 40% of their wages (\$.35 to \$.95 per hour) to pay court-ordered restitution and fees. CALPIA participants make prisons safer. Reducing idleness decreases violence against both staff and those who are incarcerated. CALPIA participants must have no disciplinary actions against them in order to keep their CALPIA assignments.

CALPIA's industries produce over 1,400 goods and services including: office furniture, clothing, food products, shoes, printing services, signs, binders, eye wear, gloves, license plates, cell equipment, and much more. In 2000, CALPIA began the development of the Industry Employment Program (IEP) to enhance the ability of inmates to obtain private sector jobs upon their release from prison. The program documents and certifies an inmate's skills, work experience, and positive work habits acquired while assigned to CALPIA's enterprises.

CALPIA's operations include and are not limited to commercial laundries (563 inmates), construction services and facilities maintenance, production of metal products, metal signs and license plates (408 inmates), commercial printing (89 inmates), modular construction (5 inmates), roofing, carpentry, marine technology, viticulture, and health facilities (collectively 361 inmates), other health facilities maintenance (978 inmates) commercial construction labor, iron work, commercial kitchen culinary arts, optical manufacturing (214 inmates), bindery production (80 inmates), meat cutting, baker (53 inmates), food and beverage packaging (255 inmates), furniture, shoes (126 inmates) and mattress manufacturing (30 inmates), the production of fabric products, dairy operations (136 inmates), crop production and farming operations (27 inmates), commercial dairy operations, dental laboratories (61 inmates), maintenance and repairs (63 inmates), warehouse operations (75 inmates), knitting mill and fabric engineering (53 inmates), fabric products (1057 inmates) health facilities maintenance, furniture production (388 inmates), poultry and egg production operations (57 inmates), coffee production and roasting (23 inmates), general fabrication (116 inmates), and cleaning products (48 inmates) among other operations. These operations include numerous and varied safety sensitive assignments for inmates to gain training, experience, and earn funds.

CALPIA invests in curriculum for inmates, offering more than 120 nationally recognized accredited certifications such as dental technology, food handling, laundry, dental technology, agriculture, welding, metal-stamping, industrial safety and health, electrical systems, mechanical systems, and maintenance. CALPIA inmates may earn certificates of proficiency in occupational disciplines to validate skills and abilities obtained during CALPIA assignments. In FY 2016-17, 559 CALPIA participants received a certificate of proficiency and/or Standard Occupational Code Proficiency certification, and 4,540

participants successfully completed an accredited certification program, a 9% overall increase for both from FY 2015-16. The increase was caused primarily by the opening of IEP enrollment to all CALPIA offenders into TPC Training Systems course 109.1 Industrial Safety and Health and the ongoing activation of the Healthcare Facilities Maintenance program at all institutions. Certifications are available in the numerous industries as listed in Appendix A.

In order for CALPIA to function efficiently and provide experiences similar to the private section, the amendment is needed to provide and enforce standard workplace practices. In addition, the amendments provide familiarity with those practices to inmates consistent with general workplace standards. CALPIA provides inmates with work opportunities to develop work skills and experience applicable upon release from custody. It is standard practice for employers to require staff to serve a probationary period or alternatively, work at-will.

**Duplication or Conflicts with Federal Regulations:**

The proposed amended regulation does not conflict with any federal standards.

**Technical, Theoretical, and/or Empirical Studies, Reports and Documents Relied Upon:**

1. Immediate Access to Employment Reduces Recidivism, June 11, 2015, [https://www.realclearpolitics.com/articles/2015/06/11/immediate\\_access\\_to\\_employment\\_reduces\\_recidivism\\_126939.html](https://www.realclearpolitics.com/articles/2015/06/11/immediate_access_to_employment_reduces_recidivism_126939.html)
2. CDCR Release Back-to-Back Annual Recidivism Reports, October 10, 2017, <https://news.cdcr.ca.gov/news-releases/2017/10/10/cdcr-releases-back-to-back-annual-recidivism-reports/>
3. How much does it cost to incarcerate an inmate? 2018-2019, [https://lao.ca.gov/PolicyAreas/CJ/6\\_cj\\_inmatecost](https://lao.ca.gov/PolicyAreas/CJ/6_cj_inmatecost)