

## **INITIAL STATEMENT OF REASONS:**

The California Prison Industry Authority (CALPIA) and the California Prison Industry Board (PIB) propose to amend section 8006. 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. According to Government Code section 11342.2, the proposed amended regulation is consistent and not in conflict with PC sections 2801 through 2808 (Prison Industry Authority) and is reasonably necessary to effectuate the purpose of PC sections 2801 through 2808. Amended Section 8006 provides overtime pay for inmates.

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). 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 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. By giving CALPIA these duties and power by statute, the Legislature implicitly delegated rulemaking authority to CALPIA to adopt those rules and regulations necessary for the exercise of powers expressly granted to CALPIA.

**Penal Code Section 2802:** Section 2802 provides for the existence and powers 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.

### **Consideration of Alternatives**

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made more specific.

### **ECONOMIC IMPACT ASSESSMENT:**

Per 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 businesses.

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

CALPIA has determined that 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. 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 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 amendments.

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

CALPIA has determined the proposed amended regulation will not affect the expansion of businesses currently doing business within the State of California because they are not affected by the internal management of CALPIA. 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 amendments.

**Benefits of the Regulations:**

An inmate pay rate for overtime pay will increase payments to these victims who may be currently unemployed or otherwise facing financial loss and increased medical costs. In addition, inmates save money to support themselves and their families upon their release and to pay child support. Additional overtime pay will add to this support. As a result, creates a positive impact to the health and safety of inmates, and welfare of California resident or the general public.

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

The purpose of these amendments is to provide overtime pay to inmates. Not only does this further the purposes of providing work experience to inmates, including typical work practices of overtime pay, but it also offers incentives to increase production performance of CALPIA's operations and factories, which in turn are designed to provide work experience to inmates. In light of economic challenges in the state, the overtime pay may offer some additional financial resources for crime victims through restitution and for families of inmates. CALPIA has recently redirected operations to include the production of face coverings and hand sanitizer, and these operations are requiring overtime hours to meet the production requirements and to provide face coverings and hand sanitizer to CDCR to promote safety inside CDCR institutions.

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

**Specific Regulatory Actions and Reasons:**

**Section 8006 is amended:**

This section is amended to provide for overtime pay for inmates working in CALPIA assignments. On March 4, 2020, the Governor of California, Governor Gavin Newsom declared a State of Emergency for the State of California due to the impact of COVID-19. This amendment will address the problem of having CALPIA factories working at capacity to address urgent circumstances, such as now with CALPIA quickly changing its production to include the production of hand sanitizer and face coverings in short supply and essential to ensure safe prison operations.

The California Prison Industry Authority (CALPIA) is deemed an essential government function and continues its operations during a State of Emergency. CALPIA has and continues to support government operations necessary to respond to this emergency, with increased production in some of its factories while other factories have had to cease operations. In addition, in response to the severe shortage of hand sanitizer, within less than 30 days, CALPIA obtained approval for and is producing hand sanitizers to state operations that can eliminate Covid-19 on hands and surfaces. To do so, CALPIA has staff working long hours and inmates working hard to support these operations in this time of emergency. In light of these extenuating circumstances in a State emergency, and these increased efforts, overtime pay is fair and reasonable to provide to inmates working beyond their usual and regularly scheduled workable hours.

Increasing inmate pay with overtime will also provide some potential relief to the severe economic downturn caused by the effects of Covid-19, as many California citizens are now suddenly out of work, and without income to pay for basic necessities of food and shelter. Inmate pay is paid by CALPIA's operations and is not paid from the State's General Fund. Increasing inmate pay which is used to pay victim compensation and supports inmate families and canteen purchases will add to the current economy. In addition, the California Legislature has been addressing inmate wages with a proposed overall increase with Senate Resolution (SCR) 69 (2019-2020).

In January 2020, the California Senate Appropriations Committee unanimously passed SCR-69, a resolution showing the Legislature's support of what it calls "fair and just" wages for incarcerated persons working for the Prison Industry Authority, the Division of Juvenile Facilities, and the Department of Corrections and Rehabilitation. On February 20, 2020, SCR-69 was referred to the Committee on Public Safety in the State Assembly. This was prior to the Governor's March 4, 2020 declaration of a State of Emergency for California.

The California Department of Corrections and Rehabilitation (CDCR) automatically collects 50 percent of prison wages or other money deposited into a trust account to pay restitution. An inmate pay rate for overtime pay will increase payments to these victims who may be currently unemployed or otherwise facing financial loss and increased medical costs. Inmates also save money to support themselves and their families upon their release and to pay child support. Additional overtime pay will add to this support.

On March 18, 2020, the California Legislative Analyst's Office, Gabriel Petek, Legislative Analyst, issued a Fiscal Perspective titled "COVID-19 and California's Evolving Fiscal Outlook" stating: The economic uncertainty caused by this emergency will significantly affect California's near-term fiscal outlook." As of March 26, 2020, California unemployment claims filed are up 363 percent.

Allowing for overtime pay may also help the most vulnerable of the state population, as noted in SR-69 as follows. The factors of disparities within imprisonment are partially a result of disproportionate social factors in African American and Latinx communities that are associated primarily with poverty, employment, housing, and family differences. The poverty rate is roughly 25 percent for both African American and Latinx communities, compared to 9 percent for White American communities. The median income for African American and Latinx communities is roughly \$20,000 less than the median income for White American communities. African American and Latinx adults are, respectively, 5.9 and 3.1 times more likely to be incarcerated than White adults.

CDCR found that in 2015, over 71 percent of prisoners were men of color. More specifically, 42 percent were Latinx and 29 percent were African American. In 2017, African American women were incarcerated at 5.7 times the rate of White women and Latinx women were incarcerated at 1.3 times the rate of white women. The State of California currently incarcerates approximately 126,428 people in state prisons. Roughly 42,897 people in prison work up to full time, earning anywhere from \$0.08 to \$1.00 per hour to \$3.90 per day in jobs ranging from electricians, carpenters, cooks, orderlies, fire conservation crew members, braille transcribers, silk screen printers, and many other integral work positions.

In 1982, California established CALPIA as a self-supporting business that provides work assignments for approximately 7,000 incarcerated people. CALPIA manages over 100 manufacturing, service, and consumable operations in all 34 CDCR institutions throughout California. The goods and services produced by CALPIA are sold predominantly to California state agencies, as well as to other governmental entities. CALPIA generates a gross profit of approximately \$60 million annually and manufactures items from road signs and clothing to cleaning products and the furniture used in nearly every room at the State Capitol. Approximately seven thousand people in prison work up to full time for CALPIA. Nearly 1,175 participate in the Inmate Ward Labor program (IWL) and can earn \$0.30 to \$0.95 per hour.

While fifty-five percent of a person's wages earned in prison are garnished to pay restitution, payments to victims are low. Many people in prison have families, and limited wages mean they are less able to help with general family financial needs, child support, or the added costs of communication and travel for families who have a loved one in prison. Research found that parents, upon entering prison, on average owed \$10,543 in child support obligations. Due to a lack of income or full-time employment opportunities, the majority of parents have no means of paying child support debt while in prison, and they also struggle to pay it after their release. Fifty-two percent of people in state prisons are parents of minors. African American children are 7.5 times, and Latinx children 2.6 times, more likely than White children to have a parent in prison. There are 1.7 million children in the United States that have an incarcerated parent.

People in prison who earn wages, including the opportunity for overtime pay, can contribute to the growth of the economy and to public safety. These contributions to their families, taxes, restitution, and themselves support the rehabilitative mandate of CDCR and ultimately save the state money by reducing the number of times people re-offend, the number of children in need of social services, and the likelihood of people seeking out governmental assistance.

State law empowers CDCR to fix the daily wage rate for persons incarcerated in state prison by regulation, and empowers CALPIA to adopt a compensation schedule for inmate employees based on quantity and quality of work performed but not more than one-half the state minimum wage. Therefore, providing overtime pay is timely and reasonable.

### Additional Necessity

To satisfy the Necessity standard, the rulemaking record must contain "substantial evidence" supporting the rulemaking agency's determination that the regulation is necessary. "Substantial evidence" is commonly defined to mean: "Such evidence that a reasonable mind might accept as adequate to support a conclusion." Black's Law Dictionary (Fifth edition, 1968) p.1281. CALPIA provides here additional information and rationale to meet the necessity standard for specific provisions of the proposed regulatory changes. First, the rate of pay for overtime of 1.5 times the usual hourly pay is designed to mirror common private sector practices that will familiarize inmates with the practice of private employers upon release to pay overtime pay beyond an employee's regular fulltime hours, such as after 8 hours of work in a day, or more than 40 hours in a work week.

Next, the terms workable hours and factor hours are included in this regulation to provide clarity and understanding to inmates, staff, and the general public. In order that the terms currently used for workable hours and factor hours are not subject to arbitrary interpretation an application, these terms are included here. Workable hours is explained because the general understanding of a work week is a typical 40 hour week for full time work. However, inmates may have a schedule of 143 hours per month as their usual and regular schedule. This may be due to allowances for the time necessary for an inmate to process through security from their cell through a workchange area, if applicable, and to be released to their CALPIA assignment. While 8 hours a day for 22 days in a month, averaging 40 hours a week, for a non-incarcerated person, translates to 143 hours for an inmate due to these necessary security and other operational considerations of the prison.

Similarly, factory workable hours is defined in this proposed regulation change in order that terms commonly used are clear and used consistently by inmates, staff, and the general public. CALPIA has numerous factories, each which may have very different factory workable hours. A factory may have 12 hours of work per day, yet inmate shifts are no more than 6.5 hours per day due to operational needs. Therefore, providing factory workable hours in this regulation change assists in eliminating any confusion or varied interpretation of inmate workable hours in relation to the factory workable hours.

## Background and CALPIA's Operations

As previously mentioned, 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 inmates.
- Operate inmate working conditions similar to private industry providing experience, earnings, and opportunities for developing good work habits and 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 manages over 100 manufacturing, service, and consumable operations in CDCR institutions throughout California. CALPIA's goal is to train offenders with job skills, good work habits, education, and job support in the community so that 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 three years, 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 provide 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 or Standard Occupational Code Proficiency certification, and 3,117 participants completed an accredited certification program, a 129 percent increase from FY 2013-14.

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. In

a 2020 California Legislature hearing, it was stated that the annual cost of inmate incarceration is approximately \$90,000 per inmate. 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 (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, eyewear, 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<sup>1</sup>), 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.

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<sup>1</sup> The number of inmates varies day to day due to the fluctuating and transitional nature of the incarcerated populations.

CALPIA invests in the 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 or Standard Occupational Code Proficiency certification, and 4,540 participants completed an accredited certification program, a 9% overall increase for both from the prior fiscal year. 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. Other certifications are available in numerous industries.

**Duplication or Conflicts with Federal Regulations:**

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

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

1. January 2020, the California Senate Appropriations Committee's SCR-69, a resolution showing the Legislature's support of what it calls "fair and just" wages for incarcerated persons working for the Prison Industry Authority, the Division of Juvenile Facilities, and the Department of Corrections and Rehabilitation.  
[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SCR69](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SCR69)



