

INITIAL STATEMENT OF REASONS:

The California Prison Industry Authority (CALPIA) and the California Prison Industry Board (PIB) propose the following regulatory action. According to the authority granted by the Legislature to the PIB and CALPIA, CALPIA and the PIB propose to delete Section 8007 and add Sections 8480, 8481, 8482, 8483, 8484, 8485, 8486, 8487, and 8488 in the California Code of Regulations (CCR), Title 15, concerning incarcerated individual grievances and appeals.

In Penal Code 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 regulatory action is consistent and not in conflict with Penal Code Sections 2801 through 2808 (Prison Industry Authority). The proposed regulatory action is reasonably necessary to effectuate the purpose of Penal Code Sections 2801 through 2808.

The proposed regulatory action will be vetted through the PIB's public process 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 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 incarcerated individuals 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 Subsection thereof, or by the federal government, or any department, agency, or corporation thereof, or for any other public use. State agencies may purchase CALPIA products. By giving CALPIA and the PIB these duties and powers by statute, rulemaking authority is implicitly delegated 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 of and to 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 their programs. 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.4th 124.) By the implied terms of Penal Code Sections 2808, 2802,

2807, and 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 proposed regulatory action is necessary to provide regulations considering the related California Department of Corrections and Rehabilitation (CDCR) regulations that now require this action. CDCR has obtained the approval of its similar regulations according to a Certification of Operational Necessity, pursuant to Penal Code Section 5058.3(a)(4). An operational necessity exists for the PIB and CALPIA, although Section 5058.3(a)(4) does not incorporate CALPIA. CDCR's new regulations provide that incarcerated individual grievances and appeals related to CALPIA will be referred to and handled by CALPIA, which were previously handled through the procedures provided by CDCR. It is timely to delete Section 8007 and add Sections 8480 through 8488 to CALPIA's regulations to provide procedures for incarcerated individual grievances and appeals.

The Prison Litigation Reform Act (PLRA) provides that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." (42 U.S.C. § 1997e(a).) In *Porter v. Nussle*, 534 U.S. 516, 122 S.Ct. 983 (2002), the Supreme Court confirmed that "the PLRA's exhaustion requirement applies to all incarcerated individual suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." (*Id.*, 122 S.Ct. at 992.) Incarcerated individuals must exhaust the procedures provided for grievances and appeals before filing litigation, and this regulatory action delineates this process. In this regulatory action, the PIB and CALPIA propose to formalize the incarcerated individual grievance and appeal process.

Just like people on the outside, incarcerated individuals have a fundamental constitutional right to use the court system. This right is based on the First, Fifth and Fourteenth Amendments to the Constitution. Under the First Amendment, is the right to "petition the government for a redress of grievances," and under the Fifth and Fourteenth Amendments, is the right to "due process of law." Put together, these provisions mean that an incarcerated individual must have the opportunity to go to court if they believe their rights have been violated. This right is referred to as the "right of access to the courts." Prior to accessing the courts, as a rule, incarcerated individuals must first exhaust administrative remedies. These remedies included filing a grievance and appeal with CALPIA. Otherwise, a later court action may be dismissed. These regulations aim to formalize CALPIA's administrative remedy process in support of these rights of incarcerated individuals.

Purpose and Necessity of Regulations

As stated above, CDCR's new regulations in Title 15 for incarcerated individual grievances and appeals provide that matters related to CALPIA will be referred to and handled by CALPIA, previously processed through the procedures provided by CDCR. Therefore, it is timely to add and amend CALPIA's regulations to provide procedures for incarcerated individual grievances and appeals. CALPIA has therefore instituted its own grievance and appeal process active approximately 1 year. Between the 36 institutions

and Central Office, an average of nine grievances per month are received. Over the past 9 months, only eight appeals and ten potential staff complaints were received. Of the ten potential staff complaints received, only three met the staff complaint criteria and were sent to CDCR for a formal investigation or allegation inquiry. Since implementation, 43% of the grievances have been rejected, 24% denied, and 11% granted. The most common grievance is about pay, including requests for raises, overtime, and number of hours. Overall, 41% of the grievances are resolved within 5 days of receipt. Appeals are resolved within 15 days on average. The program is operating and functioning, and this regulatory action will formalize this program.

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:

Following 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 regulatory action 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 regulatory action will have no impact on the creation or elimination of existing jobs or businesses within the State of California because jobs or businesses are not affected by the internal management of CALPIA. There will be no creation or elimination of jobs within the State of California due to this regulatory action.

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

CALPIA has determined the proposed regulatory action does not affect 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. As a result, there will be no creation or elimination of existing businesses within the State of California because of this regulatory action.

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

CALPIA has determined the proposed regulatory action 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. There will be no anticipated expansion

of businesses currently doing business within the State of California because of this regulatory action.

Benefits of the Regulations:

The proposed regulatory action will provide the following benefits:

- Formalize the process for handling incarcerated individual grievances and appeals.
- Formalize and clarify the roles and responsibilities of CALPIA staff at the grievance level and the appeal level.
- Expedite the processing of incarcerated individual grievances which contain information concerning personal safety, institutional security, or sexual misconduct.
- Formalize and clarify appropriate deadlines to improve grievance and appeal response times.
- Clarify the process for handling allegations of staff misconduct.
- These regulations will significantly improve the handling of incarcerated individual grievances and appeals to improve consistency, transparency, integrity, and staff accountability.

Statement of Purpose and Issues Being Addressed:

Effective June 1, 2020, CDCR amended sections 3000, 3045, 3077.3, 3078.4, 3084, 3084.1, 3084.2, 3084.3, 3084.4, 3084.5, 3084.6, 3084.7, 3084.8, 3084.9, 3085, 3086, 3134.1, 3136, 3137, 3141, 3173.1, 3179, 3193, 3220.4, 3230, 3282, 3369.5, 3383, 3475, 3476, 3477, 3478, 3479, 3480, 3481, 3482, 3483, 3485, 3486, 3548, 3563, 3630, and 3723; and adopted sections 3465, 3466, 3467, 3468, 3469, 3470, 3471, 3472, 3473, 3474, and 3487, in the California Code of Regulations (CCR), Title 15, concerning CDCR incarcerated individual and parolee grievances and appeals.

In their regulatory action, CDCR completely restructured the incarcerated individual and parolee grievance and appeal process, as well as the organizational structure of the Office of Appeals within CDCR. In doing so, CDCR revised its grievance and appeals process to refer grievances and appeals to be handled by CALPIA when the facts and circumstances involve CALPIA staff and operations. Therefore, it is necessary for CALPIA to provide regulations for the handling of such grievances and appeals.

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

CDCR revised its grievance and appeals process to refer grievances and appeals to be handled by CALPIA when the facts and circumstances involve CALPIA staff and operations. Therefore, it is necessary for CALPIA to provide regulations for the handling of such grievances and appeals.

Specific Regulatory Actions and Reasons:

Delete Section 8007:

Section 8007 is out of date as it refers to the CDCR grievance and appeal process, which has now been completely restructured and will no longer be used by CALPIA. CALPIA is instituting its own grievance and appeals process for incarcerated workers. The deletion of this section will affirm and solidify CALPIA's newly instituted incarcerated individual inmate grievance and appeals process.

Add Section 8480. Definitions:

This section provides for definitions to apply to grievances and appeals. “Clarity” as defined by Government Code Section 11349(c) means “... written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.” It is necessary to define these terms because they could have different meanings in application depending on their context. Defining the terms clarifies the meanings and helps eliminate any confusion between incarcerated individuals and CALPIA. Providing for these definitions has the benefit of providing a common understanding of the terms for uniform application and use. Subsections (a) through (b)(16) are written so that the meaning of the regulations will be easily understood by those persons directly affected by them. Clarity is an essential factor in promulgating regulations. A lack of clarity could constitute a due process violation or a failure to substantially comply with the APA. (*California Assn of Medical Products Suppliers v. Maxwell-Jolly* (App. 1. Dist. 2011) 131 Cal.App.4th 286.) See also Government Code Section 6219, plain language requirements.

Subsection (a) establishes that this Article, for Administrative Remedies for Incarcerated Individuals, applies to all incarcerated individual grievances and appeals received by CALPIA. Subsection (a) clarifies that this Article is not Administrative Remedies for staff or other persons. See also Government Code Section 6219, plain language requirements.

Subsection (b) provides definitions of terms used in Article 5, and (b) is the header for the individual subsections of defined terms as follows.

Subsection (b)(1) clarifies that “Administrative remedy” means the non-judicial process provided by CALPIA to address incarcerated individual complaints. Administrative remedies are explained under the “exhaustion of remedies doctrine.” California courts have long held that a person seeking to challenge a government decision must participate in its decision-making process and demonstrate that the judicial challenge is on the same grounds and evidence as he or she presented to the decision-maker. Known as the “exhaustion of remedies doctrine” or more commonly, “exhaustion of administrative remedies,” this requirement applies whenever the law requires those affected be given notice and opportunity to be heard before a decision is made. If a notice and hearing requirement exists, as a rule, a person affected by a governmental decision must participate in the making of that decision by appearing at the hearing and providing the agency with specific reasons why the decision is asserted to be wrong and presenting evidence supporting the reasons asserted. This rule not only ensures informed decisions, but permits decision-makers to respond to criticism, apply their expertise, and develop a record suitable for judicial review. (See *Plaintier v. Ramona Municipal Water District*, Amica Curie Brief of CA Cities, Case No. D069798, 4th Appellate District, Cal. Ct. Appeal (2017).) See also Government Code Section 6219, plain language requirements.

Subsection(b)(2) explains that “Allegation inquiry” refers to the process of gathering preliminary information concerning a claim that involves an allegation of staff misconduct. It is necessary to define this phrase to distinguish between the inquiry for staff misconduct and an inquiry for a standard grievance. An allegation of staff misconduct is of a sensitive nature separate and distinct from the general category of incarcerated individual grievances. This distinction is important as shown by CDCR’s new 2020 process for complaints of staff misconduct. CDCR created a new statewide internal affairs division to investigate complaints against staff, aiming to standardize a process that various prisons

had handled inconsistently. The new unit staffed with 36 lieutenants and six captains was detailed in the Office of Inspector General's May 2020 report. Its development followed a 2019 special review compiled by the Office of the Inspector General, which found that incarcerated individual complaints of staff misconduct were handled "inadequately" in more than half of all cases it analyzed at Salinas Valley State Prison. See also Government Code Section 6219, plain language requirements.

Subsection(b)(3) clarifies that "Appeal" means a written request from a claimant for review by the Appeals Coordinator of a decision issued by the Grievance Coordinator for the claimant's grievance. According to Black's Law Dictionary, 2d. ed., appeal is described as follows:

After a decision is rendered in a lower court, a party may make an application (written request) to a higher court for them to review the decision and potentially modify or reverse the judgment of the lower court. Typically, a reviewing or appellate court must accept all the facts that the earlier judge or jury accepted as true and the review is confined to questions of law and whether there were mistakes made in the understanding or application of law. An appellate court that finds that a mistake was serious enough to have potentially changed the outcome of the lower court's decision may direct the lower court to conduct a new trial. Harmless errors or those which would likely not affect the judgment of the lower court are denied and the judgment is affirmed. The party appealing a decision may be a losing party at trial or may be a prevailing party on most issues and is appealing a limited issue which it did not prevail at trial. In most instances, an appeal is limited to 30 days from the date of judgment whereby the party losing at trial (the appellant) and the prevailing party (the appellee) submit written arguments and make oral arguments in front of the appellate court explaining their position of whether the lower court's decision was correct or erroneous.

Here, the appeal is from the decision of a Grievance Coordinator within the administrative process rather than a court process. See also Government Code Section 6219, plain language requirements.

Subsection(b)(4) establishes that "Appeals Coordinator" means the General Counsel, or designee, who is responsible for responding to incarcerated individual appeals. The General Counsel or designee is identified as the Appeals Coordinator to ensure consistency and fairness in responding to appeals, in addition to application of the proper due process in administrative review. Appeals are handled through CALPIA's Legal Office to ensure a high level of attention and professional review to promptly address incarcerated individual concerns. See also Government Code Section 6219, plain language requirements.

Subsection(b)(5) establishes that "Appeal package" means a CALPIA Form 602-2 (03/21) and all supporting documents. This term identifies the items that are contained in and support an appeal for a clear understanding and identification of the materials for submitting an appeal. Therefore, this subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent

with Government Code Sections 11349(c) and 11349.1. See also Government Code Section 6219, plain language requirements.

Subsection(b)(6) establishes that “CALPIA” refers to the California Prison Industry Authority, and “CALPIA staff” refers to all CALPIA employees, volunteers, contractors, and vendors at CDCR Institutions, CALPIA regions, operations, locations, enterprises, and factories. Defining the term “CALPIA” promotes clarity and reduces ambiguity that may result from challenges to the term. Therefore, this subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1. See also Government Code Section 6219, plain language requirements.

Subsection (b)(7) identifies “CDCR” as referring to the Department of Corrections and Rehabilitation and to all employees, contractors, and volunteers associated with the Department of Corrections and Rehabilitation. Defining the term “CDCR” promotes clarity and reduces ambiguity that may result from challenges to the term. Therefore, this subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1. See also Government Code Section 6219, plain language requirements.

Subsection (b)(8) establishes that “Claim” means a single complaint arising from a unique set of facts or circumstances. From the Oxford Languages dictionary, a claim is “a demand or request for something considered one’s due.” (See <https://languages.oup.com/google-dictionary-en/>.) Therefore, this subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1. See also Government Code Section 6219, plain language requirements.

Subsection(b)(9) establishes that “Claimant” refers to an incarcerated individual under the custody or control of CDCR who files a grievance or appeal with CALPIA. Defining the term promotes clarity and reduces ambiguity that may result from challenges to the term. For example, a grievance may be submitted by a person who is not under the custody or control of CDCR, such as the family member of an incarcerated individual, and therefore, would not meet the requirement of being a claimant. Claimant is defined by Merriam-Webster’s dictionary as “one who asserts a right.” (<https://www.merriam-webster.com/dictionary/claimant>.) Incarcerated individuals filing a grievance are asserting a right or rights, and therefore are correctly named as a claimant. Therefore, this subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1. See also Government Code Section 6219, plain language requirements.

Subsection(b)(10) establishes that “Formal investigation” refers to a criminal or administrative investigation by the CDCR Office of Internal Affairs, another investigative or law enforcement entity, or CALPIA concerning a claim that involves an allegation of staff misconduct. Defining the term promotes clarity and reduces ambiguity that may result from challenges to the term. The Cambridge Dictionary defines “formal” as meaning official and defines “investigation” as meaning the act or process of examining a crime, problem, statement, etc., carefully, especially to discover the truth. (See <https://dictionary.Cambridge.org>.) Therefore, this subsection supports understanding of

the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1. See also Government Code Section 6219, plain language requirements.

Subsection(b)(11) establishes that “Grievance” means a written request from a claimant for review and response by a Grievance Coordinator. Defining the term promotes clarity and reduces ambiguity that may result from challenges to the term. The purpose of the grievance procedure is to provide an incarcerated individual with a channel for the administrative settlement of a grievance. In addition to providing the incarcerated individual with the opportunity of having a grievance heard and considered, this procedure will assist CALPIA by providing additional means for internal resolution of problems and improving lines of communication. This procedure will also provide a written record in the event of subsequent judicial or administrative review. Therefore, this subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1. See also Government Code Section 6219, plain language requirements.

Subsection(b)(12) establishes that “Grievance Coordinator” means the Institutional, Regional, Enterprise, or factory Prison Industries Administrator or Prison Industries Manager, or designee, at the CDCR Institution where the incarcerated individual is incarcerated or CALPIA personnel who manages the CALPIA region, operations, locations, enterprises, or facilities where the claimant is assigned with CALPIA. According to Office of the Inspector General of California, in its Special Report, September 2011 (“Special Report”) there was a need to address a primary deficiency in CDCR’s grievance and appeals process to ensure incarcerated individuals can attempt to informally resolve an issue, and to prove they had done so. The Special Report, in its Executive Summary explained:

The California Department of Corrections and Rehabilitation (CDCR) began developing its current incarcerated individual appeal¹ process in the 1970s in response to several high-profile riots and prison takeovers by incarcerated individuals who believed their grievances were not being properly addressed. Reviews of those incidents determined that establishing a meaningful incarcerated individual appeal process that promptly resolves incarcerated individual grievances at the earliest possible state is a cost-effective strategy that reduces tensions in the prison system and is essential to the security of California’s penal system.

The revised incarcerated individual appeal process ... enables incarcerated individual or parolee to appeal any policy, decision, action, condition, or omission by CDCR or its employees that the incarcerated individual can demonstrate had a materially adverse effect upon the incarcerated individual’s health, safety, or welfare. The objective of this process is to resolve incarcerated individual grievances at the lowest possible administrative level.

¹ CDCR previously used the term “appeal” instead of “grievance,” therefore references to the “appeal process” mean the grievance process.

In reviewing both CDCR's former and revised incarcerated individual appeal process, the Office of the Inspector General identified the concerns that led CDCR to change its incarcerated individual appeal process and assessed whether the revised incarcerated individual appeal process addressed those concerns.

One of the primary deficiencies CDCR identified in its former appeal process was that incarcerated individuals were unable to prove they had attempted to informally resolve and issue. This lack of verification led to allegations that a number of appeals were destroyed or lost, either intentionally or negligently. The revised process attempts to increase CDCR's accountability ...

Therefore, identifying CALPIA's high-level personnel such as the Prison Industries Administrator will promote accountability and resolution of grievances with a high level of professional review, and affirms the importance placed on addressing grievances. In this way, the due process rights of incarcerated individuals are preserved, and grievances will be handled with professionalism. Therefore, this subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1. See also Government Code Section 6219, plain language requirements.

Subsection(b)(13) establishes that "Grievance package" means a CALPIA Form 602-1 (03/21) and all supporting documents. This term identifies the items that are contained in and support a grievance for a clear understanding and identification of the materials for submitting a grievance. Therefore, this subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1. See also Government Code Section 6219, plain language requirements.

Subsection(b)(14) establishes that "Reviewing Authority" means the General Counsel, or designee, who is responsible for approving a decision on each claim raised in a grievance or appeal. The General Counsel or designee is identified as the Reviewing Authority to ensure consistency and fairness in responding to grievances and appeals, in addition to application of the proper due process in administrative review. According to Office of the Inspector General of California, in its September 2011 Special Report, there was a need to address a primary deficiency in CDCR's grievance and appeals process to ensure incarcerated individuals can attempt to informally resolve an issue, and to prove they had done so. See also Government Code Section 6219, plain language requirements.

Subsection(b)(15) establishes that "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of the function of any bodily member or organ; a wound requiring extensive suturing; and severe disfigurement. Serious bodily injury is defined by California Courts in standard criminal jury instructions CALCRIM No. 925. Battery Causing Serious Bodily Injury (Pen. Code, §§ 242, 243(d)). Subsection (b)(15) is consistent with CALCRIM Jury Instruction 925, and Penal Code Sections 242 and 243(d). Therefore, this subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent

with Government Code Sections 11349(c) and 11349.1. See also Government Code Section 6219, plain language requirements.

Subsection(b)(16) establishes that “Staff misconduct” means an allegation that CALPIA staff violated a law, regulation, policy, or procedure, or acted contrary to an ethical or professional standard, which, if true, would more likely than not subject a staff member to adverse disciplinary action. Misconduct is defined by the Business Dictionary as “unlawful or improper behavior such as in dereliction of duty.” The phrase “more likely than not” has inherent in the words and confirmed by some regulations, that this phrase means “there is a greater than 50% likelihood of the position being upheld.” (See IRC Reg. § 1.6662-4(d)(2).) Law Insider Dictionary defines “more likely than not” as follows: “More likely than not means evidence reasonably tending to support the conclusion. Evidence that is competent, relevant, and material, and which to a rational and impartial mind naturally leads, or involuntarily leads to conclusion for which there is valid, just, and reasonable substantiation.” See also Government Code Section 6219, plain language requirements.

Add Section 8481. Claimant’s Ability to Grieve and to Appeal:

This section defines the claimant’s ability to grieve and appeal.

Subsection (a)(1) provides that an incarcerated individual can file a grievance containing one or more claims to dispute a policy, decision, action, condition, or omission by CALPIA staff that causes some measurable harm to their health, safety, or welfare. Incarcerated individuals are afforded this process to have the opportunity to be heard, administrative due process, and a fair and consistent grievance and appeal process. As explained above in the discussion of subsection 8480(b)(12), pursuant to the Inspector General’s Report, incarcerated individuals shall have the option of filing a grievance or appeal, to be considered in a fair and equitable manner. The CALPIA incarcerated individual grievance and appeal process is the internal process through which incarcerated individuals may file a complaint against CALPIA to challenge a policy, practice, or treatment. The grievance and appeal processes are an internal administrative grievance process because CALPIA is a state administrative agency. According to California law, under the “exhaustion of remedies” requirement, incarcerated individuals must exhaust their administrative remedies before filing any lawsuit with the court. These regulations provide that process. The exhaustion requirement allows CALPIA to redress concerns and complaints before a court reviews the actions of a state agency. Subsection (a)(1) also states that a Grievance Coordinator must provide a written decision, clearly explaining the reasoning for the decision as to each claim. The clearest method to state a decision is to include an issue, the applicable rule, a discussion or application, and the conclusion, applying the evidence to the rule. In this way, in plain language, a decision can be understood, and is sufficient to withstand challenge on appeal if there are no valid appealable matters.

Subsection (a)(2) provides specifically for the incarcerated individual to have the option of filing an appeal of a grievance decision. As explained above in the discussion of subsection 8480(b)(12), pursuant to the Inspector General’s Report, incarcerated individuals shall have the option of filing a grievance or appeal, to be considered in a fair and equitable manner. The primary importance of the APA is the goal to protect the process through fair, reasonable, and fast judgments and decisions. This prevents

appeals going to the courts and the resources needed for these. Once the appeal has been completed, it may be possible to appease both sides of the conflict. Subsection (a)(2) provides the option of an appeal, to ensure fair and reasonable decisions. Therefore, this subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (b)(1) explains that Grievance Coordinators are authorized to grant or deny each claim in an incarcerated individual grievance. This Subsection promotes clarity and reduces ambiguity and gives clear direction that each grievance claim will be granted or denied. This Subsection also provides that the Grievance Coordinator will be a Prison Industry Manager or staff of higher position ensuring a high level of management review and highlighting the importance of incarcerated individual grievances. See discussion below for subsection (b)(2) addressing the importance of having staff of an attorney position or higher address the appeals of incarcerated individuals.

Subsection (b)(2) provides that the Appeals Coordinator and Reviewing Authority are authorized to render decisions on appeals submitted by an incarcerated individual and the Appeals Coordinator and Reviewing Authority will be staff of an attorney or higher position. This Subsection promotes clarity and reduces ambiguity and gives clear direction that an appeal will be reviewed. This Subsection also provides that the Appeals Coordinator and Reviewing Authority will be staff of an attorney or a person of higher position ensuring a high level of management review and highlighting the importance of incarcerated individual appeals. Having a staff attorney or person of higher position is consistent with the Inspector General's report in 2019 of CDCR's grievance and appeals process. That report found that there was an "inadequate staff review inquiry process for the majority of allegations that were reviewed, deficient training of staff, and the presence of bias in conducting reviews." The Inspector General recommended more independence in the appeals process.

Subsection (c) addresses that while an incarcerated individual may seek informal resolution, the timelines for filing a grievance are not tolled during the pursuit of informal resolution. This subsection provides clarity and direction that eliminates any misunderstanding or confusion that during a period of seeking informal resolution, the option to file a grievance remains available, when in fact, the deadline will pass.

Subsection (d) explains that except for allegations of staff misconduct, the claimant may withdraw a grievance or appeal at any point up to receiving a signed response. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (e) prohibits staff retaliation against an incarcerated individual for seeking to informally resolve a claim or for submitting a grievance or appeal. This subsection imparts the seriousness of impeding an incarcerated individual's right to file a grievance or appeal. This subsection also protects an incarcerated individual from harm, such as losing their work assignment, shift, hours, or pay, in retaliation for filing a grievance or appeal. In the case of *Snodgrass v. Messer*, 138 S. Ct. 1262 – 2018, the Supreme Court opined that it is common and frequent that incarcerated individuals who file complaints and grievances

are often retaliated against by staff. Subsection (e) clarifies that retaliation is expressly prohibited.

Subsection (f) explains grievances and appeals filed with CALPIA must pertain to CALPIA and not pertain to CDCR or another entity or agency as CALPIA has no jurisdiction to address grievances for CDCR or any other entity. This subsection provides clarity and direction that eliminates any misunderstanding or confusion as an incarcerated individual may incorrectly file a claim against CDCR with CALPIA, over which CALPIA has no authority. Subsection (f) is necessary because it is not uncommon for grievances and appeals to be filed with the wrong entity, or a grievance to be submitted incorrectly. For example, because proposed regulations are publicly noticed, on occasion a family member has contacted CALPIA to lodge a concern at a prison, regarding treatment by CDCR of an incarcerated family member even though CALPIA regulations' unit has no authority over CDCR or CDCR housing and treatment of inmates. Subsection (f) also clarifies that a claimant is not precluded from filing a complaint with entities or agencies other than CALPIA.

Subsection (g) explains that CALPIA Form 602-1 (03/21) will be available to incarcerated individuals at all CALPIA locations and operations for filing a grievance. This form is incorporated by reference in this rulemaking. This subsection provides clarity and direction that eliminates any misunderstanding or confusion as to where an incarcerated individual may obtain access to a form for filing a grievance. This subsection gives notice to both incarcerated individuals and staff that these forms must be maintained and available through CALPIA. This subsection also ensures access to incarcerated individuals to the necessary form for filing a grievance with CALPIA.

Subsection (h) addresses when an incarcerated individual filing a grievance or appeal needs assistance based on a disability, lack of literacy, or need for translation services, or CALPIA determines such assistance is required. In which case, CALPIA staff will provide this assistance and ensure effective communication techniques as required by the Americans with Disabilities Act (ADA). There are numerous court cases such as *Clark v. California*, 3:96-cv-01486-CRB (N.D. Cal.), among others, finding that full compliance with the ADA and related laws protecting the disabled is required in all California prisons. Subsection (h) affirms these requirements apply to and must be met during CALPIA's administrative process for grievances and appeals for incarcerated individuals.

Add Section 8482. Preparation and Submittal of a Grievance:

This section provides guidance and processes on the preparation and submittal of a grievance.

Subsection (a) identifies that a grievance must be submitted in writing to the Grievance Coordinator at the location of that incarcerated individual's assignment through the incarcerated individual's immediate supervisor or CALPIA lead staff. Requiring a grievance is in writing ensures a record is maintained, and available on any appeal, and allows for fair and equitable treatment of similarly situated claims. Staff are required to immediately notify their direct supervisor or lead staff. This subsection provides the process in submitting a grievance (it must be in writing), and where and to whom an incarcerated individual submits their grievance. Requiring staff to immediately notify their

direct supervisor or lead staff ensures the grievance will be addressed and routed to the Grievance Coordinator to ensure a timely response. Subsection (a) supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (b) provides a deadline that a claimant shall submit a claim within 30 calendar days of discovering an adverse policy, decision, action, condition, or omission by CALPIA. To eliminate any varied interpretation of discovery, this section explains that discovery occurs when a claimant knew or should have reasonably known of the adverse policy, decision, action, condition, or omission. This subsection provides clarity and direction that eliminates any misunderstanding or confusion as to the necessary deadline and the type of days (calendar versus standard business days of Monday through Friday). Thirty days is a reasonable time limit as it allows for time for an incarcerated individual to obtain the grievance form, prepare it, collect supporting records, and return it to CALPIA. A thirty-day deadline also ensures that grievances are filed as close to the event or incident as possible, to ensure witnesses and records exist and are available. This subsection also defines the initial date of discovery and what discovery means. As a result, timelines can be determined with certainty. Therefore, this subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (b)(1) explains the deadline to submit a claim shall be extended for the time that a claimant is in the custody of another authority for court proceedings. Extending this timeline supports the due process rights of incarcerated individuals to file grievances, appeals, and request review by the courts. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (b)(2) clarifies the deadline to submit a claim shall be extended for the time that the claimant is in the care of an outside hospital. Extending this timeline supports the due process rights of incarcerated individuals to file grievances, appeals, and request review by the courts. When an incarcerated person is in the care of an outside hospital, it is often when they are severely ill. In addition, it is likely they will be restrained at their hospital bed, and have no access to a grievance form, supporting materials, or even be able to submit the grievance to CALPIA personnel. Therefore, this subsection reasonably extends the time period in the situation of a hospital stay, ensuring the rights of incarcerated individuals are preserved. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (b)(3) identifies the deadline to submit a claim shall be extended for the time that the claimant is temporarily housed in a medical or mental health crisis bed. The same rationale applies to a medical or mental health care crisis bed stay as to an outside hospital stay, discussed above addressing subsection (b)(2). This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1. Extending this timeline supports the due process rights of incarcerated individuals to file grievances, appeals, and request review by the courts.

Subsection (c) specifies procedures and processes for submitting the grievance in subsections (1), (2), and (3). This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (c)(1) provides that to submit a grievance, an incarcerated individual must type or print the grievance on an official CALPIA Form 602-1 (03/21). In this way, a record of the grievance exists, and is available on review, and any appeal. As such, subsection (c)(1) ensures fair and equitable treatment of grievances. Otherwise, there would be no means by which to evaluate and review the grievance. Use of an official CALPIA Form 602-1 (03/21) also ensure all necessary information to review the claim will be provided. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (c)(2) requires that a claimant fill in the portions of the form identifying the claimant's name, CDCR number, current housing/parole unit, and institution/facility/parole region. A claimant is identified while incarcerated by a CDCR number and their name, so this information is necessary to respond. The claimant's housing and location are necessary both to provide a response, and to obtain statements of witnesses or records to fully and fairly address claims.

Subsection (c)(3) explains that to submit a grievance an incarcerated individual must describe all facts and circumstances underlying the grievance, identifying parties and witnesses with names and titles of staff, and key dates and times. In this way, a record of the basis of the grievance exists (who, what, where, when, how, why, and witnessed by whom), and is available for review. As such, subsection (c)(1) ensures fair and equitable treatment of grievances. Otherwise, there would be no means by which to evaluate and review the grievance. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (c)(4) clarifies that to submit a grievance, an incarcerated individual must describe any attempts to resolve the claim informally, with specificity of where, when, how, what this occurred, and with names and titles of staff and all persons involved identified, and the results. In this way, the Grievance Coordinator will be able to follow-up on the informal attempts and determine why resolution failed. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (c)(5) delineates that the descriptions required by Subsections 8482(c)(2) and 8482(c)(3) must be limited to the space provided on CALPIA Form 602-1 (03/21). It is a business necessity for grievances to be concise, due to staffing and resource allocation. This helps to facilitate the processing of the claims and ensures that the claims can be evaluated in an orderly and efficient fashion. Supporting records and documents may be attached to provide additional details and information as described in Subsection (c)(6).

Subsection (c)(6) requires incarcerated individuals to include or identify the location of all supporting documents with the grievance. Subsection (c)(6) requires supporting

documents are attached to a grievance to ensure all available information is considered as part of the grievance review. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (c)(7) provides that to submit a grievance, an incarcerated individual must sign and date the CALPIA Form 602-1 (03/21). This ensures that the person submitting the grievance is the incarcerated individual, and that they attest to the claim(s) made in the grievance. While it may not completely avoid false grievances being submitted under another person's name, this requirement may limit fraudulent or false grievances.

Subsection (d)(1) prohibits the use of threatening, obscene, demeaning, or abusive language in a grievance, except when quoting persons involved in the claim. This subsection is consistent with Government Code Section 12950.1 and has the goal of promoting treating state employees with dignity and respect. Subsection (d)(1) is also consistent with the goals of CALPIA to assist incarcerated individuals to learn how to exist upon release in a work environment, where the use of threatening, obscene, demeaning, and abusive language is prohibited.

Subsection (d)(2) prohibits a claimant including information or accusations known to the claimant to be false in a grievance. Subsection (d)(2) requires truthful claims, which in turn ensures the integrity of the process.

Subsection (d)(3) prohibits the contamination of the grievance package by including organic, toxic, or hazardous materials that may present a threat to the safety and security of staff. In the instance when that occurs, the grievance shall be safely discarded, and the entire grievance disallowed. Subsection (d)(3) addresses the fact that the use of organic, toxic, or hazardous materials that may present a threat to the safety and security of staff is not an unknown occurrence in CDCR institutions. CALPIA is required under OSHA regulations to protect the safety of employees. Subsection (d)(3) protects CALPIA employees by eliminating potentially unsafe grievance packages from consideration. This subsection promotes the protection of staff's safety and health.

Subsection (e) provides that CALPIA will scan the grievance package and return the original documents to the incarcerated individual. Subsection (e) eliminates possible misunderstanding that materials would not be returned to the incarcerated individual, giving the incarcerated individual notice. The necessity of this section is ensuring the claimant has their own records, as incarcerated individuals may not have access to copiers, scanners, computers, and software to store electronic copies of their own. This section also eliminates the time and expense of potential subsequent requests for public records, under the Public Records Act, thus reducing potential labor expenses and costs for CALPIA. Returning records to incarcerated individuals also supports their due process rights to file grievances, appeals, and request review by the courts. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (f) explains that the deadline to submit a grievance is measured from the time it is received by CALPIA, so that any transmission through CDCR to route it to CALPIA, is not measured against the claimant's available time to submit the grievance. Extending

this deadline supports the due process rights of incarcerated individuals to file grievances, appeals, and request review by the courts. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Add Section 8483. Grievance Review:

This section identifies grievance review processes.

Subsection (a) provides that Grievance Coordinators will assess each written grievance within one business day of receipt to determine if it contains any information concerning personal safety, institutional security, or sexual misconduct, including acts of sexual misconduct as defined by the federal Prison Rape Elimination Act and the California Sexual Abuse in Detention Elimination Act. In those instances, the Grievance Coordinator shall immediately commence an appropriate response as required by all applicable laws and regulations. Completing this review in one business day supports the due process rights of incarcerated individuals to file grievances, appeals, and request review by the courts. Completing this review in one day affirms the high importance of any information concerning personal safety, institutional security, or sexual misconduct, including acts of sexual misconduct as defined by the federal Prison Rape Elimination Act and the California Sexual Abuse in Detention Elimination Act. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (b) directs request for records pursuant to the California Public Records Act or the California Information Practices Act to be redirected to the CALPIA Public Records Act coordinator or General Counsel. This section states the process for routing of a Public Records request and is provided to give understanding to the direction to be taken for such requests.

Subsection (c) explains that grievances will be reassigned to the facility and location where the facts and circumstances underlying a grievance. This subsection addresses what happens, for example, when an incarcerated individual is transferred to a different institution, and files a grievance at the transferred location regarding a situation occurring at the previous institution. This subsection also clarifies that the date of receipt is the date CALPIA initially received it, and any associated deadlines will not be extended to account for routing to the correct institution within CALPIA. This ensures incarcerated individuals are not penalized for circumstances beyond their control such as institution transfers.

Subsection (d) directs that Grievance Coordinators shall refer claims alleging staff misconduct to the General Counsel for a determination of the appropriateness of an allegation inquiry or formal investigation pursuant to section 8484. This referral ensures that allegations of staff misconduct receive the highest level of attention with CALPIA's General Counsel, ensuring the matter is given a high level of professional consideration.

Subsection (e) refers to the rejection of claims providing that a claim may be rejected as described in Section 8488. Reference is made to the subsequent discussion of Section 8488.

Subsection (f) provides that Grievance Coordinators will ensure that an acknowledgment of receipt of a grievance is completed within 14 calendar days of its receipt indicating the date the grievance was received, whether it was disallowed under subsection 3482(d)(3), whether any claim was redirected or reassigned pursuant to this section, whether any claim was rejected pursuant to section 8488, and the deadline for the CALPIA's response to all remaining claims. This ensures detailed procedures to identify receipt and notification to the incarcerated individual of any disallowed, redirected, reassigned, or rejected claims. Fourteen days is a reasonable time, as it covers two business weeks. Fourteen days also allows for staffing issues, vacations, State holidays, and business workloads. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (g) explains that a claimant or witness shall be interviewed if it is determined that it will assist in addressing the claim. The interview shall be conducted in a manner that provides as much privacy for the claimant as operationally feasible. If a claimant is unavailable to be interviewed or refuses to be interviewed, it shall be documented in the written response. Subsection (g) details that witnesses will be interviewed, as an interview with facts and evidence about the grievance must be considered for a fair and equitable decision to be rendered. Therefore, this subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (h) excludes involved persons. This section provides Grievance Coordinators shall ensure that any individual identified as the subject of the claim is excluded from involvement in the grievance process as to that claim, including any interview of the claimant conducted as part of the grievance process. This subsection also proactively prevents any possible retaliation by that involved individual and removes the appearance of potential bias or influence. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (h)(1) requires that if the Grievance Coordinator is identified in the grievance, the Grievance Coordinator shall refer the claim to the Legal Unit to determine whether the Grievance Coordinator is the subject of the claim. If the subject of the claim is the Grievance Coordinator, then the appropriate Branch Manager shall serve as the Grievance Coordinator for that claim. The Branch Manager is sufficiently elevated to give a grievance serious consideration, while simultaneously familiar with the operations in which the grievance arises. Subsection (h)(1) ensures that a higher level authority handles this type of grievance, to ensure independence and integrity. This subsection also proactively prevents any possible retaliation by that involved individual and removes the appearance of potential bias or influence.

Subsection (h)(2) requires that if the subject of the claim is a Branch Manager, then the Assistant General Manager or designee shall serve as the Grievance Coordinator for that claim. Subsection (h)(2) ensures that a higher level authority handles this type of grievance, to ensure independence and integrity. This subsection also proactively prevents any possible retaliation by that involved individual and removes the appearance of potential bias or influence.

Subsection (h)(3) explains that participating in a committee, such as a classification committee, meeting to discuss a claimant or that includes a claimant in attendance, does not constitute personal interaction. A classification committee is a CDCR committee that evaluates incarcerated individuals based upon several criteria and categorizes incarcerated individuals for security, housing, rehabilitation programs, work programs, etc. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (i) provides that Grievance Coordinators shall ensure that a written response to the grievance is completed no later than 60 calendar days after receipt of the grievance, unless other statutory or regulatory authority requires a response in less than 60 calendar days, or the Grievance Coordinator determined that additional time is reasonably necessary to fully and fairly evaluate the grievance and approve one of the following decisions in Subsections (i)(1) through (i)(9) as to each claim in the grievance. Sixty calendar days provides sufficient time for review, analysis and drafting of a response, and coordination with the Legal Office if necessary. However, ss noted above, 41% of the grievances are resolved within 5 days of receipt. It also allows for staffing changes, time off, State holidays, and management approval.

CALPIA also uses 14-day, 30-day, and 60-day deadlines because that is what is in CDCR's regulations for grievances and appeals. Having the same deadlines gives consistency between the CDCR and CALPIA processes providing simplicity for the incarcerated individuals. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsections (i)(1)-(9) provide additional definitions and explains actions and responses to grievances. It is necessary to define these terms because they could have different meanings in application depending on their context. Defining the terms clarifies the meanings and helps eliminate any confusion between incarcerated individuals and CALPIA. Subsections (i)(1)-(9) support an understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (i)(1) defines "Denied," meaning that the Grievance Coordinator found by a preponderance of the evidence available that all applicable policies were followed and that all relevant decisions, actions, conditions, or omissions by CALPIA or staff were proper (whether substantively, procedurally, or both). When a grievance is denied, it is not approved or admitted. According to the Oxford English Dictionary, denied means to refuse to give or grant. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (i)(2) defines "Granted," meaning that the Grievance Coordinator did not find by a preponderance of the evidence available that all applicable policies were followed or that all relevant decisions, actions, conditions, or omissions by CALPIA or CALPIA staff were proper (whether substantively, procedurally, or both), in which case the Grievance

Coordinator shall grant the requested remedy. According to the Oxford English Dictionary, granted means that to accept something as true, i.e., the allegations of a grievance are true. Using the term granted ensures a clear understanding that the grievance filed and reviewed is taken as true and a remedy follows. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (i)(3) provides that “Granted in Part” means as described in subsection (i)(2) but with modification to the requested remedy. This subsection makes clear that an outcome might result in a partial granting of the requested remedy, permitting some remedy rather than a complete denial. For example, if a claimant requested a 20-cent raise when they were only entitled to a 5-cent raise, the request for a raise in general could be granted, but the amount would be denied and modified to 5 cents, resulting in the grievance being granted in part. This allows for an appropriate resolution as opposed to a complete denial, which would require the incarcerated individual to file a new grievance to request the 5-cent raise. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (i)(4) defines “Redirected,” as described in subsection 8483(b) and occurs when a request for public records is incorrectly submitted as a grievance and requires redirection to the CALPIA Public Records Act coordinator or General Counsel. (See the freedictionary.com/redirected.) This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (i)(5) defines “Rejected,” as described in subsection 8488(a) and occurs when there is cause to refuse to accept, consider, submit to, take for some purpose, or use. (See merriam-websterdictionary.com/rejected.) This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (i)(6) defines “Disallowed,” as described in subsection 8482(d)(3) and occurs when there is cause to disallow, meaning it is not allowed or accepted officially. (See collinsdictionary.com/dictionary/disallow.) This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (i)(7) defines “Withdrawn” as when, except for allegations of staff misconduct, the claimant withdraws a grievance, verbally or in writing, at any point up to receiving a signed response, as stated in Subsection 8481(d). This means that the incarcerated individual drew back, took back, or removed a grievance from review. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (i)(8) defines “Under Investigation,” meaning that the claim is under an allegation inquiry or formal investigation. An allegation inquiry is distinct from a formal investigation. An inquiry is not a formal hearing or a conclusive analysis of the allegations; it is a process to determine whether there is enough evidence to have an investigation.

This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (i)(9) defines "Additional Time Required," meaning that CALPIA was not able to respond to the claim in the time required under subsection 8483(i). Subsection (i)(9) addresses an occurrence when there is insufficient time to respond and is provided here in an abundance of caution should that situation arise. Not every circumstance will involve the same amount of time, and to render fair and equitable determinations, the option of Additional Time Required, is provided. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (j) ensures that the Grievance Coordinator's written decision shall be provided to the claimant and a copy placed in the claimant's grievance file. An effective grievance procedure provides incarcerated individuals with a mechanism to resolve issues of concern. To this end, a decision in writing preserves that resolution, and giving a copy to the claimant provides notice of the decision. Due process requires that the procedures by which grievances are handled must be evenhanded. A written decision provided to the claimant ensures grievances are handled evenhanded, as the written grievance can be appealed and subject to review. Notice is a fundamental principle of due process, and a written decision provided to the claimant meets that goal.

Subsection (k) is a title only, providing the title "Exhaustion." No text other than this title.

Subsection (k)(1) mandates that completion of the review process by Grievance Coordinators resulting in a decision found in subsections 8483(i)(1) through 8483(i)(7) and 8483(i)(9) does not constitute exhaustion of all administrative remedies available to a claimant within CALPIA. Exhaustion requires a claimant to appeal such decisions as provided in section 8485. Exhaustion of administrative remedies is important because the consequences for sidestepping them and seeking early judicial review are severe. A claimant must pursue all available administrative remedies, which includes an appeal, before exhaustion occurs. Exhaustion of administrative remedies requires a claimant goes through all administrative avenues before seeking judicial review.

It is well settled that "[j]udicial intervention is premature until the administrative agency has rendered a final decision on the merits. Before seeking judicial review, a party must show that he has made a full presentation to the administrative agency upon all issues of the case and at all prescribed stages of the administrative proceedings. (*Fiscus v. Dept. Alcohol Bev. Control* (1957) 155 Cal. App. 2d 234, 236; *People v. Coit Ranch, Inc.* (1962) 204 Cal. App. 2d 52, 58.)" (*Bleeck v. State Board of Optometry* (1971) 18 Cal. App. 3d 415, 432, see also *United States v. Superior Court* (1941) 19 Cal. 2d 189.). This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (k)(2) mandates that completion of the review process by Grievance Coordinators resulting in a decision found in subsections 8483(i)(8) does constitute exhaustion of all administrative remedies available to a claimant within CALPIA, and no

appeal is available because the claim was exhausted at the conclusion of the review by a Grievance Coordinator.

As noted above, the PLRA provides that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” (42 U.S.C. § 1997e(a).) In *Porter v. Nussle*, 534 U.S. 516, 122 S.Ct. 983 (2002), the Supreme Court confirmed that “the PLRA’s exhaustion requirement applies to all incarcerated individual suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong.” (*Id.*, 122 S.Ct. at 992.) Incarcerated individuals must exhaust the procedures provided for grievances and appeals before filing litigation, and this regulatory action delineates this process. In this regulatory action, the PIB and CALPIA propose to formalize the incarcerated individual grievances and appeals process.

The doctrine of exhaustion of administrative remedies says that a person challenging an agency decision must first pursue the agency’s available remedies before seeking judicial review. It was created by courts to promote an efficient justice system and autonomous administrative state. Exhaustion of administrative remedies occurs once CALPIA’s own procedures are finished, or exhausted. Subsection 8483(i)(8) applies when an allegation of staff misconduct is submitted to CDCR’s Office of Internal Affairs for an allegation inquiry or formal investigation. Allowing an appeal of the decision to investigate an allegation of staff misconduct would be counterintuitive since the result would be to not investigate the matter. Furthermore, once the investigation is complete, CDCR’s findings are final and non-appealable because there is no other investigative unit available to CALPIA for a secondary review and CALPIA’s own procedures are finished and the incarcerated individual would then need to seek judicial review with the courts. Thus, the administrative remedies within CALPIA would be exhausted. The purpose of the “under Investigation” response is for the Grievance Coordinator to inform the incarcerated individual that their staff complaint is being reviewed.

Requiring exhaustion helps agencies avoid the cost of making decisions without all interested parties present; increases accuracy, consistency, and public acceptability of administrative decisions; conserves judicial resources; discourages forum shopping; protects all interested parties’ rights to be heard; provides greater expertise in fact finding; and keeps policy judgments closer to the sphere of political influence.

Add Section 8484. Allegations of Staff Misconduct:

This section delineates how allegations of staff misconduct are addressed and handled when an incarcerated individual files a grievance alleging staff misconduct.

Subsection (a) provides that all claims alleging staff misconduct shall be forwarded by the Grievance Coordinator to the General Counsel who shall review the claim and determine whether the subject of the claim is staff misconduct or about an underlying issue. This referral ensures that allegations of potential staff misconduct receive the highest level of attention with CALPIA’s General Counsel, assuring the matter is given a high level of professional consideration.

Subsection (a)(1) provides that if the claim qualifies as a staff complaint, the Grievance Coordinator shall provide a grievance response pursuant to section 8483(i)(8), and a staff complaint shall be opened. Forwarding claims of potential staff misconduct complaints to the General Counsel ensures a high level of professionalism and focus, as this type of allegations are of high importance. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (a)(2) provides what occurs to the claims that are found to not be staff misconduct complaints. Subsection (a)(2) provides that if the claim does not meet the criteria for assignment as a staff complaint, it shall be reassigned back to the Grievance Coordinator at the institution or region where most of the facts and circumstances that gave rise to the claim occurred and processed as a standard grievance. This referral ensures that allegations of staff misconduct receive the highest level of attention and review assuring the matter is given a high level of professional consideration by CALPIA's General Counsel. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (b) provides the next steps if the General Counsel determines a valid allegation of staff misconduct exists.

Subsection (b)(1) explains that the matter may be referred to the CDCR Office of Internal Affairs for an allegation inquiry to be conducted. An allegation inquiry by the CDCR Office of Internal Affairs ensures the allegations are given due consideration by independent staff whose duties specially are to investigate claims and collect evidence and rendering a decision. They are also typically trained peace officers under Penal Code sections 830 -832.19. This section also includes information on which option should be selected, whether allegation inquiry or formal investigation.

Subsection (b)(2) explains that the matter may be referred to the CDCR Office of Internal Affairs for a formal investigation. As noted above, a formal investigation by the CDCR Office of Internal Affairs ensures the allegations are given due consideration by independent staff whose duties specially are to investigate claims and collect evidence and rendering a decision. They are also typically trained peace officers under Penal Code sections 830 -832.19. This section also includes information on which option should be selected, whether allegation inquiry or formal investigation.

Subsection (c) addresses that an acknowledgement of receipt shall be provided to a claimant of a staff complaint within 14 calendar days of opening the staff complaint. Providing an acknowledgement of receipt confirms it has in fact been received and constitutes verification of the initiation of the process for review, and for timelines. Fourteen days is a reasonable time, as it covers two business weeks. Fourteen days also allows for staffing issues, vacations, State holidays, and business workloads. Such ensures the due process rights of incarcerated individuals.

Subsection (d) provides that if the staff misconduct in question involves a person who is employed by a hiring authority other than CALPIA, it shall be the responsibility of CALPIA's General Manager to confer with the other hiring authority before making the

referral to the Office of Internal Affairs to avoid duplicative referrals. In this way, a duplication of efforts does not occur, but also ensures that the claim is considered by the appropriate authority. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (e) provides that when the allegation of staff misconduct concerns a use of force incident, allegations of use of force resulting in serious bodily injury, or the alleged use of force was not reported in accordance with Title 15, Sections 8268.1 or 8268.3, the General Manager shall refer the claim to the CDCR Office of Internal Affairs or other law enforcement/investigative agency. A use of force claim arises when there is an allegation of use of force that is illegal or unconstitutional. Under the Eighth Amendment to the U.S. Constitution, use of excessive force against an incarcerated individual amounts to cruel and unusual punishment. In deciding whether the use of force was unconstitutional, courts consider both the degree of force used and the mental state of the staff person who applied the force. For the first factor, the amount of force must be more than “de minimis” or minor; a simple push or shove that causes no injury almost certainly is not unconstitutional. Also, verbal harassment does not violate the Constitution. For the second factor, an incarcerated individual must show that the staff person “acted maliciously and sadistically for the purpose of causing harm,” and not in a good-faith effort to maintain or restore order. This is known as the deliberate indifference standard. Force that is applied recklessly or negligently does not violate the Constitution. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (f) provides that during an allegation inquiry or formal investigation, the claimant and as many witnesses as necessary may be interviewed to help determine if the allegation is true. The subject of the allegation of staff misconduct may also be interviewed or referred to the CDCR Office of Internal Affairs and shall be given notice of the interview at least 24 hours in advance. If the subject chooses to waive the 24-hour notice requirement then the subject may be interviewed immediately. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (g) mandates that a confidential report shall be prepared for CALPIA upon the completion of a formal investigation summarizing all the evidence that was gathered, including all significant factual findings. This confidential report shall not be provided to the claimant and no other copies shall be kept or maintained except as needed by the General Counsel, the General Manager, or a Grievance Coordinator to respond to a claim. A confidential report is confidential due to the serious nature of staff complaints, and that they affect the rights and livelihood of staff. A civil service position is a protected property right. The California Supreme Court has long recognized that once obtaining permanent status, a state employee has a property interest in their employment. Article VII of the California Constitution establishes a merit based system of civil service employment for state government. Under Article VII, the State Personnel Board enforces the merit aspects of the Civil Service Act, including prescribing probation. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1. A

report also supports fair and equal treatment in the handling of staff complaints because it documents the factual findings and evidence collected.

Subsection (h) explains that the General Counsel or designee shall ensure that a written response to the staff complaint is completed and approve one of the following decisions as to each claim in the complaint. An effective grievance procedure provides incarcerated individuals with a mechanism to resolve issues of concern. To this end, a response in writing preserves that resolution, and giving a copy to the claimant provides notice of the decision. Due process requires that the procedures by which complaints are handled must be evenhanded. A written response to staff complaints provided to the claimant ensures they are handled consistently, evenly, and fairly. Notice is a fundamental principle of due process, and a written decision provided to the claimant meets that goal. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (h)(1) provides that “Unsubstantiated,” means that there was no evidence to substantiate the allegations against the staff member. Merriam-Webster’s Dictionary defines unsubstantiated as not proven to be true. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (h)(2) provides that “Substantiated,” means that there was sufficient evidence to substantiate the allegations against the staff member. The Oxford English Dictionary defines substantiate as to provide evidence to support or prove the truth of—i.e., it means “it is true.” This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (i) requires that the General Counsel or designee’s written decision shall be mailed to the claimant and a copy placed in the claimant’s staff complaint file. A written response to staff complaints provided to the claimant ensures they are handled consistently, evenly, and fairly. Notice is a fundamental principle of due process, and a written decision provided to the claimant meets that goal. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (j) explains that completion of the staff complaint review process constitutes exhaustion of all administrative remedies available to a claimant within CALPIA. See discussion of exhaustion of remedies above at Section 8383, subsection (k). This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Add Section 8485. Preparation and Submittal of an Appeal:

This section provides guidance on the preparation and submittal of an appeal of a decision on an incarcerated individual’s grievance.

Subsection (a) requires that a claimant who wishes to appeal a decision made by a Grievance Coordinator concerning one or more claims they previously submitted in a grievance shall do so in writing by regular mail sent to the “Appeals Coordinator, CALPIA, Legal Unit, 560 E. Natoma St., Folsom, CA 95630.” Correspondence directed to this address shall not be opened by any CALPIA staff other than those in the Legal Unit. This requirement ensures a clear procedure for filing an appeal. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (b) requires that a claimant who wishes to appeal a decision found in subsections 8483(i)(1) through 8483(i)(5) shall submit an appeal within 30 calendar days of discovering the decision by Grievance Coordinator. Discovery occurs when a claimant knew or should have reasonably known of the decision. Thirty days is a reasonable time limit as it allows for time for an incarcerated individual to obtain the appeal form, prepare it, collect supporting records, and return it to CALPIA. A thirty-day deadline also ensures that appeals are filed as close to the event or incident warranting appeal as possible, to ensure records exist and remedies are available and timely. This subsection also defines the initial date of discovery and what discovery means. As a result, deadlines can be determined with certainty.

In addition, CALPIA also uses 14-day, 30-day, and 60-day deadlines because that is what is in CDCR’s regulations for grievances and appeals. Having the same deadlines gives consistency between the CDCR and CALPIA processes providing simplicity for the incarcerated individuals. Therefore, this subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (b)(1) provides that the deadline to submit an appeal of a claim shall be extended for the time that a claimant is in the custody of another authority for court proceedings. Extending this deadline supports the due process rights of incarcerated individuals to file grievances, appeals, and request review by the courts. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (b)(2) provides that the deadline to submit an appeal of a claim shall be extended for the time that a claimant is in the care of an outside hospital. When an incarcerated person is in the care of an outside hospital, it is often when they are severely ill. In addition, it is likely they will be restrained at their hospital bed, and have no access to an appeal form, supporting materials, or even be able to mail the appeal to CALPIA. Therefore, this subsection reasonably extends the time in the situation of a hospital stay, ensuring the rights of incarcerated individuals are preserved. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1. Extending this deadline supports the due process rights of incarcerated individuals to file grievances, appeals, and request review by the courts.

Subsection (b)(3) provides that the deadline to submit an appeal of a claim shall be extended for the time that a claimant is temporarily housed in a medical or mental health crisis bed. The same rationale applies to a medical or mental health care crisis bed stay

as to an outside hospital stay, discussed above addressing subsection (b)(2). This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1. Extending this deadline supports the due process rights of incarcerated individuals to file grievances, appeals, and request review by the courts.

Subsection (c) specifies procedures and processes for submitting the appeal in subsections (1), (2), and (3). This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (c)(1) mandates that the claimant type or print legibly on an official CALPIA Form 602-2 (03/21), "Appeal of Grievance." If a claim on Form 602-2 is not legible, it cannot be discerned what is the basis of the claim. Subsection (c)(1) gives advance notice that a claimant should write, print or type as clearly as possible, to facilitate consideration of their claim. This form is incorporated by reference in this rulemaking. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (c)(2) requires that a claimant fill in the portions of the form identifying the claimant's name, CDCR number, current housing/parole unit, and institution/facility/parole region. A claimant is identified while incarcerated by a CDCR number and their name, so this information is necessary to respond. The claimant's housing and location are necessary both to provide a response, and to obtain statements of witnesses or records to fully and fairly address claims.

Subsection (c)(3) mandates the claimant describe in detail why the decision provided by the Grievance Coordinator is inadequate. Subsection (c)(2) gives advance notice that a claimant should provide an explanation for the claim; otherwise, it may not be discerned what is the basis of the claim. Providing this explanation facilitates consideration of the claim. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (c)(4) limits the description required by section 8485(c)(2) to the space provided on the CALPIA Form 602-1 (03/21). Descriptions are limited to the space provided on CALPIA Form 602-1 (03/21), to facilitate the processing of the claims so the claims can be evaluated in an orderly and efficient fashion. It is a business necessity for appeals to be concise, due to staffing and resource allocation. Supporting records and documents may be attached to provide additional details and information. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (c)(5) requires the claimant sign and date the CALPIA Form 602-2 (03/21). This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1. Subsection (c)(5) ensures that the person submitting the appeal is the incarcerated individual, and that they attest to the claim made on the CALPIA Form 602-

2 (03/21). While it may not completely avoid false appeals being submitted under another person's name, this requirement may limit fraudulent or false appeals.

Subsection (d) specifies prohibitions for submitting the appeal in subsections (1), (2), (3), and (4). This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1. Subsection (d)(1) through (d)(4) delineates specific prohibitions regarding use of inappropriate language, false, and new claims on appeal. These subsections support understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (d)(1) prohibits the use of threatening, obscene, demeaning, or abusive language in an appeal except when quoting persons involved in the claim. This subsection is consistent with Government Code Section 12950.1 and has the goal of promoting treating state employees with dignity and respect. Subsection (d)(1) is also consistent with the goals of CALPIA to assist incarcerated individuals to learn how to exist upon release in a work environment, where the use of threatening, obscene, demeaning, and abusive language is prohibited. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (d)(2) prohibits a claimant including information or accusations known to the claimant to be false in an appeal. Subsection (d)(2) requires truthful claims, which in turn ensures the integrity of the process. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (d)(3) prohibits a claimant from including new claims that were not included in the original grievance, in which case the claim shall be rejected pursuant to subsection 8488(a)(4). New claims would properly belong in a new grievance, not an appeal of an existing grievance. Subsection (d)(3) mirrors the requirements of Code of Civil Procedure, Sections 901-914, General Appeals. The purpose of an appeal is to review a decision already made, and new claims are not within those already made. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (d)(4) prohibits a claimant from contaminating the appeal package by including organic, toxic, or hazardous materials that may present a threat to the safety and security of staff, in which case the appeal shall be safely discarded, and the entire appeal disallowed. Subsection (d)(4) addresses the fact that the use of organic, toxic, or hazardous materials that may present a threat to the safety and security of staff is not an unknown occurrence in CDCR institutions. This subsection promotes the protection of staff's safety and health. CALPIA is required under OSHA regulations to protect the safety of employees. Subsection (d)(4) addresses the realities of incarceration, where excrement has been used as a form of protest, being smeared on cell doors and walls, and thrown at correctional staff. Subsection (d)(4) protects CALPIA employees by eliminating potentially unsafe grievance packages from consideration.

Subsection (e) permits the scanning of an appeal package. The appeal package submitted by the claimant shall be stored electronically by CALPIA. The documents submitted will be returned to the claimant. The necessity of this section is ensuring the claimant has their own records, as incarcerated individuals may not have access to copiers, scanners, computers, and software to store electronic copies of their own. This section also eliminates the time and expense of potential subsequent requests for public records, under the Public Records Act, thus reducing potential labor expenses and costs for CALPIA. Returning records to incarcerated individuals also supports their due process rights to file grievances, appeals, and request review by the courts. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Add Section 8486. Appeal Review:

This section identifies and describes the appeal review processes.

Subsection (a) explains that the Appeals Coordinator shall designate at least one official to assess each written appeal within one business day of receipt to determine if it contains any information concerning personal safety, institutional security, or sexual misconduct, including acts of sexual misconduct as defined by the federal Prison Rape Elimination Act and the California Sexual Abuse in Detention Elimination Act. In those instances, the official shall immediately commence an appropriate response as required by all applicable laws and regulations. Completing this review in one business day supports the due process rights of incarcerated individuals to file grievances, appeals, and request review by the courts. Completing this review in one day affirms the high importance of any information concerning personal safety, institutional security, or sexual misconduct, including acts of sexual misconduct as defined by the federal Prison Rape Elimination Act and the California Sexual Abuse in Detention Elimination Act.

Subsection (b) provides that if the General Counsel determines that a claim involves staff misconduct, and that claim was not referred to the CDCR Office of Internal Affairs, a law enforcement agency or other entity for an allegation inquiry or formal investigation, then the General Counsel shall confer with the General Manager to determine whether completion of an allegation inquiry or formal investigation is required under section 8484. Having the General Counsel confer with the General Manager ensures a high level of attention and professionalism given to allegations of staff misconduct. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (c) requires the Appeals Coordinator to ensure that an acknowledgment of receipt of the appeal is completed within 14 calendar days of its receipt indicating the date the appeal was received, whether it was disallowed under subsection 8485(d)(4), whether any claim was rejected pursuant to section 8488, and the deadline for CALPIA's response to all remaining claims. This ensures detailed procedures to identify receipt and disallowance or rejection of claims. Fourteen days is a reasonable time, as it covers two business weeks. Fourteen days also allows for staffing issues, vacations, State holidays, and business workloads.

CALPIA also uses 14-day, 30-day, and 60-day deadlines because that is what is in CDCR's regulations for grievances and appeals. Having the same deadlines gives consistency between the CDCR and CALPIA processes providing simplicity for the incarcerated individuals. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (d) requires the Appeals Coordinator be provided with the necessary information to make a decision. This section provides that the full record of each claim shall be made available to the Appeals Coordinator for purposes of conducting the appeal review. The record shall include the claimant's grievance, the claimant's appeal, both acknowledgment letters, all related interviews conducted for Grievance Coordinator or CALPIA staff, any relevant documentation prepared for the evaluation and response to the claim and grievance, any allegation inquiry reports prepared, any records contained in CALPIA's information technology system, and CALPIA policies, rules, and memoranda. Subsection (d) enunciates clearly the material required for the Appeals Coordinator to review appeals. The record shall not include any new information provided by the claimant to the Appeals Coordinator on appeal that was not made available to the Grievance Coordinator for their review of the claim or grievance at the first level. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (e) provides that the Appeals Coordinator shall ensure that a written response is completed no later than 60 calendar days after receipt of the appeal, unless other statutory or regulatory authority requires a response in less than 60 calendar days, or the Appeals Coordinator determines that additional time is reasonably necessary to fully and fairly evaluate the appeal. Sixty calendar days provides sufficient time for review, analysis and drafting of a response. It also allows for staffing changes, time off, State holidays, and management approval. As noted above, appeals are resolved within 15 days on average. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

CALPIA also uses 14-day, 30-day, and 60-day deadlines because that is what is in CDCR's regulations for grievances and appeals. Having the same deadlines gives consistency between the CDCR and CALPIA providing simplicity for the incarcerated individuals. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (e)(1) defines the term and appeals response of "Denied," meaning that the Appeals Coordinator, or designee, found by a preponderance of the evidence available that the decision of the Grievance Coordinator was appropriate. When an appeal is denied, it is not approved or admitted. According to the Oxford English Dictionary, denied means to refuse to give or grant. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (e)(2) defines the term and appeals response of “Granted,” meaning that the Appeals Coordinator or designee, found by a preponderance of the evidence available that the decision by the Grievance Coordinator was erroneous, in which case the Appeals Coordinator or designee, shall set aside the decision of the Grievance Coordinator and grant the requested remedy. A decision is deemed erroneous when the Appeals Coordinator or designee, upon reviewing the entire record, is convinced by a preponderance of the evidence that a mistake exists. According to the Oxford English Dictionary, granted means to accept something as true, i.e., the allegations of an appeal are true. Using the term granted ensures a clear understanding that the appeal filed and reviewed is taken as true and a remedy follows. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (e)(3) defines the term and appeals response of “Granted in Part,” as described in subsection (e)(2) but with modification to the requested remedy. This subsection makes clear that an outcome might result in a partial granting of the requested remedy on appeal permitting some remedy rather than a complete denial. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (e)(4) defines the term and appeals response of “Rejected,” as described in subsection 8488(a) and occurs when there is cause to refuse to accept, consider, submit to, take for some purpose, or use. (See merriam-websterdictionary.com/rejected.) This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (e)(5) defines the term and appeals response of “Disallowed,” as described in subsection 8485(d)(4) and occurs when there is cause to disallow, meaning it is not allowed or accepted officially. (See collinsdictionary.com/dictionary/disallow.) This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (e)(6) defines “Withdrawn,” as described in subsection 8481(d). This means that the incarcerated individual drew back, took back, or removed an appeal from review. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (e)(7) defines the term and appeals response of “Under Investigation,” meaning that the claim is under an allegation inquiry or formal investigation. An allegation inquiry is distinct from a formal investigation. An inquiry is not a formal hearing or a conclusive analysis of the allegations; it is a process to determine whether there is enough evidence to have an investigation. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (e)(8) defines the term and appeals response of “Additional Time Required,” meaning that CALPIA was not able to respond to the claim in the time required under subsection 8486(f). This Subsection addresses an occurrence when there is insufficient time to respond and is provided here in an abundance of caution should that situation arise. Not every circumstance will involve the same amount of time, and to render fair and equitable determinations, the option of Additional Time Required, is provided. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (f) explains that the Appeals Coordinator or designee’s written decision shall be mailed to the claimant and a copy placed in the claimant’s grievance and appeal files. Claimant’s original appeal package shall be returned to the claimant with the written decision. If the Appeals Coordinator grants a claim, then a copy of the decision shall be simultaneously sent to the Grievance Coordinator who rendered the grievance decision for implementation.

A written response provided to the claimant ensures they are handled consistently, evenly, and fairly, as the written response can be subject to review. Notice is a fundamental principle of due process, and a written decision provided to the claimant meets that goal. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (g) provides that completion of the appeals review process by the Appeals Coordinator constitutes exhaustion of all administrative remedies available to a claimant within CALPIA. A claim is not exhausted if it was disallowed under subsection 8485(d)(4), rejected under subsection 8488, or withdrawn pursuant to subsection 8481(d). See the previous discussion of exhaustion of administrative remedies. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Add Section 8487. Implementation of Remedy:

This section identifies and describes the process to request the implementation of a granted remedy.

Subsection (a) provides that if a claim is granted, then the corresponding remedy shall be implemented no later than 30 calendar days after the decision was sent to the claimant. If the remedy requires budget authorization outside CALPIA’s existing authority, then it shall be implemented no later than one year after the decision was sent to the claimant. Thirty days is a reasonable time for implementation of a remedy, as it covers a business month of time. Thirty calendar days also allows for staffing issues, vacations, State holidays, and business workloads.

CALPIA also uses 14-day, 30-day, and 60-day deadlines because that is what is in CDCR’s regulations for grievances and appeals. Having the same deadlines gives consistency between the CDCR and CALPIA providing simplicity for the incarcerated individuals. One year for a remedy that requires a budget authorization permits sufficient

time for a budget change proposal and approvals and allocation of funds which can take up to one year. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (b) provides that if the remedy has not been implemented and the applicable deadline has passed, then a claimant may submit a CALPIA Form 602-3 (03/21), "Request to Implement Remedies," hereby incorporated by reference, directly to the General Counsel by regular mail sent to "CALPIA Legal Unit – General Counsel, 560 E. Natoma St., Folsom, CA 95630." Correspondence directed to this address shall not be opened by any staff other than those in the Legal Unit. In the event the CALPIA Form 602-3 is submitted to CDCR and then forwarded to CALPIA, it will be deemed submitted on the date received by CALPIA. Providing this process to request implementation of remedies is important because a decision may not have an actual remedy implemented, and it is the remedy that results in the decision having its intended effect.

Subsection (c)(1) details that a claimant must print or type legibly on the CALPIA Form 602-3 (03/21). This ensure all the necessary information is provided.

Subsection (c)(2) requires that a claimant fill in the portions of the CALPIA Form 602-3 (03/21) identifying the claimant's name, CDCR number, current facility/parole district, current area/bed/parole unit, information about the granted remedy, and verification that 30 days have passed from the due date for implementation of the granted remedy. A claimant is identified while incarcerated by a CDCR number and their name, so this information is necessary to respond. The claimant's housing and location are necessary both to provide a response, and to obtain statements of witnesses or records to fully and fairly address claims.

Subsection (c)(3) requires the claimant sign and date the CALPIA Form 602-3 (03/21). This serves to verify the claimant is making the claim, and the date that it was signed. Otherwise, claims could be filed by other parties, falsifying the name of the claimant, and causing potential havoc to operations, not an uncommon occurrence in incarceration.

Subsection (d) provides that the General Counsel or designee shall ensure that a request to implement a remedy shall be sent to the Grievance Coordinator at the institution where the claim was granted. The Grievance Coordinator presented with the request to implement a remedy shall confirm within 14 calendar days of receipt that the remedy has been implemented or provide an estimated date for implementation and the reason for the delay. If the remedy cannot be immediately implemented, the Grievance Coordinator will inform the General Counsel once it has been completed. Fourteen days is a reasonable time, as it covers two business weeks. Fourteen days also allows for staffing issues, vacations, State holidays, and business workloads.

CALPIA also uses 14-day, 30-day, and 60-day deadlines because that is what is in CDCR's regulations for grievances and appeals. Having the same deadlines gives consistency between the CDCR and CALPIA processes providing simplicity for the incarcerated individuals. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (e) provides that the General Counsel or designee shall ensure that a written response to the request for implementation is completed with 15 calendar days of its receipt indicating the date the request was received and confirmation that the remedy has been implemented or provide an estimated date for implementation. If an estimated date for implementation is provided, the General Counsel or designee shall ensure a subsequent written response is completed once the remedy has been implemented. Fifteen days is a reasonable time, as it covers two business weeks plus one additional day. This covers the 14 calendar days from Subsection 8487(d), and requires the written response to be completed no later than the day after confirmation is received from the Grievance Coordinator that the remedy has been implemented. Since the submission of a request for implementation already means the remedy is untimely, providing a quick response demonstrates the importance of the concern. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (f) provides that the General Counsel or designee's written decision and any subsequent written decision shall be mailed to the claimant and a copy placed in the claimant's grievance and implementation file. A written response provided to the claimant ensures they are handled consistently, evenly, and fairly, as the written response can be subject to review. Notice is a fundamental principle of due process, and a written decision provided to the claimant meets that goal. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Add Section 8488. Rejection of a Claim:

This section gives guidance when incarcerated individual grievance and appeal claims are rejected. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (a) provides that claims are rejected on the grounds outlined in (a)(1) through (a)(8). This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (a)(1) provides that a claim is rejected when the claimant did not submit the claim within the timeframe required by Subsection 8482(b) for grievances or Subsection 8485(b) for appeals. If a claim is not timely submitted, it cannot be considered. Timelines ensure that claims are filed within a reasonable time and to allow for timely investigation and collection of records and documents. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (a)(2) provides that a claim is rejected when the claimant did not use an official CALPIA Form 602-1 (03/21) or CALPIA Form 602-2 (03/21) as required by Subsections 8482(c)(1) and 8485(c)(1). The requirement for using the form has several purposes. First, is that it ensures all claims are providing the same or similar information and supporting records. Second, is that the form permits efficient substantive and procedural

review of claims. Third, the form provides claimants with a guiding framework to present their claims. Fourth, use of the form ensures that the process is being used only for its intended purpose, and not to have a communication outside permitted channels. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (a)(3) explains that a claim will be rejected when the claimant does not print legibly on CALPIA Forms 602-1, 602-2, as required, causing the claim to be unreadable. If a claim is not legible, it cannot be discerned what the basis of the claim is. Subsections 8482(c)(1) and 8485(c)(1) gives advance notice that a claimant should write, print or type as clearly as possible, to facilitate consideration of their claim. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (a)(4) provides that a claim is rejected when the claim submitted for appeal review has not been reviewed under the grievance process. If a claim has not been reviewed under the grievance process, it is in effect, not a valid appeal. Instead, it would be a new grievance and should be filed as one. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (a)(5) provides that a claim will be rejected when the claim concerns a policy, decision, action, condition, or omission by an entity other than CALPIA. Subsection (a)(5) addresses and gives notice that an incarcerated person must file their grievances of a policy, decision, action, condition, or omission with the correct entity. For example, a request for additional bottled water to be provided by CDCR during a water shutoff would be rejected because CALPIA does not have authority over CDCR housing or facilities plumbing. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (a)(6) provides that a claim is rejected when the claim is substantially duplicative of a prior claim by the same claimant, except when the prior claim was rejected under subsection 8488(a)(5). Subsection (a)(6) addresses repeat filings of the same grievance or appeal that has already been reviewed to save limited time and resources. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (a)(7) provides that a claim is rejected when the claim concerns harm to a person other than the person who signed the grievance or appeal. Subsection (a)(7) mirrors the legal concept of standing. In law, standing or locus standi is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case. This means the plaintiff must show that the defendant's actions will cause the plaintiff concrete harm. This means that a claimant filed by other than the person who sustained the harm lacks standing to bring the claim. This subsection supports understanding of the regulations so that the meaning

of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (a)(8) provides that a claim is rejected when the claim concerns the regulatory framework for the grievance and appeal process itself. The reason for Subsection (a)(8) is that objection to the regulatory framework must be made at the time the regulatory framework is promulgated under the APA, during the comment period. Subsection (a)(8) makes it abundantly clear that objecting to the process in a grievance after its approval and effective date will result in rejection of the claim. Subsection (a)(8) removes any potential confusion that a grievance may challenge the process. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Subsection (b) addresses untimeliness and provides that if a claim is rejected as untimely under Subsection (a)(1), then the claimant shall be notified of the following dates as determined by the Grievance Coordinator, Appeal Coordinator, or designee: the date the claim was discovered, the date the claim was received, and the deadline for receipt of the claim under either subsection 8482(b) or 8485(b), whichever is applicable. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1. Notice is a fundamental aspect of due process and providing the claimant with notice of the above-described dates affords the claimant due process. As noted previously, incarcerated individuals are to be afforded due process.

Subsection (c) describes which rejection categories are subject to appeal. A claim that is rejected under subsections (a)(1), or (a)(5) through (a)(7) may be appealed for review by the Appeals Coordinator pursuant to the procedures in section 8485. No appeal is available if a claim is rejected under subsections (a)(2) through (a)(4), and a new CALPIA Form 602-1 (03/21) shall be required pursuant to section 8482. This subsection supports understanding of the regulations so that the meaning of the regulations will be easily understood consistent with Government Code Sections 11349(c) and 11349.1.

Incorporated by Reference: CALPIA Forms 602-1 (03/21), 602-2 (03/21), and 602-3 (03/21).

CALPIA incorporates by reference CALPIA's Forms 602-1 (03/21), 602-2 (03/21), and 602-3 (03/21) for use by incarcerated individuals to submit grievances, appeals, and requests for implementation of remedies. Incorporating these forms by reference provides consistent forms for use by incarcerated individuals available throughout CDCR's institutions. The CALPIA forms are available from CALPIA staff at all CALPIA enterprises, operations, locations, or factories. Aside the from entity designation, the CALPIA forms are identical to the formed used by CDCR to give consistency between the CDCR and CALPIA processes providing simplicity for the incarcerated individuals. Using these forms is reasonable and affords the greatest opportunity for an incarcerated individual to be able to obtain the form, ensure the required information is provided for review, and request relief.

These forms incorporate the provisions of the proposed regulations, in a format to facilitate grievances and appeals.

As stated by OAL, *In re DHCS*, OAL Decision File No. 02-0927-01-S, “If any regulatory material is included on the form, it must be properly adopted as a regulation as well. See, *Stoneham v. Rushen* (1982) 137 Cal.App.3d 729, 188 Cal.Rptr. 130, 135-136. This may be done by printing the form in the regulation text, writing out the substance of any regulations contained in the form in the regulation text, or incorporating the form by reference in accordance with the provisions of Title 1, California Code of Regulations, section 20. Otherwise, the content of the form may violate the Government Code Section 11340.5 prohibition against ‘underground regulations.’”

Add CALPIA Form 602-1 (03/21). See Sections 8480 to 8483, and 8488. Form 602-1, the grievance form, requests identifying information necessary to identify the claimant, and how to provide responses, i.e., via their institution, housing unit and bed number. See Subsections 8383(f) and (i). The form also has a space for staff to identify the date received and the date a response is due, both items contained in these regulations. See Sections 8483(f) and (i). Then there are 8 questions listed to assist a grievant in providing the necessary information to make a claim, and to allow it to be fully and fairly considered. See Sections 8482, and Subsections 8482(c)(1)-(5). Page 2 provides additional space to describe the claim, and a place for the signature and date. See Subsection 8482(c)(6), as included in these regulations.

Add CALPIA Form 602-2 (03/21). See Sections 8485 and 8486. This form applies to appeal a grievance decision. This form requests identifying information necessary to identify the claimant, and how to provides responses, i.e., their bed number, housing unit, and institution. See Subsections 8486(c) and (e). The form also has a space for staff to identify the date received and the date a response is due, both items contained in these regulations. See Subsections 8486(c) and (e). Then there are questions listed to assist a claimant in providing the necessary information to make an appeal, and to allow it to be fully and fairly considered. See Subsections 8485(c)(1)-(4). There is also a space for the claimant’s signature and date, all of which are also included in these regulations. See Subsection 8485(c)(5). In addition, the form has space for staff to fill in necessary information, and to indicate in writing appealable and non-appealable claims. See Section 8486. Claimants are reminded to attach documents and records for their appeal. Therefore, the contents of Form 602-2 are contained in the proposed regulations.

Add CALPIA Form 602-3 (03/21). See Section 8487. Form 602-3 is the form to request implementation of a remedy, as provided in the proposed regulations. See Section 8487. The form provides space for both the claimant and staff to provide identifying and necessary information to make and address the request, respectively, and provide a response and remedy if appropriate, as referenced in the proposed regulations. See Subsections 8487(b) and (e). The form requires the claimant’s signature and date signed and a space to assert the required time period has been met for the request to be made. See Subsections 8487(a) and (c). These ensure the claimant making the request is the person to whom the remedy applies, and that the request is timely. These requirements also ensure that the request for implementation of remedies can be addressed without further delays.

Duplication or Conflicts with Federal Regulations:

The proposed regulatory action does not conflict with any federal standards.

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

1. OAL's Decision of Approval, CDCR's Emergency Regulation, Grievances and Appeals, 2020. OAL Matter No. 2020-0309-01; https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2020/04/Master-File-Appeals-Emerg-Regs_ADA.pdf
2. CDCR Budget Change Proposal, 5225-315-BCP-2019-A1; https://esd.dof.ca.gov/Documents/bcp/1920/FY1920_ORG5225_BCP3073.pdf
3. 2011, Special Report, Office of the Inspector General (CA), CDCR's Revised Incarcerated individual Appeals Process Leaves Key Problems Unaddressed, Robert A. Barton, Inspector General, State of California.
4. June 2020, Office of the Inspector General, Complaint Intake and Filed Inquiries [at CDCR]; <https://www.oig.ca.gov/wp-content/uploads/2019/05/Special-Report-on-CDCRs-Revised-Incarcerated-individual-Appeal-Process-Leaves-Key-Problems-Unaddressed.pdf>
5. 2019, Annual Report, Office of the Inspector General, Independent Prison Oversight, May 2020, Roy W. Wesley, Inspector General, Summary of Reports and Status of Recommendations, <https://www.oig.ca.gov/wp-content/uploads/2020/06/Annual-Report-2019-FINAL-5-20-20.pdf>
6. February 2021, Special Report, Office of the Inspector General, Independent Prison Oversight, Roy W. Wesley, Inspector General, "Its Recent Steps Meant to Improve the Handling of Incarcerated Persons' Allegations of Staff Misconduct Failed to Achieve Two Fundamental Objectives: Independence and Fairness; Despite Revising Its Regulatory Framework and Being Awarded Approximately \$10 Million of Annual Funding, Its Process Remains Broken", <file:///D:/602%20Grievances&Appeals/OIG-Staff-Misconduct-Process-Report-2021.pdf>
7. December 2020, Report, Office of the Inspector General, Independent Prison Oversight, Roy W. Wesley, Inspector General, "Monitoring Internal Investigations and the Employee Disciplinary Process of the California Department of Corrections and Rehabilitation", Semiannual Report January-June 2020, <file:///D:/602%20Grievances&Appeals/OIG-Discipline-Monitoring-Report-2020-01.pdf>