FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

The Notice of Proposed Regulations was published on November 21, 2014. The Notice of Proposed Regulations was mailed the same day in addition to being posted on the CALPIA website. A public hearing was not scheduled nor requested by any person. During the 45-day comment period, three comments were received. A summary of the comments and responses are included under the heading, "Summaries and Responses to Public Comments."

Upon further review, CALPIA agreed with the commenters and made some substantial changes to the text. The changes included: (1) repealing text regarding CALPIA exclusions for inmates with escape history; and (2) defining computer abuse by inmates. These changes along with detailed reasons for the change can be found under the heading "First Set of Changes to the Text of Proposed Regulations."

The proposed text with changes was placed on a 15-Day Notice from February 3, 2015 through February 18, 2015. No comments were received regarding changes.

CALPIA made changes to: (1) reinstate original regulatory language that was inadvertently omitted during the rulemaking process and (2) renumber regulations to improve outlining purposes. The reinstated, original language was also moved and renumbered. These changes are detailed and can be found under the heading "Second Set of Changes to the Text of Proposed Regulations" and in "Supplemental Statement of Reasons" which is incorporated by reference.

The proposed text with changes was placed on a second 15-Day Notice from March 2, 2015 through March 18, 2015. No comments were received regarding changes.

LOCAL MANDATE:

The proposed regulations do not impose any mandate on local agencies or school districts.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS:

No alternatives were proposed to CALPIA or Prison Industry Board that would lessen any adverse economic impact on small business.

ALTERNATIVES DETERMINATION:

CALPIA has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Except as set forth and discussed in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to the attention of CALPIA or Prison Industry Board.

SUMMARIES AND RESPONSES TO WRITTEN COMMENTS:

Commenter #1:

Jeffrey A. Beard, Ph.D., Secretary of the California Department of Corrections and Rehabilitation (CDCR)

Comment: Secretary Beard requested CALPIA's regulations pertaining to inmates with escape history, Title 15, Division 8, Section 8004(b)(2), to be amended to conform to CDCR regulations regarding escape history. Secretary Beard noted subsection 8004(b)(2) permanently excludes inmates with escape history from CALPIA assignments which is unnecessarily more restrictive than CDCR's regulations.

Response: After researching California Code of Regulations, Title 15, Sections 3377.1 and 3377.2, CALPIA agreed with Secretary Beard's comment. Sections 3377.1 and 3377.2 specify standards to use when assessing inmates with any type of escape or attempted escape history. CDCR's Classification Services Unit evaluates and places all inmates with any escape history into different levels of custody based on the standards found in sections 3377.1 and 3377.2. Because CDCR evaluates all aspects of inmates and their behaviors, including escape risk, it is unnecessary for CALPIA to regulate and exclude inmates with escape history from CALPIA assignments. CALPIA will repeal subsection 8004(b)(2) based on Secretary Beard's comment. CALPIA will rely on CDCR's Classification Services Unit to screen inmates with escape risk prior to recommending the inmates for CALPIA assignments.

Commenter #2:

Eric Lewis, CDCR Inmate #E29675

Comment: Mr. Lewis states 8004(c)(4)(C) is too vague and recommends defining 'computer abuse.' He is concerned any occurrence and/or accusation, including spilling liquid on a keyboard, could be used to exclude inmates from assignments with access to computers if computer abuse is not defined. Mr. Lewis also suggests using specific CDCR Forms/Reports to document computer abuse and adding regulatory language to provide processes to absolve an inmate from false accusations of computer abuse so that inmate could be permitted to return to their assignment with computer access. Lastly, Mr. Lewis suggests any type of accusation of computer abuse could permanently exclude an inmate from an assignment with computer access which denies the inmate the opportunity to learn and improve their work skills.

Response: CALPIA concurs with Commenter #2, Lewis, and amended language in 8004(c)(4)(C) to clarify how computer abuse is determined. The new language defines computer abuse as: "any documented institutional disciplinary action, as described in sections 3000 and 3312 of Title 15, involving the use of a computer to conduct unauthorized activity not related to the intended work tasks of CDCR or CALPIA"

CALPIA disagrees with the commenter that regulatory language is needed to define the use of specific CDCR Forms/Reports to document computer abuse. Regulatory language for documenting inmate misconduct and disciplinary methods already exists. California Code of Regulations, Title 15, Sections 3000 and 3312 specify documented disciplinary methods for all inmate misconduct statewide (i.e. General Chrono, Custodial Counseling Chrono, and Rules Violation Report). There are specified variations of documenting inmate misconduct that range from verbal counseling to a serious violation report. Because regulations to document inmate misconduct already exist, it would be unnecessary and in violation of the APA for CALPIA to create a duplicate regulation.

In response to the commenter's suggestion to create regulatory language that absolves an inmate from false accusations of computer abuse, CALPIA does not agree this is necessary. Regulatory language for inmate appeal process already exists. Pursuant to California Code of Regulations (CCR) Title 15, Section 8007, CALPIA inmate workers are to utilize the regular appeal process which provides a remedy for inmates with identified grievances, in accordance with Title 15, Division 3, Chapter 1, Article 8 of the CCR (Article 8). The appeal processes in Article 8 specify how inmates under the department's jurisdiction may appeal any policy, decision, action, condition, or omission by the department or its staff that the inmate can demonstrate as having a material adverse effect upon his or her health, safety, or welfare. It would be unnecessary and in violation of the APA for CALPIA to create a duplicate regulation for an appeal process by inmates. Inmates may appeal documentation of computer abuse pursuant to Article 8.

CALPIA disagrees with the commenter that inmates who are absolved of computer abuse will never be allowed to return to assignments with computer access. All inmates reserve the right to participate in the appeal process described Article 8. In the event of a successful appeal on computer abuse by an inmate, he/she may return to a CALPIA assignment with computer access.

Commenter #3:

James Robertson, Chief of Classification Services Unit, CDCR

Comment 3A: Mr. Robertson, on behalf of the Division of Adult Institutions (DAI), agrees with all of the changes contained in the proposed regulations.

Response: CALPIA appreciates the comment and support of DAI.

Comment 3B: Mr. Robertson suggests DAI and CALPIA need to address potential workload impact and contractual funding concerns associated with the drug testing program.

Response: CALPIA recognizes the implementation of new regulations may create costs and workload impacts for CDCR. CALPIA agrees to contract with CDCR for reimbursement of newly, created costs incurred by CDCR. Because CALPIA intends to reimburse CDCR for costs incurred, it was determined in the Economic Impact Analysis that no additional funds will be required for CDCR.

CALPIA is self-supporting from the sale of its products and services and operates from the Prison Industries Revolving Fund. Pursuant to Penal Code Section 2806, CALPIA's revolving fund is not

subject to annual appropriation by the Legislature or Department of Finance's oversight. CALPIA may contract and reimburse CDCR as necessary.

FIRST SET OF CHANGES TO THE TEXT OF PROPOSED REGULATIONS:

Subsection 8004(b)(2) is repealed:

- After researching California Code of Regulations, Title 15, Sections 3377.1 and 3377.2, CALPIA determined it is unnecessary to completely exclude inmates with escape history from CALPIA assignments. Title 15, Sections 3377.1 and 3377.2 specify processes to assess inmates with any type of escape or attempted escape history. CDCR's Classification Services Unit evaluates and places all inmates into different levels of custody based on all aspects of inmates and their behaviors, including escape risk. Subsection 8004(b)(2) unnecessarily excludes inmates with escape history entirely from CALPIA assignments. CALPIA will repeal subsection 8004(b)(2) and rely on CDCR's Classifications Unit to screen inmates with escape risk prior to recommending the inmates for CALPIA assignments.

Subsection 8004(b)(3) is renumbered to 8004(b)(2)

Subsection 8004(b)(4) is renumbered to 8004(b)(3)

Subsection 8004(c)(4)(C) is amended to:

- Delete original proposed text "any occurrence of computer abuse after admittance to the prison system." This language is too vague and is not consistent with the APA clarity requirements. Because 'computer abuse' is not defined, erroneous interpretations could be made. To provide clarity to subsection 8004(c)(4)(C), new text was added stating "any documented institutional disciplinary action, as described in California Code of Regulations, Title 15, Sections 3000 and 3312, involving the use of a computer to conduct unauthorized activity not related to the intended work tasks of CDCR or CALPIA." The newly added text gives a specific definition to clarify when the misuse of a computer by an inmate has occurred. Various methods for documenting institutional disciplinary action for inmate misconduct are specified in sections 3000 and 3312 of Title 15 (i.e. General Chrono, Custodial Counseling Chrono, and Rules Violation Report). Any inmate who receives documented disciplinary action (as described in sections 3000 and 3312) for computer abuse will be unassigned from computer access within CALPIA. Verbal warnings for computer abuse will not bar inmates from computer access assignments in CALPIA.

Subsection 8004.3(c) is amended:

- The reference to subsection 8004(b)(4) was changed to 8004(b)(3) because subsection 8004(b)(4) is renumbered to 8004(b)(3).

SECOND SET OF CHANGES TO THE TEXT OF PROPOSED REGULATIONS:

New Subsection 8004(b)(3)(B):

- The original language regarding "an institutional Work Supervisor's Report, CDC 101 (1/92), which is incorporated by reference" in subsection 8004.3(c) was deleted in the original proposed text. In the second set of changes to the proposed text, the original language regarding "an institutional Work Supervisor's Report, CDC 101 (1/92)" is reinstated and moved to new subsection 8004(b)(3)(B). Moving the language to new subsection 8004(b)(3)(B) did not create any substantial changes because moving original regulatory language does not alter its meaning.

For clarity reasons, the references to subsections 8004(b)(4)(A),(B), and (C) in the Initial Statement of Reasons are amended to subsections 8004(b)(3)(A),(B), and (C) due to renumbering.

Subsection 8004.2(f)(3) from original regulatory language is renumbered to New Subsection 8004.2(f)(4).

Subsection 8004.3(c) was amended to:

1. Reinstate and move original language "an institutional Work Supervisor's Report, CDC 101 (1/92), which is incorporated by reference" to new subsection 8004(b)(3)(B). During the first set of changes to the regulatory text, the original language was deleted. In the second set of changes, the original language regarding "an institutional Work Supervisor's Report, CDC 101 (1/92)" is reinstated in new subsection 8004(b)(3)(B) with its original content.

2. Reinstating and moving the following original language from subsection 8004.3(b) to Subsection 8004.3(c):

   > 'Any inmate found to be in violation of Section 3016 shall be immediately removed from the CALPIA work/training program, and may be subject to the provisions of Section 3315, Serious Rule Violations.'

   In the original proposed text, the original language mentioned above in quotes was omitted from subsection 8004.3(b). This language is being reinstated and moved to subsection 8004.3(c). Moving/Reinstating the language did not create any substantial changes because moving/reinstating original regulatory language does not alter its meaning.

AVAILABILITY OF FINAL STATEMENT OF REASONS:

The CALPIA under the authority of the PIB has prepared and will make available, copies of the Final Statement of Reasons (FSR) of the proposed regulations. Also, copies of the rulemaking file for this regulatory action, which contains all information on which the proposal is based, is available to the public upon request directed to the CALPIA's contact person:

DAWN EGER, Legal Analyst
California Prison Industry Authority
560 East Natoma Street, Folsom, CA 95630
Telephone (916) 358-1711

In the event the contact person is unavailable, requests for copies should be directed to the following back-up person:

JOHN CHIMIENTI, Assistant to General Counsel
California Prison Industry Authority
560 East Natoma Street, Folsom, CA 95630
Telephone (916) 358-1711

Electronic copies of the rulemaking file can be requested via email:
PIAregs@calpia.ca.gov