

# FINAL STATEMENT OF REASONS

## UPDATE OF INITIAL STATEMENT OF REASONS

The Notice of Proposed Regulations was published on April 25, 2014. The Notice of Regulations was mailed the same day in addition to being posted on the CALPIA website. The public hearing was held June 9, 2014. There were neither attendees nor comments at the public hearing. During the 45-day comment period, seven written comments were received. A summary of these comments is included below under the heading, "Summaries and Responses to Public Comments."

Upon further review, CALPIA determined substantial changes to text were needed. These changes included re-naming members of the General Manager's executive staff, adding a member to executive staff, adding timeframes for General Counsel and General Manager to approve outside activities of employees, and making grammar & punctuation edits. These changes and reasons for them are found below under the heading "Changes to the Text of Proposed Regulations."

The first 'Notice of Changes to the Proposed Text' was placed on a 15-Day notice from June 10, 2014 through June 25, 2014. The first 'Notice of Changes to the Proposed Text' was mailed and posted on the CALPIA website on June 10, 2014. No comments were received regarding changes.

At the June 25, 2014 Prison Industry Board (PIB) meeting, the proposed text along with highlighted changes were presented to PIB for their review and approval. PIB unanimously voted to adopt the proposed text and changes (10-0).

On October 15, 2014, the rulemaking file was submitted to the Office of Administrative Law (OAL) for review and approval. Based on OAL's recommendations, CALPIA withdrew the file to amend regulations to provide more clarity while also deleting some regulations that were deemed duplicative or exempt from the Administrative Procedures Act. In addition to providing clarity in the proposed text, CALPIA also added a 'Supplemental Statement of Reasons' to the rulemaking file. The Supplemental Statement of Reasons was added to provide clarity to the Initial Statement of Reasons. The second set of changes and reasons for them are found in Supplemental Statement of Reasons which is incorporated by reference.

The second 'Notice of Changes to the Proposed Text' was placed on a 15-Day notice from December 8, 2014 through December 23, 2014. The second 'Notice of Changes to the Proposed Text' was mailed and posted on the CALPIA website on December 8, 2014. No comments were received regarding changes.

At the January 28, 2015 PIB meeting, the second set of proposed changes to text was presented to PIB for their review and approval. PIB unanimously voted to adopt the second set of proposed changes (9-0).

On January 30, 2015, the rulemaking file was submitted to OAL for review. On March 23, 2015, OAL issued a Decision of Disapproval on the entire rulemaking file.

OAL's Decision of Disapproval specified each regulation in the rulemaking file that did not meet APA standards. CALPIA removed each regulation OAL determined was not in compliance with APA standards. Section 8101 Emergencies, Section 8115 Familiarity and Section 8116 Committed Family and Friends of Employees were removed.

Upon further review, CALPIA determined additional regulations should be removed and resubmitted on a later date. CALPIA removed the following sections from the rulemaking file: Section 8113 Incompatible Activities and Section 8117 Employee and Inmate or Parolee Training.

The remaining sections of the rulemaking file were edited for grammar and punctuation based on OAL's recommendations. The edits did not create any substantial changes to the meaning of the text in the remaining sections of the rulemaking file.

**LOCAL MANDATE:**

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

**ALTERNATIVES THE 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.

**FIRST SET OF CHANGES TO THE TEXT OF PROPOSED REGULATIONS:**

Subsection 8100(a) is amended to:

- Delete text "administrative" and add text "executive" when referring to the General Manager's description. These changes are made to create language that is consistent with policy language and other agency documentation that refers to the General Manager's description at CALPIA.

Subsection 8100(b) is amended to:

- Delete text “branch” and add text “staff” when referring to executives. These changes are made to create language that is consistent with policy language and other agency documentation that refers to executives at CALPIA. Also, text was added “Chief Financial Officer” because this position was newly created after the first notice of the proposed regulations. This text was added to reflect new additions to executive staff.

Subsection 8100(c) is amended to:

- Delete text “executive” and add text “administrative” when referring managers and supervisors that are not considered executives. These changes are made to create clarity in language and avoid confusion between executive staff and administrative staff.

Subsection 8111(a) is amended to:

- Add text “and section 8112” to clarify that the definition of Light Duty Assignment also pertains to another section that refers to Light Duty Assignment. These changes are made to add clarity as to which sections the definition of Light Duty Assignment pertains to.

## **SECOND SET OF CHANGES TO THE TEXT OF PROPOSED REGULATIONS:**

Please refer to the Supplemental Statement of Reasons which is incorporated by reference.

## **SUMMARIES AND RESPONSES TO WRITTEN COMMENTS:**

### **Commenter #1:**

**Comment 1:** Commenter requested more clarity and examples of what constitutes an incompatible activity for excluded employees/supervisors that work for CALPIA.

**Response:** CALPIA cannot list all the possibilities that could constitute an incompatible activity because that list would be too exhaustive.

**Comment 2:** Commenter asked if CALPIA employees were allowed to have second jobs, additional employment.

**Response:** CALPIA is not in the practice of prohibiting employees from engaging in additional employment with the approval of the General Counsel. CALPIA does however desire that employees be aware of their primary responsibility to CALPIA as their primary employer.

**Comment 3:** Commenter requested some examples and more clarity of what an emergency on a Saturday would entail in regards to incompatible activities for excluded employees/supervisors.

**Response:** It would be difficult for CALPIA to create a list of all the possible situations which might constitute an emergency during any period of time outside an employee’s normal work schedule.

CALPIA is concerned only that employees be aware that there are circumstances under which they may be required to respond and return to work outside normal work hours due to an unforeseen emergency situation. All employees of the State of California, through their individual chains of command, answer to the Governor, who has the power and authority to declare a state of emergency whenever deemed appropriate. Additionally, there could be circumstances under which the Secretary of CDCR, Wardens, General Manager or designee, or employee's supervisor could declare a local emergency situation which could require any CALPIA employee to respond and return to work to perform any service deemed necessary to aid in any emergency situation. Upon short notice, any time an employee is contacted by telephone or otherwise informed of an emergency, the employee shall report immediately to the workplace to which they are assigned. If the employee is engaged in any type of activity that prevents them from reporting to work immediately, that activity could be deemed incompatible.

**Comment 4:** Commenter recommended Section 8113(c)(3)(A) regarding General Counsel's approval of employees' outside activities be modified to include a specific and reasonable time frame for a determination to be made.

**Response:** CALPIA agrees and amended language to proposed Section 8113(c)(3)(A) to require the General Counsel to notify the employee of the determination within 15 days. Additionally, CALPIA added a similar timeframe for submission of an appeal to the General Manager and the General Manger's response to the appeal.

**Comment 5:** Commenter raised concern that there is no definition of what constitutes an emergency in proposed Section 8101. Commenter suggested adding a definition to clarify what constitutes an emergency. Adding a definition would help avoid conflict over application and interpretation.

**Response:** CALPIA disagrees and cannot list all the possibilities of what constitutes an emergency because that list would be too exhaustive.

**Comment 6:** Commenter recommended adding language to proposed Section 8108 regarding vacations. Commenter requested language from CCR Title 2 Section 599.742.1 regarding "Right to Vacation for Nonrepresented Employees" be incorporated into proposed Section 8108. The commenter suggests it is necessary to provide consistency between the CalHR regulation and proposed CALPIA regulation.

**Response:** The mere enactment of a CALPIA-specific regulation does not supersede, nor does it invalidate, the applicability of a CalHR regulation. As such, it is unnecessary and superfluous to repeat provisions of the CalHR regulation that will continue to apply to employees of the CALPIA.

**Comment 7:** Commenter expressed concerns in regards to the 60-day time limit that the CALPIA intends to impose on all limited term light duty assignments for employees with documented medical conditions. Commenter suggests that proposed Section 8112 will lead to more employee grievances regarding medical suspension or termination and recommended CALPIA remove the time limit. The commenter cited Board Rule 443 and Government Code Section 19050.8 that allows 2 years for

temporary assignments for employees with documented medical conditions. The commenter also inquired what authority CALPIA used for its 60-day time limit.

**Response:** CALPIA does not believe it is necessary to remove the time limit as the commenter has suggested. Per SPB Rule 443(a), “Temporary assignments involving duties that fall within the employee’s appointment class may be made without respect to this section.” This provides the CALPIA with the authority to implement any limited term light duty assignment regulations it sees fit within an employee’s classification. Additionally, should an employee need an assignment outside of their current classification, per subsection (g), the Hiring Authority has the authority to terminate the temporary assignment “...at any time for any reason,...” making the alteration of the 60-day time limit pointless.

**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, 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:

JEFF SLY, General Counsel  
California Prison Industry Authority  
560 East Natoma Street, CA 95630  
Telephone (916) 358-1711

Electronic copies of the rulemaking file can be requested via email:  
[CALPIAregs@calpia.ca.gov](mailto:CALPIAregs@calpia.ca.gov)