

## **INITIAL STATEMENT OF REASONS:**

The California Prison Industry Authority (CALPIA) and the California Prison Industry Board (PIB) propose to adopt Section 8004.3(b)(3) of Article 3, of the California Code of Regulations (CCR), Title 15, Division 8, concerning inmates refusing to test for controlled substances or the use of alcohol.

Penal Code (PC) Sections 2801 and 2808 provides the PIB with implied rulemaking authority to establish regulations for developing and operating enterprises to employ prisoners.

In order for CALPIA to function safely and efficiently, new regulations are needed to provide clarity of the consequences for CALPIA inmates who refuse to participate in controlled substance and/or alcohol testing. For safety reasons, any inmate who refuses to cooperate with substance and/or alcohol testing must be immediately removed and unassigned from CALPIA workplaces. Current regulations do not clarify immediate removal of a CALPIA when these circumstances occur.

The proposed amendments will be vetted through the public process of the PIB, as required in PC Section 2808, subsections (h) and (i), and promulgated through the regulatory process as specified in the Administrative Procedure Act (APA). The PIB will review these regulations at the next board meeting held on December 15, 2016. Upon approval, the PIB's Record of Vote and the applicable portion of the meeting minutes will be included in the rulemaking file. These documents will be filed with the Office of Administrative Law (OAL).

### **Consideration of Alternatives:**

CALPIA must determine 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.

CALPIA has made an initial determination that no reasonable alternatives to the regulation have been identified or brought to the attention of CALPIA that would lessen any adverse impact on small business.

Currently, no reasonable alternatives have been brought to the attention of CALPIA that would alter CALPIA's initial determination.

## **ECONOMIC IMPACT ASSESSMENT**

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

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

The CALPIA has determined that the proposed adoption 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 inmates.

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

CALPIA has determined that removing inmates from CALPIA job assignments for refusing to test for drugs and/or alcohol will have no impact on the creation or elimination of existing jobs or businesses within California because those jobs or businesses are not affected by the internal management of inmates.

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

Removing inmates from CALPIA job assignments for refusing to test for drugs and/or alcohol will have no effect on the creation of new or elimination of existing businesses with the State of California because those businesses are not affected by the internal management of inmates.

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

Removing inmates from CALPIA job assignments for refusing to test for drugs and/or alcohol will have no effect on the expansion of businesses currently doing business within the State of California because they are not affected by the internal management of inmates.

### **Local Mandates:**

CALPIA has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

## **Benefits of the Regulations**

The proposed regulatory action will benefit CALPIA by providing a safe work environment and potentially avoiding the cost of human injury or property damage associated with substance abuse. This new regulation will also benefit California Department of Corrections and Rehabilitation (CDCR) and CALPIA by clarifying that inmates refusing drug/alcohol testing constitutes a drug violation and the proposed language will specify CALPIA's disciplinary actions for the violation. The changes will not impact the State's environment.

## **Reports Relied Upon:**

CALPIA, in proposing these regulations, has not identified nor relied upon any technical, theoretical, or empirical study, report, or similar document.

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

**Subsection 8004(b)(3)** currently states that inmates found in possession of a controlled substance or under the influence of controlled substance must satisfy specific requirements before applying for a CALPIA position. Subsection 8004(b)(3) is amended to reference a new type of controlled substance violation that will also initiate the same requirements that must be fulfilled. CDCR's regulations, section 3290(d) of Title 15 in the CCR, states that an inmate must provide a urine sample when ordered to do so for the purpose of testing for the presence of controlled substances or the use of alcohol. New text is added to Subsection 8004(b)(3) which indicates a violation of section 3290(d) will create consequences for inmates who refuse to test for drugs/alcohol and want to work for CALPIA. The requirements will include completion of a substance abuse program, six months of disciplinary/drug/alcohol-free conduct, and ninety days of satisfactory work as written from inmate's work supervisor. Inmates willing to fulfill these requirements demonstrate their willingness to rehabilitate and are less likely to refuse drug/alcohol testing again. Refusing to test will be treated as all other drug violations in order to ensure safety within CALPIA workplaces.

**Subsection 8004.3(b)(3)** is adopted to ensure inmates are not allowed to work in any CALPIA enterprises if he/she refuses to submit to drug and/or alcohol testing. It is necessary to adopt this regulation to increase safety and decrease the amount of accidents incurred by inmates who may be under the influence and working with impaired judgement. At this time, neither CDCR nor CALPIA have regulations that specify the consequences for a CALPIA inmate who

refuses to cooperate with a drug/alcohol testing requirement. Current CDCR regulations<sup>1</sup> specify disciplinary action for inmate drug violations that are inconsistent with CALPIA's regulations<sup>2</sup> which further complexes the disciplinary actions taken by CDCR and CALPIA when an inmate refusal to drug/alcohol testing occurs. CDCR disciplinary regulations require substance abuse treatment programs and progressive loss of pay for first, second and third drug violations, including a refusal to test. For safety reasons, CALPIA inmates who are refusing to test for controlled substances should not be allowed inside a workplace where potentially dangerous hazards exist. CALPIA cannot rely on CDCR's disciplinary regulations because progressively removing an inmate's pay does not ensure a drug free workplace. CALPIA inmates refusing to test must be immediately removed and un-assigned from CALPIA.

The disciplinary differences between CDCR and CALPIA are causing safety issues such as the recent discovery of two CALPIA inmates who had refused to submit to a drug test, suffered loss of pay, and were sent to work in CALPIA workplaces because CDCR was following its own regulations. CALPIA, along with taxpayers, should not be forced to accept this potential risk within its workplaces. The adoption of this new subsection will ensure inmates will not be admitted into any CALPIA workplace when a refusal to drug/alcohol test has occurred.

**Subsection 8004.3(c)** is amended to specify what type of drug violations will require immediate removal from CALPIA workplaces. Subsection 8004.3(c) currently states that inmates found in possession of a controlled substance or under the influence of controlled substance will be immediately removed from the CALPIA work/training program. Subsection 8004(b)(3) is amended to reference a new type of controlled substance violation that will require immediate removal. New text is added to Subsection 8004(b)(3) which indicates a violation of section 3290(d) will require immediate removal. Section 3290(d) of Title 15 in the CCR, states that an inmate must provide a urine sample when ordered to do so for the purpose of testing for the presence of controlled substances or the use of alcohol. Refusing to test will be treated as all other drug violations; in order to ensure safety within CALPIA workplaces, inmates refusing to test will be immediately removed from CALPIA work/training programs.

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<sup>1</sup> Sections 3290 and 3315 of the California Code of Regulations (CCR), Title 15

<sup>2</sup> Section 8004.3 of CCR, Title 15