

INITIAL STATEMENT OF REASONS:

The California Prison Industry Authority (CALPIA) and the California Prison Industry Board (PIB) propose to adopt Section 8006 of Article 4, Chapter 1, of the California Code of Regulations (CCR), Title 15, Division 8, concerning CALPIA Inmate Pay. The Office of Administrative Law (OAL) has published a Determination regarding CALPIA policies, (CTU 2009-11-9-01) determining that CALPIA inmate pay schedules meet the definition of a regulation in Government Code Section 11342.600. These regulations are meant to address this Determination by adopting regulations pursuant to the Administrative Procedure Act (APA).

The policies of the CALPIA have been vetted through the public process of the PIB, as required in PC 2808 (h) and (i), and now are being promulgated through the regulatory process as specified in the APA. The PIB approved the filing of these regulations at their Board Meeting on October 21, 2011. The PIB's Record of Vote and a portion of the transcript of the minutes are filed as an attachment to the Initial Statement of Reasons. These documents represent a true account of the PIB's meeting. The vote of the PIB was unanimous for the approval of the regulations to be filed with OAL.

PC Section 2801 provides CALPIA with implied rulemaking authority. Section 2801(b) clearly states that the purpose of the authority is to create and maintain working conditions within the enterprises as much like those which prevail in private industry. PC 2811 provides the General Manager of the CALPIA the authority to adopt and maintain a compensation schedule for inmate employees.

This action is necessary to create operational consistency within the CALPIA enterprises throughout CDCR institutions and facilities where inmates participate in work training programs, and to prevent disparate treatment.

The CALPIA and the PIB must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected private persons, than the action proposed.

The CALPIA and the PIB have determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the CALPIA that would lessen any adverse impact on small business.

The CALPIA and the PIB have made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the CALPIA and the PIB's initial determination.

The CALPIA and the PIB have 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.

The CALPIA and the PIB have determined that the proposed regulations 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 state prisons.

The CALPIA and the PIB have determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

In proposing these regulations, the CALPIA and the PIB have not identified or relied upon any technical, theoretical, or empirical study, report, or similar document.

New Article 4 is adopted to read CALPIA Inmate Pay. Within this Article the inmate pay description and the actual CALPIA inmate pay schedule are standardized. This article establishes guidelines and sets in place the standard by which CALPIA inmate workers shall be paid, which include inmate pay rates, the inmate pay schedule and exceptions. The necessity of this Article and title is to allow for the submittal of the initial section 8006 and any future sections that will be submitted further addressing components of Inmate Pay for CALPIA. These regulations will provide consistency throughout CALPIA operations and ensure all policies and procedures that meet the definition of a regulation as defined in Section 11342.600 of the Government Code (GC) have been promulgated through the APA as required by GC Section 11340.5.

New Section 8006 is adopted to make specific PC Section 2811 which directs the General Manager of CALPIA to adopt and maintain a compensation schedule for inmate workers.

Subsection 8006(a) is adopted to restate statute that the General Manager, determines the compensation inmates who are assigned to CALPIA work programs receive. This regulation also provides for the approval by the PIB for inmate compensation. These regulations are necessary to layout the requirements of statute regarding inmate compensation in a clear and concise manner so that CALPIA inmates are informed that compensation shall be in accord with the graduated pay schedule, and based upon statutory language that inmate compensation is based on quality and quantity of work performed. Because statutory language of “quality and quantity” is vague, it is also necessary to state that compensation will be based upon technical skills and abilities required for its performance. This ensures that staff, supervisors and inmates understand that receipt of compensation is based upon the inmate exhibiting technical skills or the performance of specialized techniques and possess the competence to work at their assigned skill level. These regulations are necessary to address OAL Determination (CTU 2009-11-9-01) by adopting regulations regarding inmate pay pursuant to the APA; to assure that the PIB is not only made aware of inmate compensation but that they are a part of the approval process.

Subsection 8006(b) is adopted to create a process by which any proposed changes to the Inmate Pay Schedule shall be submitted by the General Manager to the PIB for their review. This is necessary as it ensures that the PIB is kept informed as the General Manager carries out the duties of the CALPIA as overseen by the PIB.

Subsection 8006(c) is adopted to specify that the General Manager has authority to make the final determination with regards to any disputes or interpretations of the Inmate Pay Schedule. As specified in PC 2808(e), the General Manager serves “as the chief administrative officer of the authority” and pursuant to PC 2801, the General Manager carries out the purpose of the authority and that is to operate CALPIA ensuring the operation is run efficiently and in accordance with not only statute, but with daily business practices of a private corporation. This regulation addresses disputes that may arise regarding the Inmate Pay Schedule. These disputes may include, for example, an inmate’s request to receive a pay increase prior to the three-month time period required in section (f)(1)(A), or an inmate disputing their pay, stating that it is too low for the work they are required to do. CALPIA will address the process for filing a dispute in a future rulemaking file. Additionally, the process for requesting an interpretation of the Inmate Pay Schedule will also be addressed in a future rulemaking file. This regulation is necessary to help streamline the CALPIA operations allowing it to run efficiently similarly to operations that prevail in private industry.

Subsection 8006(d) is adopted to create a schedule by which to determine an appropriate rate of pay to compensate CALPIA inmate workers. In 1982, Californians passed on the June Primary Ballot a prison bond to construct new prison facilities. Senate Bill 1574 authorized the Department of Corrections to use, in part, inmate labor to build new prisons throughout the State. The Summary of Prison Industry Legislation states, regarding Prison Wages that “The historical argument against prison labor was that it constituted involuntary servitude.” Inmate wages have been traditionally low, but some states have increased wages to permit prisoners to manufacture prison-made goods or in the original set up of the Prison Industry Authority to help with the construction of new prison facilities. Prison industries are historically state-run and –owned and limited in their range of work opportunities. CALPIA enterprises are typically different and expand those opportunities, and to introduce a more real-world work environment. While no stated reason could be found in any historical documentation or by interviewing actual witnesses to this 1982 event as to how the inmate pay schedule was originally determined by the Legislature or the PIB, a reasonable conclusion can be made that CALPIA pay schedule was modeled in part after the Department of Corrections’ (now CDCR) inmate pay scale; and the pay for CALPIA inmate workers would be at a higher amount which would provide incentive and encourage inmates to come work for CALPIA. The Federal Minimum Wage in 1982 was \$3.35 an hour (Source is the Bureau of Labor Statistics, Monthly Labor Review). PC Section 2811 states that in no event shall compensation exceed one-half the minimum wage provided in Section 1182 of the Labor Code, except as otherwise provided in this code. Half the minimum wage was \$1.67; inmate wages range from \$.30 to \$.95 per hour. This wage scale was apparently determined to be fair wages for inmate labor. Since 1982 there have been discussions regarding raising the inmate wage rate. Although half the minimum wage today is \$3.875, the General Manager has reviewed the inmate wage rate and most recently decided not to increase the inmate wage due in part to the economic crisis faced by the State of California and State agencies for many years. The CDCR provides for the basic needs of each inmate confined to or residing in its facilities throughout the State including State clothing and linen (CCR, Title 15, Division 3, Section 3030), wholesome, nutritionally balanced diet that meet the Recommended Dietary Allowances and Dietary Reference Intakes as established by the Food and Nutrition Board of the Institute of Medicine, National Academy of Science (sections 3050 through 3056), and the means for all inmates to keep themselves and their living quarters clean and to practice

good health and personal hygiene habits (sections 3061 through 3062). The General Manager believes that all basic needs are met by the CDCR; established CALPIA inmate wage rates allow for inmates to save money for canteen purchases as described in sections 3090 through 3095, or to save money for use upon their release from prison. The wage rate has been kept at its current level in an attempt to help control illegal contraband such as tobacco, cell phones, etc., purchases within prison facilities. The current rate allows for authorized purchases of various items (wants vs. needs), yet not enough for illegal contraband items.

This inmate pay schedule is organized by skill level and range of minimum and maximum dollar amounts that shall be paid for the work performed. There is a corresponding relationship between the pay rate and skill level, as depicted numerically, descriptively and by the three step skill levels. This is necessary to create a uniform CALPIA inmate pay schedule, allowing staff and inmate workers the ability to view the pay schedule in one central location. The letters beside each skill level 1-5, i.e. (B) or (C) are used for easy description of the level, so instead of semi-skilled or technician, you would use "B" range or "C" range. It is also used for key entry and tracking of inmate levels in the factories at each institution or at Central Office.

Definitions of inmate worker skill levels are as follows:

Leadperson (AA) Level 1:

- Leadperson performs much of the on-the-job training of newly assigned inmates. Assist in communicating to new inmate workers the staff's expectations of their work. They do not function as assistant forepersons or supervisors and are not assigned control over other inmates. Their role is limited to that of training and communication.

• **Special Skills (A) Level 2:**

This level requires little supervision for their work skills and assist in training other inmates. They work independently and in the various positions such as the most responsible clerical position in administration, mechanics who are responsible for the operation of many complex machines, craftspersons, or licensed pasteurizers, etc. and work in a CALPIA factory, farm, office, or warehouse.

• **Technicians (B) Level 3:**

This level requires only intermittent supervision for the work skills; and training needs are also intermittent. Positions may include clerks of a section or an operating unit of the facility whose supervisor does not have a civil service typist, milkers, a journeyman mechanics, craftspersons, Inspector IIs, and heavy equipment operators, etc.

• **Semi-skilled (C) Level 4:**

This level requires supervision and some continued training. Positions include clerks whose positions require less responsibility and skill than the above classifications, or who are working with clerks of higher classifications, apprentice mechanics, Inspector I's, medium equipment and machine operators, lead floor persons who assist in the training of laborers, and general clerical positions.

• **Laborers/Entry Trainees (D) Level 5:**

This level is considered as entry level, trainee, or unskilled and requires full supervision and training by CALPIA staff and an inmate leadperson with assistance by semi-skilled workers. Positions include janitors, farm/ barn crew or an entry level position to CALPIA, such as general clerk, accounting clerk.

Subsection 8006(e) is adopted to provide authority to the Prison Industries Administrator/Lead Manager at each facility to administer the CALPIA inmate pay program, ensuring pay positions are properly classified and allocated. This is necessary to ensure that inmates who qualify for the program are properly classified in a pay position allowing for inmates to work in a position that best meets there's and CALPIA's work goals. The Prison Industries Administrator/Lead Managers are qualified and have been properly trained ensuring accurate and proper classification and allocation of CALPIA inmates.

Subsection 8006(f) is adopted to layout the different situations that allows inmate movement between one pay rate to another pay rate. This is necessary so that the inmate would be informed and know the process by which they may move between one pay rate to another.

Subsection (1) is regarding pay increases. It is necessary to state that pay increases shall not be automatic or solely based on the inmate's longevity in any particular position. Inmates shall be required to work productively and demonstrate this productivity to his/her supervisor. This regulation is necessary to clearly provide both inmate workers and staff and inmate supervisors with the method by which inmates may receive pay increases. Statute requires that this is based upon the inmate's quality and quantity of work. It is then, through the recommendation of the supervisor, and the inmate's work/training performance report that an increase may be granted. The pay increase is subject to the review and approval of the Administrator/Lead Manager as they have authority to administer the CALPIA pay program.

Subsection (1)(A) states that inmates may receive an increase in pay for satisfactory performance; however, it must take place after three months in each pay step level until the maximum rate is obtained. This is necessary to ensure that the inmate has satisfactorily learned to perform the duties of the position and has demonstrated the ability to take on additional duties, moving from Step I to Step II and finally Step III as seen in subsection 8006(d)(1).

Subsection (1)(B) addresses the timing of inmate pay increases. After the Prison Industries Administrator/Lead Manager's approval, the administrative processing includes inputting the pay increase into the computerized pay system at CALPIA, and forwarded to CDCR's Inmate Trust Accounting. Regardless of the date of the inmate's review date, the increase shall be effective on the first day of the following month after the pay increase is implemented. If the date of the administrative processing is, for example on June 1st, the pay increase will be effective on July 1st; if the date of the review is on June 10th, the pay increase will be effective on July 1st as well. These regulations follow the standard protocol of CALPIA payroll for staff. CALPIA staff is paid on a monthly basis and payroll adjustments are typically posted in the same manner as stated above.

Subsection (2) is regarding pay decreases. A reduction in pay shall be based on the supervisor's recommendation of the inmate's below standard or less than satisfactory work performance, or inmate misconduct as described in Title 15, CCR, sections 3312, 3314, or 3315. A below standard or less than satisfactory work performance does not necessarily result in a pay reduction, it may result in the supervisor recommending extra training, wherein the inmate is provided the opportunity to improve work performance. These regulations are necessary to ensure that inmates are aware that their work standards must remain satisfactory and there must

be no violation of the above mentioned sections; if violations do occur or if work standards are below standard or less than satisfactory, a supervisor may recommend a reduction in pay.

Subsection (2)(A) addresses the timing of inmate pay decreases. The pay decrease will be processed in the same manner as any other pay adjustments, and shall be effective on the first day of the following month after input into the computerized pay system. These regulations follow the standard protocol of CALPIA payroll for staff. CALPIA staff is paid on a monthly basis and payroll adjustments are typically posted in the same manner as stated above [see (f)(1)(B)]. These regulations are also necessary to provide CALPIA staff and supervisors with the process regarding pay decreases in a clear and concise manner.

Subsection (3) is regarding advancement. The Hourly Pay Schedules, as seen in section 8006(d)(1) standardizes not only the three step pay levels, but the five skill levels from entry level of a Laborer/General Clerical (D) to the top level of worker—Special Skills (A). Some inmates may advance to the position of Leadperson (AA). Advancement would be based upon the inmate worker's increased skill level as demonstrated in the performance of their specific skill and then observed by their immediate supervisor, the immediate supervisor's recommendation, a work/training performance report that would reflect performance that shows an inmate's ability to move upward to a higher skill level, and finally it would be subject to the Administrator/Lead Manager's review and approval. The purpose of this is to allow inmates with a demonstrated increased skill level to move to the next skill level. CALPIA programs assist inmates in learning the value of work. Many CALPIA inmate workers have never held a job or learned the value of work. CALPIA staff expects inmates to learn appropriate behavior on the job, do quality work, report to work on time, and follow occupational health and safety rules. When an inmate shows the ability to move up in a skill level, it is in the best interest of the inmate, CALPIA and the State of California to advance the inmate worker to the next skill level. Each new skill, each advancement provides the inmate worker an opportunity to learn more skills. CALPIA work assignments can help inmates learn work skills and habits to become productive members of society.

Subsection (3)(A) addresses the timing of inmate advancements. Inmates may be allowed to advance from one skill level to the next after one month in the in the skill level; for example, if an inmate has shown an increase in skill and the ability to move upward to a higher skill level, i.e. a Semi-Skill (C) at \$.45 per hour to a Technician (B) \$.55 the immediate supervisor will begin the process to advance the inmate to the higher skill level. Skill level advancements will be processed in the same manner as any other pay adjustments, and shall be effective on the first day of the following month after input into the computerized pay system. These regulations follow the standard protocol of CALPIA payroll for staff. CALPIA staff is paid on a monthly basis and payroll adjustments are typically posted in the same manner as stated above [see (f)(1)(B)]. These regulations are also necessary to provide CALPIA staff and supervisors with the process regarding skill level advancements in a clear and concise manner.

Subsection (3)(B) addresses the effective date and approval of an advancement. Inmate advancement shall be effective upon the Prison Industries Administrator/Manager approval on the first day of the following month after the pay increase is administratively processed. The advancement will be processed in the same manner as any other pay adjustments, and shall be effective on the first day of the following month after input into the computerized pay system. These regulations follow the standard protocol of CALPIA payroll for staff. CALPIA staff is paid on a monthly basis and payroll adjustments are typically posted in the same manner as

stated above [see (f)(1)(B)]. These regulations are also necessary to provide CALPIA staff and supervisors with the process regarding pay advances in a clear and concise manner.

Subsection (3)(C) establishes that an inmate's longevity shall not be used as criteria for the purpose of upgrading skill level. As described in subsection (3) above, the purpose of this is to allow inmates with a demonstrated increased skill level to move to the next skill level. Even though an inmate has worked satisfactorily in a position, (for example over 3 months of time, even as long as one year) this longevity does not presume that the worker has enough skill to advance to the next skill level. This is necessary to ensure that CALPIA inmates are aware of the process by which they may advance to a higher skill level.

Subsection (4) addresses the removal of an inmate from their position beyond the inmate's control. Inmates removed from their work assignment for reasons beyond their control, including, but not limited to out-to-court or lengthy hospital stay, may return to a CALPIA assignment at the same or closest level of pay to their former position, if an open position is available via the institution classification committee process, CCR, Title 15, Division 3, Section 3040. CALPIA cannot guarantee that inmates removed will be placed back in the same or any CALPIA position due to the fact that CALPIA programs continue to utilize inmate workers and will refill any vacant position as soon as possible, thereby replacing the inmate who was removed. This is necessary to ensure work throughout CALPIA enterprises is accomplished in a timely manner by available inmates via the institution classification committee process.

ATTACHMENT TO THE INITIAL STATEMENT OF REASONS

PRISON INDUSTRY BOARD MEETING

October 21, 2011

RECORD OF VOTE

AGENDA ITEM: Adoption of Regulations Title 15, Division 8, Article 4 Section 8006 [11-1021-325-AI]

SUMMARY OF ACTION/MOTION: Motion made by Member Singh to approve and seconded by Member Kelly. Motion passed 7-0.

RECORD OF VOTE:

Member	Aye	Nay	Abstain	Absent
Chair Matthew Cate	X			
Chapjian, George				X
Davison, William	X			
Harvey, Scott	X			
Kelly, Curtis	X			
Masteller, Kira	X			
Saito, Bruce	X			
Singh, Darshan	X			
Trujillo, Ray				X
Woodford, Jeanne				X

PARTIAL TRANSCRIPT OF 10/21/11 PIB MEETING

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12 MR. PATTILLO: C, I might have Jeff come up
13 and present real quick. You are seeing one of these
14 every meeting. If this is adopted, we are putting
15 our regulations in per code. So we do not have an
16 issue of underground regulations, we are having to
17 go all the way back to 1983, put everything in
18 Office of Administrative Law, basically, standard
19 form.

20 Jeff.

21 MR. SLY: Good morning. I'm Jeff Sly,
22 General Counsel for the Prison Industry Authority.
23 The action item that you have in front of you
24 is for the proposed approval of Section 8006 of
25 Title 15 of PIA regulations. Some of you have seen

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1 this come before you with other regulations. This,
2 again, is one where an inmate challenged the policy
3 that we had as an underground regulation. OAL made
4 that finding. This is our effort to clean that up,
5 get a regulation in place so the document then can
6 be amended with a new policy reflected by this
7 regulations, and essentially bring us into
8 compliance with the Administrative Procedures Act.
9 8006, basically, is an inmate pay regulation.
10 It sets out the level of pay and ranges of pay
11 within those levels. Gives the General Manager the
12 authority with the Board's approval to establish
13 what those pay ranges will be. Establishes an
14 appeal process where the General Manager has the
15 final say if an inmate challenges his or her pay
16 under this regulations. And it also establishes how
17 inmates come into the system with the pay and their
18 level, and how they can move between them. I know
19 that is a really brief kind of overview of what
20 these are. If you have any particular questions, I
21 will try to address those. Otherwise, I will submit
22 it back to the Chair.

23 CHAIR CATE: Anything further on the
24 adoption of regs under Item C?

25 Any discussion or questions from the Board?

1 Any public comment on this matter?
2 Have a motion, please.
3 MEMBER SINGH: Move that.
4 MEMBER KELLY: Second.
5 CHAIR CATE: We have a motion and a second
6 to adopt these regulations.
7 Anything further, Mr. Pattillo, before I call
8 for a vote?
9 MR. PATTILLO: Just note that this is one
10 of a series that we are going to go through so we
11 can keep ourselves out of trouble. Most of the
12 folks who are filing, obviously, are the inmates
13 that are filing against us. There's really no
14 external folks that are doing any underground
15 regulation filing.
16 CHAIR CATE: We have a motion to approve
17 the regulations in Exhibit C1. Anything you need
18 further from us on that?
19 So call for a vote. All those in favor,
20 please say aye.
21 Any opposed.
22 It passes.
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