

**State of California
Office of Administrative Law**

**In re:
California Prison Industry Authority**

Regulatory Action:

**Title 15, California Code of
Regulations**

Amend section: 8004.2

**DECISION OF DISAPPROVAL OF
REGULATORY ACTION**

Government Code Section 11349.3

OAL Matter Number: 2024-0813-02

OAL Matter Type: Regular (S)

SUMMARY OF REGULATORY ACTION

This regulatory action by the California Prison Industry Authority (PIA) proposed to add two new requirements to PIA's regulations: (1) that incarcerated individuals complete all job-required training in order to remain in any program assignment, and (2) that incarcerated individuals sign an acknowledgement of their understanding of participation and that their refusal to complete any component of their job-required curriculum will be cause for removal/unassignment from their program assignment.

On August 13, 2024, PIA submitted the above-referenced regulatory action to the Office of Administrative Law (OAL) for review. On September 19, 2024, OAL notified PIA of OAL's decision to disapprove the proposed regulations.

DECISION

OAL disapproved the above-referenced regulatory action because the proposed amendments failed to comply with the clarity standard of the Administrative Procedure Act (APA). This Decision of Disapproval of Regulatory Action explains the reasons for OAL's action.

DISCUSSION

PIA's regulatory action must satisfy requirements established by the part of the APA that governs rulemaking by a state agency. Any regulation adopted,

amended, or repealed by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute expressly exempts the regulation from APA coverage. (Gov. Code, sec. 11346.) No exemption applies to this regulatory action.

Before any regulation subject to the APA may become effective, the regulation is reviewed by OAL for compliance with the procedural requirements of the APA and the standards for administrative regulations in Government Code section 11349.1. Generally, to satisfy the APA standards, a regulation must be legally valid, supported by an adequate record, and easy to understand. In this review, OAL is limited to the rulemaking record and may not substitute its judgment for that of the rulemaking agency regarding the substantive content of the regulation. This review is an independent check on the exercise of rulemaking powers by executive branch agencies intended to improve the quality of regulations that implement, interpret, and make specific statutory law, and to ensure that the public is provided with a meaningful opportunity to comment on the regulations before they become effective.

The Clarity Standard.

In adopting the APA, the Legislature found that the language of many regulations was unclear and confusing to persons who must comply with the regulations. (Gov. Code, sec. 11340, subd. (b).) Government Code section 11349.1, subdivision (a)(3), requires that OAL review all regulations for compliance with the clarity standard. Government Code section 11349, subdivision (c), defines “clarity” to mean “written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.”

The “clarity” standard is further defined in section 16 of title 1 of the California Code of Regulations (CCR), which provides:

In examining a regulation for compliance with the “clarity” requirement of Government Code section 11349.1, OAL shall apply the following standards and presumptions:

(a) A regulation shall be presumed not to comply with the “clarity” standard if any of the following conditions exists:

(1) the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning; or

(2) ...

(3) the regulation uses terms which do not have meanings generally familiar to those “directly affected” by the regulation, and those terms are defined neither in the regulation nor in the governing statute; or

- (4) ...
- (5) the regulation presents information in a format that is not readily understandable by persons “directly affected[.]”
- (6) ...

- (b) Persons shall be presumed to be “directly affected” if they:
 - (1) are legally required to comply with the regulation; or
 - (2) are legally required to enforce the regulation; or
 - (3) derive from the enforcement of the regulation a benefit that is not common to the public in general; or
 - (4) incur from the enforcement of the regulation a detriment that is not common to the public in general.

The following provisions in PIA’s proposed regulatory action do not satisfy the clarity standard.

1. It is unclear how a disabling condition documented in a person’s C-File pursuant to section 8004.1(g) affects the selection priorities in section 8004.2(f)(3) as amended.

PIA proposed to amend section 8004.2(f), in pertinent part, as follows:

- (f) Upon the availability of a vacant CALPIA position, CALPIA enterprise staff must:
 - (1) Request a list of eligible incarcerated individuals...
 - (2) Interview eligible incarcerated individuals...
 - (3) Make a final selection of incarcerated individuals based on the following priority of ~~the following~~ educational achievements unless an incarcerated individual has one or more disabling conditions documented in their C-File, pursuant to subdivision 8004.1(g):
 - (A) High school diploma, High School Equivalency (HSE), General Education Development (GED), or Certificate of Attendance and Participation (CAP).
 - (B) Enrolled in a GED program or a prescribed high school alternative course of study.
 - (C) No high school diploma, GED, HSE, or CAP and not enrolled in an education program or prescribed high school alternative course of study.

Existing section 8004.1(g) of title 15 of the CCR provides as follows:

- (g) Within two years of initial CALPIA assignment, CALPIA incarcerated individual workers must complete a General Education Diploma (GED), high school diploma, or Certificate of Attendance and Participation

(CAP) unless that is not feasible due to disabling conditions documented in the incarcerated individual's C-File, in which case the incarcerated individual worker must be concurrently enrolled in classes to obtain a GED, high school diploma, or CAP while in a work assignment with CALPIA.

Subdivision (f)(3) could be interpreted to mean that a disability provides a higher selection priority to an otherwise (A)-level or (B)-level priority person, for example. Or it could be interpreted to mean that the subdivision (f)(3)(A) through (C) priority scheme does not apply to persons with disabilities at all and that job selections for such persons are determined using entirely different standards or criteria. If the latter interpretation is correct, then it is unclear what standards or criteria are used to make job selections for persons with disabilities. Moreover, nothing in cross-referenced section 8004.1(g) provides any clarification on how job selections for persons with disabilities will be determined.

Section 8004.2(f)(3) violates the clarity standard of section 16(a)(5) of title 1 of the CCR, because it presents information in a format that is not readily understandable by persons directly affected by the regulation.

2. The proposed amendments to section 8004.2(i)(1) of title 15 of the CCR and to form CALPIA IEP-F029, *Incarcerated Individual Acknowledgement of Policies, Procedures, Rules and Regulations*, Rev. 1/26/2023, are unclear.

PIA proposed to amend section 8004.2(i)(1) as follows:

(i) As part of the appointment process, the incarcerated individual's supervisor will provide to the ~~immediate~~ incarcerated individual, for signature, acknowledgement(s) of policies, procedures, and appointment documents for review and as well as signature on the *Incarcerated Individual Acknowledgement of Policies, Procedures, Rules and Regulations* form (CALPIA FORM IEP F029 (8/1/2020/1/26/2023)), hereby incorporated by reference.

(1) An incarcerated individual's signature on this form acknowledges their understanding of participation and that completion of all job-required training is a condition of continued program assignment. Failure or refusal to sign the form or complete any component of the job-required curriculum sign an acknowledgement of receipt of these documents will result in immediate removal and being unassigned from the CALPIA work and training program.

PIA proposed to amend form CALPIA IEP-F029 to add a new paragraph implementing section 8004.2(i)(1) as follows:

This acknowledges that I understand there are rules, regulations, policies, and procedures (as listed below) applying to assignments with the California Prison Industry Authority (CALPIA) and that failure to sign an acknowledgement of those rules, regulations, policies, and procedures, as well as this acknowledgment, shall result in being unassigned from CALPIA work assignment.

Your acknowledgement and signature on this form acknowledges your understanding of participation and completion of all job-required training is a condition of continued program assignment. Refusal to complete any component of the job-required curriculum will be cause for removal/unassignment from this CALPIA assignment.

2.1. Amended form CALPIA IEP-F029 is inconsistent with the proposed amendments to section 8004.2(i)(1) of title 15 of the CCR.

There are three inconsistencies between form CALPIA IEP-F029 and section 8004.2(i)(1), which is the regulation the form is designed to implement. First, in form CALPIA IEP-F029, the refusal, but not necessarily the failure, to complete the job-required curriculum will have negative consequences for the incarcerated individual, whereas section 8004.2(i)(1) is broader and encompasses the *failure to complete* any component of the job-required curriculum. Second, in form CALPIA IEP-F029, the refusal to complete the job-required curriculum is cause for removal/unassignment but not necessarily actual removal/unassignment, whereas, in section 8004.2(i)(1), such refusal results in immediate removal and being unassigned. Third, form CALPIA IEP-F029 provides that the refusal to complete any component of the job-required curriculum impacts “this CALPIA assignment,” whereas, in section 8004.2(i)(1), the same refusal results in immediate removal and being unassigned from “the CALPIA work and training program.”

The inconsistency between section 8004.2(i)(1) and form CALPIA IEP-F029 violates the clarity standard of section 16(a)(5) of title 1 of the CCR, because it presents information in a format that is not readily understandable by persons directly affected by the regulation.

2.2. The references to “participation” in amended section 8004.2(i)(1) of title 15 of the CCR and form CALPIA IEP-F029 are unclear.

In section 8004.2(i)(1), it is not clear what a person is intended to understand when they acknowledge their understanding of “participation.” This term likely

cannot be interpreted to mean they understand participation is contingent on completing all job-required training, because that is described as something they understand in addition to understanding “participation.” This term could be interpreted to mean they understand participation is contingent on signing form CALPIA IEP-F029 and completing all components of the job-required curriculum. Or, it could be interpreted to mean they understand something else not specified in the regulation.

In amended form CALPIA IEP-F029, it is similarly unclear what a person is intended to understand when they acknowledge their understanding of “participation.” The term could be interpreted to mean they understand the substance of all rules, regulations, policies, and procedures referred to in the prior paragraph, or that participation is contingent on obeying all such rules, regulations, policies, and procedures, or both, or something else not apparent from the form.

The provisions in the regulation and the form regarding an incarcerated person’s understanding of “participation” do not meet the clarity standard of section 16(a)(1) and (3) of title 1 of the CCR, because they can be reasonably and logically interpreted to have more than one meaning, and because they contain a term, “participation,” which does not have a meaning generally familiar to those persons directly affected by the regulation.

2.3. It is unclear if the consequences of a failure to satisfy a condition of continued program assignment are the same as for failing or refusing to sign form CALPIA IEP-F029 or complete any component of the job-required curriculum.

In the proposed amendments to section 8004.2(i)(1), completing all job-required training is a condition of program assignment. It is unclear if this means that a failure to complete all job-required training results in termination of an incarcerated person’s continued program assignment, but not necessarily termination from the CALPIA work and training program generally, or if, as is the case for a failure or refusal to sign form CALPIA IEP-F029 or to complete any component of the job-required curriculum, a failure to complete all job-required training would result in immediate removal and being unassigned from the CALPIA work and training program entirely.

In this respect, section 8004.2(i)(1) does not meet the clarity standard of section 16(a)(5) of title 1 of the CCR, because it presents information in a format that is not readily understandable by persons directly affected by the regulation.

CONCLUSION

For the foregoing reasons, OAL disapproved the above-referenced regulatory action. Pursuant to Government Code section 11349.4, subdivision (a), PIA may resubmit revised regulations within 120 days of its receipt of this Decision of Disapproval of Regulatory Action. A copy of this Decision will be emailed to PIA on the date indicated below.

Prior to any resubmission of this action, PIA must make any substantive regulatory text changes, which are sufficiently related to the originally noticed text, available for public comment for at least 15 days pursuant to subdivision (c) of Government Code section 11346.8 and section 44 of title 1 of the CCR.

Date: September 26, 2024

Dale Mentink

Dale Mentink
Assistant Chief Counsel

For: Kenneth J. Pogue
Director

Original: William Davidson, General
Manager

Copy: Kelly Mortenson