

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

The Notice of Proposed Regulations was published on May 8, 2015. The notice 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, two comments were received. A summary of the comments and responses are included under the heading, "Summaries and Responses to Public Comments."

After the review of comments received during the 45-day notice, CALPIA determined substantial changes to the proposed text were needed. These changes included restricting conversations between employees and inmates or parolees to work-related topics only. It was also determined to delete references to position classifications that are obsolete. These changes and reasons for them are found below under the heading "Changes to the Text of Proposed Regulations."

At the June 25, 2015 Prison Industry Board (PIB) meeting, the original proposed text, with highlights to the changes, was presented to PIB for their review and approval. PIB unanimously voted (9-0) to adopt the original proposed text including the substantial changes.

The 'Notice of Changes to the Proposed Text' was placed on a 15-Day notice from June 29, 2015 through July 15, 2015. The notice was mailed the same day in addition to being posted on the CALPIA website. No comments were received regarding changes.

Other changes were made in the rulemaking file for clarity reasons and to add reference and authority citations. The edits did not create any substantial changes to the meaning of the text.

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 that 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 Robert Roehlk, CALPIA Administrator:

Comment 1: I wanted to respond to the specific sections 8115 Familiarity and 8116 Employee relations with Family members under the jurisdiction of CDCR. As you know, inmates read this information in detail and in my opinion, will use 8115 and 8116 against our employees. For many years now, we have instructed our employees to converse with inmates in business related conversations only. In 8115, we are now allowing our employees to converse in a “non- personal” conversation regarding sports, weather or current events. There is no such non-personal conversation. My opinion is this is a gateway into conversations leading up to a personal view, most of which are not allowed by current CDCR DOM and regulations.

Response: CALPIA agrees with the commenter and changed the regulations to only allow work-related conversations between employees and inmates or parolees.

Comment 2: Secondly 8116: I don't believe it is in the best interest of CALPIA to allow its employees to conduct relationships with inmates or parolees, even if it's a family member, off duty, away from the workplace. The way this reads to me is an employee can visit a family member on prison grounds as long as it is not in the factory. Or at least this is how it will be taken by employees and inmates. They can also converse through the mail. This is a very bad idea. We need to be very, very clear on this and I don't read that clarity in the proposed text changes.

Response: CALPIA disagrees with the commenter; no changes to regulatory language will be made based on Comment 2. Section 8116.1(a)(1) requires employees to disclose family members under the jurisdiction of CDCR. Once the disclosure is made, the known inmate may be transferred or arrangements will be made to ensure the employee and inmate family member are strategically separated and never assigned to the same area. In the event a CALPIA employee is conversing with an inmate on CDCR grounds outside and away from a CALPIA factory, CDCR regulations will prohibit the action. Pursuant to Section 3415 of Title 15:

Persons who are not employed by the Department of Corrections and Rehabilitation, but who are assigned to or engaged in work at any department facility must observe all rules, regulations and laws governing the conduct of employees at that facility. Failure to do so may lead to exclusion from department facilities.

CALPIA will not change its regulations to prevent its employees from conversing with disclosed family members through the mail. Doing so would be inconsistent with CDCR's regulation Subdivision 3401(e)(3) of Title 15:

While off-duty, and only in accordance with this regulation, departmental employees may conduct relationships with any inmate, parolee or member of an inmate's or parolee's family who is either the employee's immediate family member, as defined in section 3000, or the employee's aunt, uncle, niece, nephew, or first cousin.

Comment 3: Lastly, we have lost some good employees due to over familiarity with the current policy and it is not that strict. At the executive management levels within CALPIA, I have been told that if an inmate is addressing our staff by their first name, the staff is probably over familiar. I agree with this statement for the most part. The relationship between our staff and inmates is paramount – usually the difference between a successful enterprise and one that is not. Each side needs to understand their role. We need to be Chrystal clear with our expectations of our staff and inmates and this proposed change creates confusion and gives inmates a new angle to manipulate staff – and it’s in writing. Let’s reconsider this one . . .

Response: CALPIA agrees with the commenter and changed the regulations to only allow work-related conversations between employees and inmates or parolees.

Commenter #2 Joshua Bayer, CALPIA Administrator:

Please use the following information to support the language changes.

Comment 1: We had one situation, recently, where the staff was trying to manipulate the inmates by offering them food and trying to establish an overly familiar relationship. He would talk to them about personal matters (food, things they like to do, etc), trying to gain their trust. It seems as if he intended to manipulate them into doing things his way, instead of following CALPIA policy and procedure. This backfired on him. He brought in donuts, candy, and other food for the inmates, who refused to accept it, and turned him in. Other inmates heard about it and, to my understanding, attempted to get him to bring in lighters and cell phones.

Comment 2: We had another situation where the staff would complain about her immediate supervisor, to the inmate. She also shared her financial struggles with the inmate. The inmate used this as leverage and got the staff to bring in tobacco. The staff got caught and lost her job. It also created a lot of problems in the factory, because the inmate used the information she gained about this staff’s supervisor, to manipulate other operations in the factory.

Response to Comments 1 and 2: CALPIA appreciates the examples given by the commenter. These examples support the reason for the substantial changes to the proposed language. The examples given indicate the importance to prohibit non-work-related conversations between employees and inmates or parolees.

CHANGES TO THE TEXT OF PROPOSED REGULATIONS:

New Subdivision 8115(c).

For clarity reasons, the following explanations are removed and no longer valid in the Initial Statement of Reasons under New Subdivision 8115(c):

*“ . . . Conversations that are not strictly work related are foreseeable and may occur from time to time. It is the responsibility of the employee to use their discretion when conducting conversations that are not work related and to keep the conversation away from personal topics. Conversations about weather, current events, sports, and other non-personal topics are permitted with employee discretion advised . . .
. . . Employees must be aware and not answer personal questions or engage in personal topics when they are conversing about non-work related topics. “*

New Subdivisions 8115(c)(1)(2) and (3) are deleted:

- The original, proposed language allowing non-personal conversations between employees and inmates or parolees, is deleted. After receiving comments and concerns from CALPIA executives and administrators, a determination was made to restrict conversations between employees and inmates or parolees to work-related topics only. Both executives and staff stated inmates and parolees cannot be trusted with non-work related conversations. It is well known and documented from years of experience that inmates will use any kind of conversation to manipulate and try to gain control over employees. For example, an inmate that is affiliated with gangs and has connections to gangs outside of prison can make threats toward an employee's family members if the inmate knows specifics of the employee's family. If the employee succumbs to any threats, the inmate succeeds in gaining control over the employee and can demand the employee to smuggle in contraband. Prohibiting personal conversations between inmates and employees can reduce these types of hazards. Prohibiting personal conversations is necessary for the safety and welfare of employees and anyone the employees are associated with.

New Subdivision 8115(c) is amended to restrict conversations between employees and inmates or parolees to work-related topics only for reasons mentioned above.

New Subdivision 8116(c).

For clarity reasons, the following explanations are removed and no longer valid in the Initial Statement of Reasons under new subdivision 8116(c):

‘ . . . employee’s supervisor will notify the General Manager, Warden, CDCR Director, and CDCR Assistant Secretary for security purposes . . . ’

New Subdivision 8116(c) is amended to:

- Add language to amend the process for an employee disclosing a relationship with a family member who is under the jurisdiction of CDCR. The proposed regulation, as originally noticed to the public, would have required an employee’s supervisor to notify the General Manager, Warden, CDCR Director, and CDCR Assistant Secretary when an employee makes a disclosure. However, new subdivision 8116(c) is changed to place responsibility on the General Manager to inform Warden and CDCR Director and eliminate the CDCR Assistant Secretary.
- Delete language that was determined obsolete. “CDCR Assistant Secretary” is no longer an existing classification at CDCR and therefore, was removed from the proposed language.

New Subdivision 8116.1(b)

For clarity reasons, the following changes were made:

If an employee is aware of any person ~~known by an employee~~
If an employee is aware of any person described in subsection 8116.1(a)

New Subdivision 8116.1(c).

For clarity reasons, the position ‘CDCR Assistant Secretary’ is no longer a valid term in the Initial Statement of Reasons.

New Subdivision 8116.1(c) is amended to:

- Delete language that was determined obsolete. “CDCR Assistant Secretary” is no longer an existing classification at CDCR and therefore, was removed from the proposed language.

New Subdivision 8117.

For clarity reasons, the following changes were made:

no employee shall ~~do any of the following~~
no employee shall engage in any of the following transactions

AVAILABILITY OF FINAL STATEMENT OF REASONS:

The CALPIA has prepared and will make available, copies of the Final Statement of Reasons (FSR) of the proposed regulations. Electronic copies of the rulemaking file can be requested via email: PIAregs@calpia.ca.gov. 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:

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