

## **INITIAL STATEMENT OF REASONS**

### **Description of Regulatory Action:**

The California Prison Industry Authority (CALPIA) and the Prison Industry Board (PIB) propose to adopt Sections 8115, 8116, 8116.1 and 8117, Article 6, Chapter 1, of the California Code of Regulations (CCR), Title 15, Division 8, concerning CALPIA Personnel. This action is necessary to implement, interpret and make specific Penal Code (PC) Section 2809 regarding the General Manager's authority to determine personnel rules for CALPIA employees.

PC Sections 2801 and 2809 provide CALPIA with implied rulemaking authority. PC Section 2809 authorizes CALPIA to establish policies and procedures for personnel in order to support CALPIA productivity goals.

CALPIA provides work training programs for the participation and rehabilitation of persons under the jurisdiction of California Department of Corrections and Rehabilitation (CDCR). CALPIA workplaces are located throughout California; the majority existing on institution grounds. Some workplaces are established inside of the institutions' walls as well as on the outside of the of the institutions' walls and on other properties leased out by CDCR. All CALPIA workplaces create an environment where CALPIA employees are required to work closely with persons under the jurisdiction of CDCR. Because of the close interactions between CALPIA employees and persons under the jurisdiction of CDCR, these regulations are crucial and necessary to support the safety of every person on institution grounds or other locations where persons under the jurisdiction of CDCR may be working. Safety is a very serious responsibility to maintain within CALPIA workplaces. Without a safe working environment, CALPIA will be unable to implement PC Section 2801 and carry out its productivity goals.

Pursuant to PC Section 2809, CALPIA employees work under a hiring authority which is separate and distinct from the CDCR hiring authority. The challenges of separate hiring

authorities require CALPIA to adopt its own personnel rules that are separate from CDCR's, but maintain similar regulatory requirements as those imposed upon CDCR employees regarding the interactions with persons under the jurisdiction of CDCR. Maintaining similarities will keep CALPIA workplaces safe and consistent within the prison environment.

The policies of the CALPIA 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 June 25, 2015. 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).

## **ECONOMIC IMPACT ASSESSMENT**

In accordance with Government Code Section 11346.3(b), the California Prison Industry Authority has made the following assessments regarding the proposed regulation:

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

The proposed regulations will not create or eliminate jobs within the State of California. It is determined that this action has no significant adverse economic impact on jobs within the State of California because the jobs are not affected by the internal management of CALPIA employees' interactions with persons under the jurisdiction of CDCR. The benefits of new, proposed regulations will provide clear and concise personnel rules that will affect CALPIA employees and persons under the jurisdiction of CDCR.

### **Creation, Expansion, or Elimination of Existing Businesses (Small or Large) within the State of California**

The proposed regulations will not have an effect on the creation, expansion, or elimination, of small or large businesses within California. It is determined that this action has no significant adverse economic impact on small or large businesses within

the State of California because businesses are not affected by CALPIA employees' interactions with persons under the jurisdiction of CDCR. The benefits of new, proposed regulations will provide clear and concise personnel rules that will affect CALPIA employees and persons under the jurisdiction of CDCR.

**Benefits of the Regulations:**

The proposed regulatory action will benefit CALPIA employees, CDCR employees, and persons under the jurisdiction of CDCR by providing clear and concise personnel rules that ensures and promotes consistency and safety while working with inmates and parolees under the jurisdiction of CDCR.

**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.

**Reports Relied Upon:**

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

**Consideration of Alternatives:**

The CALPIA determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective as and less burdensome to CALPIA employees than the action proposed. The CALPIA also determined there are no reasonable alternatives that would lessen any adverse impact on small businesses. The internal management of CALPIA employees' interactions with persons under the jurisdiction of CDCR will not affect small businesses.

**Information Digest/Policy Statement Overview**

**New Subdivision 8115(a) is adopted** to define the term ‘familiarity’ as it is used within this section. Limiting the definition of ‘familiarity’ to mean personal conversations or personal communications will eliminate erroneous interpretations of the term. Defining the term is needed to clarify the sole purpose of its meaning for this section.

**New Subdivision 8115(b) is adopted** to restrict employees from engaging in personal conversations and communications with inmates and parolees under any circumstance with only one exception. The only exception can be found in proposed Section 8116, which allows employees to engage in familiarity with family members who are under the jurisdiction of CDCR. See proposed Section 8116 for more detail.

Because CALPIA employees work closely and together with inmates within the workplaces, it is necessary and important to prohibit personal conversations between employees and inmates to eliminate undue circumstances such as coercion, blackmail, illegal threats, and vulnerable employees. These circumstances may arise when inmates gather details from a personal conversation with an employee and use those details to gain control over the employee. 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 gains control over the employee and can demand the employee to smuggle in contraband. Prohibiting personal conversations between inmates and employees is necessary for the safety and welfare of the employee and anyone the employee is associated with.

Although CALPIA employees do not work closely and together with parolees in workplaces, it is necessary to prohibit personal conversations between employees and parolees to eliminate undue circumstances such as coercion, blackmail, illegal threats, and vulnerable employees. Because CDCR parolees may continue to be affiliated with CDCR inmates, undue circumstances may arise if an employee is engaging in familiarity with a parolee. Parolees are susceptible to incarceration and can become a threat to employees if parolee is re-incarcerated. In the event an employee comes into

contact with a parolee who is under the jurisdiction of CDCR, the employee must use caution and not engage in familiarity. This will prevent the parolee from gaining personal information about a CALPIA employee which can be used to the employee's detriment. This action is necessary for the safety and welfare of the employee and anyone the employee is associated with.

CALPIA also needs to regulate conversations between its employees and inmates/parolees under CDCR jurisdiction to conform to CDCR personnel regulations as much as possible. If CALPIA has similar rules to CDCR rules regarding communications between employees and inmates/parolees, then everyone will understand and know how to keep conversations uniform and conducive to the prison environment. CALPIA and CDCR employees cannot interact differently with inmates/parolees. For safety reasons, both CALPIA and CDCR should be consistent and as similar as possible when engaging in conversations with inmates/parolees.

**New Subdivision 8115(c) is adopted** to clarify specific types of conversations that are permitted between employees and inmates. Work related conversations that do not include personal affairs are permitted between employees and inmates. For reasons mentioned in 8115(b), conversations between employees and inmates/parolees should be limited and be kept to work related topics. 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 need to understand and be capable of controlling and/or ending a conversation when the topic turns personal. Employees must be aware and not answer personal questions or engage in personal topics when they are conversing about non-work related topics.

Communications between CALPIA employees and inmates/parolees are absolutely necessary to support CALPIA productivity goals. Defining the specific types of

conversations that are permissible is important for CALPIA employees and inmates/inmates to understand. Because CALPIA employees and inmates/parolees will be affected by these regulations, Section 8116 is designed to provide clarity which will guide them into permissible, regulated conversations.

This regulation is necessary to adopt and apply to all CALPIA employees because they work with persons under the jurisdiction of CDCR and also to create regulatory requirements that are similar to CDCR's.

**New Section 8116 is adopted** to clarify permissions for employees to have relations with their family members who are under the jurisdiction of CDCR. This section strictly pertains to an employee's family member only. For clarity reasons, this section does not permit an employee to have relations with anyone under the jurisdiction of CDCR if it's not the employee's family member. **Subdivision (a)** is adopted to clarify 'family member' as it pertains to Section 8116 and point to Section 8000, where the definition of 'family member' can be found. It is necessary to apply the definition of 'family member' to Section 8116 to ensure interpretations of Section 8116 remain consistent. **Subdivision (b)** is adopted to permit employees to engage in relationships with family members who are under the jurisdiction of CDCR when certain circumstances exist. Because CALPIA employees work around inmates and parolees but are not permitted to engage in familiarity with the inmates and parolees, Section 8116 is adopted to clarify the exception for employees' family members. It is also necessary to list specific criteria that an employee must follow if the employee wants to engage in a relationship with a family member who is under the jurisdiction of CDCR. An employee must understand that engaging with their family member who is under the jurisdiction may only take place when the employee is off-duty and away from the workplace. It would not be conducive or consistent with other regulations to allow employees to engage with their family members under the jurisdiction of CDCR while the employee is on duty; this behavior would create problems and claims of disparate treatment. Lastly, **subdivision (c)** is adopted to require an employee to disclose their relationship with their family member who is under the jurisdiction of CDCR. Subdivision (c) specifies how to make the

disclosure so the process is clear and not misleading. When an employee discloses a relationship with a family member under the jurisdiction of CDCR, the employee's supervisor will notify the General Manager, Warden, CDCR Director, and CDCR Assistant Secretary for security purposes. All persons notified will determine if the family member who is incarcerated should be moved to another institution for security reasons. Disclosure will help to eliminate undue circumstances such as coercion, blackmail, illegal threats, and vulnerable employees. These circumstances may arise if other inmates or parolees become aware of any person under the jurisdiction of CDCR that has a family member who works for CALPIA. The inmates or parolees that become aware of this fact may try to gain control over the employee or the employee's family member by making illegal threats and demanding the employee to smuggle in contraband. Disclosure of employees engaging in relationships with family members under the jurisdiction of CDCR is imperative for the safety and welfare of all CALPIA and CDCR staff and all inmates and parolees under the jurisdiction of CDCR. If an employee fails to make a disclosure, the General Manager, Warden, CDCR Director, and CDCR Assistant Secretary will be unable to protect and provide safety for everyone involved.

**New Section 8116.1 is adopted** to clarify when an employee is required to make a disclosure if the employee knows someone who is under the jurisdiction of CDCR. Subdivisions of this section will define and set parameters for specific types of persons known by an employee. Because CALPIA employees work closely with CDCR inmates or may know a CDCR parolee, it is necessary for employees to make disclosures, as described in this section, for security purposes. The disclosure will eliminate undue circumstances such as coercion, blackmail, illegal threats, and vulnerable employees. These undue circumstances may arise when inmates or parolee becomes aware that he or she knows a CALPIA employee. Once the awareness occurs, an inmate or parolee who knows the employee's personal information may use the personal information to make illegal demands or threats to gain control over the employee. Required disclosures will aid in eliminations of these situations. Disclosures will aid the General Manager, Warden, CDCR Director, and CDCR Assistant Secretary to

determine if an inmate should be moved to another institution or if a parolee's probation officer should be made aware. If an employee fails to make a disclosure, determinations to protect and provide safety for everyone involved will be impaired. Subdivision (a)(1) through (3) is adopted to define "any person known by an employee" as it is used in this section. This definition will set parameters and define what "any person known by an employee" is supposed to mean for the purposes of this section. This definition is necessary to eliminate erroneous interpretations. If 'any person known by the employee' is not defined, it could be misleading and interpreted to include too broad of a range of people that an employee may know. If 'any person known by an employee' does not meet the definitions of subdivision (a)(1) through (3), then a disclosure is not required. **Subdivision (b)** is adopted to require employees to make disclosures for security reasons. **Subdivision (c)** is adopted to clarify what an employee must do to complete his or her required disclosure. If clarification is not provided, an employee will not be aware or may become confused on how to make a disclosure. Adopting disclosure requirements will provide information and instruction to everyone who is affected by these regulations.

**New Section 8117 is adopted** to define prohibited and permitted transactions between CALPIA employees and CDCR inmates and parolees. Because CALPIA employees work closely with CDCR inmates or may know a CDCR parolee, it is necessary to regulate and define transactions that are permitted or not permitted for security purposes. This action is also necessary to create similar regulatory requirements as those imposed upon CDCR employees that regard employee transactions with inmates and parolees. California prisons have detailed regulations and local rules that define restricted tangible and intangible items for inmates. CALPIA employees must be aware of these restrictions and understand what is permitted to aid in maintaining safety for everyone under CDCR jurisdiction and CDCR/CALPIA employees. **Subdivision (a)** is adopted to clarify exceptions that allow employees to engage in transactions with inmates and parolees. These exceptions can be found in proposed sections 8116, 8119.1 and subdivision 8119(a) of Title 15 and subdivision (c) of this section. The exceptions permit an employee to engage in transactions with a person under the jurisdiction of CDCR if that person is a family member, is being hired to work for

CALPIA, or the transaction has been preapproved by the general manager of CALPIA. These exceptions are necessary for several reasons. Employees that have family members who are under the jurisdiction of CDCR are permitted to engage with family members as described in section 8116. Without the exception of section 8116, it would be impossible for employees to avoid transactions while engaging with family members who are under the jurisdiction of CDCR. For example, an employee may relay messages during visiting hours and might promise to give their family member an item upon release. Another example is a CDCR parolee, who is a family member, making an agreement to lend an employee an item or barter with the employee for many items. Section 8116 exception is necessary for the foreseeable interactions that are permitted between CALPIA employees and their family members if their family members are under the jurisdiction of CDCR. Without these exceptions, any type of interaction would lead to an unnecessary violation of this regulation. Another exception can be found in section 8119.1 which permits pre-approved business or financial transactions by the general manager between employees and persons previously incarcerated under the jurisdiction of CDCR. This exception is parallel to CALPIA's mission to reduce recidivism. Section 8119.1 provides the opportunity for business transactions for persons previously incarcerated which may reduce the chances of recidivism. Allowing CALPIA employees to engage in approved financial transactions with persons previously incarcerated under the jurisdiction of CDCR is important and necessary to increase the person's success outside of prison walls. CALPIA must lead by example and send a message to society by allowing its employees to engage in financial transactions that may further an ex-offender's chances for success. Another exception permitting an employee to engage in transactions with a person under the jurisdiction of CDCR can be found in subdivision 8119(a). With the general manager's written approval, this exception allows CALPIA employees to engage in transactions when offering employment at CALPIA to an ex-offender. Without the subdivision 8119(a) exception, any job offering or the interactions leading up to a job offer would lead to an unnecessary violation of this regulation. CALPIA must lead by example and send a message to society by allowing ex-offenders to apply for and be considered for employment at CALPIA. This opportunity may have an impact on the ex-offender's

chance at success. The last exception permitting an employee to engage in transactions with a person under the jurisdiction of CDCR is found subdivision (c) of this section. This exception is necessary to allow CALPIA employees to engage in transactions with a person under the jurisdiction of CDCR if it's within the scope and in the execution of the employee's assigned duties. Transactions between CALPIA employees and inmates or parolees are absolutely necessary to support CALPIA productivity goals. CALPIA's mission to provide productive work and skill development opportunities to offenders must be upheld with workplaces where inmates learn to engage in business transactions on the job. For example and for work related purposes, an inmate working in a warehouse will be required to receive and deliver authorized items. CALPIA employees will be relaying messages to inmates and vice versa. For example, an employee should be permitted to loan tools to inmates for work related purposes. It must also be possible for a CALPIA employee to relay messages to a CDCR parolee that inquires about a job opportunity. Section 8117(a) is necessary to make exceptions that will allow specific circumstances for CALPIA employees to conduct business, engage with family members, or provide opportunity to ex-offenders through transactions. **Subdivisions (a)(1)(2) and (3)** are adopted to clarify and prohibit transactions between CALPIA employees and CDCR inmates and parolees. When the exceptions of subdivision 8117(a) do not apply, CALPIA employees are prohibited from engaging in transactions with a person under the jurisdiction of CDCR. The transactions described in subdivisions (a)(1)(2) and (3) are prohibited to maintain safety and security for everyone who works around inmates or interacts with a parolees. It is imperative for CALPIA employees to be aware, to understand, and to follow regulations that are designed to protect and keep people safe. Engaging in prohibited transactions can lead to serious danger. For example, directly giving an unauthorized item such as a fork to an inmate could lead to a deadly situation if the fork is used as a weapon. Transmitting an unauthorized message from outside prison walls to an inmate inside prison walls could start a prison riot and a magnitude of dangerous situations that are too long to list. Employees must be prohibited from directly or indirectly trading, bartering, lending, giving, or promising to give tangible or intangible items to protect the entire prison and everyone working with and around inmates. Unauthorized trading,

bartering, lending, or giving anything to an inmate will lead to undue circumstances such as coercion, blackmail, illegal threats, and vulnerable employees. These circumstances may arise if an inmate engages in a known, prohibited transaction with an employee to gain control over the employee. For example, if an inmate convinces his or her CALPIA supervisor to give the inmate some chewing gum, the transaction gives the inmate an opportunity gain control over his or her CALPIA supervisor. The inmate can blackmail his or her supervisor by making threats to report the supervisor's prohibited transaction and showing the gum as proof. The blackmail may lead to demands on the supervisor to smuggle in contraband. To eliminate inmates from gaining control over employees or obtaining unauthorized items, this regulation is necessary to prevent transactions that can create these types of circumstances. **Subdivision (b)** is adopted to require employees to report any person, who is under the jurisdiction of CDCR or not, who attempts, requests, or tries to force prohibited transactions. The requirement for employees to report the attempt or coercion is necessary for safety and welfare purposes of all CALPIA and CDCR staff and all inmates and parolees under the jurisdiction of CDCR. For clarity purposes, subdivision (b) includes instructions for the employees to follow in the event they are required to report. This proposed regulation will provide clear and concise reporting rules that are required by CALPIA employees. If an employee fails to report any person, who is under the jurisdiction of CDCR or not, who attempts, requests, or tries to force prohibited transactions to his or her the supervisor, the Prison Industries Administrator, Manager, or Branch Manager, the protection and safety for anyone involved will be compromised. **Subdivision (c)** is adopted and necessary to allow CALPIA employees to engage in transactions with a person under the jurisdiction of CDCR if it's within the scope and in the execution of the employee's assigned duties. Transactions between CALPIA employees and inmates or parolees are absolutely necessary to support CALPIA productivity goals. CALPIA's mission to provide productive work and skill development opportunities to offenders must be upheld with workplaces where inmates learn to engage in business transactions on the job. For example and for work related purposes, an inmate working in a warehouse will be required to receive and deliver authorized items. CALPIA employees will be relaying messages to inmates and vice versa. An employee must be

permitted to promise a promotion to an inmate who is performing well on the job. It must also be possible for a CALPIA employee to relay messages to a CDCR parolee that inquires about a job opportunity.