

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2016-0728-02	REGULATORY ACTION NUMBER 2017-0426-035	EMERGENCY NUMBER
------------------	---	--	------------------

For use by Office of Administrative Law (OAL) only	
<p>NOTICE</p>	<p>REGULATIONS</p>

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUN 08 2017
3:15 PM

2017 APR 26 P 2:27
OFFICE OF
ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY California State Personnel Board	AGENCY FILE NUMBER (if any)
--	-----------------------------

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2016, 33-2	PUBLICATION DATE 8/12/2016

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Career Executive Assignment (CEA) Appeals	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
---	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT AMEND 52.4, 548.49, 548.136 REPEAL
TITLE(S) per agency request 6/8/2017	

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <u>Rulemaking with Certain Exemptions</u>	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
None

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)			

7. CONTACT PERSON Jeanne R. Wolfe	TELEPHONE NUMBER 916-651-0924	FAX NUMBER (Optional) 916-653-1280	E-MAIL ADDRESS (Optional) jeanne.wolfe@spb.ca.gov
--------------------------------------	----------------------------------	---------------------------------------	--

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 10/5/16
TYPED NAME AND TITLE OF SIGNATORY Suzanne M. Ambrose, Executive Officer	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 08 2017

Office of Administrative Law

FINAL TEXT

Text added to the Board's regulations is shown in underline.

Text deleted from the Board's regulations is shown in ~~strikethrough~~.

TITLE 2. ADMINISTRATION

Division 1. Administrative Personnel

Chapter 1. State Personnel Board

Subchapter 1.2 Hearings and Appeals

Article 2. Filing with ~~SPB~~ the Board

§ 52.4. Requirements and Method of Delivery for Filing Appeals and Complaints with the ~~SPB~~ Board.

Appeals filed with the ~~SPB~~ Board shall be subject to the following:

(a) All appeals and complaints shall be in writing.

(b) Except as otherwise provided in these Regulations, each appeal and complaint shall be filed with the Appeals Division and shall:

(1) Identify the name, address, and telephone number of the Appellant or Complainant;

(2) If different than the Appellant or Complainant, identify the name, address, and telephone number of the person filing the appeal or complaint, including the State Bar number if the person filing the appeal or complaint is an attorney;

(3) Except as provided in Government Code section 19575, state the facts that form the basis for appeal or complaint; and

(4) Identify all Respondents known to the Appellant or Complainant including, for individually-named Respondents, first and last name, job title, and business address.

(c) Unless the appeal or complaint names some other Respondent, the Appellant's or Complainant's appointing power shall be considered the only Respondent.

(d) The Appeals Division shall mail or serve a copy of the appeal or complaint to or on the Respondent(s).

(e) Time Limitations for Filing Appeals or Complaints with the ~~SPB~~ Board.

Except as otherwise provided in the act or these regulations, every appeal or complaint shall:

(1) be filed with the Appeals Division within the following time limits;

(A) Appeals from disciplinary action filed pursuant to the provisions of Government Code sections 19575, shall be filed within 30 days after the effective date of the notice of adverse action;

(B) Appeals from disciplinary action filed pursuant to the provisions of Education Code section 89539, subdivision (a), or Government Code section 19590, subdivision (c), shall be within 30 days of the employee's receipt of the notice of adverse action;

(C) Appeals from rejection during probationary period filed pursuant to the provisions of Government Code section 19175 shall be filed within 15 days of the effective date of the notice of rejection during probationary period;

(D) Appeals from non-punitive transfer, demotion or termination filed pursuant to the provisions of Government Code section 19585 shall be filed within 30 days after the effective date of the notice of non-punitive action;

(E) Appeals from medical transfer, demotion or termination filed pursuant to the provisions of Government Code section 19253.5, subdivision (f), shall be filed within 15 days of service of the notice of medical action;

(F) Appeals from a ~~Career Executive Assignment~~ CEA termination filed pursuant to the provisions of Government Code section 19889.2 shall be filed within 30 days of the employee's receipt of the notice of termination;

(G) Complaints of whistleblower retaliation filed pursuant to the provisions of Education Code section 87164 or Government Code sections 8547.8 and 19683, shall be filed within one year from the most recent act of reprisal complained about;

(H) Requests-to-File-Charges filed pursuant to the provisions of Government Code section 19583.5 shall be filed within one year of the event or events upon which the appeal is based;

(I) Appeals from constructive medical transfer, suspension, demotion, or termination shall be filed within 30 days of the employee being notified that he or she would not be permitted to resume the duties of their position;

(J) Appeals from the following types of cases shall be filed within 30 days of the effective date of the action:

- (i) Termination of appointment from the Limited Examination and Appointment Program (LEAP); and
- (ii) Termination or automatic resignation from a Permanent Intermittent appointment;

(K) Appeals from pre-employment medical disqualification, pre-employment psychological disqualification, and pre-employment drug test failure, shall be filed within 30 days of the date of service of the notice of disqualification;

(L) Appeals from improprieties in the civil service examination process, including the CEA examination process, shall be filed as follows:

- (i) Appeals from qualification appraisal interviews shall be filed within 30 days of the date that examination results are mailed to the Appellant;
- (ii) Appeals from written examinations shall be filed within 30 days of the date that examination results are mailed to the Appellant.
- (iii) Appeals from online examinations shall be filed within 30 days of the date that the examination results are available to the Appellant.

(M) Petitions to Set Aside Resignations pursuant to Education Code section 89542 shall be filed within 30 days after the last date upon which services to the state university or college are rendered, or the date the resignation is tendered, whichever is later;

(N) Appeals from Automatic Resignation for Absence Without Leave pursuant to Education Code section 89541 shall be filed within 90 days of the effective date of such separation. If the appointing authority has notified the employee of the automatic resignation, any request for reinstatement must be filed within 15 days of the service of notice of separation;

(O) Appeals from disciplinary action, rejection during probationary period, medical transfer or termination, automatic resignation, layoff, refusal to hire from a re-employment list, or grievance involving discrimination or political affiliation, filed pursuant to the provisions of Government Code section 19800 - 19810, pertaining to

Local Agencies, shall be filed in accordance with the provisions of Title 2, Division 5, Chapter 2, Article 8, Subarticle 1, section 17550.

(P) Appeals from Withhold from Certification and Voided Appointment shall be filed within 30 days of the date that the Notice of Withhold from Certification or Notice of Voided Appointment is mailed to the Appellant.

(Q) Back pay claims and requests for back pay hearings, as described in section 61, shall be filed within one year of the date of the board's decision giving rise to the back pay obligation.

(2) In all other cases, the appeal or complaint shall be filed within 30 days after the event upon which the appeal or complaint is based.

(3) Any Appellant or complainant seeking to file an appeal or complaint beyond the time limits in this section, must file a petition with the Chief ALJ or his or her designee demonstrating good cause as to why the appeal or complaint should be accepted. Upon good cause being shown, the Chief ALJ or his or her designee may allow an appeal or complaint, except as otherwise limited by statute, to be filed within 30 days after the end of the period in which the appeal or complaint should have been filed.

(f) Methods of Delivery for Filing Appeals or Complaints with the SPB Board.

(1) Appeals or complaints delivered by electronic mail (e-mail), will be filed on the date received by SPB the Board.

(2) Appeals or complaints delivered by the U.S. Postal Service are filed on the date received by the SPB the Board. An Appellant or Complainant may obtain proof of the filing of the appeal or complaint by submitting either an extra copy of the appeal or complaint or the first page only, with a self-addressed, return envelope, postage prepaid. The Appeals Division shall return the copy marked with the date of filing.

(3) Appeals or complaints hand delivered to the SPB Board during regular business hours will be filed on the date received by the SPB Board after the filing party has complied with applicable statutory and regulatory filing requirements.

Note: Authority cited: Sections 18502 and 18701, Government Code. Reference: Sections 18675 and 19630, and 19889.2, Government Code.

§ 548.49. Appeals from CEA Examinations or Appointment

(a) Appeals from CEA examinations shall be filed in accordance with subchapter 1.2, article 2, section 52.4, subdivision (e)(1)(L) of the these regulations. The appeal may be based upon allegations of improprieties in the examination process, including but not limited to, fraud, illegal discrimination, or other improper acts or circumstances.

(b) If the Board grants the appeal, the Board may order remedies including, but not limited to, voiding the examination, abolishing the eligibility list, and voiding any appointments made therefrom.

~~Within 30 days after the report of appointment to a Career Executive Assignment position is submitted to the executive officer, and employee who is otherwise eligible for appointment to the C.E.A. category may appeal to the State Personnel Board upon the grounds of irregularity, fraud or discrimination in the conduct of the examination.~~

~~If, upon review of the record of the examination, the board grants the appeal by finding fraud or discrimination, it may cancel the examination and appointment and require the appointing power to repeat the competition for the position with specific instructions that will avoid such fraud or discrimination in subsequent competition; it may order whatever corrective action it finds best provides an appropriate remedy.~~

~~If an appellant alleges irregularity in the conduct of the examination, the board may cancel the appointment and/or order a new examination only if the board finds the irregularity materially affected the appointment made as a result of the examination.~~

~~Appeals based on a challenge of the qualifications of the person appointment made as a result of an examination shall be heard only upon the grounds that such person is not well qualified and/or was not carefully selected.~~

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19889, 19889.2 and 19889.3, Government Code.

§ 548.136. Appeal from Termination.

~~Within 30 days after receipt of notice of termination of a career executive assignment,~~
Appeals from the termination of a career executive assignment pursuant to Government Code section 19889.2 shall be filed in accordance with subchapter 1.2, article 2, section 52.4, subdivision (e)(1)(F) of the these regulations. † The affected employee may appeal to the State Personnel Board upon the grounds that the termination was effected for

~~reasons of age, sex, sexual preference as prohibited by Governor's Executive Order B-54-79 (4/4/79), marital status, race, color, national origin, ancestry, disability as defined in Government Code Section 19231(a)(1), religion, or religious opinions and affiliations, political affiliation, or political opinions based on illegal discrimination or retaliation, as prohibited in Government Code section 12940, subdivisions (a) and (h), or for reasons prohibited in Chapter 10, Part 2 (commencing with section 19680) of the Government Code. After hearing the appeal, the b Board may affirm the action of the appointing power, or restore the affected employee to the career executive assignment.~~

Note: Authority: Sections 18701 and 19889.2, Government Code. Reference: Sections 19231, 19700, 19701, 19702, 19702.1, 19702.2, 19703, and 19889.2, Government Code; Gay Law Students Association v. Pacific Telephone and Telegraph Company (1979) 24 Cal.3d 458, 156 Cal.Rptr. 14, 595 P.2d 592.