



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION**

Compliance Review Unit  
State Personnel Board  
March 17, 2016

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## INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to CAL FIREs through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's) and mandated training to ensure compliance with civil service laws and board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews. The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

## EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of California Department of Forestry and Fire Protection (CAL FIRE) personnel practices in the areas of examinations, EEO, PSC's, and mandated training from December 1, 2014, through May 31, 2015, and Appointments from August 1, 2014, through May 31, 2015. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time	Serious

Area	Finding	Severity
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed	Serious
Appointments	Applications Were Not Date Stamped	Non-serious or Technical
Appointments	Certifications Were Not Documented Electronically	Observation
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance
Mandated Training	Mandated Training Complied with Statutory Requirements	In Compliance

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance
- Gray = Observation

### **BACKGROUND**

The CAL FIRE is an emergency response and resource protection department. The CAL FIRE protects lives, property, and natural resources from fire; responds to emergencies of all types; and protects, preserves, and enhances timberlands, wildlands, and urban forests.

The CAL FIRE responds to more than 5,600 wildland fires that burn over 172,000 acres each year. In addition, department personnel answer the call more than 300,000 times per year for other emergencies including structure fires, automobile accidents, medical aids, swift water rescues, civil disturbances, search and rescues, hazardous material spills, train wrecks, floods, and earthquakes.

California is rich in natural resources. Of the 85 million acres classified as wildlands, nearly 17 million are commercial forestland, half privately owned and half government owned. This timbered forestland grows 3.8 billion board feet annually. Approximately two billion board feet of timber is harvested per year, with a value of over one billion

dollars. In addition to timber, the state's wildlands also provide valuable watershed, range, wildlife habitat, and recreation resources.

Maintaining the sustainability of all these natural resources and continuing to protect the people and land of California is the goal of the CAL FIRE. The department achieves this goal by administering state and federal forestry assistance programs for landowners; demonstrating sound management practices on eight demonstration state forests; enforcing the California Forest Practice Act on all non-federal timberlands; providing research and educational outreach to the public on forest pests such as Sudden Oak Death; growing seedlings for reforestation efforts; and other important needs such as reducing the effects of global warming and coordinating efforts for fuel reduction to reduce the risk of fire and improve the quality of California ecosystems.

The CAL FIRE's mission emphasizes the management and protection of California's natural resources.

### **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing CAL FIRE examinations, EEO program, PSC's, and mandated training from December 1, 2014, through May 31, 2015, and Appointments from August 1, 2014, through May 31, 2015. The primary objective of the review was to determine if CAL FIRE personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

A cross-section of CAL FIRE examinations and appointments were selected for review to ensure that samples of various examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CAL FIRE provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action forms (NOPA), vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the CAL FIRE EEO program included examining written EEO policies and procedures; the EEO officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC). The CRU also interviewed appropriate CAL FIRE staff.

The CAL FIRE's PSC's were also reviewed.<sup>1</sup> It was beyond the scope of the compliance review to make conclusions as to whether CAL FIRE justifications for the contracts were legally sufficient. The review was limited to whether CAL FIRE practices, policies, and procedures relative to PSC's complied with procedural requirements.

In addition, the CAL FIRE's mandated training was reviewed to ensure all employees required to file statements of economic interest were provided ethics training and that all supervisors were provided supervisory and sexual harassment training within statutory timelines.

On February 22, 2016, an exit conference was held with the CAL FIRE to explain and discuss the CRU's initial findings and recommendations. The CAL FIRE was given until March 7, 2016, to submit a written response to the CRU's draft report. On March 7, 2016, the CRU received and carefully reviewed the response, which is attached to this final compliance report.

## **FINDINGS AND RECOMMENDATIONS**

### **Examinations**

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application in the office of the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each

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<sup>1</sup> If an employee organization requests the SPB to review any SPB personal services contract during the compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the CAL FIRE conducted 12 examinations. The CRU reviewed eight of the examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Arson & Bomb Investigator	Open	Qualification Appraisal Panel (QAP) <sup>2</sup>	Continuous	32
Chief of Bioenergy Greenhouse Gas, and Climate Change Adaption	Career Executive Assignment (CEA)	Statement of Qualifications (SOQ) <sup>3</sup>	12/10/2014	3
Deputy Director, Fire Protection	CEA	SOQ	12/2/2014	1
Deputy State Fire Marshal	Open	QAP	4/10/2015	72
Deputy State Fire Marshall III (Specialist)	Open	QAP	Continuous	15
Deputy State Fire Marshall III (Supervisor)	Department Promotional	QAP	2/2/2015	9
Fire Prevention Specialist I	Open	QAP	12/30/2014	163
Fire Prevention Specialist II	Open	QAP	12/30/2014	69

<sup>2</sup> The qualification appraisal panel (QAP) interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

<sup>3</sup> In a statement of qualifications (SOQ's) examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

**FINDING NO. 1 – Examinations Complied with Civil Service Laws and Board Rules**

The CAL FIRE administered five open examinations, one departmental promotional examination, and two CEA examinations, to create eligible lists from which to make appointments. For all of the examinations, the CAL FIRE published and distributed examination bulletins containing the required information. Applications received by the CAL FIRE were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications (MQ's) for admittance to the examination. The CAL FIRE notified applicants as to whether they qualified to take the examination, and those applicants who met the MQ's were also notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. Competitors were then notified of their final scores.

The CRU found no deficiencies in the examinations that the CAL FIRE conducted during the compliance review period. Accordingly, the CAL FIRE fulfilled its responsibilities to administer those examinations in compliance with civil service laws and board rules.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Except as provided by law, appointments to vacant positions shall be made from employment lists. (*Ibid.*) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the CAL FIRE made 1,499 appointments. The CRU reviewed 92 of those appointments, which are listed below:



Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Accountant I (Specialist)	Certification List	Permanent	Full Time	1
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	1
Accounting Technician	Certification List	Permanent	Full Time	3
Assistant Chief	Certification List	Permanent	Full Time	10
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	2
Battalion Chief	Certification List	Permanent	Full Time	3
Fire Apparatus Engineer	Certification List	Limited Term	Full Time	8
Fire Apparatus Engineer	Certification List	Permanent	Full Time	2
Fire Captain	Certification List	Limited Term	Full Time	6
Fire Captain	Certification List	Permanent	Full Time	2
Fire Fighter II (Paramedic)	Certification List	Limited Term	Full Time	8
Forester (Non-Supervisory)	Certification List	Permanent	Full Time	1
Forester II (Supervisory)	Certification List	Limited Term	Full Time	1
Forester II (Supervisory)	Certification List	Permanent	Full Time	1
Forestry Fire Pilot	Certification List	Permanent	Full Time	1
Forestry and Fire Protection Administrator	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Limited Term	Intermittent	1
Office Technician (Typing)	Certification List	Permanent	Intermittent	1
Staff Services Manager I	Certification List	Permanent	Full Time	2
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	1
Fire Apparatus Engineer	Demotion	Permanent	Full Time	4
Assistant Chief	Mandatory Reinstatement	Permanent	Full Time	1
Fire Captain (Paramedic)	Mandatory Reinstatement	Permanent	Full Time	1
Fire Fighter II (Paramedic)	Mandatory Reinstatement	Permanent	Full Time	1
Fire Captain (Paramedic)	Permissive Reinstatement	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Fire Fighter I	Permissive Reinstatement	Limited Term	Full Time	1
Forester II (Supervisory)	Permissive Reinstatement	Permanent	Full Time	1
Assistant Chief	Retired Annuitant	Temporary	Intermittent	1
Battalion Chief	Retired Annuitant	Temporary	Intermittent	2
CEA	Retired Annuitant	Temporary	Intermittent	1
Forester III	Retired Annuitant	Temporary	Intermittent	1
Fire Fighter I	Temporary Authorization Utilization (TAU)	Temporary	Full Time	2
Skilled Trades Journeyman (Carpenter)	TAU	Temporary	Full Time	1
Skilled Trades Journeyman (Mason)	TAU	Temporary	Full Time	1
Assistant Chief	Transfer	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	2
Battalion Chief	Transfer	Permanent	Full Time	1
Deputy State Fire Marshal III (Specialist)	Transfer	Permanent	Full Time	1
Fire Captain	Transfer	Limited Term	Full Time	4
Fire Captain	Transfer	Permanent	Full Time	2
Fire Captain (Paramedic)	Transfer	Permanent	Full Time	1
Forester II (Supervisory)	Transfer	Permanent	Full Time	1
Forestry Fire Pilot	Transfer	Permanent	Full Time	1
Heavy Fire Equipment Operator	Transfer	Permanent	Full Time	1
Materials and Stores Specialist	Transfer	Permanent	Full Time	1
Deputy State Fire Marshall	Voluntary Demotion	Permanent	Full Time	1

**FINDING NO. 2 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications**

**Summary:** The CAL FIRE did not separate 275 EEO questionnaires from 1,692 STD. 678 employment applications.

**Criteria:** Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by the California Department of Human Resources (CalHR) to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD. 678) states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."

**Severity:** Very Serious. The applicants' protected classes were visible, subjecting the agency to potential liability.

**Cause:** For the period being reviewed for this compliance review, the CAL FIRE did not have a centralized process for receiving applications from candidates. Applications for vacant positions were submitted to the hiring manager in some instances, and to personnel staff in others. With this decentralized process, although direction was given to hiring supervisors to remove these questionnaires, there were applications where the questionnaire was not separated.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CAL FIRE submit to the CRU a written corrective action plan that the department will implement to ensure conformity with in the future

that EEO questionnaires are separated from all applications. Copies of any relevant documentation should be included with the plan.

**FINDING NO. 3 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time**

**Summary:** Out of the 92 appointments reviewed, the CAL FIRE did not keep 26 NOPAs.

**Criteria:** In relevant part, civil service laws require that the employment procedures of each state department shall conform to the federal and state laws governing employment practices. (Gov. Code, § 18720.) State departments are required to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received. (Gov. Code, § 12946.) State departments are also required to retain personnel

**Severity:** Very Serious. Without documentation, the CRU could not verify if the appointments were legal.

**Cause:** Appointment documentation relating to the authorization to hire was retained. When a civil service employee is initially appointed to a limited term appointment, a NOPA is generated for the employee to sign acknowledging pertinent appointment information. When these NOPA's are generated, the assigned Personnel Specialist will route or mail the document to the employee with a request that it be returned signed. The Personnel Specialist is required to follow-up with the employee within a reasonable amount of time for documentation not received back from the employee. In the 26 cases mentioned, these documents were never returned from the employee.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CAL FIRE submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the record retention requirements of Government Code section

12946. Copies of any relevant documentation should be included with the plan.

**FINDING NO. 4 – Probationary Evaluations Were Not Provided for all Appointments Reviewed**

**Summary:** The CAL FIRE did not prepare, complete, and/or retain 16 required probationary reports of performance.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Accountant I (Specialist)	Certification List	1	1
Accounting Technician	Certification List	1	1
Assistant Chief	Certification List	6	6
Associate Governmental Program Analyst	Certification List	2	4
Fire Apparatus Engineer (Paramedic)	Certification List	1	1
Forester II (Supervisory)	Certification List	1	1
Staff Services Manager II (Supervisory)	Certification List	1	2
<b>Total</b>		<b>13</b>	<b>16</b>

**Criteria:** A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary period is required when an employee is appointed to a position under the following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently

frequent intervals to keep the employee adequately informed of progress on the job. (Gov. Code, § 19172; Cal. Code Regs., tit. 2, § 599.795.) The appointing power must prepare a written appraisal of performance each one-third of the probationary period. (Cal. Code Regs., tit. 2, § 599.795.)

**Severity:** Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

**Cause:** When an employee is serving a probationary period, the assigned Personnel Specialist communicates the length of the probationary period as well as the dates reports are due to the supervisor for the employee. Although the dates are provided, it is incumbent upon the supervisor to not only provide the reports on a timely basis to the employees, but also to ensure the original signed report is forwarded to the Personnel Specialist for placement into the employees Official Personnel File.

In this case, the reports were never forwarded to the Personnel Specialist from the supervisor and copies were unable to be provided for review at that time of the compliance review.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CAL FIRE submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the probationary requirements of Government Code section 19172.

**FINDING NO. 5 – Applications Were Not Date Stamped**

**Summary:** The CAL FIRE accepted and processed 853 out of 1,692 applications that were not date stamped.

**Criteria:** California Code Regulations, title 2, section 174 (Rule 174) requires timely filing of applications: All applications must be filed at the place, within the time, in the manner, and on the form specified in the examination announcement.

Filing an application 'within the time' shall mean postmarked by the postal service or date stamped at one of the department's offices (or appropriate office of the agency administering the examination) by the date specified.

An application that is not postmarked or date stamped by the specified date shall be accepted, if one of the following conditions as detailed in Rule 174 apply: (1) the application was delayed due to verified error; (2) the application was submitted in error to the wrong state agency and is either postmarked or date stamped on or before the specified date; (3) the employing agency verifies examination announcement distribution problems that prevented timely notification to an employee of a promotional examination; or (4) the employing agency verifies that the applicant failed to receive timely notice of promotional examination. (Cal. Code Reg., tit. 2, § 174, subs. (a), (b), (c), & (d).) The same final filing date procedures are applied to the selection process used to fill a job vacancy.

**Severity:** Non-Serious or Technical. Final filing dates are established to ensure all applicants are given the same amount of time in which to apply for a job vacancy and to set a deadline for the recruitment. Therefore, although the acceptance of applications after the final filing date may give some applicants more time to prepare their application than other applicants who meet the final filing date, the acceptance of late applications will not impact the results of the job vacancy selection.

**Cause:** Similar to the response for Finding No. 2 above, for the period being reviewed for this compliance review, the CAL FIRE did not have a centralized process for receiving applications from candidates. Applications for vacant positions were submitted to the hiring manager in some instances, and to personnel staff in others. With this decentralized process, although direction was given to hiring supervisors that all applications must be date stamped, with a

bifurcated application process, personnel was not able to ensure that all applications were stamped upon receipt.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CAL FIRE submit to the CRU a written corrective action plan that the department will implement to ensure conformity with Rule 174. Copies of any relevant documentation should be included with the plan.

#### **OBSERVATION NO. 1– Certifications Were Not Documented Electronically**

For 36 out of 56 certification list appointments, the CAL FIRE used Certification List Working Reports (CLWR) to code appointments in place of the actual certification lists within the Examination and Certification Online System (ECOS). Since the implementation of ECOS in January 2014, a certification is ordered electronically to certify eligibility of a candidate, and the hire is documented on the electronic certification. (2 CCR § 2). The CLWR is a report within ECOS that acts as a snapshot of a point in time of the status of the certification; however, it is not the official certification. The header on every page of the CLWR states: "CAUTION – DO NOT MAKE APPOINTMENTS OR COMMITMENTS FROM THIS REPORT." This is to prevent agencies from coding the hires on the paper reports, and to instruct agencies to process hires on the electronic certifications.

By failing to document the certification electronically, the CAL FIRE is unable to retain the historical data of their appointments in the central selection database. Although CAL FIRE retained some records outside of the system to document their hiring practices, they did not consistently maintain all required records. We encourage the CAL FIRE to work with the CalHR in order to fully utilize the ECOS system to ensure transparency and to take advantage of the system's automated functionality.

#### Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the CalHR by providing access to all required files, documents and data.



(*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO officer, who shall report directly to, and be under the supervision of, the director of the CAL FIRE to develop, implement, coordinate, and monitor the CAL FIRE's EEO program. (Gov. Code, § 19795.)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed the CAL FIRE's EEO program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate CAL FIRE staff.

**FINDING NO. 6 – Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules**

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the DOF EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the director of the CAL FIRE. In addition, the CAL FIRE has an established Disability Advisory Committee (DAC) that reports to the director on issues affecting persons with a disability. The CAL FIRE also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with a disability, and to offer upward mobility opportunities for its entry-level staff.

## Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the State. (Cal. Code Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the compliance review period, the CAL FIRE had five PSC's that were in effect and subject to General Services (DGS) approval. The CRU reviewed four of these, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
DynCorp International, LLC	Aircraft Services-Pilots and Mechanics	1/01/2015-12/01/2015	\$27,822,694.00	Yes
Lester E. Hendrickson, PhD	Expert Witness Services	4/01/2015-3/01/2017	\$90,000.00	Yes
WMK Sacramento LLC	Incident Management Team (IMT) Meeting	4/01/2015-5/01/2015	\$104,809.31	Yes
Wreckmaster, Inc.	Heavy Equipment Off-Road Recovery Training	5/01/2015-4/01/2018	\$117,600.00	Yes

**FINDING NO. 7 – Personal Services Contracts Complied with Procedural Requirements**

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes specific and detailed factual information that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The total dollar amount of all the PSC's reviewed was \$3,578,768.91. It was beyond the scope of the review to make conclusions as to whether the CAL FIRE's justifications for the contract were legally sufficient. For all PSC's reviewed, the CAL FIRE provided specific and detailed factual information in the written justifications as to how each of the four contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the CAL FIRE PSC's complied with civil service laws and board rules.

Mandated Training

Each state agency shall offer at least semiannually to each of its filers an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, § 11146.1)

Each department must provide its new supervisors supervisory training within 12 months of appointment. (Gov. Code, § 19995.4, subds. (b) and (c).) The training must be a minimum of 80 hours, 40 of which must be structured and given by a qualified instructor. The other 40 hours may be done on the job by a higher-level supervisor or manager. (Gov. Code, § 19995.4, subd. (b).)

Additionally, each department must provide its supervisors two hours of sexual harassment training every two years. New supervisors must be provided supervisory training within six months of appointment. (Gov. Code, § 12950.1 subd. (a).)

The CRU reviewed the CAL FIRE mandated training program that was in effect during the compliance review period. The CAL FIRE's supervisory training, ethics training, and sexual harassment training were found to be in compliance.

## **FINDING NO. 8 – Mandated Training Complied with Statutory Requirements**

The CAL FIRE provided ethics training to its 68 new filers within 6 months of appointment and provided semiannual ethics training to its 482 filers during the 2-year calendar year period commencing in 2013. The CAL FIRE also provided supervisory training to 60 new supervisors within 12 months of appointment. In addition, the CAL FIRE provided sexual harassment prevention training to its 98 new supervisors within six months of appointment and semiannual training to its 1,051 existing supervisors. Thus, the CAL FIRE complied with mandated training requirements within statutory timelines.

### **DEPARTMENTAL RESPONSE**

This response serves to delineate the corrections CAL FIRE has taken to improve practices related to compliance review items. It is a living document with central goals focused on reevaluating past practices and procedures and ensuring reduced future adverse findings during compliance review.

In an effort to ensure consistent practices related to recruitment, application receipt, hiring, and appointment processing, the department created a new unit within the Labor and Human Resource Management Office, (LHRM) called the Hiring Review Unit (HRU), which was implemented in September 2015. Many of the items mentioned in this compliance review as missing or deficient are tracked by the HRU since its implementation, although this implementation happened outside the review period for most of these items.

Prior to the implementation of the HRU, interested applicants from an employment certification list were required to submit their applications to the LHRM directly, while all other potential candidates were required to submit their applications to the hiring supervisor. By having applications going to two separate locations it was difficult for the LHRM to ensure that all EEO Questionnaires were removed and that all applications were being date stamped, despite direction being provided to hiring managers and supervisors.

Since HRU implementation, in conjunction with the release of the new Exam Certification Online System (ECOS), all applications are submitted by candidates to one location in HRU for vacancies within Sacramento Headquarters Units, or directly to a Hiring Coordinator that works closely with HRU for field unit vacancies. These individuals are responsible for each aspect of the hiring including posting the advertisement, ordering certification lists, receiving all applications, clearing of selected

candidates, electronic certification clearance, and hiring approval notifications. This ensures that all applications are received under the review of the LHRM and will ensure that EEO questionnaires are removed as appropriate and that all applications are date stamped.

In addition to the above, LHRM released Personnel Services Memorandum (PSM) 2016-001 on January 26, 2016, which reiterated the requirements of PSM 2014-003 relating to specific instructions and guidelines, in accordance with SPB's appointment and recruitment documentation requirements, for hiring supervisors and managers to follow when creating a Hiring Retention folder. Specifically, this memo indicated that all hires must be documented with supporting documents retained in the Hiring Retention folder "for a period of time no less than five years, pursuant to GC 12946."

During this review it was found that several employees had a missing NOPA for their appointments. CAL FIRE generated copies of these missing NOPA's and has since provided them to the affected employees with direction to sign and return them to their assigned Personnel Specialist for placement into their Official Personnel File (OPF). CAL FIRE is dedicated to ensuring that all documentation related to hiring is retained as appropriate. PSM 2016-002 is currently being drafted to provide additional guidance and instruction to Personnel Specialist staff reminding of the requirement to follow-up with employees to ensure receipt of a signed NOPA. A signed NOPA is not just documentation of the appointment and acknowledgement of important information by the employee, it also serves to notify an employee of their salary rate, address on file by the department, important bargaining unit information, and other information the employee is entitled to concerning their employment history.

CAL FIRE also acknowledges a need to ensure employees are receiving timely feedback on their performance. Prior to the current compliance review, CAL FIRE began development of an automatic tracking system that will be responsible for notifying supervisors of upcoming performance evaluations due dates. This new electronic notification system will notify the supervisor via email at timed intervals of 30 days prior to the due date, again at 15 days, and again at 7 days. Should a supervisor not timely complete a report and provide it to the LHRM for placement into the employees OPF, notification will be made utilizing chain of command. In addition to ensuring compliance with laws, rules, and regulations related to performance reporting, this ensures employees are receiving feedback related to their performance during the probationary period. It is anticipated this electronic tracking and reporting system will complete user acceptance testing and be released in May 2016.

CAL FIRE appreciates that assistance and guidance offered during your review, and continues to work towards ensuring consistent application of laws, rules, and regulations in regard to personnel practices.

### **SPB REPLY**

Based upon the CAL FIRE's written response, the CAL FIRE will comply with the CRU recommendations and findings and provide the CRU a corrective action plan.

It is further recommended that the CAL FIRE comply with the afore-stated recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.