



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION**

Compliance Review Unit  
State Personnel Board  
August 30, 2018

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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 departments 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 authorities' 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 comply with merit related laws, rules, and policies and to identify and share best practices identified during the reviews.

Effective July 1, 2012, the Governor's Reorganization Plan Number One (GRP1) of 2011 consolidated all of the functions of the Department of Personnel Administration and the merit-related operational functions of the State Personnel Board (SPB) into the California Department of Human Resources (CalHR).

Pursuant to Government Code section 18502(c), CalHR and SPB may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." CalHR and SPB, by mutual agreement, expanded the scope of program areas to be audited to include more operational practices that have been delegated to departments and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a consistent, statewide basis.

As such, SPB also conducts compliance reviews of appointing authorities' personnel practices to ensure that state departments are appropriately managing the following non-merit-related personnel functions: compensation and pay, leave, and policy and processes. These reviews will help to avoid and prevent potential costly litigation related to improper personnel practices and deter waste, fraud, and abuse.

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 the California Department of Pesticide regulation (CDPR) personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>1</sup>. The following table summarizes the compliance review findings.

Area	Finding
Examinations	Examinations Complied with Civil Service Laws and Board Rules
Appointments	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules
Personal Services Contracts	Union Was Not Notified in a Timely Manner
Mandated Training	Mandated Training Complied With Statutory Requirements
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Arduous Pay Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Administrative Time Off (ATO) Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Actual Time Worked (ATW) Employee Exceeded Nine Months in a Twelve Consecutive Month Period
Leave	Errors in Leave Balances and/or Timekeeping Records

<sup>1</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

Area	Finding
Leave	Leave Reduction Plans Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Policy	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Performance Appraisals Were Not Provided to All Employees

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

## **BACKGROUND**

The CDPR's mission is to protect human health and the environment by regulating pesticide sales and use, and by fostering reduced-risk pest management. The CDPR employs approximately 400 employees within the headquarters complex, Northern Regional, Central Regional, and Southern Regional offices. These employees consist of Environmental Program Managers, Environmental Scientists, Research Scientists, Toxicologists, Administrative and Information Technology staff, and Attorneys. The CDPR provides oversight of the local pesticide enforcement programs of all 55 county agricultural commissioners and their combined staff of approximately 280 biologists.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the CDPR's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>2</sup> when applicable. The primary objective of the review was to determine if CDPR personnel practices, policies, and procedures complied with state civil service laws and board regulations, bargaining unit agreements, CalHR policies and

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<sup>2</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

guidelines, CalHR delegation agreements, and to recommend corrective action where deficiencies were identified.

A cross-section of the CDPR's examinations were selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the CDPR provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CDPR did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the CDPR's appointments were selected to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CDPR provided, which generally included notice of personnel action (NOPA) forms, request for personnel actions (RPA's), vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The CDPR did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the CDPR did not make any additional appointments during the compliance review period.

The CDPR's appointments were also selected for review to ensure the CDPR applied salary regulations accurately and correctly processed employee's compensation and pay. The CRU examined the documentation that the CDPR provided, which included employee's employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay: bilingual pay, and arduous pay. During the compliance review period, the CDPR did not issue or authorize hiring above minimum (HAM) requests, red circle rates, out of class pay, or any other monthly pay differential.

The review of the CDPR's 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 CDPR's PSC's were also reviewed.<sup>3</sup> It was beyond the scope of the compliance review to make conclusions as to whether the CDPR justifications for the contracts were legally sufficient. The review was limited to whether the CDPR's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The CDPR's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors and managers were provided supervisory and sexual harassment prevention training within statutory timelines.

The CRU also identified the CDPR employees whose current annual leave, or vacation leave credits, exceeded established limits. The CRU reviewed a cross-section of these identified employees to ensure that employees who have significant "over-the-cap" leave balances have a leave reduction plan in place and are actively reducing hours. Additionally, the CRU asked the CDPR to provide a copy of their leave reduction policy.

The CRU reviewed the CDPR's Leave Activity and Correction certification forms to verify that the CDPR created a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely. The CRU selected a small cross-section of the CDPR's units in order to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of the CDPR's employee's employment and pay history, state service records, and leave accrual histories to ensure employees with non-qualifying pay periods did not receive vacation/sick leave and/or annual leave accruals or state service credit. Additionally, the CRU reviewed a selection of CDPR employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered.

Moreover, the CRU reviewed the CDPR's policies and processes concerning nepotism, workers' compensation, and performance appraisals when applicable. The review was limited to whether the CDPR's policies and processes adhered to procedural requirements.

On July 17, 2018, an exit conference was held with the CDPR to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed

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<sup>3</sup>If an employee organization requests the SPB to review any personal services contract during the SPB 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.

the CDPR's written response on August 9, 2018, which is attached to this final compliance review 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 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, February 1, 2017, through October 31, 2017, the CDPR conducted two examinations. The CRU reviewed the examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA) B, Assistant Director for the Pesticide Programs Division	Open	Supplemental	10/16/2017	6

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Senior Toxicologist	Departmental Promotional	Qualification Appraisal Panel <sup>4</sup>	8/7/2017	5

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

The CRU reviewed one open and one departmental promotional examination which the CDPR administered in order to create eligible lists from which to make appointments. The CDPR published and distributed examination bulletins containing the required information for all examinations. Applications received by the CDPR were accepted prior to the final filing date. Applicants were 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. The CRU found no deficiencies in the examinations that the CDPR conducted during the compliance review period.

**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.) 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 period under review, February 1, 2017, through October 31, 2017, the CDPR made 52 appointments. The CRU reviewed 26 of those appointments, which are listed below:

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<sup>4</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.

Classification	Appointment Type	Tenure	Time Base	No. of Appts
Accountant I (Specialist)	Certification List	Permanent	Full Time	1
Associate Governmental program Analyst	Certification List	Permanent	Full Time	1
Associate Information System Analyst (Specialist)	Certification List	Permanent	Full Time	1
Associate Programmer Analyst (Specialist)	Certification List	Permanent	Full Time	1
Associate toxicologist	Certification List	Permanent	Full Time	1
Environmental Program Manager I (Supervisory)	Certification List	Permanent	Full Time	1
Environmental Scientist	Certification List	Permanent	Full Time	4
Personnel Specialist	Certification List	Permanent	Full Time	1
Research Scientist II Epidemiology/Biostatistics	Certification List	Permanent	Full Time	1
Senior Environmental Scientist (Specialist)	Certification List	Permanent	Full Time	1
Senior Environmental Scientist (Supervisory)	Certification List	Permanent	Full Time	1
Senior Information Systems Analyst (Supervisor)	Certification List	Permanent	Full Time	1
Staff Information Systems (Analyst)	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	2
Staff Services Manager II (Supervisor)	Certification List	Permanent	Full Time	1
System Software Specialist III (Technical)	Certification List	Permanent	Full Time	1
Personnel Specialist	Transfer	Permanent	Full Time	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	2
Accounting Technician	Mandatory Reinstatement	Permanent	Full Time	1
Business Service Assistant (Specialist)	Mandatory Reinstatement	Permanent	Full Time	1
Environmental Scientist	Mandatory Reinstatement	Permanent	Full Time	1

## **FINDING NO. 2 – Appointments Complied with Civil Service Laws and Board Rules**

The CDPR measured each applicant's ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the 20 list appointments reviewed, the CDPR ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

The CDPR made three appointment via mandatory reinstatement. A state agency is required to reinstate an employee to his or her former position if the employee is (1) terminated from a temporary or limited-term appointment by either the employee or the appointing power; (2) rejected during probation; or (3) demoted from a managerial position. (Gov. Code, § 19140.5.) The following conditions, however, must apply: the employee accepted the appointment without a break in continuity of service and the reinstatement is requested within ten working days after the effective date of the termination. (*Ibid.*) The CDPR complied with the rules and laws governing mandatory reinstatements.

The CRU reviewed three CDPR appointments made via transfer. A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer. (Cal. Code Regs., tit. 2, § 425.) The CDPR verified the eligibility of each candidate to their appointed class.

The CRU found no deficiencies in the appointments that the CDPR initiated during the compliance review period. Accordingly, the CRU found that the CDPR's appointments processes and procedures utilized during the compliance review period satisfied civil service laws and board rules.

### **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 EEO; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal

upward mobility and promotional opportunities; and cooperate with the California Department of Human Resources 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 department to develop, implement, coordinate, and monitor the department'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).)

**FINDING NO. 3 – Equal Employment Opportunity Program Complied with Civil Service Laws and Board Regulations**

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 CDPR's 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 CDPR. In addition, the CDPR has an established DAC which reports to the Director on issues affecting persons with disabilities. The CDPR also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with disabilities, and to offer upward mobility opportunities for its entry-level staff. Accordingly, the CDPR EEO program complied with civil service laws and board rules.

**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 Regs., 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 period under review, February 1, 2017, through March 31, 2018, the CDPR had 100 PSC’s and seven amendments that were in effect. The CRU reviewed 20 of those contracts and two amendments.

**FINDING NO. 4 – Union Was Not Notified In a Timely Manner**

**Summary:** The CDPR did not notify the unions prior to entering into 13 of 22 PSC’s. It is the law that departments notify all applicable unions prior to executing any PSC’s.

Vendor	Services	Contract Dates	Contract Amount	Union Notified
Avantpage	Written Translation Services	10/11/17-6/30/19	\$50,000.00	No
Bank of America	Monthly Banking Services	7/1/17-6/30/18	\$3,000.00	No
Calico	Mobile App Development (NCB)	3/1/18-2/29/19	\$332,500.00	No
California State University, Fresno Foundation <sup>5</sup>	Economic Impact Analysis	2/16/18-2/15/20	\$129,243.00	No

<sup>5</sup> Amendment to contract

Vendor	Services	Contract Dates	Contract Amount	Union Notified
DiPietro & Associates	Automated External Defibrillator (AED) Training	7/1/17-6/30/18	\$3,900.00	No
Fresno County	FY 17/18 18 Enforcement Evaluation and Improvement Project (EEIP)	7/1/17-12/31/17	\$62,579.10	No
Joseph P. Sullivan, Ardea Consulting	Risk Determination	3/5/18-6/30/18	\$4,995.00	No
Lewallen's	Chair Repair/Key Duplication	9/25/17-6/30/18	\$4,999.00	No
Riverside County	FY 17/18 EEIP	7/1/17-12/31/17	\$27,113.64	No
Santa Barbara County	FY 17/18 EEIP	7/1/17-12/31/17	\$21,833.30	No
Tulare County	FY 17/18 EEIP	7/1/17-12/31/17	\$47,192.74	No
University of California, Davis (UC Davis)	Pesticide Surface Water Symposium Host	12/1/17-12/31/17	\$4,500.00	No
UC Davis, Doctor Randy Dahlgren	Stream-Cat Database Training	2/15/18-3/31/18	\$3,200.00	No

**Criteria:** Unless a personal services contract is necessary due to a sudden and unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property or essential public services, “the contract shall not be executed until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform the type of work to be contracted.” (Gov. Code section 19132 §, subd.(b)(1).)

**Severity:** Serious. Unions must be notified of impending PSC’s in order to ensure they are aware contracts are being proposed for work that their members could perform.

**Cause:** The CDPR’s classification and pay analysts reviewed the proposed contracts and made a determination that civil service classifications did not exist that could perform the work that was contracted out.

**Action:** The CDPR has updated its procedures and now notifies all 13 employee organizations (representing 21 bargaining units) of potential PSC's when the CDPR is unable to identify a state classification to perform the type of work to be contracted. It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CDPR submit to the CRU copies of any relevant documentation that addresses the corrections the department has implemented to ensure conformity with Government Code section 19132.

### **Mandated Training**

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, § 12950.1, subds. (a), (b), & (c), & 19995.4, subd. (b).)

Additionally, the training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or career executive assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, § 19995.4, subds. (d) & (e).) For

management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biannual basis. (*Ibid.*)

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

In reviewing the CDPR's mandated training program that was in effect during the compliance review period, the CRU has determined the following:

#### **FINDING NO. 5 – Mandated Training Complied with Statutory Requirements**

The CDPR provided ethics training to its 123 new filers within six months of appointment and semiannual ethics training to its 172 existing filers during two-year calendar year period commencing in 2015. The CDPR also provided supervisory training to all 22 new supervisors within 12 months of appointment. In addition, the CDPR provided sexual harassment prevention training to its: 30 new supervisors within six months of appointment and 41 existing supervisors every two years. Thus, the CDPR complied with mandated training requirements within statutory timelines.

### **Compensation and Pay**

#### **Salary Determination**

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666). Several salary rules dictate how departments calculate and determine an employee's salary rate<sup>6</sup> upon appointment depending on the appointment type, and the employee's state employment pay history and tenure.

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<sup>6</sup> "Rate" is any one of the salary rates in the resolution by CalHR, which establishes the salary ranges, and steps of the Pay Plan (CA CCR Section 599.666).

During the period under review, February 1, 2017, through October 31, 2017, the CDPR made 52 appointments. The CRU reviewed 14 of those appointments to determine if the CDPR applied salary regulations accurately and correctly processed employees' compensation transactions, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Accountant I (Specialist)	Certification List	Permanent	Full Time	\$3,000
Associate Information Systems Analyst (Specialist)	Certification List	Permanent	Full Time	\$4,829
Associate Toxicologist	Certification List	Permanent	Full Time	\$5,741
Environmental Scientist	Certification List	Permanent	Full Time	\$5,372
Environmental Scientist	Certification List	Permanent	Full Time	\$5,372
Environmental Scientist	Certification List	Permanent	Full Time	\$6,182
Personnel Specialist	Certification List	Permanent	Full Time	\$3,335
Senior Environmental Scientist (Specialist)	Certification List	Permanent	Full Time	\$5,923
Senior Information Systems Analyst (Supervisor)	Certification List	Permanent	Full Time	\$8,223
Staff Services Analyst (General)	Certification List	Permanent	Full Time	\$4,196
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	\$7,136
Business Service Assistant (Specialist)	Mandatory Reinstatement	Permanent	Full Time	\$4,152
Personnel Specialist	Transfer	Permanent	Full Time	\$3,405
Staff Services Analyst (General)	Transfer	Permanent	Full Time	\$3,041

**FINDING NO. 6 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in 14 of 52 salary determinations that the CDPR made during the compliance review period. The CDPR appropriately calculated and processed

the salaries for each appointment and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, board rules and CalHR policies and guidelines.

Alternate Range Movement Salary Determination (within same classification)

If an employee qualifies under established criteria and moves from one alternate range to another alternate range of a class, the employee shall receive an increase or a decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges (Cal Code Regs., tit. 2, § 599.681). However, in many instances, CalHR provides salary rules departments must use when employees move between alternate ranges. They are described in the alternate range criteria (CalHR Pay Scales). When no salary rule or method is cited in the alternate range criteria, departments must default to Rule 599.681.

During the period under review, November 1, 2016, through July 31, 2017, the CDPR made seven alternate range movements within a classification<sup>7</sup>. The CRU reviewed four of those alternate range movements to determine if the CDPR applied salary regulations accurately and correctly processed employee's compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary
Assistant Information Systems Analyst	Range B	Range C	Permanent	\$4,016
Attorney	Range C	Range D	Permanent	\$7,524
Staff Services Analyst (General)	Range A	Range B	Permanent	\$3,193
Environmental Scientist	Range A	Range B	Permanent	\$4,043

**FINDING NO. 7 – Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU found that four of seven alternate range movements the CDPR made during the compliance review period, satisfied civil service laws, board rules and CalHR policies and guidelines.

Arduous Pay

<sup>7</sup> 335 transactions.

Effective July 1, 1994, appointing authorities were provided the discretion to provide additional compensation for employees exempt from the Fair Labor Standards Act (FLSA) who perform arduous work that exceeds the normal demands of state service employment. (CalHR's Online Manual Section 1702). The work must be extraordinarily demanding, time consuming, and significantly exceed employees' normal workweek. The employee cannot be entitled to receive any other sort of compensation such as overtime. Eligible employees are FLSA-exempt employees who do not receive compensation in recognition of hours worked in excess of 40 hours per week. The duration of the arduous period must be at least two weeks or more (*Ibid.*).

Excluded and represented employees who are FLSA-exempt and assigned to Work Week Group E are eligible to receive up to four (4) months of pay per fiscal year, or per event for emergencies, if the following conditions are met<sup>8</sup>:

- There is a nonnegotiable deadline or extreme urgency;
- Work exceeds normal work hours and normal productivity;
- Work is unavoidable;
- Work involves extremely heavy workload;
- Employee is eligible for no other compensation, and
- The circumstances that support this pay differential are documented.

Departments have delegated authority to approve arduous pay for excluded employees who are FLSA-exempt, but CalHR approval is required for any arduous pay issued to represented employees.

Although departments have delegated authority to approve arduous pay<sup>9</sup>, they are required to fill out CalHR Form 777, documenting the circumstances, assessment and rationale behind all arduous pay approvals. A new Form 777 should be filled out for every employee receiving the pay differential, every time an employee is approved to receive a new pay differential, and every time an employee wants to extend their arduous pay. Extensions are only granted in rare circumstances. Departments must keep the Form 777 on file and retain the form for five years after the approval date (*Ibid.*).

During the period under review, November 1, 2016, through July 31, 2017, the CDPHR issued arduous pay to one employee. The CRU reviewed his two arduous pay

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<sup>8</sup> Applicable Memorandum of Understandings or Bargaining Unit Agreements detail other specific criteria.

<sup>9</sup> Pay Letter 94-32 established Pay Differential 62 regarding arduous pay for Bargaining Units 1, 7, 9, 17, 19, and 21, and Excluded employees.

authorizations to ensure compliance with applicable CalHR policies and guidelines, which are listed below:

Classification	Bargaining Unit	Work Week Group	Time Base	Total Compensation	Number of Months Received
Staff Services Manager II (Supervisory)	S01	E	Full Time	\$1,200	1
Staff Services Manager III	M01	E	Full Time	\$2,400	2

**FINDING NO. 8 – Arduous Pay Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU found that the two arduous pay authorizations that the CDPR made during the

The CRU found that the two arduous pay authorizations that the CDPR made during the compliance review period, satisfied civil service laws, board rules and CalHR policies and guidelines.

Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages ten percent or more of the total time worked. According to the Pay Scales, specifically Pay Differential 14, the ten percent time standard is calculated based on the time spent conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with the specific bilingual transactions.

Typically, the department must review the position duty statement to confirm the percentage of time performing bilingual skills and verify the monthly pay differential is granted to a certified bilingual employee in a designated bilingual position. The position, not the employee, receives the bilingual designation and the department must verify that the incumbent successfully participated in an Oral Fluency Examination prior to issuing the additional pay.

During the period under review, November 1, 2016, through July 31, 2017, the CDPR issued bilingual pay to four employees. The CRU reviewed all bilingual pay authorizations

to ensure compliance with applicable CalHR policies and guidelines, which are listed below:

Classification	Bargaining Unit	Time Base
Environmental Scientist	R10	Full Time
Research Scientist I (Chemical Sciences)	R10	Full Time
Senior Environmental Scientist (Specialist)	R10	Full Time
Special Investigator	R07	Full Time

**FINDING NO. 9 – Bilingual Pay Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU found that the bilingual pay authorized to all four employees during the compliance review period, satisfied civil service laws, board rules and CalHR policies and guidelines.

**Leave**

**Administrative Time Off**

Administrative Time Off (ATO) is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation, or when work facilities are unavailable. Additionally, ATO may be granted when employees need time off for any of the following: donating blood, extreme weather that makes getting to work impossible, and/or, when employees need time off to attend special events. Any ATO requests lasting over 30 days must be submitted and approved by CalHR. Approval will generally be given in 30 calendar day increments and any extension must be approved prior to the expiration of the 30 calendar days. Departments must properly document and track ATO for any length of time (PML, "Administrative Time off (ATO) – Policy, Procedure and Documentation Requirements", 2012-008).

Employees may also be granted a paid leave of absence of up to five days by their appointing power when the employee works or resides in a county where a state of emergency has been proclaimed by the Governor. (Cal. Code Regs., § 599.785.5)

During the period under review, August 1, 2016, through July 31, 2017, the CDPR placed 11 employees on ATO. The CRU reviewed eight employees placed on ATO to ensure the department complied with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	No. of Days on ATO
Accounting Technician	4/17/2017-4/20/2017	4
Environmental Scientist	11/28/2016-12/30/2016, 1/3/2017-1/17/2017	48
Environmental Scientist	2/13/17-2/15/17	2
Environmental Scientist	6/22/2017-6/29/2017	8
Environmental Scientist	6/2/2017-6/9/2017	8
Environmental Program Manager I (Supervisory)	4/17/2017-4/24/2017	8
Personnel Supervisor I	2/13/2017-2/15/2017	3
Program Technician	10/25/2016-11/1/2016	7

**FINDING NO. 10 – Administrative Time Off (ATO) Authorizations Complied with Civil Service Laws, Board Rules and/or CalHR Policies and Guidelines**

The CRU found no deficiencies with eight of 11 employees placed on ATO during the compliance review period. The CDPR provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations, and CalHR policy and guidelines.

Actual Time Worked

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization (TAU) employee's time to ensure that the Constitutional limit of nine months in any 12 consecutive months is not exceeded. (Cal. Const., art VII, § 5.) The ATW method of counting time is used in order to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. Time is accrued by months so that the immediate prior 12-

calendar months are the ones used to count the 194 working days. ATW includes any day on which the employee physically worked, regardless of the length of time worked on that day<sup>10</sup>, any day for which the employee is on paid absence<sup>11</sup>, and any holiday for which the employee receives either full or partial pay. If the employee works on the holiday, the day is counted only once regardless of the rate of pay<sup>12</sup>.

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. Therefore, departments must monitor the actual number of days worked in order to ensure that they do not exceed 194 days in any 12-consecutive month period (CalHR Online Manual section 1202).

At the time of the review, the CDPR had 26 employees on ATW. The CRU reviewed nine of those ATW appointments to ensure compliance with applicable laws, regulations and CalHR policy and guidelines.

Classification	Time Base	Time Frame	No. of Days on ATW
Scientific Aid	Intermittent	06/07/2016 - 06/07/2017	202

**FINDING NO. 11 – Actual Time Worked (ATW) Employee Exceeded Nine Months in a Twelve Consecutive Month Period**

**Summary:** The CDPR did not monitor one of nine ATW employees actual number of days worked in order to ensure the employees did not exceed the 194 days in any consecutive 12-month period. According to the timesheets and pay history documents provided by the CDPR, this employee worked 202 days, which exceeded the 194 days limitation.

**Criteria:** If any employee is appointed to an intermittent time base position on a TAU basis, there are two controlling time limitations that must be considered. The first controlling factor is the constitutional limit of 9 months in any 12 consecutive months for temporary appointments that cannot be extended for any reason. (Cal. Const., art VII, § 5). The nine month period may be computed on a calendar or actual

<sup>10</sup> For example, two hours or ten hours counts as one day.  
<sup>11</sup> For example, vacation, sick leave, compensating time off, etc.  
<sup>12</sup> For example, straight time, time and one-half, double time, etc.

basis. When computing time worked, 194 days equals nine months. (CalHR Online Manual, section 1202).<sup>13</sup>

**Severity:** Technical. The CDPR failed to comply with Article VII, section 5 of the California Constitution which limits the amount of time an individual may work in a temporary appointment for the state civil service. TAU appointments are distinguished from other appointments as they can be made in the absence of an appropriate employment list. Intermittent appointments are not be used to fill full-time or part-time positions. Such use would constitute illegal circumvention of these eligible lists.

**Cause:** The Transactions team did not track the number of days worked by this employee in a timely manner due to human error.

**Action:** The CDPR has updated its procedures and started providing more extensive training regarding the limit on days worked. It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CDPR submit to the CRU a copy of its updated procedures and email notifications to employees and supervisors stating the number of days available to work in the current month. It is further recommended that the CDPR provide documentation of when employees, attendance clerks and supervisors have completed additional training to ensure conformity with Government Code section 19705.

### Leave Auditing and Timekeeping

Departments must keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction (Cal. Code Regs., tit. 2, § 599.665).

Additionally, in accordance with CalHR Online Manual Section 2101, departments must create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. If an employee's attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave

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<sup>13</sup> California Code of Regulations section 265.1 became effective July 1, 2017, and did not apply at the time of these appointments. The current regulation sets forth the method for counting time for temporary appointments.

type used, the attendance record must be amended. Attendance records shall be corrected by the pay period following the pay period in which the error occurred. Accurate and timely attendance reporting is required of all departments and is subject to audit.

During the period under review, May 1, 2017, through July 31, 2017, the CDPR reported 67 units comprised of 1,157 active employees. The pay period and timesheets reviewed by the CRU are summarized as follows:

Timesheet Leave Period	No. Units	No. Units Reviewed	No. Employees Reviewed	No. Timesheets Reviewed	No. Timesheets Incorrectly Posted
June 2017	22	6	140	<b>152</b>	<b>10</b>

**FINDING NO. 12 – Errors in Leave Balances and/or Timekeeping Records**

**Summary:** The CRU found 10 discrepancies between the leave balances in the Leave Accounting System (LAS) and timekeeping records.

**Criteria:** In accordance with CalHR’s Online Manual Section 2101, departments must create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. If an employee’s attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. Attendance records shall be corrected by the pay period following the pay period in which the error occurred. Accurate and timely attendance reporting is required of all departments and is subject to audit.

**Severity:** Technical. Without sufficient processes to verify the accuracy of leave accounting data entered, departments may make erroneous leave accounting transactions that remain undetected or are never identified. These errors put the department at risk of additional costs such as the initiation of collection efforts on overpayment, the risk of litigation related to recovering inappropriately credited leave hours and funds, and/or the increase of state’s pension payments<sup>14</sup>.

<sup>14</sup> State employees can convert sick leave to state service credit when they retire, ultimately increasing the State’s pension payments.

**Cause:** Discrepancies between leave balance records and timekeeping records were overlooked.

**Action:** CDPR updated the current timekeeping audit procedures by adding an additional review by the Personnel Supervisor (PS) I at each step of the process to ensure no errors are missed. It is recommended that within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, the CDPR submit to SPB documentation of the updated timekeeping audit procedures and additional reviews performed by the PS I to ensure conformity with CalHR's Online Manual Section 2101.

### Leave Reduction Efforts

Departments must comply with the regulations and CalHR policies that require a leave plan for every employee with vacation or annual leave hours over the maximum amount permitted (Cal Code Regs., tit. 2, § 599.742.1 and applicable Bargaining Unit Agreements). Bargaining Unit Agreements and the California Code of Regulations prescribe the maximum amount of vacation or annual leave permitted. For instance, according to California Code of Regulations, title 2, section 599.737, if a represented employee does not use all of the vacation to which he or she is entitled in a calendar year, "the employee may accumulate the unused portion, provided that on January 1st of a calendar year, the employee shall not have more than" the established limit as stipulated by the applicable bargaining unit agreement<sup>15</sup>. Likewise, if an excluded employee does not use all of the vacation to which he or she is entitled in a calendar year, the "employee may accumulate the unused portion of vacation credit, provided that on January 1st of a calendar year, the excluded employee shall not have more than 80 vacation days." (Cal. Code Regs., tit. 2, § 599.738).

In accordance with CalHR's Online Manual Section 2124, departments must create a leave reduction policy for their organization and monitor employees' leave to ensure compliance with the departmental leave policy; and ensure employees who have significant "over-the-cap" leave balances have a leave reduction plan in place.

As of October 31, 2017, the CDPR had 20 employees who exceeded the established limits of vacation or annual leave. The CRU reviewed 10 of those employees' leave

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<sup>15</sup> For represented employees, the established limit for annual or vacation leave accruals is 640 hours, however for bargaining units 06 there is no established limit and bargaining unit 5 the established limit is 816 hours.

reduction plans to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit <sup>16</sup>	Leave Reduction Plan Provided
Business Service Assistant (Specialist)	R01	40.50	No
Environmental Program Manager I (Supervisory)	S10	793.00	No
Environmental Program Manager I (Supervisory)	S10	594.75	No
Environmental Program Manager I (Supervisory)	S10	200.50	No
Environmental Program Manager I (Supervisory)	S10	29.00	No
Environmental Program Manager II	M10	463.00	No
Senior Environmental Scientist (Specialist)	R10	160.70	No
Senior Environmental Scientist (Specialist)	R10	25.25	No
Senior Toxicologist	S10	164	No
System Software Specialist III (Technical)	R01	649.80	No
<b>Total</b>		<b>3,120.50</b>	

**FINDING NO. 13 – Leave Reduction Plans Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU reviewed employee vacation and annual leave to ensure that those employees who have significant “over-the-cap” leave balances have a leave reduction plan in place and are actively reducing hours. In addition, the CRU reviewed the department’s leave reduction policy to verify its compliance with applicable rule and law, and to ensure its accessibility to employees. Based on our review, the CRU found no deficiencies in this area.

<sup>16</sup> As of December 31, 2016.

## **Policy and Processes**

### **Nepotism**

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. Personal relationships for this purpose include but are not limited to, association by blood, adoption, marriage and/or cohabitation. In addition, there may be personal relationships beyond this general definition that could be subject to these policies. Overall, departmental nepotism policies should aim to prevent favoritism or bias based on a personal relationship when recruiting, hiring or assigning employees. Departments have the discretion, based on organizational structure and size, to develop nepotism policies as they see fit (Cal HR Online Manual Section 1204).

### **FINDING NO. 14 – Nepotism Policy Complied with Civil Service Laws, Board Rules and/or CalHR Policies and Guidelines**

After reviewing the CDPR's nepotism policy in effect during the compliance review period, the CRU verified that the policy was disseminated to all staff and emphasized the CDPR's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the CDPR's nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions as outlined in CalHR's Online Manual Section 1204.

### **Worker's Compensation**

Pursuant to California Code of Regulations, title 8, section 9880, employers shall provide to every new employee at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers' compensation law. This notice shall also contain a form that the employee can use to pre-designate their personal physician or medical group as defined by Labor Code section 4600. Additionally, employers shall also provide a claim form and notice of potential eligibility to their employee within one working day of notice or knowledge that the employee has suffered a work related injury or illness (Labor Code, § 5401).

According to Labor Code section 3363.5, public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. Workers' compensation coverage is not mandatory for volunteers as it is for employees. This is specific to the legally uninsured state departments participating in the Master Agreement. Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund (State Fund) office to discuss the status of volunteers (PML, "Workers' Compensation Coverage for Volunteers," 2015-009). Those departments that have volunteers should have notified or updated their existing notification to the State Compensation Insurance Fund (SCIF) by April 1, 2015 whether or not they have decided to extend workers' compensation coverage to volunteers. In this case, the CDPR did not employ volunteers during the compliance review period.

**FINDING NO. 15 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

After reviewing the CDPR's Workers' Compensation process that was in effect during the compliance review period, the CRU verified that the CDPR provides notice to their employees to inform them of their rights and responsibilities under CA workers' compensation law. Furthermore, the CRU verified that when the CDPR received worker's compensation claims, the CDPR properly provided claim forms within one working day of notice or knowledge of injury.

Performance Appraisals

According to Government Code Section 19992.2, departments must "prepare performance reports." Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee's probationary period.

The CRU selected 13 permanent CDPR employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations and CalHR's policy and guidelines.

**FINDING NO. 16 – Performance Appraisals Were Not Provided to All Employees**

**Summary:** The CDPR did not provide performance appraisals to five of 13 permanent employees at least once in each twelve calendar months after the completion of the employee's probationary period.

Classification	Date Performance Appraisals Due
Associate Information Systems Analyst (Specialist)	6/3/2017
Environmental Program Manager II	10/1/2016
Office Technician (Typing)	5/15/2017
Research Scientist II (Epidemiology/Biostatistics)	10/1/2016
Senior Management Auditor	10/26/2016

- Criteria:** Departments are required to “prepare performance reports and keep them on file as prescribed by department rule”. (Gov. Code, § 19992.2). Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee’s probationary period.
- Severity:** Serious. The department does not ensure that all employees are apprised of work performance issues and/or goals in a fair and systematic manner.
- Cause:** The CDPR has experienced a high rate of staff turnover within the Human Resources Branch and failed to ensure that all employees received performance appraisals timely.
- Action:** CDPR has implemented a tracking procedure to ensure that annual performance appraisals are submitted timely for all employees. However, it is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the CDPR submit to the CRU copies of any relevant documentation that specifically addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 599.578.

### **DEPARTMENTAL RESPONSE**

The CDPR’s response is attached as Attachment 1.

## **SPB REPLY**

It is further recommended that the CDPR comply with the afore-stated recommendations and submit documentation to the CRU within 60 days that shows all corrective actions have been implemented; and relevant documentation when personnel have completed ATW training.



Brian R. Leahy  
*Director*

Edmund G. Brown Jr.  
*Governor*

August 9, 2018

Ms. Suzanne M. Ambrose, Executive Officer  
State Personnel Board  
801 Capitol Mall, Suite 1200  
Sacramento, CA 95814

Dear Ms. Ambrose:

The California Department of Pesticide Regulation (CDPR) is in receipt of, and appreciates the interactive opportunity to discuss, the draft State Personnel Board (SPB) Compliance Review Report. The Department recognizes the importance of evaluations to ensure personnel practices are properly applied and adhered to in accordance with civil service laws, rules and regulations.

The CDPR acknowledges the findings in the August 2018 SPB Compliance Report. Detailed below are the compliance findings along with the CDPR's cause and action that has been applied.

#### **Finding No. 4 - Union Was Not Notified in a Timely Manner**

**Cause:** The CDPR follows the direction of Government Code 19132, which states that a personal services contract (PSC) shall not be executed until the state agency has notified all organizations that represent state employees who perform the type of work to be contracted. There is no requirement within the Government Code or its corresponding regulations and no guidance from the SPB regarding an agency's notice requirements in instances where the state agency cannot identify a state classification to perform the type of work to be contracted. Accordingly, as required by law, the CDPR notified all organizations when the CDPR determined that there were state employees who could potentially perform the type of work to be contracted.

**Department Response:** The CDPR understands that unions must be notified of impending PSCs to ensure they are aware of proposed PSCs for work that their members could perform. In addition to notifying a specific union when CDPR determines that it represents employees who perform the type of work to be contracted, immediately following this report, the CDPR updated its procedures and now notifies all 13 employee organizations (representing 21 bargaining units) of potential PSCs when the CDPR is unable identify a state classification to perform the type of work to be contracted.

**Finding No. 11 -Actual Time Worked (ATW) Employee Exceeded Nine Months in a Twelve Consecutive MonthPeriod**

Cause: The Transactions team did not track the number of days worked by this employee in a timely manner due to human error.

Department Response: CDPR has updated our procedures to prevent this from occurring in the future. CDPR now emails both the employee and their supervisor at the beginning of each month advising them of their current days' count, clearly stating the number of days available to work in the current month. CDPR has also started reaching out to employees, attendance clerks and supervisors to provide more extensive training regarding the limit on days worked.

**Finding No. 12 - Discrepancies Between Leave Balances and Timekeeping Records**

Cause: Discrepancies between leave balance records and timekeeping records were overlooked.

Departmental Response: CDPR updated the current timekeeping audit procedures by adding an additional review by the Personnel Supervisor I at each step of the process to ensure no errors are missed.

**Finding No. 16- Performance Appraisals Were Not Provided to All Employees**

Cause: The CDPR has experienced a high rate of staff turnover within the Human Resources Branch and failed to ensure that all employees received performance appraisals timely.

Department Response: As of April 1, 2018, CDPR is in compliance and has received Performance Appraisals for all employees. CDPR has implemented a tracking procedure to ensure that annual Performance Appraisals are submitted timely for all employees.

Ms. Suzanne M. Ambrose  
August 9, 2018  
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Thank you again for the opportunity to discuss and respond to the Draft Compliance Review Report. If you have any questions, please contact Christina Sugai, Branch Chief of Human Resources, at (916)322-1987 or by email at [Christina.Bugai@cdpr.ca.gov](mailto:Christina.Bugai@cdpr.ca.gov).

Sincerely,



Anise Severns, Assistant Director  
Administrative Services Division