

DATE: March 2, 2018

TO: ALL INTERESTED PARTIES

/s/ **SUZANNE M. AMBROSE**

FROM: Suzanne M. Ambrose
Executive Officer

SUBJECT: NOTICE OF PROPOSED REGULATORY CHANGES

Notice is hereby given that the State Personnel Board (Board) proposes to adopt the regulatory changes described below. The Board will consider any and all comments, objections, or recommendations that may be timely submitted regarding this proposed action.

PUBLIC HEARING

A public hearing regarding the proposed regulatory action will be held on April 18, 2018, at 10:00 a.m. in Room 150 at 801 Capitol Mall, Sacramento, California.

WRITTEN COMMENT PERIOD

The written comment period closes on April 16, 2018, at 5:00 p.m. Any interested party, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action to the contact person listed below.

Jeanne R. Wolfe
Senior Attorney
State Personnel Board
801 Capitol Mall, MS 53
Sacramento, CA 95814
Fax: (916) 653-4256
Email: jeanne.wolfe@spb.ca.gov

Comments must be received by the contact person no later than 5:00 p.m. on April 16, 2018

AUTHORITY AND REFERENCE

The Board proposes to adopt the proposed action under the authority granted by the California Constitution, article VII, section 3 and Government Code sections 18502 and 18701 in order to implement, interpret, and make specific the provisions of California Constitution, article VII, section 1 and Government Code sections 18900, 18931, 18935, and 18941.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

A. Summary of Existing Laws and Regulations Related to the Proposed Action

The Board is a constitutional body responsible for enforcing California's civil service statutes. (Cal. Const., art. VII, § 3.) In addition, the Board, by majority vote of all its members, prescribes probationary periods and classifications, adopts other rules authorized by statute, and reviews disciplinary actions imposed against state employees. (*Ibid.*) The Board also establishes rules implementing and enforcing the merit principle in the state civil service system. (Gov. Code, § 18660; see Cal. Const., art. VII, § 1, subd. (b).)

Regulations adopted by the Board are exempt from the Administrative Procedure Act (APA), except as expressly specified. (Gov. Code, §§ 18211, 18215, & 18216.) The Board's regulations concerning selection, examinations, and classification may be adopted by the Board without public notice or comment; however, regulations related to selection and examinations shall be reasonably available to all interested parties. (Gov. Code, § 18213.) The rulemaking procedures set forth in Government Code section 18214 apply to the adoption of Board regulations concerning other matters.

In this instance, the subject matter of the proposed regulations relates to petitions to participate in civil service examinations. These regulations are thus exempt from the APA process; however, the Board finds that a public comment period would be appropriate for this regulatory action.

B. Comparable Federal Regulations or Statutes

The Board has conducted a review of federal regulations and statutes and determined there are no comparable federal regulations or statutes.

C. Policy Statement Overview

The proposed changes are intended to update, clarify, and make more concise and efficient situations in which an employee has been dismissed from state civil service by adverse action or as a result of disciplinary proceedings and thereafter seeks employment with the state by taking civil service examinations. The amendments clarify

that the request is a written petition to participate in civil service examinations and require that the petition be served on the agency that initially served the adverse action of dismissal. The amendments add that where an agency no longer exists or has undergone significant organizational and administrative changes, CalHR shall determine whether a different or new agency should be notified and, if so, CalHR shall serve the agency with a copy of the petition. As with current Rule 211, the amendments require that certain information must be contained in the petition, e.g., effective date of the dismissal, the reason(s) for the dismissal, and an explanation setting forth reasons why the petition should be granted.

The proposed changes also clarify and make more precise the factors CalHR must consider when making a decision to grant or deny the request. For instance, rather than “[c]onfirmation/assurance of corrected and/or sustained improved behavior, the changes state, “Evidence of corrected and sustained improved behavior.” The timeframes for decision making and any appeal remain the same.

In addition, the proposed changes add Rule 211.2¹ which concerns petitions to participate in civil service examinations after there has been a Board decision on the adverse action dismissing the former employee. In general, this proposed Rule mirrors the process, considerations, and timeframes of proposed Rule 211, except the petition to participate in civil service examinations is submitted to the Executive Officer for review and decision. Like the agency that filed the adverse action dismissing the employee, CalHR may submit to the Executive Officer a response to the petition. Also, similar to proposed Rule 211, the former employee may appeal the Executive Officer’s decision to the Board. Other proposed changes are technical for purposes of style and consistency.

D. Evaluation of Consistency and Compatibility with Existing State Regulations

In reviewing other state regulations, the Board found that the instant regulatory proposal is consistent and compatible with existing state regulations.

DETERMINATION OF FISCAL IMPACT ON PUBLIC AGENCIES:

The Board has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Cost or savings to any State agency: This proposed regulatory package is intended to update the Board’s regulations and make more simplified and

¹ Rule 211.1 concerns limitations on administrative hearing or medical interpreter certification for non-citizens and is not part of this proposed rulemaking action.

streamlined the procedures for petitions to participate in civil service examinations. Therefore, the Board expects that any costs or savings to State agencies will be minimal, if any.

- Other nondiscretionary cost of savings imposed on local agencies: None.
- Cost or savings in federal funding to the State: None.

SIGNIFICANT EFFECT ON HOUSING COSTS:

None.

ECONOMIC IMPACT ON BUSINESS:

- Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: None.
- Effect on small business: The proposed regulations only set standards related to state civil service examinations and selection. Accordingly, it has been determined that the adoption of the proposed regulations would not affect small businesses in any way.

DESCRIPTION OF COST IMPACT:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF ECONOMIC IMPACT ASESMENT:

Adoption of these regulations will not:

1. Create or eliminate jobs within California.
2. Create new businesses or eliminate existing businesses within California.
3. Affect the expansion of businesses currently doing business within California.
4. Affect worker safety or the state's environment.

It is expected that the adoption of this regulatory package will have a positive impact on the general health and welfare of California residents in that the benefits of this proposed regulatory action include updating and clarifying procedures related to petitions to participate in civil service examinations.

CONTACT PERSONS:

Inquiries concerning the proposed regulatory action, including questions regarding procedure, comments, or the substance of the proposal, may be directed to:

Jeanne R. Wolfe
Senior Attorney
State Personnel Board
801 Capitol Mall, MS 53
Sacramento, CA 95814
Phone: (916) 653-1028
Fax: (916) 653-4256
Email: jeanne.wolfe@spb.ca.gov

In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Lori Gillihan
Chief, Policy and Compliance Review Division
State Personnel Board
801 Capitol Mall, MS 53
Sacramento, CA 95814
Phone: (916) 653-1028
Lori.Gillihan@spb.ca.gov

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based to Senior Attorney Wolfe at the above address.

AVAILABILITY OF RULEMAKING FILE:

The Board is maintaining a rulemaking file for the proposed regulatory action, which as of the date of this notice contains the following:

1. A copy of the text of the regulations for which the adoption is proposed in ~~strikeout~~ and underline;
2. A copy of this notice and statement of reasons for the proposed adoption; and
3. Any factual information upon which the proposed rulemaking is based.

If written comments, data or other factual information, studies or reports are received, they will be added to the rulemaking file. The file is available for public inspection during normal working hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814, Fax: (916) 653-4256. Items 1 through 3 are also available on the Board's website at www.spb.ca.gov under "What's New?" Copies may be obtained by contacting the person via the address, email, or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT:

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the person at the address indicated above. The Board will accept written comments only on the modified regulations for 15 days after the date on which they are made available to the public.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law and shall include a Final Statement of Reasons. Copies of the Final Statement of Reasons may be obtained from the contact person when it becomes available.

AVAILABILITY OF DOCUMENTS ON THE INTERNET:

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed on the Board's website at www.spb.ca.gov under "What's New?"