

## INITIAL STATEMENT OF REASONS

<b><u>HEARING DATE(S):</u></b>	September 20, 2018, at 10:00 a.m. Room 150, 801 Capitol Mall, Sacramento, California
<b><u>SUBJECT MATTER OF THE PROPOSED REGULATIONS:</u></b>	Applications, Transfers, and Special Assignments
<b><u>SECTIONS AFFECTED:</u></b>	Title 2, Chapter 1, California Code of Regulations Adopt, Repeal, and Amend Sections 170 et seq.

In this rulemaking action, the State Personnel Board (Board) proposes to adopt, amend, and repeal several Board rules, beginning with section 170 et seq. of Title 2, Chapter 1, of the Code of Regulations (CCR).

### **SPECIFIC PURPOSE OF EACH REGULATORY ACTION**

The specific purpose of each adoption, amendment, and repeal, and the rationale for the determination that these regulatory actions are reasonably necessary to carry out the purposes for which these actions are proposed, together with a description of the problems, administrative requirements, or other conditions or circumstances that each action is intended to address, is as follows:

#### **1. Amend Section 170. Civil Service Examinations and Announcements.**

Section 170, subdivision (a), which concerns, in relevant part, what components may be included in an examination, does not reference oral panel tests. Oral panel tests can be a component of an examination. Therefore, for purposes of thoroughness and clarity, subdivision (a) is amended to add reference to oral panel tests.

Subdivision (b) requires that civil service examination announcements comply with Government Code section 18933.<sup>1</sup> The rule also requires that announcements set forth a short list of specified items, i.e., title, salary range, and preferred or desirable qualifications. Further, the rule allows any additional information the California Department of Human Resources (CalHR) may deem proper.

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<sup>1</sup> This statute requires that the examination announcement include: 1) The date and place of the examination; 2) The nature of the minimum qualifications; 3) The general scope of the examination; 4) The relative weight of its several parts if more than one type of test is to be utilized; and 5) Any other information CalHR deems proper.

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Since this rule has been in effect, there have been changes in technology that impact the way applicants may submit examination applications. Mobile technology has evolved to allow the use of electronic and digital options for mailing parcels. The use of mobile barcodes for mailing has become more common place. The problem is that mobile barcodes do not indicate the date of mailing. Upgrades in technology also allow candidates to submit applications by use of an online application system. Such a system can be more convenient and efficient for both candidates and agencies. There are candidates, however, who may prefer to apply by way of U.S. mail or in person. This rule does not reflect these changes in technology.

Therefore, for purposes of clarity and updating the rule, this proposed action amends section 170 by requiring examination announcements to include statements that mobile barcodes or equivalent mobile print technology is not acceptable proof of the date the application and any other required documents or materials are mailed. It is also the intent of this rulemaking action to ensure an equal and fair opportunity for individuals who wish to apply for state civil service examinations. Therefore, the proposed amendments also require, in pertinent part, that agencies shall not prohibit applicants from applying by way of U.S. mail or in person. Other amendments conform the rule to expressly include those items required by Government Code section 18933. This change is for clarity and ease of reference to what information is required to be on examination announcements.

## **2. Amend Section 174. Applications for Civil Service Examinations.**

Section 174 addresses where, when, and in what manner applications must be filed. The rule does not address current trends and practices that may vary between agencies. The purpose and intent of the proposed amendments is to promote uniform practices and procedures so that exam applications are treated fairly and equally; otherwise, two applicants who have filled out and submitted their applications in the same way may be treated differently depending upon the practices and procedures of the agency holding the examination. Accordingly, except for online examinations, agencies shall allow applicants to file by way of an online application system, U.S. mail, or in person.

In addition, unless otherwise provided, applications failing to be filed at the place, within the time, in the manner, and on the form specified in the exam announcement shall not be accepted. All applications shall be available and accepted free of any charge to the applicant. Also, if the application instructions do not include a requirement that the applicant provide their employment history on the application form itself, a resume shall be sufficient. The proposed changes also provide that under specified circumstances an applicant's digital certification of the application form shall have the same legal effect as if the applicant hand signed the paper version of the form.

This proposed rulemaking action updates and clarifies the rule as to electronic transmissions by clarifying that electronic transmissions must be transmitted no later than 11:59 p.m. Pacific Time on the final filing date specified on the examination

announcement. The proposed amendments also conform section 174 to Government Code section 18934. Other changes are technical and non-substantive.

**3. Renumber Section 249.1. to Section 249. Standard Measurement Criteria.**

For organizational purposes, this amendment only renumbers section 249.1 to section 249 without any substantive changes to the rule.

**4. Adopt Section 249.1. Advertising For Job Vacancies.**

Currently, section 444 covers the standards for publication and screening (see No. 62, Repeal § 444). This rulemaking action proposes to repeal section 444 and replace it with the proposed changes in section 249.1. The general purpose and intent of this proposal is to update the rule to be consistent with modern recruitment practices, conform to changes in law and Board rules, and eliminate unnecessary procedures. The proposed amendments allow job advertisements to be published or posted in a variety of ways. Advertising may be limited under the same circumstances as section 444 provides, i.e., employees could reasonably be expected to accept the opportunity without a change of residence.

As to advertising to a broader area, section 444 specifies that this determination is up to the Executive Officer. Appointing powers, however, are in the best position to make this determination, since they are filling the vacancy. Therefore, this proposed action allows the appointing power to decide.

Section 444 provides that alternatives to the methods provided in the rule may be used where the Executive Officer finds these alternatives would be at least as effective as the prescribed process in meeting established affirmative action and upward mobility goals. These proposed changes allow the appointing power to make this finding as well. In addition, the proposed changes clarify that the established goals are related to affirmative action for persons with disabilities and upward mobility. In addition, the proposed changes update the rule to include reference to the recent changes to section 250, subdivision (f).

**5. Adopt Section 249.1.1. Job Announcements.**

The Board's current regulations do not provide standards for job announcements. Proposed section 249.1.1 mirrors section 170 concerning announcements for examinations, with two exceptions. The appointing power, rather than CalHR, may add any additional information it deems proper. In addition, proposed section 249.1.1 includes a rule related to advertising vacancies for limited term positions (LT) where the LT may convert to permanent status. The proposed rule requires that in such a circumstance the announcement must include a notice that the position may convert from LT to permanent in order for the incumbent to roll over into a permanent position. If the notice is not included, there must be a fair and competitive selection process for the permanent position. This change is being recommended to ensure that candidates seeking

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permanent positions are not disadvantaged by not applying for an LT position because the announcement does not make clear that the LT position may convert to a permanent position. The other proposed changes have the same intent and purpose as those for section 170 (see No. 1).

**6. Adopt Section 249.1.2. Job Applications.**

The Board is aware that there are other governmental entities that require job applicants to file applications online. This practice is understandable since filing job applications by way of an online application system for many job seekers is convenient, economical, and fast. The downside, however, is that not all job seekers have easy access to a computer or other similar device. In addition, online systems, while generally reliable and secure, may malfunction or go down, or a job seeker's internet may malfunction or go down. These types of occurrences may be rare and temporary, but they can also prove to be a barrier for the timely filing of a job application. Therefore, the intent of proposed section 249.1.2 is to ensure that persons seeking a job with the state are afforded different methods of filing applications. This will promote fair and equal opportunities for job seekers. Thus, the rule requires that appointing powers allow job applicants to file applications and other required documents by way of U.S. mail or in person, since these methods are widely available. In addition, appointing powers may also allow applicants to file application forms by way of an online application system.

The Board's current rule on job applications, section 249.8, requires that all applications for civil service employment and any other required documentation or materials must be filed at the place, within the time, in the manner, and on the form(s) specified in the job announcement. Proposed section 249.1.2 maintains this standard but adds that, unless otherwise set forth, applications failing to satisfy any of those criteria shall not be accepted. The reason for this change is inconsistency among agencies when handling applications that fail to satisfy these criteria. For example, a standard practice has been for agencies to accept a late application if all late applications are accepted. The Board's Compliance Review Unit (CRU) has found instances where appointing powers have accepted certain late applications and not others. In addition, CRU has found instances where an agency creates an internal extended deadline for applications but does not advertise or notify potential candidates of the extension. The intent and purpose of this rulemaking action is to ensure a uniform and fair practice. In addition, for purposes of consistency with the proposed amendment to section 174, the rule adds the requirement that all applications be available and accepted free of any charge to the applicant.

These proposed changes also provide that if the job application instructions do not include a requirement that the applicant provide their employment history on the application form itself, a resume shall be sufficient. In addition, under specified circumstances, an applicant's digital certification of the application form shall have the same legal effect as if the applicant hand signed the paper version of the form. The intent and purpose of these proposals is to promote uniform practices and procedures so that job applications are

treated fairly and equally. In addition, these changes are intended to provide a transparent and more efficient examination process.

**7. Adopt Section 249.1.3. Timely Filing of Job Applications.**

Proposed section 249.1.2 replaces, in part, current section 249.8 for purposes of improved organization of Board rules. (See No. 8, Repeal § 249.8.) Section 249.8 currently sets the rules for the filing of job applications and defines “within the time.” Subdivision (a) of section 249.8 requires that all job applications must be filed at the place, within the time, in the manner, and on the form specified in the job vacancy announcement. Proposed section 249.1.3, subdivision (b) keeps this same standard. Subdivision (b) of section 249.8 defines “within the time.” Proposed section 249.1.3 defines “within the time” and follows the definition provided in section 249.8, except proposed section 249.1.3 clarifies that electronic transmissions must be transmitted no later than 11:59 p.m. Pacific Time on the final filing date specified on the job vacancy announcement. In addition, proposed section 249.1.3 is intended to make clear that mobile barcodes or equivalent mobile print technology shall not be considered postmarks.

Lastly, proposed section 249.1.2 sets forth the conditions under which a job application not timely filed shall be accepted. These conditions are consistent with the current rules found in section 249.8.

**8. Repeal Section 249.8. Job Applications.**

Given the other recommended changes in this rulemaking action, section 249.8 is no longer necessary. Please see No. 6, Adopt Section 249.1.2. Job Applications, and No. 7, Timely Filing of Job Applications.

**9. Adopt Section 249.8. Holds On Employees.**

The Board’s regulations do not include standards related to holds on employees when they have accepted a different job or position within state civil service. Proposed section 249.8 adopts such a standard for purposes of uniform and fair practices when these situations arise. The proposed rule provides that where an employee has accepted a lateral transfer or a voluntary demotion in the same or different classification within the same or different appointing power, the current appointing power may hold the employee no more than 30 calendar days after the employee provides written notice of the transfer or voluntary demotion. Where an employee has accepted a promotion within the same or different appointing power, the proposed rule provides that the current appointing power may hold the employee for no more than 14 calendar days after the employee provides written notice of the promotion. No matter the type of change, the proposed rule provides that the impacted supervisors should negotiate a reasonable start date.

**10. Adopt Section 280.1. Written Justification for Limited Term Positions.**

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Limited-term employee means an employee whose appointment “as a result of reinstatement or certification from an employment list shall not exceed two years . . . .” (Gov. Code, § 18530.) The Board’s long-standing policy has been that limited-term appointments “must not be used to fill positions on an ongoing basis, since that circumvents consideration of those who are eligible for and interested in permanent jobs. In addition, when permanent staff are retained under limited-term appointments, they are deprived of the opportunity to achieve permanent status in that classification.” (Personnel Management Policy and Procedures Manual (PMPPM), § 331 (Org. issue date, Jan. 1984, with subsequent revisions.) The Board’s policy has also required agencies to thoroughly document limited-term appointments and retain that documentation for purposes of a Board audit. (*Ibid.*)

Proposed section 280.1 is intended to conform the Board’s long-standing policy into regulatory law to ensure clarity and enforcement. The proposed rule requires a written justification, as specified, for limited-term positions. The only exception regards limited-term appointments made for purposes of job examination appointment (JEP)s made pursuant to section 547.58, Article 28 (Limited Examination and Appointment Program), Limited-term appointments made for purposes of a JEP have distinct rules relative to examining a LEAP candidate for a civil service position. The proposed rule also requires that the written justification be maintained pursuant to the record retention requirements of section 26. Such retention will allow the Board to conduct effective compliance reviews.

**11. Repeal Section 425. To Another Agency.**

Given the other changes in this rulemaking action, section 425 is no longer necessary. The general standard for transfers is found in proposed sections 428 (see No. 17) and 429 (see No. 18). The effective date of transfers is found in proposed section 433 (see No. 27). The prohibition against other types of transactions used to circumvent Board rules is also found in proposed section 433.

**12. Adopt a New Section 425. Definitions.**

Proposed section 425 contains definitions for salary and class level comparisons. Those definitions mirror the definitions currently in section 431 (see No. 21, Repeal § 431). Proposed section 425 also adds definitions for “class series,” “current class,” “current position,” “deep class,” “alternate range” or “alternate salary range” and “established upward mobility pattern.” These additional definitions are necessary because this rulemaking action uses those terms and because definitions will provide those terms uniform and clear meaning. In addition, the definitions of “class series” and “step” are the same definitions provided in current sections 432 (see No. 23, Repeal § 432) and 431, respectively.

**13. Repeal Section 426. Temporary Assignments or Loans.**

Given the changes in this rulemaking action, current section 426 is no longer necessary. Temporary assignments or loans are distinct from transfers and have different governing statutory laws. Therefore, for purposes of improving the organization of the Board's rules, Article 19.1 is being proposed, which contains the rules relative to temporary assignments or loans. (See No. 39.)

#### **14. Adopt New Section 426. Calculating the Steps of Salary Levels.**

Proposed section 426 incorporates the same standards for calculating the steps of salary levels as in current section 431, subdivision (a)(5) (see No. 21, Repeal § 431). The renumbering of this standard to section 426 is without substantive changes and for purposes of consistency with other changes in this regulatory action and improved organization of Board rules.

#### **15. Repeal Section 427. Interjurisdictional Employee Exchange.**

This rulemaking action proposes to renumber the rules related to interjurisdictional employee exchanges from section 427 to proposed section 442 (See No. 61). Accordingly, given the changes in this rulemaking action, current section 427 is no longer necessary.

#### **16. Adopt Section 427. Salary Calculations and Comparisons.**

Proposed section 427 incorporates current section 431, subdivision (b) (see No. 21, Repeal § 431), which provides that unless "otherwise provided by resolution of the [B]oard, the maximum rate of the lowest salary range currently authorized for a class is used to make salary comparisons for the purposes of this chapter." In addition, proposed section 427 adds a rule for calculating and comparing deep class salaries, namely: "For deep classes, each alternate salary range shall be treated as if they were separate classes and the highest alternate salary range attained by the employee shall be used for purposes of salary calculations and comparisons." This rule is currently the policy and practice but has not been incorporated into Board rules. Therefore, adding this standard to Board rules is for purposes of clarity, enforcement, and ensuring consistent personnel practices.

#### **17. Adopt Section 428. Voluntary Transfers In General.**

Proposed section 428, subdivision (a) conforms to the authority granted the Board in Government Code section 19050.3. Proposed subdivision (b) incorporates current section 430, paragraph 1, with nonsubstantive sentence-structure changes for consistency with other Board rules. Proposed subdivision (c) incorporates current section 430, paragraph 2, with only technical stylistic changes for consistency with other Board rules. Proposed subdivision (d) provides that employees who have passed probation and attained permanent status in more than one classification may use the class which has

the highest salary range for purposes of transfer eligibility. This rule codifies long-standing practice, which benefits the civil service and employees alike because it promotes employees to use their talent, knowledge, and experience in different areas of state civil service without negative salary consequences. Codifying this practice into rule is for purposes of clarity, enforcement, and ensuring consistent personnel practices.

**18. Adopt Section 429. Voluntary Transfers Between Classes.**

Proposed section 429 adopts certain aspects of the current standard that is found in section 433 (see No. 25, Repeal § 433). Both the proposed and current rule provide that appointing powers may allow employees to voluntarily transfer between classes when the employee possess any licenses, certificates, or registration required in the “to” class provided that the salary range of the “to” class is exactly the same or any amount lower than that of the “from” class.

Proposed section 429 is similar to, but not exactly the same as, current section 433 where the salary range of the “to” class is any amount higher than the “from” class. Both the proposed and current rule require that a promotional salary range does not result from the transfer; the “to” and “from” classes are in a different class series, unless the Board specifically provides that transfers are allowed within the class series; the transfer does not preclude a future transfer that is part of the established upward mobility pattern through which the employee is moving; and the “from” and “to” classifications are not in positions that have a supervisory-subordinate relationship under the appointing power making the transfer.

Proposed section 429, however, does not include the requirements that (1) there is no class in the “to” series that is exactly the same in salary as the “from” class; or (2) the “to” class is the class in its series that is immediately higher in pay than the “from” class. These requirements do not relate to merit principles, which involve consideration of whether the candidate is best suited for the job, but rather salary concerns. As to salary, the transfer rules have traditionally allowed employees to transfer as long as the “to” class is not a promotional salary, as specified. This rulemaking action maintains that standard. Therefore, for purposes of simplification of and improved efficiency in the transfer process those two requirements have been eliminated from proposed section 429.

**19. Repeal Section 430. General.**

Given the proposal to adopt sections 428 and 429, section 430 is no longer necessary.

**20. Adopt New Section 430. Appointments Not Subject to Transfer.**

Generally, managerial classifications are engaged predominantly in management and executive-type functions and are charged with directing the implementation and effectuation of agency and/or program policies and practices. Generally, supervisory classifications have day-to-day operational authority and assign work. Thus, while both

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these classifications include the use of independent judgment, the general functions and level of responsibilities differ. Generally, rank-and-file classifications perform job functions and duties that support an agency's mission, services, and strategic plans. Movement from a rank-and-file class to a supervisory class is broadly viewed as a promotion given the increase in the level of responsibilities, regardless of the salary difference between the "from" and "to" classes. The same is equally true of movement from a supervisory classification to a managerial classification.

The Board's current regulations do not include rules specifically prohibiting transfers from rank-and-file to supervisory and supervisory to management. Given the progression of the level of duties and responsibilities of these classes, a lateral transfer would not be the appropriate vehicle for appointment. Accordingly, the purpose of new section 430 is to make this clear and ensure consistent civil service personnel practices.

**21. Repeal Section 431. Salary and Class Level Comparisons.**

Given that the proposed changes in this rulemaking action to adopt sections 425 and 426, section 431 is no longer necessary.

**22. Adopt New Section 431. Employees with Temporary or Limited Term Status.**

The Board's rules do not currently set any standards relative to whether employees with temporary or limited term status may move between positions using the transfer rules. This rulemaking action is intended to set such standards for purposes of clarity and consistent personnel practices.

As required by the California Constitution, article VII, section 1, a permanent appointment or promotion into the civil service must be made under a general system based on merit ascertained by competitive examination. To allow limited-term and temporary employees to use their limited-term or temporary status to transfer into a permanent civil service position without a competitive examination would violate Article VII. In addition, limited-term and temporary employees are hired for specified duration of times and they do not acquire civil service status in the position. Further, these employees are hired for specific staffing needs that are of a temporary nature. Thus, to allow employees with short-term status to transfer to different positions based upon their limited-term or temporary status may negatively impact the services they were hired to perform. Such a consequence would not be in the State's best interest. Therefore, for these reasons, proposed subdivision (a) prohibits an employee with temporary or limited-term status from using that temporary or limited-term status as a basis of eligibility for a transfer.

Limited-term or temporary appointments may afford permanent civil service employees with new opportunities, such as expanding their competencies or trying a new career path. Such outcomes are positive for the employee and the State alike, as such movement improves the skill level of employees and thus the quality of services and encourages promotional opportunities and thus employee retention. Not all new jobs,

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however, or career paths turn out to be the right fit. Therefore, to provide reasonable flexibility of movement for permanent civil service employees, proposed new section 431, subdivision (b) allows limited-term or temporary employees who previously had permanent status in civil service to use that status as the basis for a transfer. Subdivision (c) provides for reinstatement where a limited-term or temporary employee seeks to move to a classification in which he or she previously had permanent status.

**23. Repeal Section 432. Class Series.**

Given the changes in this rulemaking action, section 432 is no longer necessary. Section 432 defines a class series. This definition has been incorporated into section 425 (see No. 12) for purposes of improved organization of Board rules.

**24. Adopt Section 432. Salary Loss Upon Transfer to a Deep Class.**

The CalHR HR Online Manual, section 1704, Salary Upon Transfer to a Deep Class, states, "There are instances where, upon transfer into a deep class, an employee may incur a loss in salary based on existing salary rules. To avoid this, [CalHR] recommends placing the employee on a Training & Development (T&D) assignment until they meet the alternate range criteria that allow the transfer without a loss in salary."

For purposes of clarity and to avoid any confusion of the Board's rules related to transfers into a deep class with CalHR's authority and policies concerning salaries, proposed section 432 provides that exceptions to the application of CalHR rules and policies related to deep class salaries is within CalHR's discretion and authority.

**25. Repeal Section 433. Voluntary Transfers Between Classes.**

Given the changes in this rulemaking action, section 432 is no longer necessary. Please see No. 17, Adopt Section 428, Advertising For Job Vacancies, and No. 18, Adopt Section 429, Voluntary Transfers Between Classes.

**26. Repeal Section 433.1. Voluntary Transfers Between Classes – Bargaining Unit 10 Employees.**

Section 433.1 is no longer necessary, as the Board's regulations now make clear that for purposes of transfers candidates must satisfy the minimum qualifications of the "to" class or have previously passed probation and achieved permanent status in the "to" class. (See § 250, subd. (d).)

**27. Adopt New Section 433. Effective Date of Voluntary Transfers.**

Currently, the effective date of voluntary transfers is found in section 425 (see No. 11, Repeal § 425). Also in section 425 is the prohibition against using another type of appointment that has the same general effect as a transfer to circumvent the 30-day rule

for effective dates. Those standards have been incorporated in new section 433. Therefore, this proposal is a technical change that renumbers those rules.

**28. Repeal Section 434. Involuntary Transfer Between Classes.**

Given the changes in this rulemaking action, section 434 is no longer necessary. Please see No. 29, Adopt New Section 434, Involuntary Transfers.

**29. Adopt New Section 434. Involuntary Transfers.**

Currently, section 434 requires that when the transfer between classes is not voluntary on the part of the employee the class to which the employee is transferred must have prior Executive Officer approval. Proposed new section 434 eliminates the requirement of Executive Officer approval, since this is an unnecessary step in the process. The appointing power making the decision is in the best situation to know whether the decision complies with civil service laws and rules. To ensure proper oversight, however, the proposed regulation requires that the appointing power document the reasons for the involuntary transfer and maintain the documentation pursuant to the recordkeeping rules found in section 26. In this way, the Board may inspect the transaction during a regular compliance review, special investigation, or on appeal, should an appeal be filed with the Board.

The proposed new rule also clarifies that for involuntary transfers the employee must satisfy the minimum qualifications of the “to” class and the “to” class must have substantially the same salary range or salary level as the employee’s current class or the employee must have previously passed probation and achieved permanent status in the “to” classification. This standard is intended to ensure that the employee is qualified to perform the functions of the “to” classification.

In addition, the proposed new rule prohibits involuntary transfers of employees in temporary or limited term positions. Limited-term and temporary employees are hired for specified duration of times and do not acquire civil service status in the position. In addition, these employees are hired for specific staffing needs that are of a temporary nature. An appointing power may terminate a limited-term or temporary employee at any time prior to the expiration of the term to which the employee is appointed. Allowing involuntary transfers circumvents the purpose of these types of appointments. Therefore, for these reasons, the proposed new rule disallows these kinds of involuntary transfers.

**30. Repeal Section 435. Consecutive Transfer.**

Given the changes in this rulemaking action, section 435 is no longer necessary. Please see No. 31, Adopt New Section 435, Consecutive Transfers.

**31. Adopt New Section 435. Consecutive Transfers.**

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Proposed new section 435 is in substance the same as current section 435, except that the proposed new rule eliminates reference to Government Code section 19050.4 and specifically references “results in a promotional salary level.” The purpose of the change is for greater clarity and specificity.

**32. Adopt Section 436. Movement Between Alternate Ranges.**

CalHR has authority over employee movement between alternate ranges. (See Government Code §§ 19826 & 19836; Cal. Code Regs., tit. 2, § 599.681.) Proposed section 436 provides that the movement between alternate ranges shall be in accordance with CalHR’s rules and policies. The purpose of adding this new rule is to promote clarity and avoid any confusion between the Board’s transfer rules and CalHR’s rules and policies concerning movement between alternate ranges.

**33. Repeal Section 438. Temporary Assignments for Training and Development.**

Given the changes in this rulemaking action, section 438 is no longer necessary. Please see proposed Article 19.1, Temporary Assignments or Loans, and proposed sections 438 through 438.6, which are Nos. 39 through 46 below.

**34. Repeal Section 439. Status Requirement.**

The California Code of Regulations cites section 439, although this section was repealed in 1991 (Register 92, No. 8.) Therefore, this proposed repeal of section 439 is technical cleanup.

**35. Repeal Section 440. Promotions.**

Given the changes in this rulemaking action, section 440 is no longer necessary. Please see No. 51, Adopt Section 439.4, Successful Completion of a Training and Development Assignment.

**36. Repeal Section 441. Consecutive Temporary Assignments.**

Given the changes in this rulemaking action, section 441 is no longer necessary. Please see No. 41, adopt Section 438.1. Period of Time for the Temporary Assignment or Loan.

**37. Repeal Section 442. Temporary Assignment to Meet Compelling Management Needs.**

Given the changes in this rulemaking action, section 442 is no longer necessary. Please see No. 52, Adopt Section 440, Temporary Assignments to Meet Compelling Program or Management Needs, In General, and No. 53, Adopt Section 440.1,

**38. Repeal Section 443. Temporary Assignments for Injured Employees.**

Given the changes in this rulemaking action, section 443 is no longer necessary. Please see No 57, Adopt Section 441, Definition of Injured Employee; No. 58, Adopt Section 441.1, Eligibility for Temporary Assignments of Injured Employees; and No. 59, Adopt Section 441.2, Temporary Assignments for Injured Employees in Different Classifications.

**39. Adopt Article 19.1 and Section 437. Definitions.**

This rulemaking action proposes to adopt Article 19.1. This change is technical and intended to better organize the Board's rules by grouping similar topics together.

The Board's regulations do not contain definitions related to temporary assignments and loans. Proposed section 437 contains terms that are used in the Board's regulations relative to these assignments and loans. Therefore, the purpose of this proposed rule is to provide these terms uniform and clear meanings.

**40. Adopt Section 438. Temporary Assignments or Loans in General.**

Government Code section 19050.8 sets the statutory authority for temporary assignments and loans of employees within an agency or between agencies. Proposed section 438, subdivisions (a) through (c) conforms to the purpose and standards set in section 19050.8.

The purpose of the career executive assignment (CEA) category is to encourage the development and effective use in civil service of well-qualified and carefully selected executives. (Gov. Code, § 19889.) Traditionally, because there have been no provisions in the CEA regulations to permit career executives from accepting training and development assignments, they have been excluded from accepting such assignments. While CEA employees should receive training so that they can succeed in their CEA position, training and development assignments would undercut their effective use by having them perform duties other than their CEA duties. Proposed section 438, subdivision (d) thus makes express and clear that CEAs are excluded from training and development assignments.

Government Code section 19401 provides that all appointing powers shall establish effective upward mobility programs for employees in low-paying groups. The law expressly includes training and development assignments. Accordingly, to conform with this obligation, proposed section 438, subdivision (e) requires each agency to include training and development assignments in the agency's upward mobility program.

**41. Adopt Section 438.1. Period of Time for the Temporary Assignment or Loan.**

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Government Code section 19050.8 prescribes that the temporary assignment or loan of employees, as specified, within an agency or between agencies shall be for a period not to exceed two years or between jurisdictions for a period not to exceed four years. The statute does not take into account authorized leave that employees may take, the way to calculate the time for employees who work less than full time within a month, or how to define consecutive temporary assignments or loans. The Board, however, has had written policies interpreting section 19050.8. (See PMPPM §§ 331 through 343.) The primary purpose of proposed section 438.1 is to conform previous Board policies into regulation and to ensure that temporary assignments and loans are done consistently and fairly in state civil service.

Current section 441 provides that the approval of the Executive Officer is required for any temporary assignment that results in an employee spending more than 24 months of any 36-month period on such temporary assignments. The rule also requires that such assignments shall not be approved when the Executive Officer determines that they constitute a continuation of the employee's previous temporary assignment. Executive Officer approval is an unnecessary procedure that should be eliminated for purposes of simplification and efficiency. Accordingly, this rulemaking action recommends eliminating this step.

However, a 24-month window rule as provided in section 441 makes good sense. During any two year period, employees may be expected to take vacation and sick leave and may even require extended leaves of absence. Specifying the two-year timeframe within a larger time period accounts for these normal occurrences and allows employees a reasonable opportunity to complete a temporary assignment or loan. Therefore, proposed section 438.1 provides that temporary assignments or loans of employees within an agency or between agencies shall be for an aggregate period of not more than 24 months in any 36-month period. In addition, the rule provides that normal leave time (e.g., vacation, holidays, and sick leave) shall count toward the 24 months in any 36-month time period, since the employee is not performing the duties of the assignment or loan during leave.

Regarding employees who work less than full-time per month, the proposed rule sets 173.33 hours as equaling one month of full-time work and the equivalent of working full-time for 24 months in any 36-month time period as 4,159.92 (173.33 x 24) hours within a 6,239.88 (173.33 x 36) hour time period. The intent of this proposal is to provide a simple and straightforward calculation that is consistent with Board Rule 171.1, where 173.33 hours of actual time worked equals one month for purposes of calculating the amount of time required to satisfy minimum qualifications for experience.

Proposed section 438.1 also provides that a temporary assignment within an agency or between agencies may be extended beyond the 24 months in any 36-month time period for up to an additional 24 months beyond the 36-month timeframe where the employee requires additional time to complete an apprenticeship program. In addition, the proposed rule provides that the temporary assignment or loan of employees between jurisdictions

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shall be for an aggregate period not to exceed four years or 48 months. Both these standards conform to the requirements of Government Code section 19050.8.

In addition, any absence from work for more than 20 continuous working days is a significant amount of time that the duties and functions of a temporary assignment or loan are not being performed. Accordingly, upon returning to work the employee may be required to resume the duties and functions of his or her former position.<sup>2</sup> There may be circumstances, however, in which it is appropriate for an the employee to return to the temporary assignment or loan. For example, an authorized leave of absence may begin within one month of the assignment, and the employee returns within 35 working days. In such a circumstance, the appointing power may consider that having the employee continue the assignment or loan is consistent with the best interests of the state. Proposed section 438.1 thus provides that if an employee on a temporary assignment or loan is granted a leave of absence for more than 20 continuous working days, the employee shall be reinstated to his or her former position upon returning to work unless the appointing power determines it is in the best interests of the state to allow the employee to continue his or her assignment or loan. The proposed rule also includes notice requirements to the employee and, if applicable, the “from” appointing power. The purpose of setting these timeframes is to ensure that appointing powers use procedures that are clear, consistent, and fair.

Government Code section 19050.8 sets forth the two and four year limits for temporary assignments and loans but does not address whether there can be a lapse in time between one temporary assignment or loan and another temporary assignment or loan in the future. There may be instances in which an employee who has gained experience in a temporary assignment or loan would be a highly qualified candidate for the same or similar temporary assignment or loan in the future. Yet, any time lapses between temporary assignments or loans should be of such length that section 19050.8 is not circumvented. Proposed section 438.1 therefore provides that consecutive temporary assignments, defined by proposed section 437, subdivision (h) as within 12 months of the conclusion of the temporary assignment or loan, are prohibited.

#### **42. Adopt Section 438.2. Employment Relationship and Salary.**

The Board’s current regulations do not address employment relationship and salary considerations when temporary assignments and loans of employees occur between state agencies. Proposed section 438.2 is intended to ensure consistent and fair personnel practices for such a circumstance.

Temporary assignments and loans are not permanent appointments to a new position. In most of these situations, it is anticipated that the employee will return to his or her former position at the conclusion of the assignment or loan. Therefore, for purposes of ensuring that employees do not lose status in their former position, proposed section 438.2

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<sup>2</sup> Proposed section 437, subdivision (i) defines “former position” to have the same meaning as Government Code section 18522.

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provides that the employee shall be considered the employee of his or her “from” appointing power for purposes of salary, benefits, seniority, and tenure. The “to” appointing power, however, will be the employer directing the employee’s work. Thus, for purposes of clarity, proposed section 438.2 provides that the employee shall be considered the temporary employee of the “to” appointing power, and the employee’s work and activities shall be subject to the direction and control of the “to” appointing power.

While uncommon, there may be circumstances in which an employee violates civil service laws and rules during a temporary assignment or loan. For purposes of clarity, proposed section 438.2 provides that if it is determined that corrective or disciplinary action should be taken, the “from” and “to” appointing powers shall collaborate to determine which agency will take the action. The proposed rule also clarifies that the employee’s salary may be paid in any proper manner agreed upon by the participating agencies.

**43. Adopt Section 438.3. Prior Approval of the Board or Department.**

Proposed section 438.3 does not require the approval of the Board or CalHR prior to an employee receiving a temporary assignment or loan. The documentation requirements of proposed section 438.4 are intended to allow the Board to review an agency’s temporary assignments or loans for compliance with civil service laws and regulations.

**44. Adopt Section 438.4. Recordkeeping Requirements for Temporary Assignments or Loans.**

Current section 426 (see No. 13, Repeal § 426) contains the recordkeeping requirements for temporary assignments or loans. Proposed section 438.4 essentially reflects those requirements, except for certifying that a layoff by reason of such assignment or loan will not become necessary. A temporary assignment or loan that itself would cause a layoff would be rare, if ever. This requirement is therefore eliminated. The purpose of this proposal is to reduce unnecessary rules.

**45. Adopt Section 438.5. Termination and Corrective Action by Executive Officer.**

There may be circumstances where the temporary assignment or loan is not successful for the employee, the appointing power, or both. Therefore, proposed section 438.5 allows that any participating agency or employee may terminate the temporary assignment or loan at any time for any reason. There may also be circumstances where a temporary assignment or loan violates civil services laws or rules. Accordingly, the proposed rules allows the Executive Officer to order corrective action, including termination of the temporary assignment or loan, if the assignment or loan is determined to be conducted in a manner contrary to or inconsistent with applicable civil service laws and/or regulations. Lastly, the proposed rule provides that any employee whose temporary assignment or loan is terminated under this section shall have the absolute

right to return to his or her former position. The right of return conforms with the mandate of Government Code section 19050.8.

**46. Adopt Section 438.6. Use of Out-of-Class Experience.**

Government Code section 19050.8 provides that out-of-class experience obtained in a manner not described therein may be used to meet minimum requirements for promotional as well as open examinations, only if it was obtained by the employee in good faith and properly verified under standards prescribed by Board rules. Proposed section 438.6 provides that out-of-class experience shall have the same meaning as used in section 212 of the Board rules. In addition, the proposed rule provides that where out-of-class experience in a temporary assignment or loan is gained in a manner not described in Article 19.1, the employee may nonetheless use that experience to satisfy the minimum requirements of promotional and open examinations only if the experience is verified as specified in section 212. Further, the proposed rule states that the good faith of the employee is presumed to exist if the provisions of section 212 are satisfied.

The purpose of proposed section 438.6 is to conform to the requirements of Government Code section 19050.8 and maintain a process consistent with other Board rules concerning out-of-class experience.

**47. Adopt Section 438.7. Salary Calculations and Comparisons.**

There may be times when an employee who is on a temporary assignment or loan seeks appointment to a different position. Proposed section 438.7 sets the standards for such a situation. The proposed rule provides: "Where during the period of a temporary assignment or loan, an employee seeks appointment to a class that is different than the "from" class he or she held prior to the temporary assignment or loan, the "from" class, not the temporary assignment or loan class, shall be used for any required salary calculations and comparisons. If the employee receives the appointment to a different class than the "from" class, the personnel transaction(s) shall reflect that the new appointment is from the "from" class and not the temporary assignment or loan." The purpose of this rule is to ensure that appointing powers will use procedures that are clear, consistent, and fair.

**48. Adopt Section 439. Purpose of Training and Development Assignments.**

PMPPM section 340 (Revised 3/94) encouraged the use of training and development assignments to: (1) provide employees broader experiences and skills that will improve their ability to perform in their current assignments; (2) help prepare employees for future promotion; or (3) to facilitate their entry into new occupational fields. "The second and third uses are key elements of the State's upward mobility programs for employees in lower paying jobs." (*Id.* at p. 340.2.)

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Proposed section 439 essentially adopts the Board's policy in PMPPM section 340 into proposed rule 439 and adds an additional purpose: "Experience necessary to satisfy the experience component of the minimum qualifications of the training and development classification and/or gain competencies for the preferred or desirable qualifications of the training and development classification." This additional purpose is intended to promote training and development assignments as a useful tool for upward mobility programs.

CalHR has traditionally recommended using a temporary training and development assignment where an employee has been selected for appointment to a deep class by way of a voluntary transfer and the employee will incur a loss in salary. Proposed section 439, subdivision (b) addresses this circumstance and is intended to make clear that using a training and development assignment for this situation is subject to CalHR's authority and discretion.

**49. Adopt Section 439.1. Eligibility for Appointment to a Training and Development Assignment.**

The use of training and development assignments is key to an effective upward mobility program. Therefore, one of the purposes of this proposed rulemaking action is to simplify and streamline the personnel process related to these assignments by eliminating unnecessary barriers. Consequently, proposed section 439.1 does not require the employee to satisfy the minimum qualifications of the training and development assignment, although he or she must possess any licensure, certificate, or similar credential that is a component of the minimum qualifications. In addition, an employee may apply for and be appointed to a training and development assignment without the prior approval of his or her current appointing power.

**50. Adopt Section 439.2. Training and Development Classification.**

Current section 438 outlines when an employee may accept a training and development assignment involving the duties of a different classification. The intent of proposed section 439.2 is to simplify the 438 requirements, so that training and development assignments can be used to a greater extent than they are being used currently. To this end, proposed section 439.2 allows, for instance, the use of training and development assignments where the higher salaried class is in the same class series as the employee's current class, if the assignment involves an apprenticeship program approved by the Department of Industrial Relations, Division of Apprenticeship Standards.

**51. Adopt Section 439.3. Selection Process for Training and Development Assignments.**

Proposed section 439.3 requires that the selection process for training and development assignments must be competitive unless all employees in the unit and same classification are given the same training and development assignment (e.g., cross training or job rotation of employees). The reason for this requirement is that training and development

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assignments afford employee's career opportunities, like gaining experience for promotions or to change career paths and, therefore, there should be a fair and competitive process for these openings. In addition, proposed section 439.3 encourages appointing powers to consider using these assignments when filling vacancies for permanent or limited-term positions. The intent of this proposal is to increase the use of training and development assignments.

**52. Adopt Section 439.4. Successful Completion of a Training and Development Assignment.**

Government Code section 19050.8 provides that an employee who has been on a temporary assignment or loan shall have the absolute right to return to his or her former position. Proposed section 439.4 conforms to this statutory right. In addition, the statute allows for the experience gained in the assignment or loan to be used to meet minimum requirements for promotional and open examinations. The proposed rule allows for this use as well.

In addition, the proposed rule permits the employee to be appointed to the training and development position if the appointment is by way of transfer or demotion; the employee satisfies the minimum qualifications of the classification; and the employee competed for the assignment pursuant to section 439.3. If appointed, the employee is required to serve the applicable probationary period. The intent behind allowing an appointment from the training and development assignment is to simplify and streamline the hiring process, since in most instances the employee who successfully performs in a training and development assignment is also the best candidate for that job. The purpose for establishing preliminary conditions is to ensure that the initial selection process involved competition and merit principles.

**53. Adopt Section 440. Temporary Assignments to Meet Compelling Program or Management Needs, In General.**

Currently, section 442 is the only regulation addressing temporary assignments to meet compelling management needs. (See No. 37, Repeal § 442.) The regulation covers: (1) eligibility; (2) purpose of assignment; (3) preliminary conditions; (4) prohibitions; (5) employee status while on assignment; (5) special rules for CEA employees; (6) termination procedures; and (7) notification requirements. This rulemaking action is intended, in part, to simplify, streamline and make more efficient the process related to these types of assignments. There are also technical reorganizational changes intended for ease of reference and to ensure consistency with other Board regulations.

Proposed section 440 addresses the purpose and, therefore, the preliminary conditions necessary to justify compelling program or management needs assignments, namely: (1) the assignment requires a breadth and depth of expertise or certain specialized competencies; (2) current staffing levels are low or insufficient to timely, efficiently, and successfully complete a special project, special investigation, or a new process and

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procedure; (3) current staffing levels are low or insufficient to timely, efficiently, and effectively satisfy the mission of the agency or a program within the agency; (4) current staffing levels are low or insufficient to timely, efficiently, and effectively satisfy the daily or routine operational duties and functions of the agency or a program within the agency. While these proposed standards are consistent with the standards currently set in section 442, these changes provide greater clarity by being more specific and detailed. This change is intended to promote consistent and uniform practices among agencies.

Section 442 currently requires that temporary assignments shall not be made or continued where there is a reasonable basis for utilizing or pursuing other personnel management options, such as transfer, list appointment or classification plan changes. Proposed section 440 is similar but does not require appointing powers, before selecting an employee for a temporary assignment, to consider other management options. Instead the proposed rule states that appointing powers *should* consider other management options. This change is being made because the statutory scheme allows for temporary assignments for a specified period of time and managers are in the best position to know their needs and the needs of their program. In addition, this rulemaking action requires that opportunities for these types of temporary assignments must be competitive, since temporary assignments or loans provide employees with experience for promotional and other types of career opportunities. The proposed section also does not reference “continued” use, since proposed section 438.1 prohibits consecutive temporary assignments.

Lastly, regarding the use of an employee in a CEA position, proposed section 440 essentially mirrors current section 442, except the approval of the Executive Officer is not required. Such approval is an unnecessary procedural step in the process. It is the intent of this rulemaking action to simplify and streamline processes where appropriate.

**54. Adopt Section 440.1. Eligibility for Temporary Assignments to Meet Compelling Program or Management Needs.**

Section 442 (see No. 37, Repeal § 442) currently provides that eligibility for compelling program or management needs assignments are limited to: (1) employees who have permanent status in their present class; or (2) employees who previously have had permanent status and who, since such permanent status, have had no break in service due to a permanent separation. While the second basis for eligibility under section 442 may have had sufficient justification in the past, going forward the goal is to ensure that hiring managers have a robust and qualified applicant pool. In line with this purpose, proposed section 440.1 requires that the employee have permanent or probationary status in their current class, and, if the temporary assignment is to a different class, they meet the minimum qualifications of that class.

**55. Adopt Section 440.2. Advertising for Available Temporary Assignments to Meet Compelling Program or Management Needs.**

The Board's current rules do not address advertising for available temporary assignments to meet compelling program or management needs. Because these types of assignments afford employees valuable experience for upward mobility and other types of career opportunities, proposed section 440.2 requires advertising. The proposed rule requires a minimum of three working days. The intent of this minimum timeframe is to balance two important considerations: providing career opportunities for qualified employees and ensuring compelling program or management needs can be timely and effectively addressed.

**56. Adopt Section 440.3. Hiring Process for Temporary Assignments to Meet Compelling Program or Management Needs.**

Proposed section 440.3 provides for a fair and competitive hiring process. The reasons for this process are set forth in No. 55. Proposed section 440.3 also requires that appointing powers document the reasons why the selected employee was hired for the temporary assignment or loan. The purpose for maintaining such recordkeeping is for auditing and compliance purposes.

**57. Adopt Section 440.4. Successful Completion of Temporary Assignments to meet Compelling Program or Management Needs.**

Proposed section 440.4 provides that employees may use the experience earned in the temporary assignment to satisfy minimum qualifications for promotional and open examinations. In addition, the proposed rule provides the employee the absolute right to return to his or her former position. These changes conform to Government Code, section 19050.8.

**58. Adopt New Section 441. Definition of Injured Employee.**

Currently, section 443 (see No. 38, Repeal § 443) defines an injured employee for purposes of Government Code section 19050.8. Proposed section 441 adopts the definition of section 443 without substantive change. Therefore, this proposed change is nonsubstantive and technical in that it renumbers the rule from section 443 to section 441.

**59. Adopt Section 441.1. Eligibility for Temporary Assignments of Injured Employees.**

Currently, section 443 (see No. 38, Repeal § 443) provides the eligibility requirements for temporary assignments of injured employees. Proposed section 441 adopts these eligibility requirements. Therefore, this proposed change is nonsubstantive and technical in that it renumbers the rule from section 443 to section 441.

**60. Adopt Section 441.2. Temporary Assignments for Injured Employees in Different Classifications.**

Currently, section 443 sets standards for temporary assignments for injured employees in different classifications. Proposed section 441.2 essentially mirrors section 443, subdivisions (b), (e), and (f), except for nonsubstantive style changes and eliminating the requirement that such assignments for career executive employees require prior approval by the Executive Officer. (§ 443, subd. (e)(3).) Prior approval by the Executive Officer is an unnecessary step in the assignment process. It is the intent of this rulemaking action to simplify and streamline processes where appropriate.

**61. Adopt section 442. Interjurisdictional Employee Exchange.**

Section 427 (see No. 15, Repeal § 427) currently concerns interjurisdictional employee exchanges. Proposed section 442 essentially conforms to section 427, with technical and style changes.

**62. Repeal Section 444. Publication and Screening.**

Given the changes in this rulemaking action, section 444 is no longer necessary. Please see No. 4., Adopt Section 249.1, Advertising For Job Vacancies.

**63. Amend Section 548.95. Transfer of Employee.**

The proposed amendments to section 548.95, which concern CEAs, eliminate the requirement of Executive Officer approval. Prior approval by the Executive Officer is an unnecessary step in the assignment process. It is the intent of this rulemaking action to simplify and streamline processes where appropriate. Other changes are stylistic and for consistency with changes to the Board's regulations.

**CONSIDERATION OF ALTERNATIVES**

The Board has initially determined that no reasonable alternatives it has considered or that have been otherwise identified and brought to the attention of the Board would be more effective in carrying out the purposes for which the instant action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.