

**State of California
Office of Administrative Law**

In re:
State Personnel Board

Regulatory Action:

Title 02, California Code of Regulations

Adopt sections: 13

Amend sections: 26, 78, 78.1, 249, 250,
250.1

Repeal sections:

NOTICE OF FILING AND PRINTING ONLY

Government Code Section 11343.8

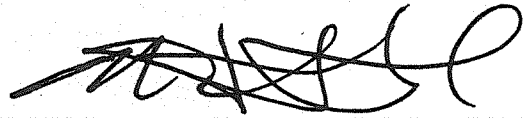
OAL Matter Number: 2021-1015-05

OAL Matter Type: File and Print Only (FP)

This action adopts definitions and amends regulations related to applications and interview rating criteria. These regulations are exempt from the Administrative Procedure Act pursuant to Gov. Code, sec. 18211.

OAL filed these regulations with the Secretary of State and will publish the regulations in the California Code of Regulations.

Date: November 30, 2021



**Thanh Huynh
Senior Attorney**

**For: Kenneth J. Pogue
Director**

**Original: Suzanne Ambrose, Executive
Officer**

Copy: Lori Gillihan

NOTICE PUBLICATION/REGULATIONS SUBMISSION

FILE PRINT

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2021-1015-05	EMERGENCY NUMBER FP
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
OFFICE OF ADMIN. LAW 2021 OCT 15 PM 3:02			
AGENCY WITH RULEMAKING AUTHORITY California State Personnel Board			AGENCY FILE NUMBER (If any)

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

NOV 30 2021
1:13 PM

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

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 Disapproved/Withdrawn			NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Application and Interview Rating Criteria	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 13
	AMEND 26, 78, 78.1, 249, 250, 250.1
TITLE(S) 2	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input checked="" type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <u>Government Code section 18211</u>	

11/30/2021 per agency request

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

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

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

7. CONTACT PERSON Lori Gillihan	TELEPHONE NUMBER 916-651-1043	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) lori.gillihan@spb.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE Suzanne M. Ambrose	DATE 10/15/2021
TYPED NAME AND TITLE OF SIGNATORY Suzanne M. Ambrose, Executive Officer	

For use by Office of Administrative Law (OAL) only
AUTHORIZED FOR FILING AND PRINTING
NOV 30 2021
Office of Administrative Law

FINAL TEXT

**CALIFORNIA CODE OF REGULATIONS
TITLE 2. ADMINISTRATION
DIVISION 1. ADMINISTRATIVE PERSONNEL
CHAPTER 1. STATE PERSONNEL BOARD
SUBCHAPTER 1. GENERAL CIVIL SERVICE REGULATIONS
ARTICLE 1. DEFINITIONS**

§ 13. Shall, Should, May, and Best Practices

In determining whether compliance with a law, regulation, rule or policy is achieved, the following definitions apply:

- (a) “Shall” means action which is necessary to achieve compliance and no alternative courses of action are acceptable to achieve compliance.
- (b) “Should” means action which is preferable to achieve compliance, while recognizing that there are circumstances where alternative courses of action are open to users.
- (c) “May” means action which is an acceptable course to achieve compliance, but alternative courses of action are also acceptable.
- (d) “Best Practices” means a technique or methodology that, through experience and research, has been proven to reliably lead to a desired result, while recognizing that alternative techniques or methodologies are open to users.

**CALIFORNIA CODE OF REGULATIONS
TITLE 2. ADMINISTRATION
DIVISION 1. ADMINISTRATIVE PERSONNEL
CHAPTER 1. STATE PERSONNEL BOARD
SUBCHAPTER 1. GENERAL CIVIL SERVICE REGULATIONS
ARTICLE 2. GENERAL PROVISIONS**

§ 26. Record Retention Requirements.

- (a) Unless otherwise specified herein, appointing powers shall retain the following records for a minimum of five years from the date of creation of the record:

(1) Affirmative action and equal employment opportunity (EEO) records, including, but not limited to, policies and procedures, EEO officer's duty statement, and complaint and response records;

(2) Examination records, including, but not limited to, the examination bulletin, examination planning documents and/or forms, job analysis, list of accepted and rejected candidates, all applications received with accepted and rejected notations, minimum qualification verifications, any notices sent to candidates, examination questions, model answer sheets, candidate answer sheets, rating criteria, rating sheets and rater's notes for each candidate;

(3) Merit, selection, and appointment records, including, but not limited to, the duty statement of the position being filled, all job announcements and bulletins, all applications received for the job opening, ~~pre-employment background and reference checks,~~ minimum qualification verifications, ~~application screening criteria, interview rating criteria,~~ all documentation related to the selection instrument(s) or procedure(s) used, ~~interview questions, interview scoring or rating sheets,~~ records documenting the reasons why the selected candidate was hired for the position, the Request for Personnel Action, the Notice of Personnel Action, probationary reports, loyalty oaths and oaths of office, and history of mandated training. These records also include employee disciplinary records, except the minimum five-year record retention requirement does not apply to specified disciplinary records if Government Code section 19589, a stipulated settlement agreement between the employee and appointing power, or a collective bargaining agreement between the state and a recognized employee organization provides otherwise; and

(4) Records related to established positions that describe the title, series, grade, duties, and responsibilities of the position, regardless of the funding source, and any requests for classification of new positions or reclassification of existing positions.

(b) For the types of records described in subdivision (a)(3) that are routinely and customarily maintained in the employee's official personnel file, the appointing powers shall retain those records for a minimum of five years from the creation date of the document or from the effective date of the employee's appointment, whichever date is later.

(c) Records subject to the requirements of this section shall be readily accessible and produced for review and inspection by the Board. Records are not required to be maintained in any particular file or location; however, all records shall be retained in an orderly and systematic manner, and may be retained electronically.

(d) As used in this section, "records" include any books, papers, or other data, on whatever medium recorded. A record will normally encompass all matters included within section 250 of the Evidence Code. Duplicate copies of the same record are not required to be retained.

Note: Authority cited: Sections 18660 and 18701, Government Code. Reference: Sections 18573, 18661 and 19232, Government Code.

**CALIFORNIA CODE OF REGULATIONS
TITLE 2. ADMINISTRATION
DIVISION 1. ADMINISTRATIVE PERSONNEL
CHAPTER 1. STATE PERSONNEL BOARD
SUBCHAPTER 1.3. CLASSIFICATIONS, EXAMINATIONS, AND APPOINTMENTS
ARTICLE 1. DEFINITIONS**

§ 78. Selection Process.

"Selection process" means the procedures, practices, and activities used by the appointing power to appoint and promote employees in the state civil service and includes the phases of recruitment, examination, establishment of eligible lists, ~~screening and rating of a candidate's qualifications,~~ the hiring process, and any required probationary period.

NOTE: Authority cited: Sections 18502, 18660 and 18701, Government Code.

Reference: Section 19050, Government Code.

§ 78.1. Hiring Process.

"Hiring process" means such activities as interviews, performance ~~demonstration tests~~, written ~~exercisestests~~, role plays, simulations, reference and background checks, as well as the use of any other instrument or procedure appointing powers may designate appropriate to assess fairly and objectively assess a candidate's qualifications to be successful in the position the appointing power is hiring to fill. The hiring process is distinct and separate from the examination process.

NOTE: Authority cited: Sections 18502, 18660 and 18701, Government Code.

Reference: Section 19050, Government Code.

**CALIFORNIA CODE OF REGULATIONS
TITLE 2. ADMINISTRATION
DIVISION 1. ADMINISTRATIVE PERSONNEL
CHAPTER 1. STATE PERSONNEL BOARD
SUBCHAPTER 1.3. CLASSIFICATIONS, EXAMINATIONS, AND APPOINTMENTS
ARTICLE 10. APPOINTMENTS**

§ 249. Standard Measurement Job-Related Criteria

The appointing power shall ~~use standard measurement criteria for~~ assessing and comparing the qualifications of candidates based upon job-related information about each candidate, such as work history, education, training, experience, references, background checks, and competencies. Regardless of the selection instruments or procedures used, the job-related information used to assess and compare each candidate shall be applied consistently and equitably.

Note: Authority cited: Sections 18660 and 18701, Government Code. Reference: Sections 19050 and 19702.2, Government Code.

§ 250. Determining Merit and Fitness During the Hiring Process.

(a) This regulation shall govern the hiring process for the following types of appointments:

- (1) Employment list appointments, as defined in Government Code section 18537, except reemployment and SROA list appointments;
- (2) Transfers, as defined in Government Code section 18525.3; and
- (3) Permissive reinstatements, as defined in Government Code section 19140.

(b) The hiring process for eligible candidates ~~chosen for job interviews~~ shall be competitive and involve an assessment of the qualifications of the candidates and be designed and administered to hire candidates who will be successful. ~~Interviews~~ The hiring process shall be conducted by using job-related criteria. The hiring process may shall include one or more of the following selection instruments: hiring interviews, standardized performance tests, demonstrations, written tests, exercises, role-plays, or simulations, as well as any other selection instrument or procedure designed to objectively and fairly assess each candidate's qualifications to be successful in the position.

(c) As a best practice, Prior to making the hiring decision, the appointing power should review the official personnel file of the candidate who is a current state employee and conduct reference checks and review the official personnel file of the candidate, regardless of whether the candidate is employed inside or outside of state service currently an employee of the state or employed outside the state.

(d) Unless otherwise specified in subdivision (f), persons selected for appointment shall satisfy the minimum qualifications of the classification to which he or she is appointed or have previously passed probation and achieved permanent status in that same classification. While persons selected for appointment may meet some or most of the preferred or desirable qualifications, they are not required to meet all the preferred or desirable qualifications.

(e) In accordance with Section 26, the appointing power shall prepare and retain documentation summarizing—demonstrating the subdivision (b) activities that were conducted during the hiring process and the reasons for the hiring decision, which may include a written memorandum summarizing and explaining the rationale of the appointing power's hiring decision.

(f) This section does not apply to intra-agency job reassignments. Intra-agency job reassignments may be approved by the appointing power with consideration of any applicable collective bargaining contract between a recognized public employee organization and the state.

(g) Nothing herein shall be construed to relieve appointing powers from the obligation to reasonably accommodate individuals with disabilities as required under the Americans with Disabilities Act, the Fair Employment and Housing Act, and the Civil Service Act.

(h) Nothing herein shall be construed so as to contravene the intent and purpose of Article VII, Section 6, of the California Constitution, which provides for the granting of preferences in state civil service to veterans and their surviving spouses.

NOTE: Authority cited: Sections 18502, 18660, and 18701, Government Code.

Reference: Section 19050, Government Code.

§ 250.1. Skills-Based Certification.

(a) Notwithstanding Section 250(a) and (b) as they pertain to eligible lists, appointments to positions in the State civil service for information technology classifications may utilize skills-based certification, as defined by Government Code section 18900.6(a). All such appointments shall be made on the basis of merit and fitness pursuant to all other provisions of Section 250.

(b) Examinations may be administered on an open basis, promotional basis, or open non-promotional basis.

(c) Selection procedures shall be competitive in nature, and designed and administered to fairly and objectively identify those candidates who meet the selection need for the position, and result in the certified ranking of candidates based on their job-related qualifications.

(d) Individuals who are successful in examinations for these classes shall be assigned a score relative to their job-related qualifications and placed in a pool for the respective class and skills set(s) tested for. For purposes of scoring, raw scores will be assigned.

(e) Whenever a vacancy is to be filled, the appointing power shall prepare a detailed statement of the duties and requirements of the position, which shall be maintained by the appointing power for audit purposes by the SPB. Such statement of duties and

requirements of the position shall constitute the justification for creating a skills-based certification list for the position.

(f) Traditional eligible lists will not be created as a result of testing. Skills-based certification lists shall be created on a position-by-position basis, and shall replace the traditional eligible lists. A skills-based certification list shall be created by weighting the final score(s) of eligible competitors attained in the core examination, if applicable, and functional skills set(s). No more than four (4) skills sets, equaling a combined total of 100%, may be used when creating a certification list. A core examination component, if utilized in the testing process, may be used for purposes of creating a skills-based certification list. Its weighting shall be determined by a job analysis. Eligibles will be ranked on the certification list according to their test scores and the percentage weightings utilized to create the certification list.

For example, a skills-based certification list created utilizing two functional skills-sets, each weighted 50%, would yield a list of only those eligibles who successfully passed the test for each of the skills-sets and ranked in descending order based on their respective weight and functional skill set test scores.

(g) If it is found that the statement of duties and requirements of the position is inconsistent with the skills-sets utilized to create the certification list, the appointment shall be deemed illegal and voided.

(h) Hiring departments shall utilize a job-related hiring process that includes one or more of the selection instruments identified in section 250, subdivision (b), structured interview process for purposes of conducting hiring interviews, and shall verify minimum qualifications and perform reference checks for all prospective hires. ~~In order to ensure that the hiring process is fair and competitive, the hiring interviews shall use a job-related structured interview process that shall conform to the following minimum standards: (1) relevant criteria shall be developed for determining which candidates shall be selected to interview for the hiring process; (2) a series of job-related questions~~ criteria shall be developed to assess the fitness and qualifications of each candidate to perform the duties of the position in question to be filled; (3) valid criteria shall be developed for scoring the candidates' evaluating each candidate's responses to the interview questions performance during the hiring process; and (4) each candidate shall be required to respond to the same interview questions the same selection method shall be applied consistently and equitably to each candidate. As a best practice, the appointing authority should conduct reference checks and, if the candidate is a current state employee, review the official personnel file of the candidate prior to appointing the selected candidate. The appointing authority shall also develop a summary of the hiring process which shall include a discussion of the job-relatedness and structure of the interview hiring process.

Note: Authority cited: Sections 18211, 18701 and 18900.6, Government Code.
Reference: Section 18900.6, Government Code.