

**State of California
Office of Administrative Law**

In re:
State Personnel Board

Regulatory Action:

Title 02, California Code of Regulations

Amend sections: 67.7, 213.4

**NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT**

**California Code of Regulations, Title 1,
Section 100**

OAL Matter Number: 2021-0827-01

OAL Matter Type: Nonsubstantive (N)

This action by the State Personnel Board corrects an inaccurate cross-reference and a minor grammatical error.

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, title 1, section 100.

Date: October 7, 2021



**Anna Thomas
Attorney**

**For: Kenneth J. Pogue
Director**

**Original: Suzanne Ambrose, Executive
Officer**

Copy: Lori Gillihan

NONSUBSTANTIVE

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2021-0827-01N	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

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

OCT. 07 2021
 2:22 PM

OFFICE OF ADMIN. LAW
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NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY State Personnel Board	per agency ALS request 10/17/21	AGENCY FILE NUMBER (If any)
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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 <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 Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE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) Disciplinary Action for Proven Retaliatory Acts & Required Components for Drug Testing	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) per agency ALS request 10/17/21
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
	AMEND
	REPEAL
TITLE(S) 2	67.7, 213.4

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 checked="" 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 type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
	<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

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 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 checked="" type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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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 Gillhan	TELEPHONE NUMBER 916-651-1043	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) lori.gillhan@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 8/26/2021
TYPED NAME AND TITLE OF SIGNATORY Suzanne M. Ambrose, Executive Officer	per agency ALS request 10/17/21

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 07 2021

Office of Administrative Law



801 Capitol Mall Sacramento, CA 95814 | www.spb.ca.gov



Governor Gavin C. Newsom

Text added to the Board's regulations is shown in underline.

Text deleted from the Board's regulations is shown in ~~strike~~through.

**CALIFORNIA CODE OF REGULATIONS
TITLE 2. ADMINISTRATION
DIVISION 1. ADMINISTRATIVE PERSONNEL
CHAPTER 1. STATE PERSONNEL BOARD
SUBCHAPTER 1.2 HEARINGS AND APPEALS
ARTICLE 10. WHISTLEBLOWER RETALIATION COMPLAINT PROCESS**

§ 67.7. Disciplinary Action for Proven Retaliatory Acts.

(a) In those cases where the Board issues a final decision that finds that a manager, supervisor, or other state civil service employee has engaged in improper retaliatory acts, the Board shall order the appointing authority to place a copy of the Board's decision in that individual's Official Personnel File within 30 days of the issuance of the Board's order and to also, within that same time period, notify the Office of the State Controller of the disciplinary action taken against the individual. The appointing authority shall also, within 40 days of the issuance of the Board's order, notify the Board that it has complied with the provisions of this subdivision.

(1) In accordance with the provisions of Penal Code section 6129, subdivision (c)(3), any employee of the Department of Corrections and Rehabilitation found to have engaged in retaliatory acts shall be disciplined by, at a minimum, a suspension without pay for 30 days, unless the Board determines that a lesser penalty is warranted. In those instances where the Board determines that a lesser penalty is warranted, the decision shall specify the reasons for that determination.

(b) In those cases where the Board issues a final decision that finds that any community college administrator, supervisor, or public school employer, has engaged in improper retaliatory acts, the Board shall order the appointing authority to place a copy of the Board's decision in that individual's Official Personnel File within 30 days of the issuance of the Board's order and also, within 40 days of the issuance of the Board's order, notify the Board that it has complied with the provisions of this subdivision.

(c) Any decision, as described in subdivision (a) or (b), shall be deemed a final decision of the Board and the individual against whom the disciplinary action was taken shall not have any further right of appeal to the Board concerning that action, with the exception of a Petition for Rehearing.

(d) For purposes of this Section, the Board's decision is deemed to be final after:

(1) 30 days has elapsed from the date the Executive Officer issued his or her Notice of Findings dismissing the complaint; or

(2) a request for hearing pursuant to section 67.7(e)6(d) has not been timely filed with the Board; or

(3) 30 days has elapsed from the date that the Board has issued a decision adopting or modifying the proposed decision submitted by an administrative law judge after an evidentiary hearing and a Petition for Rehearing concerning that decision has not been filed with the Board; or

(4) a decision has been issued by the Board after a hearing before that body and no Petition for Rehearing concerning that decision has been filed with the Board.

Note: Authority cited: Section 18701, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671, 18675, 18710, 19572, 19574, 19582, 19583.5, 19590, 19592 and 19683, Government Code; and Section 6129, Penal 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 8. EXAMINATIONS**

§ 213.4. Required Components for Drug Testing.

Any drug testing or retesting procedure conducted pursuant to sections 213 or 213.2 must be approved by the Department and shall include all of the following:

(a) The drug screening methodology to be used, which shall be a type of immunoassay, except that another method may be used if a department can demonstrate that it is equally reliable as immunoassay;

(b) The drugs to be tested which shall include at least the following drugs of abuse:

(1) Amphetamines and Methamphetamines

(2) Cocaine

(3) Marijuana/Cannabinoids (THC)

(4) Opiates (narcotics)

(5) Phencyclidine (PCP)

(c) Cutoff levels for screening tests that will identify positive samples while minimizing false positive test results;

(d) An authorization to test form which shall include at least the following:

(1) A list of the specific drugs to be tested for, and a description of the consequences of failing the drug test as specified in section 213.5;

(2) A signature block, to be signed by the applicant before the drug test begins, authorizing the test to proceed and authorizing the necessary disclosure of medical information pursuant to section 213.4.

(3) A statement that applicants who decline to sign the form or decline to be tested will be disqualified from the examination.

(e) (1) A requirement that the applicant disclose on a form, separate from the authorization to test form, all drugs and other medications taken, whether prescribed or not, within the 14 days prior to testing. This information shall be examined only by the appointing power and only if the applicant has a positive confirmatory drug test, except that for purposes of administering section 213.6, this information may be examined by the Board and staff authorized to investigate and/or hear appeals.

(2) A requirement that the appointing power utilize a Medical Review Officer, who shall be a licensed physician with knowledge of substance abuse, to review and interpret positive results of confirmatory tests and the information submitted by the applicant pursuant to section 213.4(e)(1), determine whether the result may have been caused for any medically acceptable reason, such as prescribed or over the counter medications, and report to the appointing power his/her opinion as to the cause of the positive drug test. In the process of making this decision, the Medical Review Officer may request the applicant to provide additional information regarding all drugs and other medications taken.

(f) Specimen chain of custody provisions which shall include at least the following:

(1) A procedure to assure that a valid specimen is acquired, the donor is properly identified, and that no tampering or mishandling of the specimen occurs from initial collection to final disposition.

(2) A written log in which is recorded the name, signature, time of receipt, and time of release of each person handling, testing or storing each specimen, or reporting test results.

(3) Collection of specimen samples in a clinical setting such as a laboratory collection station, doctor's office, hospital or clinic, or in another setting approved by the Department on the basis that it provides an equally secure and professional collection process.

(g) Procedure for confirmation of positive screening test results utilizing gas chromatography/mass spectrometry (GC/MS);

(h) Notices to the applicant which shall be written and based on the following:

- (1) If the screening test result is negative, the test is concluded and the applicant has passed the drug test.
 - (2) If the necessary confirmatory test result is negative, the test is concluded and the applicant has passed the drug test.
 - (3) If both the screening test and the confirmatory test results are positive and the Medical Review Officer's opinion is that the positive test results are not because of prescribed or over the counter medication or for any other medically acceptable reasons, the applicant has failed the drug test.
- (i) Specimen retention and retesting procedure which shall include at least the following:
- (1) Retention of all confirmed positive specimens and related records by the testing laboratory in secure frozen storage for at least one year following the test or until all appeals or litigation are concluded, whichever is longer.
 - (2) Provisions for retesting of confirmed positive specimens by any laboratory authorized to conduct drug testing pursuant to section 213.3, at the request of an applicant and at the applicant's expense, provided that the request is received within 30 days of notifying the applicant of his/her disqualification. Retesting shall correspond exactly with the initial testing methods and procedures.
- (j) Provisions for maintaining the confidentiality of test results, which shall include at least the following:
- (1) The results of any test conducted pursuant to sections 213, 213.2 or 213.4(i)(2) shall be given only to the applicant who was tested, the appointing power or the Department, and cannot be revealed to any other party without the written authorization of the applicant except that for the purposes of administering (A) section 213.5, the Department shall reveal a failed drug test to other State appointing powers who administer an examination for which drug testing is required and for which the individual is an applicant; or (B) section 213.6, the Department may reveal a failed drug test and other relevant information to the Board and staff authorized to investigate and/or hear appeals.
 - (2) The results of any test conducted pursuant to section 213.2 shall not be used in any adverse action proceedings.
 - (3) The information disclosed by the applicant pursuant to section 213.4(e)(1) shall be examined only the appointing power and only if the applicant has a positive confirmatory drug test, except that for purposes of administering section 213.6, this information may be examined by the Board and staff authorized to investigate and/or hear appeals.
 - (4) Drug test results which are positive shall be purged from all records one year from the date the drug test specimen is given except as follows:

(A) The retention period for drug test results which are positive for a drug as specified in section 213.5(b) shall be ten years from the date the drug test specimen is given;

(B) If a disqualification from an examination as the result of a positive test is appealed or litigated, the drug test results shall be retained until the appeal or litigation is resolved.

Note: Authority cited: Sections 18502 and 18701, Government Code. Reference: Section 18930, Government Code; and Section 56.20(c), Civil Code.