

**State of California
Office of Administrative Law**

In re:
State Personnel Board

Regulatory Action:

Title 02, California Code of Regulations

Adopt sections:

Amend sections: 242

Repeal sections:

NOTICE OF FILING AND PRINTING ONLY

Government Code Section 11343.8

OAL Matter Number: 2021-1015-04

OAL Matter Type: File and Print Only (FP)

This action amends regulations concerning promotions in place. These regulations are exempt from the Administrative Procedure Act pursuant to Gov. Code, sec. 18211.

OAL filed this regulation with the Secretary of State, and will publish the regulation in the California Code of Regulations.

Date: November 30, 2021



Amy R. Gowan
Attorney

For: Kenneth J. Pogue
Director

Original: Suzanne Ambrose, Executive
Officer

Copy: Lori Gillihan

NOTICE PUBLICATION/REGULATION SUBMISSION

STD. 400 (REV. 10/2019)

FILE PRINT

For use by Secretary of State only

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

NOV 30 2021

1:13 PM

OAL FILE NUMBERS, NOTICE FILE NUMBER Z-2020-08-03-01, REGULATORY ACTION NUMBER 2021-1015-04, EMERGENCY NUMBER FP

For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW 2021 OCT 15 PM 1:45

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY California State Personnel Board

AGENCY FILE NUMBER (If any)

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

1. SUBJECT OF NOTICE, 2. REQUESTED PUBLICATION DATE, 3. NOTICE TYPE, 4. AGENCY CONTACT PERSON, TELEPHONE NUMBER, FAX NUMBER (Optional), OAL USE ONLY, ACTION ON PROPOSED NOTICE, NOTICE REGISTER NUMBER, PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Promotions In Place, 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

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.), TITLE(S) 2

3. TYPE OF FILING, Regular Rulemaking (Gov. Code §11346), Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4), Emergency (Gov. Code, §11346.1(b)), Certificate of Compliance, Emergency Readopt (Gov. Code, §11346.1(h)), Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100), File & Print, Other (Specify) Government Code 18211

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) Second 45-Day Period April 22, 2021 - June 7, 2021

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)), Effective on filing with Secretary of State, §100 Changes Without Regulatory Effect, Effective other (Specify)

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

7. CONTACT PERSON Lori Gillihan, TELEPHONE NUMBER 916-651-1043, FAX NUMBER (Optional), E-MAIL ADDRESS (Optional) lori.gillihan@spb.ca.gov

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 10/14/2021, TYPED NAME AND TITLE OF SIGNATORY Suzanne M. Ambrose, Executive Officer

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FINAL TEXT

**CALIFORNIA CODE OF REGULATIONS
TITLE 2. ADMINISTRATION
DIVISION 1. ADMINISTRATIVE PERSONNEL
CHAPTER 1. STATE PERSONNEL BOARD
SUBCHAPTER 1.3 CLASSIFICATIONS, EXAMINATIONS, AND APPOINTMENTS
ARTICLE 9. PROMOTION**

§ 242. Promotions In Place.

(a) Except as otherwise provided in subdivision (b), an employee with permanent civil service status in their current position, regardless of time base, may receive a promotion in place where all of the following apply:

(1) The employee has demonstrated satisfactory or higher job performance in his or her current position and shown the ability and willingness to succeed at the higher level classification.

(2) The position currently occupied by the employee is reallocated to the “to” class without a change of unit or location.

(3) The employee’s “from” class has the same job functions as the “to” class but at a higher level and the appointing power documents how the promotion in place meets this criteria.

(4) The promotion in place is not from a rank-and-file classification to a supervisory or managerial classification.

(5) The promotion in place is not from a supervisory classification to a managerial classification.

~~(3)~~ (6) The employee competed in and passed an examination for the “to” class and is currently placed on the employment list for that examination in one of the top three ranks or has reinstatement eligibility for the “to” class.

(i) When determining whether the employee is in one of the top three ranks, reemployment and the Department’s State Restriction of appointment (SROA) lists shall not be considered, since the promotion in place is an appointment to a classification to which the employee’s position has been reallocated, rather than an appointment to a vacant position.

(ii) If the employee to be promoted is not in one of the top three ranks, the appointing power may not try to clear ranks by sending employment inquiries to candidates ranked higher than the employee.

(4) (7) The appointing power documents the reasons why the selected employee was chosen for the promotion in place. The documentation shall be maintained pursuant to section 26.

(b) If some, but not all, eligible employees in a unit are selected for a promotion in place, the appointing power shall ensure that those eligible employees not selected are informed in person and in writing of the reasons for the decision and provided the opportunity to obtain the competencies necessary for a promotion in the future. In addition to documenting the reasons for the decision, the appointing power shall document the date and time and any other relevant information regarding the meeting with the employee. This documentation shall be maintained pursuant to section 26. However, this documentation shall not be placed in the eligible employee's official personnel file. For purposes of this section, an eligible employee is any person, within a unit, who satisfies the minimum qualifications to examine for the "to" class being considered for promotion in place and, when applicable, meets the criteria set forth in sections 233, 234, 235, and 237.

(c) If there is a true vacancy in the unit, the appointing power may promote in place the employee before filling the true vacancy, if the criteria set forth in subdivision (a) are satisfied. Filling the true vacancy may be subject to the provisions of the Department's SROA program.

(d) Nothing in this section prohibits a promotion in place from a rank and file or supervisory classification to a higher level classification utilized in a non-supervisory specialist capacity where all elements of subdivision (a) are met, regardless of whether the specialist classification is designated as supervisory or managerial.

(e) Law school graduates currently enrolled in the State Bar Provisional Licensure Program in accordance with California Supreme Court administrative orders 9.49 and/or 9.49.1, may promote in place without acquiring permanent or probationary status in their current position where all other elements of subdivision (a) are met.

Note: Authority cited: Sections 18502, 18660, 18701 and 18804, Government Code.
Reference: Sections 18500, 18951 and 19050, Government Code.