

## INITIAL STATEMENT OF REASONS

**HEARING DATE(S):**

January 25, 2022  
WebEx/Teleconference

**SUBJECT MATTER OF THE PROPOSED REGULATIONS:**

Appeal of a Disqualification Resulting from a Failed Drug Test or Background Investigation Result.

**SECTIONS AFFECTED:**

Title 2, Chapter 1, California Code of Regulations, Amend Section 213.6.

In this rulemaking action, the State Personnel Board (Board) proposes to amend section 213.6 of Title 2, Chapter 1 of the California Code of Regulations.

**PURPOSE, NECESSITY, RATIONALE, AND BENEFITS OF REGULATORY ACTION:**

**Background:**

California Code of Regulations, title 2, section 213.6 is unclear about whether a violation of test protocol or chain of custody procedures is sufficient grounds for sustaining an appeal or whether the Appellant must show that the violation of test protocol or chain of custody procedures actually invalidates the test result.

**Anticipated Benefits of Regulatory Action:**

The anticipated benefits of this regulatory action include clarity on the distinct grounds for appealing a disqualification based on a failed drug test: 1) that the drug was used legally; or 2) that there has been a violation of test protocol or chain of custody procedures that caused a false positive test; or that an irregularity caused a false positive test result.

**Discussion of Amendment:**

The purpose of this regulatory action is to clarify the criteria and process concerning the appeal of a disqualification resulting from a failed drug test or background investigation report.

**Amend § 213.6. Appeal of a Disqualification Resulting from a Failed Drug Test or Background Investigation Result**

Language will be added to section 213.6, subdivision (b) to clarify the grounds for appeal if an applicant fails a drug test. Additionally, it will be made clear that there are two distinct grounds for appeal, since the subdivision currently does not make a distinction.

- A. The first ground for appeal will be if the drug was used legally, rather than obtained legally.
- B. The second ground for appeal will be if the test result was a false positive resulting from a violation of test protocol, defect in chain of custody procedures, or another irregularity. This cleans up the current language
- C. Additionally, uses of “his/her” will be taken out and gender-neutral language will be used out of respect for non-binary applicants.

Section 213.6, subdivision (b) will now read as: An applicant disqualified as the result of failing the drug test may only appeal the disqualification on the grounds that: 1) the drug was ~~obtained~~ used legally; or 2) there has been test result was a false positive resulting from a violation of test protocol, or defect in the chain of custody procedures, or another irregularity that invalidates the test result. A disqualified applicant may have his/her the drug test specimen retested at his/her the applicant's own expense as provided in Section 213.4(i)(2) and include the results of the retesting in his/her the appeal.

### **ECONOMIC IMPACT ASSESSMENT:**

The proposed regulations set standards only related to the Board's appeal procedures. Therefore, the adoption of these regulations will not:

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

The adoption of these regulations, however, will have a positive impact on the general health and welfare of California residents in that the benefits of this regulatory action create a fair, equitable, and consistent process for the civil service hiring process.

**TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS:**

None.

**SPECIFIC TECHNOLOGIES OR EQUIPMENT:**

This regulation does not mandate the use of specific technologies or equipment.

**EFFORTS TO AVOID CONFLICT WITH AND DUPLICATION OF FEDERAL REGULATIONS:**

Not applicable. The Board is not a department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshall.

**SIGNIFICANT ECONOMIC IMPACT ON BUSINESS:**

The proposed regulation sets a standard only related to appealing disqualifications resulting from a failed drug test or background investigation result. Accordingly, it has been determined that the adoption of the proposed regulations would not have a significant, statewide adverse economic impact affecting California businesses, including the ability of California businesses to compete with businesses in other states.

**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.