

INITIAL STATEMENT OF REASONS

HEARING DATE(S):

August 22, 2023

WebEx/Teleconference

**SUBJECT MATTER OF THE
PROPOSED REGULATIONS:**

Examinations, Appointments, Probationary
Periods, Temporary Assignments or Loans

SECTIONS AFFECTED:

Title 2, Chapter 1, California Code of
Regulations, Repeal Section 262, and
Amend Sections 170, 249.1.1, 249.1.2,
249.2, 249.4, 321, 438, 438.1, 439.2, and
439.4

In this rulemaking action, the State Personnel Board (Board) proposes to repeal section 262, and amend sections 170, 249.1.1, 249.1.2, 249.2, 249.4, 321, 438, 438.1, 439.2, and 439.4 of Title 2, Chapter 1, of the California Code of Regulations.

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

Introduction:

The jurisdiction and authority of the State Personnel Board (Board) to enforce civil service statutes and promulgate regulations is rooted in the California Constitution, article VII, section 3. Relative to this regulatory action, the Board prescribes rules to govern appointments, classifications, examinations and probationary periods. (Gov. Code, §§ 18502, subd. (b).) The Board's rulemaking authority is also found in certain statutory provisions related to civil service and the merit principle. (See e.g., Gov. Code, §§ 18701 & 18660.)

Problem Statement:

Several existing regulations in Title 2, Division 1, Chapter 1 of the California Code of Regulations concerning examinations, appointments, probationary periods, and temporary assignments or loans require clarification, streamlining, and/or the correction of deficiencies in order to reflect the Board's continuing efforts to simplify, update, and modernize the state civil service system's selection process.

Anticipated Benefits of the Regulatory Action:

The proposed regulations provide a number of significant benefits to the state civil service system. The anticipated benefits of this regulatory action include: 1.) clarifying existing Board Rules; 2.) streamlining current personnel practices; and 3.) addressing deficiencies in the selection process.

Purpose of each Proposed Amendment:

Amend § 170. Civil Service Examinations and Announcements.

Current section 170 does not proscribe a timeframe for posting civil service examination announcements. To ensure the consistent and fair administration of examinations, the proposed amendment clarifies that examination announcements shall be posted for a minimum period of ten calendar days.

Amend § 249.1.1. Job Announcements.

The proposed amendments proscribe additional requirements be incorporated into job advertisements to ensure departments effectively communicate the full scope and duties of the job vacancy. These additional requirements benefit the state's hiring process because qualified applicants may more easily determine if they meet the eligibility requirements and/or possess the qualifications to apply and compete for a job vacancy. A more transparent hiring process coupled with a more informed applicant pool supports and promotes a more robust and competitive selection process. To that end, the proposed amendments require job advertisements to include the following: each classification being considered to fill a vacancy, the types of eligibility being considered to fill a vacancy, duty statements that most accurately reflect the duties to be fulfilled for each position being considered and, if the position is advertised as limited term, the expected duration of the appointment.

Additionally, to support a more efficient hiring process while maintaining the integrity of the merit civil service system, the proposed amendments allow appointing authorities to advertise multiple vacant positions within different units on the same job advertisement as long as the positions are of the same classification. In these instances, a description of each unit must be provided along with all relevant duty statements.

Amend § 249.1.2. Job Applications.

The purpose of this amendment is to clarify that appointing powers shall not disqualify or reject applicants from the hiring process for non-job-related reasons, such as failing to complete non-job-related documents (e.g., department surveys, application package checklists). These non-job-related requirements undermine section 250's mandate that the hiring process involve a job-related assessment of the candidates' qualifications. However, the appointing power may require the applicant to submit specific job-related documentation (e.g., transcripts, certificates, licenses) in order to determine if the applicant satisfies the minimum qualifications (MQ's).

Amend § 249.2. Postings of Job Announcements on Websites or by Other Electronic Means.

In order to promote broad, inclusive, and modern hiring and recruitment efforts, the proposed amendment clarifies that in addition to advertising job vacancies on CalCareers, appointing powers may post job announcements on social media platforms, as well as career recruitment websites, career fairs, or other electronic means.

Amend § 249.4. Verification of Minimum Qualifications Prior to Appointment.

Currently, section 249.4 does not require the verification of minimum qualifications for candidates on reemployment lists or with mandatory reinstatement rights prior to appointment because these candidates have already competed for, and served in, the classification for which they are being appointed and therefore demonstrated that they meet the minimum qualifications. However, some classifications' minimum qualifications also require an incumbent to possess valid licensure, certification, or similar credential in order for the incumbent to perform the essential duties of the position. As such, the proposed amendments require that the appointing authority verify valid licensure, certification, or similar credential, when appropriate, prior to appointment regardless of whether they are reemployment candidates or possess mandatory reinstatement rights.

Additionally, section 249.4 sets forth the process for withholding a candidate from an employment list for not satisfying the MQ's. In some instances, after the appointing power has initiated or completed the withhold process, they might obtain additional information that demonstrates the candidate does in fact satisfy the MQ's. Therefore, the section is amended so that appointing powers may reverse withholds as long as they document the reason(s), notify the candidates in writing and, if applicable, restore the candidates' eligibility. The proposed amendments safeguard the merit-based civil service system by allowing otherwise eligible candidates to continue to participate in the selection process and ensuring appointing powers properly document and justify any and all withhold actions.

Repeal § 262. Waiver of Appointment.

Repealing section 262 removes the requirement that an eligible candidate's record shall be removed from the eligibility list when the candidate waives three appointments in any given class. The automation of generating eligibility lists has rendered this requirement obsolete.

Amend § 321. Extension of Probationary Period.

Currently, section 321 provides that the appointing power notify the probationer when a probationary period has been automatically extended. For transparency and equity, the proposed amendments would additionally require that appointing powers notify the probationer of the date the extended probationary period will end. This provides both the probationer and appointing power with a clear and mutual understanding of the duration of the extended evaluation period.

Additionally, proposed amendments to section 321 clarify that "absences of five or more working days" that fall outside of absences already identified in Rule 321, subdivision (b), shall not be considered working time. This proposed amendment accounts for all instances of absences by the employee, including dock.

Furthermore, under current regulations, in those instances where an appointing power needs to extend the period even further due to the employee's absence of 1/3 or more of the probationary period, the appointing power must submit a written request for extension of the probationary period to CalHR which includes specific, detailed information, and also serve this same written request on the probationer. The proposed amendments eliminate this overly complicated and onerous process. Instead, in order to support a more streamlined process, the appointing power shall simply notify the probationer in writing explaining the reasons for the extension under subdivision (d) and the date the extended probationary period will end. The probationer's right to appeal remains in this regulation.

Lastly, subdivision (f)(3) is amended to clarify that in instances where the Executive Officer is reviewing a request for extension and the probationary period will end during the review, the probationary period will be automatically extended until the Executive Officer's decision is issued. Other changes are technical or for purposes of style and consistency.

Amend § 438. Temporary Assignments or Loans in General.

Current section 438 does not outline a mechanism for an employee to terminate a temporary assignment or loan, which is unfair to the employee since they are voluntarily participating in a temporary arrangement with the appointing power. The proposed amendment clarifies that an employee serving in a temporary assignment or loan, except when serving in a compelling management need assignment, may request in writing that their temporary loan or assignment be terminated prior to the anticipated end of the temporary assignment or loan and that the request shall be granted within a reasonable time period, not to exceed 10 working days, upon receipt.

Amend § 438.1. Period of Time for the Temporary Assignment or Loan.

The proposed amendment clarifies that employees have no right of appeal to the Board or Executive Officer concerning temporary assignments or loans.

Amend § 439.2 Training and Development Classification.

The purpose of amending this regulation is to ensure consistency in the terms used to determine the appropriate classifications that may be used for training and development assignments. Specifically, the proposed amendments to Rule 439.2 update “from class” to “current class” which mirrors language in Rule 439.2, subdivision (a)(1) and is already defined in Rule 437.

Amend § 439.4. Completion of a Training and Development Assignment.

The proposed amendments require appointing powers to provide a written statement to employees certifying training and development experience within 30 calendar days of the completion and/or termination of their training and development assignment. This provides the employee with supporting documentation that verifies any time served in a training and development assignment in order to demonstrate that they meet the MQ’s of another classification, especially in those cases where the appointing power did not properly document or retain documentation of the assignment and/or failed to properly key the assignment in the state’s payroll system. Also, the rule shall be amended to clarify that an employee may file an appeal with the Board from the appointing authority’s denial of a request for use of training and development experience for meeting MQ’s in an examination pursuant to Rule 52.

ECONOMIC IMPACT ASSESSMENT:

The proposed regulations set standards related to the Board’s selection process. 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 regulations set a standard related to the Board's examinations, appointments, probationary periods, and temporary assignments or loans procedures. 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.