

Summary of Comments and Board Responses 45-Day Comment Period  
Proposed Rulemaking Action: Waiver of Appointments

## **SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES**

### **I. Introduction**

The State Personnel Board (Board) proposes to repeal Section 261.1 and amend Sections 249.5, 258, 260, 260.1, and 261 of Title 2, Chapter 1, of the Code of Regulations (CCR). A 45-day public comment period on this rulemaking action was held from June 28, 2024, through August 12, 2024. A public hearing was held on August 13, 2024. The comments received by the Board were taken under submission and considered. A summary of those comments and the Board's responses are below.

### **II. Summary of Written Comments and Responses**

Based on the comments received, the Board proposes further organizational changes to better reflect the chronology of current personnel practices and to consolidate relevant rules for the sake of simplicity, clarity, and efficiency.

The Board proposes the repeal of current section 261.1 and instead merges the criteria outlined in section 261.1 with current section 260. As proposed, section 260 now incorporates prior sections 260 and 261.1, while also addressing a criterion of section 258, subdivision (c), that fell outside the scope of time periods for eligible candidates to respond to employment inquiries following certification. This criterion, which communicates that the unavailability of a candidate constitutes a waiver of appointment is better suited to the scope of newly proposed section 260 or *Eligible Candidate Responses to Employment Inquiries*. In light of the Board's recent repeal of section 262, *Waiver of Appointments*, as noted in our Initial Statement of Reasons, the criterion has also been updated to clarify that the unavailability of a candidate to be employed within 30 calendar days following the date of a formal offer of employment is considered to be the same as a decline of a job offer and constitutes disinterest on the part of the eligible candidate.

Section 249.5 has been added and amended to ensure consistency with the proposed regulatory changes related to employment inquiries and eligibility lists within title 2, Article 10.

## **From Department of State Hospitals (DSH)**

### Comment I. 261.1(b)

DSH states that section 261.1 appears to contradict proposed revisions to section 260.1. Specifically, Section 261.1, subdivision (b), as written, provides a candidate with the right to decline an unlimited number of employment inquiries and/or hiring interview offers without penalty and yet section 260.1 imposes a penalty on a candidate if they fail to appear for work on the designated start date. DSH seeks clarity on whether the penalty of placing a candidate on the inactive list for failing to appear for work on the designated start date conflicts with section 261.1.

### Response I.

Section 260.1 specifies that if a candidate fails to appear on the agreed upon designated start date and time, the department must place the candidate on inactive status on the eligible list. This requirement was preserved given the enormous amount of work it takes to select, appoint and on-board new employees. Whereas the declination of an employment inquiry is both commonplace and unobstructive to the hiring process given the centralized, electronic process of employment inquiries administrated via ECOS. The same logic applies to the decline of hiring interviews. An eligible candidate should not be penalized for failure to appear for an interview or to decline an interview offer because the declination is within their right as an eligible candidate and does not cause undue burden on the appointing power. In either case, proposed amendments to section 260.1 clearly state that an employee shall only be made inactive on the eligible list when they fail to appear for work on the agreed upon start date and time.

### Comment II. 258 (c)

DSH questions if the terms “employment list” and “eligible list” are used interchangeably or if one should be used consistently. In section 260.1, the term “eligible list” is mentioned, while in section 258, subdivision (c), the term “employment list” is used.

### Response II.

For the sake of clarity and consistency, the Board amends section 258, subdivision (c), now proposed section 260, to use the term “eligible list” which is defined in Government Code section 18532 as “a list of persons who have been examined in an open competitive examination and are eligible for certification for a specific class.”

## **From Kathleen Chaussee, Chief Human Resources Branch, Department of Motor Vehicles (DMV)**

### Comment III. 258

DMV recommends:

- Change the term “eligible candidate” to “eligible” for consistency with other CCRs where an eligible is referenced, such as section 151.
- Define the term “eligible” and “candidate” under the definitions section to mitigate confusion between a person who has taken and passed a State civil service examination and a person who has applied for a State civil service job.
- Replace “he or she” with “they” to be more gender neutral.
- Change “candidate” to “eligible” for consistency with the definition of eligible.
- Move the second paragraph of section 258, subdivision (c) to section 261.1.

### Response III.

For clarity and consistency, any reference to “candidate” within sections 249.5 through 261 will be amended to the term “eligible candidate.” An “eligible candidate” is any person who has passed examination and is reachable on a certified eligible list for a job vacancy.

For organizational clarity, section 258, subdivision (c), has been incorporated into the newly proposed section 260, *Eligible Candidate Responses to Employment Inquiries*.

Consistent with prior proposed Board regulations, any reference to “he” or “she” within sections 249.5 through 261 has been changed to “they.”

### Comment IV. 260.1

DMV states that “Waiver of Contact” occurs chronologically prior to “Failure to Appear for Work After Acceptance of Appointment.” As such, DMV suggests moving section 260.1 to appear after section 261.1.

### Response IV.

The Board agrees with DMV's suggestion and has adjusted the order and organization of Article 10 to better reflect the chronological sequence of the hiring process.

### Comment V. 261.1

DMV recommends revising the title of section 261.1. from “Waiver of Contact” to “Contact Results” or something absent the word “waiver.” DMV believes that since Waiver of Appointment has been repealed, which eliminates the requirement that an eligible’s record be removed from the employment list for future certification when the candidate waives three (3) appointments, the title “Waiver of Contact” is confusing.

Furthermore, to be consistent with the definition of “eligible,” DMV recommends changing “candidate” to “eligible.”

### Response V.

To dispel any confusion and provide utmost clarity concerning eligible candidate responses to employment inquiries, section 261.1 has been renumbered to section 260 and retitled as *Eligible Candidate Responses to Employment Inquiries*. The term “waiver of contact” has been removed. However, the criteria for clearing individuals from certified eligible lists is retained and simplified to ensure any selected candidate is reachable and eligible for appointment.

Please see Response III (page 3) regarding the use of the term “eligible candidate.”

### Comment VI. 261.1(b)

DMV questions whether there are different rules for an open or a promotional list when referring to candidates declining an unlimited number of inquiries. If there are no differences, DMV suggests removing “open” from the first sentence.

### Response VI.

The Board would like to make clear that the standards outlined in section 261.1, now proposed section 260, apply to all eligible lists as defined in Government Code section 18532. As such, the Board has replaced the term “open” from section 260 (previously section 261.1) with the term “eligible list.”

**From Stephanie Hill, Personnel Officer, California State Teachers’ Retirement System (CalSTRS)**

### Comment VII. Section 258

CalSTRS seeks clarification on whether departments are required to allow candidates to select an employment start date within 30 calendar days of the job offer. CalSTRS questions if this requirement prevents a department from considering it a decline of a job offer if a

candidate is unable to start within two weeks, given that the department must provide at least 30 days for the candidate to begin employment. Additionally, CalSTRS asks if this 30-day timeline should be applied consistently to all candidates, regardless of their eligibility type, beyond certification listing.

#### Response VII.

The Board thanks CalSTRS for its feedback on this regulatory package. The Board would like to make clear that a department **cannot** decline a candidate if they are unavailable to start employment within 14 calendar days from the date of the formal offer of employment. Departments must provide a minimum of 30 calendar days for the individual to begin employment. This standard is consistent with the 30-day timeframe that departments must allow for lateral transfers found in section 249.8.

### **III. Conclusion**

The Board appreciates the comments and feedback it received regarding this proposed amendment. The modified text with the changes clearly indicated is available to the public as stated in the Notice of Modification to Text of Proposed Regulation.