

**STATE PERSONNEL BOARD  
801 CAPITOL MALL  
SACRAMENTO, CA 95814**

**June 14, 2010**

**NOTICE OF MODIFICATIONS TO TEXT OF  
PROPOSED REGULATIONS**

Pursuant to the requirements of Government Code section 11346.8 (c), and section 44 of Title 1 of the California Code of Regulations, the State Personnel Board is providing notice of changes made to the proposed regulation text for the following sections, all of which were the subject of a regulatory hearing on February 23, 2010.

The changes are in response to comments received regarding the proposed regulations. The changes being made are:

Section 51.2(d): An end quote was inadvertently left out.

Section 51.2(f): The words "with the SPB" have been added for clarity.

Section 51.2(i): For purposes of clarity, the words "and receiving evidence" have been added to the end of the definition.

Section 51.2(j): For purposes of clarity, this definition has been revised to read: "Business Days" means all days that all state agencies are open for business..."

Section 51.2(k): This definition has been revised to read: "Complainant" means the person or organization filing a complaint of discrimination, harassment, retaliation, or denial of reasonable accommodation for a known physical or mental disability." This revision conforms the definition to the Discrimination Complaint Process commencing with section 64.1.

Section 51.2(r): The words "by a Presiding Officer" have been added to the end of the sentence in order to clarify that a Presiding Officer conducts an Informal Hearing..

Section 51.2(u): The majority of the text which had numerous cross references to code sections which was confusing has been deleted. It now reads "Investigatory Hearing" means an evidentiary hearing conducted by a Chief ALJ's designee in accordance with provisions of section 55.2.

Section 51.2(w): This subsection has been revised to read: "Merit issue appeal" means an appeal concerning allegations that the State Civil Service Act or State Personnel Board regulation or policy related to applications, appointments and

promotions within the civil service system has been violated by an agency. This addition better reflects the scope of the subsection.

Section 51.2(cc): This subsection was deleted since it was somewhat confusing, and more importantly, not needed.

Section 52.1: The word “submitted” in subsections (a) and (b) have been changed to “filed.” This change is necessary since documents are filed with the SPB, not submitted.

Section 52.2: This section has been amended to read “...at the time of the change but not later than 1 week after the change,” in order to avoid a double negative.

Section 52.3: This section has been amended to delete the July 1, 2010 date, and add “Thirty (30) days after the effective date of this section..” This change was necessary since these regulations would not be effective July 1, 2010.

Section 52.4: Since this section deals with the filing of Appeals and Complaints, for purposes of clarity, the words “complaints” and “complainants” have been added to subsections (b), (b)(1) through (b)(4), (c), (d), and (e), where appropriate.

Section 52.4(b)(3): This subsection has been amended to read: “Except as provided in Government Code section 19575, state the facts that form the basis for appeal. This change is necessary because Government Code section 19575 exempts some Appellants from stating the facts that form the basis for appeal.

Section 52.4(e)(1)(G): The number “1” has been changed to the word “one” to make it consistent with the remainder of the section.

Section 52.4(e)(1)(H): Redundant words “that led to the filing” have been deleted from the end of the sentence.

Section 52.4(e)(L)(i): The word “days” has been added following “30,” since it was inadvertently left out.

Section 52.4(e)(1)(P): The words “Notice” and “Appointment” were inadvertently not capitalized.

Section 52.4(e)(3): The phrase “Chief ALJ or his or her designee” have been substituted for “Executive Officer” to make it consistent with the first sentence.

Section 52.4(f)(1): For purposes of clarity, the heading and subsection (f)(1) have been amended to read: “Methods of Delivery for Filing Appeals with the SPB,” and “Appeals or complaints ...received by SPB.”

Section 52.5: For purposes of clarity, subsection (a) has been amended to read: “After an appeal or complaint has been filed...” This change makes the section applicable to all other papers filed pursuant to an appeal or complaint.

Section 52.5(a): For purposes of clarity, the “Methods of Delivery” in subsections (f)(1) through (3) have been added to the end of section 52.5, which did not specify “Methods of Delivery” as indicated in the heading.

Section 52.5(b): The word “or” has been changed to “of” to correct a misspelling.

Section 52.5(c): Methods of Delivery for Filing Appeals or Complaints with the SPB from section 52.4 has been copied in a new subsection (c) in order to make it consistent with the heading of section 52.5.

Section 52.6: Since this section covers more than adverse actions, the word “Adverse” in the heading has been changed to “Personnel.”

Section 52.6(a)(6): In response to a request, new subsection (a)(6) has been added which makes it clear that an appointing power must advise an employee of the time within which to file an appeal with the SPB.

Section 52.7: The subsections were mistakenly lettered, leaving out (e), which has been added.

Section 52.7(a): The word “filed” was inadvertently repeated and was deleted.

Section 52.7(c): This subsection has been amended to make it clear that an accused employee has a right to provide an answer pursuant to Government Code section 19583.5.

Section 52.7(e): The word “signed” was added for an improvement in clarity.

Section 52.7(f): This subsection has been amended to read: “The requesting party shall submit a separate document with the request to file charges stating the reasons for good cause for the additional pages.” This change improves the clarity of the subsection.

Section 52.7(i)(3): A period was inadvertently left out following the reference to section 52.6, and was added. In addition, for purposes of clarity, the last sentence of the subsection has been amended to read: “Within 30 days after a copy of the Board’s decision is served upon the parties, either party may petition the board for rehearing of the decision, pursuant to Government Code section 19586.

Section 52.8: The phrase “Motions to Strike” have been deleted from the section heading, since Motions to Strike are dealt with in section 60.1.

Section 52.8(c): For purposes of clarity, the words “in writing, unless entered on the record before an ALJ” have been added to the end of the sentence.

Section 52.8(d): The words “Complainant” and “complaint” have been added to clarify this section applies to both appellants and complainants.

Section 52.9(b) and (c): While this section states that written notice must be given to SPB, and it is implied that written notice will be given to all parties, the word “written” before the phrase “notice to all parties...” has been added in order to clarify the requirement.

Section 52.9(d)(2): For purposes of clarity, the words “of change” have been added so that the sentence reads: “If written notice of change of address is not given....”

Section 53.2: The words “or Complaints” have been added to the heading to make it clear that this section applies to both Appeals or Complaints Assigned to the Investigative Process.”

Section 53.2(a)(1): The words “discrimination complaints” have been deleted, and the phrase: “Complaints of discrimination, harassment, retaliation, or denial of reasonable accommodation for a known physical or mental disability” has been added in order to conform the section to section 64.1.

Section 53.2(b): The first sentence has been revised to read: “Unless otherwise required by law, or otherwise assigned...” in order to make it clear that the Board or other requirements in law may affect a case that otherwise would be assigned to the investigatory hearing process.

Section 53.3: The heading and subsection (a)(5) have been amended to add the word “complaint” to make it clear the section applies to both Appeals or Complaints.

Section 53.3(a)(2) and (3): References to the Ralph C. Dills Act have been deleted because they rendered the sections unclear.

Section 53.3(a)(4): The words “Chief ALJ” have been added since they were inadvertently left out, and it now makes it clear that the Chief ALJ has the authority to assign appeals or complaints the evidentiary hearing process.

Section 54.1(f): The word “informal” was substituted for the word “investigatory” to correct an error.

Section 55.1(e): This subsection has been added to clarify that upon conclusion of the investigatory Review, the Executive Officer will either present a recommended decision to the Board, or render a decision.

Section 55.2(b): The capitalization of the word “regulation” was removed due to an inadvertent error.

Section 55.2(e): This section was amended to substitute the phrase “pursuant to” in place of the phrase “to the extent authorized,” to clarify that declarations/affidavits will be admissible pursuant to section 11514 of the Government Code.

Section 55.2(f): The word “ALJ” was substituted for “authorized representative,” since using authorized representative in this context was incorrect.

Section 55.2(g): The word “the” was added for clarity.

Section 56.1: This section has been amended to add the phrase “including those acts necessary to ensure due process for all parties,” in order to clarify that an ALJ has the discretion and the authority to act for purposes of due process.

Section 56.2: Subsection (b)(4) which required a party to serve on all parties a notice of preemptory strike has been deleted since it may be impossible to provide such notice.

Section 56.3: Subsections (c) and (c)(1) were deleted since these dealt with Board issues, and it would be inappropriate for the Appeals Division to adopt a regulation that affected the Board.

Section 56.4: An incorrect cross reference was changed from (e) to (d).

Section 57.1: Subsection (f)(1) was added to require parties to identify all related appeals or complaints pending before the Appeals Division in order to facilitate an analysis as to whether cases should or should not be consolidated. In addition, in subsection (f)(6), an error was corrected, which resulted in the deletion of the word “number,” and the addition of the word “identity.” In Subsection (f)(5) and (8), a sentence was added to make it clear that parties are not required to disclose witnesses or evidence that will be used for rebuttal or impeachment purposes. Subsection (g) was amended to provide parties with 10 days prior to the hearing within which to serve prehearing/settlement conference statements on all parties. In subsection (h), the phrase “and other pertinent documents” was deleted for clarity purposes. Lastly, subsection (j) was added for the purposes of clarity that copies section 58.3(b) which provides for a deemed withdrawal of an appeal or action for failure to proceed at a hearing or a prehearing/settlement conference.

Section 58.1: The phrase “or other electronic means” was deleted in the interests of clarity.

Section 58.2: The words “and Complaints” were added to the heading since this section deals with both Appeals and Complaints. The words “been initiated” were deleted, and the word “commenced” was added in the interests of clarity, and the remainder of the sentence was amended to conform to the change.

Section 58.3: The terms “ALJ” and “presiding officer” were added to the list of individuals an appeal is assigned to.

Section 58.4: The words “on the record” were added to clarify that a presiding officer has the authority to order on the record, a closure of a hearing or other orders.

Section 58.5: The terms “hearing officer, Chief ALJ’s designee, or presiding officer” were added to clarify that these individuals have the authority to exclude from the hearing any witnesses not at that time under examination.

Section 58.6: The phrase “or other electronic means” was deleted in the interests of clarity.

Section 58.7: Proposed subsection (b) was deleted because it was unclear, and a new subsection (b) was added to make it clear that a request for security will be evaluated by the Chief ALJ, or his or her designee, and that costs for security are reimbursed pursuant to Government Code section 18671.2.

Section 58.10: The terms “ALJ, Chief ALJ’s designee and hearing officer” were added to make it clear that any of these individuals may take official notice of those matters specified in Government Code section 11515.

Section 58.11: The words “or complaint or personnel action” were added to clarify that this section applies to appeals, complaints, and personnel actions. The words “in the case” were deleted to conform to the change. Lastly, the words “through settlement” were added to the end of the sentence to make it clear that the action as been withdrawn through settlement.

Section 59.1: Subsection (a)(1) was added to address the concerns of a commenter by making it clear that requests for discovery in Notices of Adverse Actions are handled differently than other appeals, and in addition, the right to inspect documents is governed by the provisions of Government Code section 19574 or 19590, and that a request for discovery provided by section 59.1 is a separate discovery process for proceedings before the board. In subsection (a), a grammatical change was made substituting the words “which is” for “and.” In subsection (c)(2), the words “as witnesses” were deleted in order to delete a redundant phrase. In addition, the word “witness” was added to make it clear

that what's referred to is a witness list. In subsection (c)(3), the term "ALJ" was substituted for "administrative law judge." Subsection (c)(5) was clarified by adding the phrase "pertaining to the act, omission, event, decision, condition or policy which is the basis for the appeal or complaint, including all supporting materials." Lastly, in subsection (d), the word "parties" was added to correct a misspelling.

Section 59.1(d): This subsection has been amended by SPB to make it clear that when a respondent objects to a request for discovery, the objection must be explicit, especially in regard to objections based upon a claim of privilege, work product, or right of privacy protection. The SPB also amended this subsection to make it clear that where a responding party fails to serve a timely response to a request for discovery, the respondent waives any and all objections to the request. However, the waiver may be relieved in the discretion of the ALJ where the responding party has substantially complied with the request, and the responding party's failure to make a timely response was the result of mistake, inadvertence, or excusable neglect. The basis for these amendments is the California Code of Civil Procedure. These amendments are necessary in order to encourage parties to fulfill their legal responsibilities when it comes to complying with requests for discovery, which will in turn, keep the process moving, and ultimately reduce the backlog of appeals pending before the SPB.

Section 59.2: In subsection (c), the phrase "or other electronic means" was deleted in the interests of clarity.

Section 59.3: The subpoena form was inadvertently not made available for the 45-day notice, so it's being added to the 15-day notice. Subsection (a) was amended to include the phrase "or more than 100 miles from the location where the witness testifies or is interviewed if testimony or a statement is taken electronically pursuant to section 58.6, whichever applies," to clarify the 100 miles is measured from where the testimony will be taken. Subsection (d) was amended because it was unclear in its reference to section 52.5. A new subsection (e) was added to clarify that witness fees are remitted pursuant to Government Code section 18674. The proposed subsection (e) and (e)(1) dealing with witnesses fees were deleted because they were confusing, and the new subsection (e) clarifies that witness fees are governed by Government Code section 18674.

Section 59.4: Subsection (a)(8) was added at the suggestion of a commenter which adds a failure to meet and confer to an abuse of the discovery process. In subsection (b)(1) and (2), a grammatical error was corrected by deleting and adding the words "and/or."

Section 60.1: Subsection (a) was amended to provide 90 days rather than 60 days for filing motions with the Appeals Division in order to provide the parties more time. Subsection (a)(1) was amended to add the word "Harassment" in

order to conform it to section 64.1. Subsection (f) was amended to allow parties 8 days rather than 5 days for service of the opposition on all parties in order to give parties more time.

Section 60.2: Subsection (b)(2) was amended to allow parties to file a motion for continuance by mutual agreement no later than 90 days, rather than 120 days prior to the hearing. This gives the parties more time to mutually agree to a continuance. In subsection (c)(2)(G), an incorrect citation to the Government Code was corrected.

Section 60.3: In response to a comment, a new subsection (a) was added to make it clear that a petition or motion to compel a request to inspect documents under Government Code section 19574.1, is governed by Government Code section 19574.2. In addition, motions to compel a request for discovery are governed by section 60.3. Subsections (c) and (e) were amended to add “responses and replies” to clarify that these subsections apply to motions, responses, and replies, and not just motions. Lastly, in subsection (e)(2), an error was corrected by changing “petition” to “opposition.”

Section 64.4: The SPB added subsection (b) to clarify that upon the expiration of the 90 day time period, a complainant may file a discrimination complaint with the SPB; however the complaint cannot be filed with the SPB more than 150 days after the Complainant filed the complaint with the appointing power.

Section 64.5: Subsection (a) was amended to clarify that an appointing power provides a decision to the Complainant, rather than issuing a decision. This subsection was also amended to change 120 days to 150 days to make it consistent with section 64.4.

Section 67.8: Subsection (a) was amended to change “administrative law judge” to “ALJ.”

Appendix A: This was inadvertently not sent out in the 45-day comment period, and will be included in the 15-day comment period. This Appendix is a copy of the Judicial Council of California’s 2009 California Rules of Court dealing with requests for accommodation by persons with disabilities.

Appendix B: This was inadvertently not sent out in the 45-day comment period, and will be included in the 15-day comment period. This Appendix is a copy of the SPB’s subpoena form that has been used for a number of years, and has been slightly modified.

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If you have any comments regarding the proposed changes, the SPB will accept written or e-mail comments between June 14, 2010 and June 30, 2010. All

comments must be submitted to the SPB no later than 5:00 p.m. on June 30, 2010 and addressed to:

John D. Smith  
State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95814  
[jsmith@spb.ca.gov](mailto:jsmith@spb.ca.gov)

All comments received by 5:00 p.m. on June 29, 2010, which pertain to the indicated changes will be reviewed and responded to by the SPB as part of the compilation of the rulemaking file.

**PLEASE LIMIT YOUR COMMENTS TO THE MODIFICATIONS OF  
THE TEXT**