



**NOTICE OF PROPOSED REVISION OF REGULATIONS
AND STATEMENT OF REASONS**

**CALIFORNIA CODE OF REGULATIONS
Title 2. Administration
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 1 – General Civil Service Regulations
Article 4. Hearings and Appeals**

DATE: December 14, 2007

TO: ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND
MEMBERS OF THE GOVERNOR'S CABINET

SUBJECT: PROPOSED REGULATION CONCERNING SERVICE OF DOCUMENTS
IN STATE PERSONNEL BOARD PROCEEDINGS

AUTHORITY:

Under authority established in Government Code (GC) sections 18211, 18214 and 18701, the State Personnel Board (SPB) proposes to add Section 51.10 to Title 2 of the California Code of Regulations (2 CCR), to clarify the manner in which documents may be served in proceedings before the SPB.

REFERENCE:

These regulations are to implement, interpret, and/or make specific GC sections 18575 and 18672.

PUBLIC HEARING:

Date and Time: February 5, 2008, from 9:45 a.m to 10:15 a.m.

Place: State Personnel Board
First Floor Auditorium
801 Capitol Mall
Sacramento, CA 95814

Purpose: To receive written and/or oral comments about this action.

WRITTEN PUBLIC COMMENT PERIOD:

The written public comment period will close Monday, January 28, 2008, at 5:00 p.m. This comment period allows time for SPB staff to provide copies of any written comments to the five-member State Personnel Board (Board) for consideration at the time of the hearing. Any person may submit written comments about the proposed amendments. To be considered by the Board, the appropriate person identified below must receive written comments before the close of the written public comment period.

Written comments may be submitted to:

Senior Staff Counsel Bruce A. Monfross
State Personnel Board
801 Capitol Mall, MS 53
Sacramento, CA 95814

or to: bmonfross@spb.ca.gov

or faxed to his attention at: (916) 653-4256.

In the alternative, written comments can be submitted to:

Senior Staff Counsel Stephanie Ramirez-Ridgeway
State Personnel Board
801 Capitol Mall, MS 53
Sacramento, CA 95814

or to: sramirez-ridgeway@spb.ca.gov

or faxed to her attention at: (916) 653-4256.

AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/CONTACT PERSONS:

Copies of the express terms of the proposed action, the Statement of Reasons, and all of the information upon which this proposal is based are available for review upon request to Bruce Monfross. The rulemaking file is available for review during normal business hours at SPB, 801 Capitol Mall, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed action should be directed to Bruce Monfross, as specified above. Questions regarding the regulatory process in conjunction with this regulation should be directed to Bruce Monfross at SPB, 801 Capitol Mall, MS 53, Sacramento, CA 95814, or by telephone at (916) 653-1456 or TDD (916) 653-1498.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, SPB will make the full text of the

changed regulations available for at least 15 days before the date the regulations are permanently amended.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

GC section 18211 specifies that regulations promulgated by the SPB are exempt from the Administrative Procedure Act (GC section 11340 *et seq.*), except as provided in GC sections 18215 and 18216. The exceptions in GC sections 18215 and 18216 do not apply to the service of documents in the type of SPB proceedings contemplated within the proposed regulation.

GC section 18701 authorizes the Board to prescribe, amend, and repeal regulations for the administration and enforcement of the Civil Service Act (GC section 18500 *et seq.*).

GC section 18575 specifies the manner in which notices of disciplinary actions and notices of rejections during probationary periods must be served on employees subject to the Board's jurisdiction.

GC section 18672 specifies the manner in which Board-issued subpoenas must be served in Board proceedings.

The purpose of the proposed regulation is to clarify the manner in which service of various personnel actions, including, but not limited to, disciplinary actions, rejections during probationary period, medical actions, and non-punitive actions, can be made on state civil service, local civil service, and California State University (CSU) employees. The proposed regulation is also designed to specify the manner in which SPB-issued subpoenas may be served in SPB proceedings.

IMPACT ON SMALL BUSINESSES:

No impact, is related solely to hearings conducted by the SPB related to personnel actions taken against state civil service or local civil service employees.

LOCAL MANDATE:

The proposed regulation imposes no mandate on local agencies or school districts and, therefore, requires no reimbursement pursuant to GC section 17561.

COST ESTIMATES OF PROPOSED ACTION:

Costs or Savings to State Agencies:

No impact.

Impact on Housing Costs:

No impact.

Costs or Savings in Federal Funding to the State:

No impact.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed:

No impact.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies:

No impact.

Cost Impact on Private Persons or Businesses:

The SPB is not aware of any cost impacts that representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS:

The SPB has made an initial determination that this proposed action will not have a significant, statewide adverse economic impact directly on business, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT REGARDING THE EFFECT ON JOBS/BUSINESSES:

The SPB has made an initial determination that the proposed regulation would not affect the creation or elimination of jobs within California, the creation of new businesses or elimination of existing businesses within California, or the expansion of current businesses in California.

ALTERNATIVES STATEMENT:

SPB must determine that no reasonable alternative considered by SPB, or that has otherwise been identified and brought to the attention of SPB, would be more effective in carrying out the purpose for which this action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

FINAL STATEMENT OF REASONS:

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law pursuant to GC section 11346.9, and shall include a Final Statement of Reasons for the amendments. Copies of the Final Statement of Reasons may be obtained from the contact person when it becomes available.

ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE STATE PERSONNEL BOARD WEBSITE:

The text of the proposed amendments, the Notice of Proposed Amendment of Regulations and Statement of Reasons can be viewed at www.spb.ca.gov.

STATEMENT OF REASONS:

Under the State Civil Service Act (GC sections 18500 *et seq.*), state appointing powers are authorized to file the following types of personnel actions against state civil service employees, all of which may result in a material impact on an employee's employment status: notice of adverse action under GC sections 19574 and 19590; notice of rejection during probationary period under GC section 19173; notice of medical action under GC section 19253.5; notice of non-punitive action under GC section 19585; notice of career executive assignment termination under GC section 19889.2; notice of termination with fault of a limited term, seasonal, or temporary authorization appointment (TAU) under GC sections 19083 and 19058; notice of termination of a Limited Examination and Appointment Program (LEAP) appointment under GC section 19243.4; and notice of termination or automatic resignation of a Permanent Intermittent employee under GC section 19100.5. Any state civil service employee served with such a personnel action may file an appeal with the SPB.

Local governmental agencies are also authorized to file the following types of personnel actions against local civil service employees, all of which may result in a material impact on the employee's employment status: notices of adverse action, notices of medical transfer/demotion/dismissal, automatic resignation, and layoff, under GC section 19803 and 2 CCR sections 17527 and 17550. Any local civil service employee served with such a personnel action may file an appeal with the SPB.

In addition, the California State University (CSU) is authorized to file the following types of personnel actions against CSU employees, all of which may result in a material impact on the employee's employment status: notice of adverse action under Education Code section 89538; and notice of absence without leave (AWOL) resignation/separation under Education Code section 89541. Any CSU employee served with such a personnel action may file an appeal with the SPB.

GC section 18575 sets forth the manner in which disciplinary actions and rejections during probationary period may be served on state civil service employees, and allows for both personal service and service by mail. Section 18575 does not, however, address the method of service required for the wide variety of other formal personnel actions that may also be taken against state civil service, local civil service, and CSU employees, as identified above. Although due process protections, including appropriate service of notice of the personnel action, applies to all such personnel actions, Section 18575 does not clarify the manner in which service can be made for all other types of personnel actions that are subject to hearing before the SPB. The proposed regulation is designed to clarify this ambiguity by specifying the manner in which all recognized personnel actions may be served on employees who are authorized by law to file an appeal of the personnel action with the SPB.

In addition, GC section 18672 specifies the manner in which parties to a hearing before the SPB may serve an SPB-issued subpoena. It has been the SPB's experience that parties to SPB proceedings often-times are unaware of the service requirements set forth in GC section 18672, and instead attempt to rely upon the service provisions set forth in GC section 18575 when attempting to serve SPB-issued subpoenas. The purpose of re-stating the provisions of GC section 18672 in the proposed regulation is simply to have all service requirements related to SPB proceedings located in one location so that parties to SPB proceedings are less easily confused as to what service requirements apply to the particular document they are attempting to serve.

MARY FERNANDEZ
Assistant Executive Officer

Attachment: Proposed Text of Amended Regulations

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Division 1. Administrative Personnel

Chapter 1. State Personnel Board

Subchapter 1 – General Civil Service Regulations

Article 4. Hearings and Appeals

§ 51.10 Service; Proof of Service

(a) (1) Service of the following personnel actions may be made by personal service or by mail: notice of adverse action under Education Code section 89538, and Government Code sections 19574 and 19590; notice of rejection during probationary period under Government Code sections 19173 and 19803; notice of medical action under Government Code sections 19253.5 and 19803; notice of non-punitive action under Government Code section 19585; notice of career executive assignment termination under Government Code section 19889.2; notice of termination with fault of a limited term, seasonal, or TAU appointment under Government Code sections 19083 and 19058; notice of termination of a Limited Examination and Appointment Program (LEAP) appointment under Government Code section 19243.4; notice of termination or automatic resignation of a Permanent Intermittent employee under Government Code section 19100.5; notice of AWOL Resignation/Separation under Education Code section 89541 and Government Code section 19803; and notice of layoff under Government Code section 19803.

(2) Service by mail of a notice of adverse action or a notice of rejection during probationary period shall be made by the enclosure of such notice in a sealed envelope, addressed to the last known address of the person to be served, registered with return receipt requested, and the depositing of it in the United States mail with postage fully prepaid.

(A) Service is complete on mailing, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or board rule, shall be extended five calendar days, upon service by mail, if the place of address and the place of mailing is within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States.

(3) Except as to those documents to be served as specified in subdivision (a)(2), service by mail of any other personnel action listed in subdivision (a)(1), or service by mail of any other notice, paper, or document, shall be made in the following manner:

(A) Service by mail shall be made by the enclosure of such appeal or complaint in a sealed envelope, registered with return receipt requested, addressed to the last known residence address of the employee, and either:

(1) Deposited in the United States mail with postage fully prepaid. Service is complete on mailing, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or board rule, shall be extended five calendar days, upon service by mail, if the place of address and the place of mailing is within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States.; or

(2) Deposited for Express mailing in the United States mail, with Express mail postage fully prepaid. Service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document served by Express Mail shall be extended by two business days; or

(3) In case of service by another express service carrier, the appeal or complaint must be deposited in a box or other facility regularly maintained by the express service carrier, or delivered to a courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for. For service to be effective, the employee or his or her designated representative must acknowledge receipt of the appeal or complaint at the time of delivery. The service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document served by Express Mail or other method of delivery providing for overnight delivery shall be extended by two business days.

(4) Proof of service, either personal or by mail, shall be made by affidavit.

(b) Service of a subpoena may be made by leaving the paper at the residence or business of the person or entity named to be served, with a person not less than 18 years of age. Where service is made in this manner, the proof of service shall also state the date and place of delivery and the name of the person to whom the papers were handed. Where the person making the service is unable to obtain the name of the person to whom the papers were handed, the person making the service may substitute a physical description for the name.

(1) Service of a subpoena by messenger shall be effected when the witness acknowledges receipt of the subpoena to the sender, by telephone, by mail, or in person, and identifies himself or herself either by reference to date of birth and driver's license number or Department of Motor Vehicles identification number, or the sender may verify receipt of the subpoena by obtaining other identifying information from the recipient. The sender shall make a written notation of the acknowledgment. A subpoena issued and acknowledged pursuant to this section has the same force and effect as a subpoena personally served.

(2) Service of a subpoena by mail shall be made in the same manner as provided for the service of a summons, as set forth in Code of Civil Procedure, section 415.30.

(3) Proof of service, either personal or by mail, shall be made by affidavit.

(c) Proof of service of all papers, including appeals, shall be an affidavit stating the title of the papers served or filed, the name and address of the person making the service, and that he or she is over the age of 18 years and not a party to the action.

(1) Where service is made by mail, the proof of service shall show the date and place of deposit in the mail, the name and address of the person served as shown on the mailing envelope, and that the envelope was sealed and deposited in the mail with the postage fully prepaid.

(2) The proof of service shall be signed by the person making it and contain the following statement above the signature:

"I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this Declaration was executed at (city, state) on (date)."

The name of the declarant shall be typed and signed below this statement.

(3) A proof of service made in accordance with Code of Civil Procedure section 1013a complies with this Regulation.

[Authority cited: Sections 18211, 18214, 18701, Government Code. Reference: Sections 415.30, 1008, 1012, 1013, Code of Civil Procedure; Sections 89538, 89541, Education Code; Sections 11440.20(b), 18575, 18672, 19058, 19083, 19100.5, 19173, 19243.4, 19253.5, 19574, 19585, 19590, 19803, 19889.2, Government Code.]