CALIFORNIA STATE PERSONNEL BOARD
801 Capitol Mall • Sacramento, California 95814

NOTICE OF PROPOSED ADOPTION OF REGULATIONS AND STATEMENT OF REASONS

California Code of Regulations
Title 2, Administration
Division 1, Administrative Personnel

DATE: **September 7, 1999**

TO: **ALL STATE AGENCIES AND EMPLOYEE ORGANIZATIONS**

SUBJECT: **Peace Officer Drug Use**

AUTHORITY:

Under authority established in Section 18701, Government Code (GC), the State Personnel Board (Board) has proposed to change Title 2 of the California Code of Regulations to modify the drug test/ disclosed or revealed drug use disqualification criteria for peace officer class examinations.

REFERENCE:

This regulation is amended to implement, interpret, and/or make specific Sections 1031, 18930 and 18935, GC; Sections 11000, 11007, 11054-58, 11350, 11356 and 11377 (California Uniform Controlled Substances Act), Health and Safety Code; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Section 12114(b) (Americans with Disabilities Act of 1990).

PUBLIC HEARING:

Date and Time:	November 2, 1999 from 1:00 p.m. to 2:00 p.m.
Place:	Auditorium 801 Capitol Mall, Room 150 Sacramento, California
Purpose:	To receive oral public comments about this action.

WRITTEN PUBLIC COMMENT PERIOD:

The public comment period for written comments will close November 1, 1999 at 5:00 p.m. This is to allow time for Board staff to provide copies of any written comments to Board members for their consideration at the time of the hearing. Any person may submit written comments about the proposed changes. To be considered by the Board, written comments must be received at the attention of Steve Unger at the State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010, before the close of the written comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to Steve Unger at the State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010, or telephone (916) 654-0842.

IDENTIFIED ALTERNATIVES THAT WOULD LESSEN ADVERSE IMPACT ON SMALL BUSINESSES:

No adverse impact on small businesses is anticipated from the implementation of the proposed amendments. Therefore, no alternatives which would lessen the impact on small businesses have been identified.

COST ESTIMATES OF PROPOSED ACTION:

Costs or Savings to State Agencies:

The proposed amendment neither affects the consequences of failing drug tests nor mandates drug testing. To the extent that departments voluntarily implement drug testing, costs to the State will depend upon the number of tests performed and the specific provisions of the negotiated testing contracts.

Impact on Housing Costs:

The proposal will not affect housing costs.

Impact on Businesses:

This proposal will not result in a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

Further, these proposed amendments contain no new reporting, recordkeeping and other compliance requirements that would result from the proposed action.

Cost Impact on Private Persons or Entities:

The proposal will not require private persons or entities to incur additional costs in complying with the proposal.

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 costs to local agencies or school districts are required to be reimbursed.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies:

This proposal does not impose nondiscretionary costs or savings on local agencies.

ASSESSMENT:

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

DETERMINATION:

The Board must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

AVAILABILITY OF PROPOSED TEXT AND ISR:

The text of the amended regulation, the Initial Statement of Reasons and other related material are available upon request directed to the Board's contact person.

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, the Board will make the full text of the changed regulation(s) available for at least 15 days before the date the regulations are permanently adopted.

INFORMATIVE DIGEST:

Government Code Section 18701 authorizes the Board to prescribe, amend and repeal regulations for the administration and enforcement of the Civil Service Act.

GC Section 1031 prescribes minimum standards for peace officers, including "good moral character, as determined by a thorough background investigation."

GC Section 18930 generally prescribes standards for eligible list examinations.

GC Section 18935 generally prescribes conditions under which the Board may disqualify candidates from examination or certification.

Sections 11000, 11007, 11054-58, 11350, 11356 and 11377 (California Uniform Controlled Substances Act), of the Health and Safety Code in relevant parts describe those substances for which possession would constitute a felony offense.

Federal Public Health and Welfare Code, Title 42, Chapter 126, Section 12114(b) (Americans with Disabilities Act of 1990) in relevant part prohibits the compulsory exclusion of individuals who are participating in or have completed a supervised drug rehabilitation program from the definition of a qualified individual with a disability.

This rulemaking action will bring the State of California more into line with the drug disqualification standards currently used by other employers that hire peace officers.

INITIAL STATEMENT OF REASONS:

Since May 1989, any applicant for a State civil service examination for a peace officer class who discloses, or whose background investigation reveals use of a drug for which possession would constitute a felony offense under the Uniform Controlled Substances Act (Health and Safety Code, division 10, beginning at 11000) subsequent to his or her eighteenth birthday, has been disqualified from the examination in which he or she is competing unless ten years have elapsed from the date of the disclosed use of the drug; and is not eligible to take any State civil service examination for a peace officer class until ten years have elapsed from the date of the disclosed use. During these last ten years that the regulation has been in effect, a significant number of otherwise well-qualified peace officer candidates have for this reason been disqualified from participating in examinations for State agencies and have subsequently been hired by other jurisdictions with shorter or discretionary disqualification periods for such disclosure. In particular, since candidates for the Cadet, California Highway Patrol examination may not participate if they are over 31 years old, the current ten-year disqualification period for any disclosed or revealed instance of felonious drug use that occurred when the candidate was over 21 years old effectively results in permanent disqualification.

Persons actually convicted of any felony are automatically disqualified from employment as peace officers. The proposed action would enhance the hiring discretion of State agencies to allow individuals who have feloniously used a drug at a young age of from 18 to 22, who would now be automatically disqualified from peace officer examinations for 10 years, to take such examinations after a period of time

that is more in line with the drug disqualification standards currently used by other employers that hire peace officers.

In consideration of the proposed rule change, the California Highway Patrol conducted a survey of the largest non-State peace officer jurisdictions within California. The majority of respondents reported an identical disqualification period to that proposed.

No change is proposed in the disqualification period for disclosed or revealed felonious drug use after the age of 22, nor for applicants who fail the drug test, regardless of age.

Other specific changes are proposed for the following reasons:

In subsection (c), the phrase "or revealed" has been added to provide consistency between all subsections of Rule 213.5. That is, disqualification periods for felony drug use at specified ages must be consistent whether the drug use is voluntarily disclosed or otherwise revealed through a background investigation.

Subsection (d) has been changed to clarify "applicant" and to correct the misspelling "complete." Subsection (e) has been changed to add the third possible disqualification period of five years.

LAURA M. AGUILERA, Chief
Personnel Resources and Innovations Division

Attachment: Text of Proposed Regulations

For this amendment, text added to the regulations is indicated by underline and text deleted from the regulations is indicated by strikethrough.

Section 213.5 is amended to read:

§ 213.5. Consequences of ~~Failing the~~ Drug ~~Test~~ Use.

(a) Applicants who fail the drug test pursuant to Section 213.4(h), will be disqualified from the examination in which they are competing and, except as provided by Section 213.5(e), shall not be eligible to take any state civil service examination for a class for which drug testing is required until one year has elapsed from the date the drug test specimen is given.

(b) Except as provided by Section 213.5(e), applicants who fail the drug test because of a drug for which possession would constitute a felony offense under the Uniform Controlled Substances Act (Health and Safety Code, division 10, beginning at 11000) shall not be eligible to take any State civil service examination for a peace officer class until ten years have elapsed from the date the drug test specimen is given.

(c) Any applicant for a State civil service examination for a peace officer class who discloses, or whose background investigation reveals, use of a drug for which possession would constitute a felony offense under the Uniform Controlled Substances Act (Health and Safety Code, division 10, beginning at 11000) subsequent to his or her eighteenth birthday and prior to his or her twenty-third birthday, shall be disqualified from the examination in which he or she is competing unless ~~10~~ 5 years have elapsed from the date of the disclosed or revealed use of the drug; and shall not be eligible to take any State civil service examination for a peace officer class until ~~10~~ 5 years have elapsed from the date of the disclosed or revealed use. If any such disclosed or revealed use occurred on or after the applicant's twenty-third birthday, he or she shall be disqualified from the examination in which he or she is competing unless 10 years have elapsed from the date of the disclosed or revealed use of the drug; and shall not be eligible to take any State civil service examination for a peace officer class until 10 years have elapsed from the date of the disclosed or revealed use.

(d) Any applicant for a State civil service examination for a peace officer class who is disqualified from the current examination for one of the causes specified in (c) may, upon petition and with the consent of the executive officer, be permitted to ~~complete~~ compete in the current examination and, if successful, remain on the eligible list. In acting on the request, the executive officer shall consider evidence submitted by the person of rehabilitation from drug abuse and/or extenuating circumstances regarding the drug use.

(e) Any applicant who is disqualified from taking any subsequent examination as specified in this section may, upon petition and with the consent of the executive officer, be permitted to take the specified examination. In acting on the petition, the executive officer shall consider evidence submitted by the person of rehabilitation from drug abuse and/or extenuating circumstances regarding the drug use.

Persons denied permission to take a subsequent examination within the specified one-, five-, and ten-year periods may appeal in writing to the board within 30 days of notification.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 1031, 18930 and 18935, Government Code; ~~and~~ Sections 11000, 11007, 11054-58, 11350, 11356 and 11377 (California Uniform Controlled Substances Act), Health and Safety Code; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Section 12114(b) (Americans with Disabilities Act of