



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA HIGHWAY PATROL**

Compliance Review Unit  
State Personnel Board  
August 26, 2015

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## INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in four areas: examinations, appointments, equal employment opportunity (EEO), and personal services contracts (PSC's) to ensure compliance with civil service laws and board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews. The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

## EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of California Highway Patrol (CHP) personnel practices in the areas of examinations, appointments, EEO, and PSC's from September 1, 2013, through September 30, 2014. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Examinations	Examination Documentation Was Not Kept for the Appropriate Amount of Time	Serious
Examinations	Applications Were Accepted After the Final File Date	Non-serious or Technical
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Appointments	Unlawful Appointment	Very Serious

Area	Finding	Severity
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed	Serious
Appointments	Applications Were Not Date Stamped and/or Accepted After the Final File Date	Non-serious or Technical
Equal Employment Opportunity	The Equal Employment Opportunity Officer Does Not Report to the Departmental Director	Very Serious
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

## **BACKGROUND**

The CHP is the largest state law enforcement agency in the nation with approximately 7,500 sworn officers and 3,500 civilian employees statewide. As a department within the California State Transportation Agency, the CHP's primary mission is providing traffic safety, service and security to the people of California as they use the state's highway transportation system. In total, the CHP currently patrols approximately 380,000 lane miles of roadway throughout California. As a statewide criminal justice agency, the CHP provides law enforcement assistance to local governments and allied agencies when situations exceed the limits of local resources. While not all inclusive, the CHP serves as the leader for statewide vehicle theft prevention and recovery efforts; holds the primary authority for enforcing laws and regulations relating to commercial vehicle safety and the commercial vehicle industry; and provides security and protective services to elected state officials, state government employees, and state facilities. The CHP also maintains a leadership role in educating the public concerning driver safety issues.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing CHP examinations, appointments, EEO program, and PSC's from September 1, 2013, through September 30, 2014. The primary objective of the review was to determine if the CHP personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

A cross-section of the CHP examinations and appointments were selected for review to ensure that samples of various examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CHP provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the CHP EEO program included examining written EEO policies and procedures; the EEO officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC). The CRU also interviewed appropriate CHP staff.

CHP PSC's were also reviewed.<sup>1</sup> It was beyond the scope of the compliance review to make conclusions as to whether CHP justifications for the contracts were legally sufficient. The review was limited to whether CHP practices, policies, and procedures relative to PSC's complied with procedural requirements.

On July 15, 2015, an exit conference was held with the CHP to explain and discuss the CRU's initial findings and recommendations. The CHP was given until July 29, 2015 to submit a written response to the CRU's draft report. The CHP requested an extension and on August 21, 2015, the CRU received and carefully reviewed the response, which is attached to this final compliance report.

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<sup>1</sup> If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged

## FINDINGS AND RECOMMENDATIONS

### Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application in the office of the department or a designated appointing power as directed in the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the CHP conducted 48 examinations. The CRU reviewed 24 of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Associate Automotive Equipment Standards Engineer	Open	Qualifications Appraisal Panel (QAP) <sup>2</sup>	7/18/2013	11
Associate Governmental Program Analyst	Departmental Promotional	QAP	7/24/2014	85
Associate Personnel Analyst	Departmental Promotional	QAP	1/09/2014	11
Automotive Technician III	Departmental Promotional	QAP	12/12/2013	13

<sup>2</sup> The qualification appraisal panel (QAP) interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Captain, CHP	Departmental Promotional	Assessment Center <sup>3</sup>	10/31/2013	74
Chief, CHP	Departmental Promotional	Assessment Center	11/27/2013	17
Commercial Vehicle Inspection	Open	Written <sup>4</sup>	10/17/2013	266
Custodian	Open	Supplemental Application (SA) <sup>5</sup>	4/17/2014	147
Electronics Technician	Open	QAP	6/05/2014	26
Electronics Technician Supervisor	Departmental Promotional	Education & Experience (E&E) <sup>6</sup>	6/05/2014	3
Gunsmith	Open	QAP	12/26/2013	7
Inspector of Automotive Equipment	Open	QAP	7/03/2014	29
Lead Gunsmith	Departmental Promotional	QAP	12/26/2013	5
Lieutenant, CHP	Departmental Promotional	QAP & Written	12/05/2013	228
Maintenance Mechanic	Departmental Promotional	SA	10/10/2013	15
Maintenance Worker, CHP	Open	SA	8/08/2013	112

<sup>3</sup> An assessment center is a method of evaluating candidates through the use of a battery of test procedures that assesses the level of expertise and possession of requisite knowledge, skills, and abilities. Test components comprising an assessment center may include structured interviews, role-play exercises, writing exercises, group exercises, and written examinations. Assessment centers may be used for a multitude of job classifications; however, they traditionally have been used for managerial/supervisory assessment. Using this method, employers have the opportunity to observe many candidate competencies.

<sup>4</sup> A written examination is a testing procedure in which candidates' job-related knowledge and skills are assessed through the use of a variety of item formats. Written examinations are either objectively scored or subjectively scored.

<sup>5</sup> In a supplemental application (SA) examination, applicants are not required to present themselves in person at a predetermined time and place. Supplemental applications are in addition to the regular application and must be completed in order to remain in the examination. Supplemental applications are also known as "rated" applications.

<sup>6</sup> In an education and experience (E&E) examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Motor Carrier Specialist II	Departmental Promotional	QAP & Written	5/15/2014	50
Office Services Supervisor I (Typing)	Departmental Promotional	QAP	7/10/2014	108
Office Services Supervisor II (General)	Departmental Promotional	QAP	7/10/2014	37
Printing Trades Supervisor I (General)	Open	QAP	9/19/13	16
Program Manager Transportation Services (Supervisor)	Open	E&E	9/04/2014	3
Property Inspector (Specialist)	Open	QAP	8/01/2013	33
Public Safety Dispatcher, CHP	Open	Written	11/21/2013	117
Public Safety Dispatcher, CHP	Open	Written	1/16/2014	89

**FINDING NO. 1 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications**

**Summary:** Out of 24 exams reviewed, 5 exams included applications where EEO questionnaires were not separated from the STD 678 employment application. Specifically, 20 of the 1,502 applications reviewed included EEO questionnaires that were not separated from the STD 678 employment application.

**Criteria:** Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, age, or sexual orientation). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by the California Department of Human Resources (CalHR) to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state



application form (STD 678) states, “This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions.”

**Severity:** Very Serious. The applicants’ protected classes were visible, subjecting the agency to potential liability.

**Cause:** The CHP states that the separation of the Equal Employment Opportunity questionnaire from the STD. 678, form was an oversight by the CHP Examination Services staff.

**Action:** It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the CHP submit to the CRU a written corrective action plan that the department will implement to ensure conformity with in the future that EEO questionnaires are separated from all applications. Copies of any relevant documentation should be included with the plan.

**FINDING NO. 2 – Examination Documentation Was Not Kept for the Appropriate Amount of Time**

**Summary:** The CHP failed to retain 10 exam bulletins. Specifically, exam bulletins were not retained for the Associate Automotive Equipment Standards Engineer, Associate Personnel Analyst, Automotive Technician III, Commercial Vehicle Inspection Specialist, Custodian, Gunsmith, Lead Gunsmith, Maintenance Worker, and 2 Public Safety Dispatcher exams.

**Criteria:** In relevant part, civil service laws require that the employment procedures of each state agency shall conform to the federal and state laws governing employment practices. (Gov. Code, § 18720.) State agencies are required to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received. (Gov. Code, § 12946.) State agencies are also required to retain personnel files of applicants or terminated employees for a minimum period of two years after the date the employment action is taken. (*Ibid.*) In addition, all applications for a state civil service position must be

maintained and preserved on file for at least two years. (Cal. Code Reg., tit. 2, §174.)

**Severity:** Serious. Without documentation, the CRU could not verify if examinations were properly conducted.

**Cause:** The CHP states that Examination Services procedures did not include the requirement of maintaining a copy of examination bulletins.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CHP submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the record retention requirements of Government Code section 12946. Copies of any relevant documentation should be included with the plan.

### **FINDING NO. 3 – Applications Were Accepted After the Final File Date**

**Summary:** For 18 of the exams administered, the CHP accepted 416 applications that were date stamped after the final filing date and did not include documentation indicating why the applications were accepted after the final file date.

**Criteria:** CCR, title 2, section 174 (Rule 174) requires timely filing of applications: All applications must be filed at the place, within the time, in the manner, and on the form specified in the examination announcement.

Filing an application 'within the time' shall mean postmarked by the postal service or date stamped at one of the Department's offices (or the appropriate office of the agency administering the examination) by the date specified.

An application that is not postmarked or date stamped by the specified date shall be accepted, if one of the following conditions as detailed in Rule 174 apply: (1) the application was delayed due

to verified error; (2) the application was submitted in error to the wrong state agency and is either postmarked or date stamped on or before the specified date; (3) the employing agency verifies examination announcement distribution problems that prevented timely notification to an employee of a promotional examination; or (4) the employing agency verifies that the applicant failed to receive timely notice of promotional examination. (Cal. Code Reg., tit. 2, § 174, subs. (a), (b), (c), & (d).)

**Severity:** Non-serious or Technical. Final filing dates are established to ensure all applicants are given the same amount of time in which to apply for an examination and to set a deadline for the recruitment phase of the examination. Therefore, although the acceptance of applications after the final filing date may give some applicants more time to prepare their application than other applicants who meet the final filing date, the acceptance of late applications will not impact the results of the examination.

**Cause:** The CHP states that Examination Services did not have procedures in place to address the requirement to maintain postmarked envelopes for the STD. 678 forms that were received after the final filing date of the examination, but postmarked within the filing period.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CHP submit to the CRU a written corrective action plan that the department will implement to ensure conformity with Rule 174. Copies of any relevant documentation should be included with the plan.

### Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and board rules. (Gov. Code, § 19050.) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related qualifications for a

position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the CHP made 721 appointments. The CRU reviewed 181 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Accountant I (Specialist)	Certification List	Permanent	Full Time	1
Accounting Administrator I (Supervisor)	Certification List	Permanent	Full Time	1
Accounting Technician	Certification List	Permanent	Full Time	1
Assistant Chief, CHP	Certification List	Permanent	Full Time	2
Assistant Information Systems Analyst	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Automotive Technician II	Certification List	Permanent	Full Time	3
Automotive Technician III	Certification List	Permanent	Full Time	2
Captain, CHP	Certification List	Permanent	Full Time	2
Commercial Vehicle Inspection Specialist	Certification List	Permanent	Full Time	3
Cook Specialist II	Certification List	Permanent	Full Time	1
Data Processing Manager II	Certification List	Permanent	Full Time	1
Data Processing Manager III	Certification List	Permanent	Full Time	1
Data Processing Manager IV	Certification List	Permanent	Full Time	1
Food Service Technician I	Certification List	Permanent	Intermittent	2
Groundskeeper I	Certification List	Permanent	Full Time	1
Groundskeeper I	Certification List	Permanent	Part Time	1
Information Systems Technician Specialist I	Certification List	Permanent	Full Time	1
Lead Custodian	Certification List	Permanent	Full Time	1
Legal Analyst	Certification List	Permanent	Full Time	1
Lieutenant, CHP	Certification List	Permanent	Full Time	1
Maintenance Worker, CHP	Certification List	Permanent	Full Time	3
Motor Carrier Specialist I, CHP	Certification List	Permanent	Full Time	3

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Motor Carrier Specialist II, CHP	Certification List	Permanent	Full Time	6
Office Assistant (Typing)	Certification List	Permanent	Full Time	5
Office Assistant (Typing)	Certification List	Permanent	Intermittent	1
Office Services Supervisor I (Typing)	Certification List	Permanent	Full Time	1
Office Services Supervisor II (General)	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	4
Painter I	Certification List	Permanent	Full Time	1
Personnel Supervisor I	Certification List	Permanent	Full Time	1
Printing Trades Supervisor I (General)	Certification List	Permanent	Full Time	1
Program Technician	Certification List	Permanent	Full Time	1
Property Inspector (Specialist)	Certification List	Permanent	Full Time	1
Public Safety Dispatch Supervisor I, CHP	Certification List	Permanent	Full Time	2
Public Safety Dispatcher, CHP	Certification List	Permanent	Full Time	10
Senior Accounting Officer (Specialist)	Certification List	Permanent	Full Time	1
Senior Legal Analyst	Certification List	Permanent	Full Time	1
Senior Personnel Specialist	Certification List	Permanent	Full Time	1
Sergeant, CHP	Certification List	Permanent	Full Time	28
Staff Information Systems Analyst	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	3
Systems Software Specialist I (Technical)	Certification List	Permanent	Full Time	1
Systems Software Specialist III (Supervisory)	Certification List	Permanent	Full Time	1
Telecommunications Systems Analyst II	Certification List	Permanent	Full Time	1
Telecommunications Systems Manager I (Specialist)	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Telecommunications Systems Manager I (Supervisor)	Certification List	Permanent	Full Time	1
Warehouse Worker	Certification List	Permanent	Full Time	1
Mill and Cabinet Worker	Mandatory Reinstatement	Permanent	Full Time	1
Public Safety Dispatcher, CHP	Mandatory Reinstatement	Permanent	Full Time	1
Commercial Vehicle Inspection Specialist	Permissive Reinstatement	Permanent	Full Time	2
Office Assistant (Typing)	Permissive Reinstatement	Permanent	Full Time	4
Office Assistant (Typing)	Permissive Reinstatement	Limited Term	Full Time	1
Office Services Supervisor I (Typing)	Permissive Reinstatement	Permanent	Full Time	2
Office Technician (Typing)	Permissive Reinstatement	Permanent	Full Time	3
Office Technician (Typing)	Permissive Reinstatement	Limited Term	Full Time	1
Officer, CHP	Permissive Reinstatement	Permanent	Full Time	1
Public Safety Dispatch Supervisor I, CHP	Permissive Reinstatement	Permanent	Full Time	1
Public Safety Dispatcher, CHP	Permissive Reinstatement	Permanent	Full Time	1
Staff Services Analyst (General)	Permissive Reinstatement	Permanent	Full Time	1
Assistant Information Systems Analyst	Training & Development	Limited Term	Full Time	1
Associate Personnel Analyst	Training & Development	Limited Term	Full Time	1
Staff Services Analyst (General)	Training & Development	Limited Term	Full Time	2
Associate Information Systems Analyst (Specialist)	Transfer	Permanent	Full Time	1
Associate Personnel Analyst	Transfer	Permanent	Full Time	1
Commercial Vehicle Inspection Specialist	Transfer	Permanent	Full Time	3
Executive Secretary	Transfer	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Groundskeeper	Transfer	Permanent	Full Time	1
Lieutenant, CHP	Transfer	Permanent	Full Time	1
Motor Carrier Specialist I, CHP	Transfer	Permanent	Full Time	3
Office Assistant (Typing)	Transfer	Permanent	Full Time	5
Office Services Supervisor I (Typing)	Transfer	Permanent	Full Time	1
Office Services Supervisor II (General)	Transfer	Permanent	Full Time	1
Office Technician (Typing)	Transfer	Permanent	Full Time	2
Officer, CHP	Transfer	Permanent	Full Time	3
Personnel Specialist	Transfer	Permanent	Full Time	1
Program Technician	Transfer	Permanent	Full Time	2
Sergeant, CHP	Transfer	Permanent	Full Time	2
Skilled Laborer	Transfer	Permanent	Full Time	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	4
Staff Services Manager I	Transfer	Permanent	Full Time	1
Warehouse Worker	Transfer	Permanent	Full Time	1
Word Processing Technician	Transfer	Permanent	Full Time	2
Commercial Vehicle Inspection Specialist	Voluntary Demotion	Permanent	Full Time	2
Custodian	Voluntary Demotion	Permanent	Full Time	1
Office Assistant (Typing)	Voluntary Demotion	Permanent	Full Time	3
Office Technician (Typing)	Voluntary Demotion	Permanent	Full Time	2
Personnel Specialist	Voluntary Demotion	Permanent	Full Time	1
Public Safety Dispatcher, CHP	Voluntary Demotion	Permanent	Full Time	1

**FINDING NO. 4 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications**

**Summary:** Out of 181 appointments reviewed, 51 appointment files included applications where EEO questionnaires were not separated from

the STD 678 employment application. Specifically, 829 of the 4,604 applications reviewed included EEO questionnaires that were not separated from the STD 678 employment application

**Criteria:** Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, age, or sexual orientation). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by the California Department of Human Resources (CalHR) to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD 678) states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."

**Severity:** Very Serious. The applicants' protected classes were visible, subjecting the agency to potential liability.

**Cause:** The CHP states that hiring commands did not adhere to the requirement that the Equal Employment Opportunity questionnaire needs to be separated from the STD. 678 form.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CHP submit to the CRU a written corrective action plan that the department will implement to ensure conformity with in the future that EEO questionnaires are separated from all applications. Copies of any relevant documentation should be included with the plan.

#### **FINDING NO. 5 – Unlawful Appointment**

**Summary:** The CHP made one appointment on August 30, 2013, by way of transfer. Specifically, the incumbent transferred from an Office



Technician (Typing) to an Office Services Supervisor I (Typing) position. The Office Technician (Typing) is at the advanced journey level whereas the Office Services Supervisor I (Typing) is at the working supervisor level. These two classifications do not involve substantially the same level of duties or responsibilities and as a result Rule 430 was not met.

**Criteria:** Government Code section 19050.4 provides in part, that a transfer may be accomplished without examination pursuant to rule.

CCR, title 2, section 430 (Rule 430) provides that classes meeting the criteria established by this article shall be considered to involve substantially the same level of duties, responsibility and salary for the purposes of Government Code Section 19050.4; provided that the board or the executive officer may prohibit transfer between such classes based on a specific finding that they are in a promotional relationship.

**Severity:** Very Serious. An unlawful appointment provides the employee with an unfair and unearned appointment advantage over other employees whose appointments have been processed in compliance with the requirements of civil service law. Unlawful appointments which are not corrected also create appointment inconsistencies that jeopardize the equitable administration of the civil service merit system.

When an unlawful appointment is voided, the employee loses any tenure in the position, as well as seniority credits, eligibility to take promotional examinations, and compensation at the voided appointment level. If "bad faith" is determined on the part of the appointing power, civil or criminal action may be initiated. Disciplinary action may also be pursued against any officer or employee in a position of authority who directs any officer or employee to take action in violation of the appointment laws. If bad faith is determined on the part of the employee, the employee may be required to reimburse all compensation resulting from the unlawful appointment and may also be subject to disciplinary action.

**Cause:** The CHP states that the lateral transfer of an Office Technician (OT) to the Office Services Supervisor I (OSSSI) classification was an accepted practice by the CHP since 1993 at which time the SPB allowed this lateral transfer. A determination was received from the CalHR on May 9, 2014, that a lateral transfer from an OT to OSSSI did not meet SPB Rule 430 and would not be allowable.

**Action:** The CalHR Personnel Management Division also reviewed this appointment and concurred that it was an unlawful appointment. The Personnel Management Division has informed the CHP of the findings with instructions to investigate and take corrective action. Within 60 days of the Executive Officer's approval of these findings and recommendations, the CHP must submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure the department will improve its hiring practices. Copies of any relevant documentation should be included with the plan.

**FINDING NO. 6 – Probationary Evaluations Were Not Provided for All Appointments Reviewed**

**Summary:** The CHP did not prepare, complete, and/or retain required probationary reports of performance for 14 of the 181 appointments reviewed by the CRU.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Accounting Technician	Certification List	1	2
Automotive Technician II	Certification List	1	1
Captain, CHP	Certification List	1	1
Data Processing Manager IV	Certification List	1	1
Office Technician (Typing)	Certification List	1	1
Public Safety Dispatcher, CHP	Certification List	1	1
Sergeant, CHP	Certification List	1	1
Warehouse Worker	Certification List	1	1
Office Assistant (Typing)	Transfer	1	1
Office Technician (Typing)	Transfer	1	3
Program Technician	Transfer	1	2

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Custodian	Voluntary Demotion	1	2
Office Assistant (Typing)	Voluntary Demotion	2	4
Total		14	21

**Criteria:** A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary period is required when an employee is appointed to a position under the following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Gov. Code, § 19172; Cal. Code Regs., tit. 2, § 599.795.) The appointing power must prepare a written appraisal of performance each one-third of the probationary period. (Cal. Code Regs., tit. 2, § 599.795.)

**Severity:** Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

**Cause:** The CHP states that they cannot provide an expressed reason why supervisors and/or managers did not complete probationary evaluations as required by CHP policy.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CHP submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the probationary requirements of Government Code section 19172.

**FINDING NO. 7 – Applications Were Not Date Stamped and/or Accepted After the Final File Date**

**Summary:** Out of the 4,604 applications received, the CHP accepted and processed 644 applications that were not date stamped and 228 applications that were date stamped after the final filing date.

**Criteria:** CCR, title 2, section 174 (Rule 174) requires timely filing of applications: All applications must be filed at the place, within the time, in the manner, and on the form specified in the examination announcement.

Filing an application 'within the time' shall mean postmarked by the postal service or date stamped at one of the department's offices (or appropriate office of the agency administering the examination) by the date specified.

An application that is not postmarked or date stamped by the specified date shall be accepted, if one of the following conditions as detailed in Rule 174 apply: (1) the application was delayed due to verified error; (2) the application was submitted in error to the wrong state agency and is either postmarked or date stamped on or before the specified date; (3) the employing agency verifies examination announcement distribution problems that prevented timely notification to an employee of a promotional examination; or (4) the employing agency verifies that the applicant failed to receive timely notice of promotional examination. (Cal. Code Reg., tit. 2,

§ 174, subs. (a), (b), (c), & (d).) The same final filing date procedures are applied to the selection process used to fill a job vacancy.

**Severity:** Non-Serious or Technical. Final filing dates are established to ensure all applicants are given the same amount of time in which to apply for a job vacancy and to set a deadline for the recruitment. Therefore, although the acceptance of applications after the final filing date may give some applicants more time to prepare their application than other applicants who meet the final filing date, the acceptance of late applications will not impact the results of the job vacancy selection.

**Cause:** The CHP states that they cannot provide an expressed reason to why applications were not date stamped as required by CHP policy.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CHP submit to the CRU a written corrective action plan that the department will implement to ensure conformity with Rule 174. Copies of any relevant documentation should be included with the plan.

### Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the California Department of Human Resources (CalHR) by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation

from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed the CHP's EEO program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate CHP staff.

**FINDING NO. 8 –The Equal Employment Opportunity Officer Does Not Report to the Departmental Director**

**Summary:** The EEO Officer at the CHP reports to the Deputy Commissioner. No separate, direct reporting relationship with the Departmental Director has been established for the EEO responsibilities.

**Criteria:** The appointing power must appoint, at the managerial level, an EEO officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.)

**Severity:** Very Serious. The EEO Officer did not have direct access to the head of the organization, diminishing the significance of the EEO program.

**Cause:** The CHP states that in 2013, the CHP reorganized some of its administrative functions and the Equal Employment Opportunity officer's reporting structure was changed.

**Action:** The CHP must reorganize its organizational structure to ensure that the EEO Officer reports directly to the Departmental Director on EEO related matters. The CHP must submit to the

CRU a written report of compliance, including an updated organization chart and EEO Officer duty statement, no later than 60 days from the date of the SPB Executive Officer's approval of these findings and recommendations.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the State. (Cal. Code Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the compliance review period, the CHP had 260 PSC's that were in effect. 16 PSC's were subject to Department of General Services (DGS) approval, and thus our procedural review, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
American Technologies, Inc.	Emergency Asbestos/mold remediation	5/25/2013-9/30/2013	\$106,485.00	Yes
GEMS Environmental Management Services, Inc.	Aviation Fuel Storage Maintenance	9/17/2013-6/30/2015	\$117,357.52	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Impact Teen Drivers Nonprofit Organization	IMPACT - Educational Campaign	1/14/2014-9/30/2014	\$1,000,000.00	Yes
Pitney Bowes Inc.	Postage Meters Rental	11/08/2013-11/07/2015	\$118,427.79	Yes
Prudential Overall Supply	Shop Clothing/Linen Rental Services	1/14/2014-6/30/2015	\$50,000.00	Yes
R-1 Snow Removal, Inc.	Snow Removal Services	11/18/2013-6/30/2015	\$115,552.00	Yes
Rex Moore Electrical Contractors & Engineers	Emergency Security System	2/21/2013-10/17/2013	\$97,223.00	Yes
RHF Inc.	Calibration of Specialized Equipment	10/01/2013-9/30/2014	\$101,010.00	Yes
Safety-Kleen Systems, Inc.	Hazardous Waste Removal	11/01/2013-10/31/2015	\$200,000.00	Yes
Sashadow, Inc. dba Image Pros Photo	Film & Video Processing - As Needed	10/25/2013-6/30/2015	\$50,000.00	Yes
Starrue Inc. dba Star Towing	Towing and/or Storage of Evidence	9/10/2013-8/31/2014	\$50,000.00	Yes
Sun Badge Company	Badge Repair Services	1/15/2014-1/14/2016	\$50,000.00	Yes
The Radar Shop	Certification of Specialized Equipment	10/01/2013-9/30/2014	\$248,930.00	Yes
TMD Group, Inc.	Media Services	11/15/2013-9/30/2014	\$300,000.00	Yes
Xerox Corporation	Prop. Equipment & Maintenance Repair	11/01/2013-4/30/2014	\$125,063.24	Yes
Xerox Corporation	Prop. Equipment & Maintenance Repair	10/01/2013-9/30/2014	\$137,529.20	Yes



**FINDING NO. 9 – Personal Services Contracts Complied with Procedural Requirements**

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes *specific and detailed factual information* that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The total amount of all the PSCs reviewed was \$2,867,577.75. It was beyond the scope of the review to make conclusions as to whether the CHP justifications for the contract were legally sufficient. For all PSC's reviewed, the CHP provided specific and detailed factual information in the written justifications as to how each contract met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the CHP PSC's complied with procedural requirements.

**DEPARTMENTAL RESPONSE**

The CHP's response is attached as Attachment 1.

**SPB REPLY**

Based upon the CHP's written response, the CHP will comply with the CRU recommendations and findings and provide the CRU a corrective action plan.

It is further recommended that the CHP comply with the afore-stated recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.

**DEPARTMENT OF CALIFORNIA HIGHWAY PATROL**

P. O. Box 942898  
Sacramento, CA 94298-0001  
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(800) 735-2929 (TT/TDD)  
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August 21, 2015

File No.: 001.9486.A13471.010

Suzanne Ambrose, Executive Officer  
State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95815

Dear Ms. Ambrose:

I am writing in response to the State Personnel Board (SPB) report entitled, Compliance Review Report California Highway Patrol. The SPB report presented nine findings. Eight findings require the California Highway Patrol (CHP) to provide the cause and a response to each finding. The ninth finding, Personal Services Contracts Complied with Procedural Requirements, does not require a response.

Listed below are the findings from the SPB report and the corresponding cause and response:

**Finding:** Equal Employment Opportunity questionnaires were not separated from applications during the examination process.

**Cause:** The separation of the Equal Employment Opportunity questionnaire from the STD. 678, Examination / Employment Application, form was an oversight by the CHP Examination Services staff.

**Response:** The Examination Services manager reminded staff on October 30, 2014, via electronic mail (email), advising them to remove the Equal Employment Opportunity questionnaire from all STD. 678 forms. Examination procedures were updated on July 23, 2015, to include direction that the Equal Employment Opportunity questionnaire is to be removed from the STD. 678 form and placed in a confidential destruct container.

**Finding:** Examination Documentation was not kept for the appropriate amount of time

**Cause:** Examination Services procedures did not include the requirement of maintaining a copy of examination bulletins.



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**Response:** After the SPB auditors' notification, the Examination Services manager advised the Examination Services staff on October 30, 2014, via email that copies of the examination bulletins from the California Department of Human Resources' (CalHR) and CHP's internet web sites were to be printed and maintained with the examination files. Confirmation was received by the Examination Services manager on November 18, 2014, that the direction to print the examination bulletins was included in the examination procedures.

**Finding:** Applications were accepted after the final file date

**Cause:** Examination Services procedures did not address the requirement to maintain postmarked envelopes for the STD. 678 forms that were received after the final filing date of the examination, but postmarked within the filing period.

**Response:** Notification was made to the Examination Services staff on September 17, 2014, that postmarked envelopes shall be attached to all applications received in Examination Services after the final filing date, but postmarked within the filing period, to ensure the validity of allowing candidates to examine.

On November 12, 2014, Selection Standards and Examinations Unit managers were instructed to remind staff, specifically those involved with opening the mail, to date stamp the STD. 678 forms with the date received at the bottom of the form.

**Finding:** Equal Employment Opportunity questionnaires were not separated from applications during the hiring process.

**Cause:** Hiring commands did not adhere to the requirement that the Equal Employment Opportunity Questionnaire needs to be separated from the STD. 678 form.

**Response:** A Communications Network (Comm-Net) message was sent to all commands on July 17, 2013, advising them of new procedures for processing the STD. 678 forms. The Comm-Net provided instruction to remove the Equal Employment Opportunity questionnaire, page 5, and to place it in a confidential destruct container. This page was only to be included with the application if the applicant was applying for an examination.

A Comm-Net message, dated March 10, 2015, provided instruction to all commands regarding new language to be included for job bulletins and reiterated the instruction to remove and destruct the Equal Employment Opportunity questionnaire.

Highway Patrol Manual 10.3, Personnel Transaction Manual, Chapter 2, Nonuniformed Hiring and Appointments, was revised in July 2014, to include the following: Remove the Equal Employment Opportunity questionnaire, page 5, and place it in a confidential destruct container. This page is only to be included with the application if the applicant is applying for an

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examination. Additionally, effective February 2015, the CHP, Human Resources Section (HRS) has been providing training on this topic.

**Finding:** Unlawful appointment

**Cause:** The lateral transfer of an Office Technician (OT) to the Office Services Supervisor I (OSSI) classification was an accepted practice by the CHP since 1993 at which time the SPB allowed this lateral transfer. A determination was received from CalHR on May 9, 2014, that a lateral transfer from OT to OSSI did not meet SPB Rule 430 and would not be allowable.

**Response:** The CHP received a memorandum from CalHR, dated June 19, 2015, indicating that the SPB informed CalHR of a potential unlawful appointment of a CHP employee from OT to OSS I. The CHP responded to CalHR on July 2, 2015, stating that according to an SPB training in 1993, employees in the OT classification were allowed to lateral transfer to the OSSI classification. A new determination from CalHR, effective May 9, 2014, did not allow the lateral transfers of an OT to OSSI because the transfer did not meet SPB Rule 430. As of May 9, 2014, the CHP no longer allows lateral transfers from the OT classification to the OSSI classification.

A memorandum, dated July 2, 2015, was submitted to CalHR in response to their memorandum of June 19, 2015. On July 16, 2015, CalHR sent an email to the CHP stating that it appeared the appointment was more than one year ago and it was done in a good faith effort by both the employee and the CHP. By statute, the CHP needed to send the employee a preliminary and final letter of determination. A letter was sent to the employee advising her that the CHP has determined the appointment was made and accepted in good faith, pursuant to Government Code Section 19257.5. Since the appointment is beyond the one-year statutory limitation, the appointment will stand.

**Finding:** Probationary evaluations were not provided for all appointments reviewed

**Cause:** The CHP cannot provide an expressed reason why supervisors and/or managers did not complete probationary evaluations as required by CHP policy.

**Response:** CHP supervisors and/or managers will be reminded that employee probationary evaluations shall be completed pursuant to CHP policy.

**Finding:** Applications were not date stamped and/or accepted after the final file date

**Cause:** The CHP cannot provide an expressed reason to why applications were not date stamped as required by CHP policy.

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**Response:** A Comm-Net was sent on July 17, 2013, advising commands to date stamp STD. 678 forms with the date received on the front side of the applications. On March 10, 2015, another Comm-Net was sent advising commands that STD. 678 forms must be date stamped with the date received on the first page of the form. For STD. 678 forms received after the final filing date, but postmarked within the filing period, the envelope with the postmarked date must be retained with the STD. 678 forms. California Highway Patrol policy has been revised and will include this additional information.

Currently, HPM 10.3, Chapter 2, states that all STD. 678 forms must be date stamped with the date received on the front side of the application. In addition, effective February 2015, the CHP, HRS has been providing training on this topic.

**Finding:** The Equal Employment Opportunity officer does not report to the departmental director

**Cause:** In 2013, the CHP reorganized some of its administrative functions and the Equal Employment Opportunity officer's reporting structure was changed.

**Response:** Effective June 1, 2015, the CHP changed its reporting structure to ensure compliance with state law.

**Finding:** Personal services contracts complied with procedural requirements

**Response:** The CHP is compliant and no response is required.

We appreciate the opportunity to provide a response to the compliance report. If you have any questions or require further information, please contact Inspector General Roger Ikemoto at (916) 843-3160.

Sincerely,

Handwritten signature in blue ink that reads "W. A. Stanley FARROW". A blue arrow points from the signature to the typed name below.  
J. A. FARROW  
Commissioner

cc: California Transportation Agency