



# **COMPLIANCE REVIEW REPORT**

## **THE CALIFORNIA EXPOSITION AND STATE FAIR**

Compliance Review Unit  
State Personnel Board  
May 5, 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 Exposition & State Fair (Cal Expo) personnel practices in the areas of examinations, appointments, EEO, and PSC's from April 1, 2013, through December 31, 2013. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Job Analyses Were Not Developed or Used for the Examination Process	Very Serious
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed	Serious
Equal Employment Opportunity	Disability Advisory Committee Was Not Established	Very Serious

Area	Finding	Severity
Equal Employment Opportunity	The EEO Officer Does Not Report Directly to the Head of the Agency	Very Serious

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

- Red = Very Serious
- Orange = Serious
- Green = In Compliance

### **BACKGROUND**

The Cal Expo’s mission is to create a state fair experience which reflects California’s industries, agriculture, diversity of people, traditions, and trends shaping its future.

Governed by an appointed Board of Directors, daily operations are managed by the Chief Executive Officer and staff of approximately 55 permanent employees. More than 2,000 temporary employees are hired to operate the annual 17-day State Fair. The Cal Expo is a self-sufficient operation that receives no government funding and has an estimated economic impact of more than \$200 million.

The governing body of the Cal Expo is an 11-member board of directors, who must all be residents of California. Nine directors are appointed by the Governor, with one director appointed by each the Speaker of the Assembly and the Senate Rules Committee. Ex-Officio Members during the period of review were Senator Darrell Steinberg and Assembly member Roger Dickinson.

### **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing Cal Expo examinations, appointments, EEO program, and PSC’s from April 1, 2013, through December 31, 2013. The primary objective of the review was to determine if Cal Expo 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 Cal Expo 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 Cal Expo provided, which included examination plans, examination bulletins, job analyses (JA’s),

scoring results, notice of personnel action (NOPA) 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 Cal Expo 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 Cal Expo staff.

The Cal Expo contracted for graphic design services, livestock competition judge services, media intern services, and various personal services.<sup>1</sup> However, these contracts were not subject to CRU review.

On February 6, 2015, an exit conference was held with the Cal Expo to explain and discuss the CRU's initial findings and recommendations, and to provide the Cal Expo with a copy of the CRU's draft report. The Cal Expo submitted a written response to the CRU's draft report on April 20, 2015. The CRU received and carefully reviewed the response, which is attached to this final compliance review report.

## **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

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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.

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 Cal Expo conducted five examinations. The CRU reviewed all five of the examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applicants
Deputy Manager II, District Agriculture Association	Open	Education & Experience (E&E) <sup>2</sup>	4/3/2013	9
Facility Marketing Representative, District Agricultural Association	Open	E&E	12/3/2013	5
Lead Custodian	Departmental Promotional	E&E	10/14/2013	9
Maintenance and Operations Supervisor II, District Fairs	Departmental Promotional	E&E	5/6/2013	3
Marketing Specialist, CA Museum of Science and Industry/District Agricultural Associations	Departmental Promotional	E&E	5/6/2013	1

**FINDING NO. 1 – Job Analyses Were Not Developed or Used for the Examination Process**

**Summary:** A JA is required for each civil service examination. The Cal Expo was unable to provide sufficient JA’s for all five of their examinations. Partial JA’s were provided for the Lead Custodian and Maintenance and Operations Supervisor II examinations;

<sup>2</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.

however, they did not include the required elements as listed in the Merit Selection Manual (MSM). The remaining three examinations had no JA's.

**Criteria:** The MSM, which is incorporated in California Code of Regulations (CCR), title 2, section 50, mandates the development and use of a job analysis for the examination process. A "job analysis shall serve as the primary basis for demonstrating and documenting the job-relatedness of examination processes conducted for the establishment of eligible lists within the State's civil service." (MSM (Oct. 2003), § 2200, p. 2.) The MSM requires that job analyses adhere to the legal and professional standards outlined in the job analysis section of the MSM and that certain elements must be included in the job analysis studies. (*Ibid.*) Those requirements include the following: (1) that the job analysis be performed for the job for which the subsequent selection procedure is developed and used; (2) the methodology utilized be described and documented; (3) the job analytic data be collected from a variety of current sources; (4) job tasks be specified in terms of importance or criticality, and their frequency of performance; (5) and job tasks be sufficiently detailed to derive the requisite knowledge, skills, abilities (KSAs), and personal characteristics that are required to perform the essential tasks and functions of the job classification. (MSM, § 2200, pp. 2-3.)

**Severity:** Very Serious. The examinations may not have been job-related or legally defensible.

**Cause:** The Cal Expo states there was a lack of trained staff and processes to ensure JA's were retained in the examination files.

**Action:** To correct this deficiency, the Cal Expo must abolish the examination list that has not expired. In addition, prior to administering any future examinations Cal Expo must create and develop each examination based upon a JA that meets the requirements of the MSM. Cal Expo must submit to the CRU a written corrective action plan within 60 days that describes the steps that will be taken to ensure JA's are developed for any new examinations conducted. Furthermore, the CRU finds that the appointments made from the examinations that were administered

without a JA were made in good faith, and do not merit being voided.

### 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 Cal Expo made 475 appointments. The CRU reviewed 44 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Accounting Officer (Supervisor)	Certification List	Permanent	Full Time	1
Electrician II	Certification List	Permanent	Full Time	1
Exhibit Representative II	Certification List	Permanent	Intermittent	3
Fairground Attendant, District Fairs	Certification List	Permanent	Intermittent	2
Groundskeeper	Certification List	Permanent	Intermittent	1
Lead Security Guard	Certification List	Permanent	Full Time	1
Maintenance and Operations Supervisor II, District Fairs	Certification List	Permanent	Full Time	1
Maintenance Mechanic	Certification List	Permanent	Full Time	1
Marketing Specialist, California Museum of Science and Industry/District	Certification List	Permanent	Full Time	1



Satellite Wagering Facility Manager	Certification List	Permanent	Full Time	1
Staff Services Manager II	Certification List	Permanent	Full Time	1
Supervising Groundskeeper	Certification List	Permanent	Full Time	1
Warehouse Worker	Certification List	Permanent	Full Time	1
State Fair Worker, (Casual Employment) (Various)	Temporary Authorization	Limited Term	Intermittent	25
Associate Personnel Analyst	Transfer	Permanent	Full Time	1
Carpenter Supervisor	Transfer	Permanent	Full Time	1
Staff Services Manager I	Transfer	Permanent	Full Time	1

**FINDING NO. 2 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications**

**Summary:** Out of the 44 appointment files reviewed, 6 appointments included applications in which EEO questionnaires 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, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by the 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 Cal Expo states that applications go to the personnel office for review prior to being sent to the programs for hiring review. It is anticipated that the applications containing the EEO Questionnaires were applications sent to the programs directly rather than through the personnel office.

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

**FINDING NO. 3 – Probationary Evaluations Were Not Provided for All Appointments Reviewed**

**Summary:** The Cal Expo did not prepare, complete, and/or retain required probationary reports of performance for the majority of the appointments reviewed by SPB. Specifically, 14 of the 19 appointment files did not contain all three of the probationary reports, which are reflected in the table below.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Accounting Officer (Supervisor)	Certification List	1	2
Fairground Attendant, District Fairs	Certification List	2	5
Groundskeeper	Certification List	1	3
Lead Security Guard	Certification List	1	1
Maintenance & Operations Supervisor II, District Fairs	Certification List	1	3
Marketing Specialist, CA Museum of Science and Industry	Certification List	1	1

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Satellite Wagering Facility Janitor	Certification List	1	3
Staff Services Manager II	Certification List	1	3
Supervising Groundskeeper	Certification List	1	3
Warehouse Worker	Certification List	1	3
Associate Personnel Analyst	Transfer	1	3
Carpenter Supervisor	Transfer	1	3
Staff Services Manager I	Transfer	1	1
<b>Total</b>		<b>14</b>	<b>34</b>

**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 Cal Expo states that the missing probationary evaluations were an oversight with lack of staff and appropriate training.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the Cal Expo 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 § 19172. 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 committing 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 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.)

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 Cal Expo EEO policies, procedures, and programs in effect during the compliance review period. In addition, the CRU interviewed appropriate Cal Expo staff.

#### **FINDING NO. 4 – Disability Advisory Committee Was Not Established**

- Summary:** The Cal Expo does not have an active DAC.
- Criteria:** 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).)
- Severity:** Very Serious. The agency head does not have direct information on issues of concern to employees or other persons with disabilities and input to correct any underrepresentation. The lack of a DAC may limit an agency's ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.
- Cause:** The Cal Expo states that after going through layoffs in 2011, they were unsuccessful in recruiting members to serve on the DAC due to a lack of staff.
- Action:** The Cal Expo must take appropriate steps to ensure the establishment of a DAC, comprised of members who have disabilities or who have an interest in disability issues. The Cal Expo must submit to the CRU a written report of compliance, including the DAC roster, agenda, and meeting minutes, no later than 60 days from the date of the SPB's Executive Officer's approval of these findings and recommendations.

#### **FINDING NO. 5 – The EEO Officer Does Not Report Directly to the Head of the Agency**

- Summary:** The Cal Expo's EEO Officer does not report directly to the head of the agency. Specifically, the EEO Officer reports to the Chief of the Administration Division.
- 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 Cal Expo thought it was appropriate for the EEO Officer to report to the Assistant General Manager.
- Action:** The Cal Expo must reorganize its organizational structure to ensure that the EEO Officer reports directly to the Departmental Director on EEO related matters. The Cal Expo 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's 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.)

When a state agency requests approval from the Department of General Services 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.)

During the compliance review period, the Cal Expo had 166 PSC's that were in effect. None of the PSC's were subject to DGS approval, and thus none were subject to CRU procedural review.

### **DEPARTMENTAL RESPONSE**

The Cal Expo has taken into account the findings identified by the SPB compliance review. Corrective action has been taken on each finding as noted below. We are actively changing processes and procedures to ensure continued compliance.

#### **FINDING NO. 1**

We have recently updated the JA's for most of the examinations given in 2013 through current. In addition, we have instituted an internal policy requiring that a current JA be completed for all departmental examinations for statewide classifications.

#### **FINDING NO. 2**

The Cal Expo understands the importance of protecting EEO information to ensure fairness in the selection process and compliance with all civil service selection and hiring activities. We have provided additional instructions to all involved in the hiring process to ensure understanding of the requirement to remove the EEO Questionnaire from state application forms.

#### **FINDING NO. 3**

The Cal Expo understands the importance of preserving appointment materials in accordance with state laws and employment practices. The Cal Expo has provided additional instructions and training to its hiring supervisors and managers to reinforce

the importance of preserving all appointment documentation in a manner consistent with civil service laws.

FINDING NO. 4

The Cal Expo understands the importance of the DAC. We have recently found a DAC chairperson and sent out a volunteer form and DAC application to all staff in an attempt to establish a committee.

FINDING NO. 5

The Cal Expo has reorganized the organizational structure, ensuring that the EEO Officer reports directly to the CEO on EEO related matters.

**SPB REPLY**

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

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