

INITIAL STATEMENT OF REASONS

HEARING DATE(S):

August 24, 2016, at 10:00 a.m.
Room 150, 801 Capitol Mall, Sacramento,
California

SUBJECT MATTER OF THE PROPOSED REGULATIONS:

Classification, Exam, and Selection Process

SECTIONS AFFECTED:

Title 2, Chapter 1, California Code of
Regulations

PURPOSE, RATIONALE, NECESSITY, AND BENEFITS OF REGULATORY ACTION:

Background:

The jurisdiction and authority of the State Personnel Board (Board) to enforce civil service statutes and promulgate regulations is rooted in the California Constitution, article VII, section 3. The Board thus promulgates rules to govern classifications, examinations, selection, probationary periods, career executive assignments, and other matters related to its authority under Article VII of the California Constitution. (Gov. Code, §§ 18502, subd. (b) & 19889.) The Board's rulemaking authority is also found in certain statutory provisions related to civil service and the merit principle.

Discussion of Each Adoption, Amendment, and Repeal, and Anticipated Benefits:

The following paragraphs set forth the problems with the current regulations; a summary of the proposed changes; the purpose and rationale of each adoption, amendment, or repeal; and the anticipated benefits of each adoption, amendment, or repeal.

I. Adopt Section 27. Human Resources Liaison Training.

Government Code section 18720 requires that the employment procedures of the California Department of Human Resources (CalHR)¹ and of each state agency shall conform to the federal and state laws governing employment practices, including the use of employment forms. Human resources liaisons are used to process the human resource activities of many agencies. These employees work outside of the agency's central Human Resources Office. Consequently, they may not be employed in human resource

¹ In Board regulations, CalHR is referred to as the "Department." (Cal. Code Regs., tit. 2, § 4.5.)

classifications and may not have any training on or experience with civil service laws and rules.

Proposed section 27 requires training, as deemed appropriate by CalHR, for any employee who has been designated by his or her agency to coordinate or act as a liaison for human resources activities. The training requirement applies regardless of the employee's specific working title. A certificate of completion of training shall be maintained pursuant to the Board's recordkeeping retention regulation, which is generally five years from the creation date of the record. (§ 26.)

Proposed section 27 will ensure that these employees are properly trained on how to carry out the human resource duties assigned to them. Consequently, this proposed regulatory action will reduce staff errors and improve competence levels and efficiency.

II. Adopt Definitions.

The substantive changes in this proposed regulatory action require that certain frequently used terms in the Board's regulations are defined under one article for clarity and to avoid needless repetition of definitions. These terms either have a special meaning or do not have a commonly understood meaning. All the below proposed definitions are terms that are used elsewhere in the Board's regulations.

A. Definitions Related to Classifications.

The Board is empowered to create and adjust classes of positions in the state civil service. (Gov. Code, § 18800.) The classes adopted by the Board are called the Personnel Classification Plan of the State of California. (*Ibid.*) The plan includes a descriptive title and a definition outlining the scope of the duties and responsibilities for each class of positions. (*Ibid.*) The Board may establish additional classes and divide, combine, alter, or abolish existing classes. (Cal. Const., art. VII, § 3; Gov. Code, § 18802.)

The Board's regulations do not currently define a "class or classification," "class series," "class specification," or "Classification Plan." Section 75² defines a class or classification to have the same meaning as used in Government Code section 18523. Section 75 also makes plain that the terms "class" and "classification" are used in the Board regulations interchangeably. Section 75.1 defines a "class series" in terms of a vertically related group of classes covering the same occupational specialty and same program area, which constitute a primary promotional pattern for a specifically identifiable group of employees. Section 75.2 defines a "class specification" as the description of a class or class series that is approved by the Board. Section 75.3 defines "Classification Plan" as a system in

² Unless otherwise specified, all section references are to the Board's regulations, which are found in Title 2 of the California Code of Regulations, Division 1, Chapter 1.

which positions within state civil service are grouped into classes on the basis of current duties and responsibilities.

These proposed definitions promote a well-organized classification scheme which in turn promotes promotional and upward mobility opportunities for employees and a more efficient and easily understood state civil service system. The proposed definition of “class or classification” will ensure consistency with the definition used in the Civil Service Act.

B. Definitions Related to Qualifications.

In addition to creating classes within state civil service, which necessarily involves determining the duties, responsibilities, and functions of a class, the Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position. (Gov. Code, § 18931.)

The Board’s regulations currently do not define job-related concepts for qualifications. Such definitions are essential for a merit-based recruitment, examination, and selection process. This proposed regulatory action defines “qualifications” (§ 76), “minimum qualifications (MQ)s” (§ 76.1), “preferred or desirable qualifications” (§ 76.2), “competencies” (§ 76.3), and “special personal characteristics” (§ 76.4).

The proposed definitions for these terms are intended to update, improve, and modernize civil service. The proposed definition of “qualifications” clarifies that where this term is used in the Board regulations it means both minimum qualifications and preferred or desirable qualifications. This definition is thus necessary to avoid confusion.

The proposed definition of MQs, which relates MQs to the essential tasks and functions of a classification will: (1) promote reasonably large and diverse applicant pools; (2) avoid the risk of setting minimum qualifications too high, which could potentially create a disparate impact on underrepresented and protected groups, and hinder the ability of employees to transfer within state service; (3) promote compliance with the federal Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA); (4) and encourage retention and devotion to state service by creating an improved opportunity for civil service employees to expand their job experience, skills, and knowledge through transfers to new or different positions within state civil service.

The proposed definition of “preferred” or “desirable” qualifications as job-related qualifications that serve to enhance a person’s capacity to successfully perform the tasks and functions of a classification or particular position of a classification will promote greater competition and assist appointing powers in selecting highly qualified candidates for appointment.

The proposed definition of “competencies” includes not only the knowledge, skills, and abilities (KSA)s traditionally associated with job performance, but also includes job-related

behaviors and 21st Century skill sets. This proposal is intended to update and modernize the civil service selection process. This proposed change also aligns civil service selection processes and procedures with modern trends in human resources and education. This change also promotes a broader evaluation of what competencies enhance a person's capacity to successfully perform the duties and functions of a classification.

Certain civil service classifications may involve important, job-related personal attributes, traits, or other qualities that are required or preferred. The proposed definition of "special personal characteristics" ensures a commonly understood term and, where appropriate, that special personal characteristics are included within the qualifications of a classification.

C. Definitions Related to Equivalencies.

Civil service class specifications have traditionally described the qualifications and job duties performed by the incumbent in the class and stated if substitutions for the education and experience requirements are accepted. The proposed definitions of "equivalency" (§ 77) and "equivalent combination" (§ 77.1) are based upon the Board's common usage of those terms. These definitions are beneficial for purposes of clarity and avoiding confusion.

D. Definitions Related to the Selection and Examination Process.

The proposed regulatory action defines "selection process" (§ 78) as the procedures, practices, and activities used by an appointing power to appoint and promote employees in the state civil service; the "hiring process" (§ 78.1) as including such activities as interviews, performances tests, and written tests; and the "examination process" (§ 80) as the procedures, practices, and activities that are part of administering formal examinations to establish employment lists for classifications. As proposed, the definition of the selection process is a broad term and includes the hiring process and examination process. The Board's regulations do not currently define these terms. Distinguishing these terms better organizes the Board's regulations to reflect the different phases of the civil service selection process, which will lead to regulations that are easier to follow and understand.

Other new regulations related to the selection and examination process are "job analysis" (§ 79), "employment inquiry" (§ 80.1), "personal list eligibility" (§ 80.2), "qualifications appraisal panel" (§ 80.3), "qualifications appraisal interview or QAP interview" (§ 80.4). The Board's regulations do not currently include these definitions. These definitions are necessary because these are terms that are relied upon in the Board's regulations. Adding these definitions will thus promote clarity and consistency, and avoid confusion and misinterpretation.

E. Definition of Temporary Appointment.

The proposed regulatory action adds a definition of “Temporary Appointment” (§ 81) that currently does not exist in the Board’s regulations. The definition conforms to the meaning of temporary appointment as defined in the California Constitution, article VII, section 5. This proposed change also serves to eliminate reference to the acronym “TAU,” which has caused confusion and misunderstandings.

F. Definitions Related to Reassignments and Transfers.

The terms “intra-agency reassignment” (§ 82) and “external agency transfer” (§ 82.1) are proposals that do not currently exist in the Board’s regulations. The terms “intra-agency reassignment” and “external agency transfer” clarify the difference between a “reassignment” of an employee within an agency to a different position in the same classification and a “transfer” to a different agency, position and classification or same classification. The distinction is important because an appointment by “transfer,” unlike an “intra-agency reassignment,” requires the employee to meet the MQs of the new classification.

G. Definitions Related to Promotions in Place.

The Board’s regulations do not currently include any definitions related to promotions in place. This proposed regulatory action sets standards for promotions in place. (§ 242.) Therefore, defining the terms “from” and “to” classes (§ 83), “unit” (§ 83.1), “true vacancy” (§ 83.2), “vacant position” (§ 83.3), and “position ratio allocation limits” (§ 83.4) is necessary for clarity, consistency, and to avoid misinterpretation.

III. Adopt Regulations Related to Classifications.

A. Classification Plan (§ 89).

Article VII of the California Constitution vests in the Board the exclusive jurisdiction to prescribe classifications. (Cal. Const., art. VII, § 3.) Consistent with this jurisdiction, the Board shall create and adjust classes of positions in the state civil service. (Gov. Code, § 18800.) Classes adopted by the Board are called the “Classification Plan.” (*Ibid.*) The Classification Plan shall include a descriptive title and a definition outlining the scope of the duties and responsibilities for each class of positions. (*Ibid.*)

This proposed regulatory action requires that the Classification Plan shall be periodically and routinely reviewed, and where appropriate, revised to reflect new procedures, technology, and other management-initiated changes significantly impacting the tasks or duties of a classification. Proposed section 89 also requires that all positions within state civil service shall be properly allocated to the classification that is appropriate for the work to be performed. In addition, section 89 ensures that no class shall be established

unnecessarily. The rule also creates a balancing test that agencies must follow when considering whether to recommend a new classification for Board approval. The balancing test weighs the impact of increasing the number of classes with the needs of state civil service. Finally, section 89 requires that the use of agency or division names shall be avoided.

This proposed regulatory action will ensure that civil service jobs and the services provided by those jobs are updated and modernized, as needed. This will enhance the overall efficiency and productivity of state civil service. This action also conforms to Government Code section 19051, which requires that “[n]o person shall be appointed under a class not appropriate to the duties to be performed.” In addition, avoiding the use of agency or division names for classes promotes consistency and avoids the work involved in changing a class title should an agency or division name be changed. This proposal also conforms long standing Board policy into a regulation. (*Personnel Management Policy and Procedures Manual (PMPPM)*, § 110, p. 100.4.)

B. Legal and Professional Standards for Job Analysis Methods (§ 89.1).

A job analysis is a process to identify and determine the particular job duties and requirements and the relative importance of those duties for a given classification. It involves collecting data about the duties and functions of a classification. The purpose of a job analysis is to document and ensure the job relatedness of employment procedures, such as recruitment, examinations, selection, probation and performance appraisals, and job training.

In its *Merit Selection Manual (2003)*, the Board set a policy for job analysis methods. This proposed regulatory action conforms that policy into regulation and also ensures that job analysis methods are consistent with any updates and/or amendments to the federal *Uniform Guidelines on Employment Selection Procedures (1978)*. This regulatory action also ensures that job analysis methods are consistent with civil service laws and regulations and other relevant legal standards, and relevant professional standards.

C. Factors to Consider for Minimum Qualifications (§ 89.2).

Proposed section 89.2 sets factors to consider when minimum qualifications for a classification are developed. The focus of these factors is to ensure that minimum qualifications are not set too high. MQs that are set too high may unnecessarily cause the rejection of otherwise qualified candidates or create an adverse impact on persons with disabilities, upward mobility for state employees, and equal employment opportunity for all protected classes. This proposed regulatory action is intended to avoid those negative outcomes and expand the pool of qualified applicants seeking employment with the state.

D. Factors to Consider for Preferred or Desirable Qualifications (§ 89.3).

The Board's regulations do not currently set standards for the factors that should be considered when preferred or desirable qualifications are developed. This proposed

regulatory action addresses this gap by setting forth such factors. Section 89.3 provides that factors to consider include whether certain education, experience, or competencies would enhance a person's capacity to successfully perform the tasks and functions of the classification.

This proposed regulatory action promotes competition among candidates based upon job-related factors. This action also enhances the selection process by distinguishing the qualifications of candidates.

E. Class Specification Format (§ 89.4).

The Board's PMPPM, Class Specification Guide, section 101 (July 1988), provided information on the uses and format of a class or class series specification. In relevant part, section 101 gave guidance on how to format the segments of a class specification, which is the legal and official description of a class that has been adopted by the Board. Section 101 also stated the general purposes of the class specification as the following:

1. To define the boundaries of classes and differentiate each class from every other class in terms of type of work, level of responsibility, and qualifications required;
2. To arrange classes in related occupational groupings and logically progressive series; and
3. To provide a convenient written document that identifies the basic characteristics of each class for a variety of personnel management purposes.

Consistent with this long standing policy, proposed section 89.4 requires that the class specification format consist of six segments: 1) a class title; 2) a concise description of the job functions; 3) an identification of the minimum qualifications; 4) an identification of the preferred or desirable qualifications, if applicable; and 6) the duration of the probationary period.

The class segments required by this proposed regulatory action will allow interested applicants to understand the duties and functions of a classification, and to determine whether they are interested and qualified to examine or compete for a particular classification or position in a classification. This proposed regulation will also ensure standardization of the class specification formats, which will provide for improved and consistent quality of class specification formats.

F. Board Approval for Changes to Class Specifications (§ 89.5) and Class Abolishment in General (§ 89.6).

Proposed section 89.5 and 89.6 conform to the Board's exclusive jurisdiction to establish additional classes and divide, combine, alter, or abolish classifications as it deems necessary. (Cal. Const., art. VII, § 3; Gov. Code, § 18802.)

G. Standards for Writing a Class Specification (§ 89.7).

The PMPPM, Class Specification Guide (PMPPM, § 101), set forth the general standards for writing class specifications, which included that the "class specification should be clear and understandable." (PMPPM, § 101.3.) In addition, the "differentiating factors among classes should be so conveyed that the reader does not have to engage in extended analysis to discern them or to find them in a jumble of descriptive phrases." (*Ibid.*) Moreover, the "specification format should adhere to the established pattern and the terminology used should be consistent." (*Ibid.*)

Proposed section 89.7 conforms this policy into regulation. This regulatory action promotes clear and concise class specification descriptions. Further, the benefits of this proposed action include ensuring that the qualifications and duties of classifications are easily understood by agencies, employees, and job seekers alike. This action will also assist agencies to correctly match positions to classifications.

H. Casual Employment Classes (§ 91).

PMPPM, Casual Employment, section 200 (Oct. 30, 1996), concerned the use of casual employment trades classes, time limits for use, and the status of employees assigned to such classes. These classes were designated as nontesting, so that temporary appointments were possible. Casual employment positions could be allocated only to skilled trades classifications and short-term projects of a nonrecurring nature. (PMPPM, § 200.3.) The policy also made clear that not all short-term projects were appropriate for a Casual Employment appointment. For instance, the policy encouraged permanent intermittent appointments for work that was of a recurring nature, such as several short-term projects year round or a project of four to six months duration each year. There were equity considerations as well. "If the trade rate is paid to employees who should be in permanent or permanent intermittent positions, then the State is paying one group of employees a rate higher than another performing the same work; and the State is put in the position of paying a premium for work." (PMPPM, § 200.3.) The policy also placed a six-month limit on the amount of time the employee could work in a Casual Employment class. The employee could not work beyond six months without prior Board approval.

Proposed section 91 eliminates the six-month working limit and Board approval requirement. Section 91, however, maintains the requirement that Casual Employment classes are only for skilled trades persons working on short-term construction or maintenance projects of a nonrecurring nature. The method of appointment to these

classes also remains by way of a temporary appointment. As explained below (at p. 27, *post*), proposed section 265 will simplify counting time for temporary appointments. This proposed regulatory action updates and simplifies the process for hiring persons into Casual Employment classes. Simplifying this process is consistent with the Governor's civil service improvement project.

I. Special Consultant (§ 92).

PMPPM, Classification, Special Consultants, section 210 (Jan. 1988) set forth the standards for using the Special Consultant classification. The policy stated,

The intent of the State Constitution and State civil service law and rules is that employment of individuals in State civil service shall be through the use of existing classes and their attendant merit selection criteria and processes. In some circumstances the classification plan and existing eligible lists cannot meet State needs. In these cases the class of Special Consultant can be used as an exception to the use of regular civil service classification and selection plans to meet the highly specialized needs. Special Consultants should be authorized only for the purposes outlined below under Standards and Guidelines.

To justify the use of a Special Consultant, PMPPM, section 210, required that the following conditions be met:

1. The duration of the work is less than nine months or less than the equivalent of nine months full-time employment.
2. The work is of a professional or technical character.
3. The work requires specialized skills and knowledge that are not available within existing civil service classes.

Proposed section 92 requires that the Special Consultant class shall only be established if (1) the work or project is of an expert, unique, or technical nature that is short-term but may involve multiple phases and goals; and (2) requires specialized skills, knowledge, and experience that are not available within existing civil service classifications. Section 92 also mandates that the Special Consultant class shall only be made by way of a temporary appointment, i.e., a maximum time of 9 months in 12 consecutive months. (See also proposed section 265, Counting Time for Temporary Appointments, at p. 27, *post*.)

This proposed regulatory action maintains long standing Board policy that the use of Special Consultants is short term and an exception to the use of regular civil service classification. This proposed action also reflects current models of short-term work and projects that may involve multiple phases and goals.

IV. Renumber and Amend Regulation Related to Employment Lists.

A. Non-Disclosure of a Candidate's Eligibility During the Selection Process (§ 157).

Section 157 requires that where a corresponding LEAP-referral³ list is provided to or generated for an appointing power, the basis of the candidate's eligibility shall not be available to the hiring manager, any member of an interview panel, or any other person with the authority to approve the appointment at any time before the selection and offer of appointment is made, unless the LEAP candidate chooses to voluntarily disclose his or her LEAP eligibility.

The Board proposes to renumber section 157 to section 249.7 (Non-Disclosure of a Candidate's Basis of Eligibility) to improve clarity and to better fit within the new numbering system of the Board's regulations. The reasons for the proposed changes in text are discussed fully under proposed section 249.7. (At p. 22, *post.*)

V. Adopt, Amend, and Repeal Regulations Related to Examinations.

A. Civil Service Examinations and Announcements (§ 171, Renumbered § 170).

For the purpose of establishing eligible lists, civil service examinations must be competitive and of such character as to fairly test and determine the qualifications, fitness, and ability of the competitors to actually perform the duties of the class of position to which he or she seeks an appointment. (Gov. Code, § 18930.) The manner in which examinations may be conducted is broad in scope—assembled or unassembled, written or oral, or in the form of a demonstration of skill or any combination of those. (*Ibid.*) The Board may audit examinations and order corrective action or nullify an entire examination or any part of an examination found to have been conducted improperly. (*Ibid.*) CalHR may designate an appointing power to design, announce, or administer examinations for the establishment of employment lists in accordance with Board rule. (Gov. Code, § 18930.5.) In recent years, civil service examinations have been modernized to include examinations that may be taken online.

Government Code section 18933 requires that within a reasonable time before the scheduled date of an examination, CalHR or a designated appointing power shall announce or advertise an examination. Section 18933 also specifies what information is mandated to be included in an announcement, e.g., date and place of the examination, nature of the minimum qualifications, and general scope of the examination.

³ "LEAP" means the Limited Employment and Appointment Program. (Gov. Code, §§ 19240 through 19244.)

Currently, section 171 provides that examinations shall be held at such times and places that CalHR may determine. CalHR is also charged with directing the preparation of every examination and the publication of the examination announcement. Section 171 also prescribes requirements for announcements, including requirements that each announcement state the title, salary range, and where appropriate, the duties of the class. In addition, section 171 allows CalHR to cancel a civil service examination at any time prior to the establishment of an employment list.

The proposed amendments to section 171 add reference to online and web-based examinations and also allow CalHR or a designated appointing power to administer an examination at such times and places, and in a format or manner deemed appropriate for the classification that is the subject of the examination. The proposal also requires that examination announcements shall comply with Government Code section 18933 and, in addition, state the title, salary range, preferred or desirable qualifications, and any additional information CalHR deems proper. The amendments further allow CalHR or a designated appointing power to cancel an examination at any time prior to the establishment of the employment list. There are also technical modifications to the regulation that are nonsubstantive changes, including renumbering the section to section 170.

This proposed regulatory action updates the regulation to reflect the use of online and web-based examinations; makes conforming changes to reflect the requirements of Government Code section 18933; ensures that examination announcements are consistent with the Board's proposed new regulations concerning qualifications (*ante*, at pp. 2-3); and makes conforming changes to reflect that Government Code section 18930 allows CalHR or a designated appointing power to design, announce, or administer civil service examinations.

B. Experience Requirements to Satisfy Minimum Qualifications (§ 171).

The Board is empowered to establish minimum qualifications for determining the fitness and qualifications of employees for each class of position. (Gov. Code, § 18931.) By policy, the Board set standards for evaluating experience requirements to satisfy minimum qualifications. (*Selection Manual*, Rev. July 1994, § 6200.) The calendar time was required to be in a full-time job or work assignment, or part-time employment. (*Id.* at pp. 6200.5, 6200.9.) The policy also directed that volunteer experience was credited in the same way as paid experience. (*Ibid.*)

Proposed section 171 provides that in determining whether an applicant has the appropriate experience to satisfy minimum qualifications, consideration shall be given to experience gained in a part-time or full-time job, regardless of whether the job was a paid or volunteer position or was within or outside of state service.

The purpose of this proposed regulatory action is to eliminate multiple sources of Board policy and set those policies in regulation for ease of reference. This regulatory action also

promotes uniformity and transparency in selection procedures and practices. In addition, this action promotes the establishment of broad and diverse qualified applicant pools.

C. Calculating the Amount of Time Required to Satisfy Minimum Qualifications for Experience (§ 171.1).

The Board's *Selection Manual*, The Application Review Process, section 6200, Rev. July 1994, concerned, in relevant part, calculating the amount of time required for an applicant to satisfy minimum qualifications for experience. The policy required that where an applicant worked two different qualifying jobs concurrently the time spent on those jobs would be added together to determine the total amount of qualifying experience. (*Id.* at p. 6200.9.) The policy also required that part-time employment be computed on the basis of the percentage of full time worked as part time. (*Ibid.*) For example, "One-half time employment for six months is equivalent to three months' full time. One-third time employment for one year is equivalent to four months' full-time employment." (*Ibid.*) For an intermittent employee, the time was required to be computed on the basis of 160 hours as equivalent to one month with the maximum number of hours per year of 1500 hours. (*Id.* at p. 6200.10.) The policy also required that an assignment must be performed for a definite and identifiable percentage of the employee's working time. (*Ibid.*) Calculating the conversion of part-time experience to full-time equivalency was set in a detailed conversion chart as Attachment A. (*Ibid.*)

Section 6200 of the *Selection Manual* also prohibited counting experience twice and counting hours worked on the same job in excess of full time, unless otherwise provided in the class specification. (*Selection Manual*, § 6200, Rev. July 1994, p. 6200.11.) The policy also addressed counting military experience as per the Government Code requirements and experience in a reclassified position from the date the reclassification was officially approved. (*Ibid.*)

The proposed amendments to section 171.1 delete reference to work assignment and add reference to part-time equivalent. When calculating part-time equivalent experience toward satisfying the minimum amounts of full-time experience, the regulation uses 173.33 hours of actual time worked to equal one month. The amendments also add the requirement there where an applicant works in more than one job concurrently, the hours worked per week in each job shall be added together if those hours relate to the same or substantially the same competencies. Further, this regulatory action requires that to receive experience credit, the job responsibilities or duties must be performed for a definite and identifiable percentage of working time, not performed occasionally or incidentally. Additionally, applicants shall receive credit for qualifying experience in a full-time or part-time job while enrolled in and attending a school, college, university or similar institution, unless the experience is part of the educational curriculum and the minimum qualifications require those courses of study and/or related academic degree.

As to experience in a civil service position that is reclassified, the proposed amendments allow credit to be accrued from the date the reclassification was officially approved. The regulation, however, prohibits credit for experience accrued for time the applicant was on

an unpaid leave of absence. Finally, the proposed amendments include re-numbering of the regulation and other non-substantive style changes.

The purpose of this proposed regulatory action is to eliminate multiple sources of Board policy and set those policies in regulation for ease of reference. This regulatory action promotes uniformity and transparency in selection procedures and practices. This action also simplifies the conversion of part-time qualifying experience to full-time experience by using the 173.33 hours calculation, which is consistent with CalHR regulations concerning the conversion of pay rates. (See Cal. Code Regs., tit. 2, § 599.670 [monthly or hourly rates of pay may be converted as a 40-hour week being equivalent to a 173.33-hour month].) In addition, this action promotes the establishment of broad and diverse qualified applicant pools.

D. Eligibility to Take a Civil Service Examination (§ 171.2).

Government Code section 18932 provides that any person possessing the minimum qualifications for any state position is eligible to take any civil service examination given for that position, regardless of age. Government Code section 18522 defines position to mean “any office or employment in the ‘state civil service’ as the phrase is defined in Section 1 of Article VII of the Constitution. This proposed regulatory action conforms section 171.2 to Government Code sections 18932 and 18522, and clarifies that the term “any state position” refers to the section 18522 definition.

E. Criteria for Equivalencies and Equivalent Combinations (§ 171.3).

The Board’s *Selection Manual*, The Application Review Process, section 6200, addressed, in pertinent part, making substitutions for education and experience. (Selection Manual, § 6200, Rev. July 1994, at p. 6200.17.) For older specifications, where there was a statement such as “some equivalent combination of education and experience,” the policy stated that complete substitution of one for the other was not acceptable. (*Ibid.*) Further, “any education or experience accepted under this equivalency pattern must be of the type specified in the basic definition pattern of the entrance requirements.” (*Ibid.*) The policy noted that most college and high school education patterns allowed substitution of qualifying experience for the required education on a year-for-year basis. (*Id.* at p. 6200.18.) The policy also discussed specialized college course work, teaching experience, less than college graduation, college graduation, graduate work, and correspondence school. (*Id.* at pp. 6200.18 – 6200.20.)

Proposed section 171.3 sets the basic criteria for using equivalencies and equivalent combinations when determining whether an applicant satisfies the minimum qualifications of a classification. The regulation allows for the substitution of experience for educational requirements where the experience provides the level of competencies necessary to perform the essential tasks and functions of a classification without the required education. Experience may be substituted for educational requirements on a year for year basis or calculated on a partial basis. This same standard is used where education is substituted for experience requirements. The regulation also allows for the combination of education

and experience if the combination provides the level of competencies necessary to perform the essential tasks and functions of the classification.

This proposed regulatory action eliminates multiple sources of Board policy and sets those policies in regulation for ease of reference. This regulatory action also promotes uniformity and transparency in selection procedures and practices. In addition, the proposal simplifies the criteria for equivalencies and equivalent combinations. For purposes of MQ evaluation, this proposal, rather than placing emphasis on length of experience alone or education alone, places emphasis on whether equivalencies or equivalent combinations provide an applicant with the necessary job-related competencies to perform the essential tasks and functions of a classification. Further, this regulatory action is intended to widen the pool of qualified candidates who seek employment with the state.

F. Applications (§ 174).

Currently, Government Code section 18934 requires that every applicant for examination shall file an application with CalHR or a designated appointing power as directed in the examination announcement. The statute also sets confidentiality standards for applications and prohibits any agency from charging applicants for submitting applications. Consideration of relevant volunteer experience is also mandated. Section 18934 has a sunset provision of July 1, 2017, and a repeal date of January 1, 2018.

Operative on July 1, 2017, the new Government Code section 18934 will, in addition to the current requirements summarized above, include a new subdivision concerning applications that are filed online. (Gov. Code, § 18934, subd. (b).) The law will require that when receiving applications online, CalHR or designated appointing powers shall: (1) provide applicants with the electronic communication address of CalHR or the designated appointing power, whichever is applicable; (2) unless otherwise requested by the applicant, contact the applicant using electronic communication; and (3) inform the applicant of the use of electronic communication for employment inquiry and score and rank notifications, unless the applicant specifically requests to be notified by postal mail.

Section 174 currently sets standards for filing applications to take civil service examinations and requires all applications to remain on file for at least two years. Section 174 also defines the timely filing of an application and sets forth criteria for when an application shall be accepted, even though the application is not timely filed.

This proposed regulatory action amends section 174 with an inoperative date of July 1, 2017, and adds a new section 174 with an operative date of July 1, 2017. The proposed amendments to section 174 delete the two year record retention requirement and clarify the definition of filing an application “within the time” to mean no later than the final filing date specified on the examination announcement. The amendments also clarify under what conditions an untimely filed application may be accepted. The language is changed to reflect that the triggering date to determine whether an application is filed late is the final filing date that is specified on the examination announcement. In the circumstance where an untimely application shall be accepted if the employee failed to receive timely

notice of a promotional examination, the proposed amendments delete the requirement that the examination must be one the employee would typically be expected to compete in. The amendments also include non-substantive style changes.

The proposed new section 174, which will become operative on July 1, 2017, is identical to the proposed amendments to section 174 discussed immediately above, except the new section 174 incorporates reference to applications that are “electronically transmitted.”

This proposed regulatory action makes conforming changes to reflect Government Code section 18934 changes, which will become operative on July 1, 2017. This regulatory action also harmonizes section 174 with the record retention requirements of section 26. The non-substantive style changes are for clarity and consistency. Deletion of the requirement that for late promotional exam applications the examination must be one the employee would typically be expected to compete in eliminates a subjective standard and encourages the promotional opportunities for employees, which in turn, promotes loyalty and devotion to state service. (See Gov. Code, § 18951 [the Board and each agency shall encourage economy and efficiency in and devotion to state service by encouraging promotional advancement of employees showing willingness and ability to perform efficiently services assigned them.])

G. Formula Rating (§ 193) and Ratings for Examinations (§ 193.1).

CalHR or a designated appointing power shall determine the final earned rating of each person competing in any examination, as specified in Government Code section 18936. In addition, the passing mark for an examination may be other than the true percentage or average published as part of the announcement of the examination, if deemed by CalHR or a designated appointing power to be justified in order to provide an adequate eligible list or to adjust for the apparent difficulty of an examination. (Gov. Code, § 18937.)

The proposed amendments to sections 193 and 193.1 reflect the statutory duties of CalHR and designated appointing powers relative to rating examinations and setting passing scores. There are also non-substantive style changes.

The purpose of this proposed regulatory action is to update the regulations to conform to Government Code sections 18936 and 18937. The non-substantive style changes are for clarity and consistency with the new numbering scheme of the Board’s regulations.

H. Exam Ranking Considerations (§ 193.2).

Examinations must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors actually to perform the duties of the class of position for which they seek appointment. (Gov. Code, § 18930.) In accordance with Government Code section 18654 and Board rules, CalHR may designate an appointing power to design, announce, or administer examinations for the establishment of employment lists. (Gov. Code, § 18930.5.)

The proposed adoption of section 193.2 provides CalHR and designated appointing powers that administer examinations guidelines for ranking considerations. The regulation allows CalHR or an appointing power to give the breadth, quality, continuous length of time, and recency of pertinent or qualifying experience more weight than intermittent lengths of time that are combined. The regulation requires that a statement to this effect shall be included on the exam announcement, but not the class specification.

The purpose of this proposed regulatory action is to promote uniformity, fairness, and transparency in the examination process, regardless of which agency gives an examination.

I. Limited Three Score Examinations (§ 194).

The Board conducted a Three-Rank Eligible List Pilot Study beginning in August 2008. Several agencies participated in the study, which lasted approximately two years. The three-rank eligible list was one in which all applicants who met the minimum qualifications for a classification and passed the examination were placed into one of three ranks. Applicants who did not pass the examination were assigned a score of 65 and were not ranked or identified on the eligible list. The intent of the project was to facilitate the appointment of the right qualified persons for the right jobs, consistent with a competitive merit-based process that ranked competitors and was free of patronage.

In September 2011, the Board contracted with Donnoe & Associates, Inc. to evaluate the pilot project. Donnoe & Associates concluded that (1) the pilot study had been successful; (2) the procedures of the pilot study were well understood by HR staff; (3) the examination process was merit based; (4) the exam process resulted in a greater quantity and more diverse pool of candidates to hire; and (5) the pilot project streamlined the examination process. The firm thus recommended: (1) the adoption of a new exam rule allowing limited scoring; (2) establish a limited score rule rather than a limited rank rule, since the exam score is what is limited in number, i.e., one failing score and three passing scores; and (3) establish a Board audit function for limited score examinations. It was also recommended that the new exam rule should be a tool that can be used to accommodate any number of examination planning needs.

Proposed section 194 sets the standards for Limited Three Score Examinations, which has a failing score and three passing scores. The ranking of candidates shall be competitive and based upon a comparison of the qualifications of the candidates with the qualifications of the classification that is the subject of the examination. All candidates in the passing three ranks are eligible for appointment. The names of candidates with a failing score shall not be included on the eligible list. The regulation also establishes factors to consider when determining the appropriate scores for a limited three score examination. There are also technical changes that involve renumbering.

This proposed regulatory action will promote a more streamlined and efficient examination process while maintaining competitive examinations. This action is also intended to increase the pools of qualified candidates seeking employment with the state. The non-

substantive change is for consistency with the new re-numbering scheme of the Board's regulations.

J. Regulations Related to Qualifications Appraisal Panels (§§ 195-199.1).

The Board's regulations currently set standards for qualifications appraisal panel (QAP)s that include criteria for ratings, conduct of interviews, composition of panels, competitive ratings, minimum qualifying ratings, and alternate ratings. These regulations set forth detailed and strict criteria for QAPS and have not been substantively changed for thirty years.

Despite the fact that QAPs can be an effective testing technique, the use of QAPs has declined over the years because of a number of factors including the time, effort, and travel involved for panel members.

This proposed regulatory action adopts sections 195 (Composition of Qualifications Appraisal Panels), 195.1 (QAP Interviews and Responsibilities) and 195.2 (Ratings for QAP Examinations). The proposal provides CalHR or a designated appointing power the authority to determine the number of QAP members required for an interview. CalHR or a designated appointing power shall select and appoint such members. Members must understand and be familiar with the class qualifications for which the exam is being held. They must also be familiar with and understand the merit principle, equal employment opportunity laws, and Board rules related to examinations. Chairpersons and persons acting as chairpersons in the chairperson's absence shall be selected and certified as deemed appropriate by CalHR. The regulations allow a different composition of QAP members, but require that the same QAP panel should be used whenever operationally feasible. If the chairperson is unable to attend, he or she shall select another member to act as the chairperson in his or her absence. All interviews must use the same pre-determined, job-related questions. Members are required to evaluate each candidate's qualifications on an equal and fair basis and complete rating forms or sheets. Ratings must be done by each panel member independently after the interview and before any background checks and/or investigations that may be required. Panel members may rate candidates before or after discussion with other members. Panel members must also each sign, complete, and record his or her ratings on forms or in a manner prescribed by CalHR. The regulatory action also repeals sections 194 (Rating by Interview), 195 (Conduct of Interviews), 196 (Composition of Panels), 198 (Competitive Ratings), 199 (Minimum Qualifying Ratings), and 199.1 (Alternate Ratings).

This proposed regulatory action updates and simplifies the QAP process which in turn will promote the use of QAPs. This action also ensures that QAP members have the proper knowledge and understanding necessary for fair and objective evaluations of candidates. In addition, by requiring pre-determined, job-related questions and setting standards for the conduct of QAP members, this action ensures a fair, objective, and merit-based testing process.

K. Reports on Promotional Competitors (§ 200).

Section 200 provides that in any promotional examination, CalHR may establish procedures for furnishing QAP interviewers with reports concerning the performance of competitors. The regulation is unclear and vague as to what specific reports would be furnished or who would prepare the reports. The regulation also does not address whether the competitor may review and comment on these reports where the competitor believes the report is inaccurate and/or unfair. It is also unclear as to how these reports should be factored into the promotional examination process.

This proposed regulatory action repeals section 200 as vague, unclear, and unnecessary.

L. Computing Examination Score (§ 205) and Minimum Rating Required (§ 206).

Under former Government Code section 18936, the Board or a designated appointing power set minimum qualifying ratings for each phase of an examination. Former Government Code section 18937 allowed the Board to set the passing mark for an examination to a mark that was other than the true percentage or average score. Sections 205 and 206 reflect the Board's statutory authority.

Statutory changes to Government Code sections 18936 and 18937 transferred the functions of computing examination scores and setting passing marks from the Board to CalHR or a designated appointing power. (Assem. Bill No. 1062 (2013-2014 Reg. Sess.) § 427.) Accordingly, the Board proposes to repeal sections 205 and 206 to conform to these statutory changes.

M. Establishing List in Case of Tie. (§ 210).

Section 210 is based upon former Government Code section 19057, which required that there shall be certified to the appointing power the names and addresses of the three persons standing highest on a promotional employment list. Government Code section 19057 was repealed (Sen. Bill No. 99 (2015-2016 Reg. Sess.) § 14). Accordingly, the Board proposes to repeal section 210 to conform to this statutory change.

VI. Adopt a Regulation For Promotions In Place.

A. Promotions in Place (§ 242).

The Board, CalHR, and each state agency and employee must encourage economy and efficiency in and devotion to state service by “encouraging promotional advancement of employees” who show “willingness and ability to perform efficiently services assigned” to them. (Gov. Code, § 18951.) “[E]very person in state service shall be permitted to advance according to merit and ability.” (*Ibid.*)

Proposed section 242 allows an employee with permanent civil service status to be promoted in place, if certain conditions apply: (1) the position currently occupied by the employee is reallocated to the “to” class without a change of unit or location; (2) within the employee’s agency, there are no position ratio allocation limits on the “to” class that would preclude other eligible employees from competing in the future for an appointment to the “to” class; and (3) the employee competed in and passed an examination for the “to” class and is currently placed on the employment list for that examination in one of the top three ranks.

This proposed regulatory action encourages promotional advancement of employees while also maintaining a competitive examination process. Section 242 also clarifies under what conditions an employee may receive a promotion in place.

VII. Adopt, Amend, and Repeal Regulations Related to Appointments.

In all cases that are not excepted or exempted by Article VII of the California Constitution, civil service positions shall be filled by appointment, including appointments by way of reinstatement, promotion, and demotion in “strict accordance” with the Civil Service Act and Board rules. (Gov. Code, § 19050.) The transfer of an employee from a civil service position under one appointing power to a civil service position under another appointing power may be made, but is subject to Board rule. (Gov. Code, § 19050.4.) An appointing power may transfer any employee under his or her jurisdiction to a position in the same class or to another position in a different class pursuant to Board rule. (Gov. Code, § 19050.5.)

A. Standard Measurement Criteria (§ 249.1).

The Board’s current regulations do not address the use of standard measurement criteria during the hiring process. Proposed section 249.1 requires that before the hiring process begins, the appointing power shall develop standard measurement criteria for assessing and comparing candidate qualifications. Establishing standard measurement criteria before the hiring process begins will allow hiring managers to assess each candidate as objectively and fairly as possible, since candidates will be evaluated using the same job-related criteria. This method will also promote the merit principle and compliance with federal and state anti-discrimination laws.

B. Postings of Job Announcements on Websites or by Other Electronic Means (§ 249.2).

Due to advances in computer and internet technology and the use of such electronic devices by applicants seeking civil service jobs, it is necessary for the Board to update its processes regarding the posting of job announcements. The Board’s current regulations do not address the posting of job announcements on websites or by other electronic means.

Proposed section 249.2 requires that all job announcements shall be posted on CalHR's designated website and allows posting of job announcements on other websites or by other electronic means designed to provide fair, equitable notice to eligible candidates. This proposal also requires a minimum online-posting period of ten calendar days, unless a collective bargaining contract between a recognized public employee organization and the state provides otherwise. The regulation also takes into account that critical hiring needs may require a shorter online-notice period than 10 days. In such an instance, subdivision (b) requires that certain information be documented and maintained pursuant to section 26, the Board's 5-year record retention regulation.

This proposed regulatory action provides job seekers a consistent and reliable location for electronic postings of civil service job announcements while also allowing appointing powers the ability to expand job announcements beyond CalHR's designated website to other websites or by other electronic means. Thus, the adoption of section 249.2 will reflect modern processes and promote greater efficiency in the postings of job announcements on websites or by other electronic means. This proposed regulation also ensures an adequate and reasonable amount of time for job announcements to be posted online while not unnecessarily interfering with the collective bargaining process. The critical hiring exception provides appointing powers flexibility where warranted and reasonable.

C. Conditions for Not Re-Announcing A Job Vacancy (§ 249.3).

The Board's regulations do not currently address when a re-announcement of a job vacancy is not required. Proposed section 249.3 provides that a job vacancy is not required to be re-announced if an identical vacancy was announced previously and fewer than 180 calendar days have elapsed since the identical announcement's closing date. Subdivision (b) defines vacancies as the same position title, classification code, grade, reporting location, and position requirements.

The purpose of this proposed regulatory action is to promote uniformity, fairness, and transparency in the selection process.

D. Verification of Minimum Qualifications Prior to Appointment (§ 249.4).

The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position in state civil service. (Gov. Code, § 18931, subd. (a).) Generally, a person possessing the minimum qualifications for a state position is eligible to take the civil service examination for that position. (Gov. Code, § 18932.) Through policy, the Board has explained that applications "are reviewed to ensure that applicants meet (1) minimum qualification requirements for the job classification for which the examination process is being administered and (2) final filing date requirements, as published in the examination bulletin." (*Merit Selection Manual* (Oct. 2003) § 1200, p. 1200.10.) The Board's regulations, however, do not address when an appointing power should verify that a candidate who is being considered for appointment satisfies the minimum qualifications.

Proposed section 249.4 clarifies that verification of minimum qualifications is not required for candidates on reemployment lists or State Restriction of Appointment (SROA) lists, or candidates who have mandatory reinstatement rights. For all other candidates, the regulation sets the standard that verification of minimum qualifications shall occur before a candidate is appointed. Section 249.4 also establishes an informal process in which an appointing power must notify a candidate who is found not to satisfy the minimum qualifications. The notice shall be in writing and afford the candidate an opportunity to establish that he or she satisfies the minimum qualifications. If the candidate does not establish that he or she satisfies the minimum qualifications, he or she shall not be appointed to the classification, and if the candidate's name is on an employment list, his or her name shall be removed from the list. In addition, the candidate shall be informed of his or her appeal rights.

This proposed regulatory action is intended to avoid illegal appointments, which are an unnecessary waste of state time, resources, and expense. This proposal also promotes a more efficient dispute process by affording appointing powers and candidates the opportunity to resolve issues surrounding minimum classifications without needing to first file an appeal with the Board, which can be costly and time consuming for all parties.

E. Employment Inquiries (§ 249.5).

The Board is responsible for enforcing the merit principle in the state's civil service hiring system. (Cal. Const., art. VII, § 3; *State Personnel Bd. v. Dept. of Personnel Admin.* (2005) 37 Cal.4th 512, 526-527.) Accordingly, persons hired into and promoted within civil service must be selected on the basis of their job-related qualifications. Hiring decisions based upon illegal discrimination or political patronage are prohibited. (*Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 181-182.)

Employment inquiries are used to determine whether an eligible candidate is interested in a civil service job vacancy. The Board's regulations do not currently address the proper use of employment inquiries.

Section 249.5 requires that appointing powers document which candidates were contacted, how and when they were contacted, and any response. The regulation also prohibits appointing powers from making any request or statement in an employment inquiry that could be construed as asking or instructing eligible candidates to go inactive or waive interest in a position. The documentation of employment inquiries shall be maintained in accordance with section 26 of the Board's regulations.

This proposed regulatory action ensures that employment inquiries are properly used and that all candidates receiving such inquiries are treated fairly and equally. The document retention requirement of this proposed regulatory change allows the Board to ensure compliance with section 249.5.

F. Redaction of Confidential Information on Candidate Documentation (§ 249.6).

Protecting the privacy rights of persons who seek jobs within state civil service is exceptionally important, since there is a risk that such information may be intentionally or inadvertently misused. This risk is increased given that public records are easily available on the Internet. In addition, confidential information, like social security numbers, marital status, and date of birth, are not relevant to an appointing power's hiring decision. The Board's regulations do not currently include a regulation related to protecting a job candidate's confidential information.

Proposed section 249.6 requires the redaction or removal of confidential information on candidate related documentation before copies of the documentation are provided to any person who is not assigned to work in the appointing power's human resources or personnel unit, including the hiring manager, any employee in the hiring manager's unit or division, any member of the interview panel or any other person, including employees with the authority to approve the appointment. The proposed regulation defines confidential information to include, but not be limited to, social security numbers, marital status, date of birth, equal employment opportunity data, the basis of the candidate's eligibility, or any other information considered confidential under law or regulation. Section 249.6 also makes clear that nothing in the regulation shall be construed to relieve appointing powers from the duties and obligations of other laws, regulations, or policies related to privacy and confidentiality.

This proposed regulatory action is designed to protect the confidential information of candidates seeking employment with the state.

G. Non-Disclosure of a Candidate's Basis of Eligibility (§ 249.7).

Persons hired into and promoted within civil service must be selected on the basis of their job-related qualifications. A person's basis of eligibility for appointment to a civil service job, however, may differ. For instance, a person may have LEAP referral-list eligibility, non-LEAP list eligibility, or transfer, promotional, demotional, or permissive reinstatement eligibility. Thus, the basis of a person's eligibility for a position in state service is distinct from a person's job-related qualifications to perform successfully the duties of a position. The basis of a candidate's eligibility creates the risk of bias against or for a candidate that is unrelated to the candidate's job-related qualifications.

The Board's regulations currently include a requirement that where a corresponding LEAP-referral list has been provided to or generated for an appointing power, the basis of any candidate's eligibility during the hiring process shall not be available to the hiring manager, any member of an interview panel, or any other person with the authority to approve the appointment at any time before the selection and offer of appointment is made, unless the LEAP candidate chooses to voluntarily disclose his or her LEAP eligibility. (§ 157.)

Section 157 is limited in scope in that the non-disclosure requirement only applies when a LEAP-referral list has been provided to or generated for an appointing power. Thus, in situations where there is no corresponding LEAP-referral list, a candidate's basis of eligibility may be known to those involved in the hiring decision. The limited scope of section 157 may have the unintended consequence of signaling when there are LEAP-referral candidates and when there are no LEAP-referral candidates, since the basis of a candidate's eligibility is only restricted when there are LEAP-referral candidates.

The Board proposes to repeal section 157 and replace it with section 249.7. Proposed section 249.7 prohibits during the hiring process disclosure of a candidate's eligibility for appointment to any person who is not assigned to work in the appointing power's human resources or personnel unit, including the hiring manager, any employee in the hiring manager's unit or division, any employee who acts as a human resources or personnel liaison, any member of an interview panel, or any employee with the authority to approve the appointment. The prohibition does not apply to candidates who have reemployment or SROA eligibility, since those candidates have mandatory hiring rights. Proposed section 249.7 allows, however, a candidate to voluntarily disclose his or her basis of eligibility if prior written notice of the right to non-disclosure is provided or reasonably available to candidates. Written notice may include, but is not limited to, notice on the job announcement or by way of letter or other written communication to a candidate.

The purpose of this proposed regulatory change is to promote merit-based hiring in civil service. Hiring well-qualified employees in civil service improves productivity and the quality of work and services.

H. Determining Merit and Fitness During the Hiring Process (§ 250).

Section 250 requires that selection of candidates for appointment to a position in state civil service be based upon merit and fitness. Section 250 applies to appointments made from eligible lists, by way of transfer (Gov. Code, § 18525.3), or by way of permissive reinstatement (Gov. Code, § 19140). The regulation defines merit and fitness as "the consideration of each individual's job-related qualifications for a position," which include "knowledge, skills, abilities, experience, education, training, physical and mental fitness, and any other personal characteristics relative to job requirements" (§ 250, subd. (b).) The selection procedures for determining whether a candidate possesses job-related qualifications are defined to include "hiring interviews, reference checks, background checks, and/or any other procedures" assessing the job-related qualifications of a candidate.

Section 250 also requires that eligible lists are created on the basis of merit and fitness and that permanent status in civil service is achieved after completion of the required probationary period of the classification to which the candidate is appointed. Further, section 250 requires that all phases of the selection process are fair and equitable without regard to political affiliation, race, color, ancestry, national origin, sex, sexual orientation, religion, disability, medical condition, age, or marital status.

In addition, section 250 excludes from its scope intra-departmental job assignment transfers. Lastly, section 250 provides that nothing in the regulation shall be construed so as to contravene the obligation of appointing powers to reasonably accommodate persons with a disability or construed so as to contravene the intent and purpose of the California Constitution concerning preferences in state civil service to veterans and their surviving spouses. (§ 250, subds. (e) & (f).)

On November 7, 2013, the State Personnel Board (SPB) issued a decision in *Cynthia McReynolds v. California Public Utilities Commission* (Case No. 13-0396N) (McReynolds) clarifying that section 250 requires that an employee transferring from one classification to another classification must meet the minimum qualifications (MQs) of the new classification. On December 3, 2013, an email from CalHR was sent to agencies informing them of the *McReynolds* ruling and instructing state agencies to ensure that all employees transferring to another position without examination meet the MQs of the new position.

In this proposed regulatory action, the Board intends to repeal section 250 and adopt a new section 250. Proposed section 250 includes a change in title from “Requirement That Selection Be Based on Merit and Fitness” to “Determining Merit and Fitness During the Hiring Process.” The scope of application of the proposed rule is the same as the scope of application of current section 250: employment list appointments, transfers, and permissive reinstatements. Proposed section 250 requires that the qualifications of eligible candidates are competitively evaluated and that interviews are conducted by using job-related measurement criteria and some form of rating or scoring of each candidate. Prior to making the hiring decision, the hiring manager or his/her designee must conduct reference checks and review, if available, the official personnel file of the candidate, regardless of whether the candidate is currently an employee of the state or employed outside the state. Persons selected for appointment shall satisfy the minimum qualifications of the classification to which he or she is appointed; however, the person need not satisfy all of the preferred or desirable qualifications.

Proposed section 250 also includes a record retention requirement in accordance with section 26. Further, proposed section 250 makes clear that it does not apply to voluntary demotions or intra-agency job reassignments and that those types of personnel actions may be approved by the appointing power with consideration of any applicable collective bargaining contract between a recognized public employee organization and the state. Lastly, like current section 250, proposed section 250 provides that nothing in the regulation shall be construed so as to contravene the obligation of appointing powers to reasonably accommodate persons with a disability or construed so as to contravene the intent and purpose of the California Constitution concerning preferences in state civil service to veterans and their surviving spouses.

This proposed regulatory proposal: (1) updates the language of section 250 to be consistent with other parts of the Board’s regulatory scheme; (2) clarifies that section 250 applies during the hiring process; (3) sets the *McReynolds* MQ standard in regulation; (4) ensures that the hiring phase of the selection process is fair, objective, and competitive;

(5) establishes a record retention requirement so that the Board can audit appointing powers for compliance with the regulation; (6) makes clear that voluntary demotions and intra-agency reassignments may be approved by the appointing power, as specified, without the need for an evaluation or rating and/or scoring procedures; and (7) improves the civil service hiring process by ensuring that merit-based procedures are used during the hiring process.

I. Hires From Certified Employment Lists (§ 250.1).

Currently, persons on an employment list who are eligible for appointment to a civil service position may be contacted using the Employment Inquiry Form, Std. 628. It is the duty of every eligible candidate to respond within a reasonable time to an employment inquiry to ascertain his or her interest in a job vacancy, although he or she is not required to respond if he or she is not interested in the open position. Reasonable response times are set forth in Board regulation. (See proposed § 258, at p. 26, *post.*) It has been the policy for hiring managers to make a job offer within 120-days from the date of the certification list.

CalHR administers examinations with specific ending dates (also referred to as dated lists) and examinations with continuous filing, which result in merged lists. On a dated list, eligible candidates are tested at the same time, and start and end their eligibility for appointment at the same time. On a merged list, candidates are tested on a continuous or frequent basis, and their names are merged onto the existing eligible list for that examination. Eligible candidates on a merged list will each have the same length of eligibility; however, the dates that their eligibility starts and ends may vary depending upon when they took the examination.

When an appointing power seeks to fill a vacant position from a merged list, a problem arises in that the eligibility dates of the candidates will vary, even though at the time the merged list is certified all the candidates are eligible for appointment. For instance, a hiring manager may diligently conduct interviews and make a hiring decision within a reasonable time of the list being certified only to discover that the personal eligibility of the chosen candidate has expired sometime after the certification date and before the hiring decision. This results in a costly, time consuming, and counterproductive hiring process that frustrates and impedes the hiring of otherwise qualified candidates.

The Board's regulations do not currently address the timeframe for making a job offer when the candidate's eligibility is based upon an employment list certified pursuant to Government Code section 19057.1.

The proposed regulatory action requires that if the candidate chosen for hire is eligible based upon an employment list certified pursuant to Government Code section 19057.1, the job offer shall be made no later than 180 calendar days after the certification date for non-peace officer classifications and no later than 365 working days after the certification date for classifications requiring background checks. The proposed regulation allows an appointing power to extend the 180-day time period up to 30 working days by submitting to CalHR a written justification for the extension. In addition, the regulation requires that all

candidates named on the certified list will maintain, during the hiring time period, both their certification list eligibility and personal list eligibility.

The purpose of this proposed regulatory action is to solve the dilemma that occurs for hiring managers and qualified candidates alike when candidates have varying personal list eligibility on merged lists. Proposed section 250.1 will also promote timely hiring decisions by hiring managers while not imposing an overly strict timeline that is burdensome and unrealistic. This proposal will also ensure that a qualified candidate pool remains eligible during the applicable certification period. The benefits of this regulatory action include a more efficient and straightforward hiring process when hires are made from certified employment lists.

J. Time Periods for Replies to Employment Inquiries Following Certification (§ 258).

Eligible candidates are provided specified time periods by which to respond to employment inquiries. An employment inquiry may be by telephone, mail, or electronic communication. In instances where an employment inquiry for a job opening is sent to an eligible candidate and the date by which to respond to the inquiry is prior to the final filing date of the job posting, some candidates may not respond to the employment inquiry and instead only file his or her application by the final filing date. In such an instance, it has been unclear whether an appointing power may act upon the candidate's failure to respond to the employment inquiry.

Section 258 currently sets time periods by which eligible candidates must respond to employment inquiries. Section 258, however, does not address electronic communications, voicemail messages, or what actions an appointing power may take when a candidate does not respond to an employment inquiry that requires a response prior to the final filing date for the job posting and instead only files his or her job application prior to the final filing date.

This proposed regulatory action amends section 258 to include electronic communications and voicemail messages. The proposal also sets minimums by which an eligible candidates must respond to an employment inquiry. In addition, proposed section 258 requires that CalHR or an appointing power shall not act upon a candidate's failure to respond to an employment inquiry that requires a response prior to the final filing date of the job opening, if the candidate has filed his or her application no later than the final filing date.

This proposed regulatory action updates section 258 to address new technology and clarifies what action CalHR or an appointing power may take in the above-referenced situation.

K. Counting Time for Temporary Appointments (§ 265).

Article VII, section 5, of the California Constitution allows for temporary appointments to a civil service position if there is no employment list for the classification that will be filled. Section 5 limits the length of service in a temporary appointment to no longer than nine months in 12 consecutive months.

PMPPM section 330 sets forth the Board's policy regarding how to calculate the time for temporary appointments. The policy also used the acronym "TAU" for temporary appointments. The policy allowed for TAU appointments to be made to any time base, full time or part time. Actual time worked or ATW was an approved method to keep track of a TAU employee's time to ensure that the constitutional limit of nine months in 12 consecutive months was not exceeded. The ATW method used 194 days in 12 consecutive months as the calculation. That is, 194 days equaled nine months. The ATW method was typically used when an employee was not expected to work all of the working days of a month. The policy also established rules for determining how the 194 days were accumulated (e.g., any day the employee physically worked, regardless of the hours worked). The policy included a sliding scale for calculating ATW and a three-month break rule:

If at any time during any 12 consecutive calendar month period the employee works (is paid for) the 194 days, he/she need not be separated, however, he/she may not work again until the sliding scale permits them to. Example: Employee appointed January 12, 1990, works 194 days on November 25, 1990, may not resume work until January 12, 1991, and then may only work each month the amount of days worked on a month-by-month basis during 1990. If the employee waits until February 26, 1991, to return to work he/she would have completed a three-month break and a whole new 194 days would be available for the 12 consecutive months subsequent to February 26, 1991.

(PMPPM, § 330, p. 330.3.)

Thus, if an employee worked 194 days during 12 consecutive months, the employee was restricted in a subsequent 12-consecutive month period to working each month the amount of days worked in the previous 12 consecutive months, unless the employee took off for three consecutive months. If the employee took this break, the 194 days would begin anew when the employee returned to work. If the employee worked less than 194 days during 12 consecutive months, the sliding scale allowed that those unused days could be added back to each month as available working days, "as the scale slides into a new 12-consecutive month period." An example of how the sliding scale worked is found in Attachment I, PMPPM section 330.

This proposed regulatory action simplifies the calculation for temporary appointments and sets reasonable standards for the use of temporary appointments. Proposed section 265 establishes an actual time worked basis of 1500 hours as equaling nine months. It

prohibits a temporary employee to work more than 1500 hours in a 12-consecutive month timeframe. The proposed regulation allows that a new 1500-hour working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe or any subsequent month. The proposed regulation also requires that the 1500 hours is calculated per-employee, not per-agency.

In addition, proposed section 265 makes clear that persons hired as a retired annuitant into a temporary position are subject to applicable retirement law requirements, including any wait-period restrictions and the working restriction of 960 hours per fiscal year. The proposal also requires appointing powers to monitor and control the days and/or hours worked and prohibits the use of temporary appointments or the counting of time for temporary appointments to be used by an appointing power to avoid or delay the use of an employment list. Appointing powers are also required to periodically review temporary appointments to ascertain the appropriateness of continuing to retain a temporary employee over a long period of time. In addition, proposed section 265 requires appointing powers to maintain written records of its periodic reviews in accordance with section 26.

A more simplified and straightforward process for counting the time that a temporary employee may work during 12-consecutive months will significantly reduce the time, effort, and expense incurred by personnel or HR staff when making these calculations. A prohibition against using temporary appointments to avoid or delay the use of employment lists safeguards the proper use of temporary appointments. The periodic reviews and record retention requirement for those reviews will allow the Board to audit appointing powers for compliance with section 265.

VIII. Adopt, Amend, and Repeal Regulations Related to Career Executive Assignments.

The Legislature established a category of civil service appointment called Career Executive Assignment (CEA)s. (Gov. Code, § 19889.) The purpose of this law is to encourage the development and effective use of well-qualified and carefully selected executives. (*Ibid.*) The Board is required to establish by rule a merit system specifically suited to the selection and placement of executive personnel. (*Ibid.*) Laws governing examination, selection, classification, and tenure of employees in regular civil service shall not apply to CEAs unless provided for by Board rule. The laws require that eligibility for appointment to positions in the CEA category shall be established as a result of competitive examinations. (Gov. Code, § 19889.3, subd. (a).)

A. Competitive Examinations (§ 548.40).

In the regular civil service, AB 1062 amended Government Code sections 18936 (final earned ratings on examinations) and 18937 (passing marks for examinations). Former section 18936 authorized that the final earned rating of each person competing in any examination shall be determined by the weighted average of the earned ratings on all phases of the examination according to the weights for each phase established by the

Board. AB 1062 amended section 18936 by striking reference to the Board and adding CalHR or a designated appointing power. Former section 18937 provided that the passing mark for an examination may be other than the true percentage or average published as a part of the announcement of the examination, if deemed by the Board to be justified in order to provide an adequate eligible list or to adjust for the apparent difficulty of an examination. AB 1062 amended section 18937 by striking reference to the Board and adding CalHR or a designated appointing power.

Currently, section 548.40 sets the division of the rankings for CEA examinations into six ranks based upon percentage scores that are within specified ranges. The regulation mandates the appointing power to appoint a candidate who is well-qualified for the position and who is within one of the top three ranks. The regulation also sets procedures for when there are fewer than five candidates in the top three ranks and requires appointing powers to maintain examination files for a period of three years.

As to the mandated formula for rankings, section 548.40 is similar to former Government Code section 19057.2, which set requirements for the certification of employment lists for positions in classes designated by the Board as management. For purposes of ranking a certified list, former Government Code section 19057.2 required that scores of eligibles were divided into six ranks based upon percentage scores that were within specified ranges. (e.g., “The first rank shall consist of eligibles who receive a score of 95 percent or higher”; “The second rank shall consist of eligibles who receive a score of 90 to 94 percent.”) Section 548.40 mirrors those rankings and ranges.

Former Government Code section 19057.2 was repealed, effective on September 22, 2015. (Senate Bill No. 99 (2015-2016 Reg. Sess.) § 12.) For the purpose of hiring persons into civil service, the repeal of former Government Code section 19057.2 made the three highest ranks the default ranking for certified lists.⁴ (See Gov. Code, § 19057.1.) This statutory change simplified the certification process by creating one default ranking for all examinations; provided a larger qualified candidate pool for promotional and certain non-professional supervisory job openings; and afforded appointing powers the discretion to assess candidates based on a broader evaluation of merit, shown not only by a candidate’s performance on an examination but also their performance during the hiring process.

The proposed regulatory amendments to section 548.40 delete the requirement that successful candidates shall be divided into six ranks based upon their scores and that ranks must only be within certain specified percentage ranges. The proposed amendments require that successful candidates be divided into the three highest ranks and allow CalHR or a designated appointing power to determine what percentage scores or range of percentage scores are required for each rank. The proposed amendments also make clear that Limited Scoring Examinations may be used in the discretion of CalHR or a

⁴ In relevant part, SB 99 also repealed: (1) Government Code Section 19057, relating to the Rule of Three Names for candidates who were eligible for promotion within civil service; and (2) Government Code Section 19057.4, relating to the Rule of One Rank for supervisory candidates who are not professional, scientific, or administrative and who were not examined on an open basis.

designated appointing power. Further, this proposed regulatory action deletes the record retention requirement from section 548.40 and adds it to proposed section 548.42 (At p. 30, *post*).

The purpose of these changes is to make the rankings of CEA examinations consistent with the rules for the regular civil service. In doing so, the rankings of CEA examinations will be simplified and afford appointing powers the discretion to assess candidates based on a broader evaluation of merit, shown not only by a candidate's performance on an examination but also their performance during the hiring process. As discussed more fully below, the record retention requirement is moved to proposed section 548.42 for purposes of clarity and consistent organization of the Board's regulations.

B. Examination Announcements (§ 548.41).

Currently, section 548.41 requires that examination announcements for CEA positions shall be publicized as widely as appears practicable. The rule, however, allows for restricted publicity of CEA examination announcements subject to the approval of the Board's executive officer. The regulation sets standards for the examination announcements that include the requirement that interpretive standards shall be expressed as desirable knowledge, skills, abilities, or personal characteristics that are actually necessary to perform the duties of the position to be filled.

As discussed above (*ante*, at pp. 10-11), proposed section 170 sets new standards for regular civil service examination announcements. These standards are equally applicable to examination announcements for CEA positions.

The proposed amendments to section 548.41 strike reference to the executive officer and add reference to CalHR. The proposed amendments also strike standards related to the content of the CEA examination announcements and require that the announcements conform to the provisions of section 170.

These changes will align CEA examination announcements with the requirements of regular civil service, thus creating a more simplified and streamlined process for all civil service job announcements.

C. Recordkeeping Requirements (§ 548.42).

Currently, for the regular civil service, section 26 requires that appointing powers shall retain specified employment related documents for a minimum of five years from the date of creation of the record. As to CEA examinations, and as discussed above, section 548.40 currently requires appointing powers to maintain examination files for a period of three years.

This proposed regulatory action deletes the record retention requirement from section 548.40 and adds it to section 548.42. In addition, this change requires that specified documents related to CEA examinations be retained in a systematic and orderly fashion

for a minimum period of five years from the date of creation of the record, rather than three years.

This proposed regulatory action will conform the length of the record retention requirements of CEA examinations to the five-year record retention requirement of section 26, which will set a consistent standard for record retention and also allow the Board to audit appointing powers for compliance with the regulation.

D. Eligibility for Appointments (§ 548.70, Sunsets Jan. 1, 2013) and (§ 548.70, Operative Jan. 1, 2013) .

In relevant part, SB 99 (Senate Bill No. 99 (2015-2016 Reg. Sess.) § 12) updated and expanded the eligibility for appointment to CEA positions to include persons from outside of state civil service. (Gov. Code, §§ 18546, 19889.4.) In addition, SB 99 made clear that eligibility for appointment to a CEA position shall be established as a result of competitive examinations. In addition, all candidates must satisfy such minimum qualifications as the Board may determine are required for performing high administrative and policy influencing functions. (Gov. Code, § 19889.3.)

Section 548.70, has a sunset provision of January 1, 2013, and thus is no longer legally operative. Thus, this proposed regulatory action removes section 548.70 from the Barclay's Official Code of Regulations. Section 548.70 which is currently operative as of January 1, 2013, is based upon prior law. Therefore, this proposed regulatory action also repeals section 548.70 to conform to the statutory changes of SB 99.

ECONOMIC IMPACT ASESSMENT:

The proposed regulations set standards only related to state civil service classifications, examinations, and selection. Therefore, the adoption of these regulations will not:

1. Create or eliminate jobs within California.
2. Create new businesses or eliminate existing businesses within California.
3. Affect the expansion of businesses currently doing business within California.
4. Affect worker safety or the state's environment.

The adoption of these regulations, however, will have a positive impact on the general health and welfare of California residents in that the benefits of this regulatory action include a more efficient, streamlined, and updated civil service process.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS:

None.

ANTICIPATED BENEFITS OF THE REGULATORY ACTION:

The benefits of this regulatory action include: (1) conserving the fiscal interests of the state by promoting a more efficient and streamlined civil service process; (2) enabling the Board to conduct thorough and effective compliance reviews to ensure compliance with Board regulations; (3) avoiding illegal appointments by requiring verification of minimum qualifications prior to appointment; (4) increasing the pool of qualified candidates who can take civil service examinations by defining minimum qualifications to relate to the essential tasks and functions of a classification; (5) protecting confidential information on candidate documentation by requiring the redaction of such information; (6) updating and modernizing civil service recruitment and hiring by including consideration of competencies and requiring postings of job announcements on CalHR's designated website or by other electronic means; (7) affording appointing powers the discretion to assess candidates based on a broader evaluation of merit, shown not only by a candidate's performance on an examination but also their performance during the hiring process; and (8) encouraging devotion and loyalty to state civil service by setting standards for promotions in place.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate the use of specific technologies or equipment.

EFFORTS TO AVOID CONFLICT WITH AND DUPLICATION OF FEDERAL REGULATIONS:

Not applicable. The Board is not a department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshall.

SIGNIFICANT ECONOMIC IMPACT ON BUSINESS:

The proposed regulations set a standard only related to the civil service classification, examination, and selection process. Accordingly, it has been determined that the adoption of the proposed regulations would not have a significant, statewide adverse economic impact affecting California businesses, including the ability of California businesses to compete with businesses in other states.

CONSIDERATION OF ALTERNATIVES:

The Board has initially determined that no reasonable alternatives have been identified that would be more effective in carrying out the purposes for which the instant action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.