

## INITIAL STATEMENT OF REASONS

<b><u>HEARING DATE(S):</u></b>	April 4, 2017, at 10:00 a.m. Room 150, 801 Capitol Mall, Sacramento, California.
<b><u>SUBJECT MATTER OF THE PROPOSED REGULATIONS:</u></b>	Cancellation or Withdrawal of Notice of Rejection.
<b><u>SECTIONS AFFECTED:</u></b>	Title 2, Chapter 1, California Code of Regulations, section 327.

### **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's rulemaking authority is also found in certain statutory provisions related to civil service and the merit principle. (See e.g., Gov. Code, §§ 18701 & 18660.) Relative to this regulatory action, the Board promulgates rules to govern the process for appointing powers to cancel or withdraw a notice of rejection during probation. (Gov. Code § 19175.5.)

#### **Discussion of Each Adoption, Amendment, or Repeal, and Anticipated Benefits:**

The following paragraphs set forth the problems with the current regulation; 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.

#### **Amend Section 327 (Cancellation or Withdrawal of Notice of Rejection).**

Section 327 allows an appointing power to cancel or withdraw a notice of rejection of a probationer by filing with the Board, on or prior to the thirtieth calendar day after the effective date of the rejection, a written notice of cancellation or withdrawal setting forth the reasons therefore and by obtaining the concurrence of the Board's Executive Officer to such cancellation or withdrawal prior to such filing. The rule also requires that the impacted employee shall, for such time as the Executive Officer determines is necessary to prevent injustice to the employee, be entitled to payment of salary less legal offsets, if any, and to credit for seniority, sick leave, vacation, and merit salary adjustment. Further, a

cancellation or withdrawal of a notice of rejection shall be without prejudice to further rejection, punitive action, or disciplinary proceeding for the same or other reasons.

While at the time of promulgating and revising this rule, which was over fifty years ago, there may have been sound reasons for ensuring that an appointing power was properly exercising discretion to cancel a notice of rejection of a probationer by requiring Executive Officer concurrence, this extra procedural step is no longer necessary. Appointing powers are in a better position than the Executive Officer to assess and determine whether to cancel or withdraw a notice of rejection during probation. In addition, given that the decision to cancel or withdraw is a positive outcome for the employee and appointing power alike, the Executive Officer's concurrence does not add any measurable value that would warrant the continuation of this requirement. Therefore, the proposed amendment strikes the need for the Executive Officer's concurrence.

The rule's thirty-day filing requirement is not an undue burden; however, a 45-day filing requirement will benefit employees and appointing powers in situations where a longer period of time is necessary for settlement negotiations or discussions, thus potentially avoiding the need for a hearing on the rejection during probation. In addition, the requirement that the Executive Officer, to prevent injustice, determines the time the employee is entitled to payment of salary less legal offsets and credit for seniority, sick leave, vacation, and merit salary adjustment, is simplified and streamlined by basing what the employee is entitled to receive on what "he or she would have otherwise received but for the initial rejection on probation."

#### **ECONOMIC IMPACT ASESMENT:**

The proposed regulations set standards only related to civil service probation, namely, cancellation or withdrawal of notices of rejections during probation. 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 procedure for cancellation or withdrawal of notices of rejections during probation.

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

None.

**ANTICIPATED BENEFITS OF THE REGULATORY ACTION:**

The benefits of this regulatory action include a simplified and streamlined process for state agencies when cancelling or withdrawing a notice of rejection during probation.

**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 regulation concerns a procedure for civil service agencies when cancelling or withdrawing a notice of rejection during probation. Accordingly, it has been determined that the amendment of the proposed regulation 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.