Summary of Comments and Board Responses Second 45-Day Comment Period
Proposed Rulemaking Action: Waiver of Appointments

SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES

I. Introduction

The State Personnel Board (Board) proposes to repeal Section 260.1 and 261.1 and amend Sections 249.5, 254, 254.2, 258, 260, and 261, of Title 2, Chapter 1, of the Code of Regulations (CCR). A Second 45-day public comment period on this rulemaking action was held from July 3, 2025, through August 18, 2025. The comments received by the Board were taken under submission and considered. A summary of those comments and the Board's responses is below.

II. Summary of Written Comments and Responses

From Steven Stovic, Chief Human Resources Branch, California High-Speed Rail Authority (HSR)

Comment I: 249.5

HSR recommends revising section 249.5 to include the term "contact" in addition to "employment contact letters." HSR explains that many departments reach State Restriction of Appointments (SROA) and reemployment candidates by telephone, which constitutes a valid contact but does not involve sending an employment contact letter.

Response I:

The Board thanks HSR for its feedback on this rulemaking package. The Board agrees that the regulation should include the term "contact" so that telephone communication is recognized as a valid method of reaching SROA and reemployment candidates, in addition to written employment contact letters. The Board will incorporate this recommendation into section 249.5, subdivision (b).

Additionally, the Board will define the term "contact" in proposed subdivision (a)(1) to include all appropriate methods of contact:

(a) ~~Appointing powers may send employment contact letters to eligible candidates on a certified eligible list. However,~~Definitions

(1) For purposes of this article, "contact" means communication by telephone, electronic mail, or written employment contact letter delivered by postal mail or other delivery service.

Telephone contact means a live conversation with the candidate or a voicemail message left at the telephone number of record. If a voicemail cannot be left, the appointing power shall use another reasonable contact method, such as electronic mail or a written employment contact letter. The applicable response period in subdivision (c) runs from the date and time the live conversation occurs, the voicemail message is left, or the alternate contact is sent.

Comment II. 249.5

HSR recommends amending section 249.5, subdivision (c), to expressly recognize telephone contact as a permissible method for contacting SROA and reemployment candidates, in addition to employment contact letters. This clarification reflects current departmental practices and ensures consistent application.

Response II.

The Board agrees with HSR. Section 249.5 has been revised to expressly recognize telephone contact, in addition to written employment contact letters and electronic mail. Subdivision (a)(1) now defines “contact” to include telephone, electronic mail, and mailed employment contact letters. Subdivision (c) sets the minimum response periods by contact method and applies them to all candidates who are contacted, including SROA and reemployment candidates: at least two business days following a telephone contact, at least six business days after a mailed notice is sent, and at least six business days after an electronic notice is sent. Leaving a voicemail is still required to constitute telephone contact; however, if a voicemail cannot be left, the appointing power shall use another reasonable method such as email. Appointing powers must document the method, date, and time of each contact.

Comment III. 254

HSR recommends revising section 254 to clarify that an appointing power may fill a vacancy from the three highest ranks of eligible candidates certified rather than limiting selection to the individual candidates with the highest scores.

Response III.

The Board agrees with HSR. To align section 254 with the “rule of three ranks” in Government Code sections 19057.1 and 19057.3, the Board has removed the prior “three persons” formulation by striking former subdivision (a). Former subdivision (b) has been renumbered as subdivision (a) and now expressly provides for selection from the three highest ranks of certified candidates. The reemployment carve-out has been renumbered as subdivision (b) and updated to reference the general reemployment certification rule in Government Code section 19056.5. The Note has been amended accordingly.

Comment IV. 258.

HSR recommends amending section 258, subdivision (e), to add the phrase “or withdraw interest at any stage of the hiring process.” HSR explains that this clarification would allow a candidate to withdraw at any point during the hiring process while remaining active on the eligible list.

Response IV.

The Board agrees with HSR. To clarify list status and ensure consistent statewide administration, section 258, subdivision (e), is revised to provide that an eligible candidate may withdraw interest at any stage of the hiring process and will remain active on the eligible list. A withdrawal of interest applies only to the vacancy for which the certification was issued and does not affect eligibility for future certifications. This clarification is adopted under the Board’s rulemaking authority to administer certification and appointment processes (Gov. Code, § 18650; see also §§ 19050, 19057.1, 19057.3) and is consistent with statutory provisions governing the establishment, maintenance, and use of employment lists (Gov. Code, § 18901).

Comment V. 261

HSR seeks clarification regarding section 261, which allows an eligible candidate to change conditions of employment by electronic or written request. Specifically, HSR asks to whom the request must be submitted: the department that owns the examination or eligible list, or the hiring department. HSR further notes that departments are not authorized to modify statewide lists and therefore seeks confirmation that section 261 applies only to departmental lists, and, if it also applies to statewide lists, requests the process and responsible entity for making those updates.

Response V.

The Board appreciates the request for clarification. Because the California Department of Human Resources (CalHR) administers examinations, maintains eligible lists, and may delegate list administration to departments, detailed process questions are best addressed to CalHR.

Section 261 has been rewritten for clarity so that stakeholders can readily understand who receives a change request, how a candidate may submit it, and when the change takes effect. The revision identifies the responsible recipient as the Department or a delegated appointing power, which resolves whether the request goes to the list owner or the hiring department. It reflects current practice by recognizing the Department’s designated online system for statewide lists while retaining a written request option. It makes clear that a change is effective

when received by the Department or delegated appointing power and that the effect is prospective only, so prior certifications are unchanged. It adds an express recordkeeping requirement so that the method, date, and time of receipt are captured in the eligibility record in alignment with section 26. It also names the conditions that actually drive certification decisions, including tenure, time base, and work location, and omits salary to avoid confusion about what is tracked for certification. Finally, the wording aligns with related provisions in sections 249.5, 254, and 258 and preserves the concept of waiver of certification when a position does not meet a candidate's stated conditions without reintroducing waiver of appointment.

For implementation, candidates on statewide eligible lists may change acceptable conditions directly in CalCareers by logging in, opening Exam or Assessment Records, selecting the relevant list code, and using the Change Conditions of Employment action. The Department processes those updates as the statewide list owner. For departmental eligible lists, candidates should submit the request to the department that administered the examination and maintains the list, following the process set out in the examination announcement or departmental instructions. In both situations, a change is prospective only and does not affect any certification issued before the change; future certifications will reflect the updated conditions recorded by the list owner.

Accordingly, section 261 is revised as follows:

§ 261. *Conditions of Employment and* Waiver of Certification.

(a) The Department, or a delegated appointing power, may request and record for each eligible candidate the conditions of employment under which the candidate will accept appointment. Conditions may include tenure, time base, work location, and other pertinent conditions of employment.

(b) A candidate's statement of acceptable conditions limits certification to positions that meet those conditions and constitutes an automatic waiver of certification to positions with different conditions of employment.

(c) A candidate may change acceptable conditions of employment at any time as follows:

(1) For a statewide eligible list, by submitting an electronic or written request to the Department. Electronic submissions shall be made through the Department's designated online system.

(2) For a departmental eligible list, by submitting an electronic or written request to the Department or delegated appointing power that administers the examination and the eligible list.

(d) A change to acceptable conditions is effective when received by the Department, or by a delegated appointing power, and is prospective only. The change does not affect any certification issued before the effective date of the change.

(e) The Department, or a delegated appointing power, shall record the method, date, and time the change is received in the candidate's eligibility record.

From Sabrina Smith, Human Resources, Staff Services Manager I (Specialist) The California Department of Forestry and Fire Protection (CalFIRE)

Comment VI. 249.5

CalFIRE requests clarification of whether the proposed amendments eliminate the requirement to send employment contact letters to all candidates on a certified list, except with SROA or reemployment status. CalFIRE notes that such a change would be a significant departure from past practice and asks the Board to confirm the intended direction so departments can align their procedures.

Response VI.

The revisions to section 249.5 give appointing powers discretion to contact eligible candidates on a certification list while making contact to SROA and reemployment candidates mandatory. Appointing powers may decide whether to contact other eligible candidates, but must continue to contact all SROA and reemployment candidates to comply with statutory requirements and to preserve reemployment rights.

This is a significant departure from prior practice. CalCareers, the statewide hiring portal operated by the CalHR, now allows applicants to monitor vacancies, receive alerts, and submit applications quickly across departments. In practice, candidates who receive contact letters do not respond to the letter itself but file an application to demonstrate their interest in a job vacancy.

Contact letters have therefore functioned largely as a tool to clear ranks under prior centralized examination and certification systems administered by the Board. That is no longer the current reality. Contact letters do not facilitate meaningful engagement with candidates. The amended structure is clearer, simpler, and efficient, supporting a more nimble hiring process.

At the same time, nothing in section 249.5 alters the rule of three ranks. Selection must still be made from among candidates in the three highest ranks on the certified list, consistent with Government Code sections 19057.1 and 19057.3 and section 254. If, after observing the applicable response periods for required contacts, no candidates in the currently certified ranks apply or are available, the appointing power may request certification of additional ranks

as provided in Government Code section 19057.1, subdivision (c), and section 19057.3, subdivision (c).

As proposed, departments generally will not need to send contact letters solely to clear ranks, except where contact to SROA and reemployment candidates is required. When an appointing power elects to contact any candidate, the specific minimum response periods and recordkeeping requirements in section 249.5 apply. Appointments remain subject to Government Code section 19050 and to any controlling memorandum of understanding pursuant to Government Code section 3517.5.

From Venus King, Manager, Human Resources Division, Employment Developmental Department (EDD)

Comment VII. 258

EDD requests that section 258, subdivision (d), define "unavailable" to clarify when a candidate who cannot accept or begin employment within 30 days is deemed to have declined the job offer. EDD asks the Board to specify whether "unavailable" includes situations such as a medical condition, family care obligations, or other external factors outside the candidate's control. EDD states that a clear and comprehensive definition would promote fairness, transparency, and consistent application across departments.

Response VII.

The Board agrees that clarity is important, but declines to adopt a rigid, exhaustive definition of "unavailable." Departments need flexibility to account for varied operational needs, differing MOUs, and individual candidate circumstances. A single prescriptive definition could produce inconsistent or inequitable results.

However, to promote fairness and consistency, the Board will clarify in section 258 that:

- "Unavailable" refers to a candidate who is unable or unwilling to accept or begin employment within 30 calendar days of notice of selection and for whom a later start date cannot reasonably be accommodated consistent with operational needs and applicable law.

- Before determining that a candidate is unavailable, the appointing power must consider applicable leave rights and engage in the interactive process when a disability or pregnancy related condition is implicated, consistent with the Fair Employment and Housing Act.

- If a later start date is mutually agreed upon, the candidate is not considered

unavailable.

- Nothing in this clarification alters priority rights for SROA or reemployment candidates or any controlling memorandum of understanding.

From Kathleen Chaussee, Chief Human Resources Branch, Department of Motor Vehicles (DMV)

Comment VIII.249.5

DMV requests clarification of the term “eligible.” DMV notes that “eligible” traditionally refers to an individual who has passed an examination, whereas SROA and reemployment names are placed on an eligible list due to layoff status and may not have previously passed an examination for the classification to which they are added.

To avoid confusion, DMV recommends removing the word “eligible” from the first and third sentences of section 249.5, subdivision (b), and using “SROA and reemployment candidates” instead. DMV also recommends adding a definition of “eligible candidate” in regulation, since the term is not currently defined and may be unfamiliar to non-state applicants.

Response VIII.

The Board appreciates DMV’s clarification request. The Board’s original intent was that SROA and reemployment status confers appointment eligibility under statute and rule, so referring to these individuals as “eligible candidates” is not inaccurate. However, to avoid confusion with candidates certified from an employment list after examination, the Board will revise section 249.5, subdivision (b), to remove the modifier “eligible” before “State Restriction of Appointment and reemployment candidates.” This is a nonsubstantive clarity edit and does not change the contact obligation.

Because the edit above removes the ambiguous usage, a new definition is not strictly necessary for section 249.5 to operate as intended. However, for purposes of clarity across this rulemaking package, the Board proposes the following addition to this section:

> “Eligible candidate” means an individual whose name appears on an employment list certified pursuant to Government Code section 19057.1 or 19057.3, including any combined certified list issued under those sections, and who has indicated a willingness to accept appointment under the specified conditions of employment. The term does not include persons whose names appear solely on priority or reemployment lists, including State Restriction of Appointment and reemployment lists, unless expressly stated.

Comment IX. 249.5

DMV requests removing the reference to voicemail messages in section 249.5. The proposed regulation requires appointing powers to give SROA and reemployment candidates at least two business days after the initial telephone contact, including when a voicemail message is left. DMV explains that voicemail messages cannot always be left, such as when a candidate's mailbox is full, which prevents the response period from starting and may force duplicative contacts by other methods, such as email, that then trigger additional response time. To avoid this complication and enable timely administration, DMV recommends the voicemail requirement and clarifying that telephone contact is recognized even when a voicemail cannot be left.

Response IX.

The Board disagrees with DMV. The Board does not support eliminating voicemail and treating a single unanswered call as "contact." Doing so would allow SROA or reemployment ranks to be cleared without meaningful notice to candidates, and would undermine fairness, consistent application, and auditable records.

Section 249.5 permits telephone contact, but "contact" must be something the candidate can actually receive. Under the adopted approach, telephone contact is established only by a live conversation or a voicemail message. If a voicemail cannot be left, the appointing power must use another reasonable method such as electronic mail or a written employment contact letter, and the response period runs from the date that message is left or the alternate contact is sent. This preserves flexibility for departments, supports timely hiring, and ensures candidates have a real opportunity to respond.

Departments remain free to use multiple methods at the same time for efficiency. What is not permissible is declaring "no answer" as contact and moving on. That practice is not fair to candidates and is inconsistent with section 249.5's notice, response period, and documentation requirements.

Comment X. 249.5

DMV notes that the proposed timeframes apply only to SROA and reemployment candidates. DMV recommends that when appointing powers choose to contact other candidates on a certified list, the same method specific response times should apply to all contacted candidates. Applying uniform response periods is important because departments must document clearing of ranks in order to reach candidates below the top three ranks.

DMV also observes that response times currently apply to all candidates under section 258, which is proposed for repeal. To maintain consistency and equitable treatment, DMV

recommends revising section 249.5 so that the specified response periods apply to every candidate who is contacted from a certified list, not only SROA and reemployment candidates.

Response X.

The Board agrees with DMV. Section 249.5 has been revised so the method-specific minimum response periods apply to every candidate who is contacted from a certified list, not only SROA and reemployment candidates.

Comment XI. 249.5

DMV identifies numbering and lettering errors after subdivision (c)(1)(H), noting that subdivisions (b) and (c) appear twice in section 249.5.

To correct the sequence and ensure consistency, DMV recommends labeling the final three subdivisions currently marked (b), (c), and (d) as (d), (e), and (f), respectively.

Response XI.

The Board agrees with DMV. Section 249.5 will be conformed to correct the duplicate lettering after subdivision (c)(1)(H). The final three subdivisions currently labeled (b), (c), and (d) will be relabeled (d), (e), and (f), respectively. This is a nonsubstantive, clarity edit. All internal and cross references to these subdivisions within section 249.5 and the related sections (including § 258, subd. (g)) will be updated to match the new lettering.

Comment XII. 249.5

DMV notes that the proposed text states “eligible candidates are not required to respond to an employment contact letter,” this should also cover SROA and reemployment candidates, who are not technically “eligible candidates.”

To ensure consistency and fairness, DMV recommends broadening the provision to apply to all candidates contacted from a certified list and aligning the terminology with the rule’s definition of “contact.” Suggested revision:

“~~Eligible c~~Candidates on the certified eligible list are not required to respond to an employment contact letter.”

Response XII.

The Board agrees with DMV. To ensure consistent treatment of all candidates, including

SROA and reemployment, the provision has been revised to use defined terms and to apply broadly: “Candidates on a certified list are not required to respond to a contact.”

This nonsubstantive clarity edit replaces “eligible candidates” and “employment contact letter” with “candidates,” “certified list,” and “contact” as defined in subdivision (a). It does not alter the mandatory contact requirement for SROA and reemployment candidates, the method-specific minimum response periods in subdivision (c), the recordkeeping requirements, or the applicability of any controlling memorandum of understanding under Government Code section 3517.5.

Comment XIII. 254

DMV asserts that Government Code sections 19057.1 and 19057.3 are not the correct statutory authorities for the proposed language. Those provisions implement the “rule of three ranks” by referencing certification of candidates in the three highest ranks, not certification of “the highest three eligible candidates.” DMV contends that Government Code section 19056.5 is the appropriate authority because it provides for certification of “the names of the three persons with the highest standing” on a general reemployment list. Accordingly, DMV recommends replacing reference to sections 19057.1 and 19057.3 with a reference to section 19056.5

Response XIII.

Thank you for the comment. Former subdivision (a) was legacy text in the existing rule that used a “highest three eligibles” formulation and had not been updated. In response to public comment, the Board has standardized section 254 on the rule of three ranks and corrected the citations. Specifically, former subdivision (a) is stricken; former subdivision (b) is renumbered as subdivision (a) and continues to authorize selection from candidates in the three highest ranks, now properly citing Government Code sections 19057.1 and 19057.3; and former subdivision (c) is renumbered as subdivision (b) to clarify that section 254 does not apply when certification is from a general reemployment list under Government Code section 19056.5. The Note has been updated accordingly.

Comment XIV. 254.2

DMV notes that Government Code section 19057.2 addresses pre-offer benefits disclosures to applicants and does not govern certification procedures. Because section 254.2 concerns three-rank certification mechanics, DMV recommends removing the citation to Government Code section 19057.2 from the Note for section 254.2 and any other Notes in this package where it appears. Citations to Government Code sections 19057.1 and 19057.3 should be retained as the applicable authorities.

Response XIV.

The Board agrees with DMV's recommendation and will remove the reference of Government Code Section 19057.2.

Comment XV. 258

For consistency, DMV recommends revising the term "an interview" to "a hiring interview".

Response XV.

The Board agrees with DMV's recommendation and will incorporate their suggested change.

Comment XVI. 258

DMV notes that the proposed language in section 258, subdivision (c)(2) refers to "an interview," while subdivision (e) specifies "a hiring interview." For consistency and clarity, both provisions should use the same terminology.

Response XVI.

The Board agrees with DMV's recommendation and will incorporate their suggested change.

Comment XVII. 258

DMV notes that the term "eligible candidates" is not clearly defined within the CCRs, creating uncertainty as to whether it includes SROA and reemployment candidates. This ambiguity may cause inconsistent application across departments.

As previously recommended, DMV suggests defining "eligible candidate" within the CCRs to ensure clarity and consistent interpretation.

Response XVII.

Please see VIII., Written Comments, Response (ante, at p. 7).

Comment XIX. 261

DMV notes that the proposed regulation lists "salary" as a condition of employment to be obtained for certification purposes even though salary is not captured as an acceptable condition, and it omits "time base," which is a key employment condition.

To ensure accuracy and consistency, DMV recommends removing "salary" and adding "time base" to the proposed regulatory text.

Response XIX.

The Board agrees that referencing “salary” here is inconsistent because salary is not tracked as an acceptable condition for certification, while “time base” directly impacts an employee’s work schedule and appointment status. The text will be revised accordingly.

Comment XX. 260

DMV states that when a candidate has accepted an offer and a start date is set, the appointing power has already invested substantial resources in the hire. DMV therefore recommends that a no-show on the agreed date and time result in the candidate’s removal from the eligible list, rather than remaining eligible for immediate re-certification, to avoid further waste of resources. Additionally, DMV clarifies that the term “certified eligible list” refers to the specific certification list pulled for a vacancy, but when a candidate is placed inactive, the updated status should be reflected on the underlying eligible list.

Response XX.

The Board agrees with the objective of avoiding additional resource expenditure when a no-show occurs after an offer has been accepted and a start date set. To improve clarity and align terminology with DMV’s point that the status change must be reflected on the eligible list and flow through to vacancy-specific certifications, the text will be edited as follows:

“*Notwithstanding section 258, subdivision (f), ~~I~~if a hired candidate fails to appear for work on an agreed upon start date and time without any further agreement, the ~~eligible~~ candidate will be deemed ~~no longer~~not interested in the job vacancy ~~on~~ ~~'s name will be placed on inactive status of the certified eligible list~~ and will be made inactive on the eligible list for that classification and shall not appear on any certified eligible list for that classification unless and until eligibility is reestablished.*”

This retains the consequence DMV seeks for no-shows while using consistent list terminology and avoiding ambiguity.

From Peter Brown, Covered California, Employment and Classification Service, Staff Services Manager II

Comment XXI. 260.

Covered California notes that former section 260.1 treated failure to appear as both grounds for placing a candidate inactive on the list and a “waiver of appointment.” Proposed section 260 provides that a candidate who fails to appear on the agreed start date and time is placed inactive on the eligible list and is not certified for that classification. Covered California

observes that this aligns with ECOS, which can render a candidate inactive on the Eligibility Record, but ECOS also includes a separate certification action labeled “Did not appear for job.”

Covered California requests clarification on whether failure to appear is still considered a “waiver of appointment” under the revised regulation, or solely a basis for inactive status and noncertification. Covered California further explains that, under recent policy, rescinding an offer may implicate unlawful appointment procedures, and retaining the phrase “waiver of appointment” could clarify that such cases need not be processed as unlawful appointments. Covered California also asks whether the Department will update the HR Policy Manual and related ECOS guidance to address failure-to-appear scenarios.

Response XXI.

The Board thanks Covered California for their comment. With the repeal of former section 262, “waiver of appointment” is no longer used in the certification process. Under revised section 260, a no-show after acceptance of a formal offer is treated as noninterest in the specific job vacancy with removal from the eligible list for the classification, rather than as a waiver. This aligns with ECOS practice: departments should record “Did not appear for job” and ensure the candidate is removed so the name does not appear on any certified list for that classification.

Adding a brief cross-reference will prevent confusion and make clear that a no-show is a candidate action, not an employer rescission that would trigger unlawful-appointment procedures. To that end, section 260 will be clarified as follows:

“*Notwithstanding section 258, subdivision (f), ~~I~~if a hired candidate fails to appear for work on an agreed upon start date and time without any further agreement, the ~~eligible~~ candidate will be deemed ~~no longer~~not interested in the job vacancy ~~on~~ 's name will be placed on inactive ~~status of the certified eligible list~~ and will be made inactive on the eligible list for that classification and shall not appear on any certified eligible list for that classification unless and until eligibility is reestablished.*

This section addresses a candidate’s failure to appear for work after acceptance of a formal offer of employment and does not apply to situations in which an appointing power rescinds a formal offer of employment after acceptance. Rescission after acceptance is governed by title 2, California Code of Regulations, sections 243 through 243.6 and applicable Government Code provisions.”

III. Conclusion

The Board appreciates the comments and feedback it received regarding this proposed amendment. The modified text with the changes clearly indicated is available to the public as

stated in the Notice of Modification to Text of Proposed Regulation.