

Summary of Comments and Board Responses 45-Day Comment Period
Proposed Rulemaking Action: Hearings and Appeals

SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES

I. Introduction

The State Personnel Board (Board) proposes to adopt Section 58.14 and amend Sections 58.12, 58.13, 59.3, 60.1, and 60.2 of Title 2, Chapter 1, of the Code of Regulations (CCR). A 45-day public comment period on this rulemaking action was held from June 7, 2024, through July 22, 2024. A public hearing was held on July 30, 2024. The comments received by the Board were taken under submission and considered. A summary of those comments and the Board's responses are below.

II. Summary of Written Comments

From Kimberly Chapman, Assistant Chief Counsel, California Department of Housing and Community Development (HCD)

Comment I. 58.12

HCD recommends the Board define the term "electronic proceeding" and proposes the Board adopt the following definition:

"For the purpose of this subchapter, the term 'electronic proceeding' and the phrase 'hearing conducted by electronic means' shall refer to any proceeding conducted utilizing the use of remote appearance(s) either in whole or in part."

Response I.

The Board thanks HCD for its feedback on this regulatory package. Existing Board regulation section 58.6, entitled "Electronic Proceedings", provides that an administrative law judge may conduct all or part of a hearing by telephonic conference call or video conference. This constitutes a clear working definition of the term "electronic proceeding" referenced in section 58.12. As such, section 58.12 does not require further amendment and the Board declines to adopt HCD's recommended amendments to the proposed text.

Comment II. 59.3

HCD believes that further clarity is needed for the phrase “the hearing location is the place designated for taking witness testimony during the proceeding.” In order to clear up some ambiguity in the context of hearings conducted by electronic means, HCD proposes the following amendments to section 59.3:

“(c) For hearings being conducted by electronic means, the hearing location is the place designated for the witness to be physically present for the taking of witness testimony during the proceeding, unless a different location is authorized by the Chief ALJ or their designee.”

HCD maintains that the added benefit to the proposed language above is that it more clearly avoids any issues or objections that could arise regarding the distance limitation specified in section 59.3, subdivision (a).

Response II.

The hearing location is the witness room designated by the Respondent where subpoenaed witnesses are commanded to appear and testify during the proceeding, unless a different location is authorized by the Chief ALJ or their designee. The Board’s proposed amendment aligns with this definition and declines to adopt HCD’s proposed amendment.

From Marichris Moreno, Team Leader, Human Resources Branch, Department of Motor Vehicles (DMV)

Comment III. 58.12

DMV asserts that section 58.12 lacks the requirements outlined under proposed section 58.13. Specifically, section 58.13 requires exhibit packages to be three-hole punched, placed in a loose-leaf binder(s), and printed on one side only. Furthermore, exhibit packages require a copy to be provided to the Administrative Law Judge, the witness, and to each opposing party.

DMV is concerned that these Exhibit Package requirements are only required and specified for in-person proceedings and recommends adding the same hard copy presentation and distribution requirements found in proposed section 58.13 to the proposed section 58.12.

DMV believes the above changes will ensure consistency with hard copy Exhibit Packages submitted and received.

Response III.

The Board thanks DMV for its comment. The Board's proposed amendments to sections 58.12 and 58.13 establish two distinct processes for bringing evidence to a hearing depending on whether the hearing is an electronic proceeding or an in-person proceeding. The hard copies required for each type of hearing serve different purposes.

The hard copy exhibits provided for Evidentiary electronic proceedings are courtesy for the parties and for the administrative record. The electronic copies are what the parties and ALJ use during the hearing as the parties and witnesses are in different locations. The numbering of pages ensures that all parties refer to the same document during the hearing. The change in regulation enshrines current practice of electronically transmitting, in advance, exhibits to ensure that the process of sharing documents between the parties and the ALJ does not unduly disrupt the proceeding. Therefore, the requirements outlined in 58.13 are superfluous for electronic proceedings.

During in-person Evidentiary proceedings, the process for sharing exhibits and building an administrative record is different. It occurs in real-time. Therefore, the numbering of documents is not required in advance as parties and witnesses are provided documents as the hearing proceeds.

For the reasons outlined above, the Board declines to implement further changes to sections 58.12 and 58.13.

Comment IV. 58.13

DMV asserts that section 58.13 lacks requirements that are outlined under proposed section 58.12. Specifically, section 58.12 requires the creation of hard copies and electronic copying of Exhibit Packages that are not pre-marked, tabbed, segregated, or stapled under (a), specific numbering of Exhibit Package pages under (b), an index of the exhibits under (c), specific timeline and identification of recipients of service of hard copy and electronic copy of the Exhibit Package under (d).

DMV is concerned that Exhibit Package requirements are only required and specified for electronic proceedings and recommends:

- adding the proposed section 58.12 subdivisions (a) through (d) under the proposed section 58.13 as well; or
- combining section 58.13 under section 58.12, adding a new subdivision specifically for Electronic Proceedings and another new subdivision for In-Person Proceedings to specify additional requirements based on proceeding type.

DMV believes outlining the same Exhibit Package requirements whether the proceeding is held electronically, or in-person would ensure consistency of packages submitted and received and would ensure all parties are given an opportunity to review the other party's Exhibit Package to prepare for the hearing.

Response IV.

Please see III., Written Comments, Response (ante, at p. 3).

From Melinda L. Williams, Attorney IV, Department of Water Resources (DWR)

Comment V. Section 58.12

DWR is unclear on what the proposed language "provide electronic and hard copies of documents for evidence or display at the hearing" is in reference to. DWR asks if this is meant to refer to some visual aid for testimony, some descriptive text should be included for what is meant by documents for display and how those documents differ from evidence.

Response V.

The Board thanks DWR for its feedback on this regulatory package. The Board agrees with DWR that the term "display at hearing" is unclear and may cause confusion with what is required at the hearing. Therefore, the Board will strike the proposed language from the proposed text.

Comment VI. 58.12

DWR suggests that proposed section 58.12, subdivision (a), should be amended to make an exception for rebuttal documents, so it is clear for all parties that they need not be scanned or served in advance of any hearing, and how they are to be provided if needed.

Response VI.

The Board thanks DWR for its comment and would like to make clear that proposed section 58.12 only includes those documents or demonstrative materials that the party intends to introduce as evidence at the hearing in their case-in-chief. That clarification has been made to the regulations.

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.