

INITIAL STATEMENT OF REASONS

<u>HEARING DATE(S):</u>	September 29, 2016, at 10:00 a.m. Room 150, 801 Capitol Mall, Sacramento, California
<u>SUBJECT MATTER OF THE PROPOSED REGULATIONS:</u>	Career Executive Assignment (CEA) Appeals
<u>SECTIONS AFFECTED:</u>	Title 2, Chapter 1, California Code of Regulations, Sections 52.4 (Amend), 548.49 (Amend), and Section 548.136 (Amend)

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

Background:

The State Personnel Board (Board) is a constitutional body responsible for enforcing California's civil service statutes. (Cal. Const., art. VII, § 3.) In addition, the Board, by majority vote of all its members, prescribes probationary periods and classifications, adopts other rules authorized by statute, and reviews disciplinary actions imposed against state employees. (*Ibid.*) The Board also establishes rules implementing and enforcing the merit principle in the state civil service system. (Gov. Code, § 18660; see Cal. Const., art. VII, § 1, subd. (b) [requires civil service appointments and promotions to be made under a general system based on merit ascertained by competitive examination].) Consistent with the merit principle, the Board promulgates rules to govern classifications, examinations, probationary periods, disciplinary actions, and other matters related to its authority under Article VII of the California Constitution. (Gov. Code, § 18502, subd. (b).)

Civil service law encourages the development and effective use of well-qualified and carefully selected executives. (Gov. Code, § 19889.) To carry out that purpose, the Board is empowered to establish by rule a merit system specifically suited to the selection and placement of executive personnel. (*Ibid.*) Accordingly, a category within civil service was established and called Career Executive Assignment (CEA)s. (*Ibid.*) At a minimum, Board rules must afford all employees whose career executive assignments are terminated by an appointing power a right of appeal to the Board for restoration of his or her assignment when he or she alleges that the termination was for reasons prohibited by Government Code sections 19680, et seq. (Gov. Code, § 19889.2.) Those prohibited acts include willfully defeating, deceiving or obstructing any person's rights related to examinations or employment in civil service. (Gov. Code, § 19680, subd. (a).)

In 2009, the Board's rules were amended to add Subchapter 1.2, Article 2, Filings with the Board. In pertinent part, section 52.4¹ of Article 2 sets time limitations for filing appeals and/or complaints with the Board. Included within those time limitations are appeals from CEA terminations; appeals from improprieties in the civil service examination process; and other types of complaints. Appeals from CEA examinations, however, are not included in section 52.4. Instead, those appeals are currently in section 548.49. In addition, appeals from online examinations are not currently covered by section 52.4.

Under section 548.49, the appeal period for contesting CEA examinations is 30 days after the “report of appointment to a Career Executive position is submitted to the executive officer.” The Board’s current regulations, however, no longer require that a report be submitted to the executive officer since many aspects of civil service personnel practices, including information regarding CEA appointments, have been automated and are readily available to the Board for review.² Consequently, a report to the executive officer was an unnecessary, time consuming, and costly step in the CEA appointment process.

Anticipated Benefits of the Regulatory Action:

The anticipated benefits of this regulatory action include: (1) Improving the organization of the Board’s regulations by grouping appeals from CEA terminations and examinations with other civil service appeals. This proposed change will thus make it easier to find the rules related to CEA appeals; (2) Updating the Board’s appeal-related regulations to include appeals from online examinations; (3) Conforming CEA appeals to be consistent with other civil service appeals, thereby simplifying appeal procedures and eliminating subjective standards; and (4) Ensuring that the Board’s regulations are up to date with current discrimination and prohibited acts laws and any future changes to those laws.

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. Amend Section 52.4. Requirements and Method of Delivery for Filing Appeals and Complaints with the Board.

A. Amend Section 52.4(e)(1)(L).

The proposed changes include amending section 52.4(e)(1)(L), appeals from improprieties in the civil service examination process, to include specifically appeals from the CEA examination process. In addition, this proposed amendment will change the beginning of

¹ Unless otherwise specified, all section references at to the Board’s regulations found in Title 2, Division 1, Code of California Regulations.

² See former section 548.77, Report of Appointment [Repealer filed on December 14, 2015; Operative on January 1, 2016].

the appeal period for contesting a CEA examination from “the report submitted to the executive officer” to the date the examination results are mailed to the Appellant.³

The anticipated benefits of these proposed changes are to group related regulatory provisions together in a logical order for ease of reference. Consequently, the timeframes for appeals from CEA examinations and terminations will be in the same section of the Board’s regulations. These changes also serve to conform the appeal period for CEA examinations to previous changes in the Board’s regulations, which eliminated the requirement that a report of a CEA appointment be sent to the executive officer. These proposed changes will also update the Board’s regulations and make CEA appeals consistent with other civil service appeals, thereby simplifying and streamlining appeal procedures.

B. Adopt Section 52.4(e)(1)(L)(iii).

Section 52.4(e)(1)(L) relates to appeals from civil service examinations and currently sets standards for qualification appraisal interviews and written examinations. The appeal period for both is 30 days. The state civil service examination process has been modernized to include online civil service examinations. Section 52.4(e)(1)(L), however, does not set standards for an appeal from an online examination.

This proposed regulatory action adds section 52.4(e)(1)(L)(iii), which sets the appeal period for appeals from online examinations. Under the proposed rule, appeals from online examinations must be filed within 30 days of the date that the examination results are electronically available to the Appellant.

This proposed change is necessary to establish standards for appeals from online examinations and to harmonize the length of the appeal period with other examination appeal timelines. The anticipated benefits will be to establish clear and consistent procedures for all appeals from civil service examinations.

C. Technical Changes to Section 52.4.

Other changes to section 52.4 include re-numbering and non-substantive style changes needed for consistency and clarity.

II. Proposed Changes to Section 548.49. Appeal from Examination or Departmental Appointment.

The proposed changes to Section 548.49 reflect that appeals from CEA examinations shall be filed in accordance with section 52.4(e)(1)(L) and set the remedies the Board may order if an appeal is granted. The first, second, third, and fourth paragraphs are deleted.

³ It should be noted that currently CEA examinations are not online examinations. Should, however, CEA examinations ever be given online the proposed changes to section 52.4(e)(1)(L)(iii) would apply.

The anticipated benefits of linking the time periods for CEA appeals to section 52.4, subdivision (e)(1)(L) improves the organization of the Board's regulations by grouping rules related to appeal procedures and timelines in one regulation, rather than in separate regulations. Accordingly, the first paragraph, concerning filing the appeal within 30 days after the report of the CEA appointment is submitted to the Board's executive officer, is deleted as being unnecessary given this proposed amendment to the regulation.

The second and third paragraphs distinguish the types of claims upon which an appeal may be granted with the types of remedies the Board may order. The Board, however, has broad power to administer and enforce civil service laws related to examinations. (Cal. Const. Art. VII, § 3; Gov. Code, § 18701.) If the Board grants an appeal contesting a CEA examination, the Board may order appropriate remedies regardless of the type of claim made. Therefore, the second and third paragraphs are deleted as unnecessarily complex and confusing. The addition of subdivision (b), which generally addresses the Board's authority to order remedies, simplifies and clarifies the regulation.

The deletion of the fourth paragraph removes a ground for appeal that is subjective as to what is "well qualified" or "not carefully selected." In addition, challenging the qualifications of a person appointed to a position in state service is not expressly allowed in other types of civil service appeals. Deleting the fourth paragraph will thus make CEA appeals consistent with other types of civil service appeals and eliminate subjective standards.

III. Amend Section 548.136. CEA Appeals from Termination.

Section 548.136, concerning an appeal from a CEA termination, is amended to reference section 52.4, subdivision (e)(1)(F) of the Board's regulations. The grounds for appeal are also amended to delete outdated references to grounds for illegal discrimination and incorporate references to Government Code section 19240, subdivisions (a) and (h) [illegal discrimination and retaliation under the Fair Employment and Housing Act (FEHA)] and Government Code section 19680 et seq. under Chapter 10, Part 2, of the Civil Service Act [includes such prohibited acts as whistleblower retaliation, discrimination based upon blindness or medical condition, and changes in or removal from any position based upon political or religious opinions or affiliations].

The anticipated benefits of these proposed changes include clarity and grouping related regulatory provisions together in a logical order for ease of reference. These proposed amendments also serve to harmonize section 548.136 with section 52.4. The proposed changes are also designed to ensure that the regulation is up to date with current discrimination and prohibited acts laws and any future changes to those laws.