

DRAFT

Initial Statement of Reasons
Federal Grant-in-Aid Merit Systems

GENERAL INFORMATION

The Governor's Reorganization Plan Number One of 2011 (GRP 1) created the California Department of Human Resources (Department) and vested it with the powers and duties of the former Department of Personnel Administration (DPA) as well as some operations and functions that had been administered by the State Personnel Board (SPB). Senate Bill (SB) 1309, Chapter 360, Statutes of 2012 and Assembly Bill (AB) 1062, Chapter 427, Statutes of 2013 amended the Government Code to conform the statutes to the Department's responsibilities under GRP 1. Section 18502 of the Government Code was added to provide that regulations related to the program changes would remain in effect until contradicted by the new statutes or repealed by SPB or the Department.

Among the operations transferred to the Department was the jurisdiction and authority to establish, maintain, and in some instances operate a merit-based personnel system for local government agencies, "Where such merit systems of employment are required by statute or regulation as a condition of a state-funded program or a federal grant-in-aid program established under federal laws, including, but not limited to: the Social Security Act, as amended; the Public Health Services Act; and the Federal Civil Defense Act, as amended." (Gov. Code, § 19800, and following.) This transfer of responsibility was effective January 1, 2014. The Program is known as the Merit Services System (MSS).

The federal laws referenced condition federal financial participation in certain Programs, including CalWORKS, Medi-Cal, and Child Support enforcement, on the state and local agencies that administer those Programs using a merit-based personnel system.

DETAILED STATEMENT OF PROBLEM, PURPOSE AND RATIONALE

Part I. Repeal of Existing Regulations

The regulations that are presently contained in title 5, sections 17010 through 17592, are substantially as adopted by the SPB in the early 1970's. The repeal of these regulations is necessary for several reasons:

1. Because the MSS program authority was transitioned from the SPB to the Department as part of the implementation of GRP 1, repeal of the current regulations is necessary to establish that the Department is now the authorized agency to oversee the MSS program.

2. Trying to present the proposed regulations over the old regulations in a strike-out and underline format created an unintelligible document due to the fact that the proposed regulations have little in common with the current regulations.
3. Merely substituting the Department for SPB or Executive Officer in the current regulations is insufficient because substantive changes to update the regulations are necessary. As explained further below, the current regulations are outdated, and more onerous and prescriptive of Local Agency operations than federal law requires. In 1997, when updating the federal regulations, the Office of Personnel Management (the responsible federal agency) noted, "Our 1983 revisions to these regulations promoted flexibility and innovation at the state and local levels by eliminating standardized, detailed requirements." The SPB regulations were not amended in response and contain more detail than is necessary or efficient for the Department and the Local Agencies.
4. The current regulations mandate that each Local Agency operate two separate, un-integrated personnel systems, which is no longer necessary under federal law. The revised federal regulations were specifically intended to eliminate the problem of duplicative personnel systems. When the federal regulations were amended in 1983, the Federal Register stated that the purpose of the new regulations was to, "minimize Federal intervention in State and local personnel administration;" and to, "effect cost savings by eliminating the need for dual personnel systems that the existing standards have led some State and local governments to maintain."
5. In working with the Local Agency representatives on the proposed regulations, the Department learned that every Local Agency is administering a merit system that meets the federal requirements. The repeal of the old regulations recognizes and responds to the validity of Local Agency complaints regarding the confusion caused by attempting to follow the rules of two separate systems, often within the same welfare department because not all programs administered by those departments are subject to these federal rules.

In sum, the current regulations are outdated, unnecessary, and excessively prescriptive on Local Agency operations. For these reasons, a complete repeal of the current regulations is necessary to make the proposed regulations clear to the stakeholders.

Part 2. Adoption of New Regulations

The Department is adopting new regulations, title 2, sections 17010 through 17046, to govern the operation of the MSS program authorized by Government Code sections 19800-19811. The proposed regulations recognize that the Department is now responsible for the program and also make substantive changes to how the program will be operated.

At the time the Department assumed management of the program, the SPB had been working with representatives of the Local Agencies impacted by the regulations to study how to make the program regulations more efficient and less duplicative of the personnel management responsibilities already handled by the Local Agencies. The Department built upon the work SPB had initiated to draft new regulations to increase

efficiency and eliminate duplication, in acknowledgement of the authority, autonomy, and competence within counties to operate an effective, merit-based personnel management system. The new regulations are consistent with federal law, which changed substantially subsequent to the SPB's adoption of its regulations, as explained further below.

The Department developed the new regulations in collaboration with a working group representing local-level Directors of Health and Human Services, Child Support, and Human Resources. The proposed regulations have also been reviewed with the Departments of Social Services, Health Care Services, and Child Support Services. The proposed regulations complete the process of transferring operational authority to the Department and integrating greater efficiency into the program at all levels.

Because of the complete repeal of the old regulations and the substitution of the new regulations, the Department is following the regular rule making process established in the Government Code and administered by the Office of Administrative Law without regard to the provisions of Government Code section 19811.

The Department discussed and received input on these regulations with entities expected to be interested in them, including representatives of local agencies and local and statewide labor organizations and the draft regulations include changes suggested through that process. The proposed regulations were posted on the Department website for a period of approximately three months, and the proposed regulations were modified and improved as a result.

The proposed regulations meet the federal Administrative Personnel regulations at 5 Code of Federal Regulations part 900.603 that articulate six high-level characteristics that local personnel management systems should meet, as noted below.

- (1) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.
- (2) Providing equitable and adequate compensation.
- (3) Training employees, as needed, to assure high quality performance.
- (4) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.
- (5) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information (including family medical history), marital status, political affiliation, sexual orientation, status as parent, labor organization affiliation or non-affiliation in accordance with chapter 71 of title V, or any other non-merit-based factor, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available, and with proper regard for their privacy and

constitutional rights as citizens. This “fair treatment” principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.

(6) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

However, the regulations and the federal Office of Personnel Administration leave up to the states to determine how to meet those standards and to ensure local agencies do so as well.

Purpose:

The purposes of the proposed regulations are:

- To comply with federal legal requirements to ensure the uninterrupted receipt of federal matching funds in the covered Programs.
- To clarify that the Department is the responsible agency for program administration.
- To encourage local agencies to assume operational responsibility for employees of the designated Programs, subject to audit by the Department, which may result in savings at both the local and state level.
- To establish the parameters for the merit system that the Department will oversee in whole or in part for those local agencies that are unable or unwilling to take on responsibility for personnel management of employees in the designated Programs. The regulations include provisions on selection of employees as well as disciplinary actions, reductions in force, and other aspects of personnel management identified in the federal requirements.

ECONOMIC IMPACT ASSESSMENT

In accordance with Government Code section 11346.3(b), the Department has made the following assessments concerning the proposed regulation:

Creation or Elimination of Jobs within California

The Department has determined that these regulations do not create or eliminate jobs within California. These regulations do not impact the private sector. The regulations will impact some individuals working in local government agencies if those agencies need to reduce their workforce. The regulations change the methodology for calculating seniority scores. Individuals appointed to Program positions will retain all seniority credit earned as of the date the regulations become effective. After the effective date of the regulations, those Program employees will earn seniority credit in the same manner as other Local Agency employees.

Creation of New Businesses or Elimination of Existing Businesses within California

The Department has determined that these regulations do not create new businesses or eliminate existing businesses within California. These regulations do not impact the private sector.

Expansion of Current California Businesses

The Department has determined that these regulations do not expand current California businesses. These regulations do not impact the private sector.

Benefits

These regulations are necessary to comply with federal law concerning local merit personnel systems for certain federally funded Programs in California. Adoption of these regulations will ensure continued receipt of federal funding for these Programs. Further, the revised regulations take advantage of the latitude and creativity supported and encouraged by the changes in the federal law. The proposed regulations allow for local agencies to assume as much responsibility as they want in running their own personnel operations in accordance with Local Agency procedures, which must be approved by the Department to ensure compliance with the federal law, and thereby avoid duplication of personnel operations, and unequal treatment of employees.

The regulations provide local agencies the option to run all personnel operations for the affected employees under their own locally authorized personnel system if the Department finds that system meets federal requirements. Another option allows a Local Agency to have the Department handle personnel management in totality for those employees. The final option allows a Local Agency to handle some, but not all, of the operations. For example, a Local Agency may elect to conduct its own civil service examinations so it can utilize a single list to fill all vacancies in a classification that is used for both federally funded and locally funded positions.

In sum, the proposed regulations acknowledge the authority, autonomy and expertise of the local agencies, eliminating duplication and confusion, while also providing ongoing support for those local agencies that need it.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

None.

REASONABLE ALTERNATIVES CONSIDERED

The Department has identified three reasonable alternatives as identified below. The Department has chosen Alternative 3 as the recommended alternative. As these regulations do not impact the private sector, no alternatives would lessen any adverse impact on small businesses. Further, the Department did not identify any alternative that would be less burdensome and equally effective in achieving the purposes of these regulations that also achieves the purposes of state law and federal regulations.

Alternative 1: Adopt the SPB's regulations as currently written. Under this alternative the Department would adopt the regulations as currently written with the exception that consistent with Government Code section 19800, the Department would be responsible for establishing and maintaining personnel standards on a merit basis and administering merit systems for local agencies. The Department did not chose Alternative 1 because this alternative is not consistent with federal regulations.

Alternative 2: Do Nothing. This alternative was not chosen because the regulations would not be in compliance with state law or federal regulations.

Alternative 3: Write new regulations consistent with current federal regulations and state law. The proposed regulations are consistent with federal regulations that acknowledge the diversity in design, execution and administration of merit-based personnel management systems. The current federal regulations identify the merit principles with which state and local agencies must comply. The proposed regulations are also consistent with state law in that the Department and not SPB is responsible for establishing and maintaining merit-based personnel standards and administering merit-based personnel systems for local agencies.

The proposed regulations include both performance standards and administrative procedures. The proposed regulations identify the merit-based personnel standards that Local Agency personnel systems must meet but do not mandate specific actions or procedures the Local Agency must follow to meet those standards. The proposed regulations do contain administrative procedures that local Agencies, applicants, Program employees and the Department must follow for activities such as disputing audit finding and appealing certain personnel decisions. Where the regulations require specific administrative procedures, performance standards would not be applicable. The regulations contain procedural rules so that the regulated parties are aware of the processes each party is to follow during specific interactions such as audit disputes and personnel appeals.

The Department relied on the Economic and Fiscal Impact Statement for Federal Grant-in-Aid Merit Systems to support its determination that the action will not have a significant impact on businesses.

REGULATIONS MANDATED BY FEDERAL LAW

None of the proposed regulations duplicate federal regulations but all are consistent with the authority and parameters established by the regulations. Federal regulations, title 5, part 900, subpart F. sections 900.601-900.605, provide the standards for a merit system of personnel administration that state and local governments must meet as a condition of receiving federal funds for specific grant-in-aid Programs such as the Social Security Act. As these federal Programs are managed by the state and federal and state funding flows through the state to the local agencies, these regulations are necessary to establish the manner in which the state ensures that local agencies' personnel systems comply with the federal standards. In addition, to comply with state law, the regulations provide the process for which the state will administer a personnel system for local agencies.

DETAILED STATEMENT OF REASONS: SUMMARY AND RATIONALE

“Chapter 1. General” and “Chapter 2. Department Administered Merit-Based Personnel System for Program Employees” and all their articles and sections are added to division 5, title 2 of the California Code of Regulations. These chapters fulfill the mandates of Government Code sections 19800 and 19801 that require the Department of Human Resources to establish and maintain personnel standards on a merit basis and administer merit systems for local agencies where such merit systems of employment are required by statute or regulation as a condition of employment by a state-funded or federally-funded grant-in-aid Program. These regulations are necessary to implement, interpret and make more specific the provisions of Government Code sections 19802, 19802.5, 19803, 19804, 19805, 19806, 19807, 19808, 19809, 19810, and 19811. Specific descriptions of and statements of necessity for each provision of these new regulations are set forth below.

CHAPTER 1. GENERAL

Section 17010. Purpose.

Establishes the scope and purpose of the regulations, providing that Local Agencies must manage certain employees according to a merit system of personnel management. This section is necessary to establish the parties and under what conditions the parties are subject to the regulations.

Section 17011. Definitions.

17011(a) defines “**Administrative Law Judge**” to mean an individual appointed to a state position classified as an Administrative Law Judge. Government Code section 19803 requires the Department to hear and decide appeals for applicants for employment or officers or employees appealing Local Agency decisions affecting their employment. Government Code section 19805 requires the Department to establish and administer procedures for hearing appeals under Government Code section 19803. This definition of Administrative Law Judge is needed to provide clarity to appellants on who is qualified to hear specific types of appeals.

17011(b) defines “**Classification**” to mean the manner of grouping positions that are similar in the type of work performed, level of difficulty, responsibility, and required qualifications that the incumbents in those positions should receive treatment with respect to personnel and pay administration. This definition is necessary to set the framework the federal merit principles pursuant to 5 CFR 900.603.

17011(c) defines “**Department**” to mean the California Department of Human Resources. This definition is necessary to provide clarity as to which administrative agency is authorized to administer these regulations. This definition is also necessary for ease of use and to make the regulation text easier to understand.

17011(d) defines “**Disciplinary Action**” to mean Local Agency actions taken against an employee based on the employee’s performance of the duties of his or her position that results in the dismissal, demotion, suspension, or loss of pay or work hours of a permanent employee. The definition also specifies Local Agency actions taken against

an employee that do not mean disciplinary action. Local Agency actions that do not qualify as disciplinary action include letters of reprimand, written instructions to the employee regarding correcting workplace behavior, or any other action which does not change a permanent employee's job classification or decrease his or her pay. This definition is necessary to identify Local Agency actions that qualify an employee or officer of the Local Agency to exercise his or her appeal rights pursuant to Government Code section 19803 that requires the Department to hear and decide appeals of any officer or employee from the decision of a Local Agency affecting the employment rights of such persons.

17011(e) defines "**Federal Requirements**" to mean the federal principles and standards stated in federal regulations administered by the federal Office of Personnel Management, "Intergovernmental Personnel Act Programs; Standards for a Merit System of Personnel Administration" in the Code of Federal Regulations (CFR) under title 5, part 900, subpart F and as amended from time to time. This definition is necessary to reference the specific federal standards and principles of a merit personnel system that all state and local agencies must currently meet or meet in the future as a condition of receiving certain federal grant funds as required by the specific federal Programs or federal grantor agencies. The addition of the words "and as amended from time to time" make it clear that Federal Requirements include any future standards or principles that the federal government may require if the federal regulations are amended.

17011(f) defines "**Hearing Officer**" to mean an individual designated by the Department's Director to hear and prepare proposed decisions in those matters that may be appealed to the Department including appeals of audit findings and appeals of Local Agency actions affecting applicants to Program positions or Program employees. The regulation also allows the Director to delegate to the Hearing Officer the duties and powers the Director is authorized to take with respect to hearings in accordance to Government Code section 19815.4(e) that authorizes the Director to hold hearings, subpoena witnesses, administer oaths and conduct investigations. Government Code section 19802.5 requires the Department to conduct periodic audits of Local Agencies authorized by the Department to operate their own merit-based personnel system for Program employees. Government Code section 19803 requires the Department to hear and decide appeals for applicants for employment or officers or employees appealing Local Agency decisions affecting their employment. Government Code section 19805 requires the Department to establish and administer procedures for hearing appeals under Government Code sections 19802.5 and 19803. This definition is necessary to inform Local Agencies and appellants who besides the Director is authorized to hear appeals and what authorities are granted to that individual.

17011(g) defines "**Local Agency**" to mean any city, county, city and county, district or other subdivision of the state, or other independent instrumentality thereof, that is required to utilize a merit-based personnel management system for Program employees. The definition of Local Agency is an exact restatement of Government Code section 19810 and is added to the regulations for clarity and for ease of reading the regulations.

17011(h) defines “**Personnel System**” to mean all the laws, rules, practices and policies a Local Agency follows and as well as the Local Agency’s operation of its merit-based employee management system for applicants, Program and other Local Agency employees. Personnel System also includes, but is not limited to, the performance of, and any documentation of:

1. hiring, examination and selection, training, performance evaluation and disciplinary procedures.
2. Compensation plans, classification descriptions, position descriptions and duty statements;
3. employee-management memorandum of understanding;
4. anti-discrimination policies and procedures, and,
5. conflict of interest rules and procedures.

The definition of Personnel System is necessary to describe what constitutes a merit-based personnel management system and the information that a Local Agency would need to provide to the Department to demonstrate that the Local Agency’s Personnel System is merit-based. The definition includes a list of merit system standards included in Government Code section 19802.5. Personnel Systems meeting this definition would also comply with the Federal Requirements and the Department may could be authorize the Local Agency to administer all or a part of their personnel management system for Program employees.

17011(i) defines “**Program or Programs**” to mean those Local Agency operations that receive state or federal funds that require as a condition of receiving those funds that the Local Agency operates a merit-based Personnel System for employees performing those activities. As examples, the definition includes the names of three federal laws that require employees performing those activities to be managed by a merit-based personnel system. This definition is necessary to identify the activities at the Local Agency that are covered by these regulations. The addition of the names of the three federal laws provides clarity as to the types of Programs covered by the regulations.

Section 17012. Local Agency Administered Approved Merit-Based Personnel System for Program Employees—Total or Partial Approval.

17012(a) describes the method by which Local Agencies can be approved by the Department to utilize the personnel management system in use in the Local Agency for the affected employees so long as it meets federal requirements. This subsection is necessary to inform Local Agencies on what steps are needed to obtain the Department’s approval. The subsection also makes it clear that the Department may ask for additional information as it decides is necessary to determine that the Local Agency’s Personnel System is merit-based as authorized by Government Code section 19808. This subsection also requires the Department to make a determination concerning whether the Local Agency’s Personnel System meets the criteria and that the Department inform the Local Agency of its decision.

17012(b) identifies the elements of the Personnel System that the Department will review to determine whether the Personnel System meets the Federal Requirements. This subsection identifies the merit principles contained in federal regulations. This subsection provides clarity to the Local Agency as to which aspects of its Personnel System the Department will focus its review.

17012(c) requires that upon approval of the Local Agency's Personnel System that the Local Agency certify to the Department, in a format to be determined by the Department, that it is operating the Personnel System in accordance to the information provided to the Department. This subsection also informs the Local Agency that the Department can request that the Local Agency renew this certification. This subsection is necessary so that the Department has a means to ensure that the Local Agency is operating its Personnel System in accordance to the information provided. This subsection is also necessary to meet federal regulation section 900.604 that requires that state or local jurisdictions certify that personnel administration is in conformance with the Federal Requirements.

17012(d) deems approved by the Department any Local Agencies approved by the State Personnel Board prior to January 1, 2014 to operate their Personnel Systems for Program employees. This subsection also requires the Local Agency to acknowledge any new standards adopted by the Department, if the Department requests that the Local Agency do so. This subsection is necessary so there is no interruption in personnel administration for those Local Agencies authorized to operate their own Personnel Systems. This subsection also provides clarity to Local Agencies that no action is required if the Local Agency was approved by the State Personnel Board to operate its Personnel System for Program employees unless the Local Agency receives a request from the Department.

17012(e) provides an option that a Local Agency may ask the Department to approve it using one or more elements of its current Personnel System after submitting documentation to the Department that the element(s) are consistent with the Federal Standards. This subsection makes it clear that in such instances the Department will oversee the remainder of the personnel management in accordance with Chapter 2 of these regulations. This subsection is necessary to comply with Government Code section 19802.5 that allows the Department to authorize a Local Agency to operate a part of its personnel management system for Program employees.

17012(f) requires the Department to advise a Local Agency, in writing, of the reasons the Department denies a request by the Local Agency to operate all or part of its Personnel System for Program employees. This subsection is necessary so that the Local Agency is informed why its Personnel System did not meet the Federal Requirements. This subsection also informs Local Agencies that if they are denied the use of their Personnel System that they may request that the Department approve their Personnel System whenever the Local Agency wants. This subsection is necessary to inform the Local Agency that they may renew their request for authorization to use their personnel management system if previously denied to do so by the Department.

17012(g) requires a Local Agency operating all or part of its Personnel System for Program employees to retain records relating to personnel management of Program

employees. In order to ensure that the Local Agency is retaining the personnel management records, the Local Agency is required to provide the Department with its policy for retaining personnel and human resource records or submit, in writing, its plan to retain the records, upon request of the Department. If the Local Agency does not have a records retention policy, the Local Agency is required to retain such personnel records for seven (7) years from the date of taking a personnel action or the date the employee separates from the Local Agency, whichever time period is longer. This subsection is necessary to ensure that the Department has the Local Agency records it requires when it performs audits of the Personnel System of the Local Agency as required by Government Code section 19805 or hears appeals of personnel decisions pursuant to Government Code 19803.

17012(h) describes the audit process that the Department will use to determine continued compliance by local agencies operating all or part of the Personnel System for Program employees. This subsection is necessary to comply with Government Code section 19805 that requires the Department to establish and administer procedures, including investigations and hearings, to determine whether a particular merit system is in conformity with the standards established or approved by the Department.

Section 17013. Department Procedures for Resolving Disputed Audit Findings.

17013(a) this subsection provides definitions that are to be used for this section. The definitions provide clarity to terms used in the section.

17013(a)(1) defines “**Department Representative**” to mean the manager, or his or her designee, of the organization within the Department that is responsible for administering the merit system standards for Local Agencies. The Department Representative has a role in disputed audit findings and this definition provides clarity of who that individual is. Adding a definition for Department Representative makes it easier to read the regulations.

17013(a)(2) defines “**Hearing**” to mean a review of written documents submitted by the Parties to the Hearing and makes it clear that a Hearing may include oral testimony or presentations if the Hearing Officer deems it appropriate. This definition is necessary to comply with Government Code section 19805 that requires the Department to establish and administer procedures for investigations and hearings to determine whether Personnel Systems for Program employees conform to state and federal standards.

17013(a)(3) defines “**Parties**” to mean both the Department Representative and the Local Agency. This definition is added to make the procedures for resolving disputed audit findings easier to read.

17013(b) – 17013(h) these subsections provide the process for resolving any disputes between the audit findings and the impacted Local Agency so that a final determination can be made as to whether the Local Agency’s Personnel System meets Federal Requirements. The regulations make it clear that the Hearing Officer will be independent and not involved with any aspect of the audit (17013(c)). The regulations include the number of calendar days in which the Department and the Parties are

required to respond and the administrative steps that must be followed. These regulations were added to comply with Government Code section 19805. These procedures for resolving audit disputes also resolve concerns that Local Agencies had with the administration of the program in the past when there was no clear delineation of when an audit was completed, so issues remained unresolved and management decision making was impaired as a result. These regulations are necessary to provide clarity on how audit disputes are handled so that issues are resolved. Consistent with Government Code section 19806, the regulations (17013(h)) require the Director to notify the state officer responsible for administering the federal Program that the Local Agency is not in conformity with Federal Requirements.

Section 17014. Qualifications and Classifications of Program Employees.

17014(a) requires the Local Agency to allocate all Program positions to a classification that is appropriate to the duties of the position, except for positions that are designated as unclassified in accordance to subsection (b). This section is necessary to ensure that all Federal Requirements are met.

17014(b) allows the Local Agency to designate a limited number of Program positions as unclassified or otherwise not subject to merit system requirements or the requirements of these regulations as long as the Local Agency's Personnel System allows for some positions to be designated as unclassified. This subsection is necessary to allow Local Agency's the latitude not to place all positions into a classification as allowed by section 900.602(a) of the federal regulations.

CHAPTER 2. DEPARTMENT ADMINISTERED MERIT-BASED PERSONNEL SYSTEM FOR PROGRAM EMPLOYEES.

Chapter 2 address the components of the merit-based personnel management system that the Department will oversee for those Local Agencies who elect not to operate their own Personnel System or that operate only a portion of their Personnel Systems. These provisions are necessary to interpret and make specific the provisions of Government Code section 19803. These provisions recognize that all Local Agencies maintain merit-based personnel systems. Thirty (30) Local Agencies operate their own merit-based Personnel Systems. For 30 years, the Federal Requirements that SPB has performed for the 28 Local Agencies that do not operate their own Personnel System in total, are conducting exams, maintaining lists and hearing appeals from various personnel actions. The remaining elements of the Federal Requirements are managed by the 28 Local Agencies.

Section 17030. Department Oversight of Local Agency Personnel System for Program Employees.

States the Department will oversee the Local Agency's operation of its merit-based Personnel System pursuant to Chapter 2 if the Department has not approved the Local Agency to operate its own Personnel System in total. This section also states that the Department will oversee all other aspects of the Local Agency's operation of its merit-based Personnel System pursuant to this Chapter if only a part or parts of the

Personnel System is approved. This section is necessary to clearly state what Local Agencies are governed by Chapter 2.

Section 17031. Qualifications and Classification of Program Employees.

17031(a) requires the Local Agency to allocate all Program positions to a classification, subject to audit by the Department that is appropriate to the duties of the position, except for positions that are designated as unclassified in accordance to subsection (b). This section is necessary to ensure that all Federal Requirements are met. Further it ensures that all Program employees performing the same duties as other Local Agency employees are treated alike, and the authority of the Local Agency is respected and not usurped by the Department.

17031(b) allows the Local Agency to designate a limited number of Program positions as unclassified or otherwise not subject to merit system requirements or the requirements of these regulations, subject to audit by the Department, as long as the Local Agency's Personnel System allows for some positions to be designated as unclassified. This subsection is necessary to allow Local Agency's the latitude not to place all positions into a classification as allowed by section 900.602(a) of the federal regulations.

Section 17032. Recruitment and Selection of Program Employees.

17032(a) requires that the Department ensure that vacant Program positions are advertised for a sufficient period and in a manner that will provide for a qualified candidate pool based on the level of the position, the required qualifications of applicants, and the number of qualified applicants in the appropriate labor market. This section is necessary to provide standards for position advertisements that meet the Federal Requirements rather than prescriptive procedures.

17032(b) provides that the advertisements shall include a position description, the position's compensation, the minimum qualifications for a position, how the candidate will be selected, and instructions on when and how to submit an application. This section is necessary so that all potential applicants the information necessary to determine whether they are qualified for the position and what information they need to provide on the application and when and how to file the application.

17032(c) states that if applications will be accepted for a period of time different than the advertisement period, then the advertisement must state the date, time and manner that applications will be received and that applications can only be received on the last day of the advertisement or a date subsequent to an advertisement. This allows the option for applications to only be accepted at a specific date at specific time, as long as that information is included on the application and the date applications will be received is either on the last day of advertising or a date after the last day of advertising. Having the option to specify a date and time for receiving applications is a means of ensuring that Local Agencies have a reasonable pool of applicants.

17033. Selection Processes for Applicants to Program Positions.

17033(a) states that the selection process for a Program position shall fairly test the relative qualifications, fitness and ability of the applicants to perform the duties of the Program position to which they are applying. This section also states that applicants may only be selected based on job-related criteria that are developed prior to reviewing or examining any individual application. Section 17033(a) states that the selection process may be conducted through interviews, written examinations, performance based examinations, assessments of education and experience of the applicants, or any combination of processes that are reasonably designed to ascertain the applicant's ability to perform the duties of the Program position. This section is necessary to ensure that the selection process meets the Federal Requirements. For fairness, this section requires that the criteria for selecting the qualified candidate are to be determined before the review of any application. Finally, this section provides numerous options by which an applicant may be selected for a position that are consistent with current personnel selection processes. To date, the only method that has been used to select Program employees under the state's operation of the merit system has been through written exam. Written exams are not necessary for all positions and prevent the efficient administration of the selection process.

17033(b) allows the selection process to be limited to current employees of the Local Agency or of the Program if the Local Agency's Personnel System allows for such limitations on the candidate group in positions at a similar level to the vacant Program position. Restricting a candidate pool to current employees of the Local Agency or of the Program, if allowed by the Local Agency's Personnel System, helps foster upward mobility of employees, an outcome that is consistent with merit-based selection and the Federal Requirements.

Section 17034. Certification of Qualified Candidates and Appointment to Program Positions.

17034(a) provides that after the selection process is completed, the Department will provide a ranked list of persons passing the process to the Local Agency and the Local Agency then follows its own procedures for certifying the appropriate number of names for consideration for appointment and to finalize the appointment. This section is necessary to make clear how the Department is implementing Government Code section 19803. This section further makes it clear that the Local Agency will use its own certification process after the Department completes the selection process and is responsible for finalizing the appointment of the selected candidate.

17034(b) provides that the Local Agency will conduct the appointment process for Program positions as for other Local Agency employees. This section is necessary to make clear how the Department is implementing Government Code section 19803. This section makes it clear that the Local Agency will use its own appointment process for Program employees as it would for other Local Agency employees.

17034(c) provides that Program employees will be treated as other Local Agency employees and serve probationary periods in the same manner as other Local Agency employees. Similarly, Local Agencies with polices permitting rejection during probation

are permitted to follow those procedures for rejecting during probation for Program employees. However, in accordance with the mandatory language of Government Code section 19803, appeals from such actions will be to the Department and the timing and the method of filing the appeal is included in this subsection. This subsection further integrates the operation of Local Agency Personnel Systems for all employees, while providing a path of appeal to review disputed rejections.

17034(d) provides that the appeal process under this subsection shall be in accordance with sections 17045(b) through 17045(g) of these regulations with the exception that the appellant has the burden of proof to show that the Local Agency's reasons for rejection on probation were false and the rejection was done in bad faith. This subsection is necessary to provide the appellant with the procedures for hearings in accordance with Government Code section 19805.

Section 17035. Disqualification of Applicants from Consideration for Program Positions.

This section describes the basis and process for disqualifying an applicant from competing in an exam or from appointment from a list due to:

17035(a) Failure to meet the required qualifications of the position.

17035(b) Failure to follow application or examination procedures for the position.

17035(c) False statements in the application or selection process.

17035(d) Any other reason established in the Local Agency's Personnel System.

Applicants must be notified in writing of the basis for the disqualification and may appeal the decision in accordance with section 17036 of these regulations. This section is necessary to make clear how the Department is implementing Government Code section 19803 and to provide applicants with the option to file an appeal as disqualification from an exam or removal from a list affects the employment rights of a person.

Section 17036. Selection Process Appeals

Establishes the bases for an applicant to appeal a selection process decision, with timelines for appealing, and a description of the appeal process as required by Government Code section 19805.

17036(a) Appeals are allowed for the following reasons:

17036(a)(1) for alleged irregularity, discrimination, bias, or fraud in one or more steps in an examination; or

17036(a)(2) for alleged improper acts or circumstances resulting in erroneous interpretation and application, by the examiners, of the skills, knowledge and abilities considered essential for satisfactory performance in the class for which the applicant was examined.

17036(b) provides that the appeal of the selection decision must be filed within 30 calendar days of date on which the appellant receives notice of the decision. Requires that the appellant be provided with sufficient examination material to explain the examination decision and to confirm that the appellant's score was calculated correctly unless the Department determines that access to the information would result in an unfair advantage to the appellant in future examinations.

17036(c) provides that the Director shall appoint a Hearing Officer to hear the appeal and prepare a proposed decision. The Hearing Officer is required to review the documents submitted by the appellant and the Hearing Officer may request other evidence. This subsection states that the appellant has the burden to demonstrate that the selection process was improper and as a result the appellant was not considered eligible by the Local Agency to fill the position. The Hearing Officer may hold an evidentiary hearing if the Hearing Office decides that one is needed. The Hearing Officer prepares the decision for the Director and the Director shall render a decision with 60 calendar days of submission of all evidence.

17036(d) provides that a Local Agency does not have to delay an appointment to the position while the appeal is in process unless the Local Agency determines a delay is appropriate. If the applicant's rating is corrected, it shall not affect any appointments made from the eligible list before the rating is corrected.

Section 17037. Compensation for Program Employees.

This section provides that Program employees will be compensated in the same manner as other Local Agency employees. The Department may review the Local Agency's compensation policy and practices, as necessary, to ensure compliance with the Federal Requirements. Allows the Local Agency to pay an employee above the maximum allowed by the employee's classification if Program employee's salary would be reduced through no fault of the Program employee and the Local Agency Personnel System provides for such compensation for all Local Agency employees. This section is necessary for the Department to ensure compliance with the Federal Requirement that Program employees receive equitable and adequate compensation.

Section 17038. Training for Program Employees.

This section requires the Local Agency to provide training to Program employees consistent with the training provided other Local Agency employees as established by the Personnel System. Allows the Department to review the Local Agency's training policy and practices as necessary to ensure compliance with Federal Requirements. This section is necessary for the Department to ensure compliance with the Federal Requirement that employees receive training as needed to assure high quality performance.

Section 17039. Performance Evaluation for Program Employees.

This section requires the Local Agency to evaluate the performance of Program employees in the same manner as for other Local Agency employees. Performance rating criteria must be job related, objective and applied consistently to all employees subject to performance evaluation. Program employees with complaints concerning

performance evaluation or the process shall follow the Local Agency procedures with respect to those complaints. This section is necessary to ensure compliance with the Federal Requirement that employees are retained on the basis of the adequacy of their performance, corrected for inadequate performance, and separate for inadequate performance that cannot be corrected.

Section 17040. Overall Fairness of the Local Agency Personnel System.

This section requires the Local Agency to provide for equal employment opportunity, nondiscrimination and other policies promoting fairness in overall personnel operations for applicants and Program employees pursuant to the Personnel System in the same manner established for other Local Agency employees. This section is necessary to ensure compliance with the Federal Requirement that there is fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This “fair treatment” principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.

Section 17041. Conflict of Interest and Improper Use of Authority for Program Employees.

This section requires the Local Agency to follow the rules and procedures regarding conflicts of interest, including rules pertaining to improper use of authority by an employee for Program employees pursuant to the Personnel System in the same manner as for other Local Agency employees. This section is necessary to ensure compliance with the Federal Requirement that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

Section 17042. Reduction in Force.

17042(a) establishes that when necessary, the Local Agency shall follow its reduction in force procedures for Program employees as it does for other Local Agency employees. The reduction in force procedures may include such activities as: how and when notice is given to the affected employees, limits on appointments to vacant positions pending completion of the reduction in force, and provisions for creating reemployment lists of those laid off or demoted through the reduction in force process. This section is necessary to make it clear that the Local Agency shall follow its own reduction in force policy and procedures and that the Department will not impose a different reduction in force process for Program employees with the exception of Program employees meeting the criteria of subsection (b)(1). This section is necessary so that in the event there is a reduction in force, all Local Agency employees are treated the same. According to Local Agency representatives, in the past two separate methods of calculating seniority, one based on Local Agency rules, and the other on the SPB rules, resulted in confusion for employees and results perceived by employees and the Local Agencies as unfair. For example, a long-term Local Agency employee might be laid off in lieu of a more recently hired Program employee in one of the covered positions

because of a cross-county seniority provision applicable only to Program employees and only in those counties that do not operate their own personnel system.

17042(b)(1) establishes for the purposes of calculating seniority for a reduction in force, seniority for Program employees hired after the effective date of this regulation will be calculated as for any other employee of the Local Agency. However, Program employees hired before the effective date of this regulation will retain the seniority they have accrued as of that effective date pursuant to the calculations in subsections (b)(2)(A) through (b)(2)(E). Program employees who are hired after the effective date of the regulations will accrue seniority in accordance with the Local Agency Personnel System. This section makes clear that Program employees hired as of the effective date of this regulation will retain the seniority they have accrued as of the effective date of this regulation. This is necessary so that Program employees do not lose any seniority to which they were entitled when these regulations go into effect. This section also makes it clear that Program employees hired after the effective date of this regulation will accrue seniority as other Local Agency employees.

17042(b)(2) provides that Program employees, whether permanent or probationary, that are hired as of the effective date of the regulations will receive the seniority they have accrued as provided under subsections (b)(2)(A) through (b)(2)(E). However, after the effective date of the regulations, those Program employees will accrue seniority as any other Local Agency employee. This subsection is necessary to make it clear that Program employees hired as the effective date of this regulation will keep all the seniority that they have accrued as of the date of the regulation but after the effective date of the regulation they will accrue seniority from that date forward as any other Local Agency employee. Therefore, these Program employees will not lose any seniority they have accrued to date and they will be treated the same as all other Local Agency employees in the future.

17042(b)(2)(A) through (b)(2)(E) provides the basis on which permanent or probationary Program employees as of the effective date of these regulations have accrued seniority under the former SPB regulations. These subsections are written consistent with the former section 17508 “Seniority Score Computation” except that they are written in past tense in order to make it clear that this seniority score computation is based on the time prior to the effective date of these regulations.

17042(c) provides that a Program employee may appeal to the Department a reduction in force decision that affects his or her employment. The Program employee is required to attempt to resolve the dispute first with the Local Agency. If the Local Agency and the Program employee cannot resolve the dispute, the Program employee must notify the Department in writing of the appeal and the basis of the appeal, and the Program employee must show documentation that he or she tried to resolve the dispute with the Local Agency. The Department must receive the appeal within 30 calendar days of the date that the Program employee was notified that the Local Agency would not provide the relief the Program employee was seeking. This section is necessary to make clear the appeal procedures required by Government Code sections 19803 and 19805.

17042(d)(1)-(2) state the two reasons a reduction in force may be appealed. An appeal may be filed if the Local Agency fails to comply with a specific requirement of the

Personnel Plan concerning reductions in force that adversely impacted the appellant. An appeal may also be filed if there was a miscalculation in the appellant's seniority score and the appellant's seniority score was a factor in the layoff. This section is needed to clarify what the appellant's rights are to appeal pursuant to Government Code section 19803.

17042(e) states that the Department shall resolve the appeal by reviewing documents submitted by the parties and any other information that the Department may request. The Department may schedule a hearing, if it believes one is necessary. The Department is required to decide the appeal within 60 calendar days of receipt of all the evidence. This section is necessary to clarify the appeal procedures as required by Government Code sections 19803 and 19805.

17042(f) authorizes the Local Agency to continue with the reduction in force while the appeal is in process unless the Local Agency determines that a delay is warranted. This section is necessary to clarify the procedures that the Department will use for appeal hearings pursuant to Government Code section 19805.

Section 17043. Failure to Meet Requirements for Continuing Employment.

17043(a) authorizes a Local Agency to terminate, demote, transfer, reduce the salary or otherwise alter the employment of a Program employee without the Program employee's consent for reasons unrelated to a Program employee's job performance, if the Local Agency's Personnel System allows such actions. This section provides examples of such actions including, demoting or transferring a Program employee for failing to meet a continuing requirement for the position. Such a continuing requirement could be that a Program employee who is required to drive as a condition of employment could have his or her employment altered if they fail to retain a driver's license. This section is necessary to make clear Government Code section 19803.

17043(b) provides that if a Program employee's employment is altered due to subsection (a) that he or she may appeal the action to the Department after first attempting to resolve the issue with the Local Agency. If the Program employee and the Local Agency cannot resolve the dispute, the Program employee must submit his or her appeal in writing to the Department within 30 calendar days of receiving the final decision from the Local Agency on the dispute. The appeal must include the basis for the appeal and evidence that the Program employee attempted to resolve the dispute with the Local Agency and the dispute was not resolved consistent with the request of the Program Employee. A Program employee's appeal does not delay the effective date of the non-disciplinary action. This section is added to make it clear that a Program employee has a right to appeal a non-disciplinary decision affecting his or her employment consistent with Government Code section 19803. This section also includes procedures for the appeal as required by Government Code section 19805.

17043(c)(1)-(2) state the two reasons that a Program employee may submit an appeal for a non-disciplinary action. A Program employee may file an appeal if he or she believes the Local Agency did not comply with any aspect of the Personnel Plan or if the Program employee believes the Local Agency acted unlawfully. These subsections are necessary to clarify the rights for appeal pursuant to Government Code section 19803.

17043(d) states that on receipt of an appeal the Director shall appoint a Hearing Officer who is an Administrative Law Judge to hear the appeal in accordance to section 17045 of the regulations. The appellant has the burden of proving that the non-disciplinary action was improper. The Hearing Officer is to prepare a proposed decision. The Director shall render and issue a decision on the appeal within 90 calendar days of all evidence being submitted. This section is necessary to establish the procedures for the appeals as required by Government Code section 19805.

17043(e) states that after the appellant's dispute concerning the non-disciplinary action has been resolved, the appellant's rights to reinstatement to his or her former position shall be determined by the Local Agency consistent with the Personnel System. This section is necessary to establish the procedures pursuant to Government Code section 19805 and so the appellant understands their rights after an appeal is heard pursuant to Government Code section 19803.

Section 17044. Disciplinary Actions based on Program Employee Performance or Conduct.

This section provides the authority for the Local Agency to take disciplinary actions against a Program employee consistent with the Local Agency's Personnel System. This section further states that the Local Agency shall prepare and serve the Disciplinary Action consistent with the Personnel System including minimally that the Disciplinary Action shall include the length and type of notice given to the Program employee, the contents of the notice, any right to meet or appeal to the Local Agency prior to the action becoming effective and the inclusion of documentary evidence. This section is necessary to clarify the disciplinary actions authorized by Government Code section 19803.

Section 17045. Appeals from Program Employee's on a Disciplinary Action.

17045(a) authorizes a Program employee to appeal a Disciplinary Action to the Department. The Department must receive the appeal within 30 calendar days of the effective date of the Disciplinary Action and be submitted in writing, including the basis of the appeal and the relief sought by the appellant. The Department is responsible for ensuring that the Local Agency receives a copy of the appeal and all materials provided by the appellant. The appeal does not delay the effective date of the Disciplinary Action. This section is necessary to establish the procedures for appeals required by Government Code section 19805 pursuant to the right Program employees have to appeal actions affecting their employment pursuant to Government Code section 19803.

17045(b) requires the Director to appoint a Hearing Officer who is an Administrative Law Judge to hear the appeal and prepare a proposed decision for the Director. Provides broad authority for the Hearing Officer over all aspects of the Hearing, including but not limited to setting hearing dates, ruling on the submission of evidence, requesting additional evidence or other information from the parties. This section states that Hearings are to be public, although witnesses may be excluded, unless the Hearing Officer determines that the hearing should be closed. This section is necessary to establish the procedures and show how those procedures will be administered pursuant to Government Code section 19805.

17045(c) establishes the rights that each party to the hearing will have including the right to call and examine witnesses, to request subpoenas, to be represented by counsel or some other person of their choosing, etc. This section is necessary to establish the procedures and show how those procedures will be administered pursuant to Government Code section 19805.

17045(d) authorizes the Local Agency to call and examine an appellant even if the appellant doesn't testify on his or her own behalf. Provides that the hearing does not need to be conducted according to the technical rules of evidence. Allows any relevant evidence to be admitted if it is the sort of evidence a responsible person would expect to rely upon in the conduct of serious affairs. Allows hearsay evidence to be admitted and used for supplementing or explaining direct evidence, but that the hearsay evidence shall not support a finding unless it is the type of evidence admissible in a civil action. States that the rules of privilege shall be as in as they are now and may be in the future in civil actions. This section is necessary to establish the procedures and show how those procedures will be administered pursuant to Government Code section 19805.

17045(e) provides that the Local Agency has the burden of proof to show that the Disciplinary Action is supported by the evidence and that proper procedures were followed. This section is necessary to establish the procedures and show how those procedures will be administered pursuant to Government Code section 19805.

17045(f) requires the Department to issue a decision within 90 calendar days of submission of all evidence and information requested by the Hearing Officer and that the Department shall provide the decision to both parties. Allows the Department to uphold the Disciplinary Action in all respects, or modify the penalty assessed to a lower level as long as such a penalty is available under the Local Agency Personnel System. This section is necessary to establish the procedures and show how those procedures will be administered pursuant to Government Code section 19805.

17045(g) states that 30 calendar days after the decision is issued it shall be binding on the Local Agency and is the final administrative decision in the matter unless a petition is filed by either party for a rehearing within the 30 calendar days. Provides the procedures for which a petition must be filed, including that the petition shall be in writing, contain the grounds for which a rehearing shall be granted, and a copy shall be provided to the opposing party. The Department is required to grant or deny the request within 60 calendar days of receiving the request. If the Department grants the petition, the matter be set for rehearing or the Department may rely on the existing record and arguments provided by the parties. The Hearing Officer shall determine the scope, procedures, and the schedule for any subsequent proceedings. If the Department fails to act on the petition within 90 calendar days of its filing, the petition is deemed denied. This section is necessary to establish the procedures and show how those procedures will be administered pursuant to Government Code section 19805.

Section 17046. Processing Grievances from Program Employees.

This section authorizes grievances to be defined and processed as provided in the Local Agency's Personnel System. This section is a necessary component of fair treatment in administering a personnel system.

Section 17047. Department Audits of Local Agency Personnel Systems.

This section authorizes the Department to audit any Local Agency's Personnel System under this Chapter to ensure that those elements of the Personnel System applied to Program employees are in compliance with the Federal Requirements. The Department has full discretion for setting the audit scope, schedule, and frequency. The audit process may include an entrance conference with the Local Agency, a review of Local Agency documentation, field work as needed, an exit interview, and an opportunity for the Local Agency to comment on the draft audit report. If the Local Agency prepares a response to the audit, the Department shall include the response in the final audit report. This section authorizes either the Local Agency or the Department Representative to dispute the audit findings pursuant to section 17014 of the regulations. This section is necessary to make it clear that those Local Agencies that operate under Chapter 2 of these regulations are subject to audit. The audit and dispute procedures are similar to those afforded Local Agencies that manage their own Personnel Systems for Program Employees under Chapter 1.