
TITLE 2. ADMINISTRATION
DIVISION 2. FINANCIAL OPERATIONS
CHAPTER 1. CALIFORNIA VICTIM COMPENSATION BOARD
ARTICLE 5. CLAIMS OF PERSONS ERRONEOUSLY CONVICTED OF FELONIES
SECTIONS 640, 640.1, 642, 642.1, 644, 645

NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATIONS 640, 642, 642.1, 645

Notice Published February 5, 2025

In response to comments received from the Office of Administrative Law (OAL), the California Victim Compensation Board (CalVCB) is providing notice of modifications to previously proposed regulations in Title 2, Article 5, sections 640 through 645 of the California Code of Regulations. These proposed regulations generally govern the process for submitting, rejecting, withdrawing, and deciding a claim for compensation as an erroneously convicted person under Penal Code sections 4900 et seq. Pursuant to Government Code section 11346.8, subdivision (c), and California Code of Regulations, section 44 of Title 1, CalVCB is providing this notice of modification to proposed section 640, subdivision (e)(3), proposed section 642, subdivisions (a)(3) and (a)(4), proposed section 642.1, subdivision (d), and proposed section 645, subdivision (a).

On July 18, 2024, the Board approved commencement of the rulemaking process to amend the regulations governing claims for compensation by erroneously convicted felons located at Sections 640, 640.1, 642, 642.1, 644, and 645, as well as the updated claim form entitled "Erroneously Convicted Person (ECP) Claim Form, VCB-41-00002 (Rev. 07/2024)." Following submission of the rulemaking package to the Office of Administrative Law (OAL) on July 25, 2024, the proposed regulations and related documents were published in the California Regulatory Notice Register on August 9, 2024 (i.e., OAL Notice File #Z2024-0725-01).

Meanwhile, on August 8, 2024, CalVCB posted the documents concerning this proposed rulemaking action on its website located at <https://victims.ca.gov/board/proposed-regulations/>. That same day, CalVCB sent, via US Mail and/or email, a copy of these documents to all persons whom CalVCB believes to be interested in the proposed regulatory action, as well as all persons who previously submitted a request for notice of CalVCB's regulatory actions. The public comment period concluded 45-days later on September 23, 2024, with no comments received and no hearing requested. On November 21, 2024, after CalVCB determined that no modifications to the proposed regulations or revised claim form were warranted, the Board authorized staff to conclude the rulemaking process for sections 640, 640.1, 642, 642.1, 644, and 645, as well as the updated claim form. Accordingly, on December 10, 2024, CalVCB submitted a final rulemaking package to OAL for review.

However, after several informal discussions, OAL notified CalVCB on January 21, 2025, that one substantive modification to the proposed regulations was necessary, along with three, nonsubstantive modifications. Specifically, a substantive modification was required for section 642.1, subdivision (d), to clarify the deadline for a claimant to respond to a notice of withdrawal. In addition, a nonsubstantive modification was required for section 640, subdivision (e)(3), to confirm the type of content that may be considered by CalVCB in the Attorney General's

response, without imposing an obligation upon the Attorney General to include that content in the response. Another nonsubstantive modification was required for section 642, subdivisions (a)(3) and (a)(4), to insert the phrase “pursuant to” before a statutory citation when describing examples of deficient claims that may be rejected. A final nonsubstantive modification was required for section 645, subdivision (a), to insert a cross-reference to section 619.3 in Article 2.5, Title 2, of the California Code of Regulations, as explicit confirmation of the required contents and permissible consideration for a hearing officer’s proposed decision to approve or deny a claim. Accordingly, CalVCB withdrew the final rulemaking package on January 22, 2025, in order to resume the rulemaking process to comply with OAL’s modification requests.

The purpose of this notice is to inform the public of the proposed modifications and open a 15-day public comment period, running from February 5, 2025, through February 20, 2025. Consistent with the Administrative Procedure Act, CalVCB will only address comments received during this comment period concerning modifications to the text of the proposed regulations.

Details on how to submit comments are provided below. A copy of the full proposed regulations text, including these modifications, is attached to this Notice.

In the Final Statement of Reasons, CalVCB will respond to all comments received during the comment periods for the original proposed regulations and modifications.

SUMMARY OF PROPOSED MODIFICATIONS

CalVCB proposes to modify text in sections 640, 642, 642.1, and 645, as shown below. Additions and deletions from the original rulemaking proposal are shown in single underline and single strikethrough, respectively. Modifications to add text appear in double underline, and modifications to delete text appear in double strikethrough.

2 CCR 640, subdivision (e)(3)

(3) For claims that fall exclusively within section 851.865 or 1485.55, the Board may consider ~~Attorney General’s response may address~~ evidence and argument regarding injury only. For all other claims, the Board may consider ~~Attorney General’s response may address~~ evidence and argument regarding innocence, guilt, and injury.

2 CCR 642, subdivisions (a)(3) and (a)(4)

(3) A claim solely based upon a ~~vacated~~ conviction that was vacated due to a change in the legal definition of the crime, for example pursuant to Penal Code section ~~1170.951172.6~~, is not in compliance with Penal Code sections 4900 and 4901. To be compliant, the claim must allege that the claimant is innocent of the crime with which they were erroneously convicted because the charged crime was either not committed at all or not committed by the claimant under the law in effect at the time the charged crime allegedly occurred.

(4) A claim solely based upon a conviction that was vacated due to satisfactory completion of the sentence, for example pursuant to Penal Code section 1203.4.

2 CCR 642.1, subdivision (d)

(d) Prior to deeming a claim withdrawn, the hearing officer shall send notice to the parties at their last known address of the proposed withdrawal and allow thirty (30) days

for a response. If a response is not received by the hearing officer within thirty (30) days from the date on the notice, the claim will be deemed to be withdrawn.

2 CCR 645, subdivision (a)

(a) The hearing officer shall take the matter under submission once the administrative record is closed and prepare a proposed decision in accordance with California Code of Regulations section 619.3.

PURPOSE AND NECESSITY FOR MODIFICATIONS

2 CCR 640, subdivision (e)(3)

The modification to section 640, subdivision (e)(3), is intended to clarify what relevant issues may be considered by the Board when considering the Attorney General's response to a claim, without imposing any obligation upon the Attorney General to provide specific evidence or argument about those issues. This nonsubstantive modification, which is in response to feedback from OAL, is needed to clarify the subject-matter that may be considered by the Board for certain types of claims, without intruding upon the Attorney General's discretion to decide what evidence and argument he chooses to provide in the response for each claim.

2 CCR 642, subdivisions (a)(3) and (a)(4)

The modification to subdivisions (a)(3) and (a)(4) of section 642, which inserts the phrase "pursuant to" before statutory citations that serve as examples of deficient claims, is intended as a stylistic, grammatical adjustment to enhance flow. This nonsubstantive modification, which is in response to feedback from OAL, is needed to promote the parties' ease of understanding of the rejection process, especially for claimants representing themselves.

2 CCR 642.1, subdivision (d)

The modification to section 642.1, subdivision (d), is intended to clarify the deadline for a claimant to respond to a notice of withdrawal. As modified, this subdivision explains that the claimant's response must be received by the hearing officer within 30 days from the date of the notice and it confirms that the claim will be deemed withdrawn if no response is timely received before that deadline expires. This substantive modification, which is in response to feedback from OAL, is needed to provide clarification about the process for withdrawing a claim.

2 CCR 645, subdivision (a)

The modification to section 645, subdivision (a), is intended to confirm the required contents and permissible considerations for a hearing officer's proposed decision by inserting a cross-reference to section 619.3 in Article 2.5, Title 2, of the California Code of Regulations. Section 619.3, which is entitled "Proposed Decision by the Hearing Officer," broadly applies to several different types of hearings conducted by CalVCB, including proceedings under Penal Code section 4900. It cross-references, in turn, section 619.1 in Article 2.5, Title 2, of the California Code of Regulations, entitled "Decision," which likewise applies to several different types of hearings conducted by CalVCB and enumerates the required contents and permissible considerations that apply to decisions by the Board or proposed decisions by a hearing officer. This nonsubstantive modification, which is in response to feedback from OAL, is needed to

provide clear guidance to the parties, as well as the hearing officer, of the requirements for a properly rendered proposed decision.

WRITTEN COMMENT PERIOD

Any interested individual, or their authorized representative, may submit written comments regarding the modifications set forth above to the proposed regulations in Sections 640, 642, 642.1, and 645. The written comment period closes on February 20, 2025. CalVCB will consider only comments received at its office by that date. Comments may be submitted by regular mail to:

California Victim Compensation Board
Attn: Neil Ennes, Legislative Coordinator
P.O. Box 48
Sacramento, CA 95812-0048

Comments may also be submitted via email to regulations@victims.ca.gov or by facsimile at (916) 491-6441 (FAX).

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of all documents related to this rulemaking can be accessed via CalVCB's website at <https://victims.ca.gov/board/proposed-regulations/>.