

Department of Resources Recycling and Recovery Reasons for Amending Conflict of Interest Code

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Page 1 of 14

Pursuant to Government Code section 87306, the Department of Resources Recycling and Recovery (Department) is amending its conflict of interest code (Cal. Code Regs., title 14, § 18419) to bring it current with the existing organizational structure and the positions comprising the agency's workforce. These amendments reflect the Fair Political Practices Commission's interpretation of "making" or "participating in making" governmental decisions as including advising or making recommendations to the decision maker by conducting research or preparing reports, analyses, or opinions. (Cal. Code Regs., title 2, §§ 18702-18702.4.) The specific amendments are presented below, along with an explanation of each proposed change.

I. The Department's Code Will Not Be Printed In The California Code Of Regulations

Pursuant to Government Code section 11344, the Department has determined that the printing of the regulations constituting its conflict of interest code is impractical and of limited and particular application. Accordingly, these regulations will not be published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
(CalRecycle)
801 K Street, MS 19-01
Sacramento, CA 95814

FAIR POLITICAL PRACTICES COMMISSION
428 J STREET, SUITE 800
SACRAMENTO, CA 95814

ARCHIVES
SECRETARY OF STATE
1020 "O" STREET
SACRAMENTO, CA 95814

II. The Elements Of The Department's Conflict Of Interest Code

Under the Political Reform Act (Gov. Code § 81000 et seq.), all public agencies are required to adopt a conflict of interest code. (Gov. Code § 87300.) A code designates positions required to file Statements of Economic Interests (Form 700), and assigns

disclosure categories specifying the types of interests to be reported. The Form 700 is a public document intended to alert public officials and members of the public to the types of financial interests that may create conflicts of interests.

Each code must contain three components, *i.e.*, the terms of the code, the designated positions and the disclosure categories. Each of the three components is described on the web site of the Fair Political Practices Commission.

(<http://www.fppc.ca.gov/index.php?id=228>.)

A. Terms Of The Department's Code

The Department's code (Cal. Code Regs., title 14, § 18419) incorporates by reference FPPC Regulation 18730, which includes all the information required to be in the main body of the code. (Cal. Code Regs., title 2, § 18730.)

B. The Department's Designated Positions (Appendix A)

The list of positions the Department is designating as making or participating in making decisions are listed in Appendix A of the code. (Cal. Code Regs., title 14, § 18419, App. A.) The Department reviewed duty statements and/or conferred with appropriate managers to determine which positions should be included. Appendix A also assigns a disclosure category to each designated position.

Rather than listing the designated positions according to a detailed, multi-layered organizational structure, the Department is listing designated positions by classifications and series, irrespective of the work unit to which the positions are assigned. This reduces the need to make sweeping changes to the conflict of interest code based only on variations in working titles, branch or unit name changes, and reorganizations. Unless stated otherwise in the code, all classifications in a series are designated.

C. The Department's Disclosure Categories (Appendix B)

The types of investments, interests in real property, sources of income and business positions that designated positions are required to disclose are described in the disclosure categories presented in Appendix B of the Department's code. (Cal. Code Regs., title 14, § 18419, App. B.)

III. Amendments To Appendix A: Designated Positions And Assigned Disclosure Categories

The list of positions the Department is designating as making or participating in making decisions and their applicable disclosure categories are listed in Appendix A of the code. (Cal. Code Regs., title 14, § 18419, App. A.) The specific amendments to Appendix A are presented below, along with an explanation of each proposed change.

A. Executive

The position title "Assistant Director" is amended to read "Deputy Director." That is the position title currently being used.

The position title "All Exempt and Career Executive Assignments" is added. Employees in these positions make or participate in making governmental decisions at the highest levels of the organization. Various working titles may be used for the positions. This position title is being added to designate all of these positions in the directorate and Executive offices regardless of the working titles that may be used.

"Exempt" positions are exempt from civil service under the California Constitution. (Cal. Const., art. 7, § 4.) Currently, the following Departmental positions are exempt from civil service: Director, Chief Deputy Director, Chief Counsel, and the Deputy Directors of the Public Affairs Office, the Legislative and External Affairs Office, the Policy Development and Analysis Office, and the Division of Recycling.¹

"Career Executive Assignments," commonly referred to as CEA's, are high administrative and policy influencing positions with primary responsibility for managing or rendering advice on a major function in the top managerial levels of state service. (Gov. Code § 18547.) Currently, the following Departmental positions are CEA's: Branch Chief, Information Technology Services Branch of the Administration, Finance, and Information Technology Services Division; Deputy Directors of the Office of Education and the Environment; the Administration, Finance, and Information Technology Services Division; the Materials Management and Local Assistance Division; and the Waste Permitting, Compliance and Mitigation Division.

These amendments are designating exempt and CEA positions regardless of working title in each major organizational unit throughout the Department, including the directorate; the Executive offices; the Administration, Finance, and Information Technology Services Division; the Materials Management and Local Assistance Division; the Waste Permitting, Compliance and Mitigation Division; and the Division of Recycling.

All exempt and CEA positions shall be subject to the broadest disclosure under the code and are assigned to disclosure categories 1 and 2 based on potential conflicts of interest associated with their duties.

¹ Pursuant to Public Resource Code section 14530.2: "The Division of Recycling shall be administered by an assistant director who is appointed by the Governor. The appointment shall be exempt from civil service." Accordingly, the official statutory title for the exempt position at the head of the Division of Recycling is assistant director. However, the Department's current working title for this exempt position is "Deputy Director."

1. Legislative And External Affairs Office

The position title "Staff Services Analyst" is deleted. This position title is no longer being used by the office.

The position title "Research Program Specialist" is added. Employees in these positions make or participate in making governmental decisions. The positions are assigned to disclosure category 2 based on potential conflicts of interest associated with their duties.

2. Public Affairs Office

The disclosure category for the position titles listed below are changed from disclosure category 6 to disclosure category 7. As described below, amendments to the disclosure categories presented in Appendix B are renumbering former disclosure category 6, which will now be numbered disclosure category 7. The positions are subject to the same disclosure as before these amendments, because only the category's number is being changed.

Information Officer I (Specialist and Supervisor)
Information Officer II
Staff Services Analyst
Associate Governmental Program Analyst
Graphic Designer
Recycling Specialist

3. Policy Development And Analysis Office

The organizational unit "Policy Development And Analysis Office" is added. This is a new office that was added after the Department's code was adopted.

The position title "Deputy Director" is designated. This is currently an exempt position. An employee in this position makes or participates in making governmental decisions. The position is assigned to disclosure categories 1 and 2 based on potential conflicts of interest associated with its duties.

The text "All employees in the following Policy Development Office classifications or series:" is listed.

The following position titles are designated. Employees in these positions make or participate in making governmental decisions. The positions are assigned to disclosure category 2 based on potential conflicts of interest associated with their duties.

Integrated Waste Management Specialist
Research Analyst

4. Office Of Audits

The organizational unit "Office Of Audits" is added. This is a new office that was added after the Department's code was adopted.²

The text "All employees in the following Office Of Audits classifications or series:" is listed.

The following position titles are designated. Employees in these positions make or participate in making governmental decisions. The positions are assigned to disclosure category 2 based on potential conflicts of interest associated with their duties.

Management Auditor
Associate Governmental Program Analyst

5. Office Of Education And The Environment

The organizational unit "Office Of Education And The Environment" is added. This is a new office that was added after the Department's code was adopted.

The position title "Deputy Director" is designated. This is currently a CEA. An employee in this position makes or participates in making governmental decisions. The position is assigned to disclosure categories 1 and 2 based on potential conflicts of interest associated with its duties.

The text "All employees in the following Office of Education and the Environment classifications or series:" is listed.

The following position titles are designated. Employees in these positions make or participate in making governmental decisions. The positions are assigned to disclosure category 7 based on potential conflicts of interest associated with their duties.

Integrated Waste Management Specialist
Associate Governmental Program Analyst

B. Administration, Finance & Information Technology Services Division

The division's name is changed from "Administration And Finance Division" to "Administration, Finance And Information Technology Services Division." That is the current name of the division.

² At this time, the chief of the Audits Office is appointed to a civil service classification in the Management Auditor series and there is no Deputy Director position for the office.

The position title "All Exempt and Career Executive Assignments" is added. Employees in these positions make or participate in making governmental decisions at the highest levels of the organization. This position title is being added to designate all exempt and CEA positions in this division regardless of the various working titles that may be used. These positions are assigned to disclosure categories 1 and 2 based on potential conflicts of interest associated with their duties. (For additional information on exempt and CEA positions, please see III.A. Executive, above at pp. 3-4.)

The text "All employees in the following Administration and Finance Division classifications or series:" is amended to "All employees in the following Administration, Finance and Information Technology Services Division classifications or series:" to reflect the current name of the division.

The disclosure category for the position titles listed below are changed from disclosure category 6 to disclosure category 7. As described below, amendments to the disclosure categories presented in Appendix B are renumbering former disclosure category 6, which will now be numbered disclosure category 7. The positions are subject to the same disclosure as before these amendments, because only the category's number is being changed.

- Research Analyst
- Staff Services Manager
- Staff Services Analyst
- Integrated Waste Management Specialist
- Associate Governmental Program Analyst
- Associate Budget Analyst
- Management Auditor
- Associate Business Management Analyst
- Accounting Officer
- Accounting Administrator
- Business Services Officer

The following position titles are being added. Employees in these positions make or participate in making governmental decisions. The positions are assigned to disclosure category 7 based on potential conflicts of interest associated with their duties.

Environmental Scientist
Labor Relations Specialist
Accounting Analyst
Training Officer
Industrial Hygienist
Recycling Specialist

The position title "Chief of Information Technology" is deleted. This is a working title. The position is a CEA that is designated in this division by the position title "All Exempt and Career Executive Assignments."

The disclosure category for the position titles listed below are changed from disclosure category 7 to disclosure category 8. As described below, amendments to the disclosure categories presented in Appendix B are renumbering former disclosure category 7, which will now be numbered disclosure category 8. The positions are subject to the same disclosure as before these amendments, because only the category's number is being changed.

Information Systems Analyst
Data Processing Manager
Programmer Analyst
Systems Software Specialist

The following position titles are being added. Employees in these positions make or participate in making governmental decisions. The positions are assigned to disclosure category 8 based on potential conflicts of interest associated with their duties.

Staff Services Manager (Information Technology Services Branch)
Recycling Specialist (Information Technology Services Branch)

C. Materials Management And Local Assistance Division

The former Waste Management Division was split into two divisions, the current Materials Management and Local Assistance Division and the current Waste Permitting, Compliance and Mitigation Division. Accordingly, these amendments effect changes to reflect the new organizational units.

The name of the former "Waste Management Division" is deleted. The organizational unit "Materials Management And Local Assistance Division" is added.

The position title "All Exempt and Career Executive Assignments" is added. Employees in these positions make or participate in making governmental decisions at the highest

levels of the organization. This position title is being added to designate all exempt and CEA positions in this division regardless of the various working titles that may be used. These positions are assigned to disclosure categories 1 and 3 based on potential conflicts of interest associated with their duties. (For additional information on exempt and CEA positions, please see III.A. Executive, above at pp. 3-4.)

The position title "Assistant Director" is deleted. This position title is no longer being used by the division.

The text "All employees in the following Waste Management Division classifications or series:" is amended to "All employees in the following Materials Management and Local Assistance Division classifications or series:" to reflect the current name of the division.

The following position titles are added. Employees in these positions make or participate in making governmental decisions. The positions are assigned to disclosure categories 3 and 4 based on potential conflicts of interest associated with their duties.

Recycling Specialist
Staff Services Manager
General Auditor III

The following position titles are deleted. These position titles are not being used by the division.

Research Manager
Research Analyst
Industrial Hygienist
Architect

D. Waste Permitting, Compliance And Mitigation Division

The former Waste Management Division was split into the current Materials Management and Local Assistance Division and the current Waste Permitting, Compliance and Mitigation Division. Accordingly, these amendments effect changes to reflect the new organizational units.

The organizational unit "Waste Permitting, Compliance And Mitigation Division" is added.

The position title "All Exempt and Career Executive Assignments" is added. Employees in these positions make or participate in making governmental decisions at the highest levels of the organization. This position title is being added to designate all exempt and CEA positions in this division regardless of the various working titles that may be used. These positions are assigned to disclosure categories 1 and 5 based on potential conflicts of interest associated with their duties. (For additional information on exempt and CEA positions, please see III.A. Executive, above at pp. 3-4.)

The position title "Deputy Director" is designated. This is currently a CEA. An employee in this position makes or participates in making governmental decisions. The position is assigned to disclosure categories 1 and 5 based on potential conflicts of interest associated with its duties.

The text "All employees in the following Waste Permitting, Compliance and Mitigation Division classifications or series:" is listed.

The following position titles are designated. Employees in these positions make or participate in making governmental decisions. The positions are assigned to disclosure categories 4 and 5 based on potential conflicts of interest associated with their duties.

- Integrated Waste Management Specialist
- Recycling Specialist
- Staff Services Manager
- Staff Services Analyst
- Associate Governmental Program Analyst
- Waste Management Engineer
- Engineering Geologist
- Research Program Specialist
- Research Analyst

E. Division Of Recycling

The position title "All Exempt and Career Executive Assignments" is added. Employees in these positions make or participate in making governmental decisions at the highest levels of the organization. This position title is being added to designate all exempt and CEA positions in this division regardless of the various working titles that may be used. These positions are assigned to disclosure categories 1 and 6 based on potential conflicts of interest associated with their duties. (For additional information on exempt and CEA positions, please see III.A. Executive, above at pp. 3-4.)

The position title "Deputy Director" is changed to "Assistant Director" Pursuant to Public Resource Code section 14530.2: "The Division of Recycling shall be administered by an assistant director who is appointed by the Governor. The appointment shall be exempt from civil service." Accordingly, the official statutory title for the exempt position at the head of the Division of Recycling is assistant director. The Department's current working title for this exempt position is "Deputy Director." In keeping with the Department's practice of listing official titles and classification names in the conflict of interest code, instead of working titles, the position title is being changed to the statutory title.

The position title "Deputy Chief" is deleted. The position title is not being used by the division.

The disclosure categories for the position titles "Assistant Director" and "All Managers and Supervisors" are changed from disclosure categories 1 and 5 to disclosure categories 1 and 6. As described below, amendments to the disclosure categories presented in Appendix B are renumbering former disclosure category 5, which will now be numbered disclosure category 6. The positions are subject to the same disclosure as before these amendments, because only the category's number is being changed.

The following position titles are deleted. These position titles are no longer being used by the division.

Environmental Scientist (non-supervisory)
Management Services Technician
Research Analyst

The disclosure categories for the position titles listed below are changed from disclosure category 5 to disclosure category 6. As described below, amendments to the disclosure categories presented in Appendix B are renumbering former disclosure category 5, which will now be numbered disclosure category 6. The positions are subject to the same disclosure as before these amendments, because only the category's number is being changed.

Staff Services Analyst
Associate Governmental Program Analyst
Recycling Specialist (non-supervisory)
Management Auditor
Research Program Specialist

F. Department-wide

The consultant designation is broadened to include new positions. This is consistent with the regulations of the Fair Political Practices Commission. (Cal. Code Regs., title 2, §§ 18219 and 18734.) In the position title, "Consultant" is made plural by adding the letter "s." A forward slash and "New Positions" are also added to the position title.

In the first paragraph following the asterisk, the phrase "and new positions" is added after "Consultants". In the second paragraph following the asterisk, the phrase "or new positions" is added after "consultant" in the first sentence, and the phrase "or new position's" is added after "consultant's" in the second sentence.

IV. Amendments To Appendix B: Disclosure Categories

The types of investments, interests in real property, sources of income and business positions that designated positions are required to disclose are described in the disclosure categories presented in Appendix B of the Department's code. (Cal. Code Regs., title 14, § 18419, App. B.) The specific amendments to Appendix B are presented below, along with an explanation of each proposed change.

A. Disclosure Category 2 Is Amended

The phrase "including gifts, loans, and travel payments" is amended by adding the clarifying text "the receipt of," so the phrase reads "including the receipt of gifts, loans, and travel payments." This clarifying change is being made to each disclosure category in which the phrase is used.

B. Disclosure Category 3 Is Amended

The phrase "including gifts, loans, and travel payments" is amended by adding the clarifying text "the receipt of," so the phrase reads "including the receipt of gifts, loans, and travel payments." This clarifying change is being made to each disclosure category in which the phrase is used.

After the Department's current code was adopted, the former Waste Management Division was split into the current Materials Management and Local Assistance Division and the Waste Permitting, Compliance and Mitigation Division. Accordingly, these amendments effect changes to reflect the new organizational units.

The name "Division of Waste Management"³ is deleted and the name of the new organizational unit "Materials Management and Local Assistance Division" is added.

Amended disclosure category 3 requires the disclosure of investments, business positions in, and income from sources of the type that are regulated by, do business with, receive payments from, or owe money to the Materials Management and Local Assistance Division. The disclosure of real property is not required. It is appropriate for positions having broad policy or decision making duties for the Department and for positions in the Materials Management and Local Assistance Division with any of a wide range of duties.

³ Please note that the current code erroneously lists the "Division of Waste Management" in disclosure category 3. At the time, the correct name of the division was the "Waste Management Division."

C. Disclosure Category 5 Is Added

After the Department's current code was adopted, the former Waste Management Division was split into the current Materials Management and Local Assistance Division and the Waste Permitting, Compliance and Mitigation Division. This disclosure category is being added for the new Waste Permitting, Compliance and Mitigation Division.

The newly added disclosure category 5 requires the disclosure of investments, business positions in, and income from sources of the type that are regulated by, do business with, receive payments from, or owe money to the Waste Permitting, Compliance and Mitigation Division. The disclosure of real property is not required. It is appropriate for positions having broad policy or decision making duties for the Department and for positions in the Waste Permitting, Compliance and Mitigation Division with any of a wide range of duties.

D. Disclosure Categories 5, 6, and 7 Are Renumbered As 6, 7, and 8

The addition of disclosure category 5 for the new Waste Permitting, Compliance and Mitigation Division requires that the subsequent categories be renumbered.

Accordingly, category 5 of the current code is renumbered as disclosure category 6, category 6 of the current code is renumbered as disclosure category 7, and category 7 of the current code is renumbered as disclosure category 8. There are no changes in the renumbered categories regarding the financial interests that are to be disclosed.

E. Disclosure Category 6 Is Amended

The phrase "investments and business positions in, and income" is amended by adding the term "business entities," so the phrase reads "investments and business positions in business entities, and income." The added term is used in the Department's other disclosure categories in this pattern, but was inadvertently omitted from this one. This amendment conforms this disclosure category to others using this pattern.

The phrase "including gifts, loans, and travel payments" is amended by adding the clarifying text "the receipt of," so the phrase reads "including the receipt of gifts, loans, and travel payments." This clarifying change is being made to each disclosure category in which the phrase is used.

F. Disclosure Category 7 Is Amended

The phrase "including gifts, loans, and travel payments" is amended by adding the clarifying text "the receipt of," so the phrase reads "including the receipt of gifts, loans, and travel payments." This clarifying change is being made to each disclosure category in which the phrase is used.

G. Disclosure Category 8 Is Amended

The phrase "including gifts, loans, and travel payments" is amended by adding the clarifying text "the receipt of," so the phrase reads "including the receipt of gifts, loans, and travel payments." This clarifying change is being made to each disclosure category in which the phrase is used.

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