

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

§ 18750. State and Multi-County Agencies: Adopting or Amending Conflict of Interest Code.

(a) Adoptions and Substantive Code Amendments. Any state agency or any local agency with jurisdiction in more than one county, other than judicial branch agencies, adopting or substantively amending a conflict of interest code must:

(1) Drafting Requirements. Prepare a draft code or code amendment with all required provisions as specified in Section 87302. An agency may fulfill these requirements by preparing a draft code or code amendment that meets all of the following criteria:

(A) References the Act and incorporates by reference the terms of a standard conflict of interest code provided in Regulation 18730.

(B) Identifies the location for filing statements of economic interests and states that the statements are available for public inspection and reproduction.

(C) Lists each designated position and its assigned disclosure category. The agency must designate each position that makes or participates in making a governmental decision as defined in Regulation 18704(a) and (b).

(D) Lists each disclosure category identifying the types of interests disclosable for each designated position assigned to the category. The disclosure category assigned to any designated position should include only those interests that the designated position may foreseeably affect in making or participating in making decisions within the scope of the position's assigned duties.

(2) Preliminary Review. Any agency proposing a code or code amendment should, but is not required to, seek the preliminary review of the draft by Commission staff prior to preparing notice of the proposed code or code amendment and establishing a 45-day public comment

period. During preliminary review, Commission staff can assist the agency in identifying designated positions, tailoring disclosure categories, and answering questions regarding the agency's notice. Preliminary review may expedite the Commission's final approval and allows the Commission to notice the Commission's consideration of the code or code amendment simultaneously with the agency's notice. When submitting a draft code or code amendment for preliminary review, the agency should include job descriptions or duty statements for all positions newly designated and for any position affected by a change in disclosure categories.

(3) Public Notice and Comment Period. Prepare a notice of the proposed code or code amendment and establish a 45-day public comment period.

(A) The notice of the proposed code or code amendment must:

(i) Be made publically available prior to the comment period such as by posting the notice on the agency's website.

(ii) Describe the proposed code or amendment in general terms and, if amending an existing code, include a summary of effects on the provisions of the existing code, if any.

(iii) State that copies of the proposed code or amendment are available to interested persons and indicate where the copies may be obtained.

(iv) Specify the location where written comments concerning the proposed code or amendment may be submitted and the date by which written comments must be received to be considered by the agency before it adopts or amends the code.

(v) State the time and place of any public hearing that is scheduled on the proposed code or amendment, or if a public hearing is not scheduled, include a statement that any interested person may request, no later than 15 days prior to the close of the written comment period, a public hearing.

(vi) State the name and telephone number of an agency officer to whom inquiries concerning the proposed code or amendment may be directed.

(B) For any state agency subject to the Administrative Procedure Act, the notice must also comply with the Administrative Procedure Act as required by Section 87311. In addition to the requirements above, the notice must:

(i) State that the agency has prepared a written explanation of the reasons for the any new or amended designated positions or disclosure categories.

(ii) Reference Section 87300 as authority for the adoption of the code or Section 87306 as authority for the amendment of the code.

(iii) Include a statement that the adoption of the code or code amendment will not impose a cost or savings on any state agency, or school district that is required to be reimbursed under part 7 (commencing with Section 17500) of Division 4 of the Government Code; will not result in any nondiscretionary cost or savings to local agencies; will not result in any cost or savings in federal funding to the state; will not impose a mandate on local agencies or school districts; and will not have any potential cost impact on private persons of businesses including small businesses.

(iv) Include a statement that the agency must determine that no alternatives considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

(v) Be filed with the Office of Administrative Law in sufficient time for publication in the California Notice Register prior to the 45-day comment period.

(4) Intra-agency Notice. The agency must provide intra-agency notice to each employee affected by the proposed code or code amendment no later than the commencement of the 45-day comment period by providing a copy or electronic copy of the notice to the each affected employee or posting the notice on the agency's intranet or an employee bulletin board.

(5) Public Hearing. The agency must conduct a public hearing, if requested by any interested person at least 15 days prior to the close of the 45-day public comment period. To the extent practical, the agency must mail notice of the time, place, and date of the public hearing to each person who has filed a request for notice with the agency.

(6) Permissible Changes to Draft. Any changes to the draft code or code amendment that was made available to the public for comment can be adopted or amended without further notice if:

(A) The change is non-substantial or solely grammatical in nature.

(B) The agency is not a state agency subject to the Administrative Procedure Act and the change is substantially similar to the originally proposed code or amendment that the public and employees affected had adequate notice that the change was within the scope of the original proposal.

(C) The agency is a state agency subject to the Administrative Procedure Act and the change is sufficiently related to the originally proposed code or amendment that the public and employees affected had adequate notice that the change was within the scope of the original proposal and the full text of the changed code or amendment has been available to the public for at least 15 days prior to the date the agency adopts the code or amendment.

(7) Agency Approval. An agency may approve the code or code amendment by an action of the agency's governing board or body, president, chair, chief executive officer, or chief legal

counsel. Upon agency approval after the notice and public comment period, the proposed code or amendment must be submitted to the Commission for approval under subdivision (c).

(b) Non-Substantive Code Amendments. Subdivision (a) is not applicable to non-substantive code amendments.

(1) Non-substantive amendments are limited to the following:

(A) The reclassification or renaming of previously designated positions.

(B) The deletion of abolished positions.

(C) The modification of a code provision that does not alter disclosure or disqualification for any designated position.

(2) Upon agency approval, a non-substantive amendment must be submitted to the Commission for approval pursuant to subdivision (c).

(c) Commission Approval. A proposed code or code amendment must be submitted to the Commission for approval in ~~strikeout~~/underline format.

(1) The submission for a proposed code or code amendment must include:

(A) A declaration of the agency's president, chair, chief executive officer, or chief legal counsel stating that the code specifically enumerates each of the positions within the agency that make or participate in making governmental decisions, which may foreseeably have a material financial effect on any financial interest, and the agency has satisfied the requirements of this regulation.

(B) A copy of the notice of proposed code or code amendment if required under subdivision (a).

(C) A summary of any changes to the code from that originally made available to the public for any adoption or substantive code amendment, or a summary of any changes made to the last adopted code for any non-substantive code amendment.

(2) If requested, an agency must provide additional documents necessary to approve the code such as:

(A) A summary of any hearing held by the agency and written explanation of any areas of controversy and how they were resolved.

(B) Copies of all written comments made to the agency regarding the proposed code or code amendment.

(C) A written explanation of the reasons for the designations and the disclosure responsibilities of officers, employees, members, or consultants of the agency.

(D) The most current organizational chart of the agency.

(E) Job descriptions or duty statements for all designated employees.

(F) A copy of the statutory authority under which the agency was created.

(G) A copy of the last annual or similar report prepared by the agency.

(H) Copies of recent minutes of agency meetings.

(I) A description of the duties and the terms of any consultant working for the agency who is not a designated employee.

(3) The authority to review and approve the proposed code or code amendment as required by Section 87303 is delegated to the Commission's Executive Director, or his or her designee, and must be conducted in accordance with Section 87311. Any agency that objects to recommendations for revisions may request a full hearing by the Commission at which the

Commission will consider all relevant matter presented to it prior to and during the hearing and will review the code as required by Section 87303.

(d) Effective Date. For state agencies subject to the Administrative Procedure Act, codes or code amendments, as approved by the Commission, must be transmitted by the agencies to the Office of Administrative Law within 30 days of Commission approval and will become effective on the thirtieth day following the date of filing with the Secretary of State. For agencies not subject to the Administrative Procedure Act, codes or code amendments, as approved by the Commission, will become effective on the thirtieth day following the date of approval.

(e) Public Access. Each agency must maintain a copy of its code, which may be maintained on the agency's website, and must make the code available for public inspection and reproduction during regular business hours commencing the effective date of the code. An agency may not impose any conditions upon persons desiring to inspect the conflict of interest code of the agency and may not require the requestor's identification. Copies must be provided at a charge not exceeding ten cents per page.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87300, 87303 and 87306, Government Code.

HISTORY

1. New section filed 3-30-76; effective thirtieth day thereafter (Register 76, No. 14).
2. Amendment of subsections (l), (m), (n) and (q) filed 7-28-76; effective thirtieth day thereafter (Register 76, No. 31).
3. Amendment of subsections (e), (g), (i), (j)(1) and (k) filed 11-2-78; effective thirtieth day thereafter (Register 78, No. 44).

4. Amendment of subsections (d) and (l) filed 4-28-82; effective thirtieth day thereafter (Register 82, No. 18).
5. Amendment filed 1-11-83; effective thirtieth day thereafter (Register 83, No. 3).
6. Amendment filed 6-22-83; effective thirtieth day thereafter (Register 83, No. 26).
7. Amendment filed 5-18-87; operative 5-18-87 (Register 87, No. 21).
8. Amendment of section heading, subsections (c)(3)(J) and (k) and new subsection (c)(3)(K) filed 11-28-88; operative 12-28-88 (Register 88, No. 52).
9. Amendment of subsections (b), (c), (k)(2), (m) and Note filed 4-21-92; operative 5-21-92 (Register 92, No. 19).
10. Amendment of subsections (a), (b), (c)(3)(H), (c)(3)(J), (c)(6), (d), (e)(1)(A), (f)(2), (g)(2) and (k) filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).
11. Amendment of section heading and repealer and new section filed 5-19-2016; operative 6-18-2016 pursuant to title 2, CCR section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 21).