State of California—Health and Human Services Agency
California Department of Public Health

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NOTICE OF PROPOSED RULEMAKING
Title 22, California Code of Regulations
DPH-16-012 Fair Political Practices Commission: Form 700 Update
Notice Published: October 21, 2016

NOTICE IS HEREBY GIVEN that the California Department of Public Health (Department) announces a public comment period. This notice of proposed rulemaking commences a rulemaking to amend the Department's Conflict of Interest Code (COIC) after considering all comments, objections, and recommendations regarding the proposal.

PUBLIC PROCEEDINGS

The Department is conducting a 45-day written public comment period during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in the Informative Digest/Policy Statement overview section of this notice.

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period.

If a hearing is held, the Department will provide assistive services to persons with disabilities, such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audio recording, or computer CD. To request such services or copies in an alternate format, please call or write the contact person listed in this notice. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

WRITTEN COMMENT PERIOD

Written comments pertaining to this proposal, regardless of the method of transmittal, must be received by the Office of Regulations by **5:00 p.m. on December 5, 2016**, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD.

Written comments may be submitted as follows:

1. By email to: Tim.Ford@cdph.ca.gov. It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "DPH-16-012" in the subject line to facilitate timely identification and review of the comment;

2. By fax transmission: (916) 440-5104;

3. By United States Postal Service to: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814;

4. Hand-delivered to: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814.

All submitted comments should include the regulation package identifier "**DPH-16-012**", author's name and mailing address.

AUTHORITY AND REFERENCE

The Department is proposing to amend the proposed rulemaking under the authority provided in sections 81000 et seq. of the Government Code.

The Department is proposing to implement, interpret, and make specific sections 87300 through 87302, and 87306 of the Government Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Political Reform Act (Gov. Code, § 81000 et seq.) requires each government agency to adopt a COIC, and agency personnel covered by the code to periodically file a financial disclosure statement known as a Statement of Economic Interests (Form 700). (See Gov. Code, §§ 87300 and 87302.)

Among other things, an agency's COIC must enumerate employee positions with the agency that involve the making of, or participation in the making of, decisions that may foreseeably have a material financial effect on any economic interest of the employee and, for each enumerated position, the specific types of investments, business positions, interests in real property, and sources of income and gifts that are required to be disclosed on the statement of economic interests. (Gov. Code, § 87302.)

The proposed amendments and the reasons therefore, are as follows.

NEWLY DESIGNATED JOB CLASSIFICATIONS TO ADD/REMOVE

1. Add Information Technology (IT) Classifications relating to software and programmer activities.

After adoption of the Department's COIC, which was effective August 20, 2014, feedback was received feedback from staff that the designations related to information technology were deficient in the software and programmer areas (the current code

focuses on hardware job classifications). The proposed amendment would add the IT classifications identified, and would assign to these newly-designated classifications the existing disclosure category 8, which relates specifically to information technology.

The proposed additional IT job classifications are listed below, along with the appropriate state Cal-HR identification number:

1587 Systems Software Specialist I (Technical)
1558 Systems Software Specialist II (Supervisory)
1373 Systems Software Specialist II (Technical)
1559 Systems Software Specialist III (Supervisory)
1367 Systems Software Specialist III (Technical)
1479 Assistant Information Systems Analyst
1382 Programmer I

2. Add Public Health Nutrition Consultant II/III (Specialist) and Public Health Nutrition Consultant III (Supervisory).

The existing Appendix A lists only “Public Health Nutrition Consultant II/III” and does not specify “Supervisor” or “Specialist” for the Public Health Nutrition Consultant III. The Department proposes to amend the code to list both the supervisor and specialist classifications.

3. Add job classifications in the Health Program series.

Feedback from Department staff recommended adding two (2) health program-related classifications, but only to the extent that the employee is in a position that involves contract, procurement, or grant activity. The existing Appendix A already contains a number of such duty-driven listings, and the Department agrees that adding the identified classifications is appropriate. Thus, the classifications (and their related Cal-HR number) to be added to Appendix A are:

8427 Health Program Manager I
8428 Health Program Manager II
8429 Health Program Manager III

This group of Health Program Manager classifications will be added to the code as: “Health Program Manager I, II, III: only those who are regularly assigned tasks (above a clerical level) involving the development, review, or award of bids/contracts/grants.”

8338 Health Program Specialist I
8336 Health Program Specialist II

This group of Health Program Specialist classifications will be added to the code as: “Health Program Specialist I and II: only those who are regularly assigned tasks (above a clerical level) involving the development, review, or award of bids/contracts/grants.”

4. Delete obsolete job classifications relating to the Department's Drinking Water program.

Effective July 1, 2014, the Department's Drinking Water program was moved to the State Water Resources Control Board. Thus the Department proposes to delete the four (4) related classifications as follows:

Sanitary Engineer	Senior Sanitary Engineer
Principle Sanitary Engineer	Supervising Sanitary Engineer

PROPOSED DISCLOSURE CATEGORY AMENDMENTS

1. Change required disclosure for Assistant Directors to match disclosure required of the Department's Director.

The current COIC assigns category 3, 5, and 7 to the classification of Assistant Directors. (Currently, the Department has only one Assistant Director.) This was an error, and the proposed amendment would change the applicable disclosure to be the same as the category 1 disclosure assigned to the Department's Director. The scope of potential work assignments for an Assistant Director would generally be as diverse as that of the Director, and thus the disclosure for both classifications should be the same.

2. Remove "real property" from Disclosure Category 1.

Disclosure Category 1 is the broadest category, and is assigned only to the Department's Director, Chief Deputies, and as discussed above, the Assistant Directors. The Department's current COIC includes "Interests in real property in the State of California," which historically had been a common component of what is generally referred to as "full disclosure." However, the nature of a public health agency makes it highly unlikely that a specific piece of real property would be uniquely impacted by a Department decision. In order to avoid unreasonably broad and unnecessary disclosure, the proposed amendment would remove "Interests in real property in the State of California" from Disclosure Category 1.

3. Narrow Disclosure Categories 3, 5, and 7, tied to "the employee's division."

For the Department, a "Division" is an organizational unit that is generally quite large, diverse, and high in the organization chart. Most Divisions within the Department are broken down by branches and sections.

After adoption of the Department's current COIC, it was found that referencing the employee's "division" was overly broad, since most employees are instead under a subordinate branch or section that focuses on subject matters unique to that branch/section.[1] Requiring disclosure of financial interests tied to an entire division was found to be extremely burdensome, unreasonably broad, and unnecessary. Although

[1] There are organizational units below "section," e.g. "unit," but a unit is quite small.

an employee or his/her supervisor would know, or would be able to easily determine by simple inquiry the types of contracts or grants in which their branch or section is involved, it is much more difficult to determine the types of contracts/grants that are instead under other sections, branches, or the division level of the organization. Employees designated under categories 3, 5, and 7 are seldom involved, if at all, in contracts or grants from other sections or branches from elsewhere in their Division. Nonetheless, such employees, when preparing their Form 700, have had to engage in inquiries "up the chain of command" to identify the universe of contractors or grant recipients from throughout the employee's entire division, despite the fact that the employee would seldom, if ever, be involved substantively with those other contracts or grants. That extra research and related administrative burden lacks any reasonably foreseeable benefit, and as discussed above, would not identify contractors or grantees with which the designated employee would usually be involved, either as a decision-maker or advice-giver.

In light of the above, the Department proposes to amend Disclosure Categories 3, 5, and 7 by changing "by the employee's division" to "by the employee's office[2]/section; if there is no section, then the reporting scope is the employee's branch, and if there is no branch, the reporting scope is the employee's division."

ADVISORY COMMITTEES

As part of this amendment, the Department proposes to add one (1) advisory committee, and delete another that has been disbanded. Currently, there are thirteen (13) departmental advisory committees that are designated to file a Form 700. The committee to be added, the AIDS Drug Assistance Program Medical Advisory Committee (ADAP-MAC), has been determined to meet the standard under which members of such committees are designated to file a Form 700, under the authority of Title 2, California Code of Regulations section 18701(a)(1) which applies to:

". . . salaried or unsalaried members of committees, boards or commissions with decision-making authority. A committee, board or commission possesses decision-making authority whenever:
(i) It may make a final governmental decision;
(ii) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or
(iii) It makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency."

1. AIDS Drug Assistance Program Medical Advisory Committee (ADAP-MAC).

Based upon an express statute, the ADAP-MAC clearly meets the definition of a group that needs to file; approval by the ADAP-MAC is required prior to the Department's

[2] For the Department's Directorate, "office" is used and is generally synonymous with "section" or "branch."

Office of AIDS adding any new drug to its formulary.

California Health and Safety Code, section 120966 provides in pertinent part as follows:

> (a)(1) The program established under this chapter shall make available to any eligible person under this chapter any antiviral drug that is approved by the federal Food and Drug Administration for treatment of human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS), prescribed by the beneficiary's medical care provider, and approved by the AIDS Drug Assistance Program Medical Advisory Committee of the Office of AIDS . . . .

The Department interprets this statute as mandating approval by the ADAP-MAC as a mandatory step, and without such approval, cannot add any drug to the formulary.

For the ADAP-MAC, the proposed amendment would establish a separate and unique disclosure category tailored to potential financial interests that could be impacted by decisions or recommendations made by the ADAP-MAC. Since the ADAP-MAC deals only with approved pharmaceuticals, the Department proposes to adopt the following Disclosure Category 20:

> Investments, business positions in business entities, and all sources of income (including receipt of loans, gifts, and travel payments) from pharmaceutical companies and retail drug stores.

2. Delete WIC Program Local Agency Task Force.

The last meeting of this advisory group was held January 21-22, 2015, and Department officially disbanded this group on August 12, 2015. As a result, the proposed amendment to the COIC deletes the WIC Program Local Agency Task Force from Appendix A, which lists the designated advisory committees, and the related Disclosure Category 20 for this group, contained in Appendix B.

EVALUATION OF INCONSISTENCY AND INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

The Department evaluated this proposal and determined that it, if adopted, will not be inconsistent or incompatible with existing state regulations. This evaluation included a review of the Department’s existing general regulations and those regulations specific to the implementation of the Political Reform Act.

MANDATE ON LOCAL AGENCY OR SCHOOL DISTRICT

The Department has determined that the regulation would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by part 7 (commencing with section 17500) of division 4 of the Government Code.

FISCAL IMPACT ESTIMATE

The Department has determined that the proposed code:

(1) Imposes no cost or savings on any state agency.

(2) Will not result in any other nondiscretionary cost or savings to local agencies.

(3) Will not result in any cost or savings in federal funding to the state.

(4) Will not have any potential cost impact on private persons, businesses or small businesses.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING THE ABILITY TO COMPETE

The Department has made an initial determination that the proposed code would not have a significant, statewide adverse economic directly affecting California business enterprises or individuals, including the ability of California businesses to compete with businesses in other states

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department has determined that the regulation would not significantly impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California. This regulation does not affect worker safety or California's environment.

ALTERNATIVES INFORMATION

In proposing to adopt this conflict of interest code amendment, the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the amendment is proposed, would be as effective and less burdensome to affected private persons than the proposed amendment, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed code and the text of the proposed amendment to the code. The Office of Regulations, at the address noted above, will be the location of public records related to the proposed code (rulemaking file).

In order to request that a copy of this public notice, the amended code, and the initial statement of reasons or alternate formats for these documents be mailed to you, please call (916) 440-7807 (or the California Relay Service at 711), send an email to regulations@cdph.ca.gov, or write to the Office of Regulations at the address previously

noted. Upon specific request, these documents will be made available in Braille, large print, audiocassette, or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After completion of the written comment period/hearing, the Department may adopt the proposed code amendment if it remains substantially the same as described in the text originally made available to the public. The Department may make changes to the proposed code amendment prior to its adoption, so long as the text of any modified amendment is made available to the public at least 15 days before the Department of Public Health adopts the amendments. A request for the modified text should be made to the Contact Person identified in this notice. The Department will accept written comments on the modified amendments, addressed to the Contact Person identified in this notice, for 15 days after the date on which the text of any modified amendments is made available.

CONTACT PERSON

All inquiries concerning this proposed code and any communications required by this notice should be directed to:

Timothy Ford
Office of Legal Services
California Department of Public Health
1415 L Street, Suite 500
Sacramento, CA 95814
Phone: (916) 558-1710
Fax: (916) 440-5747

INTERNET ACCESS

Materials regarding the action described in this notice (including this public notice, the text, and the initial statement of reasons) are available via the Internet and may be accessed at www.cdph.ca.gov by clicking on these links, in the following order: Decisions Pending & Opportunities for Public Participation, Proposed Regulations.