

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

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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 Accordingly, these regulations will not be published in full in the California Code of Regulations.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.

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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/learn/rules-on-conflict-of-interest-codes.html>.)

## **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 within the Executive Offices and Divisions. 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.

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## **A. Executive**

The position title "Associate Governmental Program Analyst" 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.

### **1. Policy Development and Analysis Office**

The position title "Research Analyst" is deleted. The Office is no longer using the position title. The California Department of Human Resources (CalHR) has eliminated this and related classifications and replaced them with the Research Data Series, which includes Research Data Analyst, Research Data Specialist, Research Data Supervisor, and Research Data Manager classifications. Accordingly, Research Analyst, Research Program Specialist, and other impacted classifications are being updated to the Research Data series Department-wide.

The position title "Research Data" 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. Audits Office**

The following position titles are 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.

Auditor I  
General Auditor II  
General Auditor III

### **3. Office of Education and the Environment**

The position title "Integrated Waste Management Specialist" is deleted. The Office is no longer using the position title.

The position title "Education Programs Administration (non-CEA classes)" is 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.

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**B. Administration, Finance & Information Technology Services Division**

The following position titles are deleted. The Division is no longer using these position titles.

Research Analyst  
Associate Administrative Analyst- Accounting Systems  
Information Systems Analyst  
Programmer Analyst  
Software Systems Specialist

The following position titles are 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.

Associate Safety Engineer  
Senior Safety Engineer (Industrial)  
Special Consultant

CalHR has replaced several information technology classifications with the Information Technology (IT) series. All effected positions have been reclassified by the Department into the IT series, which includes IT Technician, IT Associate, IT Specialist, IT Supervisor, and IT Manager classifications.

Accordingly, the position title "Information Technology" is 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.

**C. Materials Management And Local Assistance Division**

The following position titles are deleted. The Division is no longer using these position titles.

Research Program Specialist  
Research Analyst

The position title "Research Data" is added. Employees in these positions make or participate in making governmental decisions. The positions are assigned to disclosure category 3 and 4 based on potential conflicts of interest associated with their duties.

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## **D. Waste Permitting, Compliance And Mitigation Division**

The following position titles are deleted. The Division is no longer using these position titles.

Research Program Specialist  
Research Analyst

The position title "Research Data" is added. Employees in these positions make or participate in making governmental decisions. The positions are assigned to disclosure category 4 and 5 based on potential conflicts of interest associated with their duties.

## **E. Division of Recycling**

The followed position titles are deleted. The Division is no longer using these position titles.

Research Program Specialist  
Research Analyst

The position title "Research Data" is added. Employees in these positions make or participate in making governmental decisions. The positions are assigned to disclosure category 6 based on potential conflicts of interest associated with their duties.

## **IV. Amendment of 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.) A total of 8 disclosure categories are established.

Disclosure Category 4 requires the disclosure of a proscribed set of interests in real property. Only real property meeting certain criteria that is located near a facility over which the position has inspection duties and authority for the Materials Management and Local Assistance Division or the Waste Permitting, Compliance and Mitigation Division is required to be disclosed.

A recently amended Fair Political Practices Commission (FPPC) regulation establishes a rebuttable presumption that "The financial effect of a governmental decision on a parcel of real property in which an official has a financial interest involving property 1,000 feet or more from the property line of the official's property is presumed not to be material." (Cal. Code Regs., title 2, § 18702.2(b).)

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Disclosure Category 4 currently requires disclosure of "interests in real property located within two miles of the boundaries" of any facility that is subject to the inspection duties and authority of the position. The Department initially proposed changing the measure to 1,000 feet to be consistent with FPPC regulation 18702.2(b). However, after consulting with and receiving advice from the FPPC as the code reviewing body (Gov. Code 82011(a)) during its preliminary review of this rulemaking package (Cal. Code Regs., title 2, § 18750(a)(2)), the Department acknowledged that the nature and characteristics of the regulated facilities may have reasonably foreseeable financial effects on real property located beyond the 1,000 feet threshold of the FPPC's generally applicable materiality standard. In lieu of a materiality standard specific to the listed facilities, the Department is amending Disclosure Category 4 by changing the distance from the facility boundary triggering disclosure from "two miles" to "2,500 feet."

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