



STATE OF CALIFORNIA  
**FAIR POLITICAL PRACTICES COMMISSION**  
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**To:** Chair Remke, Commissioners Audero, Casher, Wasserman, and Wynne

**From:** Hyla P. Wagner, General Counsel  
Brian G. Lau, Senior Commission Counsel

**Subject:** Regulation 18751 – Conflict of Interest Code Exemptions.

**Date:** August 8, 2016

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## I. Summary

The Political Reform Act<sup>1</sup> requires every agency to adopt a conflict of interest code designating those positions within the agency that “involve the making or participation in the making of decisions” that may have an effect on any financial interest. However, state and multi-county agencies (agencies whose conflict of interest codes are subject to the Commission’s approval) may request an exemption from adopting a code under Regulation 18751 if: (1) the agency has no employees qualifying as designated employees, (2) the agency will cease operations within one-year, or (3) there is good cause for extraordinary circumstances. This regulatory proposal is intended to clarify existing requirements, streamline the requirements for requesting an exemption or extension of an exemption, and speed up the approval of requests.

## II. Background

Section 87300 requires every agency to “adopt and promulgate a Conflict of Interest Code” (1) designating all “positions within the agency, other than those specified in Section 87200, which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest,” and (2) identifying those interests of the designated employees that are reportable. A newly created agency is required to submit a code to its code reviewing body for approval “not later than six months after it comes into existence.” (Section 87303.) An agency must submit a code amendment to its code reviewing body for approval, “within 90 days after the changed circumstances necessitating the amendments have become apparent.” (Section 87306.) Agencies must also review their existing codes biennially. (Sections 87306 and 87306.5.) The Commission is the code reviewing body for all state agencies, other than judicial branch agencies, and all local government agencies with jurisdiction in more than one county (multi-county agencies). (Section 82011.)

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<sup>1</sup> The Political Reform Act (Act) is set forth in Government Code Sections 81000 through 91014, and all further statutory references are to this code. The Commission’s regulations are contained in Division 6, Title 2 of the California Code of Regulations, and all regulatory references are to this source.

The code approval process is provided in Regulation 18750, which was amended by the Commission in April to increase efficiencies in the process for both the agencies and the Commission. This proposal continues the Commission's efforts to streamline the code approval process by clarifying the procedure in Regulation 18751 for requesting and approving an exemption from the Act's requirement to adopt a code. The Commission does not receive a large number of requests for exemptions or extensions of the exemptions. Since March, three exemptions were granted (i.e., International Trade and Investment Advisory Council on May 27<sup>th</sup>, Governor's Military Council on May 25<sup>th</sup>, and Department of Toxic Substances Control Independent Review Panel on March 11<sup>th</sup>), and four extensions.

Current Regulation 18751 provides both the requirements for an agency requesting an exemption from adopting a code and the requirements for the Commission in approving a request. The regulation applies to all state and multi-county agencies whose prospective codes are subject to the Commission's review and approval and encourages other code reviewing bodies to adopt a similar procedure. As drafted, proposed Regulation 18751 will: (1) clarify the standard for requesting and approving an exemption, (2) require documents to support an exemption request only when necessary, (3) streamline review timeframes, and (4) extend the period for requesting reconsideration.

### **1. Exemption Standard**

Under current Regulation 18751, an agency may receive an exemption from adopting a code only if the Commission's Executive Director finds: (1) there will be no designated employees if the agency were to adopt a code; (2) that the agency is, or within one year will be, inoperative and nonfunctioning; (3) that the agency is a committee, board, or commission that does not possess decisionmaking authority, will not acquire real property in the foreseeable future, and has an annual operating budget exclusive of salaries for the agency of less than \$150,000; or (4) that good cause exists for granting an exemption due to extraordinary circumstances.

Despite the existing language, there is no statutory requirement for an inoperative or nonfunctioning agency to adopt a code. Therefore, the proposed regulation deletes language applicable to an inoperative or nonfunctioning agency

Additionally, an agency that does not possess decisionmaking authority can receive an exemption only to the extent that there will be no designated employees if the agency were to adopt a conflict of interest code. Whether the agency may acquire property or has an annual operating budget of less than \$150,000 are merely criteria for determining whether the agency has other designated employees. Accordingly, the proposed regulation merges the existing standards for agencies with no decisionmaking authority and no designated employees.

Proposed Regulation 18751, subdivision (d)(1)(A), clarifies that an agency may receive an exemption only if: (1) the agency has no designated employees, including any agency that is a committee, board, commission, or similar multi-member body that will not acquire real property in the foreseeable future, has an annual operating budget exclusive of salaries of less than

\$150,000, and does not otherwise possess decisionmaking authority; (2) the agency will be inoperative and nonfunctioning within one year; or (3) good cause exists for granting an exemption due to extraordinary circumstances.

## **2. Supporting Documents**

Currently, a request for an exemption must be accompanied by a statement of the alleged basis for a grant of exemption and other supporting documents that differ based upon the agency's stated justification for the request. (See current Regulation 18751, subdivisions (e) through (g).) However, in many instances, supporting documents may not be necessary or may be readily available online. Accordingly, proposed Regulation 18751, subdivision (b), requires an agency to initially provide only a "detailed explanation of the proposed basis for a grant of exemption and a copy of the statutory authority under which the agency was created with specific citations to the provisions setting forth the duties and responsibilities of the agency." An agency must provide other supporting documents only when requested.

## **3. Review Timeframe**

Within 90 days of a request for an exemption or extension, current Regulation 18751 requires the Executive Director to approve, deny, or return a request for resubmission within 60 days. Upon resubmission, the Commission must approve the request for exemption or deny the request within 60 days. This procedure is largely duplicative of Section 87303. Proposed Regulation 18751, subdivision (d)(2), will clarify that an exemption or extension request will be reviewed under the same timeframe provided for all conflict of interest code submissions in Section 87303, which gives the Commission 90 days after receiving a proposed code to: (1) approve the proposed code, (2) revise and approve the proposed code, or (3) return the proposed code to the agency for revision and resubmission within 60 days.

## **4. Request for Reconsideration**

Current Regulation 18751, subdivisions (j) and (k), require the Commission to post approved and denied exemption requests on its website and gives interested persons 30 days to ask for reconsideration. Proposed language will extend the deadline to request reconsideration to 30 days from the date the letter approving or denying a request is posted on the website. (Proposed Regulation 18751, subdivision (d)(5).)

## **III. Recommendation**

Staff recommends repealing current Regulation 18751 and adopting proposed Regulation 18751 clarifying the requirements for requesting and approving state and multi-county agency exemptions from adopting a conflict of interest code.

Attachments:

Proposed Regulation 18751

Repealed Regulation 18751