

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

§ 18751. Conflict of Interest Code Exemption.

(a) Scope. This regulation establishes the requirements for an exemption for any state agency or any local agency with jurisdiction in more than one county, other than judicial branch agencies, from the adoption of a conflict of interest code required under Section 87300. Other code reviewing bodies are encouraged to adopt the same or similar procedure and standards.

(b) Exemption Request. An exemption request submitted to the Commission must be signed by the chief executive officer or a legal representative of the agency and must include 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. If requested, the agency must provide additional documents necessary to approve the request such as:

(1) A list of every position in the agency, including each officer, employee, member, and consultant with the agency.

(2) A job description for each position.

(3) The identification of the entity or body to whom the agency reports.

(4) The last annual or similar report prepared by the agency.

(5) Recent minutes of agency meetings.

(c) Extension Request. An exemption extension request submitted to the Commission must be signed by the chief executive officer or a legal representative of the agency and state that the circumstances that served as the basis for the original grant of exemption have not changed.

(d) Criteria for Approval. The authority to grant an exemption or extension is delegated to the Commission's Executive Director, or the Executive Director's designee. An exemption or extension may be granted by the Executive Director, or designee, on the Executive Director's, or designee's, own initiative or in response to a request by the agency. An exemption or extension may be granted only if one of the following criteria is met:

(1) The agency has no "designated employees," within the meaning of Government Code Sections 82019 and 87302(a), including any agency that is a committee, board, commission, or similar multi-member body that:

- (i) Will not acquire real property in the foreseeable future,
- (ii) Has an annual operating budget exclusive of salaries of less than \$150,000, and
- (iii) Does not otherwise possess decisionmaking authority as defined in Regulation 18700(c)(2).

(2) The agency will be inoperative and nonfunctioning within one year.

(3) Good cause exists for granting an exemption due to extraordinary circumstances that indicate the burden on the agency of adopting a conflict of interest code is not warranted by the degree of likelihood that a conflict of interest may occur.

(e) Decision by Executive Director. An exemption or extension will be reviewed in the same manner as the submission of a conflict of interest code as provided in Section 87303.

(1) If granted, a letter stating the legal and factual basis of the exemption or extension will be issued.

(2) If a request is denied, a letter will be issued establishing a deadline by which the requesting agency must submit a proposed conflict of interest code to the Commission, or be added to the conflict of interest code of another agency. If the request is from a newly created

agency with board or commission members subject to the filing requirements of Section 87302.6, the letter will also establish a new deadline, not exceeding 30 days from the date the letter is issued, by which the board or commission members must file statements of economic interests pursuant to Section 87200.

(f) Reconsideration. All exemption, extension, and denial letters issued will be posted on the Commission's website. Within 30 days of the date the letter is posted, any interested party may submit a request for reconsideration by the Commission. The Chair will consider the request and will schedule the matter for hearing before the Commission if, in the Chair's discretion, good cause exists for reconsideration.

(g) Duration of Exemption or Extension. An exemption or extension remains in effect until the basis for the grant of exemption no longer exists or the expiration of two years, whichever occurs earlier. The Commission may revoke an exemption or extension at any time or extend an exemption or extension on its own initiative. When an exemption or extension expires, the agency must either adopt a conflict of interest code as required by Section 87300 or submit an extension request.

(h) Tolling of Time Limits. For a newly created agency, the time limits prescribed by Sections 87302.6 and 87303 for the members of a board or commission to file statements of economic interests, and for the agency to submit a proposed conflict of interest code, will be tolled while a request for exemption is under initial consideration including reconsideration by the Commission if the request is submitted prior to the time limit expiring.

Note: Authority cited: Sections 83108 and 83112, Government Code. Reference: Sections 87300, 87301, 87302, 87302.6, 87303, 87304, 87305, 87306, 87306.5, 87307, 87308, 87309, 87310, 87311, 87311.5, 87312, 87313 and 87314 Government Code.

HISTORY

1. New section filed 7-28-76; effective thirtieth day thereafter (Register 76, No. 31).
2. Amendment filed 3-3-86; effective thirtieth day thereafter (Register 86, No. 10).
3. Amendment of subsections (c), (e), repealer of former subsection (h) and relettering, and amendment of new subsections (h)-(j), repealer of subsection (l) and amendment of Note filed 4-21-92; operative 5-21-92 (Register 92, No. 19).
4. Amendment of subsection (g) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
5. Amendment of section heading and section filed 12-29-2005; operative 1-28-2006. 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.) (Register 2005, No. 52).
6. Amendment filed 2-23-2011; operative 2-10-2011, pursuant to California Code of Regulations, title 2, section 18312(c)(3). 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) (Register 2011, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6-11-2011.
7. Editorial correction of History 6 (Register 2011, No. 13).
8. Reinstatement of section as it existed prior to the 2-10-2011 emergency amendment filed 2-23-2011 by operation of Government Code section 11422.1(c) (Stats. 1971, c. 1303). See *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) (Register 2011, No. 34).

9. Repealer and new section filed 9-19-2016; operative 10-19-2016. Submitted to OAL for filing and printing 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. 39).

10. Amendment of subsections (d) and (f) filed 5-12-2021; operative 6-11-2021 pursuant to Cal. Code Regs., tit. 2, 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 2021, No. 20).