

## **INITIAL STATEMENT OF REASONS**

### **INTRODUCTION**

The Department of Public Health (Department), pursuant to the authority set forth in Section 87306 of the Government Code, proposes to amend its Conflict of Interest Code (COIC). The purpose of this amendment is to implement the requirements of Sections 87300 through 87302, and Section 87306, of the Government Code.

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 Interest, more commonly referred to as a "Form 700." (See Gov. Code, §§ 87300 & 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 which are required to be disclosed on the Statement of Economic Interest. (Gov. Code, § 87302.)

### **BACKGROUND/OVERVIEW**

This regulatory action constitutes an amendment to the Department's COIC that initially took effect on August 20, 2014. Since that date, the Department has been reviewing feedback from staff, and combined with experience gained during the intervening Form 700 filing cycles, seeks to improve on the original COIC by adopting the changes described in this document and the Notice of Proposed Rulemaking to which it pertains.

The Department proposes to adopt this COIC amendment to cover its officers and employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of Section 87302 of the Government Code.

The proposed changes 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.

The Department has determined that job class designations related to information technology were deficient by not including appropriate software and programmer classifications (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 identified, along with the appropriate state Cal-HR identification number are:

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. Separate Public Health Nutrition Consultant II/III (Specialist) and add Public Health Nutrition Consultant III (Supervisory).

The existing Appendix A lists only “Public Health Nutrition Consultant II/III” and does not specify, as had been intended, “Supervisor” and “Specialist” for the Public Health Nutrition Consultant III. The Department thus proposes to amend the code to expressly 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, and in furtherance of the COIC as originally adopted in 2014. The classifications (and their related Cal-HR number) to be added 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 now-obsolete 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 previously, 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.<sup>1</sup>

3. Narrow Disclosure Category 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

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<sup>1</sup> The full text to be deleted is "Interests in real property in the State of California, as well as"; the new version thus begins with the existing "Investments" followed by the remainder of the current language.

branch/section.<sup>2</sup> Requiring disclosure of financial interests tied to an entire division was found to be extremely burdensome, unreasonably broad, and unnecessary.

Although 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 office is involved, it is much more difficult to determine the types of contracts or 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 previously discussed, 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<sup>3</sup>/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

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<sup>2</sup> There are organizational units below “Section,” e.g. “Unit,” but a Unit is quite small.

<sup>3</sup> For the Department’s Directorate, “office” is used and is generally synonymous with “section” or “branch.”

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 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 and without such approval, cannot add any drug to the formulary.

For the ADAP-MAC, the proposed amendment would, as done in the original COIC for advisory groups, establish a separate and unique disclosure category tailored to potential financial interests that could be impacted by decisions or recommendations made by each advisory committee. Since the ADAP-MAC deals only with approved pharmaceuticals, the Department proposes to adopt the following disclosure category 20:<sup>4</sup>

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 the WIC Program Local Agency Task Force 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. Category 20 would become the disclosure for the newly-added ADAP-MAC.

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<sup>4</sup> In the current COIC, Category 20 is assigned to the WIC Program Local Agency Task Force, which has since been disbanded.