

**State of California
Office of Administrative Law**

In re:
FAIR POLITICAL PRACTICES COMMISSION

Regulatory Action:

Title 2, California Code of Regulations

Adopt sections:
Amend sections: 18734, 18751
Repeal sections:

**NOTICE OF FILING OF EMERGENCY
REGULATORY ACTION UNDER THE
PROVISIONS OF THE APA IN EFFECT ON
JUNE 4, 1974**

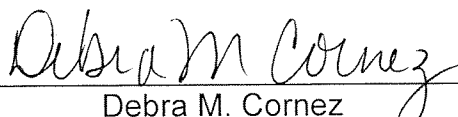
**Government Code Section 11380.2 as it
existed in 1974, and title 2, Cal. Code Regs,
section 18312(d)**

OAL File No. 2011-0216-03 FPPE

This emergency regulatory action deals with financial disclosure by employees of newly created agencies. Pursuant to California Code of Regulations, title 2, section 18312(e)(1)(B), this emergency regulatory action is effective February 10, 2011. OAL's review of FPPC proposed regulations is limited to the provisions of the APA as it was enacted on June 4, 1974, when voters adopted the California Political Reform Act. (Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer (April 27, 1992, C010924 [nonpub. opn.] .) As such, OAL's review is limited to determining if the proposed regulations comply with "the form and style prescribed by the Secretary of State. If the department approves the regulation or order of repeal for filing, it shall endorse on the certified copy thereof its approval for filing and shall transmit such copy to the Secretary of State." (Former Gov. Code, section 11380.2, repealed by Stats. 1979, ch. 467, § 2.)

These regulations are exempt from review by the Office of Administrative Law, and subject only to the June 4, 1974 version of the Administrative Procedure Act (APA). This regulatory action becomes effective 2/10/2011. Filing of a certificate of compliance within 120 days will be required pursuant to Government Code section 11422.1 of the 1974 version of the APA.

Date: 2/23/2011



Debra M. Cornez
Assistant Chief Counsel/Acting Director

Original: Ann Ravel
Copy: Virginia Latteri-Lopez

FPPE EMERGENCY

STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW
 NOTICE PUBLICATION/REGULATIONS SUBMISSION

See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2010-1026-12	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2011-0216-03FPPE
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ENDORSED FILED IN THE OFFICE OF

2011 FEB 23 PM 3:15

Jenna Bowen
 JENNA BOWEN
 SECRETARY OF STATE

For use by Office of Administrative Law (OAL) only

NOTICE	REGULATIONS
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2011 FEB 16 PM 1:39
 OFFICE OF ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY
 Fair Political Practices Commission

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Financial Disclosure by Employees of Newly Created Agencies	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 18734, 18751
TITLE(S) 2	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code § 11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§ 11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, § 11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§ 11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, § 11346.1)	<input checked="" type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, § 11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <i>Emergency action; FPPE v. OAL</i>	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, § 44 and Gov. Code § 11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, § 100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> § 100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) February 10, 2011
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM § 6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Virginia Latteri-Lopez	TELEPHONE NUMBER 916-322-5660	FAX NUMBER (Optional) 916-327-2026	E-MAIL ADDRESS (Optional) vlatteri-lopez@fpcc.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>John W. Wallace</i>	DATE 2/16/11
TYPED NAME AND TITLE OF SIGNATORY John W. Wallace, Assistant General Counsel	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

FEB 23 2011

Office of Administrative Law

1 Amend 2 Cal. Code Regs. Section 18734 to read:

2 **§ 18734. ~~Designated Employees and Consultants~~— New Positions Pending Code Adoption**
3 **or Amendment.**

4 (a) New Positions and Consultants – Interim Disclosure: Consultants and individuals in
5 newly created positions as set forth in Regulation 18219, including positions at newly created
6 agencies, that make or participate in the making of decisions that may foreseeably have a
7 material effect on any financial interest shall file interim disclosure under this category.

8 (b) Disclosure Requirements: Individuals in positions specified in subdivision (a) of this
9 regulation shall file under the broadest disclosure category in the agency’s conflict-of-interest
10 code or, if the agency does not have a conflict-of-interest code, provide full disclosure until the a
11 new agency amends its code is adopted and approved to reflect the position. However, if the
12 position does not involve duties that require disclosure under the broadest disclosure category or
13 under full disclosure, the agency may determine that the broadest disclosure is not necessary and
14 must set interim disclosure within 30 days of the establishment of the new position or new
15 agency that is more tailored to the positions with a position’s limited range of duties. This
16 determination shall include a description of the position’s duties and, based upon that
17 description, a statement of the extent of disclosure requirements. Full disclosure means that the
18 statement discloses all investments and interests in real property held on the date of assuming
19 office, and income received during the 12 months immediately preceding assuming office. The
20 code reviewing body shall determine the filing location for statements.

21 (c) Public Records: Records pertaining to positions that file under this category are public
22 records and must be retained for the public’s inspection in the same manner and location as the

1 agency's conflict-of-interest code as set forth in Section 81008(a). This includes any written
2 documents that support a limited disclosure category.

3 (d) Time of Filing: Persons in positions specified in this regulation shall file an initial
4 statement within 30 days of assuming office and shall continue to file annually in the same
5 manner and location specified in the agency's conflict-of-interest code.

6 (e) Annual Statement: Any statement filed under this provision is deemed to satisfy the
7 requirement of Section 87302(b), which requires that an initial or annual statement be filed.

8 (f) Nothing in this regulation shall be construed to exempt any agency from complying
9 with provisions of Section 87306.

10 NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87302,
11 Government Code.

1 Amend 2 Cal. Code Regs. Section 18851 to read:

2 **§ 18751. Procedure and Standards for Obtaining Exemption from Government Code**
3 **Section 87300, Requiring Adoption and Promulgation of a Conflict-of-Interest Code.**

4 (a) This section sets forth the procedure and standards by which the Fair Political
5 Practices Commission will determine whether to grant an exemption from ~~Government Code~~
6 ~~section~~ Section 87300 to an agency for which the Commission is the code reviewing body.
7 Other code reviewing bodies are encouraged to adopt the same or similar procedure and
8 standards. Nothing in this section shall be construed to mean that a government agency is not
9 required to adopt a conflict-of-interest code if it has not been granted an exemption.

10 (b) A governmental body qualifying as an agency, and therefore required to adopt and
11 promulgate a Conflict-of-Interest Code pursuant to ~~Government Code section~~ Section 87300, or
12 be included within another agency's Conflict-of-Interest Code, may submit a request to the Fair
13 Political Practices Commission for exemption from that requirement if the Commission would be
14 the agency's code reviewing body. Obtaining an exemption as provided in this regulation is the
15 exclusive means by which an agency may obtain an exemption from the requirement to adopt
16 and promulgate a Conflict-of-Interest Code. The term "agency" as used in this section means any
17 state agency or local government agency with jurisdiction in more than one county.

18 (c) An exemption shall be granted to an agency by the Executive Director only if he or
19 she finds:

20 (1) That if the agency were to adopt a Conflict-of-Interest Code, there would be no
21 "designated employees," within the meaning of ~~Government Code~~ Sections 82019 and 87302(a),

1 subject to its provisions; or

2 ~~(2) That the agency is, or within one year will be, inoperative and nonfunctioning; or~~

3 ~~(3) That the agency is a committee, board, or commission that does not possess decision-~~
4 ~~making authority as defined in ~~2 Cal. Code Regs. section~~ Regulation 18701(a)(1), and both of the~~
5 following apply:

6 (A) The agency will not acquire real property in the foreseeable future; and

7 (B) The annual operating budget exclusive of salaries for the agency is less than \$
8 150,000; or

9 ~~(4)~~ (3) That good cause exists for granting an exemption due to extraordinary
10 circumstances that indicate the burden on the agency of adopting a conflict of interest code is not
11 warranted by the degree of likelihood that a conflict of interest may occur.

12 (d) An exemption may be granted to an agency or extended by the Executive Director on
13 his or her own initiative or in response to a request by the agency. A request by an agency shall
14 be signed by the chief executive officer or a legal representative of the agency and shall be
15 accompanied by a statement of the alleged basis for a grant of exemption with supporting
16 documentation, as described in subdivisions (e) through (g) of this regulation.

17 (e) A request for exemption under subdivision (c)(1) shall be accompanied by:

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

20 (2) A copy of the job description for each position listed in subsection (1) above;

21 (3) A copy of the statutory authority under which the agency was created with specific
22 citations to the provisions setting forth the duties and responsibilities of the agency;

23 (4) Identification of the person or body to whom the agency reports;

1 (5) A copy of the last annual or regular report submitted by the agency to the person or
2 body to whom the agency reports;

3 (6) A detailed justification of the request for exemption including an explanation of why
4 none of the positions listed in subsection (1) above, are designated employees. In preparing this
5 justification, particular note should be taken of ~~Government Code section~~ Section 82019.

6 ~~(f) A request for exemption under subdivision (e)(2) shall be accompanied by:~~

7 ~~(1) A copy of the statutory or legal authority under which the agency ceased, or soon will~~
8 ~~cease, to operate or function;~~

9 ~~(2) The date, time and place of the last meeting of the agency;~~

10 ~~(3) Identification of the positions and names of any staff who continue to work for or~~
11 ~~represent the agency, whether salaried or unsalaried; and~~

12 ~~(4) A detailed explanation of the reasons the agency is, or soon will be, inoperative and~~
13 ~~nonfunctioning.~~

14 ~~(g)~~ A request for exemption under subdivision ~~(e)(3)~~ (c)(2) shall be accompanied by:

15 (1) A copy of the statutory authority under which the agency was created with specific
16 citations to the provisions setting forth the duties and responsibilities of the agency;

17 (2) Identification of the person or body to whom the agency reports; and

18 (3) A copy of the last annual or regular report submitted by the agency to the person or
19 body to whom the agency reports;

20 ~~(h)~~ (g) Within 90 days after receiving a request for exemption, the Executive Director
21 shall:

22 (1) Approve the request;

23 (2) Deny the request; or

1 (3) Return the request for additional information and resubmission within 60 days. Upon
2 resubmission, the Commission shall, within 60 days, either approve the request for exemption or
3 deny the request.

4 ~~(h)~~ (h) In the case of a newly created agency, the time limits prescribed by ~~Government~~
5 ~~Code sections~~ Sections 87302.6 and 87303 for the members of a board or commission to file
6 statements of economic interests, and for the agency to submit a proposed Conflict-of-Interest
7 Code, shall be tolled while a request for exemption is under initial consideration by the
8 Executive Director or reconsideration by the Commission, provided the request is submitted
9 prior to the time limit expiring.

10 ~~(i)~~ (i) When an exemption is granted, the Executive Director shall issue an exemption
11 letter and transmit it to the requesting agency. The exemption letter shall state a legal and factual
12 basis for the granting of an exemption. When an exemption is granted under subdivision ~~(e)(4)~~
13 (c)(3), the letter shall also describe the particular extraordinary circumstances that warrant the
14 granting of an exemption under that subdivision. A copy of the exemption letter shall be
15 transmitted to any person requesting it, and shall be posted on the Commission's website. Within
16 30 days after the exemption is granted, any interested party may submit a request that the grant
17 of exemption be reconsidered by the Commission. The Chairman shall consider the request and,
18 if in his or her discretion good cause exists for reconsideration, he or she shall schedule the
19 matter for hearing before the Commission.

20 ~~(j)~~ (j) When a request for exemption is denied, the Executive Director shall issue a letter
21 denying the request for exemption, transmit it to the requesting agency, and establish a new
22 deadline by which the agency requesting the exemption shall submit a proposed Conflict-of-
23 Interest Code to the Commission, or be included within the Conflict-of-Interest Code of another

1 agency. If the request is from a newly created agency having a board or commission whose
2 members are subject to the filing requirements imposed by ~~Government Code section~~ Section
3 87302.6, the letter denying the request for exemption shall also establish a new deadline, not
4 exceeding 30 days from the date the letter is issued, by which the board or commission members
5 shall file statements of economic interests pursuant to ~~Government Code section~~ Section 87200.
6 A copy of the letter denying the exemption shall be transmitted to any person requesting it, and
7 shall be posted on the Commission's website. Within 30 days after the request for exemption is
8 denied, any interested party may submit a request that the denial be reconsidered by the
9 Commission. The Chairman shall consider the request and, if in his or her discretion good cause
10 exists for reconsideration, he or she shall schedule the matter for hearing before the Commission.

11 ~~(h)~~ (k) An exemption granted under subdivision ~~(e)(3)~~ (c)(2) of this regulation does not
12 constitute formal written advice or informal assistance pursuant to ~~2 Cal. Code Regs. sections~~
13 Regulations 18329 and 18329.5 concerning the duty of an individual to file a statement of
14 economic interests under the provisions of an existing Conflict-of-Interest Code.

15 ~~(m)~~ (l) Upon being issued, an exemption shall remain in effect until the basis for the grant
16 of exemption no longer exists or the expiration of 2 years, whichever occurs earlier. When an
17 agency's exemption expires without being renewed on the Executive Director's own initiative,
18 the agency shall either adopt and promulgate a Conflict-of-Interest Code pursuant to ~~Government~~
19 ~~Code section~~ Section 87300, submit a request for the exemption to be extended, or submit a new
20 request for exemption.

21 ~~(n)~~ (m) A request to extend an exemption need only consist of a declaration signed by
22 the chief executive officer or a legal representative of the agency stating that the circumstances
23 that served as the basis for the original grant of exemption have not changed. The request shall

1 then be granted or denied according to the procedures set forth in subdivisions ~~(h)~~ (g) through ~~(k)~~
2 (j) of this regulation, and if granted, subject to the provisions of subdivision ~~(h)~~ (k) of this
3 regulation, just as an original exemption.

4 NOTE: Authority cited: Sections 83108 and 83112, Government Code. Reference: Section
5 87300 et seq., Government Code.