



February 08, 2019

F2019-02

To: District Agricultural Association CEOs and Board of Director Chairs

SUBJECT: Assembly Bill Number 2396: DAA Employee Sharing

On August 27, 2018, Governor Brown signed AB-2396 into law, codified at Public Contract Code section 10413, which allows District Agricultural Association (DAA) employees to contract on their own behalf with another DAA to provide services or goods. These contracts are subject to the Department's Incompatible Activities Policy and the prohibition against receiving double compensation. In summary, a DAA employee may contract with another DAA if:

1. The employee is not receiving his/her salary from their employer during the contract period; and
2. The employee's supervisor approves the outside work pursuant to the Department's Incompatible Activities Policy.

The provisions of AB-2396 are effective beginning January 1, 2019. Please refer to the enclosed, updated circular letter outlining the many ways DAAs may share their employees.

The Department recognizes the importance of DAAs' ability to share knowledgeable and experienced staff within the fair industry. This newly enacted legislation constitutes a valuable tool as it allows DAAs to access specialized skills and resources from another DAA's employee.

If you have any questions or need additional information, please contact me at (916) 900-5025 or John.Quiroz@cdfa.ca.gov. Please share with board of director chairs.

Sincerely,

John Quiroz, Chief
Fairs & Expositions Branch

Enclosure

cc: Human Resources Branch
Legal Office



Policy

It is the policy of the California Department of Food and Agriculture (CDFA or Department) and District Agricultural Associations (DAA's) to protect the outstanding record of personal integrity established by its officers and employees (employees) in carrying out its responsibilities to other State agencies and to the public, as well as to comply with State law. Accordingly, CDFA and DAA employees shall not engage in any employment, activity or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as an employee of the State.

Authority

Section 19990, California Government Code
Section 10410, Public Contract Code
Sections 81000-91014, California Government Code (Political Reform Act)
Federal Hatch Act
Bargaining Unit Contracts (MOU's)

Definitions

<i>Employee</i> ¹	Includes all CDFA and DAA civil service employees (including seasonal and non-testing classes on any time base) and exempt officers and employees of the Department/DAA. Does not include the following: employees hired through a contract such as Cooperative Agricultural Support Services (CASS), 119-Day employees of the District Agricultural Associations, and Fair Board members.
<i>Person</i>	Includes an individual, firm, corporation, partnership, association, other governmental body, or an agent or representative of any of these entities.

¹ The term encompasses any friend, relative, dependent, or other person used by an employee in an effort to accomplish indirectly what this policy prohibits.

Incompatible Activities Policy

<i>Outside Employment</i>	Includes any service performed by an employee outside employee's work hours for which the employee receives any form of compensation not from CDFA. The term also includes the employee's having an ownership interest in a partnership or other private company, but does not include stock ownership in a publicly traded company.
<i>Outside Activity</i>	Includes any activity, enterprise or service performed by an employee outside employee's work hours, for which the employee does not receive any form of compensation.
<i>Related to the Department</i>	Includes anything related to or affecting any activity, conduct, premises, items, farm or livestock (or products thereof), or commodity, which the Department regulates, monitors, or helps to promote or market. This term further includes any activity performed by the Department/DAA. This term should be interpreted broadly.

Responsibility

<i>Branch Chiefs/Chief Executive Officers (CEO's)</i>	<p>Branch Chiefs and CEO's are responsible for providing a written decision as to whether an employee's outside employment and/or activities are permissible.</p> <p>Branch Chiefs and CEO's are responsible for providing the original written decision to the Human Resources Branch (HRB).</p>
<i>Managers and Supervisors</i>	<p>Managers and supervisors are responsible for ensuring that their staff is informed of this Policy.</p> <p>Managers and supervisors are responsible for ensuring that new employees complete and return the certification within thirty (30) days of appointment.</p> <p>Managers and supervisors are responsible for ensuring that employees complete and return the certification annually between March 1 and April 30.</p> <p>Managers and supervisors are responsible for sending all of the original completed certifications to the HRB and maintaining a copy in the Branch files.</p>

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	<p>Managers and supervisors are responsible for initiating the review process if a decision is required on outside employment and/or activities.</p>
<i>Employees</i>	<p>Employees are responsible for reading, understanding, and abiding by this policy.</p> <p>Employees are responsible for completing a new certification within thirty (30) days of appointment and returning them to their supervisors.</p> <p>Employees are responsible for completing the certification annually between March 1 and April 30 and returning them to their supervisors.</p> <p>Employees are responsible for completing a new certification if they intend to engage in outside employment and/or activities which are or may be related to the Department/DAA.</p>
<i>Human Resources Branch (HRB)</i>	<p>HRB is responsible for filing certifications and Branch Chief/CEO decisions.</p> <p>HRB is responsible for providing copies of certifications and/or decisions upon request. (Certifications and Branch Chief/CEO responses are public documents.)</p>
<i>Legal Office</i>	<p>The Legal Office is responsible for providing assistance to Branch Chiefs/CEO's, upon request, when a decision is required as to whether an employee's outside employment and/or activities are permissible.</p>

Penalty for Violation

Any employee who violates this policy is subject to disciplinary action up to and including dismissal.

Outside Employment and/or Activities

An employee may engage in outside employment and/or activities that are not related to the employee's job functions or departmental responsibilities.

An employee shall not engage in outside employment and/or activities that are related to the employee's job functions or departmental responsibilities without the written consent of his/her Branch Chief/CEO.

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An employee shall not engage in outside employment and/or activities that are subject to review, control, inspection, audit or enforcement by that employee.

An employee must submit, to his/her supervisor, a written description of any outside employment and/or activities that are or may be related to CDFA/DAA (see Certification Procedures on page 1.2.7.9). The employee's Branch Chief/CEO must make an individual determination as to whether or not the employment and/or activity are permissible. Where it would not adversely affect the operation of the Department/DAA, it may be possible to restrict duty assignments to prevent potentially incompatible situations from arising. It may also be possible to permit a certain employment and/or activity under specific written conditions.

An employee shall not engage in the following outside employment or activities:

- a. Except as part of the regular performance of his/her assigned duties, an employee shall not counsel, advise, or assist any person in the preparation, presentation or defense of any appeal, application, claim, notice, petition, record, report, statements or other writing or matter that is before or may be presented to, the Department/DAA, or presented in any administrative hearing, court proceeding, or action arising under or related to the laws administered by the Department/DAA.
- b. An employee shall not represent any of the following before the Department/DAA:
 1. Any person who is either an applicant for, or a recipient of, any type of service or assistance from a program that is under the supervision of the employee's Division/DAA.
 2. Any person who is applying for, or has obtained, any type of license, registration, or certification issued by the employee's Division/DAA.
 3. Any person who is applying for, or has obtained, any type of license, registration, or certification, which is subject to audit by the employee's Division/DAA.
- c. An employee shall not serve, either directly or indirectly, as the representative of any person in any state hearing, administrative hearing or trial in which the Department/DAA is a party or adjudicator, unless required as part of his or her duties as an employee of the Department/DAA.
- d. An employee shall not contract on his/her own behalf with any California State agency to provide services or goods.
- e. An employee shall not participate in any outside employment or activity, which creates a situation in which the employee fails to devote full-time attention and effort to his/her regularly assigned duties during regular hours of employment.

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If the circumstances of an otherwise permissible outside employment or activity change such that they cause an employee to be unable to devote full-time attention and effort to his/her regularly assigned duties during regular hours of employment, the employee must terminate the outside employment or activity or make arrangements, if possible without disruption to the Department/DAA, to reduce the employee's time base.

- f. An employee shall not act as a consultant in areas related to his/her areas of responsibility at the Department/DAA, unless the services are rendered to another California state agency, other state's agency, or federal agency. An employee shall not be compensated for consulting for another governmental agency except that the employee's actual expenses and per diem may be reimbursed.
- g. An employee must abide by the restrictions listed in the Misuse of Position and/or Resources section of the Policy in all outside employment and/or activities.

Misuse of Position and/or Resources

Misuse of position and/or resources (misuse) includes using state time, facilities, equipment, or supplies for personal advantage and/or the personal advantage of another person. Each employee should devote his/her full time, attention and effort to his/her State office or employment during the hours of duty as a State employee. Any employment or activity during or outside duty hours that impedes an employee's ability to comply with this obligation is incompatible with the employee's State office or employment.

Examples of prohibited activities or activities that constitute misuse include (but are not limited to):

- a. An employee shall not use any departmental symbol, badge, uniform, identification card, stationery, record, information, facility, staff time, equipment, supplies, training material, vehicle, address, postage, mailing list, or influence of his/her State position for personal use, gain and/or advantage, or lend or give such items to other persons unless authorized by law.

Exceptions are:

- 1. An employee who has been provided a State cellular phone for business purposes may make occasional personal use of it provided the employee reimburses the Department/DAA for the cost of that usage.
- 2. An employee may use a State telephone to make necessary personal calls, provided the employee charges any toll or long-distance charges to a credit card. Any such calls should be made only during the employee's

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break time except in case of emergency. Abuse of this privilege will result in its restriction or removal.

- b. An employee shall not use state-owned copy machines, fax machines, computer equipment, or software for personal use.
- c. An employee shall not accept, take or convert to his/her own use, products of any kind in the course of, or as a result of inspections or audits of products, facilities, or premises.
- d. An employee shall not make arrangements for employment outside State service while on duty.
- e. An employee shall not use the status of the Department/DAA to solicit, directly or indirectly, business of any kind or to purchase goods or services at a discount for private use.
- f. An employee shall not use confidential or non-confidential information available to the employee solely by virtue of the employee's State employment for personal gain and/or advantage or for the personal gain and/or advantage of another person.
- g. An employee shall not provide confidential or sensitive information to persons not authorized to receive such information. Supervisors are responsible for ensuring that employees know what program information is confidential or sensitive.
- h. An employee shall not provide services or information to prospective bidders on any state contract unless authorized by the Department/DAA Contract Unit manager, and such services and information are available to all prospective bidders on the contract.
- i. An employee shall not prepare, present or publish any speech, article or other writing relating to the operation of the Department/DAA for any compensation from a source other than the State without prior written authorization by the employee's Branch Chief/CEO.
- j. An employee shall not use the authority of his/her position with the Department/DAA to knowingly violate or circumvent, or knowingly assist another to violate or circumvent any local, State, or federal law, regulation, or policy.
- k. An employee who has been given authority to make outside purchases for materials or services for the Department/DAA shall not make such purchases from any business entity in which he/she has a financial interest, or in which a member of the employee's immediate family (spouse, child, parent, sibling, or in-law) has a financial interest.

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- i. An employee shall not accept, solicit, or otherwise seek gratuities, loans, credit, money, or anything of value directly or indirectly from any person or his/her agent who is regulated, inspected, licensed, or certified by or otherwise does business with the Department/DAA.
- m. An employee shall not enter into any partnership, profit sharing, or employment arrangement with, solicit business of any kind from, or purchase any property at a special discount from any person subject to regulation, inspection, licensing, certification, accreditation, supervision, or audit by the Department/DAA when the official duties of the employee involve such functions related to that person.
- n. An employee in a scientific, professional, or technical position with the Department/DAA shall not have a financial interest in or enter into any partnership, profit sharing, or employment arrangement with any private practitioner or firm rendering such scientific, professional, or technical services when such private practitioner or firm is subject to regulation, licensing, certification, accreditation or supervision by the Department/DAA, or performs work for the Department/DAA.

Gifts²

An employee shall not accept any gift, including money, any service, gratuity, favor, entertainment, loan, or other thing of value from any person who is doing or seeking to do business of any kind with the Department or whose activities are subject to regulation, inspection, supervision, licensing, or certification by the Department/DAA *under circumstances from which it could reasonably be proven that the gift was intended to influence the employee in his/her official duties or was intended as a reward for any official actions of the employee.* If there is doubt as to the propriety of accepting a gift, the gift should be refused.

All prohibited favors or gifts must be courteously refused, any received must be returned.

If an employee receives an offer of a favor, gift, or cash under circumstances that imply that the intent was to influence or reward the employee's actions, the employee must immediately notify his/her supervisor, even if the offer is refused. The supervisor will elevate the issue as deemed appropriate.

Receipt of gifts from close relatives and friends prompted solely by love, affection, or affinity are not prohibited. Likewise, inexpensive advertising items bearing the

² "Designated" employees should consult the brochure entitled "Limitations and Restrictions on Gifts, Honoraria, Travel and Loans" provided by the Fair Political Practices Commission with Form 700, Annual Statement of Economic Interests.

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names of firms are excluded from this Policy (such as pencils, pens, calendars, notepads, coffee mugs, etc.). Reciprocating meals or entertainment are also not prohibited; however, employees should exercise caution and good judgment in all areas.

Use of State Time to Market Products

The use of state time and resources by employees to market products for personal gain or advantage is prohibited. During work hours, employees must devote their full time, attention, and effort to their State office and assigned duties.

The term "product" includes, but is not limited to cosmetics, food products, cleaning products, house wares, mail orders, jewelry and other sundry items. Employees involved in marketing products must confine such activity to non-work time during the work day, may not use State resources (including the telephone) in the employment or activity, and may not distract other State employees from their duties.

Fund-raising is permitted for Department/DAA or charitable purposes and only if:

- a. It is limited to the employee's non-work time, and
- b. It does not involve contacting other employees during their work time. For instance, placing an order form where it is available for other employees to use is permissible, whereas, going from desk to desk soliciting orders is not.

These two conditions are subject to supervisor approval.

Political Activities

Political activities for State employees and officers are governed by the federal Hatch Act and applicable state statutes.

Former Employees

Once an employee leaves State service, he/she is no longer subject to the provisions of Government Code Section 19990; however, former employees are governed by the Political Reform Act which places restrictions on post-government employment under the provisions of Government Code Sections 81000-91014 and Public Contract Code Section 10410.

Certification Procedures

All employees must complete the Incompatible Activities Certification within thirty (30) days of commencing employment with the Department/DAA and annually thereafter between March 1 and April 30.

Those employees who are engaged in or wish to engage in any outside employment/activity which is or may be related to the Department/DAA must provide the specifics on the Certification, including the name of the employer or activity, job title/capacity, detailed description of the employment/activity, and number of hours per week that the employment/activity will involve, and reasons why the employee believes that the outside employment/activity is not incompatible with the employee's State duties or office.

A current employee wishing to engage in any outside employment/activity which is or may be related to the Department/DAA must submit a new Certification to his/her supervisor prior to engaging in the outside employment/activity, if possible, but no more than thirty (30) calendar days after beginning the employment/activity, so that a determination may be made by the Branch Chief/CEO whether the outside employment/activity is permissible.

If a new employee is already engaged in an employment/activity which is or may be related to the Department/DAA, the employee may continue the employment/activity until receiving a response from the Branch Chief/CEO.

Grievance/Complaint Procedures

An employee has the right to file a grievance or complaint regarding the application of this Policy to the employee's individual situation. Represented employees should follow the grievance procedures as outlined in the applicable MOU.

All non-represented employees may file a grievance or complaint as outlined in Administrative Manual Section 9.5.2, Excluded Employees – Grievances/Complaints and Non-Merit Statutory Appeals. The grievance or complaint must include the reason(s) why the employee disagrees with the Department's decision.

Distribution

Distribution of the above policy/procedure includes all employees.

Employees with questions may contact the Legal Office at (916) 654-1393.

STATE OF CALIFORNIA
INCOMPATIBLE ACTIVITIES CERTIFICATION
 SO-112 (Rev. 08/11)

DEPARTMENT OF FOOD AND AGRICULTURE
 HUMAN RESOURCES BRANCH

If you have any questions regarding your outside employment and/or activities, contact your supervisor prior to completing this certification.

I have received and read a copy of the California Department of Food and Agriculture's Administrative Manual Section 1.2.7, Incompatible Activities Policy (Policy), and I agree to abide by the policy.

I understand that failure to abide by the Policy may result in disciplinary action up to and including dismissal.

I declare that, if there is any change in my outside employment and/or activities which causes this Certification to be inaccurate or incomplete, I shall submit, in writing, a description of that change within thirty (30) calendar days of commencing the employment and/or activity.

I understand that the original of this signed Certification shall be kept in the Human Resources Branch and that a copy will be retained in Branch/DAA files.

Please check the box below that applies to you. For guidance and/or definitions, please refer to the "Definitions" and "Outside Employment and/or Activities" sections of the Policy.

- Category A** – I have no outside employment and/or activities that are or may be related to the Department/DAA.
- Category B** – I have outside employment and/or activities that are or may be related to the Department/DAA.

Complete below for either category. Provide the outside employment and/or activities information only if you check Category B above.

Name (Type or Print)		Classification Title		Time Base (FT or PT)	
Branch/Unit/DAA		Telephone No.		Supervisor	
Name of Outside Employer or Activity				Outside Job Title/Capacity	

Detailed Description of Outside Employment and/or Activity. (Include number of hours per week and reasons why the employment or activity is not incompatible. Use additional pages if necessary.)

Signature		Date	
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*Employee – Return completed certification to supervisor.
 Supervisor – Send original certification to Human Resources Branch. Maintain a copy in Branch/DAA files.*