

**BOARD RESOLUTION ADOPTING THE COMPLIANCE REVIEW REPORT AND
FINDINGS BY THE SPB COMPLIANCE REVIEW DIVISION OF
THE DEPARTMENT OF FOOD AND AGRICULTURE**

WHEREAS, the State Personnel Board (SPB or Board) at its duly noticed meeting of December 5, 2013, carefully reviewed and considered the attached Compliance Review Report of the Department of Food and Agriculture submitted by SPB's Compliance Review Division.

WHEREAS, the Report was prepared following a baseline review of the Department of Food and Agriculture's personnel practices. It details the background, scope, and methodology of the review, and the findings and recommendations.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts the Report, including all findings and recommendations contained therein. A true copy of the Report shall be attached to this Board Resolution and the adoption of the Board Resolution shall be reflected in the record of the meeting and the Board's minutes.


SUZANNE M. AMBROSE
Executive Officer

COMPLIANCE REVIEW REPORT CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE FINDINGS AND RECOMMENDATIONS NOVEMBER 26, 2013

Appointments

During the period under review, May 1, 2011 through October 31, 2012, the California Department of Food and Agriculture (CDFA) made a total 345 civil service appointments. The SPB reviewed 35 of those appointments, which are listed below:

Classification	Appointment Type	No. of Employees
Agricultural Pest Control Supervisor	Eligible List	2
Associate Information Systems Analyst	Eligible List	2
Brand Inspector	Eligible List	5
Environmental Scientist	Transfer	10
Fruit and Vegetable Quality Control Supervisor II	Transfer	1
Office Technician (Typing)	Eligible List	7
Plant Quarantine Supervisor I	Transfer	2
Research Analyst I (General)	Transfer	1
Senior Agricultural Biologist	Eligible List	5

FINDING NO. 1 - CDFA Failed to Advertise Before Filling Vacant Positions

Departments are required to have recruitment strategies designed to be "as broad and inclusive as necessary to ensure the identification of an appropriate candidate group." (Merit Selection Manual [MSM], § 1100, p. 1100.2 (Oct. 2003); Cal. Code Reg., tit. 2, § 50.) Generally, the typical steps a department takes after determining that approval to fill a vacant position has been secured include: determining whether there is an eligible list for the classification in which the vacancy exists; determining whether an eligible list is necessary to fill the vacancy; advertise the vacancy, which may include certifying the eligible list; receive applications, and if no applications are received, re-advertise the position with increased recruitment efforts; screen applications to determine which

candidates meet minimum qualification requirements and are eligible for appointment; and conduct hiring interviews. (MSM, § 1200, pp. 1200.7-1200.8; Cal. Code Reg., tit. 2, § 50.)

SPB rules require that appointments to positions in state civil service by way of eligible list, transfer, or reinstatement be made on the “basis of merit and fitness, defined exclusively as the consideration of each individual’s job-related qualifications for a position...as determined by candidate performance in selection procedures, including, but not limited to, hiring interviews, reference checks, background checks, and/or any other procedures, which assess job-related qualifications” (Cal. Code Regs., tit. 2, § 250, subd. (a).)

CDFA made appointments to fill 14 vacant positions that it failed to advertise. By not advertising, CDFA’s recruitment strategy was not designed to be as broad and inclusive as necessary to ensure the identification of appropriate candidate groups. Whereas CDFA’s written policy is to advertise all vacant positions on the Vacant Position Database (VPOS), CDFA instituted an exception to its policy whereby CDFA granted exemptions from advertising upon request. With respect to advertising, CDFA has not provided a basis upon which to make exceptions.

Therefore, it is recommended that within 60 days of the Board’s Resolution adopting these findings and recommendations CDFA submit to the Board a written corrective action plan that addresses the corrections the department will implement to ensure conformity with advertising requirements for filling future vacant positions.

FINDING NO. 2 – CDFA Failed to Maintain Personnel Records of Incumbents for a Minimum Period of Two Years

In relevant part, civil service laws require that the employment procedures of each state agency shall conform to the federal and state laws governing employment practices. (Gov. Code, § 18720.) State agencies are required to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received. (Gov. Code, § 12946.) State agencies are also required to retain personnel files of applicants or terminated employees for a minimum period of two years after the date the employment action is taken. (*Ibid.*)

CDFA failed to maintain personnel records for 11 of 35 appointments reviewed. The Notice of Personnel Action (NOPA)¹ and Report of Performance for Probationary Employee (STD. 636) are required to be kept on file for at least two years. CDFA did not retain NOPAs and STD. 636s for employees for two years after the date of the employment action as required.

Therefore, it is recommended that within 60 days of the Board's Resolution adopting these findings and recommendations CDFA submit to the Board a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the record retention requirements of Government Code section 12946.

Equal Employment Opportunity (EEO)

The SPB reviewed CDFA's EEO program that was in effect during the compliance review period. In addition, the SPB interviewed appropriate CDFA staff.

FINDING NO. 3 – CDFA's EEO Officer Does Not Directly Report to the Secretary

The Equal Employment Opportunity Officer must report directly to, and be under the supervision of, the director of the department. (Gov. Code, § 19795, subdivision (a).) CDFA's EEO Officer reports directly to the General Counsel.

CDFA must therefore establish a direct reporting relationship between the Secretary and the EEO Officer. CDFA must implement this organizational change within 60 days of the Board's Resolution adopting these findings and recommendations and submit to the SPB a written report of compliance that includes any relevant documentation.

FINDING NO. 4 – CDFA Did Not Inform Complainants about Reasons for Delays in Discrimination Complaint Resolution

Departments are required to provide a written decision to employees who file complaints of discrimination within 90 days of the original filing. If the department is unable to meet the 90-day resolution, it must inform the complainant in writing before the 90 days as to the reason for the delay. (Cal. Code Regs., tit. 2, § 64.4 (a).) Of the

¹ The NOPA is a computer generated record that provides employees with an informational copy of transactions which affect their employment status, and/or serves as a legal document for recording the employee's signature on appointments.

18 EEO discrimination complaints filed during the compliance review period, 16 were not resolved within 90 days. CDFA informed the complainants that there had been a delay in issuing its decision within that time period, but did not disclose the reason for the delay.

Therefore, the SPB recommends that CDFA institute procedures that ensure written communications are sent to any future complainants whose complaint is not resolved within 90 days which include the reason(s) for the delay in the issuance of the decision. It is thus recommended that within 60 days of the Board's Resolution adopting these findings and recommendations CDFA submit to the Board a written report of compliance.

DEPARTMENTAL RESPONSE

CDFA was provided a copy of the initial report to review. A copy of CDFA's response is attached as Attachment 1.

SPB REPLY

Regarding Finding No. 1, CDFA plans to revise its advertising policy, and to notify hiring supervisors and managers about the change. Regarding Finding No. 2, CDFA's Human Resources Branch will implement a tracking system to follow up with supervisors regarding late or missing performance reports and NOPAs. CDFA must implement these actions within 60 days of the Board's Resolution adopting these findings and recommendations, and submit to the SPB a written report of compliance.

Regarding Finding No. 3, CDFA has changed the reporting status of the EEO Officer to reflect a direct reporting relationship to the Secretary. CDFA forwarded a revised organization chart and EEO Officer's duty statement (both featured within Attachment 1) to document the change, so no further action on this Finding is required.

Regarding Finding No. 4, CDFA has revised its discrimination complaint status notification to include the reason for delay, and provided a sample copy with its response to this report. No further action on this Finding is required.

The SPB thanks CDFA for their cooperation and assistance during the compliance review period.

Memorandum

To : James L. Murray, Chief
Compliance Review Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

Date: November 21, 2013

Place: Sacramento

Phone: (916) 654-1020

From : Department of Food and Agriculture - 1220 N Street, Suite 120
Sacramento, CA 95814

Subject : Department Response to Compliance Review Report

The Department of Food and Agriculture (CDFA) met with Diana Campbell and Madeline Olson on November 20, 2013, to discuss the findings from the review of the appointment process and the Equal Employment Opportunity Office (EEO). CDFA appreciates the thoroughness of the review and agrees with the findings.

Detailed below are the corrective measures CDFA plans to implement by February 1, 2014.

Finding No. 1 – CDFA Failed to Advertise Before Filling Vacancies

Corrective Measures – The provision allowing an exception to advertising vacancies will be removed from the Advertising Vacant Positions policy and all hiring supervisors and managers will be notified that no exceptions to advertising will be granted when filling true vacancies.

Finding No. 2 – CDFA Failed to Maintain Personnel Records of Incumbents for a Minimum Period of Two Years

Corrective Measures – The review determined that a few of the selected employee appointment records were missing some of the Notices of Personnel Action (NOPAs) as well as some of the Reports of Performance for Probationary Employees. The Human Resources Branch will devise and implement a tracking system to follow up with supervisors regarding late or missing performance reports and NOPAs.

Finding No. 3 – CDFA's EEO Officer Does Not Directly Report to the Secretary

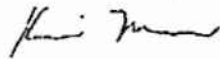
Corrective Measures – The reporting relationship was changed to reflect direct reporting to the Secretary. The revised organizational chart and duty statement are attached.

**Finding No. 4 – CDFA Did Not Inform Complainants about Reasons for Delays in
Discrimination Complaint Resolution**

Corrective Measures – The letter notifying complainants of response delays was revised to include the reason for delay. A sample letter is attached.

CDFA will submit details concerning the corrective measures for findings 1 and 2 within the next 60 days. Please contact Gay Faivre at 403-6582 or Cathy D'Ambrosio at 403-6577 should you have questions concerning the information contained in this letter.

Sincerely,



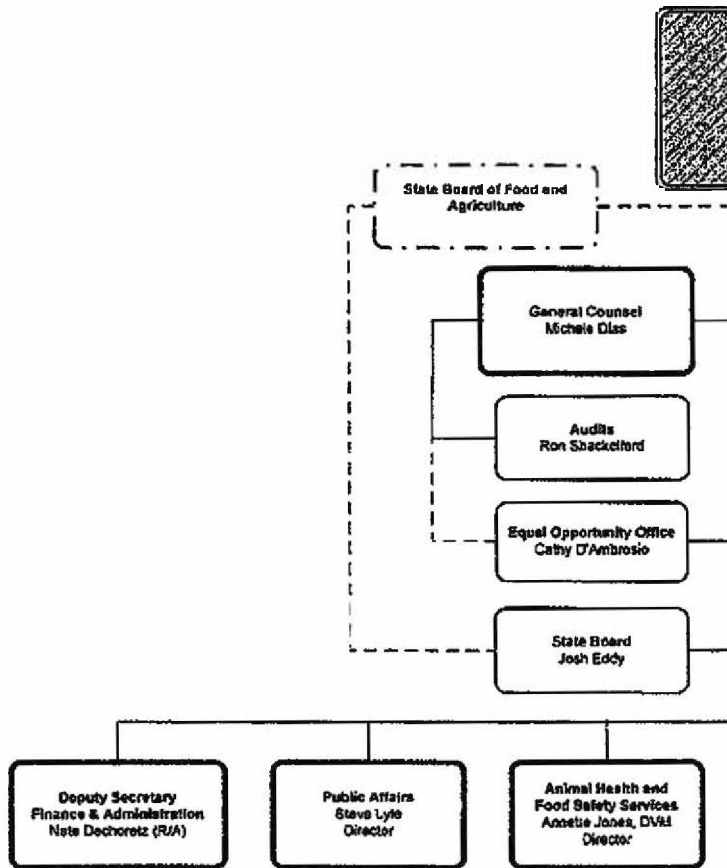
Kari Morrow, Director
Administrative Services

Attachments

cc: Gay Faivre, Personnel Officer, CDFA
Cathy D'Ambrosio, Equal Employment Opportunity Officer, CDFA



**CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE**



SECRETARY
Karen Ross

Administrative Asst. II
Carol Tate

UNDERSECRETARY
Sandra Schulz

Administrative Asst. II
Vacant

Science Advisor
Amrith Gunasekara

Emergency Management
Rita Borgman

Plant Health and
Pest Prevention Services
Director
Vacant

Information Technology
Robert Schmidt
AIO Director

Administrative Services
Karl Morrow
Director

County/State Liaison
Gary Leslie

Plant Health and
Pest Prevention Services
Director
Vacant

**Deputy Secretary for
Legislation & Public
Engagement**
Thea Lee

Administrative Asst. I
Thea Lee

Measurement Standards
Kristen Macey
Director

Inspection Services
Rick Jansen
Director

Fairs & Expositions
John Quiroz
Acting Director

Marketing Services
Kevin Masuhara
Director

**California Department of Food and Agriculture
Staff Services Manager I
Equal Employment Opportunity Officer**

I. Program/Position Identification

Under supervision from the Secretary or his/her designee and direction from the General Counsel, the Staff Services Manager I (SSM I) is responsible for providing leadership to the Equal Employment Opportunity (EEO) and Civil Rights programs for the California Department of Food and Agriculture (CDFA). This position frequently interacts with the general public and other State and federal agencies regarding issues which impact the Department's Equal Employment Opportunity Office.

Classification:	Staff Services Manager I
Working Title:	EEO Officer
License or Other Requirement:	N/A
Position Number:	014-010-4800-001
Location:	Sacramento
Date Prepared:	November 2013
Work Hours/Shift:	40 hours per week

II. Essential and Non-Essential Job Functions

A. Essential Functions:

Travel by vehicle or other public transportation systems to various locations throughout the State is required approximately 15% of the time.

Function #1 Administers EEO Program 40%

- Works with Division Directors and executive staff to prevent discrimination and effectively implement equal employment opportunity.
- Administers the Department's Equal Employment Opportunity Program, Americans with Disabilities Act (ADA), Sections 503 and 504 of the Rehabilitation Act of 1973, Reasonable Accommodation, CDFA's EEO Policy, and other State and Federal regulations with focus on equal employment opportunity and/or discrimination.

- Advises the Secretariat on impact of new or revised State or Federal civil rights/discrimination regulations.
- Formulates policy for the Department in EEO program areas and provides active staff leadership in the development and implementation of these and other Department policies and procedures.
- Participates in decision-making process for handling of sensitive and controversial issues.
- Directs investigations of complaints of discrimination, sexual harassment, and/or separate investigations of a sensitive nature. Interacts with other State and Federal Jurisdictions, such as the State Personnel Board (SPB), the Department of Fair Employment and Housing (DFEH), and/or the Equal Employment Opportunity Commission (EEOC) regarding complaints filed against CDFA.
- Advises the Secretariat on policy issues relative to discrimination complaints, equal employment opportunity matters, and sensitive investigations.
- Analyze and prepare Department reports/surveys such as the Biennial Language Survey in compliance with the Dymally-Alatorre Services Act and the Work Force Analysis report.
- Monitors hiring practices including the composition of panel members in department examinations and participates in outreach/recruitment planning and evaluating the results of efforts. [Gov. Code, §19791 & §19795, subd. (a)]
- Coordinates with the departmental personnel, training, workforce planning, and labor relations offices, and employee unions regarding development and implementation of departmental upward mobility programs. [Gov. Code, §§19401 and 19795, subd. (a)]

Function #2 Training

30%

- Develops training programs addressing sexual harassment prevention, Americans with Disabilities Act, cultural diversity, upward mobility, reasonable accommodations and discrimination prevention.
- Establishes and maintains lines of communication with Department employees and management through training seminars and group presentations.
- Conducts sexual harassment prevention training seminars.

Function #3 Consultation / Implementation

20%

- Provides consultation, advice and direction to Department management on issues relating to the application of Title VII of the

Federal Civil Rights Act, the Fair Employment and Housing Act, the Americans with Disabilities Act, and other EEO and Civil Rights laws, rules, and regulations.

- Acts as the Departments Reasonable Accommodation Coordinator.
- Partners with CDFA's Human Resources Branch in implementing American's with Disability Act, Reasonable Accommodation, and the Family Medical Leave Act.
- Directs the implementation of the American's with Disabilities Act and Reasonable Accommodation, and facilitates the activities of the CDFA's Disability Advisory Committee. Monitors department's compliance in having an active disability advisory committee and provides guidance on disability employment issues including but not limited to underrepresentation of persons with disabilities. [Gov. Code, §19795, subd. (b)]
- Analyzes and evaluates the potential changing environment of discrimination/sexual harassment based on Supreme Court and appellate court decisions as they affect complaints filed with/against the Department.

Function #4 Department Representation

5%

- Acts as the Departments liaison with the Attorney General's (AG) Office in the coordination of discrimination litigation involving CDFA.
- Testifies as the Departments representative on EEO policy and procedures in court and/or administrative hearings.
- Participates in committees and working groups with other State agencies regarding EEO issues.

B. Non-Essential Functions:

Function #1

5%

- Conducts or directs special studies and investigations.
- Responds to correspondence and prepares complex reports; responds to legislative and/or private industry correspondence.

III. Work Environment

The duties of this position are primarily conducted indoors. Each desk includes at least one computer, with various software programs, a telephone with voice-mail, and stationary filing drawers and bins.

Classification: Staff Services Manager I
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The duties of this position require the ability to give presentations, participate at meetings, and interact with other staff; to operate standard office equipment including but not limited to: a computer terminal, calculator, photocopier machine, FAX, and telephone; to grasp papers, small objects, and manuals; to maneuver above shoulder level and below waist level to access upper and lower files and cabinets; and to occasionally move and position items up to fifteen pounds.

The position is located at 1220 N Street in Sacramento. Travel by vehicle or other public transportation systems to various locations throughout the State is required.



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

November 15, 2013

CONFIDENTIAL

Dear :

The California Department of Food and Agriculture (CDFA)'s Equal Employment Opportunity (EEO) Office is responsible to investigate, review, and provide management with a final report regarding your allegations. Unfortunately, completion of the report is delayed due to _____ and _____ expected to be finalized within the next _____ days.

You may concurrently file a complaint with the Department of Fair Employment and Housing (DFEH) and/or the Equal Employment Opportunity Commission (EEOC). There is a 300 calendar day statute of limitations under the EEOC's complaint process and a 365 calendar day statute of limitations under the DFEH's complaint process.

DFEH: <http://dfeh.ca.gov/>
1-800-884-1684

EEOC: <http://www.eeoc.gov/>
The charge filing process:
1-800-669-4000
1-800-669-6820 (TTY)
info@eeoc.gov

This matter remains to be confidential and we ask that you refrain from discussing it outside of the EEO investigative process.

Please contact me if you have any questions regarding this matter.

Sincerely,

Todd Johnson
EEO Analyst/Investigator
todd.johnson@cdfa.ca.gov
(916) 654-1005

