

NOTICE OF PROPOSED EMERGENCY REGULATIONS

Paragraph (a)(2) of Government Code section 11346.1 requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the agency seeking the proposed emergency action shall send a notice to persons who have filed a request for notice of regulatory action with the agency and publish the proposed emergency regulations on its website at <http://www.dot.ca.gov/regulations.htm>.

OPPORTUNITY FOR INTERESTED PERSONS TO SUBMIT COMMENTS TO THE OFFICE OF ADMINISTRATIVE LAW

After submission of the proposed emergency action to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

EMERGENCY REGULATIONS ADOPTED:

TITLE 21 PUBLIC WORKS DIVISION 2 DEPARTMENT OF TRANSPORTATION

CHAPTER 24 RIGHT OF WAY

Article 1 Affordable Rent Program

§2653 Purpose and Scope

The California Legislature has declared the availability of affordable residential housing is of vital statewide importance and state agencies, including the Department of Transportation, have a responsibility to use the power vested in them to meet the housing needs of all economic segments of the community. Accordingly, the Department sets forth herein the Affordable Rent Program by which the Department can consider affordability when adjusting rents for current residential tenants who are economically disadvantaged. The Affordable Rent Program is intended to protect existing low-income tenants from large rental rate increases, which may otherwise result in their current rental unit becoming unaffordable. For new tenants, rents will be set at fair market rates.

Authority cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code
Reference cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code

§2654 Definition of Terms

Affordable Rent Level means 25% of the gross monthly income for tenants who began renting the unit on or before March 3, 1981 or 30% of the gross monthly income for tenants who began renting the unit after March 3, 1981.

Annual Income means total income for the most recent past tax year, before adjustments, credits and taxes.

Fair Market Rent means the amount of rent a parcel would command in the open market if offered under the terms and conditions typical of the market for similar properties.

RAP refers to the Relocation Assistance Program as set forth in the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended (URA) and Title 49 Code of Federal Regulations Part 24 (2005).

Authority cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code
Reference cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code

§2655 Tenant Affordability Standards

In order to qualify for the Affordable Rent Program, tenants must (1) be in occupancy as of December 31, 2012; (2) not be eligible for RAP; and (3) have an Annual Income not exceeding 120% of the county median household income as identified in accordance with the Department of Housing and Community Development's annual publication of Official State Income Limits, adjusted for size of household, published pursuant to Health and Safety Code section 50093.

Authority cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code
Reference cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code

§2656 Income Standards

Affordability is based on Annual Income from all tenants 18 years or older living in the household. Children up to the age of 23, who are enrolled in school full-time including college, will not be included in determining income. Income will be verified using W-2 Forms, state and federal income tax returns, pay stubs, and any other financial documentation relevant to income. When current tenants do not submit complete and accurate supporting financial documentation they will be charged fair market rent.

Authority cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code
Reference cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code

§2657 Rent Standards

Rent charged to tenants who qualify for the Affordable Rent Program will be the higher of either: (1) The current rent; or (2) The Affordable Rent Level. Any rent increase made under the provisions of the Affordable Rent Program shall be limited as follows: (1) if current rent is 25% or less below the Affordable Rent Level, there will be annual 10% rent increases until actual rent equals the Affordable Rent Level, or (2) if current rent is more than 25% below the Affordable Rent Level, there will be 10% rent increases every six months until actual rent is 25% or less below the affordable rent level and then there will be annual 10% rent increases until actual rent equals the affordable rent level. In no case shall the rent in the affordable rent program exceed the fair market rent.

Authority cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code
Reference cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code

§2658 Tenant Eligibility

Continued eligibility for the program will be reviewed annually by the Department.

Authority cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code

Reference cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code

TITLE 21. PUBLIC WORKS
DIVISION 2. DEPARTMENT OF TRANSPORTATION

OPPORTUNITY FOR INTERESTED PERSONS TO SUBMIT COMMENTS TO THE OFFICE OF ADMINISTRATIVE LAW

The Department of Transportation (hereinafter referred to as Caltrans) has complied with paragraph (a)(2) of Government Code section 11346.1 which requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the agency shall send a notice of the proposed emergency action to persons who have filed a request for notice of regulatory action with the agency and post said notice on its website.

After submission of the proposed emergency action to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6

EXPRESS FINDING OF EMERGENCY REGULATIONS TO BE RE-ADOPTED

The Affordable Rent Program (ARP) regulations (Cal. Code Regs., tit. 21 §§ 2653 through 2658) are being re-adopted on an emergency basis for the immediate preservation of the public peace, health and safety, and the general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, within the meaning of Article IV of the Constitution. The emergency regulations are being re-adopted to avoid the risk of undue financial hardship and displacement of current tenants renting under the ARP. Without re-adoption of the emergency ARP regulations, current tenants paying reduced rental rates under the program will be subject to rent increases to align with fair market rent level. This will, in all likelihood, cause some occupants to become displaced because rents are raised to unaffordable levels for units that some tenants have occupied for decades. To re-adopt the emergency ARP regulations will keep eligible occupants in their homes, thus mitigating the environmental effects of disrupting a segment of an established community and the possibility of tenants being made homeless by fair market rents.

The re-adoption of these emergency regulations will keep procedures for administering the Affordable Rent Program in place until the regular rulemaking process is complete. If the emergency regulations expire and subsequently are repealed, rental rates for ARP occupants will immediately be raised to fair market level.

Caltrans incorporates by reference the rulemaking record, Emergency Number 2013-0614-01 EE.

AUTHORITY AND REFERENCE

The proposed emergency regulations will implement, interpret and make specific the authority appointed to Caltrans under Streets & Highways Code section 104.6 and section 65580 of the Government Code.

NECESSITY FOR THE EMERGENCY REGULATION

On December 24, 2012, emergency regulations (Emergency Number 2012-1214-02E) were adopted by the Office of Administrative Law (“OAL”), and those regulations stayed effect until June 25, 2013. On June 14, 2013, Caltrans requested approval for re-adoption of the ARP emergency regulations, Emergency Number 2013-0614-0IEE. That request was approved and the ARP Emergency Regulations were effective on June 24, 2013 and will expire on September 24, 2013. The circumstances requiring emergency regulations be adopted are unchanged since the initial adoption. In order to maintain the intent of these emergency regulations, Caltrans requests a second 90 day re-adoption of the he emergency regulations pursuant to Government Code section 11346.1(h).

Caltrans has proceeded with diligence to comply with Government Code 11346.1(e). On May 7, 2013, Caltrans submitted the regular Notice of Proposed Rulemaking, Notice File Number Z-2013-0507-06, to OAL for publication in the Notice Register on May 17, 2013. Since then, Caltrans has conducted four public hearings as designated in the Notice of Proposed Rulemaking. The hearings were held in Sacramento, San Diego, Los Angeles and Pasadena, with the final public hearing date and final date to submit written comments being July 10, 2013. Caltrans has reviewed all the transcripts from the four hearings conducted, reviewed written comments and has drafted its Final Statement of Reason. After analyzing the comments and recommendations substantive to the proposed regulations, Caltrans made no revisions to its ARP Emergency Regulations in place.

Because of the number of participants at the public hearings (the Los Angeles hearing had over 100 attendees) and the volume of written comments, the subsequent review and analysis of the comments was much longer than anticipated. Caltrans has not completed the final review by its executive branch. The opening of the Bay Bridge diverted the attention from executive level review, however, the review process is back on track and should be completed promptly.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Legislature declared that the availability of affordable housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian, including farm workers, is a priority of the highest order. State governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provisions for the housing needs of all economic segments of the community. (Gov. Code § 65580.)

The Department of Transportation acquires real property needed for state highway construction purposes. Caltrans must, by law, maintain and lease the property that it holds pending future use for highway needs (Sts. & Hy. Code§ 104.6). Since 1979, Caltrans has made a portion of its residential properties available to qualifying low- and moderate- income families at reduced rental rates pursuant to the terms and conditions detailed in Caltrans’s Right-of-Way Manual. The program is known as the Affordable Rent Program. In August 2012, the State Auditor determined the procedures for the Affordable Rent Program in the Right-of-Way Manual could meet the definition of a regulation pursuant to the Administrative Procedures Act (APA) and, therefore, may be unenforceable because they have not been adopted as regulations pursuant to Section 11340.5 of the Government Code.

OBJECTIVE AND ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

Caltrans needs to re-adopt emergency regulations in place to maintain the Affordable Rent Program it established pursuant to section 65580 of the Government Code. The only regulations addressing this program are the current emergency regulations and to continue the program until the regular rulemaking process is complete, it is necessary to re-adopt those regulations, sections 2653 through 2658, Title 21 of the California Code of Regulations. The proposed emergency regulations will implement the criteria and set income limit requirements to qualify for the Affordable Rent Program currently in place for residential properties owned and maintained by Caltrans. Without these emergency regulations, low- and moderate-income tenants could face serious and immediate harm by having their rents increase beyond their financial means and risk displacement if unable to afford the fair market rent.

Benefits:

Re-adoption of the proposed emergency regulations is required as a condition to continue the Affordable Rent Program for which Caltrans does not have permanent adopted regulations under the APA. If the program were to cease, many low- and moderate-income households would realize rent increases beyond their financial means and may even face displacement if unable to afford fair market rent.

Determination of Inconsistency/Incompatibility with Existing State or Federal Law:

The only current existing laws for Caltrans’s Affordable Rent Program are the emergency regulations adopted by OAL. The emergency regulations in place do not conflict with any state or federal law, nor do they pose any inconsistency or incompatibility with any other state or federal regulations.

Technical, Theoretical and/or Empirical Study, Reports or Documents:

State Audit Report, of August 2012, Report 2011-120

California Code of Regulation, Title 25, section 6932 (annual State Income Limits)

Health and Safety Code, section 50093

Affordable Rent Tenants, Exhibit 11-EX-3 of Caltrans of Transportation's Right of Way Manual

Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended, Title 49 of the Code of Federal Regulations, Part 24 (2005).

California Department of Housing and Community Development and the Federal Housing and Urban Development documents and websites that define their affordable housing programs.

Incorporate by Reference:

The income requirements for the Affordable Rent Program, Section 2655 of Title 21, incorporate by reference the Department of Housing and Community Development's publication of State Income Limits that is published annually under Section 6932, Title 25 of the California Code of Regulations pursuant to Health and Safety Code section 50093.

Mandate on Local Agencies and School Districts:

Caltrans has determined that the proposed emergency regulations do not impose a mandate on local agencies or school districts.

Fiscal Impact:

Caltrans has determined that the proposed emergency regulations do not impose an additional cost or savings requiring reimbursement under Government Code section 17500, et seq.; any non-discretionary cost or savings to local agencies or school districts; or any cost or savings in federal funding to the State. Caltrans has determined there will be no direct or indirect cost or savings to any state agency. Any fiscal impact is a result of reasonable compliance with the mandatory provisions of Government Code section 65580 and are not germane to this analysis.

Economic Impact:

Because the ARP is a State operated program, Caltrans has determined that:

- there are no cost impacts a representative private person or business would necessarily incur in reasonable compliance with the proposed action
- the emergency regulations would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states
- the emergency regulations would not affect the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses, or the expansion of

businesses currently doing business within the State of California

- the emergency regulations would have no affect on housing costs within the State of California.

CONTACT PERSONS:

Inquiries concerning the proposed emergency regulatory action may be directed to:

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Please direct requests for copies of the proposed text of the emergency regulations or other information upon which the rulemaking is based to Mr. Rodrigues at the above address.