

**TITLE 21. PUBLIC WORKS**  
**DIVISION 2. DEPARTMENT OF TRANSPORTATION**  
**CHAPTER 23. ADOPT-A-HIGHWAY PROGRAM**  
**AMMENDED STATEMENT OF REASONS**

**INTRODUCTION**

In 1985, the passage of AB 2330 added Section 91.5 to the California Streets and Highways Code. This statute allowed the California Department of Transportation (Caltrans) to accept funds, materials, equipment, or services for maintenance or roadside enhancement. The statute also authorized the director to install a courtesy sign in recognition of such donations.

On October 5, 1989, Caltrans Director's Policy Memo, P89-03\*, Adopt-A-Highway Program, outlined and established the Caltrans Adopt-A-Highway Program (Program). Since that time, Program administrators have developed a comprehensive set of standards, policies, and procedures for operating the Program.

The proposed regulatory action incorporates these standards, policies, and procedures into the California Code of Regulations.

**“MAINTENANCE MANUAL” AND “FHWA MEMORANDUM”**

Development of Program policy has largely depended on two sources.

The *Caltrans Maintenance Manual*, Volume I, Chapter 8. Protection of Workers (Rev. 07/06) (Maintenance Manual), establishes rules for Caltrans maintenance workers while working on the highway. These rules have been developed over the many years of the department's existence and so, wherever applicable, Program rules for participants working at an adoption site are the same as those established for Caltrans maintenance workers.

Caltrans adopts policy set forth in the United States Department of Transportation Federal Highway Administration's (FHWA) *Manual on Uniform Traffic Control Devices* (MUTCD). The MUTCD gives rules for signs installed on highways, street, and roadways open to public travel.

Prior to 2003, Adopt-A-Highway signs were considered by the FHWA to be “informational” signs and Program sign policy reflected MUTCD requirements for informational signs. However, in order to ensure that Adopt-A-Highway Program signs throughout the United States were not being used for advertising, the FHWA began drafting new law regarding “acknowledgment” signs. These provisions will eventually be published in the MUTCD. However, because the rulemaking process is lengthy, the FHWA has issued a policy memorandum titled “Optional Use of Acknowledgment Signs on Highway Rights-of-Way” (Rev. 08/05) (FHWA Memorandum) that is to be adhered to in the meantime. Wherever applicable, Program sign policy reflects policy set forth in the FHWA Memorandum.

\*Currently titled Caltrans Deputy Directive, Adopt-A-Highway Contributions, DD-36-R1, (Rev. 07/09).

## PURPOSE AND NECESSITY OF EACH PROPOSED SECTION

### ARTICLE 1. INTRODUCTION

#### § 2620. Scope of the Adopt-A-Highway Program

The proposed regulatory action defines the scope of the Program as being less broad than its enabling statute (Section 91.5, California Streets and Highways Code). Each of the four subsections narrows the Program's scope in a specific way:

**Subsection (a)** includes donation of services in the Program's scope but excludes donation of funds, materials, and equipment.

**Subsection (a)(1)** prohibits the Program or its courtesy signs from being used for means other than highway maintenance or beautification. This provision is necessary because Caltrans receives numerous proposals each year for adoptions that are outside of the Program's scope. For example, a request was received to install a courtesy sign to recognize a business for funding a mural project. Even though mural installation is a beautification activity, the installation work was not performed under a Program Permit. Also, a mural is not suitable for a graffiti removal adoption because graffiti on a mural cannot be painted over (it must be removed using chemicals). Since no work was performed (or could be performed) under a Program Permit, the purpose of the requested courtesy sign was judged to be advertising and the adoption request was declined.

**Subsection (a)(2)** allows Caltrans to refuse an adoption if it would not be of net benefit to Caltrans.

**Subsection (a)(3)** lists adoption types presently available. This is necessary because Caltrans has found that offering a limited number of standardized adoption opportunities is essential for competent Program management.

### ARTICLE 2. DEFINITIONS

#### § 2621. Definitions

The proposed regulatory action defines words and phrases used in Title 21, Division 2, Chapter 23 (Chapter 23). In addition to clarifying the meaning of each word or phrase, the proposed definitions make the entire chapter easier to understand because fewer words are needed to define a rule.

**Unfamiliar Terms and Titles:** Many terms used in Chapter 23 are specific to Caltrans or the Program and are defined because they are not readily understood by the public. These words and phrases are:

- |                   |   |
|-------------------|---|
| (b) Adoption Site | (c) Adoption Task                         |
| (d) Adoption Type | (h) Caltrans Policy                       |
| (k) Courtesy Sign | (l) Deputy District Director, Maintenance |

- |                              |                              |
|------------------------------|------------------------------|
| (m) Displaced Adopter Status | (n) District                 |
| (o) District Coordinator     | (p) District Permit Engineer |
| (t) Median                   | (ff) Program Internet Site   |
| (gg) Recognition Panel       | (ll) Sponsor                 |
| (mm) Sponsored Adoption      | (nn) Successive Permit       |
| (oo) Statewide Coordinator   | (pp) Turnaround Time         |
| (qq) Vegetation Control Plan | (rr) Volunteer Adoption      |

**Familiar Terms:** Some familiar words and phrases used in Chapter 23 must be defined because they have a unique meaning when used with reference to the Program.

These words and phrases are:

- |                              |  |
|------------------------------|--|
| (a) Adopter                  | (e) Applicant                                  |
| (g) Caltrans                 | (i) Contractor                                 |
| (j) Contractor’s Crew Leader | (q) Group Leader and/or Alternate Group Leader |
| (s) Maintenance Supervisor   | (u) Obscene                                    |
| (v) Organization             | (w) Participant                                |
| (dd) Program                 | (hh) Safety Orientation                        |
| (ii) Sexually Explicit       | (jj) Site Plan                                 |

**Documents and Groups of Documents:** There are numerous forms and handouts mentioned in Chapter 23. All have lengthy titles and, in some cases, the titles are nearly identical. For example, “Attachment A (Adopt-A-Highway Special Provisions)” and “Adopt-A-Highway Permit Special Provisions” are two different forms. For clarity, they are simply referred to as “Attachment A” and “Special Provisions.” Also, some forms and/or handouts are grouped together to create a unit. For example, a Permit package can include up to six different documents depending on the adoption type. To list all possible combinations of these documents in the regulations text would confuse the reader.

These documents and groups of documents are:

- |                          |  |
|--------------------------|--|
| (f) Attachment A         | (r) Instructions for Preparing Plans and Schedules |
| (x) Permit               | (y) Permit Application                             |
| (z) Permit Package       | (aa) Permit Provisions                             |
| (bb) Plans and Schedules | (cc) Planting Plan                                 |
| (ee) Program Application | (kk) Special Provisions                            |
| (ss) Work Plan           | (tt) Work Schedule                                 |

## ARTICLE 3. ELIGIBILITY

### § 2622. Adoption Eligibility

The proposed regulatory action defines Program eligibility requirements.

**Subsection (a)** sets broad parameters for eligibility by limiting participation to individuals, businesses, corporations, agencies, or organizations.

**Subsection (a)(1)** establishes that the Program does not discriminate and is compliant with the Americans with Disabilities Act of 1990 and Title VI of the Civil Rights Act of 1964 as amended. This subsection allows an exception to be made only if a participant's disability or medical condition would affect the participant's or the public's safety. To determine whether or not a disability or medical condition is serious enough to deny eligibility, the Program applies much of the same criteria imposed on Caltrans maintenance employees who work in the field. These include the ability to:

- Work in hot and cold weather.
- Walk on uneven and sloped surfaces.
- Carry up to ten pounds.
- Be able to use their own eyes and ears to look and listen for danger signals to ensure their personal safety. (*Maintenance Manual 8.00 B, 8.14*)
- Be free from the effects of medication, controlled substances, alcohol, or the complications arising from illness or injury which might impair their judgment and/or ability to work. (*Maintenance Manual 8.02*) Examples include the ability to:
  - Resist the urge to argue or engage in "horseplay" while on the roadside.
  - Resist the urge to pickup litter in unsafe places.
  - Follow directions and abide by safe work practice rules.
  - Recognize when they are too fatigued or ill to work.
  - Recognize an emergency.
  - React and move quickly to avoid errant drivers, snakes, and other roadside hazards.

An example of a medical condition that would affect a person's ability to safely participate would be a disorder that prevented a person from walking without an assistive device. Such a person would risk falling if they were to carry a litter bag in one hand while picking up litter with the other hand. An example of a medical condition that would affect the public's safety would be a disorder that would prevent a person from being able to make a judgment to ignore a piece of litter that is in a traffic lane.

Disabled individuals or groups with disabled persons rarely apply to the Program. If one were to apply, the district coordinator discusses the above capabilities with the applicant. These capabilities are again stressed via a required safety orientation. Once adoption work begins, it is the volunteer group leader's responsibility to ensure that all members of the group are able to work safely on any given day. It is the contractor's responsibility to hire capable persons; it is the contractor's crew leader's responsibility to ensure that crew

members are able to work safely on any given day. This responsibility is assigned to the adopter by the Adopt-A-Highway Permit Special Provisions (Special Provisions) which is included in each adopter's Permit package.

Special Provisions 4., Acceptance of Provisions, states:

Permittee understands and agrees to accept these Adopt-A-Highway Permit Special Provisions and all attachments to this permit, for any work to be performed under this permit. It is understood and agreed by the permittee that performing work under this permit shall constitute acceptance.

Special Provisions 32., Responsibility for Damage, states:

The permittee shall indemnify and save harmless the State of California, all officers, employees, and State's contractors, thereof, including but not limited to the Director of Transportation and the Deputy Director, from all claims, suits or actions of every name, kind and description...

Even so, should Caltrans become aware of any participant endangering themselves or the public, the volunteer adopter's or contractor's Permit is immediately revoked as established by Section 2649 (b)(3)(A) 2.

**Subsection (a)(2)** establishes the minimum age for participation. Sixteen is the age commonly associated with a young adult's ability to assume greater responsibility and to understand the risks associated with the responsibility. For example, a 16 year-old may seek employment or a driver's license. It is necessary for participants to be of a responsible age because working on a highway roadside involves some risk.

**Subsection (a)(3)** establishes the minimum age for contact persons. The primary contact is the person who signs the Permit application. Once a Permit is issued, the primary contact is responsible for ensuring that all Permit Provisions are met. This is a great responsibility and involves some liability. Therefore, it is necessary for the primary contact to be of legal adult age. Because the alternate contact may replace the primary contact during the course of an adoption, he or she must also be 21 or older. It is necessary for the primary contact of student organization to be a faculty member because the membership of a student organization changes frequently. In addition, most adoptions require work during the summer months, a time when many students are not available.

**Subsection (b)** sets broad parameters for denial of eligibility. These are necessarily broad in order to allow Caltrans discretion in a variety of situations. If an existing adopter's Permit is revoked for any of the three reasons stated in Subsections (b)(1)-(b)(3), these provisions would enable Caltrans to deny the adopter's eligibility to apply for another adoption.

**Subsection (b)(1)** states that eligibility may be denied if an applicant's participation in the Program would "create a hazard to the safety of Caltrans' employees or the public." An adopter, whose presence or activities while on the Caltrans right of way disrupts the normal flow of traffic, can be considered a hazard to safety.

**Subsection (b)(2)** states that eligibility may be denied if an applicant’s participation in the Program would “violate the law.” An example would be that of a person who had been issued a restraining order to stay away from schools wanting to adopt a site located adjacent to a school’s playground.

**Subsection (b)(3)** states that eligibility may be denied if an applicant’s participation in the Program would “contrary to Caltrans Policy.” DP-01-R6, Caltrans Director’s Policy on Equal Employment Opportunity (07/06) sets forth a “zero tolerance policy” of discrimination and harassment. Parties who perform an act of violence, discrimination, or harassment against Caltrans “applicants, employees, clients, and customers” are not eligible to participate.

**ARTICLE 4. ADOPTION TYPES**

**§ 2623. Adoption Types**

The proposed regulatory action identifies the Program’s adoption types and describes the work requirements for each type.

**Subsection (a)** explains how adoption types are named and also states that existing adoption types and requirements are subject to change. While changes in adoption requirements rarely happen, it is important that the public be made aware of this possibility.

**Subsections (b)(1) - (7)** describe the seven standard adoption types and provide a detailed list of work requirements. The requirement to prepare plans and schedules as part of the Permit Application process for vegetation control and planting adoptions is also made known. Although people are curious about work requirements for the different adoption types, the Program’s rationale for establishing the requirements listed in Subsection (b) is usually not questioned. Based on experience, the Program’s work requirements have proven to be reasonable and necessary to create a successful adoption.

Caltrans is occasionally questioned about how the minimum size requirements for each adoption type are determined. The overriding principle is fairness. An attempt is made to ensure that work performed by all adopters in the same geographical area is roughly equivalent.

The length of a litter removal site is set at approximately two miles. As shown in the chart below, this is the length used by the majority of Adopt-A-Highway Programs in the United States.

<b>International Adopt-A-Highway Association Survey 2008</b>						
<b>What is the minimum adoption length?</b>						
	<b>None</b>	<b>½ mile</b>	<b>1 mile</b>	<b>2 miles</b>	<b>Other</b>	<b>Response Count</b>
<b>Urban</b>	5.1% (2)	15.4% (6)	12.8% (5)	61.5% (24)	5.1% (2)	39
<b>Rural</b>	5.9% (2)	2.9% (1)	17.6% (6)	70.6% (24)	2.9% (1)	34

Normally, a litter removal site includes both directions of a two-mile section of highway. However, a litter removal site on a freeway or wide expressway may be adopted in only one direction if the site has a pickup frequency much greater than the minimum of six times per year. For example, the average pickup frequency for Los Angeles County is 24 times per year but the average pickup frequency for Mendocino County is six times per year.

A graffiti removal adopter is usually required to adopt more than one structure to ensure work several times a year. A vegetation control adoption site is large because the minimum work frequency is only two times per year (a vegetation control site must include both directions of a two-mile site or be approximately five acres net). Because the work required by a tree and shrub planting adopter or wildflower planting adopter is complex and extensive, a planting adoption site is smaller – approximately three acres net. A courtesy sign is not installed to recognize supplemental litter removal or spot wildflower planting adopters because those sites fall well below the minimum size requirement and it would not be equitable to give the same amount of recognition to an adopter who is doing a fraction of the work required for other adopters in the same area.

#### **§ 2624. Materials and Equipment**

The proposed regulatory action identifies items supplied by Caltrans and informs the public that some adoption types require the adopter to purchase materials and equipment.

**Subsection (a)** informs the public that instructional handouts are available to applicants who are required to prepare plans and schedules.

**Subsections (b) - (b)(3)** identifies what equipment is supplied by Caltrans and when the equipment is distributed.

**Subsection (c)** identifies what labor is provided by Caltrans.

**Subsection (c)(1)** explains the Program’s policy regarding recyclable items found at an adoption site (a question often posed by adopters).

**Subsection (d)** makes clear the adopter’s responsibility to supply anything not listed in Subsections (a) - (c).

### **ARTICLE 5. ESTABLISHING ADOPTION SITES**

#### **§ 2625. Site Reviews**

The proposed regulatory action explains the purpose of a site review and lists times when site reviews are required. The public should know that Caltrans has a procedure in place to evaluate all adoption sites before they are offered for adoption.

**Subsection (a)** declares the primary purpose of a site review – to classify a site as “adoptable” or “not adoptable.” Subsection (a) also states the secondary purpose of a site review – to gather information about the site so that it can be passed along to the adopter.

**Subsection (b)** informs the public that sites are reviewed on an ongoing basis.

**Subsection (c)** identifies who initiates a site review and who conducts a site review.

## **§ 2626. Site Review Criteria**

The proposed regulatory action defines the factors examined during a site review. The public should understand why Caltrans classifies some sites as “not adoptable.”

**Subsections (a)(1)(A) - (a)(1)(D)** define site access requirements for participants, vehicles, and equipment. If there is no safe access, the site is classified as “not adoptable.” Site access rules reflect Maintenance Manual 8.18 policy which requires Caltrans maintenance workers to install a shoulder closure (a form of traffic control) if they park within six feet of a traffic lane for more than 20 minutes. Proper use of traffic controls requires training. In the private sector, persons who provide traffic control services must have a general contractor’s license or a Construction Zone Traffic Control (C-31) license issued by the California Contractors State License Board. Since Program participants are not trained to use traffic controls, Program participants are forbidden to park, walk, or work within six feet of a traffic lane.

**Subsections (a)(2)(A)(1) - (a)(2)(A)(6)** state that an adoption site must meet minimum size requirements but also gives the maintenance supervisor and/or district coordinator a certain amount of flexibility when establishing the beginning and end points of a site. Because of this flexibility, it is rare for a site to be classified as “not adoptable” because it is too small.

**Subsections (a)(2)(B)(1) - (4)** list areas that are automatically excluded from adoption.

**Subsection (a)(2)(B)(1)** excludes medians. Program participants are not permitted within six feet of a traffic lane, so a site located in a median would have to be accessed by a vehicle. Medians with room for a vehicle to park off of paved shoulders and at least six feet from the traffic lane are rare in populated areas where most adoptions occur. In addition, deceleration from and acceleration into the “fast lane” of traffic is unsafe because sand or gravel in a median can cause a vehicle’s tires to slip. Exclusion of medians reflects Maintenance Manual 8.30, which requires maintenance workers to avoid parking in a median that is too narrow, wet, sandy, or is difficult to accelerate from. In addition, Maintenance Manual 8.32, requires use of protective vehicles (a form of traffic control) when picking up litter in narrow medians.

**Subsection (a)(2)(B)(2)** excludes areas under construction. When an area goes under construction, responsibility for the area is transferred from a district’s Maintenance Division to the district’s Construction Division. Once transfer of responsibility occurs, Caltrans maintenance employees are not permitted in the construction zones (unless there is an emergency). Because the Program is administered by the Maintenance Division, adopters are also not permitted in construction zones. An attempt is made to help adopters who lose a site because of construction to find another site. This “displaced adopter” provision is found in Section 2640.

**Subsection (a)(2)(B)(3)** excludes areas under a maintenance agreement. When an area goes under a maintenance agreement with another agency, Caltrans pays the agency to perform maintenance activities. Even though the Program is of great value to Caltrans, there is a cost associated with each adoption for administration and signs.

To duplicate costs for a maintenance activity would constitute a wasteful use of taxpayer dollars.

**Subsection (a)(2)(B)(4)** excludes areas within six feet of a traffic lane. This provision prevents many areas from being adopted, including bridges, tunnels, gore points (triangular areas created between ramps and the traffic lane), paved shoulders, and sections with no workable ground beyond the six-foot boundary. The obvious reason is safety. Six feet is the minimum number of feet required by the Maintenance Manual 8.21 and 8.23 for a buffer zone. When Caltrans maintenance employees work within six feet of a traffic lane, they are required to utilize barrier vehicles and/or shoulder closures for protection. As mentioned before in Subsections (a)(1)(A) - (a)(1)(D), Program participants are prohibited from using traffic controls.

**Subsection (a)(3)** explains that the maintenance supervisor decides what work methods can be used at an adoption site. This information is passed along to the adopter. For example, as part of a vegetation control site review, a maintenance supervisor determines that hand pulling, hoeing, and weed-whipping may be used for vegetation control. A district landscape specialist approves the maintenance supervisor's decision. The district coordinator communicates the supervisor's selections to the applicant during the Permit Application process. The applicant chooses one or more of the approved methods and lists them in a work plan. The work plan is submitted to the district coordinator, approved by a district landscape specialist, and a copy is included in the Permit package. A copy of the Permit package is sent to the adopter, the maintenance supervisor, and the district coordinator.

**Subsection (a)(4)** explains how work frequencies are determined. To base a work frequency on the amount of time it "takes litter to accumulate" or "for weeds to grow" is a common-sense approach. Nearly every roadside in the State Highway System has been reviewed in order to identify potential litter removal sites and work frequencies for adoptable sites have been assigned. When a maintenance supervisor performs a new site review, he or she has the option to change the current work frequency. However, once again fairness is essential and an effort is made by the district coordinator to change work frequencies for adjacent sites at the same time.

The minimum graffiti removal turnaround time of three days provides a reasonable period of time for adopters to plan and complete a graffiti removal work event. The maximum graffiti removal turnaround time of ten days is based on the Caltrans Deputy Directive for Graffiti Prevention and Removal (DD-39-R1) which requires District Directors to "remove graffiti from traffic control devices as soon as possible, when traffic safety is affected, or the graffiti is of an obscene nature, and otherwise within ten days as specified in Streets and Highways Code Section 96."

## **§ 2627. Site Classification**

The proposed regulatory action establishes that there is no obligation for Caltrans to classify an adoption site as "adoptable" or to continue to classify an existing adoption site as "adoptable."

**Subsection (a)** gives Caltrans the authority to decline to establish an adoption site that does not meet site review criteria or would increase the Caltrans maintenance work load. For example, a party is interested in a tree and shrub planting adoption but does not have the resources to pay for water to be transported to the site. Since Caltrans is not obligated to allocate its own resources to transport water to the site or to install irrigation, the adoption site would not be established.

**Subsection (b)** acknowledges the public’s right to know why a site is classified as “not adoptable.” A list of all sites in a district showing the location, classification, and adoption status of each site is available upon request from each district coordinator. If a site is classified as “not adoptable,” a reason is stated on the list.

**Subsection (a)** gives Caltrans the authority to change a site’s classification. This provision allows for a site to be reclassified as “not adoptable” or as “adoptable.” For example, a site classified as “not adoptable” because it is under construction may be reclassified as “adoptable” once construction is complete. Or, a site classified as “adoptable” may be classified as “not adoptable” if it is about to be enveloped in a construction zone.

## **ARTICLE 6. COURTESY SIGNS**

### **§ 2628. Purpose of Courtesy Signs**

The proposed regulatory action establishes the purpose of courtesy signs. The public must understand that Caltrans does not allow advertising on courtesy signs. The FHWA Memorandum states:

FHWA recognizes a distinction between signing intended as advertising and signing intended as an acknowledgment for services provided. Advertising generally has little if any relationship to a highway service provided. The advertiser basically wants to get its recognizable message, company emblem, or logo before the public, and if possible, information on how or where to obtain the company’s product or services. In most cases, if the sign goes beyond recognizing the company’s contribution to a particular highway service at a specific highway site or includes telephone numbers or internet addresses, the sign is more properly classified as an advertising sign and not an acknowledgment sign....

Use of highway right-of-way for advertising purposes is not allowed. This policy position is consistent with the principles and intent of several laws including 23 U.S.C. §1.23(b), 23 U.S.C. §109(d), and 23 U.S.C. §131. The MUTCD Section 1A.01 state that “Traffic control devices or their supports shall not bear any advertising message or any other message that is not related to traffic control.” This position is founded on safety and operational concerns, particularly as related to driver distraction.

## § 2629. Location, Installation, and Cost of Courtesy Signs

The proposed regulatory action describes Caltrans' policy regarding location, installation, and cost of courtesy signs. This section informs the public that a district coordinator cannot alter established sign policy in order to please an adopter. For example, it is not unusual for an adopter to ask a district coordinator to have its sign moved to a "better" location.

**Subsection (a)** informs the public that the Division of Traffic Operations determines where a sign is placed. Rules for placement of acknowledgement signs are outlined in the FHWA Memorandum which states:

With respect to placement of traffic control signs, regulatory, warning, and guide signs have a higher priority than acknowledgement signs. In fact, acknowledgement signs are the lowest priority of information-type signs and may only be placed where adequate spacing between higher priority signs is available. In no case shall the acknowledgment sign be placed such that it obscures road users' view of other traffic control devices.

The Memorandum also lists minimum spacing requirements, prohibits placement of an acknowledgement sign in certain areas, and requires that an acknowledgment sign be relocated to accommodate a newly installed, higher priority sign.

Because each district's Division of Traffic Operations is responsible for the placement of all traffic control devices, it is most appropriate for traffic operations personnel to determine where a courtesy sign can be placed.

**Subsection (b)** informs the public that Caltrans supplies a courtesy sign and standard recognition panel for each direction of an adopted site without cost to the adopter. This information is especially important to a prospective sponsor because most contractors charge a fee for providing a recognition panel.

**Subsection (c)** informs the public that an adopter is not guaranteed a sign. The Program's authorizing statute (Section 91.5 of the Streets and Highways Code) states, "The director *may* authorize a courtesy sign." The public should understand that Caltrans has discretionary authority to authorize a courtesy sign.

**Subsection (c)(1)** restates information first given in Article 4, Adoption Types – a supplemental litter removal adopter or a spot wildflower planting adopter does not receive a sign. Repetition is necessary because the subject matter is different. In Article 4, the lack of a courtesy sign is mentioned to establish that Caltrans values equitable recognition for work performed. In this article (Article 6), the lack of a courtesy sign is mentioned to provide an example of Caltrans' discretionary authority.

## § 2630. Recognition Panels

The proposed regulatory action describes the three categories of recognition panels. The regulatory action also informs the public that the Program has strict rules regarding what can be displayed on recognition panels.

**Subsection (a)** explains the differences between a standard panel, a standard panel with logo, and a custom panel. The subsection also informs the public that the adopter incurs some costs if a standard panel is not chosen. Caltrans does not provide logos or other custom panel elements because it does not have the capability to do so. Lettering for a standard recognition panel is prepared on the same equipment used for other Caltrans signs.

**Subsection (b)** authorizes Caltrans to make rules regarding recognition panel content. The FHWA Memorandum states, “If a State or local highway agency elects to have an acknowledgment sign program, then that agency should develop an acknowledgement sign policy.” Subsection (b) lists basic rules for what can be displayed on a recognition panel. Subsection (b) also makes known that a complete listing of recognition panel rules, called the “Adopt-A-Highway Recognition Panel Design Guidelines,” is available on the Program’s Internet site. This document gives detailed rules regarding type styles, lettering size, and colors.

**Subsections (b)(1)(A) - (b)(1)(B)** establish that the name entered in the “Individual, Organization, Agency, or Business Name” field of the Program Application is the name that will be displayed on the adopter’s recognition panel. This policy presents a problem to businesses who want to advertise products, services, slogans, etc. on a recognition panel. Some businesses choose not to participate because of this policy. Others have attempted to enter an “embellished” business name on the Program Application. For example, a business whose legal name is “24-Hour Parking” might attempt to apply under the name of “24-Hour Airport Parking” in order to advertise the fact that they are located near the airport.

**Subsection (b)(1)(C)** permits a business, agency, or organization to also display its logo along with its name or to display just its logo.

**Subsection (b)(2)(A)** establishes that adding graphical embellishments to a recognition panel is not permitted. They may look nice, but they go beyond what is needed to recognize an adopter.

**Subsection (b)(2)(B)** establishes that “obscene” or “sexually explicit” content is not permitted. These terms are defined in Article 2, Definitions. Caltrans believes that exclusion of such words or images is reasonable and necessary because recognition panels are viewed by travelers of all ages.

**Subsection (b)(2)(C)** establishes that adopter names or logos that violate the law or Caltrans’ policy are not displayed. The FHWA Memorandum prohibits display of “any messages, lights, symbols, and trademarks that resemble any official traffic control devices.” Therefore an adopter whose logo depicted a stop sign would not be permitted to display its logo. It would be a violation of Caltrans’ policy to display words or logos that are discriminatory and harassing in nature. For example, a club, whose logo depicted a person in a protected class being brutalized, would not be permitted to display

its logo. It is important to note that the “eligibility” of a party affected by this provision is not necessarily affected. Such a party may be able participate but items displayed on its recognition panel must be compliant with Program rules.

**Subsection (b)(2)(D)** lists items which adopters have attempted to display despite the Program’s long-standing “name, logo, or both” policy. The policy to prohibit words in a logo that are not part of the adopter’s name was instituted along with a requirement to provide an example of the proposed logo being used in a corporate document. This policy is necessary because businesses were able to “work the system” by simply creating a new logo that incorporated the product name or service the business wished to advertise. For example, if the “24-Hour Parking” business mentioned above was not permitted to use the embellished name, then they might attempt to alter its logo to include the word “Airport” and request a logo-only panel.

### **§ 2631. Courtesy Sign Maintenance**

The proposed regulatory action describes the Program’s policies regarding maintenance of installed courtesy signs and recognition panels. The public should know what happens to a courtesy sign and/or recognition panel if any of the situations listed in subsections (a) - (f) occur during a Permit period.

**Subsection (a)** explains the Program’s policy regarding damaged or vandalized courtesy signs.

**Subsection (b)** explains the Program’s policy regarding courtesy signs in areas under construction.

**Subsection (c)** explains the Program’s policy regarding recognition panel replacement during a Permit period.

**Subsection (d)** gives notice that a non-compliant recognition panel which needs to be replaced for any reason must be replaced with a compliant recognition panel. Occasionally, a district coordinator approves a recognition panel in error. If this occurs, Caltrans does not require the recognition panel to be immediately replaced. However, should the recognition panel need to be replaced because it was damaged or for any other reason, then the replacement recognition panel must be compliant with recognition panel design rules.

**Subsection (e)** gives Caltrans the authority to take corrective action if an adopter alters a panel from the approved design.

**Subsection (f)** explains the Program’s policy regarding courtesy signs at vacant adoption sites.

## **ARTICLE 7. PARTICIPATION OPTIONS**

### **§ 2632. Participation Options**

The proposed regulatory action defines the Program’s two participation options and makes known that a party may have multiple adoptions.

**Subsection (a)** explains the difference between a volunteer adoption and a sponsorship. In a sponsored adoption, two Permits are issued. The sponsor's Permit is considered by Caltrans to be a "primary" Permit and the contractor's Permit is considered to be a "double" Permit. The contractor's Permit is totally dependant on the sponsor's Permit. A similar relationship in private industry would be that of a general contractor and a subcontractor. A sponsor is like a general contractor and a sponsor's contractor is like a subcontractor. A general contractor can decide to perform work without the help of a subcontractor or hire a subcontractor to do the work. A general contractor can also hire more than one subcontractor or fire a subcontractor.

**Subsection (a)(1)** explains that a volunteer adopter can convert to a sponsorship at any time.

**Subsection (a)(2)** explains that a sponsor can convert to a volunteer adoption or change to a different contractor at any time. The subsection advises a sponsor to examine the contract with its contractor before making a change. This is because the contract between the sponsor and the contractor may require the sponsor to continue paying until its contract period ends or to pay a cancellation fee. As established in Subsection 2624 (a), Caltrans does not intervene in such cases.

**Subsection (b)** informs the public that a participant may adopt as many sites as its resources will allow.

### **§ 2633. Shared Adoptions**

The proposed regulatory action explains policy for shared adoptions.

**Subsection (a)** defines a shared adoption.

**Subsection (b)** explains what options a shared adopter has if its co-adopter no longer wishes to participate. This is necessary because shared adoptions seldom last beyond a single Permit period.

### **§ 2634. Relationship of Contractors, Sponsors, and Caltrans**

The proposed regulatory action clarifies the relationship between contractors, sponsors, and Caltrans.

**Subsection (a)** informs the public that Caltrans has no authority or involvement in the contract established between a sponsor and a contractor. This understanding is especially important if a sponsor wants to convert to a volunteer adoption, change contractors, or to stop participating, as permitted by Subsections 2632 (a)(2) and 2647 (c)(1).

As previously mentioned, Caltrans does not intervene if a contractor requires the sponsor to continue paying until its contract period ends or to pay a cancellation fee.

**Subsections (a)(1)(A) - (a)(1)(B)** inform the public that a sponsor may hire more than one contractor but a contractor may not subcontract. For example, a sponsored wildflower planting adoption requires soil preparation, seeding, and year-round weed control. The sponsor may hire a contractor who has the appropriate equipment to till the soil and hydro seed the adoption site. Then the sponsor could hire a contractor who

charges much less per hour to perform weed control. It is not permissible for the contractor who performs the weed control to subcontract the tilling or hydro seeding.

### **§ 2635. List of Contractors**

The proposed regulation explains how to become a Program contractor. It also establishes participation rules specific to contractors and explains the consequences for non-compliance.

**Subsection (a)** explains that certain requirements must be met in order for a contractor to be added to the Program's list of contractors. The subsection also directs interested parties to the Program's Internet site for a detailed list of requirements.

**Subsection (b)** authorizes a district coordinator to cancel a contractor's Permit for non-compliance of Permit provisions.

**Subsection (c)** authorizes a district coordinator to deny a sponsor's Program Application or Permit Application and issue a warning letter to the contractor if the contractor submits falsified documents on behalf of the sponsor. As discussed in the necessity statement for Subsection 2630 (b), some businesses want to advertise products, services, slogans, etc. on its recognition panel. Since contractors are aware of the Program's naming rules and recognition panel design rules, is it not acceptable for a contractor to knowingly submit false business name verification, logos samples, or other falsified documents.

## **ARTICLE 8. PROGRAM APPLICATION**

### **§ 2636. Purpose of the Program Application**

The proposed regulatory action explains the purpose of the Program Application.

**Subsection (a)** establishes that the Program Application initiates the adoption process.

**Subsection (b)** establishes that applicant name requirements and applicant eligibility requirements are applied at the Program Application stage. The eligibility approval policy described in Subsection 2637 (b)(4) is new and will become effective when Chapter 23 is adopted. In order to avoid confusion among persons who are familiar with the Program's existing application process, it is necessary to establish when the new eligibility approval step will be applied.

**Subsection (c)** establishes that the date a completed Program Application is received is the date a district coordinator uses to determine which applicant is offered an adoption site desired by more than one applicant. A Program Application is considered complete if the applicant's name is compliant with Program name rules and the Program Application is properly filled out.

### **§ 2637. Program Application Process**

The proposed regulatory action describes the Program Application process and informs applicants that an appeal process is available for denied Program applicants.

**Subsection (a)** establishes that a prospective adopter must submit a Program Application to the district coordinator in order to begin the adoption process. The section also authorizes a contractor to submit a Program Application on behalf of a sponsor.

**Subsection (a)(1)** explains where a Program Application can be obtained.

**Subsection (a)(2)** explains how a Program Application can be submitted.

**Subsection (b)** divides the Program Application process into six basic steps which are described in Subsections (b)(1) - (b)(6).

**Subsection (b)(1)** explains that the district coordinator creates a record of when the Program Application was received.

**Subsection (b)(2)** explains that the district coordinator checks to see if the applicant's name is compliant with the Program's applicant name rules described in Subsections (b)(2)(A) - (b)(2)(E).

**Subsection (b)(2)(A)** establishes a requirement for businesses to provide a document to verify its business name and lists acceptable verification documents. As discussed in the necessity statement for Section 2630, some businesses, who wanted to include advertising on their recognition panels, were applying under false business names. The business name verification requirement has proved to be a successful deterrent to this practice.

Since there have been very few instances of individuals, agencies, or organizations using false names, they are not required to submit name verification along with a Program Application. However, should a question arise regarding the name of an individual, agency, or organization, the district coordinator can ask for name verification.

**Subsection (b)(3)** explains that the district coordinator reviews a Program Application for completeness. This subsection also explains what a district coordinator does if a Program Application is or is not complete. Once the district coordinator determines that the Program Application is complete, the date completed is entered on the face of the Program Application. As established in Subsection 2636 (c), this is the date a district coordinator must use to determine which applicant is offered an adoption site if it is desired by more than one applicant.

**Subsection (b)(4)** explains the eligibility approval process and the appeal process available to denied Program applicants. As previously mentioned, the eligibility approval step is new. If controversy should arise regarding a new adopter, it is appropriate for the attention to be directed away from the district coordinator to the managerial level of the Deputy District Director, Maintenance.

**Subsection (b)(5)** explains that the district coordinator must order a site review for a requested site if it is classified as "adoptable" and is vacant and the site review on file is older than two years.

**Subsection (b)(6)** requires the district coordinator to send an Application Status Letter to each applicant within 30 calendar days of receipt of the completed Program Application. The letter's purpose is to inform the applicant of the action taken for each requested site. Possible actions are described in Subsections (b)(6)(A) - (b)(6)(C).

## **ARTICLE 9. WAITING LIST**

### **§ 2638. Establishment of Waiting Lists**

The proposed regulatory action defines who establishes waiting lists, when waiting lists are established, who can be placed on a waiting list, how many times a party can be placed on a waiting list, and general waiting list rules.

**Subsection (a)** establishes that a district coordinator must create a waiting list if an adoption site is desired by more than one applicant.

**Subsection (a)(1)** explains that there is no limit to the number of adoption sites an applicant can wait for.

**Subsection (a)(2)** prohibits contractors from being placed on a waiting list. This is because contractors cannot be issued a “double” Permit without a “primary” Permit having first been issued to a sponsor.

**Subsection (a)(3)** prohibits waiting list positions from being transferred to another party. This rule prevents persons from circumventing the waiting list process. For example, John’s Food Store is first on the waiting list for a newly vacated site and is offered the site. John decides to adopt the site and then, a few weeks later, he comes up first on the waiting list for another site. John’s wants to adopt the second site too, but wants the Permit to be issued to his brand new business named John’s Realty. If there are other applicants on the waiting list for the second site, this would constitute a transfer of a waiting list position and would not be permitted.

**Subsection (a)(4)** explains that applicants are responsible for informing the district coordinator of any change in contact information. This is necessary because it is common for a waiting list applicant to change a phone number or move during the time they are waiting for a site. Since Permits are issued for five years and adopters in good standing may apply for an unlimited number of successive Permits, most waiting list applicants wait for several years before being offered an adoption site.

**Subsection (a)(5)** explains that waiting list ranking is determined by the date a completed Program Application is received.

### **§ 2639. Waiting List Process**

The proposed regulatory action describes the waiting list process.

**Subsection (a)** establishes that the district coordinator must ensure that a site has been reviewed within the last two years before contacting a waiting list applicant. Except for a site about to go under construction, it is unlikely that a newly vacated site would be reclassified as “not adoptable.” However, it is possible for the site’s work frequency or permissible work methods to change since the site was last reviewed. Also, in two years time, there is potential for vegetation to grow to the paved shoulder and the adopter would need to be advised to skip such areas.

**Subsection (b)** explains how a waiting list applicant is notified when a requested site becomes available.

**Subsection (b)(1)** explains what a district coordinator does if a waiting list applicant is no longer interested or cannot be reached.

**Subsection (b)(2)** explains what a district coordinator does if a waiting list applicant is interested in adopting the site.

#### **§ 2640. Displaced Adopters**

The proposed regulatory action explains how the Program accommodates adopters who must give up an adoption site.

**Subsection (a)** explains who is eligible for the “displaced adopter status.”

**Subsections (a)(1) - (a)(2)** define the two options available to a displaced adopter.

**Subsection (a)(2)(A)** describes how ranking is determined if more than one displaced adopter waits for the same site. This rule is needed because long-term construction projects usually affect more than a single site.

**Subsections (a)(2)(B) - (a)(2)(C)** describe what happens to remaining waiting list entries once a displaced adopter adopts a site or refuses a site offer.

### **ARTICLE 10. PERMIT APPLICATION**

The proposed regulatory action defines the purpose of a Permit Application, explains that there is no fee charged for a Permit, that there is a maximum number of Permits allowed per adopter per district, and that a Permit is not transferrable.

#### **§ 2641. Purpose of the Permit Application**

**Subsection (a)** establishes that a Permit Application is used to apply for a single available adoption site. This is different from a Program Application which allows a person to apply for multiple sites even if the sites are currently adopted.

**Subsection (a)(1)** explains that no fee is charged for Program Permits.

**Subsections (b) - (b)(1)** establish that, except for sites in remote areas, there is a limit of ten Permits per adopter per district. The limit is ten regardless of whether the Permit is issued for one or both directions of an adoption site.

**Subsection (c)** explains that a Permit cannot be transferred to another party. This rule prevents applicants from circumventing the waiting list process. For example, if an adopter named John’s Tacos sold his business and wanted to transfer the adoption to his new business, named John’s Realty, this could not be done. However, if there was no waiting list for the adoption site, the district coordinator could cancel the existing Permit and issue a new Permit to John’s Realty.

#### **§ 2642. Permit Application Process**

The proposed regulatory action describes the Permit Application process.

**Subsection (a)** identifies two conditions which initiate the Permit Application process. The subsection also requires a district coordinator to issue a Permit Application for a newly vacated site with a waiting list within 90 days.

**Subsections (a)(1) - (a)(3)** list events that would negate the 90-day requirement. Subsection (a)(3) takes into account the fact that contact information for waiting list applicants may be so outdated that a new Program Application is necessary. For example, the primary contact (who has signed the application) may no longer be a member of the organization that submitted the application.

**Subsection (b)** establishes that there are seven basic steps in the Permit Application process. These are discussed in Subsections (b)(1) – (b)(7).

**Subsection (b)(1)** requires the district coordinator to ensure that the site has a current site review before contacting the first waiting list applicant. Except for a site about to undergo construction, it is unlikely that the site review will result in the site being classified as “not adoptable.” However it is common for a work frequency or permissible work methods to be changed.

**Subsection (b)(1)(A)** requires the district coordinator to notify the applicant if the adoption site is classified as “not adoptable.”

**Subsection (b)(2)** requires the district coordinator to contact the applicant (or its contractor) before issuing a Permit Application. This is necessary because the district coordinator must explain adoption requirements and must determine what information to send to the applicant. For example, a vegetation control applicant who plans to have a custom recognition panel, must be informed of permissible work methods and may need to be sent the Adopt-A-Highway Recognition Panel Design Guidelines. However, a litter removal applicant who plans to have a standard recognition panel does not need this information.

**Subsection (b)(3)** requires the district coordinator to send all pertinent information to the applicant (or its contractor).

**Subsections (b)(3)(A) - (b)(3)(D)** list the documents that may be sent.

**Subsection (b)(3)(E)** requires the district coordinator to identify documents that the applicant must return and to specify a due date.

**Subsections (b)(4) - (b)(4)(B)** require the district coordinator to examine the returned Permit Application to ensure that it is the original form generated by Caltrans and that the form is properly signed.

**Subsection (b)(4)(C)** provides for submission of the Permit Application via the Program’s Internet site. This capability is planned but not yet available.

**Subsections (b)(5) - (b)(5)(B)** require the district coordinator to ensure that all requested documentation has been returned and that all necessary approvals are obtained.

**Subsection (b)(6)** requires the district coordinator to write the date completed on the face of the Permit Application. This date is referenced should an applicant question the length of time it took to process a Permit. Caltrans has 60 days to issue a Permit once a

completed Program Application is received. This time frame is required by the California Streets and Highways Code Section 671.5 (a) which states:

The department shall either approve or deny an application from an applicant for an encroachment permit within 60 days of receiving a completed application as determined by the department.

**Subsection (b)(7)** requires the district coordinator to forward all appropriate documents to the district permit engineer within five days. The district permit engineer is employed by the district's Division of Traffic Operations.

**Subsection (b)(7)(A)** requires the district permit engineer to confirm that all documents are complete and then to approve or deny the Permit Application within 55 days.

**Subsection (b)(7)(B)** explains that the appeal process for a denied Permit Application is established in other law.

### **§ 2643. Successive Permits**

The proposed regulatory action establishes that certain adopters can apply to adopt the same site at the conclusion of a Permit period and explains the process for doing so.

**Subsection (a)** explains that an adopter can continue to apply for successive Permits as long as the volunteer adopter or the sponsor's contractor performs satisfactorily. Subsection (a) also gives Caltrans the authority to decline to send a Permit Application for a successive Permit to the adopter when its existing Permit expires.

**Subsection (a)(1)** requires an adopter to notify Caltrans of its desire to apply for a successive Permit, however, Subsection (a)(2) allows the district coordinator to initiate the contact.

**Subsection (b)** requires the district coordinator to order a site review before sending the adopter a Permit Application for a successive Permit.

**Subsections (b)(1) - (b)(3)** describe actions to be taken as a result of the information gathered during the site review.

**Subsection (c)** requires the district coordinator to inquire about the adopter's or the contractor's past performance prior to sending the adopter a Permit Application for a successive Permit.

Questions asked when making this determination include:

- Was advance notice of work given? (This is required by Special Provisions 9.)
- Was the work frequency met or the work schedule followed?
- Was the quality of work satisfactory?
- Were any warnings issued during the Permit period?

**Subsections (c)(1) - (c)(2)** describe actions the district coordinator must take if the adopter's or the sponsor's contractor's past performance was unsatisfactory.

## **ARTICLE 11. SAFETY ORIENTATION**

### **§ 2644. Purpose and Scope of Safety Orientations**

The proposed regulatory action explains where a safety orientation is conducted, why a safety orientation is necessary, who must attend a safety orientation, and when a safety orientation is required.

**Subsection (a)** establishes that the safety orientation is conducted at a Caltrans facility by a maintenance supervisor. Subsection (a) also establishes that a safety orientation is required for each adoption site to ensure that a volunteer group leader or a contractor's crew leader has received notice of the requirements set forth in its Permit package. Special Provisions 5., Permittee Responsibility, states, "No person shall enter the State's right of way to perform work until the Department's Maintenance Supervisor has given the permittee's group/crew leader a safety orientation..."

**Subsection (b)(1)** establishes that a standardized checklist is used during a safety orientation for volunteer group leaders. Use of the checklist ensures uniform training.

**Subsection (b)(2)** establishes that Caltrans issues materials and equipment to the volunteer group leaders at the end of the safety orientation.

**Subsection (c)(1)** establishes that a standardized checklist is used during a safety orientation for a contractor's crew leader. Use of the checklist ensures uniform training.

**Subsection (c)(2)** establishes that the contractor is to make arrangements with each district for distribution of litter bags. Flexible arrangements for distribution of litter bags are necessary because a contractor may have numerous adoptions in a single district. Both the district and the contractor could benefit from an arrangement which allows litter bag distribution at a single location rather than requiring the contractor collect one or two cases of bags from several different locations.

**Subsection (c)(3)** establishes the safety orientation as the appropriate time and place to distribute a panel recognition installation order to a crew leader. The subsection describes the contents of the form and also informs the public that instructions for proper panel installation are available. It is important to note authorization is only given to replace the recognition panel portion of the courtesy sign. A contractor is not permitted to perform any other sign installation or maintenance activity.

### **§ 2645. Who Must Attend a Safety Orientation**

**Subsection (a)** requires a volunteer adopter or contractor's crew leader to contact Caltrans to schedule the safety orientation.

**Subsection (a)(1)** explains that the primary contact and alternate contact listed on the adopter's Program Application are the assumed group leader and alternate group leader. Because they are the "assumed" group leaders but not the "required" group leaders, Subsection (a)(1) allows a volunteer adopter to appoint different leaders. For example, the owner of a business is entered on a Program Application for a volunteer adoption as the primary contact and the assistant manager is entered as the alternate contact. If the owner will be unable to participate in adoption events on a regular basis, the business

may designate the assistant manager as the primary group leader and an employee as the alternate group leader. The subsection also explains that a safety orientation is mandatory for both the volunteer group leader and alternate group leader.

**Subsection (a)(2)** explains that a safety orientation is mandatory for the contractor's crew leader. As previously mentioned, a contractor may have several crews working in a regional area such as Southern California. Therefore, the crew leader attending the safety orientation must be the crew leader assigned to supervise the crew who will be working at the site being discussed at the safety orientation.

#### **§ 2646. When a Safety Orientation is Required**

The proposed regulation informs the public that more than one safety orientation may be required during a permit period.

**Subsections (a) - (c)** require that a safety orientation be attended any time a new volunteer group leader, alternate group leader, or contractor's crew leader is appointed. Because Permit requirements are complex, it is not appropriate for the previous group leader or contractor's crew leader to attempt to train the new leader.

**Subsection (d)** requires a safety orientation after construction affecting the conditions at the site. For example, if a lane leading to an off ramp is widened and a portion of the former work area becomes less than six feet from the traffic lane, the maintenance supervisor must ensure that the adopter is instructed to skip that portion of the site.

**Subsection (e)** authorizes a maintenance supervisor to request a corrective safety orientation at any time. For example, a maintenance supervisor gives a group leader an informal warning because a participant placed filled litter bags on the paved shoulder. (This is not permitted because paved shoulders must remain clear for emergencies.) On the group's next work event, a participant placed filled litter bags within six feet of a traffic lane on a gore point (a gore point is the triangular area created where an onramp merges with a traffic lane). In addition to sending the group leader a formal warning letter, the maintenance supervisor requests a corrective safety orientation so that the group leaders can be shown exactly where they may or may not place litter bags.

### **ARTICLE 12. PERMIT PERIOD AND PERFORMANCE MONITORING**

The proposed regulation establishes the length of a Permit period and describes events that may occur during the course of an adoption. Each of the six sections covers a different set of events.

#### **§ 2647. Permit Period**

**Subsection (a)** establishes that a Permit is valid for five years.

**Subsection (b)** authorizes Caltrans to alter Permit provisions as needed.

**Subsection (b)(1)** establishes rules for increasing litter removal frequency.

**Subsection (b)(2)** requires Caltrans to consider keeping a Permit active during construction, even though the unaffected portion of the adoption site is below the

minimum site size requirement. Since a construction project can last for several months, this provision helps to retain valued participants.

**Subsection (c)** establishes that an adopter may cancel its Permit at any time without consequence from Caltrans.

**Subsection (c)(1)** explains that a contractor's Permit is automatically canceled when its sponsor's Permit is canceled.

**Subsection (c)(2)** describes options given to a sponsor if its contractor cancels its Permit. As discussed in Subsection 2650 (c)(1), these options are also available to a sponsor if Caltrans were to revoke a contractor's Permit.

### **§ 2648. Suspension of Permits Due to Construction**

**Subsection (a)** describes options given to an adopter who has its Permit suspended due to construction. If possible, the district coordinator provides the adopter with information regarding the nature of the construction project, whether or not the site's future adoptability will be impacted, and the project's estimated completion date.

### **§ 2649. Performance Monitoring**

**Subsection (a)** informs the public that an adopter's performance is randomly monitored.

**Subsection (a)(1)** requires a maintenance supervisor to perform reviews for work quality within 1 day of the activity. This is because a single truck with an uncovered load can spew litter along a site within a short time after it is cleaned.

**Subsection (b)** requires Caltrans to take action when a Permit provision or Caltrans policy violation is discovered. Possible actions are described in Subsections (b)(1) - (b)(3).

**Subsection (b)(1)** establishes rules for giving informal, verbal warnings.

**Subsection (b)(2)** establishes rules for giving formal, written warnings.

**Subsection (b)(3)** authorizes Caltrans to revoke a Permit if any of the three conditions outlined in Subsection (b)(3)(A) exist.

**Subsection (b)(3)(A) 1.** establishes that a Permit is revoked after repeated violations by the adopter. For example, if a litter removal adopter missed a single work event, they would be given an informal, verbal warning. On the second and third missed work event, they would be given a formal, written warning. If they missed a fourth work event, its Permit would be revoked.

**Subsection (b)(3)(A) 2.** establishes that a Permit is revoked for a single violation if the safety of a participant, a Caltrans employee, or the traveling public is jeopardized. For example, if a participant of a litter removal group, named Delta Sigma Chi, was seen running from the adoption site to the freeway median and back again in order to be initiated into the fraternity, Delta Sigma Chi's Permit would be immediately revoked.

**Subsection (b)(3)(A) 3.** establishes that a Permit is revoked if a participant discriminates against or harasses a Caltrans employee. For example, a maintenance supervisor, who is in a class protected by Equal Employment Opportunity laws, asks the district coordinator to send a formal warning letter to a sponsor regarding the poor work quality of its contractor. When the sponsor receives the letter, the sponsor becomes upset and questions the contractor about the letter. The contractor, who is now embarrassed and angry, then calls the maintenance supervisor and, using racial slurs, threatens to “get even” if the sponsor fires the contractor. The contractor’s behavior would not be tolerated by Caltrans and the contractor’s Permit would be revoked.

### **§ 2650. Steps Taken When a Permit is Revoked**

**Subsection (a)** requires the district coordinator (or the maintenance supervisor) to verbally inform a volunteer adopter that its Permit is being revoked. The district coordinator is also required to inform the adopter of its right to appeal the revocation and to follow-up the verbal notification with a written notification of revocation.

**Subsection (b)** requires the district coordinator (or the maintenance supervisor) to verbally inform a contractor that its Permit is being revoked. The district coordinator is also required to inform the sponsor that its contractor’s Permit is being revoked. Both the contractor and the sponsor must be informed of the contractor’s right to appeal the revocation. The district coordinator is required to follow-up both verbal notifications with written notifications of revocation of the contractor’s Permit.

**Subsection (c)** describes possible scenarios and participation options available to a sponsor if its contractor’s Permit is revoked.

**Subsection (d)** requires the district coordinator to keep a site affected by a revoked Permit vacant until either the deadline for the submission of an appeal is past or the appeal process is ended.

### **§ 2651. Disqualification from Future Participation**

The proposed regulatory action explains the effect a revoked Permit has on an adopter’s ability to participate in the future.

**Subsection (a)** allows a volunteer adopter whose Permit is revoked to participate again as a sponsor. For example, if a volunteer litter removal adopter’s Permit is revoked for failure to meet its established work frequency, the adopter may still wish to participate as a sponsor.

**Subsection (b)** establishes that a sponsor is not disqualified from future participation if its Permit is revoked for failure to choose a participation option within the deadline.

**Subsection (c)** requires Caltrans to apply consequences to contractors in progressive stages of severity. A progressive consequences approach is both necessary and fair because a contractor may have different crews working throughout the state. For example, the behavior of a Southern California crew leader should not jeopardize the contractor’s Northern California Permits. This approach gives a contractor the

opportunity to work with problem crews. And, since nearly one third of all adoptions are sponsorships, this approach could prevent a disruptive situation where several hundred Permits would need to be canceled at the same time. However, as established in Section 2635 (b), if a contractor fails to keep adequate insurance coverage, all of the contractor's Permits are revoked and the contractor's name is removed from the list of contractors for all districts.

**Subsection (c)(1)** establishes the lowest level of consequence. If the contractor has received two warning letters and commits a third violation, one Permit is revoked and the contractor is not issued another Permit for that adoption site. Verbal notice of the revocation is given to both the sponsor and the contractor. The verbal notice is followed by a written notice of revocation. The notice is sent to the sponsor and a copy is sent to the contractor. In order for one Permit to be revoked, the contractor will have received at least two warning letters, or acted with a deliberate disregard for safety, or violated Caltrans policy.

**Subsection (c)(2)** establishes the middle level of consequence. If the contractor has more than three Permits revoked in a single district, all of the contractor's Permits in that district are revoked and the contractor is disqualified from future participation in that district. Verbal notice of the revocation of the contractor's Permit is given to all affected sponsors and the contractor. The verbal notices are followed by written notices of revocation. The written notices are sent to all affected sponsors and copies are sent to the contractor. In addition, the contractor is given verbal notice of its removal from the contractor's list for that district. This verbal notice is also followed by a written notice to the contractor. In order for the middle level of consequence to be applied, a contractor will have received at least eight warning letters, or acted with a deliberate disregard for safety at least four times, or violated Caltrans policy at least four times, or any combination of these resulting in more than three Permits being revoked.

**Subsection (c)(3)** establishes the most severe level of consequence. If the contractor has more than three Permits revoked in a second district, all of the contractor's Permits in that district are revoked and the contractor is disqualified from future participation in all districts. Verbal notice of the revocation of the contractor's Permits is given to all affected sponsors in the second district and to the contractor. The verbal notices are followed by written notices of revocation. A written notice is sent to each affected sponsor and copies are sent to the contractor. In addition, the contractor is given verbal notice of its removal from the contractor's list for all districts. This verbal notice is also followed by a written notice. In order for the most severe level of consequence to be applied, a contractor will have received at least 16 warning letters, or acted with a deliberate disregard for safety at least eight times, or violated Caltrans policy at least eight times, or any combination of these resulting in more than eight Permits being revoked.

## **§ 2652. Appeal Process**

**Subsections (a)(1) - (a)(2)** defines the appeal process for an adopter whose Permit is revoked.

**Subsection (a)(3)** requires the District Director to respond to a written appeal within 30 calendar days.

**Subsection (a)(3)(A)** requires the district coordinator to reinstate the adopter to its former site if the decision to revoke a volunteer adopter's or sponsor's Permit is reversed.

**Subsection (a)(3)(G)** allows the sponsor to continue using its contractor if the decision to revoke a contractor's Permit is reversed. However, the sponsor is not required to use the contractor.

**Subsections (b)(1) - (b)(2)** defines the appeal process for a contractor who is removed from the contractors list for a single district or for all districts.

**Subsection (b)(3)** requires the District Director or the Caltrans Director to respond to a written appeal within 30 calendar days.

**Subsection (b)(3)(A)** requires the district coordinator or the statewide coordinator to reinstate a contractor to the contractor's list if the decision to remove the contractor is reversed.

## **TECHNICAL, THRORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS:**

1. California Department of Transportation, DD-36-R1, Deputy Directive on Adopt-A-Highway Contributions (Rev. 07/09)
2. *California Department of Transportation Maintenance Manual*, Volume One, Chapter 8. Protection of Workers (Rev. 07/06), Sections: 8.00 (B), 8.02, 8.14, 8.18, 8.21, 8.23, 8.30, and 8.32
3. U.S. Department of Transportation Federal Highway Administration Policy Memorandum, Information: Optional Use of Acknowledgment Signs on Highway Rights-of-Way (Rev. 08/05)
4. 42 U.S.C. §12132, Americans with Disabilities Act of 1990, as amended
5. 42 U.S.C. §2000d., Title VI of the Civil Rights Act of 1964
6. International Adopt-A-Highway Survey, 2008
7. California Department of Transportation, DD-39-R1, Deputy Directive for Graffiti Prevention and Removal (Rev. 07/09)

**REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES.**

No other alternatives were presented to or considered by Caltrans. The proposed regulations implement, interpret, and make specific Section 91.5 of the California Streets and Highways Code.

**REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES.**

Caltrans has not identified any alternatives that would lessen any adverse impact on small businesses.

**EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.**

Caltrans has not identified an adverse economic impact on any business.