

TITLE 21. Public Works
Division 2. Department of Transportation

CHAPTER 11.
Regulations for Implementation of the California Environmental Quality Act

Article 1. General

§1501 Authority. The regulations adopted under this subchapter implement the requirements of the California Environmental Quality Act (hereinafter "CEQA") commencing with Public Resources Code Section 21000 and the State CEQA -Guidelines issued by the Resources Agency contained in Title 14 commencing with Section 15000. The State CEQA Guidelines (Title 14, California Code of Regulations, Chapter 3), including all subsequent amendments thereto, are hereby incorporated by reference as if fully set forth in this subchapter. In the event of any conflict or ambiguity between the provisions of these regulations and the State CEQA Guidelines, the provisions of the latter shall control.

Authority: Section 21082, Public Resources Code. Reference: Sections 21000-21174, Public Resources Code.

§1501.1 Short Title. These regulations may be cited as "Environmental Regulations."

Article 2. Purpose

§1502 Purpose. ~~The purpose of t~~These regulations is to set forth the principles, objectives, criteria, objectives, procedures, and definitions ~~timelines~~ to be used by the Department of Transportation and the California Transportation Commission in implementation of the California Environmental Quality Act of 1970, Public Resources Code Section 2100 et seq.

Authority: Section 21082, Public Resources Code. Reference: Sections 21000-21174, Public Resources Code.

Article 3. Policy

§1503.1.2 California Transportation Commission (hereinafter "Commission") Policies Regarding Use of Environmental Documents.

(a) Commission Review Requirements: The Commission reviews and considers environmental documents and findings as part of its responsibilities to allocate funding for state or local capital projects and approve the location of state highway routes, and may need to review and consider environmental documents for other discretionary decisions.

(a) (b) Scope of Commission Review: The Commission generally examines and considers effects related to project cost and funding, including costs of mitigation measures being considered or proposed, and may consider any other environmental effects; the Commission advises agencies preparing environmental documents at a minimum to describe scope and cost of project alternatives, including costs for mitigation measures, and the complete funding package for the project, in documents that they send to the Commission.

(b) (c) Basis of Commission Action: The Commission uses the final environmental document as

a basis to ratify and approve project scope, cost, and funding participation for subsequent allocation of funds; the Commission as a matter of practice schedules large, complex projects into the first two years of state programs ready for allocation of funding only after final environmental documents required under CEQA have been completed.

~~(e)~~ (d) Linkage to Commission Responsibilities: The Commission may postpone or refuse allocation of funds to a project when it has not previously been given an opportunity to review environmental documents.

Authority: Section 21082, Public Resources Code. Reference: Sections 21000-21174, Public Resources Code.

~~Article 4. Definitions~~

~~§1504 General. For the purpose of these regulations, "AGENCY" means, as appropriate, the Commission or the Department of Transportation.~~

~~Authority cited: Section 21082, Public Resources Code. Reference: Sections 21000-21174, Public Resources Code.~~

~~§1504.5 Decision Making Body. Any person or group of people within Agency permitted by law to approve or disapprove the project at issue.~~

~~(a) The Commission will be the Lead Agency for the purpose of adopting or rescinding State highway routes and new public road connections to freeways and expressways.~~

~~(b) The Department of Transportation will be the Lead Agency for all other projects requiring action by both the Department and the Commission.~~

~~Authority cited: Section 21082, Public Resources Code. Reference: Sections 21000-21174, Public Resources Code.~~

~~Article 5. General Responsibilities~~Procedures and Timelines

~~§1505 Timely Compliance.~~

~~(a) Circulation to the Commission: A lead agency shall submit to the Commission all notices of preparation, draft environmental documents, and final environmental documents for any projects for which the Commission will later be asked to allocate state or federal funds; agencies submitting environmental documents for Commission review shall send a copy the executive summary to each individual Commissioner, and shall send one additional copy of the complete document to Commission staff at its office in Sacramento for purposes of agenda calendaring, staff review, and transmittal of responses., and must send a copy of the complete document to any Commissioner who requests one.~~

~~(b) Commission review procedure: The Commission itself reviews environmental documents, and authorizes the Executive Director subsequently to send comments and file notices of determination; the Commission may receive and consider recommendations from its staff.~~

~~(c) Commission timelines: The Commission generally meets every five weeks with meeting agendas published 10 days before each meeting; the Commission typically will calendar and review environmental documents on its next available agenda following receipt of those~~

documents, which requires lead time of 15 days before scheduled meetings, and yields a typical response time from the Commission of 20 to 60 days following receipt of documents.

Authority: Section 21082, Public Resources Code. Reference: Sections 21000-21174, Public Resources Code.

FINAL STATEMENT OF REASONS

California Department of Transportation

Title 21, Division 2, Chapter 11
Sections 1501 through 1513.2 (not consecutive)
California Code of Regulations

Update of Initial Statement of Reasons

The entire text of the Initial Statement of Reasons remains unmodified and is incorporated herein by reference. The Notice of Proposed Rulemaking (Notice) was published in the California Regulatory Notice Register on July 25, 2003. The Notice contained a statement that a public hearing would be held pursuant to Government Code Section 11346.8 if requested in writing 15 days prior to the close of the written comment period. No request for a hearing was made and no public hearing was held. No modifications to the proposed text were made.

Summary of Public Comments

No public comments were received by the Department of Transportation (the Department) nor the California Transportation Commission (CTC) during or after the public comment period, July 25, 2003 to September 8, 2003. Two individuals asked for and received copies of the amended regulations, but did not comment on them.

Comments Made by the Office of Small Business Advocate

No comments were received from the Office of Small Business Advocate

Comments Made by the Trade and Commerce Agency

No comments were received from the Trade and Commerce Agency

Alternatives Considered

No other alternatives were presented to or considered by the Department and the CTC that would be more effective in carrying out the purpose for which the amended regulations are proposed or would be as effective and less burdensome to private persons than the adopted regulations.

The proposed amendments are technical clarifications that only affect the CTC and the Department.

Alternatives that Would Lessen Any Adverse Impact on Small Business

The Department and the CTC have determined that the revision of these regulations will have no cost impact on small businesses because a small business: 1) is not legally required to comply with the regulation; 2) is not legally required to enforce the regulation; 3) does not derive a benefit from the enforcement of the regulation; or 4) does not incur a detriment from the enforcement of the regulation. Therefore, no alternatives were analyzed that would lessen any adverse impact on small business.

Local Agency or School District Mandate

The Department and CTC's proposed regulatory action does not impose a mandate on local agencies or school districts.

Objections or Recommendations Made Regarding the Proposed Amendments

The Department and the CTC did not receive any comments regarding the proposed regulatory amendments.

Technical, Theoretical, and/or Empirical Studies, Reports or Documents

The Department and the CTC did not rely upon any technical reports, theoretical, or empirical studies, reports or documents in proposing these amendments.

INITIAL STATEMENT OF REASONS

California Department of Transportation

Title 21, Division 2, Chapter 11 Sections 1501 through 1513.2 (not consecutive) California Code of Regulations

SPECIFIC PURPOSE OF THE PROPOSED REGULATORY ACTION

The California Department of Transportation (“Department”) and California Transportation Commission (“CTC”) propose to revise their “Environmental Regulations” Sections 1501 through 1513.2 (not consecutive), Chapter 11, Division 2 in Title 21 of the California Code of Regulations (CCR). The purpose of the proposed amendments is to clarify the role of the CTC in cases where the Department or another public agency is the lead agency for California Environmental Quality Act (CEQA).

Section 1503.1 sets forth the CTC policies regarding the use of environmental documents. The proposed amendment would add a new subsection that clarifies that the CTC reviews and considers environmental documents and findings as part of its responsibilities to allocate funding for state or local capital projects and to approve the location of state highway routes.

Section 1505 deals with general responsibilities. The amendment would change the Article heading to Procedures and Timelines and would clarify the materials to be submitted to the CTC for its review.

Sections 1504 and 1504.5 define general terms, such as “agency” and “decision-making body.” Section 1504.5 further states that the CTC will be lead agency for purposes of adopting or rescinding State highway routes and new public road connections to freeways and expressways. These sections would be deleted.

NECESSITY

The current “Environmental Regulations” adopted by the Department and the CTC state that the CTC will be the lead agency under CEQA for purposes of adopting or rescinding State highway routes and new public road connections to freeways and expressways. A reexamination of the roles and responsibilities of the Department and the CTC in developing new highway and public road connections to freeways and expressways has revealed that it is not appropriate for the CTC to be the lead agency under CEQA.

Under CEQA, a lead agency is “the public agency with the principal responsibility for carrying out or approving a project” (Public Resources Code, Section 21067). The CEQA Guidelines (Title 14, Article 3, Section 15051, California Code of Regulations) provide further criteria for determining lead agency status. Two of the criteria are relevant here: 1) the lead agency will normally be the agency with general governmental powers, and 2) the agency which will act first on the project in question shall be the lead agency.

While the CTC is responsible for the programming and allocating of funds and the formal adoption of routes for highway improvements throughout California, it does not have the

principal responsibility for actually carrying out the improvements; at the state level the principal responsibility for approving and constructing highway projects rests with the Department. The Department's powers are more general and include all aspects of developing improvements to improve mobility across California—from early planning, to environmental document preparation, design preparation and construction. In addition, the Department acts first on highway projects; only after the Department approves the project does the CTC take action.

Both the CTC and the Department support the proposed amendments that place the CTC in a responsible agency role rather than a lead agency role.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS

The Department and the CTC did not rely upon any technical reports, theoretical, or empirical studies, reports or documents in proposing these amendments.

REASONABLE ALTERNATIVES TO THE AMENDED REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other alternatives were presented to or considered by the Department and the CTC.

ALTERNATIVES TO THE AMENDED REGULATIONS THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Department and the CTC do not anticipate any adverse impact on small business as a result of the proposed amendments.

EVIDENCE SUPPORTING AN INITIAL DETERMINATION OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department and the CTC have determined that the revision of these regulations will have no cost impact on small businesses because a small business: 1) is not legally required to comply with the regulation; 2) is not legally required to enforce the regulation; 3) does not derive a benefit from the enforcement of the regulation; or 4) does not incur a detriment from the enforcement of the regulation.

Title 21. California Department of Transportation

[July 25, 2003]

NOTICE OF PROPOSED RULEMAKING

The California Department of Transportation ("Department") and the California Transportation Commission ("CTC") propose to adopt the amended regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Department and CTC propose to revise their "Environmental Regulations" Sections 1501 through 1513.2 (not consecutive), Chapter 11, Division 2 in Title 21 of the California Code of Regulations (CCR). These sections are the regulations adopted by the Department and the CTC to implement the California Environmental Quality Act of 1970 pursuant to Section 21082 of the Public Resources Code.

PUBLIC HEARING

The Department and the CTC have not scheduled a public hearing on this proposed action. However, pursuant to Government Code Section 11346.8, a public hearing will be held if a written request for a public hearing from any interested person, or his or her authorized representative, is received no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on September 8, 2003. The Department will consider comments received at the Department offices by that time. Submit comments to:

Denise O'Connor
Environmental Program - Mail Station 27
California Department of Transportation
1120 N Street
P.O. Box 942874
Sacramento, CA 94274-0001
Fax Number (916) 653-7757

AUTHORITY AND REFERENCE

Public Resources Code Section 21082 authorizes the Department and the CTC to adopt the proposed regulations, which implement Sections 21000 through 21174 of the Public Resources Code. The implementing regulations for the Department and the CTC are codified in the California Code of Regulations, Title 21, Division 2, Chapter 11, Sections 1501 through 1512.3 (not consecutive).

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INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The Department and the CTC propose to amend the California Code of Regulations, Title 21, Division 2, Chapter 11. Sections 1501 through 1512.3 (not consecutive). These regulations were adopted by the Department and the CTC to implement the California Environmental Quality Act (“CEQA”), which is codified in the Public Resources Code Sections 21000 to 21174.

The purpose of the proposed amendments is to clarify the role of the CTC in cases where the Department or another public agency is the lead agency for CEQA. Changes in the funding and development of transportation projects on the state highway system necessitate revisions to the sections regarding the CTC’s roles, responsibility, and procedures under CEQA.

Section 1503.1 sets forth the CTC policies regarding the use of environmental documents. The proposed amendment would add a new subsection that clarifies that the CTC reviews and considers environmental documents and findings as part of its responsibilities to allocate funding for state or local capital projects and to approve the location of state highway routes.

Section 1505 deals with general responsibilities. The amendment would change the Article heading to Procedures and Timelines and would clarify the materials to be submitted to the CTC for its review.

Sections 1504 and 1504.5 define general terms, such as “agency” and “decision making body.” Section 1504.5 further states that the CTC will be lead agency for purposes of adopting or rescinding State highway routes and new public road connections to freeways and expressways. These sections would be deleted.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department and the CTC have made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Cost or savings in federal funding to the state: None.
- Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.
- Cost impacts on a representative private person or business: The Department and the CTC are not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Adoption of these regulations will not:
 - (1) create or eliminate jobs within California
 - (2) create new businesses or eliminate existing businesses within California; or
 - (3) affect the expansion of businesses currently doing business within California.

- Significant effect on housing costs: None.

Small Business Determination

The Department and the CTC have determined that the revision of these regulations will have no cost impact on small businesses because a small business: 1) is not legally required to comply with the regulation; 2) is not legally required to enforce the regulation; 3) does not derive a benefit from the enforcement of the regulation; or 4) does not incur a detriment from the enforcement of the regulation.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department and the CTC must determine that no alternative considered by them would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department and the CTC invite interested persons to present statements or arguments with respect to alternatives to the proposed action at any hearing that may be requested or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative actions may be directed to:

Ms. Denise O'Connor
Environmental Program - Mail Station 27
California Department of Transportation
1120 N Street, Room 4331
P.O. Box 942874
Sacramento, CA 94274-0001

Telephone: (916) 653-5157
ATSS 8-453-5157

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED AMENDMENT / INTERNET ACCESS

Pursuant to Government Code Section 11346.5, an initial statement of reason and the text ("express terms") of the proposed regulations have been prepared and are available from the contact person named in this notice. The Department and the CTC will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the amended regulations, and the initial statement of reasons. The documents relating to this proposed action may be found on the Department's website at the following address: <http://www.dot.ca.gov/ser>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After any hearing and considering all timely and relevant comments received, that Department and the CTC may adopt the proposed regulations substantially described in this notice. Pursuant

to Government Code Section 11346.8, if the Department and the CTC make modifications which are substantially related to the originally proposed text, the modified text— with changes clearly indicated—will be made available to the public for at least 15 days before the Department and the CTC adopt the regulations as revised. Any such modifications will also be posted on the Department's website. Requests for copies of any modified regulations to the attention of Denise O'Connor at the address indicated above. The Department and the CTC will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, the final statement of reasons may be obtained by contacting Ms. Denise O'Connor at the above address. The final statement of reasons will also be posted on the Department's website at <http://www.dot.ca.gov/ser>.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this notice, the initial statement of reasons and the text of the regulations in underline and ~~strikeout~~ can be accessed through the Department's website at <http://www.dot.ca.gov/ser>.