

Memorandum

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: January 25, 2012

Reference No.: 4.11
Information Item

From: NORMA ORTEGA
Chief Financial Officer

Prepared by: Jane Perez
Division Chief
Division of Mass Transportation

Subject: **COMMISSION ADVICE AND CONSENT ON TRANSPORTATION DEVELOPMENT ACT (TDA) REGULATIONS**

SUMMARY:

The California Transportation Commission (Commission) is required by the Public Utilities Code (PUC) Section 99241 to give advice and consent on the Transportation Development Act (TDA) regulations, as prepared by the California Department of Transportation (Department). The regulations are updated to incorporate legislative changes and to interpret and clarify the statutes.

The Department is proposing to amend California Code of Regulations (CCR) Sections 6640 and 6680 of the TDA. The proposed amendments to these sections of the CCR will bring the regulations into conformity with Senate Bill 607 of the Statutes of 2009. Senate Bill 607 created the Imperial County Transportation Commission (ICTC) as the new Regional Transportation Planning Agency (RTPA) for Imperial County. ICTC supersedes Imperial Valley Association of Governments as the RTPA for Imperial County. The proposed amendments to the CCR would strike the phrase “and also includes Imperial Valley Association of Governments” from Section 6640 and also strike out the phrase “and the County of Imperial” from Section 6680 of the CCR. The Department has reviewed the proposed changes with regional agencies, transit operators and affected agencies, and sent out a notice of proposed rule making, allowing a time period of 45 days for review, comment and/or request of a public hearing.

As part of the review process, the Department is providing the proposed revisions of the TDA regulations to the Commission as an information item. After incorporating the Commission’s comments, the Department will return the revised guidelines to the Commission for adoption at its February 2012 meeting.

BACKGROUND:

The Mills-Alquist-Deddeh Act, better known as the Transportation Development Act (TDA), was enacted in 1972 by the California Legislature and is administered by the Department. It provides two major sources of funding for public transportation in California implemented by regional transportation planning agencies (RTPA). These funds are for the development and support of

public transportation needs that exist in California and are allocated to areas of each county based on population, taxable sales and transit performance. The first, the county Local Transportation Fund (LTF), has been in existence since 1972. The second, the State Transit Assistance (STA) fund, came into being in 1980.

TDA statutes are located under the Government Code Title 3, Division 3, Chapter 2, Article 11 and under the PUC Division 10, Part 11, Chapter 4, Articles 1-9. Additional implementing provisions can be found under the California Code of Regulations Title 21, Chapter 3, Subchapters 2 and 2.5. The Department produces the *Transportation Development Act Statutes and California Code of Regulations*, which is updated periodically depending on TDA-related legislative actions.

PROPOSED CHANGES:

The Department is proposing two amendments to TDA regulation Sections 6640 and 6680, with the advice and consent of the Commission, under the authority granted by Section 99241 of the PUC, which allows the Director of the Department to amend, add, and repeal the regulations as statutes change. The Department proposes to amend Section 6640, by striking the phrase “and also includes Imperial Valley Association of Governments”, because they are no longer the RTPA for Imperial County. The second proposed amendment will strike “and the County of Imperial” because the ICTC is the new RTPA for Imperial County. Below are the texts of CCR Sections 6640 and 6680 identifying the areas of the proposed amendments, as reflected in strikethrough and bold and underscore.

SECTION 6640. Designation.

The term “transportation planning agency” has reference to that entity or policy committee thereof responsible for the development of a regional transportation plan. It may derive such responsibility by statute or by delegation from local government together with delegation of accompanying responsibility for implementation of the transportation planning process in cooperation with the State pursuant to memorandum of understanding.

The term “transportation planning agency” also applies to county transportation commissions created pursuant to Division 12 (commencing with Section 130000 of the PUC) ~~and also includes Imperial Valley Association of Governments~~ for the purpose of administering Chapter 4 (commencing with section 99200) part 11, Division 10 of the Public Utilities Code.

For a county included entirely within the jurisdiction of a statutorily created regional comprehensive or transportation planning agency, it is such agency. Where only a portion of the county is subject to such a jurisdiction, it is also such agency, but only for such portion of the fund as the population within the agency's jurisdiction bears to the population of the county.

For every other county, and for a county partially subject to the jurisdiction of a statutory agency for such portion of the fund as the population outside such agency bears to the population of the county, it is such regional comprehensive planning agency as is established pursuant to any of the following authorities, and references in the Act to a "Council of Government" means such agency:

- (a) An agency organized pursuant to Chapter 5 (commencing with Section 6500) of Division 7, Title 1 of the Government Code; or
- (b) A regional planning district formed pursuant to Chapter 2 (commencing with Section 65060) of Title 7 of the Government Code; or
- (c) An area planning commission formed pursuant to Article 11 (commencing with Section 65600) of Chapter 3 of Title 7 of the Government Code; or
- (d) A planning district formed pursuant to Chapter 5 (commencing with Section 66100) of Title 7 of the Government Code.

No moneys shall be allocated from the fund by the county or any other governmental entity except the one designated by the Director. In the event the county and the cities therein are neither subject to the jurisdiction of a statutorily created regional comprehensive or transportation planning agency nor within the area of or members of a locally created regional comprehensive planning agency, one must be established if moneys in the fund are to be disseminated, unless an option is made to establish only a single purpose local transportation commission pursuant to the Act.

Note: Authority cited: Section 99241, Public Utilities Code. Reference: Sections 99214 and 99230, Public Utilities Code; and Sections 29532, 29532.4, 29535 and 29536, Government Code.

SECTION 6680. Designation.

Consolidated transportation service agencies shall be designated by the transportation planning agency, except that within the area of the Southern California Association of Governments, they shall be designated by the county transportation commissions, ~~and the County of Imperial.~~ The consolidated transportation service agencies shall be designated in accordance with the action plan adopted pursuant to Section 15975 of the Government Code. Each consolidated transportation service agency shall be an entity other than the transportation planning agency and shall be one of the following:

- (a) A public agency, including a city, county, operator, any state department or agency, public corporation, or public district, or joint powers entity created pursuant to Chapter 5 (commencing with Section 6500) of Division 7, Title 1 of the Government Code.
- (b) A common carrier of persons as defined in Section 211 of the Public Utilities Code, engaged in the transportation of persons, as defined in section 208.
- (c) A private entity operating under a franchise or license.

(d) A nonprofit corporation organized pursuant to Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code.

Note: Authority cited: Section 99241, Public Utilities Code. Reference: Section 99241, 99246, and 99248, Public Utilities Code.

Attachments:

1. Draft Resolution
2. Regulation Package

**CALIFORNIA TRANSPORTATION COMMISSION
CONSENTING TO PROPOSED AMENDMENTS OF THE
TRANSPORTATION DEVELOPMENT ACT REGULATIONS**

RESOLUTION G-12-__

- 1.1 WHEREAS, Section 99241 of the Public Utilities Code provides that the implementation of the Transportation Development Act (Act) shall be subject to the regulations adopted by the Director of the Department of Transportation (Department), with the advice and consent of the California Transportation Commission; and,
- 1.2 WHEREAS, the Director has proposed changes to the California Code of Regulations Sections 6640 and 6680 to implement amendments to the Act, and,
- 1.3 WHEREAS, the Department has mailed the proposed changes to city councils, boards of supervisors, county auditor controllers, transportation planning entities, and transit operators statewide for review and comment; and
- 1.4 WHEREAS, the Department provided a 45-day period, ending 5:00 p.m., October 24, 2011, for any interested party to request a public hearing, receiving no request within the said period.
- 2.1 NOW, THEREFORE, BE IT RESOLVED that the California Transportation Commission does hereby consent to the proposed changes to the Transportation Development Act regulations, as presented by the Director of the Department of Transportation.



ISSUE MEMORANDUM

TO: MALCOLM DOUGHERTY, Acting Director
California Department of Transportation

FROM: MARTIN TUTTLE, Deputy Director
Planning and Modal Programs
(916) 654-5368; (916) 654-6608; martin_tuttle@dot.ca.gov

PREPARED BY: JANE PEREZ, Chief
Division of Mass Transportation
(916) 654-8144; (916) 657-4068; jane_perez@dot.ca.gov

DATE: November 17, 2011

SUBJECT: **California Transportation Commission Resolution Approving the
Amending of the California Code of Regulations Section 6640 & 6680**

-
- | | |
|--|---|
| <input checked="" type="checkbox"/> Request for Approval | <input type="checkbox"/> For Information |
| <input type="checkbox"/> Request for Discussion | <input checked="" type="checkbox"/> For Signature |

TRACKING NUMBER:

TIME FACTOR:

None.

BACKGROUND:

Public Utilities Code (PUC) section 99241 authorizes the California Department of Transportation (Department) to adopt or amend proposed regulations in the California Code of Regulations (CCR) with the advice and consent of the California Transportation Commission (CTC). The proposed regulatory change to sections 6640 & 6680 of the CCR has already gone through the 45-day public notice period and is now ready to submit to the CTC for approval by

**SUBJECT: California Transportation Commission Resolution Approving the Amending
of the California Code of Regulations Section 6640 & 6680**

resolution. The proposed amendments to sections 6640 & 6680 of the CCR will bring the regulations into conformity with Senate Bill 607 of the statutes of 2009. Senate Bill 607 created the Imperial County Transportation Commission (ICTC) as the new Regional Transportation Planning Agency (RTPA) for Imperial County. ICTC supersedes Imperial Valley Association of Governments as the RTPA for Imperial County. The proposed amendments to the CCR would strike the phrase "and also includes Imperial Valley Association of Governments" from section 6640, and also strikes out the phrase "and the County of Imperial" from section 6680 of the CCR (see Attachment 1).

DISCUSSION/PRO-CON ARGUMENTS:

Section 99241 of the PUC authorizes and requires the Department to promulgate changes to regulations that enforce the Transportation Development Act (PUC section 99200 et seq.). The existing regulations were enacted in 1979 and have been amended several times to implement State and federal statutory and regulatory authority.

The first step in this process requires the Department to send a public notice allowing 45 days for public comment. This process has been completed. The Department now proposes to submit the proposed amendments to the CTC for approval by resolution. The amendment package to be submitted to the CTC contains the Notice of Proposed Rulemaking, the Initial Statement of Reasons, a copy of the text showing the amended section, and a completed "Notice Publication/Regulations Submission" (STD 400) signed by the Director of the Department.

EFFECT ON EXISTING LAW:

None.

ESTIMATED COST:

None.

RECOMMENDATION:

It is recommended that the Director sign the form STD 400 approving the amendment package to be submitted to the CTC.

APPROVED:


MALCOLM DOUGHERTY, Acting Director

11/16/2011
Date

**SUBJECT: California Transportation Commission Resolution Approving the Amending
of the California Code of Regulations Section 6640 & 6680**

Attachments

- (1) Proposed Amendments to the California Code of Regulations
- (2) Notice of Proposed Rulemaking
- (3) STD 400, Notice Publication/Regulation Submission to be signed by the Director

TITLE 21.

Proposed Amendments to the California Codes of Regulations

§ 6640. Designation.

The term "transportation planning agency" has reference to that entity or policy committee thereof responsible for the development of a regional transportation plan. It may derive such responsibility by statute or by delegation from local government together with delegation of accompanying responsibility for implementation of the transportation planning process in cooperation with the State pursuant to memorandum of understanding.

The term "transportation planning agency" also applies to county transportation commissions created pursuant to Division 12 (commencing with section 130000 of the Public Utilities Code) ~~and also includes Imperial Valley Association of Governments~~ for the purpose of administering Chapter 4 (commencing with section 99200) part 11, Division 10 of the Public Utilities Code.

For a county included entirely within the jurisdiction of a statutorily created regional comprehensive or transportation planning agency, it is such agency. Where only a portion of the county is subject to such a jurisdiction, it is also such agency, but only for such portion of the fund as the population within the agency's jurisdiction bears to the population of the county.

For every other county, and for a county partially subject to the jurisdiction of a statutory agency for such portion of the fund as the population outside such agency bears to the population of the county, it is such regional comprehensive planning agency as is established pursuant to any of the following authorities, and references in the Act to a "Council of Government" means such agency:

- (a) An agency organized pursuant to Chapter 5 (commencing with section 6500) of Division 7, Title 1 of the Government Code; or
- (b) A regional planning district formed pursuant to Chapter 2 (commencing with section 65060) of Title 7 of the Government Code; or
- (c) An area planning commission formed pursuant to Article 11 (commencing with section 65600) of Chapter 3 of Title 7 of the Government Code; or
- (d) A planning district formed pursuant to Chapter 5 (commencing with section 66100) of Title 7 of the Government Code.

No moneys shall be allocated from the fund by the county or any other governmental entity except the one designated by the Director. In the event the county and the cities therein are neither subject to the jurisdiction of a statutorily created regional comprehensive or transportation planning agency nor within the area of or members of a locally created regional comprehensive planning agency, one must be established if moneys in the fund are to be disseminated, unless an option is made to establish only a single purpose local transportation commission pursuant to the Act.

Note: Authority cited: Section 99241, Public Utilities Code. Reference: Sections 99214 and 99230, Public Utilities Code; and Sections 29532, 29532.4, 29535 and 29536, Government Code.

§6680. Designation of Consolidated Transportation Service Agency (CTSA)

Consolidated transportation service agencies shall be designated by the transportation planning agency, except that within the area of the Southern California Association of Governments, they shall be designated by the county transportation commissions, ~~and the County of Imperial~~. The consolidated transportation service agencies shall be designated in accordance with the action plan adopted pursuant to section 15975 of the Government Code. Each consolidated transportation service agency shall be an entity other than the transportation planning agency and shall be one of the following:

- (a) A public agency, including a city, county, operator, any state department or agency, public corporation, or public district, or joint powers entity created pursuant to Chapter 5 (commencing with section 6500) of division 7, title 1 of the Government Code.
- (b) A common carrier of persons as defined in section 211 of the Public Utilities Code, engaged in the transportation of persons, as defined in section 208.
- (c) A private entity operating under a franchise or license.
- (d) A nonprofit corporation organized pursuant to division 2 (commencing with section 5000) of title 1 of the Corporations Code.

Note: Authority cited: Section 99241, Public Utilities Code. Reference: Section 99241, 99246, and 99248, Public Utilities Code.

TITLE 21. DEPARTMENT OF TRANSPORTATION
NOTICE OF PROPOSED RULEMAKING

TO ALL INTERESTED PERSONS:

The California Department of Transportation (“Department”) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action.

However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, 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 October 24, 2011. The Department will consider only comments received at the Department by that time. Please submit comments to:

Gordon Arruda
Department of Transportation
Division of Mass Transportation
1120 ‘N’ Street, MS 39, Room 3300
Sacramento, CA 95814

AUTHORITY AND REFERENCE

Public Utilities Code section 99241 authorizes the Department to adopted proposed regulations, with the advice and consent of the California Transportation Commission (CTC), which would amend and correct California Code of Regulations sections 6640 & 6680.

[Type text]

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department proposes to amend sections 6640 & 6680 in Title 21 of the California Code of Regulations.

Public Utilities Code section 99241 authorizes and requires the Department to promulgate regulations to enforce the Transportation Development Act (Public Utilities Code sections 99200 et seq). The existing regulations were enacted in 1979 and have been amended several times to implement State and Federal statutory and regulatory authority.

This proposed regulatory action will bring the regulations into conformance with Senate Bill 607, Statutes of 2009.

Section 6640 states how a transportation planning agency may be designated. Section 6680 identifies the kind of agency(s) that can be designated as a Consolidated Transportation Service Agency (CTSA). The proposed amendment reflects change brought about by Senate Bill 607 designating Imperial County Transportation Commission as the regional transportation planning agency for Imperial county, replacing Imperial Valley Association of Governments.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Costs or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630, inclusive: None.

Other non-discriminatory costs or savings imposed on local agencies: None.

Costs 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: None.

[Type text]

Adoption of these regulations will not:

- (1) Create or eliminate jobs within the State of California;
- (2) Create new businesses or eliminate existing businesses within the State of California; or
- (3) Affect the expansion of businesses currently doing business within the State of California.

Significant effect of housing costs: None.

Small Business Determination

The Department has determined that the proposed regulatory action will not affect small businesses. These actions only affect TPA, public transportation operators, and transit service providers within Imperial county.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a) (13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department 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 invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory action during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed regulatory action may be directed to:

Gordon Arruda
Division of Mass Transportation
California Department of Transportation
1120 'N' Street, MS 39, Room 3300
Sacramento, CA 95814
Telephone: (916) 654-9396

The backup contact person for these inquiries is:

Terry Farris
Department of Transportation
Division of Mass Transportation
1120 'N' Street, MS39, Room 3300
Sacramento, CA 95814
Telephone: (916) 657-3876

[Type text]

Questions on the substance of the regulatory action may be directed to **Mr. Gordon Arruda** or **Terry Farris**.

Please direct requests for copies of the proposed text (the “express terms”) of the regulatory action, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which this rulemaking is based to **Gordon Arruda** at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address during regular business hours. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting **Gordon Arruda** at the above address and telephone number.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding any requested public hearings and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to **Gordon Arruda** at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting **Gordon Arruda** at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Department’s website at www.dot.ca.gov/hq/MassTrans/State-TDA.html.

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

AGENCY WITH RULEMAKING AUTHORITY
California Department of Transportation

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Division of Mass Transportation		TITLE(S) 21	FIRST SECTION AFFECTED 6640 & 6680	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Gordon Arruda		TELEPHONE NUMBER (916) 654-9396
FAX NUMBER (Optional) (916) 654-9366		NOTICE REGISTER NUMBER		PUBLICATION DATE
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Mass Transportation	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
---	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 6640 & 6680
TITLE(S) 21	REPEAL

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
--	---	---	--

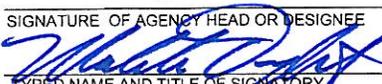
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Gordon Arruda	TELEPHONE NUMBER (916) 654-9396	FAX NUMBER (Optional) (916) 654-9366	E-MAIL ADDRESS (Optional) garruda@dot.ca.gov
------------------------------------	------------------------------------	---	---

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 11/16/2011
TYPED NAME AND TITLE OF SIGNATORY Malcolm Dougherty, Acting Director, California Department of Transportation	