CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 20. CALIFORNIA LAW ENFORCEMENT ACCOUNTABILITY REFORM ACT

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

Article 1. Definitions

§ 999.300, subd. (c): Definition of "Appropriate Oversight Agency"

The definition of "Appropriate Oversight Agency" has been amended to remove a provision that had previously explained that a federal agency (*e.g.*, the United States Department of Justice) could fulfill the role of the Appropriate Oversight Agency. This provision was removed in response to comments that suggested including the provision introduced confusion, particularly where the involved federal oversight agency likely could not or does not assert authority over law enforcement disciplinary proceedings covered by the CLEAR Act.

§ 999.300, subd. (i): Definition of "Findings"

The definition of "Findings" has been amended to clarify that a finding may include a conclusion that an element of an offense "has not been established following an investigation," and addresses situations in which the investigator cannot disprove an element but also has reached an appropriate end to the investigation without sufficient evidence.

Article 2. Investigations

§ 999.301: Responsibility

Subdivision (a). In response to comments, subdivision (a) was amended to clarify that responsibility for investigations or adjudications may be assigned only with the consent of involved agencies. While an oversight agency may be considered "appropriate" based on its competence and expertise as defined in Section 999.300, subd. (c), the agency cannot bear responsibility under the statute without affirmatively accepting it.

Subdivision (b). To remove any ambiguity, subdivision (b) was revised to clarify that responsibility for the investigation and adjudication of Covered Complaints "shall," rather than "may," be assigned to one agency or allocated among multiple agencies based on specified factors.

Subdivision (d). In response to comments during the first comment period, subdivision (d) was previously deleted based on a determination that it was unnecessary in light of existing authority held by state and local governments and Employing Agencies. Subdivision (d) has now been restored to improve clarity and avoid any ambiguity.

Subdivision (e). In response to comments, a new subdivision (e) was added to clarify that the proposed regulations do not restrict the statute's guarantee of "an opportunity for an administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code." (Pen. Code, § 13680, subd. (h).) Newly added Section 999.310 of the proposed regulations (*see infra*) further clarifies that neither the statute nor the proposed regulations affect existing rights to appeal to a court of competent jurisdiction, including beyond guaranteed administrative appeals.

§ 999.302: Public Complaints

Subdivision (f) was amended to include that, regarding the prominent link that must be provided on the home page of each agency's website explaining the Public Complaint process, the information provided must include the content of the policy described in Section 999.301, subdivision (a), and contact information for the submission of a Public Complaint in person, online, by mail, and by phone. This changes provides more clarity regarding the specific information about the Public Complaint process required on agencies' websites.

§ 999.302, subds. (a), (g), (h), (i): Public Complaints; § 999.313, subd. (b): Training

In response to comments, these provisions have been amended to remove the role of "intake coordinator." The Department of Justice (Department) has determined that the duties relating to intake of complaints may be undertaken by appropriately trained personnel consistent with agency staffing needs.

§ 999.303: Internal Complaints

Subdivision (a). To improve clarity, subdivision (a) was amended to add cross-references, clarifying that Internal Complaints, like Public Complaints, shall be accepted "consistent with Section 999.301, subdivision (a), and Section 999.306, subdivision (a)."

Subdivision (c). In response to comments, the Department has removed subdivision (c), which required that agencies develop and implement a policy effecting a mandatory reporting duty for personnel when they become aware that a peace officer has engaged in misconduct prohibited under the CLEAR Act, as well as a corollary requirement that any such policy also provide that retaliation against personnel for submitting internal complaints is subject to punishment up to termination. The Department makes this change based on its determination that such policies should be and increasingly have been implemented by law enforcement agencies themselves on a scale broader than the scope of conduct covered by the statute.

§ 999.304: Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies

Subdivision (a). To avoid any ambiguity, subdivision (a) was amended to replace "may" with "shall," to clarify that oversight agencies are required to investigate the complaint itself or refer to another Appropriate Oversight Agency if certain conditions are met.

Subdivision (b). Subdivision (b) was amended to clarify that an investigation conducted pursuant to Section 999.304 need not be disclosed to the subject's Employing Agency or Investigating Agency while the investigation is still pending. Original proposed language stating that such notification is not required "prior to the completion of the investigation" was amended to instead more clearly state that notice is not required "during the pendency" of the investigation.

Subdivision (b) has also been amended to allow the agency receiving the complaint and any oversight agency to which the complaint is referred not to disclose the existence of the complaint and investigation to the Employing Agency or Investigating Agency, if the investigation results in Findings that the alleged misconduct has not been established. This provision is intended to protect complainants and other witnesses from potential retaliation where disclosure of their involvement is not necessary to guarantee due process for the Subject of the investigation.

Subdivision (c). In response to comments, subdivision (c) has been amended to limit the authority of non-designated Appropriate Oversight Agencies to investigations, but not to adjudications of complaints. Instead, in order to preserve the integrity of the adjudication process where an agency acting under Section 999.304 has reason to believe that the Adjudicating Agency designated pursuant to Section 999.301 has a conflict of interest or is otherwise incapable of conducting an unbiased adjudication, the agency must submit a copy of the Findings to the Department with all information forming the basis of the agency's concerns at the same time it transmits its findings to the Adjudicating Agency.

Subdivision (d). To improve clarity and for ease of reading, subdivision (d) was non-substantively amended to add the six-month time period set forth in the referenced Section 999.306, subd. (i). Subdivision (d) was also amended to provide that for purposes of this six-month time period, "receipt of a Covered Complaint by an agency conducting an investigation pursuant to this Section is equivalent to receipt of a Covered Complaint by an Investigating Agency." This is a non-substantive change made for improved clarity regarding when the six-month time frame begins, and replaces the previous language in this subdivision that "the agency initially receiving the complaint shall serve as the Investigating Agency."

Subdivision (e). For the reasons discussed in subdivision (c), references to "adjudication" by non-designated Appropriate Oversight Agencies have been deleted. In addition, the phrase "and shall be authorized to depart from existing policy, agreement, or other source of law where necessary to comply with these regulations" was removed as unnecessary because the regulations are already superior to conflicting policies or agreements in the hierarchy of legal authorities.

Subdivision (f). In response to comments received during the first comment period, subdivision (f) was previously deleted based on a determination that it was unnecessary in light of existing

authority held by state and local governments and Employing Agencies. Subdivision (f) has now been restored to improve clarity and for the avoidance of any ambiguity.

§ 999.306: Investigations

Subdivision (a). In response to a comment, this provision has been amended to include a requirement that investigators undergo a background check, which will help to reduce the risk of investigations being conducted by persons with conflicting interests or lacking the character appropriate to this work in circumstances where the investigator has not undergone a background check as a peace officer.

Subdivision (b). To improve clarity, subdivision (b) was amended to replace the term "any other reason" with "any other impediment to investigation," when describing the reasons it is impossible or impracticable to comply with the assignment provisions of subdivision (a). Subdivision (b) was further amended to provide that the alternative referral permitted by subdivision (b) must take place within five days of referral to the Investigative Unit, to provide a clear deadline for referral to an alternate Investigating Agency and avoid undue delay.

To improve clarity, subdivision (b)(1) was amended to make it mandatory for an agency to request that the Department accept a referral of the matter, if referral to an alternate Investigating Agency is impossible or impractical.

Subdivision (b)(2) was amended to provide that, if the Department accepts the referral, it is bound by these regulations, except that it shall have the discretion to refer the matter to an Appropriate Oversight Agency. This change was made to clarify the bounds of the Department's authority when it receives a referral.

To improve clarity, subdivision (b)(3) was amended to provide that, if the Department declines to accept the referral or does not respond to the Investigating Agency's request within 30 days, the Investigating Agency is permitted to refer the matter to another Appropriate Oversight agency not covered by the policies in place pursuant to Section 999.301, with the consent of the referee agency. The consent provision was added because the referee agency's consent is required, as that agency does not have a prior agreement to accept referrals of investigations, and the referee agency cannot be compelled to conduct an investigation where it has no existing obligation in law or contract to do so.

Subdivision (h) was amended to refer to the statute itself, rather than quoting certain language from the statute, by adding the words "[p]ursuant to Penal Code section 13682, subdivision (a)," in describing the circumstances when an investigator must open an investigation. This language replaces language quoting the statute and improves clarity.

Subdivision (i) was amended to give examples of what constitutes "needs" sufficient to warrant an extension of time past the six-month time frame for an investigation, "such as complexity, number of subjects, or unforeseen developments warranting further investigation." These changes were made to improve clarity regarding the types of needs specific to the investigation that would appropriately warrant extensions of the deadline to complete investigations.

Subdivision (i) was further amended to provide an extension for completing the investigation for "up to three months at a time," to ensure that the investigation continues to move along in a timely manner and avoid undue delay. Subdivision (i) was also amended to again refer back to the statute (Penal Code section 13682, subdivisions (a) and (b)) to confirm that the length of the investigation is not a mitigating factor in the adjudication of the matter and shall not affect the Employing Agency's obligation to remove from appointment as a Peace Officer any Peace Officer against whom a Covered Complaint is sustained.

Subdivision (l). Subdivision (l), like subdivisions (h) and (i), is amended to refer back to the statute itself ("Pursuant to Penal Code section 13682, subdivision (a)") for clarity that its provisions prevail "notwithstanding any other law." To further improve clarity, additional text is added to clarify that such language is "except as required by the United States or California Constitutions."

In response to comments, several subdivisions of this provision have been amended for clarity. Subdivision (l) sets forth specific requirements for certain aspects of an investigation that shall not be restricted, except as required by the United States or California Constitutions. These aspects include the length of notice provided to a subject or witness, the duration of an interview or interrogation, the number or questioners or other participants, restrictions on the presence of a subject or witness' representative at an interview or interrogation, the provision of evidence to a subject or witness before an investigation is concluded, and an investigator or finder or fact's discretion to draw a negative inference if a subject refuses to answer questions or provide any other evidence requested for a legitimate investigative purpose. Of these, the following subdivisions have been amended:

Subdivision (l)(3) has been amended to clarify that an investigator's discretion to include in an interrogation the appropriate number of questioners or participants is based on the need to include subject-matter experts, which is anticipated to be a particularly acute need for investigations under this statute.

Subdivision (l)(5) has been amended to clarify that an investigator's discretion not to share evidence with a Subject or witness during the pendency of an investigation includes discretion to prohibit the Subject or witness from recording or transcribing interview proceedings.

New subdivision (m). New subdivision (m) clarifies that, when an investigation includes allegations of both CLEAR Act misconduct and other misconduct, the aspects of the investigation modified by Section 999.306, subdivision (l) (discussed above) apply only to investigative activities that involve allegations of CLEAR Act misconduct, and do not apply to investigative activities unrelated to allegations of misconduct under the statute.

New subdivision (n) (previously (m)). Subdivision (n) removes the phrase "and without being bound by any other policy" because it is unnecessary – statutes and regulations are superior to policies and agreements in the hierarchy of legal authorities. To improve clarity and provide guidance, subdivision (n) was further amended to clarify that the Investigating Agency's determination (regarding whether the investigation should run concurrently and parallel to any related criminal investigation, or whether it should be paused until the conclusion of a related

criminal investigation) "should take into account potential loss or degradation of evidence caused by extended passage of time, and appropriate efforts should be made to protect the integrity of parallel criminal proceedings."

New subdivision (o) (previously (n)). Subdivision (o) (which was previously subdivision (n)), has been amended to clarify that an investigation may be deemed concluded where an investigation does not produce evidence sufficient to establish an element of the alleged offense. These specific elements are set forth in Section 999.308. This amendment recognizes that an adequate investigation may be unable to identify sufficient evidence to establish any of these elements, but that the investigation may be closed where it meets applicable standards for sufficiency.

The citation to Title 15, Section 3417 of the California Code of Regulations has been deleted because that section is no longer referenced in subdivision (h).

Article 3. Adjudication

§ 999.307: Adjudication

Subdivision (b) was amended to provide that an Adjudicating Agency is required to return the case to the Investigating Agency or Investigative Unit if it concludes that further investigation is necessary. This change was made to improve clarity regarding the Adjudicating Agency's responsibility when it determines that further investigation is necessary.

Subdivision (c). In response to comments, subdivision (c) of Section 999.307 has been revised to clarify that the subject of investigation is entitled to receive a copy of the investigative file with sufficient time to prepare a defense in subsequent administrative proceedings. The latest appropriate time is understood to be at or before such time as the Adjudicating Agency or Employing Agency communicates its intent to discipline the Subject based on the investigation.

In response to comments, subdivision (c) previously was revised to state that the adjudicator must give a "sufficient basis" for any decision with respect to the Findings. However, because the deleted phrase was clearer, the deleted phrase was restored.

Subdivision (f). For clarity and in response to comments, the description of an adjudicatory determination as "following all applicable administrative appeals" has been replaced with "subject to all applicable administrative appeals."

§ 999.308, subds. (a), (b), (c): Elements of Covered Misconduct

In response to comments, these subdivisions have been amended to revise the burden of proof for all forms of Covered Misconduct from "preponderance of the evidence" to "clear and convincing evidence." Although the common standard for administrative discipline is a preponderance of the evidence, this revision more closely aligns the burden of proof standard with the Commission on Peace Officer Standards and Training's (POST) standard for decertification proceedings, which is clear and convincing evidence. This revision will avoid the potentially absurd consequence of

a Peace Officer being removed from appointment under the CLEAR Act (under a "preponderance" standard), but not decertified by POST in subsequent proceedings under a "clear and convincing" standard.

§ 999.309, subd. (b): Other Misconduct

To improve clarity, subdivision (b) was amended to clarify that, where there is evidence to sustain a charge of Covered Misconduct, the applicable agency is not permitted to enter in an agreement with the subject to "withdraw the Charge of Covered Misconduct, including where such withdrawal is made in exchange for the Subject accepting discipline other than" removal from appointment as a Peach Officer.

§ 999.310: Reporting to the Commission on Peace Officer Standards and Training

In response to a comment, this provision, which was previously entitled "Serious Misconduct," has been re-titled "Reporting to the Commission on Peace Officer Standards and Training," and amended to clarify that certain incidents involving alleged or proven misconduct under the statute are reportable to POST pursuant to Section 13510.9 of the Penal Code.

Article 4. General Provisions

§ **999.311, subd. (a): Recordkeeping, Transparency, and Best Practices**

To improve clarity, subdivision (a) was amended to clarify that records retained pursuant to this subdivision are required to be maintained in one of the files designated in the subdivision.

§ 999.313, subd. (b): Training

Consistent with amendments to other provisions of the regulations removing reference to the role of "intake coordinator" role, this provision has been amended to delete reference to "intake coordinators" in subdivision (b), regarding training, and instead provides that training shall be provided to "personnel responsible for accepting complaints" regarding the performance of their duties.

§ 999.314: No Abrogation of Rights

In response to comments, this section has been added to the regulations to make clear that Penal Code sections 13680-83 and its implementing regulations do not abrogate the right of any party to seek relief in a court of competent jurisdiction.

CORRECTIONS AND NON-SUBSTANTIAL EDITS

A "non-substantial change is one that clarifies without materially altering the requirements, rights, responsibilities, conditions or prescriptions contained in the original text. (Cal. Code

Regs., tit. 1, § 40.) The following minor additional issues were noted since publication of the Notice of Proposed Rulemaking and Initial Statement of Reasons:

Renumbering

A non-substantive change was made to renumber the regulations from Title 11, Division 1, Chapter 11, §§ 941–955, to Title 11, Division 1, Chapter 20, §§ 999.300–999.314.

§ 999.300, subd. (p): Definition of "Organization"

The definition of "Organization" has been amended for clarity to state that it refers to a group of two or more people who bear "at least one" – replacing "one or more" – of specified traits.

§ 999.301: Responsibility

Subdivision (a): A reference to "this regulations" has been corrected to "these regulations."

Subdivision (c): To improve clarity and readability, a comma was replaced with "and."

§ 999.303, subd. (c): Internal Complaints

Subdivision (d) was renamed as subdivision (c), to account for the deletion of the previous subdivision (c).

§ 999.306: Investigations

Subdivisions (m)–(p) were renamed as subdivisions (n)–(q), due to the addition of a new subdivision (m).

In new subdivision (o)(2), for clarity, because Section 999.308 concerns all three forms of misconduct identified in the statute, a reference to "any element identified in Section 999.308" has been revised to "any applicable element identified in Section 999.308."

SUMMARY OF COMMENTS AND DEPARTMENT RESPONSES

The Department received 34 comments: 25 during the initial 45-day comment period (First Comment Period), four during the first 15-day comment period (Second Comment Period), and five during the second 15-day comment period (Third Comment Period). The comments are included in the rulemaking file as Exhibits 12, 13, and 17.

The Department held two in-person public hearings in Los Angeles and Oakland. Full transcripts of those hearings are included in the rulemaking file as Exhibits 14 and 15.

Of the 25 comments the Department received during the First Comment Period, 17 were written, 6 were oral comments made at one of the two public hearings, and 2 were voicemails. All four

comments received during the Second Comment Period were written, as were the five comments received during the Third Comment Period.

Summaries of public comments and corresponding responses are organized by topic, beginning first with comments received during the First Comment Period in Section A, followed by comments received during the subsequent Second Comment Period in Section B, and comments received during the Third Comment Period in Section C, *infra.*

A. COMMENTS MADE DURING THE FIRST COMMENT PERIOD[1]

1	Richard Hylton
2	Rev. Carla Dietz
3	Dmitra Smith
4	Fralana Latham
5	Ed Obayashi
6	Ed Obayashi
7	Ed Obayashi
8	Ed Obayashi
9	William Dowdy
10	Richard Hylton
11	Craig D. Lally for Los Angeles Police Protective League (LAPPL)
12	Brian R. Marvel for Peace Officers Research Association of California (PORAC)
13	Cameron McEllhiney & Anthony W. Finnell for National Association for Civilian Oversight of Law Enforcement (NACOLE)
14	Bryant Henley for CA Commission on Peace Officer Standards and Training (POST)
15	Dean Strang
16	Jon Hanson
17	Musa Tariq for Council on American Islamic Relations (CAIR)
18	Phillip Murray for California Correctional Peace Officers Association (CCPOA)
19	Dmitra Smith
20	Musa Tariq for Council on American Islamic Relations (CAIR)
21	Dmitra Smith
22	Norma Nelson
23	Alix Mazuet
24	Nyla Moujaes
25	Strong Ma

[1] Multi-part comments are designated by the comment number and part number, separated by a hyphen. So, for example, part 3 of comment 12 would be cited as "Comment 12-3." Each multi-part comment has been annotated in the right margin to indicate each numbered part, and these may be found in the attached compilation of comments.

1. Comments regarding Article 1. Definitions

§ 999.300, subd. (c): Definition of "Appropriate Oversight Agency"

PORAC comments that the definition of "Appropriate Oversight Agency" "could be construed to extend to agencies that have no power to impose termination of employment, such as civilian monitors or oversight boards." PORAC recommends amending the definition to mean only "the employing agency or designee," and recommends deleting subdivision (1), which referenced federal agencies as potential Appropriate Oversight Agencies. PORAC requests that the regulations conform to statute in the statute's guarantee of a right to administrative appeal. (Comment 12-1.)

Response: The term "Appropriate Oversight Agency" is used, but not defined, in Section 13682, subd. (a), of the statute to identify the kind of agency, other than the agency employing the Subject, that may undertake the functions described in the statute. The Department's proposed regulations define the term generically in terms of the agency's competence to undertake these functions.

The process for allocating responsibility for conducting investigations or adjudications involving a specific agency's Peace Officers is provided in Section 999.301 of the proposed regulations, rather than in Section 999.300, which covers only definitions. Section 999.301 requires that responsibility for investigation and adjudication be established by agreement of the Employing Agency and any involved outside agencies, subject to applicable law. Consistent with the mandate of Section 13680, subd. (h), of the statute, incorporating Sections 3304 and 3304.5 of the Government Code, the proposed regulations do not interfere with any agency or jurisdiction's process for the conduct of administrative appeals.

The Department concludes that discussion of the role of federal oversight is unnecessary to this definition and so has omitted subdivision (c)(1) in order to make the proposed regulations clearer. It has not adopted the remainder of PORAC's suggestion, which would define an Appropriate Oversight Agency only as "the employing agency or designee." The Department maintains that the implementation of the statute requires that it provide a definition of the term Appropriate Oversight Agency that is objective and addresses the characteristics that make an organization competent, or "appropriate," to undertake the duties described in the statute.

CCPOA likewise comments on the subdivision within this definition of Appropriate Oversight Agency that provides that "federal agency that has asserted appropriate control over an Employing Agency pursuant to agreement or court order may serve as an Appropriate Oversight Agency." CCPOA requests that Section 999.300(c)(l) "should address whether a federal court falls within the meaning of agency and should clarify what "appropriate control" means," citing current litigation in which a federal court has "substantial authority to mandate investigations and discipline with" a state agency. (Comment 18-20.)

Response: As discussed above, subdivision (c)(1) has been removed.

POST seeks clarification that it may not be designated as an Appropriate Oversight Agency, without its consent. (Comment 14-1.)

Response: In response to this comment, the regulations have been revised to clarify that an Appropriate Oversight Agency shall assume responsibility for investigating a complaint only if that agency consents. (See proposed revisions to Section 999.301, subd. (a).) While POST may meet the generic definition of an "Appropriate Oversight Agency" due to its institutional competence and expertise, the Department does not intend for POST to fulfill the role of an Investigating Agency or Adjudicating Agency. Section 999.301, subd. (a), of the proposed regulations has been revised to clarify that an agency will not assume responsibility for investigations or adjudications under this statute absent the agency's consent. Subd. (d) of that section requires that responsibility under this statute be consistent with existing law. These are intended to make clear that POST does not have responsibility for investigation or adjudicative proceedings required by this statute.

§ 999.300, subd. (e): Definition of "Covered Complaint"

PORAC requests that Section 999.300, subdivision (e), be amended to define "Covered Complaint" to be limited to those complaints that "allege[] with sufficient particularity to investigate allegations of Covered Misconduct," and further requests that the Department remove from the definition the reference to a complaint that "contains facts supporting the possibility of Covered Misconduct . . . whether or not those allegations or facts have Sufficient Particularity to Investigate." (Comment 12-2.)

Response: No change has been made in response to this comment. The term "Covered Complaint" is used to refer to a complaint with a sufficient nexus to the conduct proscribed by this statute such that the relevant agency is required to assess the existence of "sufficient particularity to investigate" pursuant to the statute. The fact that a complaint is a "Covered Complaint" does not mean that a formal investigation must be undertaken. Rather, it means that the complaint must be handled and evaluated for "sufficient particularity to investigate" in accordance with these regulations. (See, e.g., Section 999.306, subd. (c) [requiring assessment of whether a Covered Complaint has Sufficient Particularity to Investigate], subd. (f) [describing closing of Covered Complaint after determining that it lacks Sufficient Particularity to Investigate]).

The identification of a class of Covered Complaints is necessary to ensure that complaints under the statute are handled in such a way as to ensure that full investigations are undertaken when necessary and to ensure the effectiveness of those investigations.

LAPPL requests that Section 999.300, subd. (e)(1) be amended to "require all agencies (Investigative, Employing, Oversight, Adjudicating) to allow such complaints to be made anonymously." (Comment 11-2.)

Response: No change has been made in response to this comment. Section 999.303, subd. (b), already requires the acceptance of anonymous Internal Complaints; the proposed revision is unnecessary.

CCPOA objects to the definition of "Covered Complaint" in this subdivision because it contends that, taken together with Section 999.306, subd. (a), "it requires an agency to assess and investigate any statement, even those lacking sufficient particularity," even though Section 13682(a) "requires law enforcement agencies to investigate only those internal or public complaints that allege "with sufficient particularity to investigate the matter." (Comment 18-5.)

CCPOA further objects to the definition of Covered Complaint as overly broad because it requires "any statement in any form which contains an allegation of Covered Misconduct must be considered and investigated, despite whether that complaint contains sufficient particularity as required by Penal Code section 13682(a)." (Comment 18-17.)

Response: No change has been made in response to this comment. Section 999.306, subd. (a), requires an investigator to be assigned to a complaint upon its referral to the Investigative Unit. Section 999.306, subd. (c), requires that investigator, within 10 days of the Investigating Agency receiving the complaint, to assess "whether the Covered Complaint provides Sufficient Particularity to Investigate." The statute requires agencies to investigate complaints that allege potential misconduct with Sufficient Particularity to Investigate. The fact that a complaint is a "Covered Complaint" does not mean that a formal investigation must be undertaken. Rather, it means that the complaint must be handled and evaluated for "sufficient particularity to investigate" in accordance with these regulations. (See, e.g., Section 999.306, subd. (c) [requiring assessment of whether a Covered Complaint has Sufficient Particularity to Investigate], subd. (f) [describing closing of Covered Complaint after determining that it lacks Sufficient Particularity to Investigate]). Neither the statute nor these proposed regulations require a full investigation where Sufficient Particularity to Investigate does not exist. Accordingly, this definition has not been revised.

§ 999.300, subd. (i): Definition of "Findings"

PORAC notes that subdivision (i)(2), defining "Findings," "is potentially problematic unless the absence of evidence establishing an element identified in section 999.308 it [sic] itself sufficient evidence to negate a finding." (Comment 12-3.)

Response: Section 999.300, subd. (i), and Section 999.306, subd. (o) (formerly (n)), have been revised to clarify that Findings may include the conclusion that an element of an offense has not been established following an investigation, and that an investigation may be deemed concluded when the investigation has not resulted in the identification of evidence sufficient to establish an element of an offense. The Department expects that Employing Agencies and Appropriate Oversight Agencies will maintain adequate policies and guidelines for ensuring that investigative efforts are appropriately thorough.

Section 999.300, subd. (p): Definition of "Organization"

PORAC comments that "[d]efining an "Organization" as merely two people who meet periodically or are in a contact list of any kind is overbroad. The requirement that only one of the enumerated traits be present sweeps almost any relationship between people into the definition of organization. All four of the traits should be required to define an "Organization" for purposes of defining a "Hate group" within the meaning of Penal Code section 13680((c)." (Comment 12-4.)

Response: No change has been made in response to this comment. Section 999.300, subd. (p), is intended to provide a clear and fixed definition for the term "Organization," which is used in both the statute and proposed regulations. In keeping with the statute's aims, the adopted definition covers different ways in which an Organization might be configured, for example, covering both groups that are primarily online and groups that primarily meet in person. The proposed revisions would narrow the definition so severely that it would undermine the aims of the statute.

CCPOA objects to the definition of "Organization" as overly broad because "the meaning of 'organization' defined as 'two or more people' is so grossly and unacceptably broad as to encapsulate many innocuous organizations or associations. As currently drafted, the term could mean family members, coworkers, members of a softball team, etc. The term needs to be described with more specificity and in conjunction with the Penal Code." (Comment 18-18.)

Response: No change has been made in response to this comment, for the same reasons given above. The statute and regulations would generally not reach the examples of innocuous organizations and associations given, as the statute does not make it an offense merely to be a member of an "organization." (Cf. Pen. Code, § 13680, subds. (c), (d) [defining "hate group" and "membership in a hate group"].) However, any family group, group of coworkers, or softball team that "supports, advocates for, threatens, or practices genocide or the commission of hate crimes" (Pen. Code, § 13680, subd. (c)) is properly identified as a hate group within the meaning of the statute.

2. Comments regarding Article 2. Investigations

§ 999.301: Responsibility

LAPPL objects to Section 999.301, as drafted, because "[a] law enforcement agency may be authorized to enter into an agreement with an external law enforcement agency for that external agency to conduct administrative adjudications, however Section 13682 of the Penal Code does not authorize agencies to violate municipal charters, collective bargaining agreements, or applicable laws unless a conflict exists with the statutory directive to conduct an investigation." LAPPL comments that "the Department can mandate that an investigation be carried out, but [it] cannot determine the provisions of due process where due process provisions already exist." (Comment 11-11.)

Response: No change has been made in response to this comment. Pursuant to Section 13682, subd. (c), of the Penal Code, Section 999.301 of the proposed regulations vests in the Employing Agency responsibility for devising and maintaining a consistent, non-arbitrary policy controlling which agencies are responsible for the investigation or adjudication of any given matter covered by the statute. Such policies are ultimately subject to applicable law (see § 999.301, subd. (d)), so a local governing body may control the content of this policy by, for example, directing investigations to an inspector general or directing adjudications to a police commission.

To the extent there is a conflict, regulations such as those proposed, which govern a matter of statewide concern, will generally supersede local law or contract. Here, the proposed regulations go beyond the text of the statute in making clear that neither the state nor its implementing regulations abrogate due process (see § 999.301, subd. (e); sec. 999.314) even if they affect specific policies and procedures.

§ 999.301, subd. (a): Responsibility

CCPOA objects to Sections 999.301, subd. (a), 999.304, subd. (c), and 999.307, subd. (f), on the ground that they abrogate the State Personnel Board's (SPB) jurisdiction to "review disciplinary actions." (Comment 18-16.)

Response: No change has been made in response to this comment. AB 655 requires that any Peace Officer who is the Subject of proceedings under the statute be afforded the right to administrative appeal. (See Pen. Code, § 13680, subd. (h) [citing Gov. Code, §§ 3304, 3304.5].) "An administrative appeal instituted by a public safety officer under this chapter shall be conducted in conformance with rules and procedures adopted by the local public agency." (Gov. Code, § 3304.5.) Consistent with the statute, the proposed regulations govern adjudication in the first instance, resulting in a decision by an Employing Agency or other Adjudicating Agency that the misconduct at issue has or has not been established. They do not address procedures for administrative appeals.

The SPB is responsible for "review[ing] disciplinary actions." (Cal. Const. art. VII, § 3.) This responsibility of review is neither expanded nor restricted by the statute or the proposed regulations. For avoidance of confusion, Section 999.307, subd. (f), has been revised to clarify that the Adjudicating Agency's determination is "subject to all administrative appeals." Section 999.301, subd. (e), has been added to further clarify that "[t]he assignment of an Adjudicating Agency shall not affect any rights to administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code."

§ 999.301, subd. (d): Responsibility

PORAC requests that the following sentence be deleted: "Implementation is not subject to collective bargaining with a personnel union or any other private agreement." PORAC asserts that this provision violates the right of "recognized exclusive representatives to bargain over

disciplinary procedures." PORAC further comments that this provision impairs labor agreements in violations of the Contracts Clause of the U.S. Constitution. (Comment 12-5.)

Response: The Department deleted subsection (d) after the First Comment Period; however, the Department restored subsection (d), as originally noticed, after the Second Comment Period. While government employees have various rights to collective bargaining, those rights do not extend to bargaining over whether an agency does or does not have jurisdiction to investigate or adjudicate cases involving the misconduct proscribed by AB 655. Accordingly, there is no conflict with existing law. Even if there were a conflict, the statute's directive that the Employing Agency "investigate, or cause to be investigated by the appropriate oversight agency" relevant misconduct vests authority regarding the assignment of responsibility for proceedings under the statute solely in the Employing Agency and the government entities of which it is a part. (See Pen. Code, § 13682, subd. (a).) This vesting of authority is made "notwithstanding . . . any other law." (*Id*.) While labor unions may have the right to bargain over disciplinary procedures, the statute is consistent with the well-established principle that investigations subjects are not permitted to choose their investigators or the tribunals that will render a decision on their charges.

The proposed regulations also do not unconstitutionally impair contract rights. The State retains the power to make laws even where those laws may affect existing rights fixed by contract. (See *City of El Paso v. Simmons* (1965) 379 U.S. 497, 508 ["[T]he state also continues to possess authority to safeguard the vital interests of its people. It does not matter that legislation appropriate to that end has the result of modifying or abrogating contracts already in effect." (cleaned up)]); *California Teachers Assn. v. Cory* (1984) 155 Cal. App. 3d 494, 510 ["Nor does every impairment run afoul of the contract clause. . . . [T]he reservation of the essential attributes of continuing governmental power is also read into contracts as a postulate of the legal order." (citations omitted)].)

CCPOA objects to Section 999.301, subd. (d) because it contends that that provision and Section 999.304, subd. (f), "purport to exempt implementation of the regulations from collective bargaining," and that "an administrative agency cannot adopt a regulation in conflict with or which alters or violates a statute." (Comment 18-11.) Relatedly, CCPOA objects to 999.301(d) and 999.304(f) because it contends they "attempt to suppress and abrogate the representational rights of bargaining Unit 6 employees to meet and confer regarding matter affecting their terms and conditions of employment." (Comment 18-12.) Likewise, CCPOA objects to 999.301(d) and 999.304(f) because it contends that they "invade and abrogate [the Public Employment Relations Board (PERB)]'s jurisdiction to determine which issues are within the terms of employment and thus subject to collective bargaining." (Comment 18-13.)

Response: The Department deleted subsection (d) after the First Comment Period; however, the Department restored subsection (d), as originally noticed, after the Second Comment Period. As discussed above, the subject matter of Section 999.301 is not subject to collective bargaining.

The Department does not dispute the PERB's important role in determining which matters fall within the "terms of employment," but the Department recognizes that the PERB's role involves interpreting applicable law. The Department understands this provision to be consistent with

existing law, and the Department further recognizes that its role, pursuant to the statute, is to make law rather than to interpret law.

§ 999.302, subd. (a): Public Complaints

PORAC requests that the following be deleted from this provision: "All Employing Agencies and Investigating Agencies shall designate intake coordinators responsible for overseeing acceptance of Public Complaints." (Comment 12-6.)

Response: The Department has removed all references to the intake coordinator role from the proposed regulations.

CCPOA objects to the requirement in Section 999.302, subd. (a),[2] that "All Employing Agencies and Investigating Agencies shall accept Public Complaints involving Peace Officers of any Employing Agency." (Comment 18-4.) CCPOA objects to this language both as a requirement that agencies accept complaints involving other agencies' Peace Officers and as a purported requirement that agencies investigate complaints involving other agencies' Peace Officers.

Response: No change has been made in response to this comment. In keeping with the stated purposes of AB 655, the regulations impose on all agencies subject to the statute a reciprocal obligation to accept all complaints under the statute, even if they involve personnel of other agencies. Over time, this obligation should impose at most a de minimis burden on agencies accepting complaints, as all regulated agencies extend the same assistance to each other. (See Section 999.305.) The acceptance and referral of complaints that do not involve an agency's own personnel is consistent with standard practice.

The proposed regulations only require that such complaints be accepted and referred. They do not impose a requirement on third-party agencies to investigate.

§ 999.302, subd. (c): Public Complaints

CCPOA comments that section 999.302(c), which requires that "Anonymous Public Complaints shall be accepted," should "specify the evidentiary weight that anonymous complaints without other substantiation should be given. Such specificity should align with the limitations set forth in Penal Code Section 6065(c)(l) in order to safeguard individual peace officers from baseless accusations." CCPOA further comments that "Penal Code Section 6065 (c)(l) provides that while anonymous allegations may be accepted, "uncorroborated or anonymous allegations shall not constitute the sole basis for disciplinary action by the department, other than an investigation." (Comment 18-19.)

[2] The comment refers to both subdivisions (a) and (d), but in context it appears intended only to refer to subdivision (a).

Response: No change has been made in response to this comment. The Department's proposed requirement that anonymous complaints be accepted is not intended to impose any requirements or offer guidance on the evidentiary weight that should be accorded uncorroborated anonymous statements of any kind. The proposed regulations do not conflict with Section 6065, subd. (c)(1), of the Penal Code, and agencies should follow applicable law and best practices in determining how to evaluate all evidence considered under the CLEAR Act. Evidentiary standards are addressed in Section 999.308, which describes the Elements of Covered Misconduct, and which, following revisions, requires that every element of any offense under the statute "must be established by clear and convincing evidence." The Department is unaware of any standard under which a single uncorroborated, anonymous complaint, standing alone, would meet the threshold for "clear and convincing evidence."

§ 999.302, subd. (d): Public Complaints

PORAC requests that this provision be removed because public policy disfavors "encouragement or protection of false or defamatory speech," and further asserts that "nothing prohibits an agency from requesting complainants to attest to their accusations under oath nor to make credibility assessments based on a refusal to do so." (Comment 12-7.)

LAPPL requests that Section 999.302, subds. (d)(1) and (d)(2), be removed because they conflict with Penal Code section 148.6, which requires written complaints regarding Peace Officers as well as requiring that such complaints contain an advisory that the complainant must sign under penalty of perjury. (Comment 11-1.)

CCPOA asserts that Section 999.302, subd. (d), violates both section 148.6 of the Penal Code and regulations governing the California Department of Corrections and Rehabilitation. CCPOA further argues that the proposed regulations are contrary to public policy due to the potential harm that may be caused by false complaints. (Comment 18-1, 18-2, 18-3.)

Response: No change has been made in response to these comments. To the extent that section 148.6 of the Penal Code remains enforceable law, the Department maintains, as discussed in the Initial Statement of Reasons, that its implementation significantly impedes the stated aims of AB 655 and so is subject to AB 655's directive that it supersede contrary statutes. (See Pen. Code, § 13682, subd. (a).) The California Supreme Court held section 148.6 of the Penal Code unconstitutional on November 10, 2025. (See *Los Angeles Police Protective League v. City of Los Angeles* (2025) 18 Cal. 5th 970.) This decision is consistent with an earlier holding of the U.S. Court of Appeals for the Ninth Circuit, which also concluded that section 148.6 of the Penal Code is unconstitutional. (See *Chaker v. Crogan* (9th Cir. 2005) 428 F.3d 1215.)

The Department recognizes that false complaints do not advance the interests of justice. On balance, however, the potential harm of impeding valid com plaints, particularly by complainants already fearful of retaliation, strongly weighs against prohibiting anonymous complaints or imposing any measures that are reasonably likely to discourage potential complainants.

§ 999.303, subd. (c): Internal Complaints

PORAC requests that this provision be deleted because the statute does not "authorize[] DOJ to mandate the filing of complaints." PORAC further represents that "[m]any jurisdictions have already enacted procedures which this regulation seeks to preempt." (Comment 12-8.)

CCPOA also asserts that the statute does not support imposition of a duty to make internal reports. (Comment 18-8.) CCPOA further asserts that this provision expands the reach of AB 655 beyond what is authorized in the statute. (Comment 18-9.) Finally, CCPOA comments that the term "has likely engaged" as used in this provision is unworkably vague. (Comment 18-10.)

Response: The Department has determined to delete this provision. While the Department maintains that it is appropriate for agencies to require internal reporting of all serious misconduct, given the nature of the misconduct at issue here, the Department does not believe it is feasible to identify on a statewide basis the specific levels of knowledge and certainty that should lead to a reporting obligation, particularly where failure to meet that obligation may carry severe penalties. This infeasibility is compounded by the proximity of Covered Misconduct to protected expressive and associational activity. For example, if the potentially-reporting party witnessed a peace officer associating with hate group members, there may be circumstances in which that should or should not be required to be reported based on additional context and circumstances unique to a jurisdiction or agency. We encourage every agency to develop internal reporting policies for all serious misconduct that meet their respective needs.

§ 999.304, subd. (a): Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies

PORAC reiterates its comments with respect to Section 999.300, subd. (c), and requests that Section 999.304, subd. (a), be replaced with the following:

"If another agency that is not the Appropriate Oversight Agency or designated Investigating Agency received a Covered Complaint, the receiving agency shall promptly forward the Covered Complaint to the Appropriate Oversight Agency or designated Investigating Agency. Should the Appropriate Oversight Agency or designated Investigating Agency identify reasons why they cannot investigate the matter without compromising the investigation or placing any person at risk of harm, the matter shall be referred to another agency for investigation."

PORAC's rationale for requesting this revision is "[i]f another non-employing agency receives a Covered Complaint, the receiving agency should refer the Covered Complaint to the Appropriate Oversight Agency (i.e., the employing agency or designee) of designated Investigating Agency for investigation. Should the Appropriate Oversight Agency or designated Investigating Agency identify reasons why they cannot investigate the matter without compromising the investigation or placing any person at risk of harm, the matter can be referred to another agency for investigation." (Comment 12-9.)

Response: No change has been made in response to this comment, consistent with its response to PORAC's comment regarding Section 999.300, subd. (c). Section 999.304 addresses a situation in which a complaint cannot reasonably be expected to be made or referred to the Investigating Agency due to concerns about the integrity of the investigation or the risk of harm to persons. Because AB 655 is intended to address the infiltration of law enforcement agencies by hate groups, implementation of the statute requires the promulgation of rules that address, as best as possible, this particular situation. The Department believes that the proposed regulations are tailored as narrowly as possible to address such a situation.

§ 999.304, subd. (b): Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies

PORAC requests removal of subdivision (b) because it contends that the Employing Agency should be notified as the employer and entity ultimately responsible for implementing corrective action. PORAC also objects to this provision because, to the extent it contemplates not notifying the Investigating Agency about the complaint, the Investigating Agency is by definition an Employing Agency or Appropriate Oversight Agency. (Comment 12-10.)

Response: The Department has amended the provision to clarify that the third-party agency's discretion not to notify the Employing Agency or Investigating Agency applies only during the pendency of the investigation or if the investigation does not result in Findings that the misconduct at issue has been established. The Department sees no basis in law for requiring notification of the Employing Agency that an investigation is ongoing where there is a reasonable likelihood that doing so would undermine the aims of the statute.

LAPPL requests that Section 999.304, subd. (b), be rewritten to provide that the agency receiving the complaint and any oversight agency to which the complaint is referred only be permitted to withhold notification to the Employing Agency or Investigating Agency until completion of the investigation. (Comment 11-3.)

Response: The Department has revised this provision, as described in the response to PORAC above, to clarify that the third-party agency's discretion not to notify the Employing Agency or Investigating Agency applies only during the pendency of the investigation or if the investigation does not result in Findings that the misconduct at issue has been established.

§ 999.304, subd. (c): Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies

PORAC requests that this subdivision be deleted because it contends that "[a]n outside agency does not meet the definition of the Investigating Agency and has no power to take action as required by the statute. Nothing in the statute grants authority for an outside agency to usurp these powers or render a determination regarding a conflict of interest. A conflict of interest is not defined anywhere, thus inviting subjectiveness. Moreover, a conflict between a law enforcement agency and hate group is inconceivable. This regulation encourages usurpation of authority based

on the false contention that employment with an agency creates a conflict of interest." (Comment 12-11.)

Response: The Department has determined to remove adjudicatory authority from Section 999.304 of the proposed regulations. All adjudications will be pursuant to the policy established under Section 999.301. However, where an agency investigating a complaint pursuant to Section 999.304 has cause for concerns about the integrity of the adjudication, that agency shall share a copy of its Findings with the Department to enable necessary oversight.

LAPPL requests that Section 999.304, subdivision (c) be amended to reflect that "an agency other than the employing agency may adjudicate a complaint if that agency is identified as an Adjudicating Agency in the policies adopted pursuant to Section 999.301, and a determination is made that" there is a conflict of interest or the employing agency is incapable of conducting an unbiased adjudication. (Comment 11-4.)

Response: Subdivision (c) has been amended so that only a designated Adjudicating Agency may adjudicate a complaint. When an agency acting under Section 999.304 has reason to believe that the Adjudicating Agency designated pursuant to Section 999.301 has a conflict of interest or is otherwise incapable of conducting an unbiased adjudication, it must instead submit a copy of the Findings to the Department with all information forming the basis of the agency's concerns. Such submission will facilitate action by the Department where appropriate.

CCPOA contends that, by permitting the adjudication to be performed by agencies other than the SPB, the proposed regulations abrogate the SPB's jurisdiction. CCPOA asserts that "for state-employed peace officers, Sections 999.304, subd. (c), and 999.307, subd. (f), seek to displace SPB as the first review and arbiter of the appropriateness of disciplinary action." (Comment 18-16.)

Response: Subdivision (c) has been amended to remove authority for an agency conducting an investigation under Section 999.304 to adjudicate a complaint, as discussed in the response to PORAC above. The Department reiterates its response to CCPOA's comment regarding Section 999.301, subd. (a), concerning displacement of the SPB. Where the SPB is presently responsible for reviewing disciplinary actions, that responsibility is unchanged by AB 655 or its proposed implementing regulations. (See Pen. Code, § 13680, subd. (h); section 999.301, subd. (e), of the proposed regulations.) However, the Department notes that the appropriateness of discipline is governed by statute, which requires removal from appointment as a Peace Officer. (See Pen. Code, § 13682, subd. (b).)

§ 999.304, subd. (d): Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies

PORAC requests deletion of this provision. PORAC contends that "[c]omplaints alleging violations of AB 655 should be referred to the employing agency for investigation. If the employing agency is unable to investigate the complaint, the matter can be referred to another designated investigating agency." (Comment 12-12.)

Response: No change has been made in response to this comment. The purpose of this section is to clarify when the six-month deadline specified in Section 999.306, subd. (i), begins to run where an investigation is conducted pursuant to Section 999.304. PORAC's broader expressed concerns about investigations conducted pursuant to Section 999.304 are addressed above.

§ 999.304, subd. (e): Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies

PORAC requests deletion of this provision, commenting in part that this section "seeks to expand DOJ's nullification of existing laws governing the investigation and adjudication of misconduct allegations against peace officers to any agency investigating conducted prohibited by AB 655. PORAC objects to many of the provisions identified in section 999.304(e) and does not believe DOJ has the authority to supersede state law and contractual rights."

PORAC further comments that "[s]tate collective bargaining laws authorize recognized exclusive representatives to bargain over disciplinary procedures" and AB 655 does not authorize the Department to promulgate regulations "impairing existing contract rights or the collective bargaining rights or public employees." PORAC contends that "[t]here is no legal authority for impairment of contract through regulations, and nor are these impairments necessary. The statute itself purports to override any inconsistent statutes of limitations that may be contractually obligated. The DOJ has not demonstrated a compelling need to further impair collective bargaining agreements nor that less severe alternatives to not exist." (Comment 12-13.)

Response: No change has been made in response to this comment. This provision is included to ensure, as much as possible, that Appropriate Oversight Agencies that have not been designated as responsible agencies pursuant to Section 999.301—and which therefore may not have in place procedures for the handling of AB 655 proceedings—conduct investigations consistent with these proposed regulations. The Department reiterates its response to PORAC's comment regarding Section 999.301, subd. (d), regarding impairment of labor agreements.

LAPPL objects to Section 999.304, subdivision (e)'s requirement that agencies conducting an investigation or adjudication "shall be authorized to depart from existing policy, agreement, or other source of law where necessary to comply with these regulations." LAPPL acknowledges that Penal Code section 13682 "enables agencies, 'notwithstanding,' to override any provisions that conflict with, meaning that cannot be harmonized with, the statutory directive to investigate covered misconduct." LAPPL contends, however, that that provision does not "enable the Department of any law enforcement agency to override any applicable laws, policies, or agreements that govern adjudications." LAPPL further contend that section 999.304, subdivision (e), "cannot override any other provisions that govern provisions of MMBA, skelly hearing(s), or collective bargaining, for example." LAPPL requests removal of the phrase "and shall be authorized to depart from existing policy, agreement, or other source of law where necessary to comply with these regulations." (Comment 11-5.)

Response: The Department has revised this section to remove adjudication authority from non-designated agencies, but otherwise makes no change in response to this comment. Regarding inclusion of the phrase "and shall be authorized to depart from existing policy, agreement, or other source of law where necessary to comply with these regulations," the Department refers to its response above. Regarding its authority to implement AB 655 where it identifies a potential conflict with existing statute or collective bargaining agreement, the Department refers to its response regarding Section 999.301, subd. (d).

CCPOA objects to Sections 999.304, subd. (e), and 999.306, subd. (l), arguing that these provisions "far exceed the authority of the authorizing statute" because it claims that the exemption from "any other law" set forth in Penal Code section 13682, subdivision (a) extends only to Section 3304, subd. (d), of the Government Code. (Comment 18-14.) CCPOA contends that these provisions attempt to abrogate the procedural safeguards set forth in the Public Safety Officers Procedural Bill of Rights Act. (Comment 18-15.)

Response: No change has been made in response to this comment. "As the California Supreme Court explains, '[w]e deny a phrase like 'any other provision of law' its proper impact if we expect a ... statute ... to further enumerate every provision ... to which it is relevant.'" (*First Amendment Coalition v. Superior Court* (2023) 98 Cal. App. 5th 593, 607 [quoting *People v. Romanowski* (2017) 2 Cal.5th 903, 908–909]; see also *Criminal Justice Legal Foundation v. Department of Corrections and Rehabilitation* (Cal. Ct. App., July 28, 2025, No. C100274) 2025 WL 2104730, at *1 ["To the extent the regulations contradict other statutes, those statutes are superseded because Proposition 57 authorizes the department to adopt regulations 'notwithstanding any other provision of law.'"].)

§ 999.304, subd. (f): Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies

PORAC requests deletion of the second sentence of Section 999.304, subd. (f), which provides that "[t]he provisions of this Section are not subject to collective bargaining with a personnel union or any other private agreement." PORAC objects to the inclusion of this sentence for the same reason it sought to delete 999.304, subd. (e), *supra*. (Comment 12-14.)

Response: The Department deleted subsection (f) after the First Comment Period; however, the Department restored subsection (f), as originally noticed, after the Second Comment Period. The Department reiterates its response to PORAC's comment regarding the identical provision at Section 999.301, subd. (d).

CCPOA objected to 999.304(f) for the same reasons it objected to Section 999.301, subd. (d), contending that these provisions abrogate collective bargaining statutes (and thus exceed AB 655, the authorizing statute), abrogate the representational rights of state Peace Officers, and invade and abrogate the Public Employment Relations Board's jurisdiction. (Comment 18-11, 18-12, 18-13.)

Response: The Department deleted subsection (f) after the First Comment Period; however, the Department restored subsection (f), as originally noticed, after the Second Comment Period. The Department reiterates its response to CCPOA's comment regarding the identical provision at Section 999.301, subd. (d).

§ 999.306, subd. (c): Investigations

PORAC requests removal of this provision, stating "[t]he regulation contradicts the statute and itself by nullifying the requirement that complaint contain sufficient particularity to investigate and then essentially assert that failure to identify any of the elements of the covered conduct is not insufficient." PORAC further contends that, "[c]onsistent with the statute and fundamental due process rights, the complaint should minimally be required to allege the officer engaged in covered conduct and identify the alleged hate group or public expressions of hate. This regulation appears intended to facilitate investigations [sic] First Amendment protected activities that have no nexus to a hate group, which is required by the statute." (Comment 12-15.)

Response: No change has been made in response to this comment. The statute requires an investigation where there exists "Sufficient Particularity to Investigate." Depending on circumstances, a complaint that omits a reference to the name of an involved hate group or that describes alleged misconduct using different terms than those used in the statute may still contain enough particularized information to provide leads that may be readily investigated.

This provision is not intended to "facilitate investigations [of] First Amendment" activities. Rather, the provision is intended to prevent a complaint from being disregarded solely because it omits a particular detail, where the omission of that detail does not reasonably prevent a potential investigation.

§ 999.306, subd. (e): Investigations

CCPOA objects to this provision, which provides in part that "[i]f the investigator concludes that the Covered Complaint, as received, lacks Sufficient Particularity to Investigate or lacks sufficient detail regarding when the misconduct allegedly occurred or the age of the Subject at the time, the investigator shall take all reasonable steps to contact the complainant, if possible, to ascertain whether the complainant has additional information that could provide the necessary Sufficient Particularity to Investigate." PORAC requests that this provision be deleted because, it contends, an investigator will be required, when a Covered Complaint lacks sufficient particularly, to "attempt to contact the complainant to 'ascertain whether the complainant has additional information that could provide the necessary Particularity to Investigate.'" CCPOA contends that this means that investigators will be "obligated to attempt to bolster the complaint through investigation," and claims that this is contrary to the language of 13682(a), "which provides that only complaints that allege with sufficient particularity must be investigated." (Comment 18-6.)

Response: No change has been made in response to this comment. Reasonable follow-up to address gaps or lack of clarity in a complaint before assessing how to proceed is a standard practice. In the

absence of a requirement for reasonable follow-up, the effectiveness of the statute would depend on the ability of complainants to include in their original complaints all details deemed essential by the agency receiving each complaint. This outcome is not consistent with the aims of AB 655, and regulations ensure that the standard practice of reasonable follow-up on complaints is enforced with respect to complaints controlled by the statute.

§ 999.306, subd. (f): Investigations

PORAC requests removal of this provision, which details the steps an investigator should take to close an investigation. PORAC objects to the language in the subdivision requiring the investigator to document their "reasoning, and efforts to obtain any additional information." PORAC also asks that the last two sentences of the subdivision (requiring that the determination to close the investigation be reviewed by the investigator's supervisor, and that the Investigating Agency shall maintain the documentation regarding the Covered Complaint in a file, including all investigatory records) be removed. PORAC contends that it "appears intended to create an implicit bias against clearing an innocent officer by requiring much more documentation of the basis for clearing an officer than if the allegation is sustained. Due process requires a reverse emphasis. Additionally, the apparently permanent retention policy violates Penal Code section 832.7, and the timelines set forth therein. The statute does not authorize DOJ to abrogate Penal Code section 832.7 in through regulation." (Comment 12-16.)

Response: No change has been made in response to this comment. The requirement in Section 999.306, subd. (f), that an investigator document "their conclusions, reasoning, and efforts to obtain additional information" before deciding not to initiate an investigation does not create an "implicit bias against clearing an innocent officer by requiring much more documentation of the basis for clearing an officer than if the allegation is sustained." As an initial matter, this provision addresses whether or not a full investigation is initiated, not whether charges are "sustained" or a Peace Officer is "cleared." Further, if the investigator were to decide to proceed with a full investigation, the work of conducting and documenting that investigation would far exceed the de minimis burden of recording the reasons for not initiating the investigation.

Section 999.306, subd. (d), also does not establish a "permanent retention policy." Section 999.311, subd. (a), of the proposed regulations establishes the length of time for which records created under AB 655 must be retained. While the comment does not explain how this provision conflicts with section 832.7 of the Penal Code, the Department is required to promulgate regulations consistent with the language and intent of AB 655, "[n]otwithstanding Section 19635 of the Government Code, or any other law." (See Pen. Code, § 13682, subd. (a).)

§ 999.306, subd. (g): Investigations

CCPOA objects to this provision, which provides that an investigation cannot be terminated or suspended solely because a complainant withdraws the complaint, the Subject voluntarily or involuntarily separates from employment, or the Subject's status as a Peace Officer is discontinued. CCPOA claims that, if a complaint is withdrawn, that withdrawal "automatically

cancels the allegations made" against the officer, and thus the regulation is exceeding its statutory authority, which "authorizes investigations for only those complaints that allege with sufficient particularity." CCPOA contends that Section 999.306, subd. (g) exceeds the authority granted under Section 13682, subd. (a) because Section 999.306, subd. (g) "[purports] to expand the authority for investigations to include all complaints, even defective ones that fail to allege the specificity required by section 13682(a)." (Comment 18-7.)

Response: No change has been made in response to this comment. AB 655 requires the investigation of any complaint with "sufficient particularity to investigate" and does not condition that requirement on the continued cooperation of the original complainant. The statute's requirements make sense in the context of its intended purpose of addressing particularly egregious forms of misconduct; it is not difficult to imagine a situation in which a complainant is threatened or coerced into withdrawing a complaint, and the proposed regulations seek to eliminate incentives for such behavior. Moreover, it is accepted practice for an internal investigation to proceed without the continued cooperation of an original complainant where it is reasonable and possible to do so.

It is also accepted practice for an investigation into Peace Officer misconduct to proceed even where the Subject of the investigation has left their role. For instances of serious misconduct, the completion of investigations is required by statute. (See Pen. Code, § 13510.8, subd. (c)(1) ("[E]ach law enforcement agency shall be responsible for the completion of investigations of allegations of serious misconduct by a peace officer, regardless of their employment status.").)

§ 999.306, subd. (i): Investigations

LAPPL requests that this provision be deleted because it "attempts to nullify any provisions governing the statute of limitations imposed by POBOR, which are not in conflict with Section 13682 of the Penal Code or any other provision of AB 655 (D-Kalra, 2022). The intent of the Legislature was not to modify the provisions of law that govern how administrative investigations are conducted. The intent of the Legislature was to ensure that administrative investigations are conducted when specific criteria are met." (Comment 11-6.)

Response: No change has been made in response to this comment. AB 655 requires that an investigation be conducted where there is "sufficient particularity to investigate" a complaint of misconduct under the statute, and it requires that the investigation Subject be removed from appointment where that complaint is Sustained. The statute does not authorize the abandonment of an investigation based solely on the length of time it has taken, and it does not permit the length of the investigation to be considered as a mitigating factor that would permit a Sustained finding of misconduct not to result in removal from appointment as a Peace Officer. To the contrary, the statute requires that an agency "shall remove from appointment as a peace officer, any peace officer against whom a complaint described in subdivision (a) is sustained." (Pen. Code, § 13682, subd. (b).) To the extent AB 655's requirements conflict with earlier statutes, AB 655 is intended to displace the conflicting statutes. (See Pen. Code, § 13682, subd. (a).) The proposed regulations merely follow the requirements of AB 655 on these points.

§ 999.306, subd. (k): Investigations

PORAC asks that subdivision (k), which provides in part that interviews be video-recorded or audio-recorded, also include that "[a]udio recording of peace officers, including the Subject, is permitted in accordance with Government Code section 3303(g). Peace officers shall not be video recorded without their consent." PORAC comments that "recording witnesses who are peace officers, including the Subject, should only occur with advance notice. Peace officers should have the right to refuse video recording of interviews. Consistent with Government Code section 3303, subd. (g), however, audio recording of peace officer interviews is permissible, provided the peace officer is permitted to record the interview as well." (Comment 12-17.)

Response: No change has been made in response to this comment. Section 999.306, subd. (k), is not intended to displace existing law or policy beyond requiring that interviews be recorded in some fashion, whether audio-only or audio and video. The Department rejects the contention that interviewees should always be permitted to record their interviews, for the reasons given in the Initial Statement of Reasons supporting the inclusion of Section 999.306, subd. (l)(5). Section 999.306, subd. (l)(5), has been revised to clarify that investigator discretion not to provide evidence during an investigation extends to preventing recording of interviews.

§ 999.306, subd. (l): Investigations

LAPPL requests removal of this provision because it "attempts to nullify various provisions of POBOR that are not in conflict with Section 13682 of the Penal Code or any other provision of AB 655." (Comment 11-7.)

PORAC requests removal of this provision because it "eviscerates existing procedural protections enshrined in the Peace Officer Procedural Bill of Rights. The section also impermissible restricts the *Weingarten* rights of union-represented Subjects and right of an exclusive employee organization to represent its members in disciplinary investigations in violation state public employee collective bargaining laws." "Penal Code section 13682(a) does not nullify existing laws granting specific procedural rights and protections to Peace Officers under investigation for misconduct that could lead to punitive action (including discharge). Instead, Penal Code section 13682(a) merely abrogates any statutory time limits imposed on investigations of Peace Officers when the conduct at issue is prohibited by AB 655 and sets forth a 7-year limitation period."

PORAC further contends that the proposed regulations unconstitutionally impair labor contracts. (Comment 12-18.)

CCPOA objects to Sections 999.304, subd. (e), and 999.306, subd. (l), arguing that these provisions "far exceed the authority of the authorizing statute" because it claims that the exemption from "any other law" set forth in Penal Code 13682(a) extends only to section 3304, subd. (d), of the Government Code. (Comment 18-14.) CCPOA contends that these provisions attempt to abrogate the procedural safeguards set forth in the Public Safety Officers Procedural Bill of Rights Act. (Comment 18-15.)

Response: On the subject of its authority with respect to potential conflicts with existing law, policy, or collective bargaining agreements, the Department refers to its responses regarding Section 999.301, subd. (d), and Section 999.304, subd. (e). AB 655 explicitly provides that its directives shall be implemented "[n]otwithstanding Section 19635 of the Government Code, or any other law." (Pen. Code, § 13682, subd. (a).) Consistent with the precedents of the California Supreme Court and Courts of Appeal, the Department has interpreted this provision to impose on it an obligation to identify existing laws that pose a strong likelihood of interfering with the effective implementation of AB 655, consistent with the statute's recognized purposes. (See *First Amendment Coalition v. Superior Court* (2023) 98 Cal. App. 5th 593, 602-3 ["Whether [a statute with a notwithstanding clause] overrides the application of [an earlier statute] presents an issue of statutory interpretation, which we review de novo. The rules governing our analysis are settled. Our goal in interpreting a statute is to effectuate the Legislature's intent."]; *id.* at 607 ["As the California Supreme Court explains, '[w]e deny a phrase like 'any other provision of law' its proper impact if we expect a ... statute ... to further enumerate every provision ... to which it is relevant.'" (quoting *People v. Romanowski* (2017) 2 Cal. 5th 903, 908–909)].) The Court of Appeal recently held that an agency may promulgate rules superseding existing statutes pursuant to a delegation of authority to make rules "notwithstanding any other law." (See *Criminal Justice Legal Foundation v. Department of Corrections & Rehabilitation* (2025) 113 Cal. App. 5th 26, 31.) In so holding, the court collected cases in which the phrase "notwithstanding any other law" had previously been held to confer upon an agency authority to supersede statute. (See *id.* at 35.) (The California Supreme Court has granted review of this case limited to the following question: "Does Proposition 57 authorize the California Department of Corrections and Rehabilitation to award and apply earned credits to advance indeterminately sentenced persons' minimum eligible parole dates?" (*See* Case No. S292887 (Sept. 8, 2025)).)

The Department recognizes that this obligation extends to identifying potential points of conflict with existing law during the investigation phase and reconciling AB 655 with other laws. The Department has sought to identify such conflicts as narrowly as possible, and to identify resolutions that minimally impact existing rights, duties, or procedures. However, the Department rejects any suggestion that it has discretion to disregard the statutory mandate to reconcile AB 655 with conflicting law.

In order to better align the proposed regulations with the specific issues over which AB 655 may conflict with existing law, Section 999.306, subd. (l)(3), has been revised to clarify that an investigator's discretion to include more questioners or interview participants that might otherwise be permitted is specifically based on a potential need to include subject-matter experts. The Department anticipates that Investigating Agencies may need to enlist support from such experts where they are investigating activities involving Hate Groups with which they are not familiar.

As discussed in the response regarding Section 999.306, subd. (k), above, Section 999.306, subd. (l)(5), has also been revised for clarity.

§ 999.306, subd. (o) (previously subd. (n)): Investigations

PORAC requests that language be added to this provision that states that "For purposes of this subsection, the absence of sufficient evidence to establish an element identified in Section 999.308 is the same as sufficient evidence that an element cannot be established." (Comment 12-19.)

Response: In the interest of clarity, the Department has revised this subdivision to specify that an investigation may be deemed concluded when the investigator has been unable to identify evidence sufficient to establish any element in Section 999.308. The Department expects that individual agencies will follow appropriate standards for the thoroughness of investigations, including those found in the proposed regulations.

The Department can find no basis in law, nor has PORAC identified such, for categorically treating the absence of evidence as conclusive proof that the element of misconduct at issue cannot be established.

§ 999.306, subd. (p): Investigations

LAPPL requests that Section 999.306 subd. (p), be amended "to explicitly state that the investigative file shall be transmitted from the Investigating Agency to the individual under investigation at the same time that the file is transmitted to the Adjudicating Agency or adjudicating official." (Comment 11-8.)

Response: The Department concludes that it is appropriate for the proposed regulations to guarantee that the investigation Subject have access to the investigative file with sufficient time to mount a defense. Section 999.307, subd. (c), has been revised to include the following: "At or before such time that the Adjudicating Agency or Employing Agency communicates to the Subject the agency's intent to discipline the Subject, the agency shall provide the Subject with a copy of the investigative file, including any additions made at the request of the Adjudicating Agency or official." Because the adjudicating official may send the file back for further investigation or decline to pursue disciplinary action, it may not be appropriate to share the investigative file with the Subject concurrently with its transmission to the Adjudicating Agency or adjudicating official.

3. Comments regarding Article 3. Adjudication

§ 999.307, subd. (c): Adjudication

PORAC comments that "t]he requirement to provide reasons for rejection but not for sustaining the allegations is asymmetrical and creates an implicit bias in favor of sustaining the allegation. Given the due process interests at stake, the reasoning and conclusion in support to sustained findings are much more important than making the investigators justify not sustaining the allegations." PORAC requests that subdivision (c) be revised to state: "The Adjudicating Agency's determination must be in writing and set forth the basis for its conclusions." (Comment 12-20.)

Response: The Department has simplified the language at issue to state that the determination must "provide a sufficient basis for concurrence with or rejection of each element of the Findings." However, the Department continues to recognize that a "sufficient basis" for concurring with a Finding well-supported by evidence will typically be less than a "sufficient basis" for contradicting a Finding well-supported by evidence.

§ 999.307, subd. (f): Adjudication

LAPPL requests that this provision be amended "to require the adjudicating agency to honor the outcome of the administrative appeal unless a contrary decision is made in a court of law." (Comment 11-9.)

Response: The Department intends, consistent with the due process rights of Subjects, that all adjudications are bound by the decisions of superior tribunals, including administrative bodies and courts of law. Section 999.307, subd. (f), has been revised to clarify that adjudicative determinations are "subject to all applicable appeals." Section 999.301, subd. (e), has been added to reaffirm the rights to administrative appeal guaranteed in the statute. Section 999.314 has been added to affirm due process rights to seek review in court.

CCPOA contends that, by permitting the adjudication to be performed by agencies other than the SPB, the proposed regulations abrogate the SPB's jurisdiction. CCPOA asserts that "for state-employed peace officers, Sections 999.304(c) and 999.307(f) seek to displace SPB as the first review and arbiter of the appropriateness of disciplinary action." (Comment 18-16.)

Response: Section 999.307, subd. (f), has been revised to clarify that adjudicative determinations are "subject to all applicable appeals." Section 999.301, subd. (e), has been added to reaffirm the rights to administrative appeal guaranteed in the statute. Section 999.314 has been added to affirm due process rights to seek review in court. The Department reiterates its response to CCPOA's comment regarding Section 999.301, subd. (a), concerning displacement of the SPB. Where the Board is presently responsible for reviewing disciplinary actions, that responsibility is unchanged by AB 655 or its proposed implementing regulations. (See Pen. Code, § 13680, subd. (f); section 999.301, subd. (e), of the proposed regulations.) However, the Department notes that the appropriateness of discipline is governed by statute, which requires removal from appointment as a Peace Officer. (See Pen. Code, § 13682, subd. (b).)

§ 999.308: Elements of Covered Misconduct

PORAC requests that the evidentiary burden to establish misconduct under the statute be "clear and convincing evidence" rather than "preponderance of the evidence." PORAC also objects because it contends that the Constitution requires "specific intent of furthering its goals" and "knowing of its illegal objectives," citing *Keyishian v. Board of Regents of University of State of N.Y.* (1967) 385 U.S. 589, 607. (Comments 12-21, 12-22, 12-23.)

Response: The Department has revised the evidentiary burden to establish misconduct under the statute from "preponderance of the evidence" to "clear and convincing evidence" in order to align with the standard used in decertification proceedings adjudicated by the California Commission on Peace Officer Standards and Training (POST). Additional explanation regarding this change can be found in response to comments related to this section during the Second Comment Period, in Section B, *infra*. The Department disagrees that the statute or proposed regulations are in conflict with the U.S. Supreme Court's holding in *Keyishian*. The elements of offenses detailed in Section 999.308 include requirements of intentional conduct consistent with the U.S. and California Constitutions. (See subds. (a)(4) ["At the time of actual or putative membership, the Subject intended to Further the commission of Genocide or Hate Crimes by any members of the Organization."], (b)(4) ["The Subject was actively and directly involved in, Facilitated, or Coordinated the commission or attempted commission of that Hate Crime while the Subject was 18 or older."], (c)(3) ["The statement or expression explicitly Advocated for, explicitly Supported, or explicitly threatened to commit Genocide or any Hate Crime, or explicitly Advocated for or explicitly Supported any Hate Group, with knowledge of the Hate Group's Advocacy for, threats of, or practice of Genocide or the commission of Hate Crimes."]) To the extent the statute or proposed regulations are interpreted by a court of law to be inconsistent with constitutional requirements, the Department intends that they be interpreted consistent with the U.S. and California Constitutions.

§ 999.309, subd. (a): Other Misconduct

PORAC requests deletion of this provision, contending that "Penal Code section 13682(c) restricts the establishment of investigatory guidelines solely to complaints involving the specific misconduct prohibited by AB 655. The statute does not authorize investigation of other offenses, whether or not related in some way to a violation of AB655, against peace officers outside the investigatory process established by existing state law and local ordinance." (Comment 12-24.)

Response: No change has been made in response to this comment. Section 999.309, subd. (a), does not affect the investigation of any misconduct. Rather, it permits agencies to conserve resources by holding unified proceedings, consistent with existing policy, where multiple charges of misconduct stem from a common nucleus of facts.

Section 999.309, subd. (b): Other Misconduct

LAPPL contends that Section 999.309, subdivision (b), "seeks to curtail the ability of an employing agency's discretion to assess the circumstances of 'misconduct' and render an alternative form of discipline," and further comments that this provision "undermines the widely held public policy and premise that all decisions on the appropriate discipline is up to the hiring authority, and courts generally yield to the hiring authorities' decision on discipline upon appeal." (Comment 11-10.)

Response: No change has been made in response to this comment. Penal Code section 13682, subd. (b), provides that a Sustained finding under the statute "shall" result in removal from appointment

as a Peace Officer. The statute does not permit the imposition of any lesser discipline in any circumstance.

§ 999.310: Serious Misconduct (renamed Reporting to the Commission on Peace Officer Standards and Training)

POST requests "a more limited rule that would simply direct the employing law enforcement agency to report allegations or Findings regarding 'Covered Misconduct' to POST, when appropriate, so that POST can determine whether the incident also constitutes actionable 'serious misconduct'" and that would require similar reporting upon discovery that a Peace Officer failed to disclose Covered Misconduct at the time of appointment. (Comments 14-2, 14-3.)

Response: For the avoidance of confusion, the Department rescinds Section 999.310 of the proposed regulations, previously titled "Serious Misconduct." The Department replaces that provision with a new provision titled "Reporting to the Commission on Peace Officer Standards and Training." The new rule provides in full:

"All events involving Covered Misconduct by a Peace Officer must be reported to the Commission on Peace Officer Standards and Training by the Investigating Agency and Adjudicating Agency according to the requirements of Section 13510.9 of the Penal Code."

PORAC requests deletion of Section 999.310 on grounds that it is overbroad. (Comments 12-25, 12-26.)

Response: The Department has removed the original Section 999.310 as described above.

4. Comments regarding Article 4. General Provisions

§ 999.313, subdivision (b): Training

CCPOA comments on subdivision 999.313, which requires investigating agencies to ensure that investigators assigned to investigate Covered Complaints receive training, "including interview techniques, conducting social media reviews, and handling of electronic evidence." (Section 999.313, subd. (a).) CCPOA contends that this provision does not address the minimum qualifications of an investigator or what constitutes an adequate investigation. CCPOA recommends looking at other statutes, such as Penal Code section 6065, which addresses training for investigators for the California Department of Rehabilitation and Corrections (CDCR), as a potential template. CCPOA references the minimum standards referenced in that statute as a model for the proposed regulations. It notes that Section 6065 contains several requirements that the proposed regulations lack, including background checks for investigators, requiring that all internal affairs allegations or complaints must be logged and numbered annually, and requiring thorough and unbiased investigations. (Comment 18-21.)

Response: The Department accepts CCPOA's comment insofar as it requests that the proposed regulations specify that investigators undergo an appropriate background check. Section 999.306, subd. (a)(5), has been added accordingly. However, the Department declines to implement additional background check requirements because background checks for Peace Officers are already governed by section 1031 of the Government Code and title 11, section 1953 of the California Code of Regulations. The Commission on Peace Officer Standards and Training provides additional, more detailed guidance. These rules, along with Penal Code section 6065 and existing agency policies, provide a structure for hiring law enforcement investigators that the Department declines to replace.

Section 999.306 of the proposed regulations includes various rules regarding efforts that must be undertaken with respect to the receipt and evaluation of complaints and to the conduct of investigations. (See, e.g., subds. (i) ("The investigator shall identify, collect, and consider all relevant evidence . . ."), (j) ("The investigator shall identify, collect, and consider all relevant evidence . . .").) Section 999.308 of the proposed regulations further defines the adequacy of an investigation under the statute by defining the specific elements that must be established for each offense identified in the statute. The proposed regulations include recordkeeping requirements for every stage of the investigative and adjudicative processes. The Department declines to elaborate further requirements in light of many variables involved in any particular investigation.

5. General Comments

Richard Hylton presents general comments expressing dissatisfaction with the Department's regulatory processes (citing the regulations promulgated by the Department to implement the California Racial and Identity Profiling Act (RIPA)). (Comments 1, 10.)

Response: No change has been made in response to this comment, which is interpreted to be an observation rather than a recommendation of any change to the regulations themselves.

Carla Dietz, Interim Pastor, Parkside Community Church UCC, asked the Department to contact her if the Department would like to hold a public hearing on the regulations in the Sacramento area. (Comment 2.)

Response: No change has been made in response to this comment, which is interpreted to be a comment regarding logistics of the public hearings during the first public comment period rather than a recommendation of any change to the regulations themselves. The Department had previously scheduled hearings to take place on March 12 and 14, 2025, in Los Angeles and Oakland, respectively, during this First Comment Period.

Dmitra Smith, Former Chair of the Sonoma County Commission on Human Rights, co-author of AB 655, and other positions, comments that AB 655 was motivated by community reports about the conduct of Sonoma County Sheriff Department deputies, but noting that this was a public

safety issue affecting all Californians. Ms. Smith observes that the proposed regulations are an "important strengthening of the implementation of AB 655." (Comments 3, 19, 21.)

Response: No change has been made in response to these comments, which are interpreted to be observations rather than recommendations of any change to the regulations themselves.

Fralana Latham writes regarding various reparations meetings being held throughout the country and in support for "LINEAGE BASED REPARATIONS FOR ALL BLACK REPARATIONS IN America and the State of IL." (Comment 4.)

Response: No change has been made in response to these comments, which appear to be addressed not towards the AB 655 regulations, but rather reparations efforts throughout the country.

Ed Obayashi, a law enforcement training instructor, contacted the Department several times, asking to speak about the regulations, without providing any substantive comment. (Comments 5, 6, 7, 8.)

Response: No change has been made in response to these comments, which do not provide any substantive recommendation for changes to the regulations themselves. The Department responded to Deputy Obayashi by email encouraging him to provide either written comment or oral comment at one of the two public hearings on the regulations.

William Dowdy, Sheriff-Coroner for the County of Modoc, advised that his policy advisor, Deputy Ed Obayashi, had been attempting to contact the Department regarding the regulations. (Comment 9.)

Response: No change has been made in response to this comment, which does not provide any substantive recommendation for changes to the regulations themselves. The Department responded to Deputy Obayashi by email (see Comment 6) encouraging him to provide either written comment or oral comment at one of the two public hearings on the regulations.

NACOLE writes that "the proposed DOJ regulations implementing the CLEAR Act (AB 655 (2022)) are in alignment with these core principles and best practices in civilian oversight," referring to the organization's publication, with the support of the U.S. Department of Justice, of the 2021 report "Civilian Oversight of Law Enforcement: Report on the State of the Field and Effective Practices." NACOLE refers specifically to the proposed regulations' "clearly defined jurisdiction and authority," "independence and procedural justice," complaint acceptance procedures, and audit mechanisms. (Comment 13.)

Response: No change has been made in response to this comment, which is interpreted to be observations rather than recommendations of any change to the regulations themselves.

Dean A. Strang, Distinguished Professor in Residence, Loyola University of Chicago School of Law, expresses support for the proposed regulations and observes that they "strike an important and effective balance between serious concerns about unlawful, biased, and dangerous misconduct by some peace officers that threatens safety and public confidence on the one hand, and the important goal of assuring that peace officers, like all people, are afforded due process in notice of what is prohibited and fair adjudication of complaints, on the other hand." (Comment 15.)

Response: No change has been made in response to this comment, which is interpreted to be observations rather than recommendations of any change to the regulations themselves.

Jon Hanson, Alan A. Stone Professor of Law and Director of the Systemic Justice Project, Harvard Law School, expresses support for the proposed regulations, including specifically their provisions addressing conflicting statutes and their fulfillment of the Legislature's intent. He observes that "[t]he proposed regulations strike an important and effective balance between addressing unlawful, biased, and dangerous misconduct by a small number of police officers—misconduct that threatens public safety and public confidence—while also ensuring that peace officers, like all citizens, are afforded due process, including clear notice of prohibited conduct and fair adjudication of complaints." (Comment 16.)

Response: No change has been made in response to this comment, which is interpreted to be observations rather than recommendations of any change to the regulations themselves.

Musa Tariq, policy coordinator at the San Francisco Bay Area chapter of the Council on American-Islamic Relations, noted that, even though the Federal Bureau of Investigations (FBI) has identified organizations committed to domestic terrorism with active ties to law enforcement, including militia extremists and white supremacist extremists, accountability at the local level remains inconsistent, "allowing extremism, racism, and bias within police departments to persist." Mr. Tariq noted that with AB 655, California took steps to address this issue, and stated further that Oakland must implement and enforce AB 655 to ensure law enforcement accountability and trust. He advocated "establishing clear and accessible complaint mechanisms, conducting thorough and timely investigations, holding officers accountable for violations, ensuring transparency by publicly disclosing sustained misconduct findings, and proactively vetting new hires for extremist ties." (Comments 17, 20.)

Response: No change has been made in response to this comment, which is interpreted to be observations rather than recommendations of any change to the regulations themselves.

Norma Nelson expresses support for the AB 655 and the proposed regulations, and further expresses support for the deployment of necessary resources to effectively implement the statute and regulations. (Comment 22.)

Response: No change has been made in response to this comment, which is interpreted to be observations rather than recommendations of any change to the regulations themselves.

Alix Mazuet expresses support for the proposed regulations, which she characterized as "very clear[,] concise[,] and very common sense." (Comment 23.)

Response: No change has been made in response to this comment, which is interpreted to be observations rather than recommendations of any change to the regulations themselves.

Nyla Moujaes expresses support for the proposed regulations, observing that "[w]ithout adopting these proposed regulations some police officers in the state of California will continue to be employed and retained with impunity, despite their criminal, possibly repetitive acts of collective harm, and this reality does not serve or protect vulnerable residents of the state of California. Since these very clear and tangible reforms to investigate and adjudicate such complaints, both internally and externally against peace officers have been laid out in these proposed regulations in the interest of public health, safety, and in order to fulfill a peace officer's mission to serve and protect the public, I am in full support and believe they should be adopted by the California Department of Justice." (Comment 24.)

Response: No change has been made in response to this comment, which is interpreted to be observations rather than recommendations of any change to the regulations themselves.

Strong Ma expresses support for the proposed regulations, including specifically "provisions, giving agency – investigatory agencies discretion in how they may investigate covered conduct or covered misconduct on their regulations." He further comments that "procedural hurdles are often used to obstruct and to delay and to, overall, negatively impact the quality of investigations into police misconduct. And I think, for the purposes of AB 655's mandate to broadly promote police accountability, that discretion in investigatory procedures is warranted." (Comment 25.)

Response: No change has been made in response to this comment, which is interpreted to be observations rather than recommendations of any change to the regulations themselves.

B. COMMENTS MADE DURING THE SECOND COMMENT PERIOD[3]

26	Jiadi Chang for Center for Policing Equity (CPE)
27	Brian R. Marvel for Peace Officers Research Association of California (PORAC)
28	Phillip Murray for California Correctional Peace Officers Association (CCPOA)
29	Nancy Goodban for California Coalition for Sheriff Oversight (CCSO)

1. Comments regarding Article 1. Definitions

§ 999.300, subd. (c): Definition of "Appropriate Oversight Agency"

PORAC requests this provision be amended to state that "'Appropriate Oversight Agency' means the Employing Agency or a state or local government agency designated by the employing agency with authority to impose adverse actions, including termination of employment" because the definition as currently written potentially includes "civilian oversight boards that lack authority to impose termination, contrary to AB 655's intent for investigations to be conducted by the employing agency or its designee. (Comment 27-1.)

Response: No change has been made in response to this comment. Section 999.301, not Section 999.300, specifies the process for allocating actual responsibility for conducting investigations or adjudications, and thus this proposed revision is unnecessary. Please see responses to comments regarding this provision made during the First Comment Period, in Section A, *supra*.

§ 999.300, subd. (e): Definition of "Covered Complaint"

CCPOA restates their previous comment from the 45-day rulemaking objecting to this provision, taken together with § 999.306(a), as an "enlargement of authority" that "conflict[s] with the enabling statute" because § 999.300(e) "allows for the investigation of complaints 'whether or not those allegations or facts have Sufficient Particularity to investigate.'" (Comment 28-3.)

Response: No change has been made in response to this comment. Please see responses to comments regarding this provision made during the First Comment Period, in Section A, *supra*.

[3] Multi-part comments are designated by the comment number and part number, separated by a hyphen. So, for example, part 3 of comment 12 would be cited as "Comment 12-3." Each multi-part comment has been annotated in the right margin to indicate each numbered part, and these may be found in the attached compilation of comments.

§ 999.300, subd. (i): Definition of "Findings"

PORAC notes that the changes made to this provision in the June 23, 2025, version of the proposed regulations resolve their original comment on this provision. (Comment 27-2.)

Response: No change has been made in response to this comment, which does not provide any additional substantive recommendation for changes to the regulations themselves.

§ 999.300, subd. (p): Definition of "Organization"

PORAC comments "that defining an 'Organization' as a group with just one trait is overly broad, potentially encompassing nearly any relationship and sweeping in constitutionally protected activities. All four traits should be required . . . ." (Comment 27-3.)

Response: No change has been made in response to this comment. Please see responses to comments regarding this provision made during the First Comment Period, in Section A, *supra.*

2. Comments regarding Article 2. Investigations

§ 999.301, subd. (d): Responsibility

CCSO requests that a provision from the initial version of the proposed regulations, which excluded from collective bargaining certain organizational decision about responsibilities for proceedings under the statute be restored. This provision was removed as part of the modifications proposed on June 23, 2025. CCSO asserts that removing the subdivision "would open the door to arguments that the investigative process required by the CLEAR Act would be subject to multiple meet and confer processes in different localities, with different possible outcomes on the same or similar facts. This would undermine both the intent of the legislation and the principles of effective oversight." (Comment 29-1.)

Response: The Department has restored this provision exactly as drafted in the initial version of the proposed regulations made available for comment. California law does not permit labor unions to "intrude upon management's role of formulating policy." (*Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608, 619.) Policies regarding handling of police misconduct complaints have been held to fall solely within management's decision-making powers. (See *Berkeley Police Assn. v. City of Berkeley* (1977) 76 Cal. App. 3d 931, 937 ["A decision of such fundamental importance to the basic direction of the corporate enterprise is not included within the area of mandatory collective bargaining." (quoting *NLRB v. Transmarine Navig. Corp*. (9th Cit. 1967) 380 F.2d 933, 939)].) Accordingly, the Department understands this provision to constitute guidance to relevant agencies regarding their duties to formulate organization policies independently and apart from collective bargaining.

PORAC requests the addition of an affirmative statement specifying that "assignment of an Adjudicative Agency shall be subject to applicable state collective bargaining laws, including Government Code §§ 3502 –3504" in order to "protect collective bargaining rights." (Comment 27-4.)

Response: No change has been made in response to this comment. For the reasons discussed above, this request is contrary to law and not adopted.

CCPOA expressed support for the removal of this provision in the previous draft of the proposed regulations. (Comments 28-7, 28-8.)

Response: This provision has been restored for the reasons discussed above.

§ 999.302, subd. (a): Public Complaints

CCPOA restates its comment from the 45-day rulemaking objecting to this provision as "an invalid enlargement of the scope of authority" because it "allow[s] all employing agencies and investigating agencies to accept public complaints involving peace officers employed by any agency." (Comment 28-2.)

Response: No change has been made in response to this comment. Please see responses to comments regarding this provision made during the First Comment Period.

§ 999.302, subd. (d): Public Complaints

PORAC restates its comment from the 45-day rulemaking objecting to this provision and requesting its deletion. (Comment 27-5.)

Response: No change has been made in response to this comment. Please see responses to comments regarding this provision made during the First Comment Period.

CCPOA restates its comment from the 45-day rulemaking objecting to this provision and requesting its deletion. (Comment 28-1.)

Response: No change has been made in response to this comment. Please see responses to comments regarding this provision made during the First Comment Period.

§ 999.303, previous subd. (c): Internal Complaints

PORAC notes that the deletion of this provision in the June 23, 2025, proposed modification to this provision resolves their original comment. (Comment 27-6.)

CCPOA likewise notes that the deletion of this provision in the June 23, 2025, proposed modification resolves their original comment. (Comment 28-6.)

Response: No change has been made in response to this comment, which does not provide any additional substantive recommendation for changes to the regulations themselves.

CPE requests for this provision to be restored, with language added to clarify "that nothing in this provision prohibits a law enforcement agency from implementing policies related to required reporting that are broader or stronger than what is required by this provision" and mandating "that if an agency has an existing mandatory reporting and non-retaliation policy, that policy must also cover misconduct under the CLEAR Act in addition to any other statutory, regulatory, or policy violations." The original provision, which was included in the initial January 24, 2025, rulemaking proposal but removed in the June 23, 2025, proposed modification, required that agencies implement a mandatory reporting policy for personnel that become aware of peace officers engaged in CLEAR Act-prohibited misconduct. The provision also required that the implemented reporting policy prohibit retaliation against those who file internal complaints, with violators subject to termination. CPE asserts it is beneficial "to establish statewide, baseline standards" because "if law enforcement agencies are given the option of implementing such policies or not, there will invariably be some that choose not to do so. These gaps in reporting requirements and protection against internal retaliation could chill internal reporting and erode the strength of these regulations as a whole." (Comments 26-1, 26-2.)

Response: No change has been made in response to this comment. For the reasons given in response to earlier comments about this provision, the Department concludes that regulations may hinder, rather than help, implementation of effective policy regarding this subject.

§ 999.304, subd. (a): Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies, Referring Complaints

PORAC objects to the provision, as revised, because "it does not require complaints to be referred to the employing agency first, allowing external investigations without employing agency involvement, contrary to AB 655's intent." PORAC proposes the revised provision be replaced with the following language:

"If an agency that is not the Appropriate Oversight Agency or designated Investigating Agency receives a Covered Complaint, the receiving agency shall promptly forward the Covered Complaint to the Appropriate Oversight Agency or designated Investigating Agency. Should the Appropriate Oversight Agency or designated Investigating Agency identify reasons why they

cannot investigate the matter without compromising the investigation or placing any person at risk of harm, the matter shall be referred to another agency for investigation."

(Comment 27-7.)

Response: No change has been made in response to this comment. The Department previously revised this section in response to similar comments. The structure established in Section 999.304 is necessary to permit Appropriate Oversight Agencies of relevant jurisdiction to make use of their existing authority in a situation where referral to the Employing Agency or Investigating Agency is determined to risk harm to the integrity of an investigation or to persons. Please see responses to comments regarding this provision made during the First Comment Period.

§ 999.304, subd. (b): Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies, Employing Agency Notification

PORAC requests this Section be deleted because "[t]he employing agency should be notified as they are the employer and ultimately responsible for implementing corrective action. Concealment may also have the unintended consequence of preventing the employer from placing the officer on administrative leave or taking other interim measures." PORAC also contends that "[t]his section is also nonsensical because it contemplates not notifying the Investigating Agency of the complaint. "Investigating Agency" means an Employing Agency or Appropriate Oversight Agency." (Comment 27-8.)

Response: No change has been made in response to this comment. The Department previously revised this section in response to similar comments. Please see responses to comments regarding this provision made during the First Comment Period.

§ 999.304, subd. (c): Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies, Conflict of Interest

PORAC requests deleting this provision or defining "conflict of interest" to prevent "arbitrary assessments." (Comment 27-9.)

Response: No change has been made in response to this comment. The concept of a conflict of interest is generally understood, but individual agencies or situation may pose unique circumstances best navigated at the local level. As a result, the Department concludes that further definition is unnecessary and may hinder the effectiveness of agency efforts.

§ 999.304, subd. (d): Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies, Receiving Complaints

PORAC restates its request from the 45-day comment period to delete this provision because "[c]omplaints alleging violations of AB 655 should be referred to the employing agency for investigation. If the employing agency is unable to investigate the complaint, the matter can be referred to another designated investigating agency." (Comment 27-10.)

Response: No change has been made in response to this comment. Please see responses to comments regarding this provision made during the First Comment Period.

§ 999.304, subd. (e): Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies, Regulation Compliance

PORAC notes that the revisions made to this Section "partially addresses our concern by limiting the provision to investigations, reducing the scope of nullification of existing laws," but it continues to object to this subdivision because the provision "retains authority to depart from policies and agreements, violating collective bargaining rights and procedural protections under state law (e.g., Gov. Code §§ 3300 et seq., 3502–3504). This risks unconstitutional impairment of contract rights (U.S. Const. art. I, § 10, cl. 1; Cal. Const. Art. I, § 9)." Accordingly, PORAC restates their request from the 45-day comment period to delete the Section "to preserve existing statutory and contractual rights." (Comment 27-11.)

Response: No change has been made in response to this comment. This provision permits agencies that have not been designated Investigating Agencies and so have not adopted policies implementing the proposed regulations to take appropriate measures to nevertheless comply with these regulations when conducting an AB 655 investigation. State law that has the effect of abrogating collective bargaining agreements generally does not amount to an unconstitutional impairment, as discussed in response to the earlier comment on this provision. Please see responses to comments regarding this provision made during the First Comment Period.

CCPOA reiterates its earlier objection that this provision exceeds the Department's authority. (Comment 28-9.)

Response: No change has been made in response to this comment. Please see responses to comments regarding this provision made during the First Comment Period.

§ 999.304, previously subd. (f): Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies

CCSO requests that a provision from the initial version of the proposed regulations, which excluded from collective bargaining certain organizational decision about responsibilities for

proceedings under the statute be restored. This provision was removed as part of the modifications proposed on June 23, 2025. CCSO asserts that removing the subdivision "would open the door to arguments that the investigative process required by the CLEAR Act would be subject to multiple meet and confer processes in different localities, with different possible outcomes on the same or similar facts. This would undermine both the intent of the legislation and the principles of effective oversight." (Comment 29-1.)

Response: The Department has restored this provision exactly as drafted in the initial version of the proposed regulations made available for comment. California law does not permit labor unions to "intrude upon management's role of formulating policy." (*Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608, 619.) Policies regarding handling of police misconduct complaints have been held to fall solely within management's decision-making powers. (See *Berkeley Police Assn. v. City of Berkeley* (1977) 76 Cal. App. 3d 931, 937 ["A decision of such fundamental importance to the basic direction of the corporate enterprise is not included within the area of mandatory collective bargaining." (quoting *NLRB v. Transmarine Navigation Corp*. (9th Cir. 1967) 380 F.2d 933, 939)].) Accordingly, the Department understands this provision to constitute guidance to relevant agencies regarding their duties to formulate organization policies independently and apart from collective bargaining.

PORAC notes that the deletion in the June 23, 2025, proposed modification resolved their original comment on this provision. (Comment 27-12.)

Response: No change has been made in response to this comment, which does not provide any additional substantive recommendation for changes to the regulations themselves. The Department notes, however, as described above, that the provision made available for public comment in the initial version of the proposed regulations has been restored.

§ 999.306, subd. (c): Investigations

PORAC restates its request from the 45-day comment period to revise this subdivision to require that "the complaint should minimally be required to allege the officer engaged in covered conduct and identify the alleged hate group or public expressions of hate" and direct the investigator to "assess, within ten days whether the Covered Complaint alleges with sufficient particularity that the Subject engaged in Membership in a Hate Group, Participation in Any Hate Group Activity, or Advocacy of public Expressions of Hate, including identification of the alleged Hate Group or specific Public Expressions of Hate." PORAC states that the current regulations "risk[] targeting First Amendment protected activities, violating due process and Penal Code § 13680's requirements." PORAC proposes that this provision be revised to state:

"The investigator shall assess, within ten days, whether the Covered Complaint alleges with sufficient particularity that the Subject engaged in Membership in a Hate Group, Participation in Any Hate Group Activity, or Advocacy of Public Expressions of Hate, including identification of the alleged Hate Group or specific Public Expressions of Hate."

(Comment 27-13.)

Response: No change has been made in response to this comment. Please see responses to comments regarding this provision made during the First Comment Period.

§ 999.306, subd. (e): Investigations

CCPOA restates its request from the 45-day comment period to revise this provision to remove the requirement that "an investigator must take certain measures 'to ascertain whether the complainant has additional information that could provide the necessary Sufficient Particularity to investigate'" because this requirement "contravenes the legislative intent that only complaints that set forth sufficient particularity at the outset be investigated." (Comment 28-4.)

Response: No change has been made in response to this comment. Please see responses to comments regarding this provision made during the First Comment Period.

§ 999.306, subd. (f): Investigations

PORAC restates its request from the 45-day comment period to revise this subdivision, noting that "[t]he section remains unchanged, failing to address our concern that the DOJ lacks authority to abrogate Penal Code §832.7 (disclosure of peace officer records) through regulation, as the documentation requirement may conflict with existing disclosure laws." PORAC requests that this section be revised to state:

"If the investigator, having taken the steps outlined in subdivision (e), determines that the Covered Complaint does not provide Sufficient Particularity to Investigate, that the misconduct occurred more than seven years preceding communication of any portion of the underlying allegations to a government agency, or that the misconduct occurred when the Subject was less than 18 years of age, the investigator may close the investigation after documenting their conclusions, consistent with Penal Code §832.7."

(Comment 27-14.)

Response: No change has been made in response to this comment. Please see responses to comments regarding this provision made during the First Comment Period.

§ 999.306, subd. (g): Investigations

CCPOA restates its request from the 45-day comment period, objecting to the requirements "to continue to investigate complaints that have been withdrawn or where 'it has not yet been determined whether there exists Sufficient Particularity to Investigate'" because the provision

"exceeds the limitations that the legislature imposed in Penal Code Section 13682 (a)." (Comment 28-5.)

Response: No change has been made in response to this comment. Please see responses to comments regarding this provision made during the First Comment Period.

§ 999.306, subd. (k): Investigations

PORAC restates its request from the 45-day comment period to revise this subdivision to grant peace officers "the right to refuse video recording" and to specify that "[a]udio recording of peace officer, including the Subject, is permitted in accordance with Government Code §3303(g) [sic]," meaning "the peace officer is permitted to record the interview as well." (Comment 27-15.)

Response: No change has been made in response to this comment. Please see responses to comments regarding this provision made during the First Comment Period.

§ 999.306, subd. (l): Investigations

PORAC observes that the revisions made to this provision "partially address our concern by limiting these restrictions to CLEAR Act misconduct investigations (§999.306(m)) and clarifying the need for subject-matter experts (§999.306(l)(3))." However, PORAC restates its objections from the 45-day comment period and asks that the entirety of subdivision (l) be deleted and replaced with the following language:

"All provisions of Government Code §3303 et seq., except for sections 3304(d)(1) and (2), shall apply to investigations pursuant to Penal Code §13682."

(Comment 27-16.)

CCPOA restates its objection to Section 999.306, subd. (l), as "still in direct conflict with the protections set forth in Section 3303 [of the Government Code] and clash with the legislative intent to provide procedural fairness to California's peace officers." (Comment 28-9.)

Response: No change has been made in response to this comment. Please see responses to comments regarding this provision made during the First Comment Period.

§ 999.306, subd. (o) (previously subd. (n)): Investigations

PORAC notes that the changes made to this provision in the June 23, 2025, proposed modification resolve their original comment. (Comment 27-17.)

Response: No change has been made in response to this comment, which does not provide any additional substantive recommendation for changes to the regulations themselves.

CPE requests this subdivision be amended to include "standards for what constitutes an adequate investigation" or to require an "investigator's supervisor or an external agency sign off on the investigation before it is concluded for a lack of sufficient evidence" because "too often, a lack of evidence is used to justify the conclusion of investigations into law enforcement misconduct" and "there is notable public concern that law enforcement cannot and should not be trusted to conduct thorough investigations into its own employees or even those of its peers." (Comment 26-3.)

Response: No change has been made in response to this comment. The proposed regulations include provisions addressing requirements for investigations under this statute. (See Section 999.306, subds. (j), (k).) Given the potential variations between matters involving Covered Misconduct and between Investigating Agencies, the Department declines to address further standards through statewide regulation.

3. Comments regarding Article 3. Adjudication

§ 999.307, subd. (c): Adjudication

PORAC notes that the changes made to this provision in the June 23, 2025, proposed modification resolve their original comment. (Comment 27-18.)

Response: No change has been made in response to this comment, which does not provide any additional substantive recommendation for changes to the regulations themselves.

§ 999.308: Elements of Covered Misconduct

CPE requests "returning the burden of proof for all forms of Covered Complaints to the preponderance of evidence standard." The initial January 24, 2025 rulemaking proposal utilized a preponderance of evidence standard, but the June 23, 2025 proposed modification changed the standard to clear and convincing. A clear and convincing standard "would make the adjudication process for Covered Misconduct inconsistent with both agency-level internal investigations and the escalating standard of evidence based on the severity of the misconduct that currently exists in California." (Comment 26-4.)

CCSO requests returning to "preponderance of the evidence" standard, as was used in the January 24, 2025, rulemaking proposal, rather than implementing the "clear and convincing evidence" standard used in the June 23, 2025 proposed modification because a preponderance standard "is generally used in investigations of alleged public employee misconduct and civil litigation," "[p]articipation by an officer in hate groups or public expressions of hate are inherently corrosive of positive relationships between law enforcement and the communities they police," and the clear

and convincing standard "would significantly undermine both the intent of the CLEAR Act and the principle of procedural justice so important to effective oversight." (Comment 29-2.)

Response: No change has been made in response to these comments. As discussed in responses to earlier comments regarding this provision, the "clear and convincing" standard aligns AB 655 adjudications with parallel decertification proceedings conducted by the California Peace Officer Standards and Training Commission. Moreover, while Covered Misconduct is not subject to protection under the First Amendment, the potential proximity of Covered Misconduct to protected expressive or association activity counsels in favor of a heightened burden of proof in order to avoid inadvertently punishing protected activity. The Department notes that the "clear and convincing" standard applies only to the adjudication of the specific offenses identified in the statute, and it has no bearing on the burden of proof for overlapping charges involving the same nucleus of facts. So, for example, a single fact pattern may yield misconduct charges for Participation in Hate Group Activity, which must be established by clear and convincing evidence, alongside charges for harassment, falsifying evidence, public intoxication, or other misconduct, all of which may be established by preponderance of the evidence if that is consistent with applicable law and policy. The offenses established by AB 655 are intended to supplement existing categories of misconduct, not to displace them.

§ 999.308, subd. (a): Elements of Covered Misconduct

PORAC requests § 999.308(a)(4) be revised "to require specific intent and knowledge of illegal objectives, per *Keyishian v. Board of Regents* (1967) 385 U.S. 589, 607." PORAC suggests replacing the language in subdivision (a)(4) with the following:

"At the time of actual or putative membership, knowing of its illegal objectives, the Subject specifically intended to Further the commission of Genocide or Hate Crimes by any members of the Organization."

(Comment 27-19.)

Response: No change has been made in response to this comment, as the proposal is duplicative of the existing requirements. To establish Section 999.308, subd. (a)(4), it must be shown the Subject "*intended* to Further the commission of Genocide or Hate Crimes. . . ." (emphasis added). Establishing intent to "Advocate [for], Coordinate, Facilitate, or Support" (see Section 999.300, subd. (j)) a particular action necessarily includes establishing knowledge of that action. To add a second intent requirement in a different form invites potential confusion in applying the statute and proposed regulations.

§ 999.308, subd. (b): Elements of Covered Misconduct

PORAC notes that the changes made to this provision in the June 23, 2025, proposed modification resolve their original comment. (Comment 27-20.)

Response: No change has been made in response to this comment, which does not provide any additional substantive recommendation for changes to the regulations themselves.

§ 999.308, subd. (c): Elements of Covered Misconduct

PORAC notes that the changes made to this provision in the June 23, 2025, proposed modification resolve their original comment. (Comment 27-21.)

Response: No change has been made in response to this comment, which does not provide any additional substantive recommendation for changes to the regulations themselves.

§ 999.309, subd. (a): Other Misconduct

PORAC restates its request from the 45-day comment period to delete this subdivision because "Penal Code §13682(c) restricts the establishment of investigatory guidelines solely to complaints involving the specific misconduct prohibited by AB 655," and "[t]he statute does not authorize investigation of other offenses, whether or not related to a violation of AB 655, against peace officers outside the investigatory process established by existing state law and local ordinance." (Comment 27-22.)

Response: No change has been made in response to this comment. Please see responses to comments regarding this provision made during the First Comment Period.

§ 999.310: Serious Misconduct (renamed Reporting to the Commission on Peace Officer Standards and Training)

PORAC observes that "the amendment largely resolves our concern [with previous subdivision (a)] by removing the blanket classification of CLEAR Act misconduct as "serious misconduct" under Penal Code §13510.8(b)" but further requests that the Department "delete the entire section [999.310](a) to eliminate mandatory reporting obligations that exceed AB 655's scope" because "not all CLEAR Act misconduct aligns with [the California Peace Officer Standards and Training Commission]'s criteria." (Comment 27-23.)

Response: No change has been made in response to this comment. California Peace Officer Standards and Training Commission has authority to determine whether Peace Officers should be decertified in connection with sustained findings of Covered Misconduct. However, the Department has determined that all Covered Misconduct is reportable to the Commission. Moreover, reporting to the Commission is necessary to effectuate the statutory requirement that a Peace Officer against whom an AB 655 complaint has been sustained not be reappointed as a Peace officer for a period of seven years from the date of the offense. (See Pen. Code, § 13681.)

§ 999.310, previous subd. (b): Serious Misconduct (renamed Reporting to the Commission on Peace Officer Standards and Training)

PORAC notes that the deletion of this provision in the June 23, 2025, proposed modification resolve their original comment. (Comment 27-24.)

Response: No change has been made in response to this comment, which does not provide any additional substantive recommendation for changes to the regulations themselves.

C. COMMENTS MADE DURING THE THIRD COMMENT PERIOD[4]

30	Joseph Vigil, Police Chief, Antioch Police Department
31	Kalezva Baltodano for Peace Officers Research Association of California (PORAC)
32	Natalie Pelton for California Correctional Peace Officers Association (CCPOA)
33	Andrea Thomas and Ri'Sean Williams
34	Danny Wilson

Article 1. Definitions

§ 999.300, subd. (p): Definition of "Organization"

PORAC requests that the definition of "organization" be narrowed further by incorporating a requirement that the organization "has a primary purpose of furthering hate as defined in Penal Code § 13680." (Comment 31-1.)

Response: No change has been made in response to this comment, which is similar to previous comments. Please see responses to comments regarding this provision made during the First Comment Period, in Section A, *supra*.

§ 999.300, subd. (v): Definition of "Support"

PORAC requests that the definition of "support" be "narrowed to prevent overbreadth or vagueness by tying it to the statute, " specifically by limiting the definition of "support" to "where such support is knowingly directed toward furthering Genocide or Hate Crimes" (Comment 31-2.)

[4] Multi-part comments are designated by the comment number and part number, separated by a hyphen. So, for example, part 3 of comment 12 would be cited as "Comment 12-3." Each multi-part comment has been annotated in the right margin to indicate each numbered part, and these may be found in the attached compilation of comments.

Response: No change has been made in response to this comment. PORAC's request to define the word "support" to "where such support is knowingly directed toward furthering Genocide or Hate Crimes" is unnecessary because the word "support" in the regulations, when used to define "Elements of Covered Misconduct" (see § 999.308), is used in conjunction with phrases that sufficiently limit its scope. For example, in order to be sustained, "a Public Expression of Hate" allegation requires as one of its required elements that:

> "(3) The statement or expression explicitly Advocated for, explicitly Supported, or explicitly threatened to commit Genocide or any Hate Crime, or explicitly Advocated for or explicitly Supported any Hate Group, with knowledge of the Hate Group's Advocacy for, threats of, or practice of Genocide or the commission of Hate Crimes. that modify it regarding the furtherance of Genocide of Hate Crimes." (Prop. Reg., § 999.308, subd. (c)(3).)

Article 2. Investigations

§ 999.301, subd. (d): Responsibility

PORAC reiterates its comments asserting that the regulations impair existing collective bargaining rights and requests that the following phrase be eliminated from this subdivision: "Implementation is not subject to collective bargaining with a personnel union or any other private agreement." (Comment 31-3.)

Response: No change has been made in response to this comment, which is similar to previous comments. Please see responses to comments regarding this provision made during the First Comment Period, in Section A, *supra.*

CCPOA reiterates comments made previously regarding this subdivision, asserting that new investigative procedures such as the ones contemplated here adversely affect working conditions when they create a potential for discipline that did not previously exist and thus are subject to collective bargaining. CCPOA comments that the regulations abrogate due process rights guaranteed by POBRA and collective bargaining rights. (Comment 32-2.)

Response: No change has been made in response to this comment, which is similar to previous comments. Please see responses to comments regarding this provision made during the First Comment Period, in Section A, *supra.*

While the comment further characterizes its concern as involving the "unlawful[] abrogat[ion] due process rights guaranteed by POBRA" in addition to the previously stated concerns about collective bargaining rights, no statute confers upon peace officer unions a due process right to participate in the kind of core management decisionmaking processes that are at issue in Sections 999.301 and 999.303.

§ 999.302, subd. (d): Public Complaints

PORAC requests that the entirety of this subdivision be deleted, stating:

> "No public policy supports encouragement or protection of false or defamatory speech. Perjury is not protected speech and should not be encouraged. The legislature has defined dishonesty as serious misconduct for good reason. While Penal Code §148.6 is not enforceable, nothing prohibits an agency from generally admonishing complainants to present factually accurate information or requesting complainants to attest to their accusations under oath or to make credibility assessments based on a refusal to do so." (Comment 31-4.)

Response: No change has been made in response to this comment, which is similar to previous comments. Please see responses to comments regarding this provision made during the First Comment Period, in Section A, *supra.*

§ 999.303, subd. (f): Internal Complaints

CCPOA reiterates comments made previously regarding this subdivision. (Comment 32-2.)

Response: No change has been made in response to this comment, which is similar to previous comments. Please see responses to comments regarding this provision made during the First Comment Period, in Section A, *supra.*

§ 999.304, subd. (a): Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies

PORAC reiterates comments made previously regarding this subdivision. (Comment 31-5.)

Response: No change has been made in response to this comment, which is similar to previous comments. Please see responses to comments regarding this provision made during the First Comment Period, in Section A, *supra.*

§ 999.304, subd. (b): Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies

PORAC reiterates comments made previously regarding this subdivision. (Comment 31-6.)

Response: No change has been made in response to this comment, which is similar to previous comments. Please see responses to comments regarding this provision made during the First Comment Period, in Section A, *supra.*

§ 999.304, subd. (c): Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies

PORAC reiterates comments made previously regarding this subdivision. (Comment 31-7.)

Response: No change has been made in response to this comment, which is similar to previous comments. Please see responses to comments regarding this provision made during the First Comment Period, in Section A, *supra.*

§ 999.304, subd. (d): Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies

PORAC reiterates comments made previously regarding this subdivision. (Comment 31-8.)

Response: No change has been made in response to this comment, which is similar to previous comments. Please see responses to comments regarding this provision made during the First Comment Period, in Section A, *supra.*

§ 999.304, subd. (f): Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies

PORAC reiterates comments made previously regarding this subdivision, and requests that the following language be deleted: "The provisions of this Section are not subject to collective bargaining with a personnel union or any other private agreement." (Comment 31-9.)

Response: No change has been made in response to this comment, which is similar to previous comments. Please see responses to comments regarding this provision made during the First Comment Period, in Section A, *supra.*

§ 999.306, subd. (b)(3): Investigations

PORAC requests that the phrase "with the consent of the referee agency" be removed from this provision because the proposed regulation "does not identify or define a "referee agency" and does not provide any justification for why such consent is needed." (Comment 31-10.)

Response: No change has been made in response to this comment. The term "referee agency" does not require further definition, as the meaning of the term is clear in the context of the sentence in which it is used. That sentence discusses referral of a matter by the Investigating Agency to another Appropriate Oversight Agency, and the term "referee" is commonly defined to mean the person or agency to which a matter is referred for investigation.

Consent of the referee agency is required because that agency does not have a prior agreement to accept referrals of investigations, and the referee agency cannot be compelled to conduct an investigation where it has no existing obligation in law or contract to do so.

§ 999.306, subd. (c): Investigations

PORAC reiterates comments made previously regarding this subdivision, and requests that the subdivision be amended to state: "The investigator shall assess, within ten days, whether the Covered Complaint alleges with sufficient particularity that the Subject engaged in Membership in a Hate Group, Participation in Any Hate Group Activity, or Advocacy of Public Expressions of Hate, including identification of the alleged Hate Group or specific Public Expressions of Hate." (Comment 31-11.)

Response: No change has been made in response to this comment, which is similar to previous comments. Please see responses to comments regarding this provision made during the First Comment Period, in Section A, *supra.*

§ 999.306, subd. (e): Investigations

PORAC requests that the entirety of this subdivision be deleted because it allegedly "contradicts the statute and itself by nullifying the requirement that a complaint contain sufficient particularity to investigate and by mandating that the investigator independently attempt to remedy substantive deficiencies in the Covered Complaint rather than rejecting an insufficient Covered Complaint for investigation." (Comment 31-12.)

Response: No change has been made in response to this comment, which is similar to previous comments raised by CCPOA. Please see responses to comments regarding this provision made during the First Comment Period, in Section A, *supra.*

§ 999.306, subd. (f): Investigations

PORAC repeats comments made in connection with subdivision (e) and also reiterates comments made previously regarding this subdivision (f). It asserts that the proposed regulation contains provisions requiring the Investigating Agency to maintain a file pertaining to the Covered Complaint that may contradict with the retention and disclosure requirement of Penal Code sections 832.5 and 832.7. Section 999.311(a) of the proposed regulations already address record keeping rendering this provision unnecessary. PORAC requests that this subdivision be revised as follows: "Revise section 999.306(f) to state: "If the investigator determines that the Covered Complaint lacks Sufficient Particularity to Investigate, that the misconduct occurred more than seven years preceding communication of any portion of the underlying allegations to a government agency, or that the misconduct occurred when the Subject was less than 18 years of age, the investigator will close the investigation after documenting their conclusions, reasoning, and efforts to obtain additional information. Any such determination shall be reviewed by the investigator's supervisor" – requiring an investigation to be closed where an investigator determines that an element has not been met, without taking steps in compliance with subdivision (e), and without having to maintain documentation regarding the steps taken during the investigation and conclusions. (Comment 31-13.)

Response: No change has been made in response to this comment, which is similar to previous comments. Please see responses to comments regarding this provision, as well as subdivision (e), made during the First Comment Period, in Section A, *supra*. PORAC does not outline how the recordkeeping provisions conflict with Penal Code sections 832.5 and 832.7 and the Department does not see any conflict. The Department does not view the recordkeeping provision as unnecessary in light of section 999.311 of these regulations. Whereas that provision governs the recordkeeping requirements of Covered Complaints that were investigated, this provision makes clear that there are also documentation and retention requirements for complaints that ultimately are not found to have Sufficient Particularity to Investigate, consistent with 999.311. The Department's authority to regulate the maintenance of files during an investigation is conferred by Penal Code section 13682, subd. (c).

§ 999.306, subd. (g): Investigations

PORAC comments that subsections (1) and (2) of this subdivision "mirror existing requirements imposed by SB 2 to complete investigations into allegations that may constitute "serious misconduct," including allegations of bias. Subsection (3) would only apply if a peace officer's certificate is suspended rather than revoked. In light of SB 2, this section is unnecessary, but if it is retained, subsection (3) should be limited to the "suspension" of peace officer status." (Comment 31-14.) PORAC requests:

> "Delete the entire section 999.306(g) or, at a minimum, amend subsection (3) to state: '(3) The suspension of a Subject's status as a Peace Officer.'" (Comment 31-14.)

Response: No changes have been made in response to these comments. AB 655 and SB 2 are complementary statutes regulating overlapping but separately defined conduct. The Legislature's instruction to the Department to implement AB 655 is distinct from SB 2 and its implementation by the Commission on Peace Officer Standards and Training. The Department does not recognize any conflict between this section and either SB 2 or its implementing regulations, and the comment does not assert that any such conflict exists.

With respect to the comment's proposed change to narrow this provision, notwithstanding the provisions of SB 2, and as noted in the Initial Statement of Reasons (ISOR), the provision as drafted "is necessary to avoid situations in which a complaint is ignored because the complainant is pressured by the agency or involved parties to withdraw their complaint, or because the Subject is no longer with the Employing Agency but could still seek future employment as a peace officer or has obtained such employment elsewhere." (ISOR, p. 21.)

§ 999.306, subd. (k): Investigations

PORAC reiterates comments made previously regarding this subdivision, noting that recording peace officer witnesses and subjects should only occur with advance notice, and that peace officers should have the right to refuse video recording of interviews. PORAC further comments that audio recording should be permissible provided the peace officer is permitted to record the interview as well. PORAC thus requests that the following be deleted: "Interviews shall be video-recorded or audio-recorded" and that the following be added:

> "Audio recording of peace officers, including the Subject, is permitted in accordance with Government Code §3303(g). Peace officers shall not be video recorded without their consent."

(Comment 31-15.)

Response: No change has been made in response to this comment, which is similar to previous comments. Please see responses to comments regarding this provision made during the First Comment Period, in Section A, *supra.*

§ 999.306, subd. (l): Investigations

Joseph Vigil comments that "[f]or the CLEAR allegations, the regulations give broader investigative authority than we typically see referenced in our MOUs (interview length and participation, timing of evidence disclosure, ability to draw adverse inferences when officers refuse to answer relevant questions or provide reasonably requested evidence)." (Comment 30-1.) Joseph Vigil also states that "if you intend to submit formal feedback . . . [r]equest some practical guidance or examples on how the expanded investigative authority is expected to

operate alongside POBR and local MOUs, particularly for agencies that rely on external investigators." (Comment 30-4.)

Response: No changes have been made in response to these comments. No changes were made in response to Comment 30-1, which is interpreted to be an observation rather than a specific recommendation to change these regulations. No changes were made in response to Comment 30-4, as the Department is unable to provide examples in the context of binding regulations due to the fact-specific nature of each case and relevant circumstances. The Department interprets this comment as a request for informal guidance separate from these regulations.

PORAC reiterates comments made previously regarding this subdivision and requests deletion of the subdivision, with the addition of the following language: "All provisions of Government Code §3303 et seq., except for sections 3304(d)(1) and (2), shall apply to investigations pursuant to Penal Code section 13682." (Comment 31-16.)

CCPOA reiterates prior objections regarding the exemptions from other laws regarding the investigations of peace officers. It reiterates its view that this subdivision exceeds the authority of the governing statute because "'any other law' include by inference Government Code section 3304 (d) and (f) but not every other law," and the statutory language should be limited to laws setting out time limits or statutes of limitation for peace office discipline. CCPOA comments that "[s]tripping away the protections POBRA guarantees would also violate due process rights conferred by the Federal and California constitutions." CCPOA also comments that this subdivision, "by eviscerating the protections of Section 3303," would permit unseemly behavior such as threats and abuse by investigators, conduct the legislature wanted to curtail with POBRA. (Comment 32-1.)

Response: No change has been made in response to these comments, which are similar to previous comments. Please see responses to comments regarding this provision made during the First Comment Period, in Section A, *supra.*

The Department notes that the due process rights conferred by the Public Safety Officers Procedural Bill of Rights Act (POBR) are statutory and not found in the United States or California Constitutions and rather reflect the decision of the Legislature to provide peace officers with additional rights beyond those constitutionally guaranteed. Indeed, the scope of rights guaranteed by that statute have subsequently been scaled back by the Legislature, underscoring that these rights are not constitutionally fixed. With AB 655, the Legislature directed the Department to implement appropriate regulations notwithstanding any other law, and in so doing directed the Department to supersede POBR where it determined that POBR directly conflicted with the intent of AB 655. Section 999.306, subd. (l), explicitly protects all constitutionally guaranteed rights.

With respect to the concerns that the regulations "eviscerate[e]" POBR and "permit unseemly behavior such as threats and abusive behavior by investigators," the Department notes that the

regulations permit POBR's protections to be disregarded in only narrow circumstances reflecting the need to effectuate AB 655. This aspect of the regulations reflects the text of the statute and the intent of the Legislature, which is the body that conferred the rights found in POBR and has the power to narrow or rescind those rights.

Article 3. Adjudication

§ 999.307, subd. (c): Adjudication

PORAC requests that "[t]o maintain consistent terminology, the term 'discipline' should be replaced with 'adverse action.'" PORAC also contends that the term "Adjudicating Agency" also includes "Employing Agency," and thus the reference to "Employing Agency is unnecessary. PORAC also suggests that the Adjudicating Agency or official should provide the Subject with a copy of the Findings and the investigative file at or before the time when the Subject is notified of the intent to pursue adverse action. PORAC also states that "[t]here should not be any "additions" beyond the Findings and investigative file, which would include additional findings following a request by the Adjudicating Agency for further investigation pursuant to section 999.307(b). The adjudication process should not contemplate endless additions from multiple sources. At some point the investigation and adjudication by the Investigating Agency and/or Adjudicating Agency must conclude." PORAC requests these revisions:

> "Revise section 999.307(c) to state: "The Adjudicating Agency's determination must be in writing and concur with, or provide reasons for rejection of, the conclusions as to each element of each instance of Covered Misconduct discussed in the Findings At or before such time that the Adjudicating Agency ~~or Employing Agency communicates to~~ **notifies** the Subject **of** the agency's intent to **initiate adverse action**, ~~discipline the Subject~~, the agency shall provide the Subject with a copy **of the Findings and entire** investigative file~~, including any additions made at the request of the Adjudicating Agency or official~~."

(Comment 31-17.)

Response: No change has been made in response to these comments. The Department notes that an Employing Agency may be an Adjudicating Agency, but the Employing Agency is not necessarily assigned responsibility for adjudication. (See section 999.301 of the proposed regulations.) The term "adverse action" is not used elsewhere in the statute or in the proposed regulations. The section of the Proposed Regulations at issue already does require provision of the investigative file to the Subject at or before such time as the intent to discipline is communicated to the Subject. The phrase "including any additions made at the request of the Adjudicating Agency or official" is intended to guarantee that the Subject receives a comprehensive investigative file. The Department maintains that an Adjudicating Agency must have the authority to request further investigation where necessary, including for the benefit of the investigation Subject. (*See* section 999.307, subd. (b)., of the proposed

regulations.) Nothing in the proposed regulations "contemplate[s] endless additions from multiple sources."

§ 999.307, subd. (f): Adjudication

PORAC requests that this subdivision be revised to state:

> "If the Adjudicating Agency's determination is sustained in accordance with Penal Code section 13682, the Subject shall be removed from appointment as a Peace Officer." (Comment 31-18.)

The current language of this provision is:

> "If the Adjudicating Agency determines, subject to all applicable administrative appeals, that the Subject engaged in Covered Misconduct, the Subject shall be removed from appointment as a Peace Officer."

PORAC comments that "AB 655 does not give the Adjudicating Agency the final word on violations when a peace officer appeals the Adjudicating Agency's determination. When appealed, the Adjudicating Agency's determination may be overturned by another entity."

Response: No changes have been made in response to this comment, because the existing language provides sufficient clarity that an Adjudicating Agency does not have "the final word," but rather its determination must be sustained in accordance with Penal Code section 13682, which provides in part that "The agency shall remove from appointment as a peace officer, any peace officer against whom a complaint described in subdivision (a) is sustained." (Pen. Code, § 13682, subd. (b).) Section 13680, subdivision (h), in turn, defines "sustained" as:

> "(h) "Sustained" means a final determination by the investigating agency following an investigation, or, if adverse action is taken, a final determination by a commission, board, hearing officer, or arbitrator, as applicable, following an opportunity for an administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code, that the allegation is true." (Pen. Code, § 13680, subd. (h).)

The proposed regulations adopt the same definition as subdivision (h). (See section 999.300, subd. (w).) Accordingly, the proposed regulations and statute are consistent in providing that an Adjudicating Agency does not have the "final word" and that its determination is subject to review in accordance with existing law. (See also section 999.301, subd. (e) ["The assignment of an Adjudicating Agency shall not affect any rights to administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code."]; section 999.314 ["Sections 13690-13683 of the Penal Code, and these implementing regulations, shall not be interpreted to abrogate the right of any party to seek relief in a court of competent jurisdiction."])

§ 999.307, subd. (g): Adjudication

PORAC requests that the entirety of subdivision (g) be deleted because it is "inappropriate and unnecessary" in light of 999.310, which notes the existing reporting requirement to POST pursuant to Penal Code section 13510.9. (Comment 31-19.)

Response: No change has been made in response to this comment. Section 999.307, subd. (g)., of the proposed regulations is intended to clarify that neither the statute nor proposed regulations supersede existing agency codes of conduct, disciplinary guidelines, or similar policies except as stated in the statute and Proposed Regulations. If a Subject's conduct violates other laws or policies beyond what is proscribed by the statute and the proposed regulations, the Subject remains accountable for those additional violations.

§ 999.309, subd. (a): Other Misconduct

PORAC reiterates comments made previously regarding this subdivision, requesting that the entirety of this subdivision be deleted because "Penal Code §13682(c) restricts the establishment of investigatory guidelines solely to complaints involving the specific misconduct prohibited by AB 655. The statute does not authorize investigation of other offenses, whether or not related to a violation of AB 655, against peace officers outside the investigatory process established by existing state law and local ordinance." (Comment 31-20.)

Response: No changes have been made in response to this comment. As the Initial Statement of Reasons explained, "[g]iven the nature of the misconduct covered by AB 655, there is a strong likelihood that an administrative investigation into Covered Misconduct will implicate additional policy violations, such as those prohibiting unprofessional conduct, improper use of force, or discriminatory behavior. Provision (a) clarifies that an investigation conducted pursuant to AB 655 may incorporate investigations of related misconduct. This provision is necessary to avoid confusion about the requirements for AB 655 investigations, and to promote efficiency and flexibility in agencies' investigations." (ISOR, p. 28.) The Department has implemented this rule based on its understanding that the Legislature did not intend to force investigative and adjudicative agencies to conduct multiple, separate proceedings with respect to a single incident or fact pattern involving the same Subjects. Please also see responses to comments regarding this provision made during the First Comment Period, in Section A, *supra*. Please further note that Section 999.306, subd. (m), clarifies that additional discretion conferred on investigators to investigate Covered Misconduct "shall not apply to interrogations or other investigative activities that do not involve Covered Misconduct."

§ 999.309, subd. (b): Other Misconduct

PORAC requests that this entire subdivision be deleted because "[t]he requirement to notify POST in response to a Covered Complaint provides sufficient safeguards against biased peace officers retaining their peace officer certification" and comments that "AB 655 did not impose prohibitions or restrictions on alternative administrative resolutions prior to a sustained finding." (Comment 31-21.)

Response: No changes have been made in response to this comment. Subdivision (b) provides:

> "(b) Where there is evidence to Sustain a charge of Covered Misconduct, the Employing Agency, Adjudicating Agency, or any other agency so empowered shall not enter into any agreement with the Subject to withdraw the Charge of Covered Misconduct, including where such withdrawal is made in exchange for the Subject accepting discipline other removal from appointment as a Peace Officer." (§ 999.309, subd. (b).)

As the Initial Statement of Reasons explains:

> "Provision (b) prohibits an agency from negotiating less severe discipline when the agency has evidence to sustain a charge of Covered Misconduct, which would ultimately require removal of the Subject from appointment as a Peace Officer (see Pen. Code, § 13682, subd. (b)). The practice and abuse of such negotiated settlements, resulting in a lack of accountability for serious misconduct, is well documented, and this provision seeks to curtail their use.
>
> This provision is necessary to effectuate the statute's intent that any peace officer against whom a Covered Complaint is sustained be "remove[d] from appointment as a peace officer," with no provision for alternate discipline. (See Pen. Code, § 13682, subd. (b).)" (ISOR, pp. 28-29.)

While the language of the provision has been revised for clarity, the Department maintains that the statute prohibits any agreement that would prevent removal of a peace officer following a sustained finding of conduct proscribed by the statute. The statute's requirements are distinct from POST's jurisdiction over peace officer certification.

§ 999.308: Elements of Covered Misconduct

Joseph Vigil states that "if you intend to submit formal feedback. . . [a]sk the State to clarify the burden-of-proof language, which currently blends "preponderance" and "clear and convincing" standards, so agencies and hearing officers have a single, clear standard to apply;" (Comment 30-3.)

Response: No changes have been made in response to this comment. The Department understands this comment to refer to the formatting of the most recent draft regulations, which displays both deleted and added text. An earlier version of these regulations included a "preponderance of the evidence" standard, which has been replaced in all instances by a "clear and convincing evidence" standard.

§ 999.310: Reporting to the Commission on Peace Officer Standards and Training

Joseph Vigil comments that "good coordination between Backgrounds, Professional Standards, our POST reporting point, and the outside IA firms" is required so that agencies do not miss any "required referrals," i.e., when hate-related misconduct is sustained, removal from peace officer status is mandatory, and likewise falls into POST's "serious misconduct" category. He also comments that "for newer hires there is also an obligation to refer if qualifying conduct in the seven years before appointment was not disclosed in the background process." (Comment 30-2.)

Response: No changes have been made in response to these comments, which is interpreted to be an observation rather than a specific recommendation to change these regulations.

General Comments

PORAC requests that "DOJ add a savings clause or catchall providing that any ambiguity or conflict in the regulatory language with AB 655 or related statutes always be resolved in favor of the relevant statute and statutory rights." (Comment 31, p. 2.)

PORAC also reiterates comments it made previously regarding its belief that the proposed regulations "eviscerate existing statutory rights through rulemaking," including those regarding investigations and those regarding the statutory right of recognized exclusive employee organizations to negotiation with public employers over the terms and conditions of employment for their peace officer members, including disciplinary procedures. (Comment 31, p. 1.)

Response: No changes have been made in response to these comments, which were substantively addressed during the first comment period. See *supra* regarding comments in response to Article 2 (Investigations).

Andrea Thomas and Ri'Sean Williams provide general comments regarding their allegations that they are "victims of misconduct of genocide of Racial profiling and Identity profiling using Artificial Intelligence surveillance, meta data, data location, social media." (Comment 33.)

Danny Wilson provides general comments that "what is needed" is "vetting for better candidates than the past, although there were good choice that were over shadowed [sic] by that displayed community contradicting bias." Danny Wilson further comments regarding the definition of a "vetting process" and states that "creating a uniformed and agreed standard that is agreed and practiced with value based conditions, may be what is needed. This means maybe contractual macro and micro reward and losses to ring home the seriousness of good practices, with reminders of budget tied past losses and rewards." (Comment 34.)

Response: No changes have been made to the proposed regulations because these comments are unrelated to the text of the regulations and propose no changes.

LOCAL MANDATE DETERMINATION

The proposed regulation does not impose any mandate on local agencies or school districts.

ALTERNATIVES DETERMINATIONS

In accordance with Government Code section 111346.9, subdivision (a)(4), the Department has determined that no alternative it considered, or that it otherwise identified, or was brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

This determination is based on the Department's determination that the proposed regulations are the most effective way to comply with its statutory obligation to create rules for the investigation and adjudication of complaints involving membership in hate groups, participation in hate group activity, or public expressions of hate.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

The Department determines that the proposed regulations do not affect small businesses.

DOCUMENTS INCORPORATED BY REFERENCE

No documents are incorporated by reference.

NON-DUPLICATION

Some of the regulations may repeat or rephrase in whole or in part a state or federal statute or regulation. This was necessary to satisfy the clarity standard set forth in Government Code section 11349.1, subdivision (a)(3).