

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

NOTICE OF PROPOSED REGULATORY ACTION

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 6.5, ARTICLE 3,
AMEND SECTION 1213

ELECTRONIC LOGGING DEVICES (CHP-R-2017-11)

The Commissioner of the California Highway Patrol (CHP) finds that the adoption of these proposed regulations is necessary to carry out the duties of the CHP. Sections 34501 and 34501.2 of the California Vehicle Code (CVC) allow the CHP to adopt reasonable rules and regulations which are designed to promote the safe operation of vehicles described in Section 34500 of the CVC, commonly referred to as “regulated” vehicles (trucks, truck-trailer combinations, buses, etc.). The adopted regulations are contained in Title 13 of the California Code of Regulations (CCR). In order for the CHP to fulfill the mandate established in Section 34501(a) CVC, and be in compliance with federal law, the CHP must align record of duty status (RODS) requirements with Title 49 of the Code of Federal Regulations (CFR), Part 395. This rulemaking action will align state regulations which currently conflict with updated federal regulations in Title 49 CFR. It also serves to clarify that carriers and drivers engaged in interstate operations shall comply with RODS requirements contained in Title 49 CFR, Part 395, as those regulations exist in the October 1, 2017 edition.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Federal Motor Carrier Safety Administration (FMCSA) is requiring that interstate motor carriers and drivers who are currently required to maintain RODS and record them manually per Title 49 CFR, Part 395, Section 395.8(a), utilize Electronic Logging Devices (ELDs) to record RODS beginning December 18, 2017. After December 18, 2017, unless otherwise provided, RODS recorded manually will no longer be acceptable for drivers engaged in interstate operations. Current state regulations do not require the use of ELDs as a method for recording a driver’s RODS; therefore, beginning December 18, 2017, they were no longer compatible with federal regulations. Authorized personnel inspecting interstate motor carriers and driver RODS for compliance within California are no longer able to effectively enforce federal regulations regarding RODS applicable to those carriers and drivers. Compliance with drivers’ hours-of-service (HOS) limits and RODS is a matter of public safety on California highways and is intended to create a safer work environment for drivers, and make it easier and faster to accurately track, manage, and share RODS data. With approximately 5,567,583 registered motor trucks in California, the potential for collisions is extremely high. Fatigued driving is a proven danger on the road leading to hundreds of traffic collisions and deaths each year. Assurance of compliance with HOS limits, documented as required, will help prevent fatigued drivers from operating commercial vehicles and reduce catastrophic traffic collisions. Additionally, current federal regulation contained in Title 49 CFR, require states to remain compatible with federal

regulations¹. Therefore current state regulations contained in Title 13 CCR, Section 1213, are in jeopardy of federal preemption. An amendment is needed to create consistency between state and federal regulations. This proposed regulation will create that consistency between state and federal regulations and allow California to effectively enforce federal regulations regarding RODS applicable to those carriers and drivers.

DOCUMENT INCORPORATED BY REFERENCE

The CHP has determined it would be cumbersome, unduly expensive, or otherwise impractical to publish Title 49 CFR, Part 395, in the CCR.

The CHP will make available Title 49 CFR, Volume 5, subtitle B - Chapter III, October 1, 2017, edition, upon request, to the affected public. Copies of this document, or relevant portions thereof, can be obtained from the CHP by calling CVS at (916) 843-3400, (800) 735-2929 (TT/TDD), (800) 735-2922 (voice), or via facsimile at (916) 322-3154. Additionally, this document, or relevant portions thereof, is available on the following Web site:

<https://www.gpo.gov/fdsys/pkg/CFR-2017-title49-vol5/pdf/CFR-2017-title49-vol5.pdf>

The rulemaking file is available for inspection at CHP, CVS, 601 North 7th Street, Sacramento, California 95811. Interested parties are advised to call for an appointment.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

After conducting an evaluation, the CHP has determined these are the only regulations concerning driver's RODS. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

This proposed regulatory action will provide a nonmonetary benefit to the protection and safety of public health, employees, and safety to the environment by providing a regulatory basis for enforcement efforts as they relate to the CFR.

PUBLIC COMMENTS

Any interested person may submit written comments on this proposed action via facsimile at (916) 322-3154, by electronic mail to cvsregs@chp.ca.gov, or by writing to:

California Highway Patrol
Commercial Vehicle Section
Attention: Officer Joseph Mosinski
P.O. Box 942898
Sacramento, CA 94298-0001

¹ Section 355.25 of Title 49, CFR

Written comments will be accepted until 5:00 PM, on March 26, 2018.

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by the CHP, Commercial Vehicle Section (CVS), no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF INFORMATION

The CHP has available for public review an initial statement of reasons for the proposed regulatory action, the information upon which this action is based (the rulemaking file), and the proposed regulation text. Requests to review or receive copies of this information should be directed to the CHP either at the above address, by facsimile at (916) 322-3154, or by calling the CHP, CVS, at (916) 843-3400. All requests for information should include the following information: the title of the rulemaking package, the requester's name, proper mailing address (including city, state, and zip code), and a daytime telephone number in the event the requestor's information is incomplete or illegible.

The rulemaking file is available for inspection at CHP, CVS, 601 North 7th Street, Sacramento, CA 95811. Interested parties are advised to call for an appointment. All documents regarding the proposed action are available through the CHP's Web Site at:

<https://www.chp.ca.gov/News-Alerts/Regulatory-Actions>.

Any substantial changes to the original proposal will be available for at least 15 days prior to the CHP adopting this resulting regulation.

Any person desiring to obtain a copy of the adopted text and a final statement of reasons may request them at the above noted address. Copies will also be posted on the CHP's Web site.

CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations or questions regarding the content of the proposed regulations, should be directed to Officer Joseph Mosinski or Sergeant Jaime Nunez, CHP, CVS, at (916) 843-3400.

ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the CHP may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or non-substantive in nature, the full text of the resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

DISCLOSURES REGARDING THE PROPOSED ACTION

The CHP has made the following determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Significant, statewide, adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None

Cost to any local agency or school district which must be reimbursed in accordance with Government Code (GC) Sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business: CHP is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Small Business: This proposed regulation will not affect small business because businesses subject to federal jurisdiction are currently required to comply with Federal Motor Carrier Safety Regulations. Therefore, the mere adoption of regulations to avoid preemption or to grant enforcement authority of preexisting regulations provides no additional impact on the industry.

Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The CHP concludes this proposed regulatory action: (1) is unlikely to create additional jobs, nor eliminate any jobs in the State of California; (2) is unlikely to result in the elimination of existing businesses, nor create or expand businesses in the State of California; (3) will continue to provide a nonmonetary benefit to the protection and safety of public health, employees, and the environment by providing a regulatory authority for enforcement efforts as they relate to violations of RODS found in Title 49 CFR.

CONSIDERATION OF ALTERNATIVES

In accordance with Section 11346.5(a)(13) GC, the CHP must determine that no reasonable alternative considered by the CHP, or that has otherwise been identified and brought to the attention of the CHP, 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. The CHP invites

interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AUTHORITY AND REFERENCE

The authority and references for the adopted and amended sections contained in this rulemaking are as follows:

Section 1213

Note: Authority cited: Sections 31401, 34501, 34501.2, 34501.5, and 34508, Vehicle Code; and Section 39831, Education Code. Reference: Sections 545, 31401, 34501, 34501.2, 34501.5 and 34508, Vehicle Code; and Section 39831, Education Code.

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
E. L. FALAT, Chief
Enforcement and Planning Division