

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

INITIAL STATEMENT OF REASONS

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 6, ARTICLE 3,
AMEND SECTIONS 1160.2 AND 1164

GENERAL HAZARDOUS MATERIALS REGULATIONS (CHP-R-2018-08)

PURPOSE OF REGULATORY ACTION

Section 2402 of the California Vehicle Code (CVC) authorizes the Commissioner of the California Highway Patrol (CHP) to make and enforce regulations as necessary to carry out the duties of the CHP. Sections 2402.7 and 34501(b) CVC authorize the CHP to adopt reasonable rules and regulations for the safe transportation of hazardous materials (HM) in order to ensure the safety of persons and property using the highways. The adopted regulations are contained in Title 13 of the California Code of Regulations (CCR).

In compliance with the requirements of Title 49, United States Code (USC), Chapter 51, Section 5125, and Title 49, Code of Federal Regulations (CFR), Part 107, Subpart C, the CHP proposes to amend and update the state's hazardous materials regulations (HMR). This amendment would be applicable to all persons transporting HM on the state's highways. Additionally, this rulemaking will repeal Subsection 1164(b) in the state's HMR which conflicts with federal HMR.

This rulemaking action adopts the October 1, 2019, edition of the federal HMR incorporated by reference. The intent of this rulemaking action is to enhance safety and fulfill federal mandates. This action will consider the competitiveness of California businesses by eliminating or modifying, to the extent possible, regulations which impose a negative impact on businesses and the economy.

SECTION BY SECTION OVERVIEW

Title 13, California Code of Regulations, Division 2, Chapter 6, Article 3, Section 1160.2, U.S. Department of Transportation Regulations

The state's HMR contained in Title 13, CCR, Sections 1160 through 1167, are required to be continuously evaluated and updated to ensure the safe transportation of HM by highway and to avoid federal preemption. Title 49, USC, Section 5125, requires states to adopt HM laws and regulations which are "*substantively the same as*" the corresponding federal HM laws and regulations. In order for the CHP to fulfill the mandate established in Section 34501(b) CVC and be in compliance with federal law, it must align the state's HMR with federal HMR. This alignment accounts for the change from the October 1, 2015, to the October 1, 2019, published

edition of the federal HMR. Additionally, in reference to the October 1, 1999, edition of the federal HMR, private carriers, as defined by Title 13, CCR, Section 1160.3, not subject to federal jurisdiction will be removed and all persons transporting HM will comply with a single edition of the federal HMR.

The state's HMR apply to all persons transporting HM, which includes the transportation of HM by private carriers which are not subject to federal jurisdiction (e.g., personal use or by state, county, or city governmental agencies). Currently, this section allows those persons not subject to federal jurisdiction to comply with the October 1, 1999, or any subsequently published, version of the federal HMR. Although these persons are currently required to comply with the October 1, 1999, or newer, federal HMR, they would be subject to enforcement action due to the adoption of the October 1, 2019, federal HMR, which contains revised requirements from prior editions of the federal HMR. In allowing these carriers to utilize outdated regulations, they could be subject to either state or federal enforcement action should their activities become subject to federal jurisdiction (e.g., offer HM for a movement in commerce). This amendment would have minimal impact for these carriers because the October 1, 2019, edition of the federal HMR is the current accepted standard for interstate HM transportation. This amendment increases consistency in compliance and enforcement of the HMR in California.

The state's HMR currently provide private carriers, which are not subject to federal jurisdiction, an extensive list of exceptions found in Title 13, CCR, Section 1160.1. Continued use of these exceptions will be unaffected by this rulemaking action. Additionally, when a carrier is unable to comply with a specific requirement in the current edition of the federal HMR, the CHP may authorize an alternate method of compliance, as prescribed by Title 13, CCR, Section 1160.4(c). This option is afforded to carriers, which are not subject to federal jurisdiction, and is offered at no cost to the requesting carrier.

The amendment of Subsection 1160.2(a)(1) provides private carriers, not subject to federal jurisdiction, to have the option of applying for an alternate method of compliance, pursuant to Subsection 1160.4(c), when they find compliance to be unnecessarily burdensome or impractical. The repeal of Subsection 1160.2(a)(2) eliminates the reference to outdated federal regulation. These changes are necessary because the most recent federal regulations on this subject matter were published on October 1, 2019, and state regulations must comply with the most current federal regulations, pursuant to Section 34501(b) CVC. Amending language in Subsection 1160.2(a)(1) is necessary to provide a method of compliance for private carriers not subject to federal jurisdiction (not in commerce) when transporting HM under the currently adopted federal HMR (October 1999 or later) which conflict with the most current federal HMR (October 2019).

Title 13, California Code of Regulations, Division 2, Chapter 6, Article 3, Section 1164, Vehicle Loading

This section prescribes the requirements for the loading and securement of HM in motor vehicles. Subsection (a) requires compliance with Title 49, CFR, Part 177, Subparts A, B, and C. Title 49, CFR, Section 177.834(a), requires HM to be *secured against shifting, including relative motion between packages, within the vehicle on which it is being transported, under conditions normally incident to transportation*. Title 49, CFR, Part 177, Subpart A, addresses

the use of general cargo-securement requirements as outlined in Title 49, CFR, Part 393. The addition of Title 49, CFR, Part 177, Subpart A, reinforces the cargo-securement requirements for commodity-specific containers, such as portable and intermodal tanks. Subsection (b) mandates the use of specific securement methods and places additional controls on the transportation of portable tanks. These requirements are inconsistent with the federal HMR and must be repealed to avoid federal preemption.

It is necessary to add Subpart A of Title 49, CFR, Part 177, to Title 13, CCR, Subsection 1164(a), in order to gain consistency and conformity with federal HM cargo-securement requirements. The addition of Subpart A of Title 49, CFR, Part 177, to Title 13, CCR, Section 1164(a), will provide guidance regarding the proper securement of HM being transported in specific types of packages, such as portable and intermodal tanks. It is necessary to repeal Title 13, CCR, Subsection 1164(b), due to inconsistencies with the existing language in Subsection (b) and the proposed adoption of the October 1, 2019, federal HMR.

STUDIES/RELATED FACTS

None.

LOCAL MANDATE

These regulations do not impose any new mandate on local agencies or school districts.

IMPACT ON SMALL BUSINESS

The CHP has not identified any significant adverse impact on businesses since these changes will only affect carriers and shippers which are currently subject to federal jurisdiction. As a result, the affected persons should already be in compliance with the appropriate federal regulations.

DOCUMENT INCORPORATED BY REFERENCE

The CHP has determined it would be cumbersome, unduly expensive, or otherwise impractical to publish Part 107, Parts 171 through 180, and Part 393 of Title 49, CFR, in the CCR.

The CHP has made available Part 107, Parts 171 through 180, and Part 393 of Title 49, CFR, upon request, to the affected public. Copies of this document, or relevant portions thereof, can be obtained from the CHP by contacting the Commercial Vehicle Section (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 at the following Web site: <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>. The rulemaking file is available for inspection at the CHP, CVS, 601 North 7th Street, Sacramento, California 95811. Interested parties are advised to call for an appointment.

ALTERNATIVES

The CHP has not identified, nor been made aware of, an alternative which would be as effective and less burdensome for the purpose for which this action is proposed.

Alternatives Identified and Reviewed:

Alternative 1: Make no changes and allow the outdated reference dates to remain in Title 13, CCR, Section 1160.2 and Section 1164. This could result in federal preemption of California's HMR. If preempted, the state could not enforce any of these regulations as they apply to transportation in commerce, thus jeopardizing public safety and environmental protection. Failure to maintain consistency with the federal regulations would also jeopardize federal Motor Carrier Safety Assistance Program grants used for commercial vehicle enforcement and training. The loss of all or a portion of this funding would, in itself, represent a negative impact on public safety.

Alternative 2: Change statutes to directly require compliance with the federal regulations as these regulations now exist or are hereafter amended, in lieu of the existing delegation of rulemaking prescribed in Section 34501(b) CVC. This alternative would eliminate the present state regulatory mechanism, which provides for the adoption of exceptions to the HMR, presently adopted by reference in Title 13, CCR. The CHP also retains discretion to promulgate regulations and/or exceptions for carriers not subject to federal jurisdiction (e.g., noncommercial or governmental operations).

Alternative 3: Update Title 13, CCR, Section 1160.2 and Section 1164, to the current federal regulations for consistency with the federal regulations. This is the alternative selected as it meets the safety needs of the Department and the public, and fulfills federal mandate.

ECONOMIC IMPACT ANALYSIS

Economic Impact on Business

The CHP has not identified any significant adverse impact on businesses. Businesses which are subject to federal jurisdiction are currently required to comply fully with the federal HMR and, therefore, the mere adoption of regulations to avoid preemption or to grant enforcement authority of preexisting regulations provides no additional impact on industry. The proposed changes to Title 13, CCR, Section 1160.2, are already applicable and enforceable on businesses subject to federal jurisdiction, pursuant to Title 49, CFR, Section 171.1. Businesses involved in the transportation of HM may choose to purchase the Title 49, CFR, Volumes 2 and 3, Subtitle B - Chapter I, October 1, 2019, edition at a cost of approximately \$40 annually through various vendors. The regulations are also available at no cost online at: <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

These businesses will not otherwise experience any greater effect due to the implementation of the referenced sections of Title 49, CFR, Volumes 2 and 3, Subtitle B - Chapter I, October 1, 2019, edition, other than what is already commonly known and accepted.

Impact on Jobs and Business in the State of California

The CHP has made a determination that this proposed regulatory action will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, nor create or expand businesses in the State of California.

Benefits of the Regulation

This proposed regulatory action will continue to provide a nonmonetary benefit to the protection and safety of public health, employees, and the environment because changes to the application of the regulation are not substantive and bring the regulation in conformance with existing statute. Minor additions and changes to the regulations are clarifying in nature, and all are within existing requirements for the transportation of HM.

The CHP has made a determination that this proposed regulatory action will result in:

- No effect on housing costs;
- No new mandate upon local agencies or school districts;
- No nondiscretionary costs or savings to any local agency, no cost to any local agency or school district for which Sections 17500-17630 of the Government Code require reimbursement, no cost or savings to any state agency, nor costs or savings in federal funding to the state;
- Neither the creation or elimination of jobs in the State of California, nor result in the elimination of existing businesses, nor create or expand businesses in the State of California;
- No significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states;
- A continued nonmonetary benefit to the protection and safety of public health and employees; and
- Safety to the environment by providing an updated regulatory authority for enforcement efforts.

NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

This proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The Department has determined these regulation amendments will result in:

- No significant increase in costs for carriers or shippers involved in the transportation of HM in commerce. This rulemaking action will simply provide a regulatory basis to provide consistency between the state's HMR and the federal HMR, which are already being used in this state and throughout North America;
- No significant compliance cost for persons or businesses directly affected;
- No discernible adverse impact on the quantity and distribution of goods and services to large and small businesses or the public;
- No impact on the level of employment in the state; and
- No impact on the competitiveness of California to retain businesses, as state, provincial, and national governments throughout North America have already adopted these requirements.