

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

NOTICE OF PROPOSED REGULATION

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

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

In compliance with the requirements of Title 49, United States Code, Chapter 51, Section 5125, and Title 49, Code of Federal Regulations (CFR), Part 107, Subpart C, the California Highway Patrol (CHP) proposes to amend the state's hazardous materials regulations (HMR) to be consistent with national transportation requirements as required by federal law.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Title 13, California Code of Regulations (CCR), Division 2, Chapter 6, Article 3, Sections 1160 through 1167, contain the CHP's regulations governing the highway transportation of hazardous materials (HM). These sections contain general provisions, hazard classification and shipping names, HM training, and the reporting of incidents involving HM or hazardous waste.

The proposed rulemaking action will make substantive changes to align state and federal HMR for persons subject to federal jurisdiction pursuant to Title 49, CFR, Section 171.1. Adopting and incorporating by reference the October 1, 2019, edition of the federal HMR in Title 13, CCR, Section 1160.2, ensures this alignment.

This proposed rulemaking action also proposes the amendment of one additional section. Title 13, CCR, Section 1164, 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. Subsection (b) of Title 13, CCR, Section 1164, mandates the use of specific securement methods and places additional controls on the transportation of portable tanks. Subsection (b) requirements are inconsistent with the federal HMR and must be repealed to avoid federal preemption.

Anticipated Benefits of Proposed Regulation

This amendment would provide a nonmonetary benefit to the protection and safety of public health, employees, and the environment, as well as consistency between state and federal regulations, by providing a regulatory authority for enforcement efforts as they relate to violations of the current HMR found in Title 49, CFR.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

The CHP has determined this proposed regulation is neither inconsistent, nor incompatible, with existing regulations. After conducting a review for any regulations that would relate to or affect this area, CHP has concluded that these are the only regulations that concern the General Hazardous Materials Regulations.

PUBLIC COMMENTS

Interested persons may submit written comments on these proposed actions via facsimile to (916) 322-3154, by electronic mail to *cvsregulations@chp.ca.gov*, or by writing to:

California Highway Patrol
Enforcement and Planning Division
Commercial Vehicle Section
Attention: Sergeant Robert Daniels, Jr.
P.O. Box 942898
Sacramento, CA 94298-0001

Written comments will be accepted until March 30, 2020.

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 at the above address, by facsimile to (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 case the requester's information is incomplete or illegible.

The rulemaking file is available for inspection at the 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 also available through the CHP's Web site at <https://www.chp.ca.gov/News-Alerts/Regulatory-Actions>.

CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations, or questions regarding the substance of the proposed regulations, should be directed to Sergeant Robert Daniels, Jr. or Officer David Kelly, 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 nonsubstantive 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.

FISCAL AND ECONOMIC IMPACT/RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The CHP has made an initial determination that this proposed regulatory action: (1) will have no effect on housing costs; (2) will impose no new mandate upon local agencies or school districts; (3) will involve no nondiscretionary cost or savings to any local agency, no cost to any local agency or school district for which Sections 17500-17630 of the Government Code (GC) require reimbursement, no cost or savings to any state agency, nor costs or savings in federal funding to the state; (4) will neither create or 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; (5) will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states; and (6) 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 the current HMR found in Title 49, CFR. The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

COST IMPACTS ON PRIVATE PERSONS OR BUSINESSES

The CHP is not aware of any cost impacts that a private person or business would incur while maintaining compliance with the proposed action.

EFFECT ON SMALL BUSINESSES

The CHP has not identified any significant adverse effect on small businesses. The proposed regulations do not increase any requirements upon any small businesses. Businesses subject to federal jurisdiction are currently required to comply 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 businesses. The proposed regulatory amendment to Title 13, CCR, Section 1160.2, is already applicable and enforceable on businesses subject to federal jurisdiction pursuant to Title 49, CFR, Part 171.

The federal HMR being adopted by reference in Title 13, CCR, were subjected to procedures under the Federal Administrative Procedures Act (FAPA). The FAPA provided regulated businesses the opportunity to participate in the rulemaking process, prior to adopting the current federal HMR.

CONSIDERATION OF ALTERNATIVES

In accordance with GC Section 11346.5(a)(13), the CHP must determine that no reasonable alternative considered, or otherwise identified and 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. The CHP invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Once the Final Statement of Reasons for this proposed regulatory action is available, the public may request to review or receive copies of the statement. Requests should be directed to the CHP at the above address, by facsimile to (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 case the requester's information is incomplete or illegible.

AUTHORITY

This regulatory action is being taken pursuant to Sections 2402.7 and 34501(b) CVC.

REFERENCE

This action implements, interprets, and/or makes specific Sections 2402.7 and 34501(b) CVC.

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
J. T. EPPERSON, Chief
Enforcement and Planning Division