

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

INITIAL STATEMENT OF REASONS

TITLE 13, CALIFORNIA CODE OF REGULATIONS
DIVISION 2, CHAPTER 6.5, AMEND ARTICLE 3. GENERAL DRIVING REQUIREMENTS,
SECTIONS 1201, 1212, AND 1212.5

DRIVERS' HOURS-OF-SERVICE (CHP-R-2015-01)

PROBLEM

The definition for “On-duty Time” in Title 13 of the California Code of Regulations (CCR), Section 1201(u), is no longer consistent with the definition found in Title 49 Code of Federal Regulations (CFR), Section 395.2. Current federal regulations, contained in Title 49 CFR, require states to remain compatible with federal regulations¹. Therefore, current state regulations, contained in Title 13 CCR, Section 1201, are incompatible for federal funding purposes. Additionally, this inconsistency places California drivers in a competitive disadvantage when compared with similar drivers engaged in interstate commerce. Currently, the provisions, contained in Section 395.2 of Title 49 CFR, allow for time spent resting in or on a parked vehicle, and up to two hours in the passenger seat immediately before or after a period of at least eight hours in the sleeper berth, to not be counted as on-duty time. Title 13 CCR, Section 1201(u), will be amended to add the same two provisions to be utilized by drivers engaged in intrastate commerce.

This rulemaking also clarifies that a driver who operates a vehicle for a public utility or public water district is exempt from all hours-of-service (HOS) regulations and associated recordkeeping provided they are not transporting hazardous materials (HM), as those terms are defined in Section 171.8 of Title 49 CFR. The utility service vehicle (USV) HOS exemption was ratified by the California State Legislature in 2009 and became effective January 1, 2010, (Section 34501.2[b][3] of the California Vehicle Code [CVC]). This exemption is essentially identical to an exemption, effective September 4, 2007, adopted by the Federal Motor Carrier Safety Administration and published in the Federal Register, Vol. 72, No. 128, July 5, 2007. The current exemption, contained in Title 13 CCR, Section 1212(i), provides relief from HOS regulations only during the emergency restoration of services in the event of a power, gas, or water outage, and has been rendered moot by the blanket HOS exemption granted to USV drivers by Section 34501.2(b)(3) CVC.

Additionally, this regulatory action adds clarifying language to the HOS exemption afforded to drivers transporting farm products from the field to the first point of processing, the 100 air-mile radius driver exemption, and makes nonsubstantive changes to regulatory language in Title 13 CCR, Sections 1212(e)(4) and (k), thereby lending clarity to existing rules. The current language merely reiterates the statutory exemption provided by Section 34501.2(c)(1) CVC;

¹ Section 355.25 of Title 49, CFR

however, the application of the exemption is often interpreted incorrectly. These amendments should effectively eliminate confusion surrounding the appropriate application of this HOS exemption by industry and law enforcement.

In recent years, the California Highway Patrol (CHP) has been contacted by numerous government agencies within the State of California, such as the Los Angeles County Department of Public Works and the Office of Emergency Services, requesting temporary exemptions from all driver HOS rules for drivers of commercial motor vehicles with a gross vehicle weight rating or gross vehicle weight over 10,000 pounds, employed by those agencies, during the emergency restoration of basic essential public services and related operations. The Department relies on the provisions of Title 13 CCR, Section 1202(e), which provides authority to the Commissioner to grant limited exemptions to HOS requirements during emergency events. The process, from first determining the need for an exemption to requesting and obtaining an exemption, often takes several hours, or even days, which in turn delays the critical response of local governments regarding emergency restoration of basic essential public services. This amendment would simplify the process and provide local governments immediate discretion regarding the utilization of a 72-hour exemption during emergency restoration efforts. This rulemaking will adopt an exemption from drivers' HOS limits to the extent permitted by statute, contained in Section 34501.2 CVC, for drivers employed by the State of California, a city, a county, a city and county agency, or any political subdivision thereof during the emergency restoration of basic essential public services and related operations.

This regulatory action will also make a change to tow truck drivers' HOS by providing limited extension of the driver's work period. This limited extension of the driver's work period is provided in support of public safety in order to ensure tow operators have sufficient driving hours available to remove disabled vehicles and restore the roadway in a timely manner. Additionally, this exemption will ensure tow operators are available to assist with disabled vehicles and their occupants, particularly if the request for assistance is arranged by a law enforcement agency. Historically, due to the unique nature of tow truck operations, compliance with conventional drivers' HOS limits has proven difficult. For example, tow truck operations in rural areas are operated by a few employees and often require drivers to drive long distances to reach the location of the disabled vehicle or blocked roadway. Additionally, these unplanned incidents occur at any time throughout the day or night. This exemption will permit drivers of tow trucks to drive commercial vehicles for not more than 12 nonconsecutive hours since first reporting for duty, without being limited by driving only within the first 16 hours since reporting for duty.

Finally, this rulemaking would clarify the language related to the HOS requirements for drivers of buses and trucks being operated in intrastate commerce. Currently, the regulations combine the requirements for bus drivers, truck drivers, and flammable-liquid tank vehicles within the same subdivision. This could lead to confusion as to the specific requirements for the driver of each vehicle type. The proposed changes will reformat the section, providing greater clarity, as well as consistency with the same limitation prescribed pursuant to Section 34501.2(b)(1) CVC.

BENEFITS OF THE REGULATIONS

One of the benefits these regulations provide is permitting drivers to operate commercial motor vehicles for extended periods of time, at the discretion of an authorized governmental agency, to expedite the restoration of essential public services in the interest of public safety and the economy. Another benefit to the public is increased efficiency in the ability of tow operators to provide traffic congestion relief through the removal of disabled vehicles, by providing a driver of specified tow trucks a limited extension of the driver's work period. Additionally, these amendments would 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 HOS regulations.

PURPOSE AND NECESSITY OF REGULATIONS

Section 2400 CVC authorizes the Commissioner of the CHP to enforce laws regulating the safe operation of motor vehicles. Section 2402 CVC authorizes the Commissioner to make and enforce regulations as necessary to carry out the duties of the CHP. Sections 32002, 34501, 34501.2, and 34501.5 CVC allow the CHP to adopt reasonable rules and regulations which are designed to promote the safe operation of vehicles described in Section 34500 CVC, which are commercial vehicles commonly referred to as "regulated" vehicles (trucks, truck-trailer combinations, buses, etc.). The adopted regulations are contained in Title 13 CCR.

SECTION BY SECTION OVERVIEW

Title 13 CCR, Division 2, Chapter 6.5, Motor Carrier Safety Regulations.

Article 1. Definitions and General Provisions.

Section 1201. Definitions.

Subsection (u) is amended to add provisions found in Title 49 CFR, Part 395.2, Definitions. The first added provision would allow for time spent resting in or upon a parked vehicle to count as off-duty time, rather than on-duty time, except for a vehicle transporting explosives, where the driver is required to attend to the vehicle, pursuant to Section 31614 CVC. The second added provision would allow a passenger, who rides in the passenger seat of a property-carrying vehicle moving on the highway, to count up to two hours as off-duty time, rather than on-duty time, so long as the two hours occurs immediately before or after a period of at least eight hours in the sleeper berth. This allows co-drivers added flexibility, for timekeeping purposes, by allowing that time in the passenger seat to be logged as "off-duty" and be excluded from the 16-hour calculation, as specified by Title 13 CCR, Section 1212.5. Drivers would no longer be confined to the sleeper berth in order to avoid logging on-duty time. These amendments are necessary to align this section with federal regulations, provide reasonable flexibility for drivers to use off-duty time, and clarify the use of that time for logging purposes.

Article 3. General Driving Requirements.

Section 1212. Driver Hours of Service.

Subsection (e)(4) is amended to clarify the meaning of 12 hours on-duty. The existing language in this section is often misconstrued to mean that drivers may utilize the “100 air-mile radius driver” exemption, even when they have exceeded 12 consecutive hours since the driver first reported for duty, provided the driver has not actually been on duty (as defined in Title 13 CCR, Section 1201[u]) for more than 12 hours. Often drivers who are otherwise eligible to utilize this exemption take short off-duty periods (lunch, rest breaks, etc.), thus keeping their on-duty total for the day below 12 hours. However, many times this will cause the driver to be released from duty after the 12th consecutive hour since they first reported for work, making them ineligible, as they have not complied with Title 13 CCR, Section 1212(e)(2). Once a driver has exceeded the 12th consecutive hour from first reporting for duty, it becomes difficult to determine if the driver has complied with the driving time limits, contained in Title 13 CCR, Section 1212.5(a), when a form of timekeeping record other than a graph-grid is used. By referring to the definition of a work period, contained in Title 13 CCR, Section 1201(hh), the confusion surrounding “12 hours on-duty” should be negated.

Subsection (i) is amended, exempting drivers employed by an electrical corporation, a gas corporation, a telephone corporation, a water corporation, or a public water district from all HOS regulations (including recordkeeping requirements), while operating a public utility or public water district vehicle. The existing language is in conflict with the aforementioned statutory exemption, contained in Section 34501.2 CVC. Therefore, any language limiting USV drivers’ HOS is removed.

Subsection (k) is amended to clarify the exemption afforded to drivers transporting farm products from the field to the first point of processing. The current language merely reiterates the statutory exemption provided by Section 34501.2(c)(1) CVC; however, the application of the exemption is often interpreted incorrectly. The intent of this section is to allow drivers transporting “farm products,” as defined in Title 13 CCR, Section 1212(k), additional time to move these commodities, from the point of harvest to the initial processing point, due to the perishable nature of the product and/or the limited window of opportunity to move the product from the harvest location (e.g., timber). Within the “farm products” definition exists extremely perishable commodities, defined as “special situation farm products.” Adding the proposed language to Title 13 CCR, Section 1212(k), should effectively eliminate confusion surrounding the appropriate application of this HOS exemption by industry and law enforcement.

New Subsection (k)(1)(A) is added to clarify the 12-hour maximum driving time for drivers transporting farm products following eight consecutive hours off duty. This requirement was previously stated within the paragraph of Section 1212(k)(1), and is being moved into its own subsection to provide clarity for compliance and enforceability of these requirements.

New Subsections (k)(1)(B) and (C) have been reorganized to provide clarity and accessibility to the information provided.

New Subsection (k)(2) is added to provide that drivers transporting “special situation farm products” may use the same exemption provided to farm products (with regard to the driving and daily on-duty limits), but are not held to any eight-day cumulative on-duty limit, to allow for a driver who may be on duty up to 16 hours a day until the harvest is complete. This is necessary to allow drivers to extend beyond eight-day cumulative limits for no more than 28 days to move extremely perishable commodities within a very limited window of opportunity from the point of harvest to the initial processing point.

New Subsection (k)(3) is added to specify any driver operating under the exemption in Title 13 CCR, Section 1212(k), must accurately record their time on a record of duty status (RODS) for each 24-hour period. Drivers are required to retain the current day plus copies of their RODS for the previous seven consecutive days and provide those documents to law enforcement personnel, on demand, to ensure compliance with HOS. While utilizing this exemption, drivers are not eligible to use other exemptions contained in Title 13 CCR, such as Title 13 CCR, Section 1212(e), 100 air-mile radius driver, which requires 10 hours off duty for truck drivers, separate each 12 hours on duty, as the provision of this exemption does not meet concurrently with Title 13 CCR, Section 1212(k). For example, a driver only utilizing the “8 hours to requalify” portion of the exemption, listed in subsection (k)(1)(B) of this paragraph, may believe they are not required to complete a RODS prescribed by Title 13 CCR, Section 1213, because current Title 13 CCR, Section 1212(k), only refers to Title 13 CCR, Section 1212.5(a)(4), 80 hours in any consecutive eight days limitation, to require RODS. However, the intent of Title 13 CCR, Section 1212(k), was not to exempt RODS, but to afford drivers transporting farm products from the field to the first point of processing additional time to move these time-sensitive products. Additionally, Title 13 CCR, Section 1212(g), Sleeper berths, would not be available as an exemption from RODS, as Title 13 CCR, Section 1212(g)(1)(A), requires a driver to have a 10-hour requalification period before driving more than 12 hours, or after the 16th hour, prior to resuming operation.

New Subsection (k)(5) is added to allow for the terms defined in this subdivision to be applicable for use in all of Chapter 6.5, Title 13 CCR. This change was necessary to clarify the use of this exemption as referenced in other sections within the chapter.

Subsection (n) is amended to include drivers engaged in emergency operations, as defined in proposed Title 13 CCR, Section 1212(p), to the limitations provided by this paragraph. This would clarify that drivers are not able to transport hazardous substances or hazardous waste, as those terms are defined in Title 49 CFR, Section 171.8, while utilizing the exemption provided by Title 13 CCR, Section 1212(p). The transportation of these materials presents an additional risk to public health and safety. Therefore, drivers engaged in emergency operations shall be subject to HOS limits while transporting hazardous substances or hazardous waste.

New Subsection (p) is added to permit an intrastate governmental driver, employed by the State of California, a county, a city, a county and city agency, or any political subdivision thereof, to drive a commercial motor vehicle more than the number of hours specified in Title 13 CCR, Section 1212.5, if they are actively involved in the emergency restoration of basic essential public services and related operations. This subsection is necessary to specify to whom the exemptions, provided in the following subsections, apply:

New Subsection (p)(1) is added to permit California state or local governmental drivers, operating government owned or operated vehicles and engaged in essential emergency restoration operations, to exceed the maximum driving and on-duty time limitations, as provided by Title 13 CCR, Section 1212.5. This will allow state and local governments, at their discretion, the ability to quickly deploy their personnel, for the purposes of emergency restoration, without hesitation or delay concerning the established HOS limitations. Previously, the Department would have to rely on the provisions of Title 13 CCR, Section 1202(e), which provides authority to the Commissioner to grant exemptions to HOS requirements during emergency events. The process, from first determining the need for an exemption to requesting and obtaining an exemption, often takes several hours, or even days, which would in turn delay the critical response of local governments regarding emergency restoration of basic essential public services. This subsection further defines the phrase “and related operations” in order to clarify a driver engaged in emergency operations need not be within the actual scene of the emergency in order to qualify for the exemption. The 72-hour exemption qualifies the response time, between the driver’s normal work reporting location and the scene of the emergency restoration of essential public services, to be exempt from HOS limitations. This is necessary, for clarity purposes, to appropriately utilize the exemption.

New Subsection (p)(2) is added to provide that this exemption applies only to governmental drivers working within a 100 air-mile radius of their normal work reporting location, and who begin and end work at the normal work reporting location. This requirement is necessary to limit and specify how this exemption is to be used. The 100 air-mile radius was determined by the CHP to be the appropriate maximum operating distance necessary to provide drivers the capacity to carry out their duties of emergency restoration of basic essential public services, while operating a commercial motor vehicle within the parameters of the exemption. The determination is based on long standing exemptions that are preexisting for local drivers, as presented in Title 13 CCR, Section 1212(e). The new exemption is intended to provide relief from HOS requirements for state and local governments responsible for basic essential public services within those jurisdictions.

New Subsection (p)(3) is added to provide a 72-hour time limit for an emergency restoration exemption. This subsection preserves the Commissioner’s authority, while allowing time for evaluation and concurrence, or nonconcurrence, of a request. This subsection provides a temporary emergency exemption to account for average holiday or weekend timeframes when a normal workday response from the CHP may not be feasible and a more immediate action is requested.

New Subsection (p)(4) is added to allow a request to extend the initial 72-hour emergency restoration exemption period to be through the submission of a letter from the originating entity. Granting the extension remains at the discretion of the Commissioner.

New Subsection (p)(5) is added to provide, upon expiration or termination of the emergency restoration exemption and release of a driver from duty, the total on-duty hours accumulated by the driver during the most recent eight consecutive days shall be considered reset to zero upon the driver's completion of an off-duty period of 24 or more consecutive hours, rather than 34 or more consecutive hours, as required by Title 13 CCR, Section 1212.5. The off-duty period of 24 or more hours for reset of the eight-day cumulative clock is consistent with the reset permitted by other exceptions within this section, such as those for oil field operations,

firefighters, and the transportation of construction materials and equipment. Therefore, these drivers would not need 34 or more hours, as required for a reset for intrastate truck drivers engaged in more conventional commercial truck driver operations. The 24-hour reset is necessary to allow state or local government drivers, previously engaged in emergency restoration efforts, the ability to quickly reset their cumulative clock, in order to resume their routine scheduled duties without being penalized for the hours accumulated during the emergency restoration of basic essential public services.

New Subsection (p)(6) is added to require California state or local government agencies, utilizing this exemption, to document the nature of the incident requiring emergency restoration services and the duration of the emergency necessitating excessive driving hours. This is necessary to ensure the exemption provided by this section is used appropriately and is properly accounted for. The retention of these documents, for at least two years, was determined by the CHP as a reasonable amount of time to permit verification of compliance with applicable drivers' HOS requirements and not so long as to be burdensome for recordkeeping purposes.

New Subsection (p)(7) is added to provide governmental entities direction and contact information required for telephonic notification of the utilization of an emergency restoration exemption.

New Subsection (p)(8) is added to establish the Commissioner of the CHP as the determining authority for the issuance or rescission of an emergency restoration exemption or any extensions of said order.

New Subsection (p)(9) is added to provide a definition for "emergency restoration," as used in this section. This definition is necessary to provide the circumstances for which this exemption may be used. The definition is similar to the definition of "emergency," as provided in Section 34501.2(b)(1)(C) CVC. Additionally, this subsection provides clarification for what does not meet the definition of emergency restoration and, therefore, may not be used to utilize this exemption.

New Subsection (p)(10) is added to provide a definition for "governmental driver," as used in this section. This definition is necessary to provide clarification of who is considered a qualified governmental driver or governmental employee for which this exemption may be used.

New Subsection (q) is added to provide drivers of specified tow trucks a limited extension of the driver's work period. A driver's work period is defined in Title 13 CCR, Section 1201(hh), as the duration between the time a driver first reports for duty, and the time a driver is completely relieved of all duties and is permitted to go off-duty for ten consecutive hours. Title 13 CCR, Section 1212.5, requires intrastate truck drivers to not drive for any period after the end of the 16th hour after coming on duty following ten consecutive hours off duty. This exemption will allow drivers of specified tow trucks to drive no more than 12 hours within their work period, rather than limiting driving to the first 16 hours since first coming on duty. This extension is necessary for drivers of specified tow trucks due to their inconsistent driving patterns.

New Subsection (q)(1) is added to define the term “tow truck,” as used within the section. This definition references the definition of tow truck, contained in Section 615(a) CVC, and further limits that definition for the purposes of the proposed new Title 13 CCR, Section 1212(q). This limitation is intended to include only those vehicles which are used to lift, carry, or otherwise remove disabled vehicles from the roadway in the interest of immediate restoration of the roadway, in support of public safety. The further limiting of the definition is intended to exclude vehicles otherwise defined as tow trucks, not engaged in the immediate restoration of the roadway through the removal of disabled vehicles.

New Subsection (q)(1)(A) is added to prohibit drivers, utilizing the proposed exception to drivers’ HOS limits, from driving more than 12 hours within any work period following at least ten consecutive hours off duty. This limit is consistent with drivers’ HOS limits applicable to drivers engaged in intrastate transportation of general freight, contained in Title 13 CCR, Section 1212.5.

New Subsection (q)(1)(B) is added to prohibit drivers, utilizing the proposed exception to existing drivers’ HOS limits, from driving after the end of the 16th hour on duty in any work period. This limitation will permit the drivers of specified tow trucks to extend any work period with off-duty time interspersed throughout the work period. The limitation is intended to provide relief from the prohibition contained in Title 13 CCR, Section 1212.5, otherwise applicable to drivers engaged in intrastate transportation of general freight, from driving after the 16th consecutive hour since first reporting for duty.

Existing drivers’ HOS limits prohibit driving after the 16th consecutive hour since reporting for duty. These 16 consecutive hours include all on-duty time, as that term is defined, and all off-duty time, as both of those terms are applicable to drivers of regulated commercial vehicles. The proposed exception is intended to permit the driver of a specified tow truck to be relieved from duty and all responsibility for performing work, throughout the work period, in order to allow for an extended work period. For example, currently, a driver who is required to be in readiness to work or begins to work at 6:00 A.M. may not drive a regulated commercial vehicle after 10:00 P.M., or the 16th hour since reporting for duty, until such time as the driver accumulates at least ten consecutive hours off duty. Under the proposed exception, the driver may accumulate off-duty time of less than ten consecutive hours throughout the work period, thus permitting operation of the commercial vehicle beyond the 16th consecutive hour since going on duty.

New Subsection (q)(1)(C) is added to prohibit driving after 80 hours on duty in any eight consecutive days. This is consistent with drivers’ HOS limits applicable to drivers engaged in intrastate transportation of general freight, contained in Title 13 CCR, Section 1212.5.

For example, a driver who accumulates 12 hours of on-duty time for each of six consecutive days, totaling 72 hours, may not drive on the seventh or eighth consecutive day after accumulating eight additional hours (a total of 80 hours) of on-duty time. Drivers’ HOS limits are applicable to drivers actually driving a regulated commercial vehicle, as the term “driving time” is defined, and intended to limit driving time in the interest of public safety. While drivers’ HOS limits do not prohibit or limit the duration of work, other than driving a regulated commercial vehicle as specified, all working time is defined as on-duty time and is included in the accumulation of on-duty hours.

The accumulation of on-duty time may be reset to zero with the beginning of an off-duty period of not less than 34 consecutive hours. This provision is contained in drivers' HOS requirements applicable to drivers engaged in intrastate transportation of general freight in Title 13 CCR, Section 1212.5. The proposed exception continues to permit this cumulative on-duty time reset provision for drivers of specified tow trucks, but is not intended to provide any additional relief relative to this provision.

New Subsection (q)(2) is added to prohibit drivers of tow trucks, otherwise specified within the proposed exception, from utilizing the exception.

New Subsection (q)(2)(A) is added to prohibit drivers transporting HM in a quantity requiring the display of placards, pursuant to Section 27903 CVC, or an HM transportation license, pursuant to Section 32000.5 CVC, from utilizing the proposed exception. Additionally, the subsection prohibits use of the exception by drivers transporting hazardous waste of a type or quantity requiring a hazardous waste transporter permit, pursuant to Section 25163 of the Health and Safety Code. Drivers of these vehicles are deemed to pose an increased risk to public safety. As such, use of the proposed exception is unreasonable for these drivers who remain subject to existing drivers' HOS limits.

New Subsection (q)(2)(B) is added to prohibit drivers of truck-tractors, any motor truck used to tow any trailer, defined in Section 34500(e) CVC, and the driver of any other vehicle, not defined in proposed Title 13 CCR, Section 1212(a), from utilizing the exception. These drivers are not generally engaged in lifting, carrying, or otherwise removing disabled vehicles from the roadway in the interest of immediate restoration of the roadway. As such, use of the proposed exception is unreasonable for these drivers who remain subject to existing drivers' HOS limits.

New Subsection (q)(3) is added to prohibit the use of the proposed exemption at the discretion of the driver of a tow truck. The subsection is intended to provide the motor carrier employing the tow truck driver the option of requiring the driver to remain compliant with existing drivers' HOS limits. The subsection is further intended to allow the employing motor carrier to retain safety control and oversight of employed tow truck drivers, specifically relative to the use of the proposed exception.

New Subsection (q)(3)(A) is added to require drivers of tow trucks to complete a driver's RODS, pursuant to Title 13 CCR, Section 1213, notwithstanding any other exception or exemption, as a requirement to utilize the provisions of the exception permitting an extended driver's work period. The subsection requires the use of the driver's RODS during any 24-hour period, during which the exception is utilized, as well as the immediate subsequent seven consecutive 24-hour periods. Driving a commercial vehicle requires the utmost attention of the driver; accumulated fatigue has a deleterious effect on the driver's capacity for safe operation of the vehicle. As such, it is necessary to ensure all of the driver's time is documented on a driver's RODS, pursuant to Title 13 CCR, Section 1213.

The driver's RODS, required by Title 13 CCR, Section 1213, contains a graph-grid on which the driver records all activity during the 24-hour period, including all on-duty, off-duty, and driving time. Use of the graph-grid provides both the employing motor carrier and the Department the capacity to more closely monitor driver fatigue in the interest of driver and

public safety. Moreover, use of the graph-grid allows close monitoring of driver fatigue accumulated over an eight consecutive day period.

New Subsection (q)(4)(A) is added to require tow truck operators, as defined in subsection (q)(1) of this paragraph, who are involved in an incident, as defined by subsection (q)(4)(B) of this paragraph, to report the incident to the Department within 15 days of the incident. Additionally, the subsection permits submission of the report by United States Mail or email, and provides a physical and email address to support the submission of the required report.

The subsection requires a report to be submitted in the event of an incident occurring during any 24-hour period during which the driver utilizes the proposed extension of the driver's work period or the immediately subsequent seven 24-hour periods. This is intended to permit the Department to track and analyze incidents which may be attributable to accumulated fatigue of drivers utilizing the proposed exception.

The subsection also requires any incident report to include legible copies of reports or descriptions of the incident made by any law enforcement agency, any emergency response agency, or any insurance company. This requirement is intended to provide the Department the greatest capacity to track and analyze incidents and contributing factors which may be associated with the use of the proposed exception and extension of a tow truck driver's work period.

New Subsection (q)(4)(B) is added to define the term "incident" for the purpose of the section.

New Subsection (q)(4)(B)(i) is added to include within the definition of "incident," as any injury to the driver, any member of the public, any emergency response personnel, or any other party at the scene which is directly attributable to any action or inaction of the tow truck driver. The extent of injury, included in the definition of incident, is an incident that results in an injury requiring medical attention beyond first aid, as defined in Section 5401 of the Labor Code. For the purpose of the section, first aid is defined as any one-time treatment, and any follow-up visit for the purpose of observation of minor scratches, cuts, burns, splinters, or other minor industrial injury, which do not ordinarily require medical care.

This definition is consistent with existing definitions applicable to industrial injuries in California. Injuries involving, or as the result of action or inaction by, a tow truck driver may occur as the result of accumulated fatigue. As such, and as a result of the aforementioned reporting requirement, the Department may assess any possible deleterious effect on driver or public safety attributable to, or occurring in conjunction with, use of the proposed exception.

New Subsection (q)(4)(B)(ii) is added to include property damage in the definition of the term "incident," as used within the section. The property damage included is limited to a retail restoration or replacement value exceeding \$500. This is intended to include vehicles, infrastructure, personal property, or any other property adversely affected, at or above the \$500 retail restoration or replacement cost level, attributable to any action or inaction of a tow truck driver operating under the provisions of the exception.

The retail restoration or replacement cost is intended to preclude avoidance of incident reporting of included property damage by the employer of a tow truck driver who replaces or restores

damaged property at a reduced or discounted rate. This is further intended to ensure restoration of any party affected by any included property damage, to the level of existence prior to the damage.

§ 1212.5 Maximum Driving and On-duty Time

Subsection (a) is amended to include newly proposed Title 13 CCR, Sections 1212(p) and (q). These newly proposed sections include exceptions to the maximum driving and on-duty limits applicable to drivers of regulated commercial vehicles. Moreover, the newly proposed sections will provide relief only to specified drivers operating specified vehicles, under specified conditions. The subsection is amended to include the newly proposed subsections in the list of exceptions to the existing maximum on-duty and driving limits contained in Title 13 CCR, Section 1212.5.

Subsections (a)(1), (a)(1)(A), and (a)(1)(B) are amended to clarify the language related to the HOS requirements for drivers of buses and trucks being operated in intrastate commerce. Currently, the regulations combine the requirements for bus drivers, truck drivers, and flammable-liquid tank vehicles within the same subdivision. This could lead to confusion as to the specific requirements for the driver of each vehicle type. Reference to flammable-liquid tank vehicles is being moved from subsection (a)(1) to subsection (a)(2)(A), providing greater clarity, as well as consistency with the same limitation prescribed pursuant to Section 34501.2(b)(1) CVC.

HISTORY/BACKGROUND

None.

STUDIES/RELATED FACTS

None.

CONSULTATION WITH OFFICIALS

None.

LOCAL MANDATE

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

IMPACT ON SMALL BUSINESS/IMPACT ON BUSINESS

None.

DOCUMENT INCORPORATED BY REFERENCE

None.

ECONOMIC IMPACT ASSESSMENT/ ANALYSIS

Creation or Elimination of Jobs in the State of California

The CHP has evaluated whether jobs would be affected in the State of California and determined this rulemaking will neither create, nor eliminate jobs in the State of California, nor result in the elimination of existing businesses or create or expand businesses in the State of California. Proposed changes will affect only those individuals employed by specified motor carrier entities assigned to operate commercial motor vehicles and provide increased lawful operating hours within which to do so. As a result, the proposal will result in neither a net increase nor decrease in the overall number of jobs and will not impact the size, scope, or number of businesses in California. Additionally, this proposed regulatory change 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.

Creation, Expansion, or Elimination of Businesses in the State of California

These regulations affect motor carriers and drivers that operate vehicles described in Section 34500 CVC. All those on the departmental motor carrier interested party list are notified of proposed changes and given the opportunity to comment. The proposed regulations are also electronically noticed publicly. It is assumed that both small and large businesses, as well as industry advocates, may review the regulations. Nothing in these proposed regulations adversely impacts businesses which operate in compliance with applicable laws and regulations.

The CHP has not identified any significant adverse impact on businesses. Businesses subject to federal jurisdiction are currently required to comply with Federal Motor Carrier Safety Regulations (FMCSR), and therefore, the mere adoption of regulations to avoid preemption or to grant enforcement authority of preexisting regulations provides no additional impact on the industry. The proposed regulations updated and amended in Title 13 CCR, Section 1213, are already applicable and enforceable on businesses subject to federal jurisdiction, pursuant to Title 49 CFR, Part 395. Business subject to state jurisdiction are also required to meet current statutory and regulatory HOS regulations. The proposed regulations provide relief from these HOS regulations when certain conditions exist and do not place economic burdens on the affected entities.

There is no indication that businesses operating “regulated” vehicles under the proposed regulations will incur the need to add or reduce personnel. The changes allow more flexibility in staffing and responding to incidents outlined in the proposed regulation.

The CHP has determined these regulatory amendments will result in:

- No increased costs for motor carriers. The proposed regulatory amendments only clarify existing regulation, without affecting the application, or eliminate regulation which is no longer applicable.
- No significant compliance cost for persons, businesses, or agencies 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.
- No adverse impact on the competitiveness of this state to retain businesses, as the majority of other states (especially neighboring states) have already adopted these or similar requirements.
- No discernable benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

Benefits of the Regulation

The CHP has evaluated the potential benefits of this proposed regulatory action. This proposed regulatory action will continue to provide benefits, which include a nonmonetary benefit to the protection and safety of public health, employees, and the environment. The CHP has made an initial determination that this proposed regulatory change will:

- Have no effect on housing costs;
- Not impose new mandates upon local agencies or school districts;
- Involve 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 costs or savings to any state agency, nor costs or savings in federal funding to the state;
- 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;
- Continue to provide a nonmonetary benefit to the protection and safety of public health, employees, and the environment by providing a regulatory basis for enforcement efforts as they relate to the CFR; and
- Have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

FISCAL IMPACT TO THE STATE

The CHP has determined these regulation amendments will not result in a fiscal impact to the state.

ALTERNATIVES

The CHP has not identified or been made aware of an alternative which would be more effective and less burdensome for the purpose for which this action is proposed, would be as effective and less burdensome to the affected private persons for the purposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Alternatives Identified and Reviewed:

Alternative 1: Amend the existing regulations for consistency with California statute; federal regulations; and for clarity; thereby providing consistent, accurate application of regulations by motor carriers and law enforcement personnel.

Alternative 2: Make no changes to the existing regulations. The current regulations provide an HOS exemption, under certain circumstances, for drivers who currently are exempt from all HOS limits under Section 34501.2(b)(3) CVC, rendering the regulation moot. Additionally, the existing regulations, which would be amended by this rulemaking, are often misapplied by both law enforcement and industry personnel, requiring the CHP to repeatedly interpret the regulatory intent. Failure to lend definition to these regulations would continue to place the motor carrier industry at a disadvantage by their inability to comply due to a misunderstanding of the regulations.