

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

NOTICE OF PROPOSED RULEMAKING

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)

Section 2400 of the California Vehicle Code (CVC) authorizes the Commissioner of the California Highway Patrol (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 allows 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 (motor trucks, tractor-trailer combinations, buses, etc.). The adopted regulations are contained in Title 13 of the California Code of Regulations (CCR).

The CHP proposes to amend the Motor Carrier Safety Regulations contained in Title 13 CCR to be consistent with the CVC and the current version of adopted federal regulations in Title 49 of the Code of Federal Regulations (CFR), Part 395.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The definition for "On-duty Time" in Title 13 CCR, Section 1201(u), is no longer consistent with the same definition found in Title 49 CFR, Section 395.2. Current federal regulation, contained in Title 49 CFR, requires 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 upon 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, 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])

¹ Section 355.25 of Title 49, CFR

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; 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 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 drivers' 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 similar 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 government 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 a 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. The proposed exception is inconsistent with existing drivers' HOS limits applicable to drivers engaged in intrastate transportation of general freight; however, the proposed exception is consistent with the Federal Motor Carrier Safety Assistance Program drivers' HOS tolerance guidelines contained in Title 49 CFR, Part 350.341, applicable to state drivers' HOS requirements. 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.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

The CHP has determined the proposed regulations are neither inconsistent, nor incompatible, with existing regulations. After conducting a review of existing state regulations for any regulations that would relate to or affect this area, the CHP has concluded that these are the only regulations that concern HOS.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

This amendment 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.

WRITTEN COMMENT PERIOD

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 David Kelly
P.O. Box 942898
Sacramento, CA 94298-0001

Written comments will be accepted until 5:00 P.M., on May 6, 2019.

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 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 requester'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 David Kelly 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 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.

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

Effect on small business: The CHP has determined that the proposed regulations will not affect small business. The overlying statute (Section 34501.2 CVC) mandates California's drivers' HOS regulations applicable to all drivers of commercial motor vehicles remain consistent with federal drivers' HOS regulations. This proposal will amend those regulations as required by statute. However, the regulated community is encouraged to respond during the public comment period of this regulatory process if significant impacts are identified.

Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The CHP has made an initial determination 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 HOS.

ALTERNATIVES

In accordance with Section 11346.5(a)(13) GC, the CHP must determine that no reasonable alternative considered, or which 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 1201

Note: Authority cited: Sections 31401, 34501, 34501.5, 34508, and 34520, Vehicle Code; and Section 39831, Education Code. Reference: Sections 336, 378, 545, 546, 27375, 31401, 34501, 34501.2, 34501.5, 34508, and 34520, Vehicle Code; and Section 39831, Education Code.

Section 1212

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.

Section 1212.5

Note: Authority cited: Sections 31401, 34500.4, 34501, 34501.5, and 34508, Vehicle Code; and Section 39831, Education Code. Reference: Sections 545, 31401, 34003, 34500.4, 34501, 34501.2, 34501.5, and 34508, Vehicle Code; and Section 39831, Education Code.

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
JAMES EPPERSON, Chief
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