

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

INITIAL STATEMENT OF REASONS

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2,
CHAPTER 6 AMEND ARTICLE 3, SECTION 1162.1 AND
CHAPTER 6.5 AMEND ARTICLE 8, SECTION 1242

**FIRE EXTINGUISHERS
(CHP-R-15-04)**

PURPOSE AND NECESSITY 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 32002, 34501, 34501.2, and 34501.5 CVC authorize the CHP to adopt reasonable rules and regulations that, in the judgment of the CHP, are designed to promote the safe operation of vehicles described in Section 34500 CVC including, but not limited to, controlled substances and alcohol testing of drivers by motor carriers, hours of service of drivers, equipment, fuel containers, fuel operations, inspection, maintenance, record keeping, accident reports, and drawbridges. The adopted regulations are contained in Title 13, California Code of Regulations (CCR).

Current federal regulation contained in Title 49, Code of Federal Regulations (CFR) requires states to remain compatible with federal regulations. Current state regulation contained in Title 13, CCR, Sections 1162.1 and 1242 are currently in jeopardy of federal preemption, therefore, an amendment is needed to create consistency between state and federal regulations. State regulations do not incorporate the current federal fire extinguisher laws and regulations; therefore, creating an inconsistency between state and federal regulations. In order for the CHP to fulfill the mandate established in Section 34501(a) CVC, and to be in compliance with federal law, it is necessary for the CHP to align fire extinguisher requirements contained in Title 13, CCR, Sections 1162.1 and 1242. California regulations are more stringent than federal requirements which creates an unnecessary burden on interstate carriers; therefore, alignment with federal regulations would increase compliance without jeopardizing safety. This proposed rulemaking action will update state regulations to be consistent with updated federal regulations in Title 49, Code of Federal Regulations (CFR), thereby, allowing California businesses to compete with out-of-state businesses under identical safety rules.

SECTION BY SECTION OVERVIEW

Title 13, California Code of Regulations, Section 1162.1 – Vehicle Safety Equipment

This section will be amended to remove the alternative to carry two fire extinguishers for a combined rating of 10 B:C. This amendment would create a consistency between state and federal regulations.

This section proposes to amend subsection (a)(3), which would no longer require every tank vehicle or combination of tank vehicles used to transport flammable or combustible liquids to be equipped with at least one fire extinguisher with a rating of not less than 20 B:C. This subsection contains specific service instructions and an exemption for fire extinguishers with a rating of 12 B:C, manufactured before July 1, 1970. Both parts of this subsection are proposed to be removed.

Section 1242 – Fire Extinguishers.

This section proposes to amend subsection (d) to include language consistent with federal regulations, as it refers to the securement of a fire extinguisher in a commercial motor vehicle.

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 either maintain reasonable exceptions for carriers not directly subject to federal jurisdiction (to minimize impact on businesses), or they simply adopt federal regulations which already applies to the majority of the regulated community, thereby eliminating a conflict between state and federal regulations.

ALTERNATIVES

The CHP has not identified, nor been made aware of, an alternative which would be as effective and less burdensome to affected parties than the proposed action. Additionally, the CHP has not identified an alternative which would be more cost effective to affected parties and equally effective in implementation the statutory policy or other provision of law.

Alternatives Identified and Rejected:

Alternative 1: Do nothing and allow the outdated section to remain in Title 13, CCR: This could result in federal preemption of California's motor carrier safety regulations. If preempted, the state could not enforce any of these regulations as they apply to transportation in commerce; therefore, jeopardizing public safety and environmental protection. Failure to maintain consistency with the Federal Motor Carrier Safety Regulations (FMCSR) 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 FMCSR 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 FMCSR 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).

Alternative 3: Amend Title 13, CCR for consistency with Title 49, CFR, Section 393.95. This is the alternative selected as it meets the safety needs of the public and the Department.

ECONOMIC IMPACT ANALYSIS

Creation or Elimination of Jobs in the State of California

The CHP has made an initial determination this proposed regulatory action 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. Additionally, 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.

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

The CHP has not identified any significant adverse impact on businesses. Businesses subject to federal jurisdiction are currently required to comply with the FMCSR, 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 regulations updated and amended in Title 13, CCR, Sections 1162.1 and 1242 are already applicable and enforceable on businesses subject to federal jurisdiction, pursuant to Title 49, CFR, Parts 385-399. Businesses involved in the transportation of interstate and intrastate commerce via commercial trucking may choose to purchase the current Title 49, CFR, Volume 5, subtitle B - Chapter III, October 1, 2014, Edition at a cost of approximately \$20 annually through various vendors. The regulations are also available online at:

<http://www.gpo.gov/fdsys/pkg/CFR-2014-title49-vol5/pdf/CFR-2014-title49-vol5-subtitleB-chapIII.pdf>

These businesses will not otherwise experience any greater effect due to the implementation of the listed sections of Title 49, CFR, Volume 5, subtitle B - Chapter III, October 1, 2014, Edition, other than what is already commonly known and accepted.

Benefits of the Regulation

This rulemaking action will ensure that interstate carriers are not unnecessarily burdened by California's more stringent fire extinguisher regulations; therefore, alignment with federal regulations will increase compliance without jeopardizing safety. Additionally, This proposed regulatory action will continue to provide a nonmonetary benefit to the protection and safety of public health, employees, and safety to the environment because changes to the application of the regulation merely brings the State's regulation in conformance with existing federal regulation. Minor additions and changes to the regulations are clarifying in nature and all are within existing requirements for industry.

The CHP has made an initial determination this proposed regulatory action:

- Will have no effect on housing costs;
- Will impose no new mandate upon local agencies or school districts;
- 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 require reimbursement, no cost or savings to any state agency, nor costs or savings in federal funding to the state;
- 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;
- Will continue to 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;
- 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
- Will provide safety to the environment by providing an updated regulatory authority for enforcement efforts.

FISCAL IMPACT TO THE STATE

The CHP has determined these regulation amendments will result in:

- No significant increase in costs for owners or operators of commercial vehicles. This rulemaking action will simply provide a regulatory basis to provide consistency between California's regulations and the FMCSR which are already being used by the CHP 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 this state to retain businesses, as state, provincial, and national governments throughout North America have already adopted these requirements.