

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

INITIAL STATEMENT OF REASONS

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 6, ARTICLE 3,
AMEND SECTIONS 1160.1, 1160.2, 1160.3, AND 1160.4

GENERAL HAZARDOUS MATERIALS REGULATIONS (CHP-R-16-05)

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 persons subject to federal jurisdiction pursuant to Title 49, CFR, Part 171, as required by federal law. Additionally, this rulemaking will clarify existing regulations for persons not subject to federal jurisdiction.

This rulemaking action adopts the October 1, 2015, edition of the federal HMR incorporated by reference. In an effort to fulfill the plain language requirements of Section 6219 of the California Government Code, this action will clarify regulations which provide exceptions for persons transporting HM which are not subject to federal jurisdiction. Lastly, it will provide alternate methods of compliance for existing regulations. The intent of this rulemaking action is to fulfill federal requirements and consider the competitiveness of California businesses by eliminating or modifying, to the extent possible, regulations which represent 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 1160.1, Exceptions and Special Applications

This section establishes the applicability of and exceptions to the state's HMR. The state's HMR are applicable to the transportation of HM on the state's highways and although the state's HMR apply to all persons transporting HM, the state is authorized to provide exceptions for persons not subject to federal jurisdiction. The existing language in Title 13, CCR, Sections 1160.1(b)

and 1160.1(c), and the definitions in Title 13, CCR, Section 1160.3, are redundant, inconsistent, and could confuse the regulated community. The intent of amending these sections, is to clearly state that only persons which are not subject to federal jurisdiction may utilize the state's exceptions to the HMR. Persons which are subject to federal jurisdiction must comply with the federal HMR and may only use the federal exceptions to the HMR.

Title 13, CCR, Section 1160.1(g), provides an exception from the shipping paper requirement for certain materials when transported in quantities of 500 pounds or less. Additionally, this section includes a list of certain materials which are not granted the exception, which includes packages of HM labeled "KEEP AWAY FROM FOOD." On January 1, 1999, the "KEEP AWAY FROM FOOD" label designation was removed from the federal HMR. Subsection (g) will be amended to remove reference to the aforementioned label.

Lastly, Title 13, CCR, Section 1160.1(m), provides an exception from the emergency response information requirement for certain materials. Packages of HM labeled "KEEP AWAY FROM FOOD" are excluded from the exception. As noted previously, the "KEEP AWAY FROM FOOD" label designation has been removed from the federal HMR. Subsection (m) will be amended to remove reference to the aforementioned label.

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 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) of the CVC, and be in compliance with federal law, it must align the HMR applicable to persons subject to federal jurisdiction pursuant to Title 49, CFR, Part 171. This alignment will reflect the change from the October 1, 2014, to the October 1, 2015, printed edition of the federal HMR.

Title 13, California Code of Regulations, Division 2, Chapter 6, Article 3, Section 1160.3, Definitions

The state's HMR are applicable to the transportation of HM on the state's highways. Although the state's HMR apply to all persons transporting HM, the state is authorized to provide exceptions for persons not subject to federal jurisdiction. Many exceptions are only applicable to "private carriers" as defined in this section. The state is not authorized to provide exceptions to carriers which are directly subject to federal jurisdiction (e.g., transporting HM in commerce). The proposed amendment will define a "private carrier" as only those persons who are not subject to federal jurisdiction. This includes transporting HM for personal use or by governmental agencies. It will also align the definition of "hazardous material" with the definition contained in the CVC.

Title 13, California Code of Regulations, Division 2, Chapter 6, Article 3, Section 1160.4, General Provisions

Prior to transporting certain amounts and types of HM, the CVC and the state's HMR require persons to obtain an HM transportation license issued by the Department. Title 13, CCR, Section 1160.4(g)(7), requires a person transporting HM, in a quantity which would require a license, to carry a copy of the license in the motor vehicle. The proposed amendment would allow for a person to fulfill this requirement by either carrying a copy of the license or another document bearing the license number issued pursuant to this article. This change would be less burdensome for nationwide carriers who manage large vehicle fleets. It would remove the necessity for paper copies of the license to be prepared and distributed to vehicles prior to expiration. Additionally, the recent implementation of the Department's Carrier Information Reporting and Evaluation System, now provides departmental personnel real-time access to HM licensing information. This alternative is consistent with the carrying of the federal HM registration and the HM safety permit documents. Lastly, the requirements for persons to carry copies of their federal HM registration or HM safety permit are removed from this section. The specific requirements for those documents currently exist in other sections within this article and in Article 1 of Chapter 6.5 of this Division.

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 made available Part 107, Parts 171 through 180, and Part 393 Title 49, CFR upon request, to the affected public. Copies of this document, or relevant portions thereof, can be obtained from the CHP by calling 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 CHP, CVS, 601 North 7th Street, Sacramento, California 95811. Interested parties are advised to call for an appointment.

ALTERNATIVES

The CHP has not identified any alternative, including the no action alternative, which would be more effective and less burdensome for the purpose for which this action is proposed. Additionally, the CHP has not identified any alternative which would be as effective and less burdensome to affected persons other than the action being proposed.

Alternatives Identified and Reviewed

1. Amend the existing regulations for consistency with the federal regulations.
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).
3. Make no changes to the existing regulations. This could result in federal preemption of California's HM regulations. 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.

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. The amendments in Title 13, CCR, Sections 1160.1 and 1160.3, are not applicable to businesses. Lastly, Title 13, CCR, Section 1160.4 will provide an alternate

method of compliance which will be less burdensome to industry. 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, 2015 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, 2015 Edition, other than what is already commonly known and accepted.

Impact on Jobs and Business in the State of California

The CHP has made an initial determination that 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.

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 safety to 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 industry.

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 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; (6) will continue to provide a nonmonetary benefit to the protection and safety of public health and employees; and (7) will provide 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 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 California to retain businesses, as state, provincial, and national governments throughout North America have already adopted these requirements.