

# DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

## PROPOSED TEXT

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)

*Existing text:* .....Times New Roman 12 point font.

*Additions:* .....Times New Roman 12 point font with single underline.

*Deletions:* .....~~Times New Roman 12 point font with strikethrough~~

#### § 1160.1. Exceptions and Special Applications.

(a) Application to Shippers. Shippers are subject to all provisions of this article except Sections 1160.4(g), 1162.1, 1166 and 1167, and are subject to Section 1164 only when loading or directing the loading of any vehicle.

~~(b) Application to Non-commercial Transportation. The exceptions contained in this section shall only apply to the transportation of hazardous materials (HM) by carriers when not directly subject to federal jurisdiction pursuant to 49 CFR Part 171 (i.e., transporting HM in intrastate, interstate or foreign commerce [transported for a fee or used for commercial purposes]).~~

~~(e)~~ (b) Alternative Exceptions for Non-commercial Carriers. Only private carriers, as defined in Section 1160.3(h), transporting hazardous materials for non-commercial purposes (i.e., transporting hazardous materials for personal use or by a federal, state or local government agency) may utilize the exceptions contained in subsections (e) through (m) of this section. ~~or Alternatively, carriers may use the exceptions contained in either 49 CFR 173.6 or 49 CFR 173.8(c); but not Carriers may not utilize both the exceptions in subdivisions (e) through (m) and the referenced 49 CFR exceptions at one time simultaneously~~ on the same vehicle or combination of vehicles.

~~(d)~~ (c) Liquefied Petroleum Gas. Except as provided in Sections 1160.4(g), 1160.5, 1161, 1161.3, 1161.6, 1161.7, 1162, 1163(d), 1166, and 1167, this article shall not apply to the transportation of liquefied petroleum gas in cargo tanks subject to regulations of the Division of Occupational Safety and Health, Department of Industrial Relations contained in Title 8, California Code of Regulations, Chapter 4, Subchapter 1 (Unfired Pressure Vessel Safety Orders), but it shall apply to liquefied petroleum gas transported in cylinders and portable tanks.

(1) This subsection shall not apply to the transportation of liquefied petroleum gas in cargo tanks subject to federal jurisdiction.

~~(e)~~(d) Incidentally Transported Materials. This article shall not apply to the transportation of the following:

(1) Batteries in vehicle or auxiliary equipment ignition or lighting systems.

(2) Flammable compressed gases or flammable and/or combustible liquids used exclusively in vehicle or auxiliary equipment fuel, heating, refrigeration, or cooking systems.

(3) Batteries, compressed air in cylinders or tanks not exceeding 200 psi, inflated tires or less than 10 gallons of flammable liquid fuels on tow trucks or similar roadside service or repair vehicles or otherwise transported in private (not for-hire) carriage. Containers used to transport flammable liquids under this subsection shall not exceed 5 gallons capacity each, and shall be constructed and maintained in conformance with a nationally recognized fuel storage and dispensing standard for the fuel being transported (e.g., U.S. Department of Transportation (DOT), United Nations (UN), National Fire Protection Association (NFPA), American National Standards Institute (ANSI), American Society for Testing and Materials (ASTM), Underwriter Laboratories (UL), Factory Mutual (FM), or U.S. Department of Defense (military) specifications (U.S. Mil. Spec.).

(4) Highway fusees, and liquid-burning emergency flares and/or red electric lanterns that conform to 49 CFR 393.95~~(f)~~~~(i)~~(j), being transported expressly for highway warning purposes or as authorized for use pursuant to Vehicle Code Section 25301, unless otherwise prohibited by this Division or the Vehicle Code. This exception does not apply to broken fusees or fusees with missing protective caps.

(5) Fire extinguishers being transported expressly for in-transit emergency fire suppression purposes.

(6) Flammable or combustible distillate fuels transported in a single compartmentalized or noncompartmentalized metal cargo tank of 450 liters (119 gallons) or less total volumetric capacity, or both flammable and combustible distillate fuels transported in a single compartmentalized metal cargo tank of 450 liters (119 gallons) or less total volumetric capacity, by a private carrier and used to service other vehicles or equipment. The tank shall be in compliance with 49 CFR 173.24(b), and the tank, its components, and attached equipment must be secured to the vehicle and protected from damage or leakage of the lading should the vehicle overturn.

(fe) Consumer Commodity Exception. The outside packaging and marking exception contained in 49 CFR 173.156 for hazardous materials authorized to be renamed “Consumer commodity” and reclassified ORM-D is extended to transportation by a private carrier from either a distribution center or retail outlet, or subsequent transportation for incidental use.

(gf) Shipping Paper Exception. Section 1161, pertaining to shipping papers, shall not apply to a private carrier transporting any one of the following:

(1) Not more than 227 kilograms (500 pounds) aggregate gross weight (including the packaging) of hazardous materials other than:

(A) Any materials listed in 49 CFR 172.504(a), Table I, or

(B) Any materials for which an INFECTIOUS SUBSTANCE, ~~KEEP AWAY FROM FOOD~~, ORGANIC PEROXIDE, SPONTANEOUSLY COMBUSTIBLE, POISON or RADIOACTIVE label is required, or

(C) Any materials which require a Uniform Hazardous Waste Manifest pursuant to Section 25160 of the Health and Safety Code.

(2) Anhydrous ammonia in a single cargo tank of not more than 4,524 liters (1,200 gallons) capacity transported not more than 30 miles from the filling point or in a trailer-mounted cargo tank in compliance with Section 1163(f)(1) of this article.

(3) Not more than 1 cylinder each of argon, oxygen, carbon dioxide, acetylene, helium, or nitrogen if the gross weight is less than 454 kilograms (1,001 pounds), provided containers and labeling comply with Sections 1161.2 and 1163 of this article.

(hg) Storage Tanks. Storage tanks used only for off-highway storage and dispensing of flammable and/or combustible distillate fuels and which contain only residue are excepted from specified provisions of this article as indicated below, when transported in accordance with the following:

(1) Except for subsection (d), Section 1163 shall not apply to portable or stationary above ground storage tanks when in conformance with 49 CFR 173.24(b).

(2) Except for Section 1163(d), this article shall not apply to underground storage tanks when prepared for shipment in accordance with American Petroleum Institute Recommended Practice 1604, Second Edition, December 1987. (This publication may be obtained from the American Petroleum Institute, 1220 L Street, Northwest, Washington D.C. 20005.)

(3) For purposes of this subsection, “residue” means the material remaining after the tank has been unloaded to the maximum extent practicable via the normal discharge opening. In no event shall the tank contain more than 454 liters (120 gallons) of any liquid.

(4) Storage tanks shall not be transported on the same vehicle with any other hazardous materials.

(~~h~~) Traffic Paint Applicator. Traffic paint applicator systems containing flammable paint are excepted from the provisions of Section 1163, except subsection (d), when in conformance with 49 CFR 173.24(b).

(~~j~~) Mobile Meter Calibration Units. Mobile meter calibration units containing flammable distillate fuel residue or liquefied petroleum gas residue are excepted from the provisions of Section 1163, except subsection (d), when in conformance with 49 CFR 173.24(b) and emptied to the maximum extent practicable via the normal discharge opening.

(~~k~~) Self Contained Breathing Apparatus. Compressed air breathing apparatus transported solely for in-transit emergencies or for the safety of persons conducting loading or unloading operations are not subject to this article, except Sections 1161.2, 1161.3 and 1163, when the compressed gas cylinders are mounted or otherwise secured to the vehicle during transit to prevent sliding, falling, tipping, rolling, or damage to the valving should the vehicle overturn.

(~~k~~) Breathing Air Recharge Units. Air cylinders or tanks operating under a Division of Occupational Safety and Health, Department of Industrial Relations operating permit and used to fill/recharge breathing air cylinders are not subject to Section 1163, except subsection (d), when in conformance with 49 CFR 173.24(b).

(~~m~~) Emergency Response Information. Section 1161.6 shall only apply to HM shipments for which the display of placards is required and/or for which an INFECTIOUS SUBSTANCE, ~~KEEP AWAY FROM FOOD~~, ORGANIC PEROXIDE, SPONTANEOUSLY COMBUSTIBLE, POISON or RADIOACTIVE label is required pursuant to this article; and to shipments that would have otherwise been required to be placarded and/or labeled, notwithstanding compliance with an applicable U.S. Department of Transportation placarding and/or labeling exemption issued pursuant to 49 CFR Part 107, Subpart B.

Note: Authority cited: Section 2402.7, 34002, 34019 and 34501, Vehicle Code. Reference: Sections 2402.7, 34002, 34019 and 34501, Vehicle Code.

**§ 1160.2. U.S. Department of Transportation Regulations.**

(a) Incorporation by Reference. This article incorporates by reference portions of 49 CFR Part 107, Parts 171 through 180, and Part 393 to the extent specified in this article. Unless otherwise specified, all references in this article to 49 CFR for persons:

(1) Not subject to federal jurisdiction per 49 CFR Part 171, are those regulations published on October 1, 1999.

(2) Subject to federal jurisdiction per 49 CFR Part 171, are regulations published on October 1, ~~2014~~2015.

(b) Federal Preeminence. Provisions of the Hazardous Materials Transportation Act recodified into Title 49 U.S. Code (49 U.S.C.) Section 5125, preempt any requirements of any state or political subdivision thereof inconsistent with the act or federal HM Regulations relating to hazardous materials transported in commerce. The U.S. Department of Transportation (DOT), Pipeline and Hazardous Materials Administration (PHMSA) may except any material from being classed as hazardous, or change any classification or transportation requirement in accordance with authority granted that agency, and such action shall govern the application of this article. In lieu of compliance with the provisions of this article, hazardous materials shipment preparation and transportation in compliance with a later promulgated PHMSA requirements, exemption or exception than that adopted by reference in this article is permitted. This includes compliance with a later promulgated requirement prior to its effective date during any period of time where earlier compliance is authorized in the applicable final rulemaking.

(c) Limited Applications. 49 CFR Parts 174 and 179 shall apply only as referenced in 49 CFR Parts 173, 177, and 178.

(d) Motor Carrier Safety Requirements. Provisions of 49 CFR Part 393 applies as incorporated in cargo tank specifications referenced in 49 CFR Part 178.

(e) Referenced Regulations. Copies of 49 CFR, can be obtained from:

SUPERINTENDENT OF DOCUMENTS

U.S. GOVERNMENT PRINTING OFFICE

PO BOX 979050

ST LOUIS, MO 63197-9000

(202) 512-1800

Internet purchases: <http://bookstore.gpo.gov>

Internet Access. Title 49 CFR may also be accessed through the internet at the Government Printing Office's web site at "<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>" or through the U.S. Department of Transportation, PHMSA's web site at "<http://phmsa.dot.gov/regulations>".

Note: Authority cited: Sections 2402.7 and 34501, Vehicle Code. Reference: Sections 2402.7 and 34501, Vehicle Code.

### **§ 1160.3. Definitions.**

(a) The meanings of terms contained in this article and not defined in this article are the same as those contained in 49 CFR 171.8.

(b) "Carrier" means any person as defined in Section 1235.1, who transports hazardous materials subject to this article.

(c) "Department" means Department of the California Highway Patrol.

(d) "Hazardous material" means a substance or material, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property ~~when transported in commerce~~ during transportation, and which has been so designated. The term includes hazardous substances, hazardous wastes, marine pollutants, and elevated temperature materials as defined in 49 CFR 171.8, materials designated as hazardous under the provisions of 49 CFR Sections 172.101 and 172.102, and materials that meet the defining criteria for hazard classes and divisions in 49 CFR Part 173.

(e) "License" as used in this article means a license issued by the Department to transport hazardous materials in California.

(f) "New License" means any license issued to a carrier pursuant to an application and required fees received more than 30 days after the date of expiration of any current or previous license.

(g) "Original License" means a license printed and issued by the Department, and forwarded to the carrier.

(h) "Private carrier" as used in this article means any carrier who transports hazardous materials ~~enroute~~ and is not subject to federal jurisdiction pursuant to 49 CFR Part 171 ~~for use in~~

his/her occupation or for other purpose without reward or compensation (i.e., transporting hazardous materials for personal use or by a federal, state or local government agency).

(i) “Renewal License” means a license issued pursuant to an application and required fees received not more than thirty days after the expiration of an existing license.

(j) “Shipper” means any person who prepares or offers hazardous materials for transportation. A shipper who also transports its own material is both a shipper and a carrier.

(k) “Initial License” means any new license and any license issued to a carrier not previously issued a license.

(l) “Temporary License” means a probationary license valid for not more than 60 days from the date of application. A temporary license is immediately null and void when an applicant for a new or initial license is assigned an unsatisfactory rating as the result of any inspection conducted pursuant to Section 34501, 34501.12, or 34520 of the Vehicle Code.

Note: Authority cited: Sections 2402.7, 2532, 32000.5 and 34501, Vehicle Code. Reference: Sections 32000.5 and 34501, Vehicle Code.

#### **§ 1160.4. General Provisions.**

(a) Applicability.

(1) Shippers shall not offer and carriers shall not transport any shipment of a HM not prepared for transportation in accordance with this Article.

(2) A carrier and a shipper/carrier with one or more terminal locations in California shall be in compliance with Section 34501.12 of the Vehicle Code.

(3) Shippers shall verify the carrier holds a valid Hazardous Materials Transportation License prior to offering HM for transportation in quantities requiring the license.

(b) References to Statutes and Regulations. Any reference to provisions of these regulations or to statutes shall apply to all amendments and additions made to such regulatory or statutory provisions.

(c) Alternate Method of Compliance. Upon a finding that an alternate method of compliance provides protection to the public equal to or exceeding that afforded by compliance with provisions of this article, the Department may authorize use of such alternate method subject to the following:

(1) Any alternate method of compliance shall be permitted only after application has been made to and written authorization obtained from the Department.

(2) Written authorization shall be carried in each transporting vehicle or combination.

(3) No authorization for an alternate method of compliance shall be accorded any highway carrier subject to federal jurisdiction, nor shall such authorization apply to the preparation of HM for interstate transportation.

(4) No authorization for an alternate method of compliance shall be granted when a special permit or exemption has been issued by the U.S. Department of Transportation, Associate Administrator for Hazardous Materials Safety authorizing the requested alternate method.

(d) Special Permits and Exemptions. Compliance with requirements of special permits and exemptions issued by the U.S. Department of Transportation, Associate Administrator for Hazardous Materials Safety in accordance with 49 CFR Part 107, shall be deemed in compliance with equivalent provisions of this article.

(e) Inspection by Department. Carriers and shippers shall afford duly authorized employees of the Department reasonable opportunity to enter terminals and other locations to determine compliance with the provisions of this article.

(f) Unsafe Transportation Prohibited. Authorized employees of the Department shall declare and mark any vehicle out-of-service (OOS) when the condition, securement, preparation of lading, filling, closures, or protective devices on cylinders and tanks would be hazardous to life and property during transportation.

(1) No carrier shall require or permit any person to operate nor shall any person operate any vehicle marked OOS until all necessary corrections have been completed.

(2) No person shall remove any OOS notice from any vehicle prior to the completion of all corrections required by the notice.

(g) Hazardous Materials Transportation License.

(1) Application. The carrier shall submit a completed Form CHP 361M (Rev. 06-12), Application for Hazardous Materials Transportation License. The carrier shall include all required information on the Form CHP 361M listed below:

(A) Company/Applicant Name.

(B) Additional Name the Company is Doing Business As.

(C) Name Change.



- (D) Federal Employer Identification Number.
- (E) Social Security Number (must be provided for individuals).
- (F) Telephone Number.
- (G) Main Office Street Address.
- (H) Mailing Address (if different from the main office address).
- (I) Reason for Application.
- (J) Ownership Information.
- (K) Mail License Attention.
- (L) California Carrier Identification Number.
- (M) CHP Hazardous Materials Transportation License Number and Expiration Date (if applicable).
- (N) MC/MX Number (if applicable).
- (O) USDOT Number (if applicable).
- (P) California Corporation Number (if applicable).
- (Q) Pipeline and Hazardous Materials Safety Administration Registration Number and Expiration Date (if applicable).
- (R) Federal Motor Carrier Safety Administration Hazardous Materials Safety Permit Number and Expiration Date.
- (S) Specialized Highway Routing Requirement Information.
- (T) Applicant Background.
  - (1) An explanation of all “yes” answers to Applicant Background questions are required to be attached to the application.
- (U) Carrier Identification of Terminals.
- (V) Certification Information.
  - (1) Original authorized certifier's signature.
  - (2) The printed or typed name and title of the certifier.
  - (3) The date of certification.
- (2) Fees. The fee for a new or initial license is one hundred dollars (\$100), the fee for a renewal license is seventy-five dollars (\$75), and the fee for a duplicate license is five dollars (\$5.00).

(3) Original License. The original valid license shall be kept at the licensee's place of business as indicated on the license and presented to any duly authorized employee of the Department upon request.

(A) The original license shall be immediately surrendered to the Department upon cancellation, suspension, or revocation. The carrier shall immediately forward the original license to the California Highway Patrol, Commercial Vehicle Section, via US Mail or other appropriate means and shall destroy all copies.

(B) A license may be revoked without prejudice in the event the license is issued in error.

(C) A license shall not be issued to any carrier unless all appropriate applications and fees are on file with the Department.

(D) The Department shall not issue a new or initial license to any carrier subject to Section 34501.12 of the Vehicle Code unless each terminal from which HM carrying vehicles are operated is in compliance with the requirements of Section 34501.12 and is currently rated satisfactory.

(E) Except as otherwise provided, the Department shall not issue a new or initial license to any carrier who has received an unsatisfactory rating within the previous three years as the result of any inspection conducted pursuant to Section 34501, 34501.12, or 34520 of the Vehicle Code, unless the carrier has corrected the unsatisfactory rating prior to applying for the license. The correction shall be evidenced by the assignment of a satisfactory or conditional rating, issued by the Department, as the result of a reinspection conducted to ensure remedy of any existing unsatisfactory conditions and for which the previous unsatisfactory rating was assigned. In order to ensure issuance of a license is not unreasonably hindered, the Department may require the carrier to provide documented proof of correction upon request.

(F) An original license shall not be issued unless the carrier is in compliance with the Code of Federal Regulations, Title 49, Part 107, Subpart G, and Part 171, Subpart A. The Department may require proof of compliance with applicable requirements prior to the issuance of any license.

(4) Renewal License. Carriers with a valid license may renew the license if the renewal request and required fees are on file with the Department within the 30 day period following the expiration of the existing license when accompanied by the fee for a new license and;

(A) No proof of transportation of HM is discovered for any period during which the carrier was not properly licensed.

(5) New License. Carriers who have previously held a valid license may be issued a New License under the following conditions:

(A) The request and required fees are received by the Department more than 30 days after the expiration of the existing license.

(B) No proof of transportation of HM is discovered in any period during which the carrier was not properly licensed.

(6) It shall be the responsibility of the carrier to obtain an application and ensure a license is issued or renewed, prior to the transportation of HM.

(7) Copy in each vehicle. A legible copy of the license ~~and any registration or special permit required by the Secretary of the Department of Transportation~~ or another document bearing the license number, identified as the license issued by the Department, shall be carried in any vehicle or combination of vehicles transporting HM and shall be presented to any peace officer or authorized employee upon request.

(8) Temporary License. Carriers subject to and in compliance with the provisions of Vehicle Code Sections 34501, 34501.12, and 34520, who have submitted a properly completed application and the required license fee to the Department and who have not been assigned an unsatisfactory compliance rating within the preceding three years, may use either of the following as a temporary license for not more than 60 days when carried in the vehicle:

(A) A copy of the carrier's properly completed application for license to transport HM and a copy of the check or money order indicating payment of the required fee.

(B) A copy of the carrier's properly completed application for license to transport HM and a telegraphic money order receipt, or copy thereof, made payable to the California Highway Patrol, indicating payment of the required fee for a license to transport HM.

(9) The Department's license issuance and verification process should not unreasonably hinder a carrier's capacity to transport HM.

(10) Exceptions. Federal, State, county, city, and city and county agencies, and other political subdivisions of the State including, but not limited to, school, irrigation, and fire protection districts are exempt from the licensing requirements of Vehicle Code Section 32000.5.

Internet Access. The California Highway Patrol Form CHP 361M (Rev. 06-12), Application for Hazardous Materials Transportation License, instructions for completing the application and related documents are available on the Internet at <http://www.chp.ca.gov/publications/index.html>.

Note: Authority cited: Sections 2532, 32000.5, 32002 and 34501, Vehicle Code. Reference: Sections 2501, 2502, 32000.5, 32001 and 34501, Vehicle Code.