

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

INITIAL STATEMENT OF REASONS

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 6.5, ARTICLE 6,
ADD SECTION 1233.2

BASIC INSPECTION OF TERMINALS INSPECTION SELECTION (CHP-R-2017-01)

PROBLEM

As a result of Assembly Bill 529 (Lowenthal, Chapter 500, Statutes of 2013), the Biennial Inspection of Terminals Program contained in Section 34501.12 of the California Vehicle Code (CVC) was re-branded as the Basic Inspection of Terminals (BIT) Program and changed from a time-based inspection system to a performance-based inspection selection system.

Under the Biennial Inspection of Terminals Program, every terminal from which any commercial vehicle subject to the program was operated was required to be inspected every 25 months. Under the BIT Program, safety performance scoring is used to select motor carrier terminals for inspection.

The performance-based inspection selection system utilizes the Federal Motor Carrier Safety Administration (FMCSA) Safety Measurement System (SMS) to assess on-highway safety performance of motor carriers. Violations detected during inspection and enforcement contacts with commercial vehicle operators are electronically uploaded to the SMS and used to determine which motor carrier terminals in California will be selected for inspection as required by Section 34501.12 CVC, under the BIT Program. This is intended to direct the limited inspection resources of the California Highway Patrol (CHP) to proven noncompliant motor carrier operations.

PURPOSE AND NECESSITY OF REGULATIONS

Proposed new Section 1233.2 is added to Title 13 of the California Code of Regulations (CCR) to establish motor carrier safety performance scoring and use of the scoring to select terminals for inspections pursuant to Section 34501.12 CVC. Section 34501.12 CVC requires the CHP to incorporate scoring methodologies consistent with those in use by the FMCSA to assess motor carrier safety performance. Additionally, the section provides the CHP authority to utilize the FMCSA scoring system without regard to how the scoring system is used by the safety intervention processes, procedures, or policies of the FMCSA or any other agency charged with commercial vehicle operation oversight. Title 13, CCR, Section 1233.2, provides authority and direction regarding the use of the FMCSA safety performance scoring methodologies by the CHP as it relates to the BIT Program.

SECTION BY SECTION OVERVIEW

Subsection (a) is added to require motor carrier safety performance scoring methodologies used by the CHP to consider quantitative analysis of safety-related performance data. Data included in the analysis must be safety performance data collected as the result of any inspection or other enforcement contact. This data utilizes all violation information detected and documented by any federal, state, or local safety official, and uploaded to the FMCSA SMS.

The SMS includes seven Behavior Analysis and Safety Improvement Categories (BASIC) in which individual scores are calculated and provided. The BASIC include violations related only to that category, such as vehicle maintenance, unsafe driving, or driver fitness. Violations detected, documented, and uploaded to the SMS are separated into the appropriate BASIC for the purpose of motor carrier safety performance scoring. This subsection is necessary as it adopts the safety performance scoring methodology already in use federally as the basis for terminal selection criteria within California.

Subsection (a)(1) is added to provide authorization for motor carrier safety performance scoring to consider whether the motor carrier transports general freight, HM, or both. This is intended to apply a standard directly related to the type of transportation conducted by the motor carrier for the purpose of determining which terminals are selected for inspection as required by Section 34501.12 CVC. For example, HM constitute an inherent risk to public safety; therefore, motor carriers who transport HM represent an increased safety risk as compared to motor carriers who never transport HM. As a result, safety performance scoring assesses motor carriers who transport HM by including the additional safety risk in the scoring methodology.

Subsection (a)(2) is added to permit the CHP to include a California Performance Safety Score (CPSS) within the departmental motor carrier information database known as the Carrier Information Reporting and Evaluation System (CIRES). This CPSS is intended to summarize safety performance scoring of the FMCSA SMS and provide a single two-digit score indicator in order to simplify the inspection selection process. The CPSS reflects scoring of the SMS and allows the CHP to apply limited inspection resources to the motor carrier operations which represent the greatest risk to public safety in order of priority; highest safety risk first. A higher CPSS represents a greater risk to public safety based on safety performance scoring of the SMS.

Subsection (b) is added to outline the process of selecting terminals for inspection as required by Section 34501.12 CVC.

Subsection(b)(1) is added to require the use of safety performance scores assigned to a motor carrier entity in order to select California terminals for inspection under the BIT Program. The FMCSA SMS gathers safety performance information for motor carriers rather than separating scoring by geographic location, commodity type transportation, fleet makeup, or other factors. As a result, the subsection requires terminals in California to be selected for inspections required by Section 34501.12 CVC based on scoring attributable to the motor carrier as a whole.

For example, a motor carrier may operate commercial motor vehicles from several geographic locations across more than one state or geographic region. Without regard to the typical and normal domicile of any particular commercial vehicle or driver, violations detected,

documented, and uploaded to the FMCSA SMS are attributed to the motor carrier safety performance score. As a result, violations discovered and documented for vehicles and drivers domiciled in a state outside California, as well as those inside California, will affect the overall motor carrier SMS scoring and California's terminal inspection selection process.

Commercial vehicle fleets are dynamic and individual vehicles and drivers often move from one normal domicile location to another. As a result, it is not possible to continuously track the movement and relocation of vehicles or drivers. Just as, it is not possible to associate specific violations and scoring to one or more terminal or geographic location. Consequently, the subsection requires motor carrier safety performance scoring to consider all available safety performance data in order to best serve the safety interest of the public and assist the CHP to select motor carrier terminals for required inspections.

Subsection (b)(2) is added to codify safety performance scoring which cause terminals to be selected for inspection as required by Section 34501.12 CVC. The FMCSA sets and periodically adjusts the scoring level at which safety intervention is initiated by FMCSA. These intervention levels are set independently for each BASIC and may vary depending on transportation of only general freight versus transportation of HM. The subsection requires all terminals of a motor carrier with an FMCSA SMS safety performance score in any one or more BASIC, at or above the FMCSA intervention threshold, to be selected for inspection under the BIT Program. The CIRES will be adjusted to reflect changes in the SMS intervention thresholds implemented by the FMCSA. This is necessary to provide industry the awareness of the safety performance intervention threshold, based on the FMCSA SMS, upon which California terminals will be selected for inspection by the CHP.

For example, the FMCSA SMS Hours-of-Service (HOS) Compliance BASIC intervention threshold is currently 60 hours for a motor carrier who transports HM and 65 for a motor carrier who only transports general freight. A score of 62 in the HOS Compliance BASIC for a motor carrier who does not transport HM will not identify the motor carrier for terminal inspection under the BIT Program. However, the same FMCSA SMS HOS Compliance BASIC score of 62 will identify a motor carrier who transports HM for inspection under the BIT Program.

Subsection (b)(2)(A) is added to provide one year from the assignment of a satisfactory safety compliance rating to all terminals of a motor carrier selected for required inspection, to the next terminal inspection required by the section as a result of safety performance scoring. The FMCSA SMS scores motor carrier safety performance using an algorithmic calculation which considers many parameters including, but not limited to, violation severity and time-based weighting. The negative effect of violations included in the scoring are reduced over time. Additionally, inspections which include no violations affect safety performance scores positively in a manner similar to the negative effect of documented and uploaded violations.

The one-year time frame does not prohibit the Department from conducting additional inspections. The time frame is intended to permit motor carriers to continue to operate from terminals in California while working to reduce safety performance scores and moderate the number of unnecessary inspections of terminals recently assigned a satisfactory safety compliance rating. Providing a one-year time frame is necessary to allow a safety performance

score, that may still be above the intervention level, a year to adjust before another inspection is required.

Motor carrier safety performance scores are affected by many factors which can include inspections of vehicles and drivers operating from locations outside of California. For example, a motor carrier may operate commercial vehicles from locations throughout North America, including California. Inspections of vehicles and drivers working from terminals outside of California which include violations documented and uploaded to the FMCSA SMS, negatively affect the overall safety performance scoring of the motor carrier. Conversely, inspections of drivers and vehicles working from terminals outside of California which include no violations, positively affect the motor carrier's safety performance score. As a result, these additional inspections affect the California selection of motor carrier terminals for inspections required by Section 34501.12 CVC.

Subsection (b)(3) is added to specify a motor carrier with FMCSA SMS safety performance score in one or more BASIC, which is at or above the intervention threshold, and will have a CPSS over 84 in the departmental CIRES. This is intended to provide knowledge of the intervention threshold of the CPSS contained in CIRES, for departmental personnel, industry representatives, and the public.

Subsection (b)(4) is added to specify scoring applicability in order to clarify which set of FMCSA SMS intervention thresholds apply to a motor carrier. As they apply to the terminal selection process related to inspections required by Section 34501.12 CVC, FMCSA SMS intervention thresholds pertinent to a motor carrier transporting only general freight are not applicable to a motor carrier who transports HM. Due to the sensitivity and risk transportation of HM poses to the public, FMCSA SMS intervention thresholds may be more strict than that of general freight. This section is included to differentiate the applicability FMCSA SMS will be applied between general freight and HM.

Subsection (b)(4)(A) is added to further clarify subsection (b)(4). The FMCSA SMS intervention thresholds are, in some cases, lower or reached with fewer violations for a motor carrier who transports HM than one who only transports general freight or non HM. In order to ensure intervention thresholds accurately reflect the operation of the motor carrier and are applied appropriately based on the type of transportation conducted by the motor carrier, the subsection specifies which motor carriers are scored as HM motor carriers.

For example, motor carriers, who at any time, transport HM in an amount requiring the display of placards pursuant to Section 27903 CVC are subject to FMCSA SMS intervention thresholds applicable to HM transporting motor carriers, notwithstanding the location throughout North America within which the transportation is conducted. Additionally, motor carriers who transport HM requiring a license pursuant to Section 32000.5 CVC, or a hazardous waste transporter registration pursuant to Section 25163 of the Health and Safety Code are also subject to FMCSA SMS intervention thresholds applicable to HM transporting motor carriers.

Subsection (b)(5) is added to provide the CHP authority to adjust the terminal inspection selection process as it relates only to the Crash BASIC. The FMCSA SMS scoring does not consider fault associated with crashes of commercial vehicles. As a result, crashes in which a

motor carrier vehicle is involved, through no fault of the motor carrier, have a detrimental impact on safety performance scoring of the motor carrier. This issue is well-known throughout the motor carrier industry and by the FMCSA.

In order to more justly apply FMCSA SMS scoring in the Crash BASIC to motor carrier operations, for the purpose of selection of motor carrier terminals for required inspections under the BIT program, the CHP will consider BASIC scores in driver related categories in conjunction with the Crash BASIC. The correlation between crashes of commercial vehicles and use of controlled substances or alcohol, excessive driving hours by commercial vehicle drivers, fitness of drivers, or unsafe driving is well-known.

Subsection (b)(5)(A) is added to specify a motor carrier safety performance score at or above the intervention threshold need not result in a required inspection. However, a score in the Crash BASIC, meeting or exceeding 90 will result in all terminals of the motor carrier being selected for required inspections. Although a score in the Crash BASIC may be elevated to meet or exceed 90 by factors outside of generally applicable fault of the motor carrier, it is incumbent on the CHP to determine the safety operation of the motor carrier in California. As such, when the motor carrier FMCSA SMS Crash BASIC score meets or exceeds 90, the CHP will conduct an inspection of every terminal of the motor carrier, notwithstanding any other safety performance score.

Subsection (b)(5)(B) is added to specify requirements related to authorized adjustment to the terminal selection process as it relates to the Crash BASIC. Specifically, when a motor carrier's FMCSA SMS Crash Basic score is at or above the intervention threshold, but less than 90, terminal inspections are not required. However, due to the correlation between driver behavior and commercial vehicle crashes, a motor carrier's Crash BASIC at or above the intervention threshold, but less than 90 in association with one of the driver-related BASICs at or above 90 percent of the intervention threshold, it becomes necessary that an inspection of the motor carriers operations at every terminal in California be required.

For example, the Crash BASIC intervention threshold for a motor carrier who transports only general freight is 65. The intervention threshold in the HOS Compliance BASIC is 65. As a result, a general freight transporting motor carrier with a Crash BASIC score of 70 and an HOS Compliance BASIC score of 60 (approximately 92 percent of the intervention threshold) will be selected and all terminals of the motor carrier will undergo the inspections required by Section 34501.12 CVC.

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 of the statutory policy or other provision of law.

Alternatives Identified and Rejected:

Alternative 1: Do nothing. This alternative was not selected because the CHP would fail to comply with requirements of Section 34501.12 CVC. The Department would not have a performance-based truck terminal inspection selection system utilizing methodologies consistent with those used by the FMCSA.

Alternative 2: Develop a new system utilizing FMCSA data to create a scoring method designed to implement the BIT Inspections Selection. This method was not selected because it was determined to not be viable or cost effective because of the amount of time and resources required to build a new system. It would be unnecessary and duplicative for the CHP to create a new system that utilized FMCSA's data with the same specifications as already established by FMCSA's SMS.

Alternative 3: Update Title 13, CCR to adopt Section 1233.2. This is the alternative selected as it meets the requirements outlined in 34501.12 CVC, and it meets the safety needs of the public and the Department.

LOCAL MANDATE

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

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Creation or Elimination of Jobs in the State of California

The CHP evaluated whether jobs would be affected in the State of California. There is no indication that businesses operating vehicles subject to the BIT Inspections Selection will result in hiring more personnel, and it is not anticipated it will lead to layoffs or downsizing as a direct result of this rulemaking action. Additionally, use of the BIT Inspections Selection is already prevalent; therefore, adopting an updated edition of BIT Inspection Selection, will not affect jobs. The CHP has determined this rulemaking action 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. Based on the above findings, 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 evaluated whether businesses would be affected in the State of California. No adverse impact was identified. Additionally, the CHP has made the initial determination this proposed regulatory action will not affect the creation of new businesses, the expansion of existing businesses, or the elimination of existing businesses.

Benefits of the Regulation

The CHP has evaluated the potential benefits of this proposed regulatory action. 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 by ensuring the safest commercial motor vehicles are operated on public roadways, thereby contributing to the safety of the motoring public. Items listed in the BIT Selection Criteria serve to encourage motor carriers to adhere to safety requirements. The CHP has made an initial determination that this proposed regulatory action:

- Will have no effect on housing costs;
- Will not impose new mandates upon local agencies or school districts;
- Will 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;
- Will 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;
- 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 Code of Federal Regulations;
- 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 specify how the BIT Inspection Selection criteria will be met;
- 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.