

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

INITIAL STATEMENT OF REASONS

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 6.5,
AMEND ARTICLE 1, SECTIONS 1202.1 AND 1202.2, AND ARTICLE 6, SECTION 1232.

MOTOR CARRIER SAFETY REGULATIONS - CONSISTENCY WITH TITLE 49, CODE OF FEDERAL REGULATIONS (CHP-R-14-06)

PROBLEM

Current regulations adopt, by reference, specific sections of the Federal Motor Carrier Safety Regulations (FMCSR), contained in Title 49, Code of Federal Regulations (CFR), as published on October 1, 2006. The specific sections enhance the safety of those operating commercial motor vehicles on California highways.

PURPOSE AND NECESSITY OF REGULATIONS

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 designed to promote the safe operation of vehicles described in Section 34500 CVC, which are commercial vehicles commonly referred to as “regulated” vehicles (trucks, truck-trailer combinations, buses, etc.). The adopted regulations are contained in Title 13, California Code of Regulations (CCR).

This rulemaking action proposes to adopt the current publishing date of federal regulations incorporated by reference, and eliminates state regulations which conflict with updated federal regulations in Title 49, CFR, thereby, allowing California businesses to compete with out-of-state businesses under identical safety rules. This is necessary to eliminate the possibility of California businesses following out-of-date federal regulations for their intrastate operations. Instead, California businesses would be required to follow current federal regulations when operating in interstate commerce. Additionally, these businesses will no longer need to retain multiple publishing dates of federal regulations for the purpose of determining compliance with California regulations.

SECTION BY SECTION OVERVIEW

Title 13, CCR, Article 1, Section 1202.1, Applicability of Federal Regulations

The proposed regulatory amendments incorporate by reference, the October 1, 2014, edition of Title 49, CFR, providing uniformity between state and federal transportation regulations. Changes in federal regulations between the current October 1, 2006, publishing date and the proposed October 1, 2014, publishing date are as follows:

Title 49, CFR, Section 385.415, What operational requirements apply to the transportation of a hazardous material for which a permit is required? The October 1, 2012, final rule (77 Federal Register [FR] 59826) amended this section to contain non-substantive changes, including a reference to a document incorporated by reference and an address change for the FMCSA. The October 1, 2014, edition will be adopted for consistency with the remainder of the section.

Title 49, CFR, Section 391.15(b)(2), Disqualification of loss of driving privilege. This section remains unchanged; however, the October 1, 2014, edition will be adopted for consistency with the remainder of the section.

Title 49, CFR, Section 392.9b, Prohibited transportation. The FMCSA created a new online Unified Registration System which streamlines the registration process for all entities under the jurisdiction of the FMCSA, which includes motor carriers, brokers, freight forwarders, intermodal equipment providers (IEP), hazardous materials safety permit applicants, and cargo tank facilities. This section became effective November 1, 2013, as a result of a 2013 rulemaking (78 FR 52655, August 23, 2013). It prohibits the operation of a commercial motor vehicle (CMV) providing transportation in interstate commerce without an active United States Department of Transportation (US DOT) registration file.

Title 49, CFR, Section 392.60, Unauthorized persons not to be transported. This section falls under prohibited practices and the section remains unchanged; however, the October 1, 2014, edition will be adopted for consistency with the remainder of the section.

Title 49, CFR, Section 392.66, Carbon monoxide; use of commercial motor vehicle when detected. This section falls under prohibited practices and became effective as a result of the 1995 rulemaking (60 FR 38747, July 28, 1995). This section was created in order to limit exposure to certain toxic gases within a CMV. These limits provided CMV drivers with the same basic protection afforded industrial workers through current occupational safety standards.

Title 49, CFR, Section 392.67, Heater, flame-producing; on commercial motor vehicle in motion. This section falls under prohibited practices and became effective as a result of the 1995 rulemaking (60 FR 38747, July 28, 1995). This section provided CMV drivers with a basic safety standard by not allowing flame-producing heaters on CMVs while in motion.

Title 49, CFR, Section 392.71, Radar detectors; use and/or possession. This section falls under prohibited practices and became effective on February 11, 1994, as a result of the 1993 rulemaking (58 FR 67375, December 21, 1993). The regulation was aimed at reducing the safety

threats posed by the drivers of CMVs who routinely break highway speed limits, but evade the efforts of law enforcement through the use of radar detectors mounted in their cabs.

Title 49, CFR, Section 393.77, Heaters. As a result of the 1968 rulemaking (33 FR 19735, December 25, 1968), this section became effective to enhance the safety of CMV operators.

Title 49, CFR, Section 393.86, Rear impact guards and rear end protection. This section remains unchanged; however, the October 1, 2014, edition will be adopted for consistency with the remainder of the section.

Title 49, CFR, Section 393.93, Seats, seatbelt assemblies, and seatbelt assembly anchorages. The CHP proposes to repeal the reference to Title 49, CFR, Section 393.93. Section 27315 CVC, was amended in 2004 and again in 2005 to require seatbelt assemblies to comply with the same Federal Motor Vehicle Safety Standards referenced in Title 49, CFR, Section 393.93. The enactment of these legislative amendments also expanded the applicability of Section 27315 CVC to include CMVs. For this reason, the CHP contends the continued adoption of Title 49, CFR, Section 393.93, is duplicative and unnecessary.

Title 49, CFR, Section 396.11, Driver vehicle inspection reports. As the result of a 2008 rulemaking (73 FR 76824, December 17, 2008), the FMCSA made several changes to Title 49, CFR, Section 396.11. Those changes are as follows:

Title 49, CFR, Section 396.11(a), Equipment provided by motor carrier. (1) Report required. This section was divided into two subsections: “(1) Motor carriers” and “(2) Intermodal equipment providers.” Subsection (2) was added to require IEPs to have a process in place for receiving reports of defects or deficiencies in the intermodal equipment being operated. The following items are required to be included on the report: king pin upper coupling device; rails or support frames; tie down bolsters; locking pins; clevises, clamps, or hooks; sliders or sliding frame lock; wheels, rims, lugs, and tires; lighting devices, lamps, markers, and conspicuity marking material; air line connections, hoses, and couplers; and brakes. For the first time, IEPs were subject to the FMCSR, and the Agency’s intention was to make IEPs a shared responsibility between motor carriers and drivers in order to ensure the safer operation of IEPs.

As the result of the 2009 rulemaking (74 FR 68709, December 29, 2009), the FMCSA made the following non-substantive change to Title 49, CFR, Section 396.11. The items in Title 49, CFR, Section 396.11(b)(2), which are required to be inspected and reported upon were placed in a new order.

As the result of the 2012 rulemaking (77 FR 34852, June 12, 2012), the FMCSA made several changes to specific subsections to Title 49, CFR, Section 396.11. The section was realigned to provide separate sections for motor carriers and IEPs. Much of the realignment was non-substantive. Motor carriers were subsequently required to complete report content, guidance was provided for intermodal equipment in need of corrective action, and report retention periods, as well as exceptions, were provided. The IEPs were subsequently required to add information to reports, including the name and the US DOT identification number of the motor carrier responsible for the equipment, in addition to the other required information. Additionally,

subsection (c) was defined to ensure corrective action was taken for any defects which may have been detected, and to require the motor carrier to make correction(s) before operation could resume. The original driver vehicle inspection report (DVIR) lists any defects required to be signed by the motor carrier. Retention limits were also placed on these reports. The same exemptions were listed for IEPs as for motor carriers.

As the result of the 2012 rulemaking (77 FR 59828, October, 2012), the FMCSA made the following non-substantive change to provide clarity to Title 49, CFR, Section 396.11: In Title 49, CFR, Section 396.11(b)(4), Retention period for reports, the phrase “including the original driver report, the certification of repair on all intermodal equipment,” was replaced with the phrase “including the original driver report and the certification of repairs on all intermodal equipment.”

As the result of the 2013 rulemaking (78 FR 58485, September 24, 2013), the FMCSA made several non-substantive changes to punctuation in Title 49, CFR, Section 396.11.

As the result of the 2014 rulemaking (79 FR 75449, December 18, 2014), the FMCSA amended regulation requiring property-carrying drivers to complete a DVIR only when a defect is found. Previously, drivers were required to complete a DVIR whether or not a defect was found.

Title 49, CFR, Section 396.17, Periodic inspection. As a result of the 2008 rulemaking (73 FR 76825, December 17, 2008), this provision was implemented to ensure proper inspections of intermodal equipment. This section requires IEPs and motor carriers to assume responsibility of the annual inspection of intermodal equipment

Title 49, CFR, Section 397.7, Parking. As a result of the 1994 rulemaking (59 FR 63925, December 12, 1994), this section was enacted to limit the parking of vehicles transporting explosive hazardous materials.

Title 49, CFR, Section 397.17, Tires. This section remains unchanged; however, the October 1, 2014, edition will be adopted for consistency with the remainder of the section.

Title 49, CFR, Section 397.19, Instructions and documents. This section remains unchanged; however, the October 1, 2014, edition will be adopted for consistency with the remainder of the section.

Title 49, CFR, Section 397.67, Motor carrier responsibility for routing. This section remains unchanged; however, the October 1, 2014, edition will be adopted for consistency with the remainder of the section.

Title 13, CCR, Article 1, Section 1202.2, Applicability of Federal Regulations

The proposed regulatory amendments incorporate by reference, the October 1, 2014, edition of Title 49, CFR, provides uniformity between state and federal transportation regulations. Changes in the CFR between the current October 1, 2006, publishing date and the proposed October 1, 2014, publishing date are as follows:

Title 49, CFR, Section 385.415, What operational requirements apply to the transportation of a hazardous material for which a permit is required? This section contains non-substantive changes, including a reference to a document incorporated by reference and an address change from the FMCSA. However, the October 1, 2014, edition will be adopted for consistency with the remainder of the section.

Title 49, CFR, Section 392.9b, Prohibited transportation. Changes to this section are for the same reasons as stated for Title 13, CCR, Section 1202.1.

Title 49, CFR, Section 392.66, Carbon monoxide; use of commercial motor vehicle when detected. Changes to this section are for the same reasons as stated for Title 13, CCR, Section 1202.1.

Title 49, CFR, Section 392.67, Heater, flame-producing; on commercial motor vehicle in motion. Changes to this section are for the same reasons as stated for Title 13, CCR, Section 1202.1.

Title 49, CFR, Section 392.71, Radar detectors; use and/or possession. Changes to this section are for the same reasons as stated for Title 13, CCR, Section 1202.1.

Title 49, CFR, Section 393.77, Heaters. Changes to this section are for the same reasons as stated for Title 13, CCR, Section 1202.1.

Title 49, CFR, Section 393.86, Rear impact guards and rear end protection. Changes to this section are for the same reasons as stated for Title 13, CCR, Section 1202.1.

Title 49, CFR, Section 396.11, Driver vehicle inspection reports. Changes to this section are for the same reasons as stated for Title 13, CCR, Section 1202.1.

Title 49, CFR, Section 396.13, Driver inspection. Changes to this section are for the same reasons as stated for Title 13, CCR, Section 1202.1.

Title 49, CFR, Section 397.7, Parking. Changes to this section are for the same reasons as stated for Title 13, CCR, Section 1202.1.

Title 49, CFR, Section 397.17, Tires. Changes to this section are for the same reasons as stated for Title 13, CCR, Section 1202.1.

Title 49, CFR, Section 397.67, Motor carrier responsibility for routing. Changes to this section are for the same reasons as stated for Title 13, CCR, Section 1202.1.

Title 13, CCR, Article 6, Section 1232, Vehicle Inspection and Maintenance

The proposed regulatory amendments incorporate by reference, the October 1, 2014, edition of Title 49, CFR, regarding qualifications of airbrake inspectors. No changes have occurred on this matter in the CFR since October 1, 2006, but absent this change in the equivalent California

regulation, motor carriers would need to retain their 2006 editions of the CFR solely to read this reference.

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

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

Alternative 1: Update Title 13, CCR to the current revision of the FMCSR. This alternative would provide consistency between State and Federal regulations. This is the alternative selected as it meets the safety needs of the public and the Department.

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: Do nothing and allow outdated reference 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, thus

jeopardizing public safety and environmental protection. Failure to maintain consistency with the 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.

ECONOMIC IMPACT ASSESSMENT AND ANALYSIS

Economic Impact on Businesses and Jobs

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 the industry. The proposed regulations updated and amended in Title 13, CCR, Sections 1202.1, and 1202.2, are already applicable and enforceable on businesses subject to federal jurisdiction, pursuant to Title 49, CFR, Parts 385-399.

There is no indication that businesses operating “regulated” vehicle trucks will result in hiring more personnel, and it is not anticipated that it will lead to lay-offs or downsizing because of the updating of outdated reference found in Title 49, CFR published in October 6, 2006, and proposed changes found with the new publication date of October 14, 2014.

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 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.

Creation or Elimination of Jobs 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. 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.

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 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.

FISCAL IMPACT TO THE STATE

The Department 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.