

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

NOTICE OF PROPOSED REGULATION

Title 13, California Code of Regulations, Division 2, Chapter 6.5, Article 3, Amend Section 1213, Add Section 1213.3, and Article 6, Amend Section 1234.

Electronic Logging Devices for Intrastate Motor Carriers and Drivers (CHP-R-2018-09)

The California Highway Patrol (CHP) proposes to amend the Motor Carrier Safety Regulations contained in Title 13, California Code of Regulations (CCR), to be consistent with the current version of adopted federal regulations in Title 49, Code of Federal Regulations (CFR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Title 13, CCR, Division 2, Chapter 6.5, Article 3, Section 1213, contains general driving requirements, and Article 6, Section 1234, contains carrier requirements.

This rulemaking action proposes to amend Title 13, CCR, sections in order to align with current California Vehicle Code (CVC) sections. The actions will enhance the safe operation of motor vehicles and increase the competitiveness of California carriers by eliminating or modifying, to the extent possible, regulations which conflict with updated federal regulations, reducing negative impacts on businesses. This rulemaking will also allow the CHP to remain consistent with Federal Motor Carrier Safety Regulations (FMCSR) adopted by the United States Department of Transportation, and addresses inconsistencies and incompatibilities between state and federal regulations.

Currently, state regulations do not require an Electronic Logging Device (ELD) as the method for preparing an intrastate driver's record of duty status (RODS), and are subsequently not compatible with federal regulations. In order for the CHP to fulfill the mandate established in Section 34501(a) CVC and be in compliance with federal law, the CHP must amend intrastate RODS regulations. This rulemaking actions will align state regulations with FMCSR in Title 49, CFR, Part 395, by requiring California intrastate carriers and drivers to record RODS using ELDs. Additionally, the use of ELDs will enhance commercial vehicle safety by improving compliance with the applicable hours-of-service (HOS) rules and reducing the overall paperwork burden for both motor carriers and drivers. This proposed rulemaking actions amends Title 13, CCR, Section 1213 and Section 1234, and adopts and incorporates by reference the most current edition of Title 49, CFR, Part 395, into Title 13, CCR. Adding Title 13, CCR, Section 1213.3, ensures California's regulatory consistency with federal requirements.

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS:

The CHP has determined this proposed regulation is neither inconsistent, nor incompatible, with existing regulations. After conducting a review for any regulations that would relate to or affect this area, CHP has concluded that these are the only regulations that concern the driver's record of duty status.

PUBLIC COMMENTS

Interested persons may submit written comments on these proposed actions via facsimile to (916) 322-3154, by electronic mail to cvsregulations@chp.ca.gov, or by writing to:

California Highway Patrol
Enforcement and Planning Division
Commercial Vehicle Section
Attention: Sergeant David Kelly
P.O. Box 942898
Sacramento, CA 94298-0001

Written comments will be accepted until December 19, 2022.

PUBLIC HEARING

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by the CHP, Commercial Vehicle Section (CVS), no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF INFORMATION

The CHP has available for public review an Initial Statement of Reasons for the proposed regulatory actions, the information upon which this action is based (the rulemaking file), and the proposed regulation text. Requests to review or receive copies of this information should be directed to the CHP at the above address, by facsimile to (916) 322-3154, or by calling the CHP, CVS, at (916) 843-3400. All requests for information should include the following information: the title of the rulemaking package, the requester's name, proper mailing address (including city, state, and zip code), and a daytime telephone number in case the requester's information is incomplete or illegible.

The rulemaking file is available for inspection at the CHP, CVS, 601 North 7th Street, Sacramento, CA 95811. Interested parties are advised to call for an appointment. All documents regarding the proposed action are also available through the CHP's Web site at <https://www.chp.ca.gov/News-Alerts/Regulatory-Actions>.

CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations, or questions regarding the substance of the proposed regulations, should be directed to Sergeant David Kelly or Officer Kasonja Pochop, CHP, CVS, at (916) 843-3400.

ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the CHP may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or nonsubstantive in nature, the full text of the resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

DISCLOSURES REGARDING THE PROPOSED ACTION/FISCAL IMPACT

The CHP has made the following initial determinations:

LOCAL MANDATE

These proposed regulations will not impose a mandate on local agencies or school districts that must be reimbursed in accordance with Part 7 (commencing with section 17500) of the Government Code.

FISCAL IMPACT

Costs to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq. None anticipated.

Cost or savings to any state agency. Estimates of fiscal costs and savings to the state include, but is not limited to; increased states tax revenue from the purchase and installations of ELD devices. The estimated state revenue impact for ELD sales tax assess the ELD cost for; hardware, new installation labor, replacement installation labor, and monthly fees.

Other non-discretionary costs or savings imposed upon local agencies. None anticipated.

Cost or savings in federal funding to the state. None anticipated.

HOUSING COSTS

No significant effect on housing costs exists. The proposed regulations do not intersect with the cost of housing.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

The proposed regulations will directly affect intrastate commercial vehicle motor carriers and drivers. The following compliance requirements are projected to result from the proposed regulation:

- Require ELDs for recording RODS for commercial drivers.
- Require installation of new ELDs in regulated commercial vehicles.
- Software service of ELD devices.
- Training costs.

This rulemaking will affect California commercial vehicle motor carriers and drivers. The CHP made an initial determination that the amendment and adoption of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The CHP has considered proposed alternatives that would lessen any adverse economic impacts on businesses and invites you to submit additional proposals. Submissions may include the following considerations:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- Consolidation or simplification of compliance and reporting requirements for businesses.
- The use of performance standards rather than prescriptive standards.
- Exemption or partial exemption from the regulatory requirements for businesses.

RESULTS OF THE STANDARDIZED REGULATORY IMPACT ASSESSMENT

The CHP determined that this rulemaking action is a major regulation and has completed a Standardized Regulatory Impact Assessment (SRIA), conducted by Berkeley Economic Advising and Research (BEAR). The SRIA, the Department of Finance (DOF) comments on the SRIA, and the CHP's response to DOF's comments are included in the Initial Statement of Reasons for this rulemaking action.

The SRIA found that businesses will realize an increase in costs due to this regulation. Some of the costs may be absorbed from the potential reduction in traffic crashes, HOS violations, and paperwork savings. The costs associated with the proposed regulations will not be deterred from continuing with this regulatory amendment. However, the SRIA also found the overall savings were greater than cost associated with the proposed regulations. For these reasons, the CHP made the following determinations:

- The proposed regulations will affect the creation or elimination of jobs within the State of California.
- The proposed regulations will likely affect the creation of new businesses or the elimination of existing businesses within the State of California.
- The proposed regulations may affect the expansion of businesses currently doing business in the State of California.
- The proposed regulations may affect the ability of businesses within California to compete with businesses in other states.
- The proposed regulations may affect the competitive advantages or disadvantages for businesses currently doing business in the State of California.
- The proposed regulations may affect the increase or decrease of investment in the State of California.
- The proposed regulations will not likely affect incentives for innovation in products, materials, or processes.
- The proposed regulation will likely have cost impacts on private persons and small businesses.
- The proposed regulation will provide a nonmonetary benefit to the health and safety, and welfare of California residents, worker safety, and the state's environment and quality of life, by providing a regulatory authority for enforcement efforts as they relate to violations of the current RODS regulations found in Title 49, CFR.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

While the regulatory requirements will impose costs on intrastate commercial vehicle motor carriers and drivers, the results of the SRIA concluded that the proposed regulations will also provide economic benefits to individuals and the public by increasing business related to these regulated industries. Based on conservative assumptions that overestimate costs, annualized costs for typical businesses will be responsible for the majority of the average \$49 million cost burden over the first nine years of implementation. The estimated cost burden includes annualized ELD cost for; hardware, new installation labor, replacement installation labor, and monthly fees. In turn, the majority of the indirect economic benefits from this regulatory savings could yield up to a nine-year annual average of approximately \$306 million. The SRIA, as conducted by BEAR, was indicative of current economic trends at the time of the study. These costs and impacts are discussed in more detail in the Economic Impact Assessment in the Initial Statement of Reason (ISOR).

SUMMARY OF DEPARTMENT OF FINANCE COMMENTS ON STANDARDIZED REGULATORY IMPACT ASSESSMENT

The DOF generally concurred with the SRIA study for the proposed regulations and found that it meets the requirements for the SRIA, but completed a critique of the SRIA. The DOF's comments on the SRIA and the CHP's response are summarized as follows:

DOF Comment 1. *"The SRIA should incorporate and discuss relevant assumptions and data on ongoing pandemic circumstances such as the current global chip shortage and general supply disruptions and how that may delay compliance, impacting the timing and magnitude of costs and benefits in the first year of implementation. Actual violation data from the 2021 FMCSA Pocket Guide Book showed that there were over 20,000 (0.7 percent) ELD violations for the nation in 2020, three years after the phase-in of the federal program and one year after the 2019 mandatory compliance, demonstrating challenges in compliance even before the pandemic. Similarly, the agency should discuss any implications of potential truck driver shortages as the SRIA assumes that new drivers will be hired to make up for required reduced hours to avoid HOS violations. Actual occupations data for California showed that the number of affected drivers decreased by nearly 5 percent in 2020. The SRIA should use updated data to reflect current conditions or alternatively justify the implicit assumption that the number of affected drivers has already recovered to pre-pandemic levels and the assumption of growth to make up for reduced HOS violations despite potential labor shortages in this sector."*

CHP Response to DOF Comment 1. The following text has been added to Section 2.3 Assumptions and Uncertainty:

The ongoing public health threat from COVID-19 has been disruptive to supply chains and livelihoods dependent upon them, including commercial transportation. These shocks affected California's trucking sector through both logistical mismatches and labor shortages, creating delays and escalating operating costs and prices. Fortunately, the US economy has shown remarkable resilience, with no evidence of a sustained recession and a dramatic recovery of labor markets. As the latest data from the US Bureau of Labor Statistics indicates (Figure 1), national and California employment in freight trucking have returned to long term trends now, six months before the projected ELD compliance date. We assume this recovery will be sustained and, taking all these factors into account, we conclude that COVID-19 itself will be of very limited direct relevance to ELD compliance within the state. In other words, the number of affected drivers has already recovered to pre-pandemic trends and this growth makes up for reduced HOS violations that might have resulted from transitory labor shortages in this sector. As DOF notes, violations of the Federal mandate continued after enactment and before the pandemic, but there is no reliable data attributing COVID-19 to changes in compliance. The current SRIA also takes account of non-compliance in all three scenarios but does not support implicating COVID-19 directly in the regulatory shock.

Note: (Figure 1) is located and discussed in more detail in the ISOR.

DOF Comment 2. *"Another recent development that should be discussed is the move from mobile carriers to begin shutting down 3G networks, which would lead to more existing ELDs that need to be replaced than assumed in the SRIA."*

CHP Response to DOF Comment 2. The following text was added to Section 2.3: Assumptions and Uncertainty:

During the period of this SRIA assessment, California’s mobile network has been undergoing a transition from 3G to 5G service. Although transition to 5G networks is not a consequence of the ELD regulation and would be part of the Baseline, but process that can be expected to impact adoption patterns for network transmission devices like ELDs. There is no reliable ex ante data to calibrate this in greater detail because, now in the middle of the technology deployment (February-December 2022), no public data is available to identify how many California carriers are currently utilizing 3G and 5G compatible ELDs.

With respect to the regulation, most carriers are expected to be committed to 5G deployment before ELD compliance is required. The announced sunset dates (completing 3G shutdowns) are listed below, although most service providers expect to complete these transitions earlier. These are dates for completing their shutdowns.

- AT&T 3G: February 22, 2022
- Sprint 3G (T-Mobile): March 31, 2022
- Sprint LTE (T-Mobile): June 30, 2022
- T-Mobile 3G: July 1, 2022
- Verizon 3G: December 31, 2022

Thus, only Verizon would fully sunset after the ELD regulation comes into force. Meanwhile, FMCSA strongly encourages motor carriers to take the above actions as soon as possible to avoid compliance issues, as portions of carrier 3G networks will be unsupported in advance of the announced sunset dates. Moreover, it should be borne in mind that delayed 5G adoption need not render 3G devices unusable. ELD devices can still record information even if it is not transmitted across the network. For these reasons, the SRIA assumes timely adoption by users of the first four networks and pre-emptive adoption by Verizon users.

DOF comment 3. *“The SRIA must produce quantitative estimates of all fiscal costs and savings to state, county and local budgets, as required by Finance regulations. This includes but is not limited to:*

1) the increased state and local sales tax revenue from the purchase and installation of nearly 200,000 ELD devices that would cost between \$40 million to \$145 million, which would increase sales tax revenue by \$3.3 million to \$11.9 million (assuming an average tax rate of 8.2 percent)”

CHP Response to DOF Comment 3. Changes in sales tax revenue are already accounted for in the BEAR forecasts, which used a general equilibrium model that has closed-form accounting of Baseline fiscal interactions. To clarify the sales tax component of this, the revenue impact table was added to Section 5.1 of the SRIA.

Note: The revenue impact table is located and discussed in more detail in the ISOR. The estimated state revenue impact for ELD sales tax assess the average annualized ELD cost for; hardware, new installation labor, replacement installation labor, and monthly fees.

DOF comment 4. *"2) any changes in violation fees collected by the state due to potential delays in compliance discussed above and to better tracking of violations;"*

CHP Response to DOF Comment 4. To be clear, the regulation will explicitly require full compliance by the proposed deadline (October 2022), but the scenarios evaluated in the SRIA assume some violations will continue to occur. In these cases, firms must recruit to replace cited drivers and these compliance costs are explicitly calculated in the Proposed and Alternative Policy scenarios. As there is no historical data on a comparable regulatory adjustment in California, to estimate the effects of "better tracking" we relied on data from Federal precedence (see Section 2.3.4 and Appendix 3 for details).

DOF comment 5. *"3) any changes in workload for roadside inspectors "*

CHP Response to DOF Comment 5. As stated in Section 5.2, the SRIA assumes that time spent per citation will remain consistent with current practices. Changes in the number of citations will be the net result of two offsetting forces: improved deterrence (-) and improved detection (+). Lacking California data on this, our assumption is again based on Federal precedence (Appendix 3, Table 11.1). Net personnel cost differences for CHP are estimated to average \$79,792/yr for the first three years of implementation, or about 0.03% of its aggregate staffing budget. Subsection 5.2.1 has been added to provide these details.

CONSIDERATION OF ALTERNATIVES

In accordance with Section 11346.5(a)(13) of the GC, the CHP must determine that no reasonable alternative considered, or otherwise identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The CHP invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Once the Final Statement of Reasons for this proposed regulatory action is available, the public may request to review or receive copies of the statement. Requests should be directed to the CHP at the above address, by facsimile to (916) 322-3154, or by calling the CHP, CVS, at (916) 843-3400. All requests for information should include the following information: the title of the rulemaking package, the requester's name, proper mailing address (including city, state, and zip code), and a daytime telephone number in case the requester's information is incomplete or illegible.

AUTHORITY

This regulatory action is being taken pursuant to Sections 31401, 34501, 34501.2, 34501.5 and 34508, Vehicle Code; and Section 39831, Education Code.

REFERENCE

This action implements, interprets, and/or makes specific Sections 545, 546, 31401, 34501, 34501.2, 34501.5 and 34508, Vehicle Code; and Section 39831, Education Code.

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
K. DAVIS, Chief
Enforcement and Planning Division