

CALIFORNIA HIGHWAY PATROL

GENERAL ORDER 82.6

SEPTEMBER 2023

COMMERCIAL VEHICLE INSPECTION SELECTION

AND UNBIASED ENFORCEMENT POLICY

1. PURPOSE. The purpose of this General Order is to establish uniform guidelines for the selection of commercial motor vehicles (CMV) for inspection. This policy applies to all CHP enforcement personnel, including CHP support personnel in Motor Carrier Safety Assistance Program-funded positions.

2. POLICY. It is the policy of the CHP to enforce the law without fear, favor, or discrimination. Inspection efforts are to be concentrated on CMVs that have a negative impact on traffic safety and shall be conducted in a nondiscriminatory manner.

3. DEFINITIONS.

a. Commercial Motor Vehicle. The term CMV applies to those vehicles described in Sections 260, 322, 15210, and 34500, of the California Vehicle Code (CVC).

NOTE: It is the policy of the Department that pickup trucks, as defined in Section 471 CVC, shall not be required to stop at a Commercial Vehicle Enforcement Facility (CVEF) when operated singly or in combination. This policy does not apply when the California Department of Food and Agriculture is operating an agricultural inspection operation and signs requiring such a stop are properly posted, as required by Section 5341.5 of the California Food and Agricultural Code.

b. Terminal. Terminal, also referred to as a "maintenance facility," means any place or places where a CMV is regularly garaged or maintained, or from which it is operated or dispatched. A maintenance facility or terminal includes a private business or residence. Terminal also means the location or locations in California that are designated by a motor carrier where vehicles may be inspected by the CHP, and where vehicle maintenance, inspection, and drivers' records will be made available for inspection.

c. Terminal Inspections. Terminal inspections are inspections performed at truck terminals by a Motor Carrier Specialist to ensure compliance with the provisions of law and applicable regulations, in accordance with Highway Patrol Manual (HPM)

84.1, Motor Carrier Safety Operations. Terminal inspections shall not include registration inspections.

d. On-Highway Inspections. On-highway inspections are all vehicle inspections other than terminal inspections.

e. On-Highway Primary Crash Factor Enforcement. The term Primary Crash Factor (PCF) refers to the one element of a driving action, which, in an officer's opinion, best describes the primary or main cause of a crash. A PCF will usually correlate to a CVC violation (e.g., speeding is enforced through Section 22350 CVC and other speed laws). As used in this context, on-highway enforcement would be focused on the drivers of CMVs who violate laws related to PCFs.

f. Safety Inspections. Safety inspections refer to all levels of North American Standard (NAS) inspections of CMVs which require the inspection to be recorded into SafetyNet, as well as Iteris inSPECT.

4. AUTHORITY.

a. General. The CHP is responsible for enforcement oversight relative to the operation of CMVs in California and is granted the authority to do so by the CVC. Authority for enforcement of requirements applicable to the operation of CMVs in California is contained entirely within California statute and regulation. Therefore, only those federal regulations adopted into California statute or regulation may be enforced and documented on the CHP 407F/343A-inSPECT, Driver/Vehicle Examination Report. The same applies for enforcement documents (e.g., CHP 215, Notice to Appear; CHP 281, Notice to Correct Violation; CHP 214, Written Warning). For example, Title 49, Code of Federal Regulations (CFR), Section 391.11, requires the operator of a CMV to be able to read and write the English language. This regulation is not adopted by California; therefore, this requirement shall not be enforced or appear on the CHP 407F, CHP 343A, or any enforcement document.

b. Legal. The following CVC sections outline the legal authority used by the CHP regarding CMV inspections:

(1) Section 2400 CVC authorizes the Commissioner to enforce laws regulating the safe operation of motor vehicles.

(2) Section 2402 CVC authorizes the Commissioner to make and enforce regulations as necessary to carry out the duties of the CHP.

(3) Section 2410 CVC authorizes the CHP to direct traffic. As this section is interpreted, this includes authorization for the CHP to prohibit the movement of unsafe vehicles on the highway.

(4) Section 2800(a) CVC makes it unlawful to willfully fail or refuse to comply with a lawful order, signal, or direction of a peace officer when that peace officer is in uniform and is performing their duties, or to refuse to a lawful inspection.

(5) Section 2800(b)(1) CVC makes it unlawful to fail or refuse to comply with a lawful out-of-service (OOS) order issued by an authorized employee of the CHP or an authorized enforcement officer.

(6) Section 2800(c) CVC makes it unlawful to fail or refuse to comply with a lawful OOS order issued by the U.S. Secretary of the Department of Transportation. (Federal OOS orders shall be enforced by the CHP.)

(7) Section 2800(e) CVC makes it unlawful for a driver of a CMV subject to inspection under the CVC to fail to comply with any vehicle inspection testing and associated procedures as required by an authorized member of the CHP.

(8) Section 2806 CVC provides peace officers the authority to require a vehicle to stop and submit to an inspection to determine safety and compliance, based on reasonable cause to believe the vehicle is not equipped as required.

(9) Section 2813 CVC requires every driver of a commercial vehicle to stop and submit the vehicle to an inspection of the size, weight, equipment, and smoke emissions of the vehicle at any location where members of the CHP are conducting tests and inspections of commercial vehicles, and when signs are displayed requiring the stop.

(10) Section 32001(a)(1) CVC provides that authorized CHP employees may inspect any sealed or unsealed vehicle, container, or shipment, which is subject to CVC, Division 14.1, in maintenance facilities, terminals, or other public or private property to ascertain the quantity and kind of hazardous material, and to ensure compliance with provisions of the CVC and regulations adopted pursuant to the CVC.

(11) Section 34500 CVC requires the CHP to regulate the safe operation of CMVs.

(12) Section 34500.1 CVC requires the CHP to regulate the safe operation of tour buses.

(13) Section 34501(a)(1) CVC requires the CHP to adopt reasonable rules and regulations that, in the judgment of the CHP, are designed to promote the safe operation of CMVs.

(14) Section 34501(a)(2) CVC provides that the CHP may adopt rules and regulations relating to commercial vehicle safety inspection and OOS criteria.

(15) Section 34501(a)(4) CVC provides that the CHP may inspect any vehicles in maintenance facilities or terminals, as well as any records relating to the dispatch of vehicles or drivers, and the pay of drivers, to ensure compliance with the CVC and regulations adopted pursuant to this section.

(16) Section 34501(c)(1) CVC requires the CHP to inspect, at least once every 13 months, every maintenance facility or terminal of any person who, at any time, operates any bus.

(17) Section 34501.12(c)(1) CVC provides the CHP may inspect any terminal of a motor carrier who, at any time, operates a CMV.

(18) Section 34520(b)(1) CVC requires a motor carrier to make available for inspection, upon the request of an authorized CHP employee, copies of all results and other records pertaining to controlled substances and alcohol use and testing conducted pursuant to federal law, as specified in subdivision (a), including those records contained in individual driver qualification files.

5. PROCEDURES.

a. The Commercial Vehicle Safety Alliance (CVSA) is an organization involving the U.S., Canada, Mexico, Puerto Rico, U.S. Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands. The purpose of the CVSA is to bring about uniformity in the adoption and enforcement of CMV laws and regulations throughout North America. Through a signed, individual memorandum of understanding, CHP Commercial Enforcement Program (CEP) members have agreed to strictly adhere to specific CMV, driver, and OOS standards.

b. The NAS inspection shall be utilized for the on-highway and off-highway inspections of CMVs. Vehicle inspections shall be conducted in compliance with departmental publications and the directives contained in HPM 82.6, Commercial Enforcement Manual. Only CEP personnel, who have satisfactorily completed the National Training Center–NAS Level I Commercial Enforcement Course, have maintained their certification, and have demonstrated their skills to the satisfaction of their immediate supervisor, shall perform NAS Level I or V inspections. Trainees under the supervision of certified CEP personnel may also conduct inspections.

c. The CHP's inspection selection process for CMVs passing through California CVEFs and roadside inspection lanes utilizes the following inspection selection priority list, as outlined in HPM 82.6, Chapter 3, Inspection Policies:

- (1) Any CMV with an observed mechanical violation.
- (2) Any CMV transporting hazardous material/hazardous waste (HM/HW) without CVSA decals.
- (3) Any CMV transporting HM/HW with expired CVSA decals.
- (4) Large CMV power units without CVSA decals.
- (5) Large CMV power units with expired CVSA decals.
- (6) Two-axle CMVs without CVSA decals.
- (7) Two-axle CMVs with expired CVSA decals.

d. In addition to CVEFs, the CHP has Mobile Road Enforcement (MRE) officers whose primary focus is patrolling highways not served by a CVEF, enforcing CMV rules of the road and conducting NAS inspections. California law requires an officer to establish probable cause prior to initiating an enforcement stop on a vehicle, except for vehicles transporting the following commodities:

- (1) Hazardous waste pursuant to Sections 25180 and 25185 of the California Health and Safety Code.
- (2) Inedible kitchen grease pursuant to Sections 2810 and 2466 CVC.
- (3) Timber products, livestock, poultry, farm produce, crude oil, and other petroleum products pursuant to Section 2810 CVC, for the purpose of determining lawful possession.

e. Enforcement stops conducted by MRE officers and other commercially trained personnel often result in a NAS Level I, II, or III inspection. The decision to stop a CMV or conduct a NAS inspection shall be guided by sound, professional judgment, and shall not be based on the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, mental or physical disability, as outlined by Section 13519.4(e) of the California Penal Code, nor shall it be based on the grounds of race, color, national origin, sex, age, disability, low-income, or limited English proficiency (LEP), as described by Title VI and other federal nondiscrimination authorities.

f. Per HPM 82.6, Chapter 2, Operational Policies, only currently assigned commercial enforcement officers and Motor Carrier Specialists who have successfully completed the NAS Level I Commercial Enforcement Course, and uniformed supervisors, are authorized by the CHP to place operators and/or CMVs OOS.

6. AGENCY RESPONSIBILITY.

a. The CHP is committed to the unbiased and equitable treatment of all persons in enforcing the law and providing services. Employees conducting motor vehicle enforcement, including CMV inspections, shall adhere to nondiscrimination policies and Title VI of the Civil Rights Act of 1964 requirements.

(1) Federal Statutory and Regulatory Authorities.

(a) Title VI of the Civil Rights Act of 1964 (Title 42, U.S. Code [USC], Section 2000d et seq., 78 Stat. 252), (prohibits discrimination based on race, color, national origin).

(b) Federal-Aid Highway Act of 1973 (Title 23, USC, Section 324 et seq.), (prohibits discrimination based on sex).

(c) Title IX of the Education Amendments of 1972 (Title 20, USC, Section 1681 et seq.), as amended, (prohibits discrimination based on sex in education programs or activities).

(d) Section 504 of the Rehabilitation Act of 1973 (Title 29, USC, Section 794 et seq.), as amended, (prohibits discrimination based on disability).

(e) The Age Discrimination Act of 1975 (Title 42, USC, Section 6101 et seq.), as amended, (prohibits discrimination based on age).

(f) Americans with Disabilities Act of 1990 (Title 42, USC, Section 12101 et seq.), as amended, (prohibits discrimination based on disability).

(g) Title 49, CFR, Part 21 (entitled Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act Of 1964).

(h) Title 49, CFR, Part 27 (entitled Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance).

- (i) Title 49, CFR, Part 28 (entitled Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation).
- (j) Title 49, CFR, Part 37 (entitled Transportation Services for Individuals with Disabilities).
- (k) Title 49, CFR, Part 303 (Federal Motor Carrier Safety Administration's [FMCSA] Title VI/Nondiscrimination Regulation).
- (l) Title 28, CFR, Part 35 (entitled Nondiscrimination on the Basis of Disability in State and Local Government Services).
- (m) Title 28, CFR, Section 50.3 (Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964).

(2) Other Executive Orders and relevant guidance that direct action by federal agencies regarding their federally assisted programs and activities to which compliance is required by recipients to ensure federal agencies carry out their responsibilities.

(a) Executive Order 12898 (1995), entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, emphasizes that federal agencies should use existing laws to achieve environmental justice, in particular Title VI, to ensure nondiscrimination against minority populations. Recipients should be aware that certain Title VI matters raise environmental justice concerns and FMCSA intends that all recipients evaluate and revise existing procedures (as appropriate) to address and implement environmental justice considerations. See the following Federal Highway Administration Web site for more information and facts about environmental justice: https://www.fhwa.dot.gov/environment/environmental_justice/index.cfm.

(b) Executive Order 13166 (2000), entitled Improving Access to Services for Persons With Limited English Proficiency. The U.S. Department of Justice in its Policy Guidance Document dated August 16, 2000 (65 Fed. Reg. at 50123), clarifies the responsibilities associated with the "application of Title VI's prohibition on national origin discrimination when information is provided only in English to persons with limited English proficiency." When receiving federal funds, recipients are expected to conduct a four-factor analysis to prevent discrimination based on national origin. (See also U.S. DOT's "Policy Guidance Concerning Recipients' Responsibilities to LEP Persons," dated December 14, 2005, (70 Fed.

Reg. at 74087 to 74100); the guidance is a useful resource when performing a four-factor analysis).

b. The CHP complies with Title VI and other federal nondiscrimination authorities which prohibit discrimination on the grounds of race, color, national origin, sex, age, disability, low-income, or LEP in CHP's programs, activities, services, operation, delivery of benefits, or opportunities to participate as identified in the FMCSA Title VI Program Assurance signed by the Commissioner.

c. Literature, which is also translated into Spanish, explaining Title VI rights is available for public viewing in designated CVEFs. Additionally, this information is available for public viewing on the CHP's Internet website at: <https://www.chp.ca.gov/Programs-Services/Programs/Commercial-Vehicle-Section>.

d. The CHP must ensure that all its programs and activities are operated in a nondiscriminatory manner. To monitor the CHP's Title VI compliance, the CHP's Commercial Vehicle Section does the following:

- (1) Ensures compliance with Title VI.
- (2) Provides technical assistance in the CEP's implementation of Title VI.
- (3) Provides training to personnel conducting traffic enforcement compliance review and safety audit activities as detailed in the California Highway Patrol Federal Fiscal Year 2022 Updated Title VI Program Compliance Plan, including adherence to the FMCSA Enforcement Memorandum regarding English language proficiency versus LEP (MC-ECE-2016-006).
- (4) Corrects deficiencies, if found to exist.

e. Any person believing the CHP or any of its FMCSA financial grants sub-recipients has violated Title VI Program requirements in the administration of its programs or activities may file a complaint in person, in writing, or by utilizing the Department's Internet Web site at www.chp.ca.gov. Any such complaint may be filed in writing or electronically through the CHP Office of Internal Affairs, or the Office of Equal Employment Opportunity, located at 601 North 7th Street, Sacramento, CA, 95811; or through a local CHP Area office or CVEF.

OFFICE OF THE COMMISSIONER

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