

CHAPTER 4
STATUTES, REGULATIONS, AND POLICY
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CHAPTER 4
STATUTES, REGULATIONS, AND POLICY

1. GENERAL.

a. This chapter will provide trainees with a basic knowledge of statutes, regulations, and policies, their relationship to each other, and how they guide the MCSO Program. This basic knowledge is important to understanding why requirements are what they are, what is required to change them, and who must be involved in making any changes.

b. This training should include tabbing of manuals, regulations, and codes to enable trainees to readily research pertinent information-Further tabbing should be encouraged (specific to each inspection category) as the training progresses.

2. DEFINITIONS.

a. Statute. An act of an elected body of officials. At the federal level, this is Congress. At the state level, the Legislature creates statutes declaring, commanding, or prohibiting something (e.g., Vehicle Code (VC) and Government Code (GC)). State legislators author bills of their own creation, and also accept legislative proposals from individuals, industry, or governmental entities such as the California Highway Patrol. Departmental employees are encouraged to submit legislative proposals through channels to the Office of Special Representative.

b. Law. Statutes enacted by a state legislature or the U.S. Congress are referred to as laws, or "statutory law," to distinguish them from "administrative law" (regulations). The meaning of the term "law," however, is considerably broader than that of "statute." When referring to State or Federal laws and emphasis on their legislative origin is desired, "statute" is a clear indication that the mandate was written by a legislative body.

c. Regulation. A rule or order having the force of law issued by executive authority of government (state or federal). Regulations are not the work of the Legislature, but are often written at the direction of the Legislature.

(1) Regulations adopted by the Commissioner of the California Highway Patrol, pursuant to authority granted by statute, are contained in Title 13, California Code of Regulations (13 CCR).

(2) For a regulation to have the force of law, there must be statutory authority for the agency to adopt the regulation, and some provision of statutory law

must invoke a penalty. For example, Section 34506 VC declares violations of certain adopted regulations to be misdemeanors. This Section is quoted below:

34506. It is a misdemeanor to fail to comply with any rule or regulation adopted by the Department of the California Highway Patrol pursuant to Section 34501, 34501.5, 34508, or 34513 regarding any of the following:

- (a) Hours of service of drivers.**
- (b) Hazardous material transportation.**
- (c) School bus construction, design, color, equipment, maintenance, or operation.**
- (d) Youth bus equipment, maintenance, or operation.**
- (e) Tour bus equipment, maintenance, or operation.**
- (f) Equipment, maintenance, or operation of any vehicle described in subdivision (a), (b), (c), (d), (e), (f), or (g) of Section 34500.**
- (g) Equipment, maintenance, or operation of any school pupil activity bus.**

(3) Section 42001.3 (b) VC sets forth a penalty for violations of Section 34506 (a) VC, hours of service of drivers:

(b) Violations of subdivision (a) of Section 34506, with respect to any regulation adopted under Section 34501 relative to drivers hours of service, shall be punishable by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000). In addition, the violations may be punishable by imprisonment in the county jail for not more than six months.

(4) Other sections of the 42000 series of the VC address the penalties for violations of the other parts of 34506 VC, and other penalties for violations of other VC sections.

(5) The State Office of Administrative Law reviews every regulation for compliance with the following legal standards prior to adoption:

(a) Authority: There must be a provision of law which obligates or permits the Department to adopt regulations on the subject specified.

(b) Necessity: A substantial need for every regulatory requirement must be identified. This must be explained in a supporting document known as the Statement of Reasons.

(c) Consistency: The proposed regulation must be consistent with the cited authority, and not be in conflict with any existing law or regulation.

(d) Clarity: The meaning of the regulation must be easily understood by the persons affected.

(e) Reference: There must be some provision of law being implemented, interpreted, or made specific.

(f) Non-duplication: The regulation must not duplicate or serve the same purpose as another law or regulation.

(g) Plain English: The regulation must be written in language that can be interpreted by a person who has no more than an eighth grade proficiency in English.

3. CALIFORNIA VEHICLE CODE.

a. Most state law related to highway traffic is contained in the VC. Uniformed employees of the Department enforce a wide variety of laws contained in other codes as well, as they have full peace officer powers and responsibilities. MCSO Program activities are governed primarily by the VC, with some direction provided in the Health and Safety Code (HSC), the Education Code, (EC) and the Public Utilities Code (PUC), and to a lesser extent, other codes.

b. The following outline is provided for use in familiarizing trainees with the Vehicle Code:

- (1) Table of Contents, Divisions, Chapters, and Articles.
- (2) General Provisions.
- (3) Division 1, Words and Phrases Defined. (In alphabetical order.)
- (4) Division 2, Administration.
 - (a) Chapter 2, Department of the California Highway Patrol.
 - (b) Chapter 2.5, Licenses Issued by California Highway Patrol.
- (5) Division 6, Driver Licenses.
- (6) Division 12, Equipment of Vehicles.
- (7) Division 13, Towing and Loading Equipment.

- (a) Towing Equipment - Chapter 1.
 - (b) Regulated Loads - Chapters 2 through 7.
 - (8) Division 14, Transportation of Explosives.
 - (9) Division 14.1, Transportation of Hazardous Material.
 - (10) Division 14.3, Transportation of Inhalation Hazards.
 - (11) Division 14.5, Transportation of Radioactive Materials.
 - (12) Division 14.7, Flammable and Combustible Liquids.
 - (13) Division 14.8, Safety Regulations.
 - (14) Division 14.85, Motor Carriers of Property Permit.
 - (15) Division 15, Size, Weight, and Load.
 - (16) Division 16, Implements of Husbandry.
- c. Explain the importance of reviewing appropriate divisions and articles for definitions and other references that might affect a particular section's authority, scope, or intent.

4. TITLE 13, CALIFORNIA CODE OF REGULATIONS.

- a. Familiarize trainees with the chapters and articles contained in 13 CCR.
- b. Explain the authority, reference, and/or history cited, following each section.
- c. Show trainees the procedure for updating their 13 CCR and stress the importance of keeping it current.
- d. Explain the importance of reviewing sections entitled "Scope," "Application," and "Definitions" associated with each chapter or article being reviewed.
- e. Explain how federal regulations are adopted by reference as in 13 CCR 1160.2, 1202. 1. and 1202.2.
- f. Explain what an exemption is, i.e., permission to deviate from the requirements of a regulation, usually on condition of compliance with alternative requirements, when the permission and alternative requirements are specified in a document outside of the regulations themselves; refer to 13 CCR 1202(f).

g. Explain what an exception is, i.e., permission to deviate from the requirements of a regulation or law under conditions specified in the regulation or law itself, therefore requiring no separate document issued by the agency having authority to enforce the law or regulation in question; refer to 13 CCR 1212(e).

5. OTHER CODE POLICY.

a. Explain that other codes, when adopted by reference in the VC and 13 CCR, require equal consideration in carrying out terminal inspection activities.

(1) Parts of Title 49, Code of Federal Regulations (49 CFR), supplement the VC and CCR to the extent they have been adopted by reference in California statute or the Department's Motor Carrier Safety and Hazardous Materials Regulations. States are encouraged by the federal government to adopt federal regulations in order to enhance nationwide uniformity. However, there are a great many considerations that control the extent to which the states adopt federal statutes and/or regulations. Nationwide uniformity is often a desirable goal, but not always. How a particular matter will be controlled, by federal or state mandate, has been a controversial subject throughout United States history, and was the central issue of the American Civil War. Trainees are not expected to be constitutional scholars, but they do need to realize that many federal laws apply only in the absence of a state law on the same subject, while other federal laws assert authority to override any local laws, and adoption of still others is encouraged by federal funding, but is nevertheless optional to the states.

(2) The Health and Safety Code provides the basic authority and directs the California Department of Toxic Substances Control (DTSC) to regulate specified aspects of hazardous waste transportation over California highways. The DTSC hazardous waste regulations are contained in 22 CCR.

(3) Federal Motor Vehicle Safety Standards (FMVSS), must be consulted regarding equipment design on various trucks, trailers, and buses. The standards apply to vehicles before first sale and preempt state equipment requirements if vehicles built to those standards are maintained in compliance with applicable FMVSS (13 CCR 1240). The FMVSS are found in 49 CFR, Part 571.

(4) Public Utilities Code. The California Public Utilities Commission (PUC) regulates the intrastate business operations of passenger stage corporations, charter-party carriers of passengers, and for-hire household goods carriers. The PUC grants operating authority to these carriers. Additionally, the Private Carrier of Passengers Registration Act, found in the Public Utilities Code, requires not-for hire passenger transportation carriers to register with the PUC

prior to operation. The CHP regulates the operational safety of these carriers and their vehicles.

6. AUTHORITY TO INSPECT.

a. Explain that Section 34501 (a)(3) VC states that the Department may inspect any vehicles (listed in Section 34500 VC) in maintenance facilities or terminals, any records relating to the dispatch of vehicles or drivers, and the pay of drivers to assure compliance with the VC and regulations adopted pursuant to the section.

(1) A California Highway Patrol Officer has full police powers, and is a peace officer. He/she has full authority to conduct "on-highway" inspections, subject to departmental policy relating to the specialized training required for inspection of commercial vehicles. (By policy, officers only perform off highway inspections when requested by Division MCSUs through the Division Chief.)

(2) A Motor Carrier Specialist (MCS) has no police powers. However, due to the authority of 34501 (a)(3) VC and departmental policy designating them as "representatives of the department," MCS have authority to conduct inspections on private property, or "off-highway" i.e., terminals and maintenance facilities as stated in 13 CCR 1202(a), and hazardous materials carriers and shippers according to 13 CCR 1160.4(e). They also are authorized to place vehicles out of service (13 CCR 1160.4(f) and 1230(a)).

(3) MCS personnel have no authority on-highway (except for on-highway bus inspections as referenced in HPM 84.1, Chapter 10) and will under no circumstance stop, detain, or attempt to take action against anyone as if possessing the authority of a peace officer. Refer to HPM 84.1, Chapter 1.

b. Explain that MCS personnel are not responsible for enforcement of vehicle loading requirements (except for those pertaining to hazardous materials) and shall take no enforcement action regarding vehicle registration or on-highway operational matters. If registration problems are noted or violations are apparent, MCS should notify a supervisor. Except for inspecting carrier files for compliance with Section 1808.1 VC, MCS personnel shall not attempt to enforce driver license requirements, although they may report their observations to commercial enforcement officers.

7. DEPARTMENTAL POLICY.

a. Definition of Policy. For the purpose of this manual, "policy" is defined as written statements that give direction to employees toward the accomplishment of the objectives of the Department.

b. Dissemination of Departmental Policy. Departmental policy is established or changed by the Commissioner and is contained in General Orders (GO), Highway Patrol Manuals (HPM),, or, on a temporary basis, in management memorandums and Communications Network (Comm-Net) Messages. Policy established in General Orders and Highway Patrol Manuals may be repeated in other publications, such as information bulletins, guides or handbooks.

(1) General Orders (GO). GOs establish policy, assign responsibility, and contain permanent detailed instructions and procedures that direct how personnel perform their duties. GOs are created for specific subjects, where a manual is not a practical format for the volume of information involved.

(2) Highway Patrol Manuals (HPM). Manuals establish policy, assign responsibility, and contain procedures that direct how personnel are to perform their duties. In content, a manual may be general and deal with principles or concepts; it may be a compilation of material related to an entire function; or it may be a step-by-step directive on the accomplishment of a specific task or operation. Manuals are the primary type of document used to disseminate departmental policy.

(3) Highway Patrol Guides (HPG). Guides contain informational material. They may refer to or restate policy, but they do not establish policy or direct compliance with it. Generally, guides are intended for departmental use only.

(4) Highway Patrol Handbooks (HPH). Handbooks usually contain quoted policy, law, procedures, etc., and are primarily of an informational nature. They are sometimes issued as brochures or booklets. In addition to departmental use, they are also made available to the public. Some have the public as their primary audience.

(5) Management Memorandums (MM). Management memorandums provide the means for issuing temporary directives and policy until it is placed in an existing publication, or until the condition requiring the temporary policy ends. They expire not more than six months from their effective dates unless formally extended (generally via Management Information System (MIS) message). Permanent departmental policy will be contained only in GOs and manuals.

(6) Communication Network (Comm-Net) Messages. Comm-Net messages provide an expeditious means for issuing directives, policy or other information. Comm-Net messages establishing policy are generally applicable for a specified period of time or may be incorporated by reference into an HPM or GO.

c. Motor Carrier Safety Operations Program Policy.

(1) Policy specific to the MCSO program is contained in HPM 84.1, Motor Carrier Safety Operations. HPM 84.1 states, *"It is the policy of this Department to maintain a continuing, effective program of regulation and inspection to ensure compliance with provisions of the Vehicle Code (VC) and Title 13 of the California Code of Regulations (13 CCR) relating to commercial vehicles, farm labor vehicles, school buses, school pupil activity buses (SPAB), youth buses, general public paratransit vehicles (GPPV), flammable and combustible liquid cargo tanks, and hazardous materials transportation. The Motor Carrier Safety Operations Program is a part of the Department's Commercial Enforcement Program. "*

(2) The field Division Standard Operating Procedures (SOP) provides operational directives for each field Division office, including the MCSU.

(3) The MCSU SOP prescribes the internal operations of each MCSU.