

DEPARTMENT OF THE CALIFORNIA HIGHWAY PATROL

Initial Statement of Reasons

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 6.5,
AMEND ARTICLE 1, SECTION 1200 AND ARTICLE 6, SECTION 1234.

FEDERAL CONSISTENCY

(CHP-R-2018-01)

PURPOSE AND NECESSITY OF REGULATIONS

In December 2012, the Federal Motor Carrier Safety Administration (FMCSA) completed a review of the California Highway Patrol (CHP) Motor Carrier Safety Assistance Program (MCSAP). The purpose of the review was to determine compatibility between state and federal regulations. Title 49, Code of Federal Regulations (CFR), Part 350, contains regulations governing the MCSAP and High Priority Program, and establishes requirements to qualify for grant funding under those programs. Title 49, CFR, Part 355, establishes requirements for regulatory review, and prohibits the adoption and enforcement of any state law or regulation pertaining to commercial vehicle safety which the FMCSA finds to be incompatible with the Federal Motor Carrier Safety Regulations (FMCSR). As a result of the MCSAP review, the FMCSA outlined approximately 55 issues of incompatibility, as well as several recommendations for action to remedy the identified incompatibilities. While the Department has taken steps to remedy the majority of the findings, the Department has also responded to several of the FMCSA's findings asserting current and ongoing compatibility, and providing support for that position.

One finding of incompatibility pertained to California regulation of two-axle motor trucks with a gross vehicle weight rating of 10,001-26,000 pounds identified in Section 34500(j) of the California Vehicle Code (CVC). In 2017, Section 34500(j) CVC was amended to remove the limitation to only hours-of-service (HOS). Specifically, Title 13, California Code of Regulations (CCR), Division 2, Chapter 6.5, Section 1200, limits the regulation of motor carriers and drivers of the aforementioned motor trucks to matters relating to HOS and logbooks of drivers. This amendment addresses the change in statute by removing the limited applicability in regulation as well. Conversely, Title 49, CFR, requires the same motor carriers and drivers to be fully regulated in the same manner as other motor carriers and drivers subject to the FMCSR.

Additionally, the FMCSA review identified an incompatibility finding with Title 49, CFR, Section 391.21, concerning commercial motor vehicle (CMV) driver employment applications. Specifically, the findings indicated California statutes and regulations do not require CMV driver employment applications to include all of the information required by Title 49, CFR, Part 391.21. While the CHP effectively refuted this finding, current statutory requirements regarding the collection of driver information, contained in Title 49, CFR, Part 391.21, do not require the retention of driver applications by the motor carrier for the specified time period or make them

available for inspection by the CHP to determine compliance with the requirements. Therefore, the CHP proposes regulatory changes to achieve consistency with federal regulations.

SECTION BY SECTION OVERVIEW

§1200 Scope. Subsection (a) is amended to replace the reference to CVC Section 545(k), which was renumbered to 545(a)(11), but was not otherwise amended in the 2017 legislative cycle. Subsection (b), Paragraphs (1), (2), (3), (4), and (5), are amended to remove the limited applicability of regulations contained in Division 2, Chapter 6.5, to the operation of motor trucks identified in Section 34500 CVC. Subsection (b) is amended to add an exception for vehicles inadvertently regulated when Section 34500 (g) CVC was amended in 2016. The amendment is necessary to correct the incompatibility with federal regulations. As mentioned previously, vehicles identified in Section 34500 CVC are fully regulated by the FMCSR when operated in interstate commerce. However, motor carriers and drivers operating the same vehicles in intrastate commerce are only required to comply with safety regulations referenced in Title 13, CCR, Section 1200, related to driver HOS, logbook, carrier, and equipment requirements. The proposed amendment to this section will require motor carriers to comply with critical safety regulations relative to vehicle maintenance and records retention, in addition to driver HOS requirements, thereby eliminating an inconsistency between Title 13, CCR, Section 34500 CVC, and Title 49, CFR.

§1234 Required Records for Motor Carriers. Subsection (i) is added to require motor carriers to retain and make available for inspection CMV driver employment applications, for the length of the driver's employment plus three years. Section 15230 CVC requires specified persons seeking employment as a driver of a CMV to provide the employer, at the time of employment, with an application outlining the names and addresses of all previous employers within the past ten years, for whom the applicant was a driver of a CMV. Section 15230 CVC also requires the application to include the dates of employment with each employer, the reason the person left that employment, and certification the information provided is true and complete. This amendment is necessary to support the ongoing efforts for consistency between the CHP and FMCSA CMV regulatory oversight. Finally, the amendment will provide carriers an additional tool to assist them in selecting qualified drivers, while providing the CHP additional information to determine if motor carriers are compliant with other critical safety requirements, previous employer inquiries for controlled substances and alcohol testing, and driver qualification/credentialing requirements.

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 align the Title 13, CCR sections with current statutes contained in the CVC and Title 49, CFR, 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 eliminating an inconsistency between Title 13, CCR, Section 34500 CVC, and Title 49, CFR. 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 and fulfills federal mandate.

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

Economic Impact on Businesses

The CHP has not identified any significant adverse impact on businesses. Businesses subject to federal jurisdiction are currently required to comply with the CVC and the Title 49, CFR, 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.

Economic Impact on Jobs

There is no indication that businesses operating “regulated” vehicles 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 13, CCR.

Based on the above analysis:

The CHP has made a 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 will result in:

- No effect on housing costs;
- No new mandate upon local agencies or school districts;
- 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 cost or savings to any state agency, nor costs or savings in federal funding to the state;
- Neither the creation or elimination of jobs in the State of California, nor result in the elimination of existing businesses, nor create or expand businesses in the State of California;
- No significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states;

- A continued nonmonetary benefit to the protection and safety of public health and employees; and
- Safety to the environment by providing an updated regulatory authority for enforcement efforts.

FISCAL IMPACT TO THE STATE

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. 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 the CVC, Title 13, CCR, and the Title 49 CFR which are already being used in this state 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 California to retain businesses, as state, provincial, and national governments throughout North America have already adopted these requirements.