

OFFICE OF THE DIRECTOR
DEPARTMENT OF MOTOR VEHICLES
P.O. BOX 932328
SACRAMENTO, CA 94232-3280



TITLE 13: DEPARTMENT OF MOTOR VEHICLES

NOTICE IS HEREBY GIVEN

The Department of Motor Vehicles (department) proposes to amend Sections 115.04 and 115.07 in Chapter 1, Division 1, Article 2.4 of Title 13, California Code of Regulations, relating to Driver Safety hearings.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 p.m., fifteen (15) days prior to the close of the written comment period.

DEADLINE FOR WRITTEN COMMENTS

Any interested party or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 p.m., **September 1, 2014**, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulation.

AUTHORITY AND REFERENCE

The department proposes to adopt this regulation under the authority granted by Vehicle Code section 1651 and Government Code section 11400.20, in order to implement, interpret, or make specific Vehicle Code sections 13558, 16070, 16075, and Article 3 (commencing with Section 14100) of Chapter 3 of Division 6, and Government Code sections 11440.30, 11505, and 11506.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Vehicle Code section 13558 allows a person who receives a notice of driver license suspension or revocation pursuant to Vehicle Code sections 13353, 13353.1, 13353.2, 13382, 13388, 23612, or a notice pursuant to Section 13357, to request a hearing to contest the suspension or revocation, within 10 days of the receipt of the notice of order of suspension or revocation. Vehicle Code section 13558 also specifies the conditions under which the hearing is to be conducted.

In recent years, the department has encountered situations where a driver's attorney contacts the department to request a hearing on behalf of his or her client and fails to provide the department with sufficient information to process the hearing request. For instance, the attorney will provide the department with only the driver's name and driver's license number, but the attorney refuses to provide information or documentation related to the arrest date or the arresting agency. The department has been accepting these hearing requests; however, in many instances, the department is unable to determine the arresting agency and to contact the agency to obtain the necessary documents prior to the hearing. In these instances, the impact is felt most by the

driver who will likely be required to wait an extended amount of time while the department obtains the necessary documentation. In addition, the delay results in a traffic safety issue as the statutorily required immediate adjudication of the administrative per se action is delayed. For these reasons, it is necessary to implement the proposed regulation in order to require the driver, or the driver's representative, to provide to the department sufficient information to process the hearing request.

This proposed regulatory action clarifies Vehicle Code section 13558 by requiring a request for hearing contain specific information. The department is amending Section 115.04 to require a hearing request to contain the subject driver's name, address, birthdate, and driver's license number, as well as the date of arrest and the name of the arresting agency. The collection of this information will ensure the department is able to request any necessary documentation within a reasonable amount of time, which will ensure a timely hearing.

Once a hearing is scheduled, a party has the ability to object to all or part of the hearing being conducted by telephone, television or other electronic means. In recent years, problems have arisen when certain witnesses are required to provide testimony but are not available to personally appear at the hearing. In this instance, the department allows that witness to provide testimony by telephone. In circumstances where a party objects to the witness testifying by telephone, the hearing officer is left with no other option than to reschedule a hearing. This deficiency is causing delays in rescheduling hearings to accommodate witnesses and leaves the department with a backlog of hearings. Furthermore, these hearing delays are inconsistent with the legislative intent to immediately resolve and implement the administrative per se suspension.

This action will repeal provisions of Section 115.07 and allow the department to set hearings and allow witnesses to appear by telephone. The amendment will repeal a party's ability to object to such an appearance and allow the department to clear hearing backlogs.

The department does not anticipate that this proposed action will result in any nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, or the increase in openness and transparency in business and government.

PROBLEMS THIS DEPARTMENT INTENDS TO ADDRESS AND BENEFITS ANTICIPATED FROM THE REGULATORY ACTION:

This proposed regulatory action will ensure hearings are scheduled efficiently by allowing the department to gather information necessary to gather requisite arrest documentation and ensure hearings are conducted efficiently by allowing the department to have witnesses to appear by telephone.

CONSISTENCY AND COMPATIBILITY WITH EXISTING REGULATIONS

The department has conducted an evaluation for any regulations on this area and has concluded that these are the only regulations dealing with driver safety hearings. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

ECONOMIC AND FISCAL IMPACT DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- Cost or Savings to Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Costs or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Effects on Housing Costs: None.
- Local Agency/School District Mandates: The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Small Business Impact: This regulation is not likely to impact small business because the proposal only addresses driver safety hearings, a process that does not impact small business, only drivers.
- Significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: None.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The department has determined that this proposed regulatory action:

- Will not create or eliminate jobs within the State of California
- Will not create or eliminate existing business within the State of California
- Will not expand business currently doing business within the State of California
- Will not benefit the State's environment, however, this action may have a positive benefit on the welfare of California residents as these provisions will ensure driver safety hearings are adjudicated as quickly and efficiently as possible.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot easily be reviewed during the comment period.

ALTERNATIVES CONSIDERED

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be effective as 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 provisions of law.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Randi Calkins, Regulations Analyst
Department of Motor Vehicles
Legal Affairs Division
P.O. Box 932382, MS C-244
Sacramento, CA 94232-3820

Any inquiries or comments concerning the proposed rulemaking action requiring more immediate response may use:

Telephone: (916) 657-6469
Facsimile: (916) 657-1204
E-Mail: LRegulations@dmv.ca.gov

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

Shelly Johnson Marker, Chief of Staff
Telephone: (916) 657-6469

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an Initial Statement of Reasons for the proposed regulatory action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the Express Terms of the proposed regulatory action using underline or italics to indicate additions to, and strikeout to indicate deletions from the California Code of Regulations.

The contact person identified in this notice shall also make available to the public, upon request, the Final Statement of Reasons and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (the Notice of Proposed Regulatory Action, the Initial Statement of Reasons, the revised handbook and Express Terms) may be accessed at www.dmv.ca.gov/about/lad/regactions.htm.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the fully modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.