

Initial Statement of Reasons  
Title 13, Division 1, Chapter 1  
Article 2.4 – Driver Safety

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

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.

Initial Statement of Reasons  
Driver Safety Hearings

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.

**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.

**ALTERNATIVES CONSIDERED:**

The department did not consider alternatives in promulgating these regulations. The proposed regulations represent the most effective method by which the department can schedule and facilitate hearings.

**COMPARABLE FEDERAL AND STATE REGULATIONS:**

There are no comparable federal or state regulations.

**§ 115.04. Hearing Requests.**

Section 115.04 is amended to identify the current language as subsection (a).

Subsection (a)(1) is adopted to identify the information components necessary to constitute a valid request for hearing. A valid hearing request shall contain:

The true full name, address, birthdate, and driver's license of the subject driver, as specified in subsections (a)(1)(A), (a)(1)(B), (a)(1)(C), and (a)(1)(F), respectively; the date of arrest, as specified in subsection (a)(1)(D); and the name of the arresting agency, as specified in subsection (a)(1)(E).

Necessity: The adoption of subsection (a)(1) will ensure that the department has all the information related to the arrest to secure the arrest documentation in the event the driver or the driver's attorney does not provide the department with the documentation. Complete information will also ensure the driver is afforded a hearing in a reasonable amount of time. The amendments clarify the hearing request provisions established in Vehicle Code section 13558.

Subsection (a)(2) is adopted to clearly communicate that any request that does not contain all the information will not be considered a valid hearing request pursuant to Vehicle Code section 14100.

Necessity: This provision is necessary to further establish the importance of a complete hearing request and clarify that a request absent any of the requirements in subsection (a)(1) will be considered invalid and a hearing will not likely be scheduled.

Initial Statement of Reasons  
Driver Safety Hearings

§ 115.07. Telephone Hearings.

Subsection (b) is repealed to eliminate circumstances whereby a hearing officer is prohibited from conducting a hearing by electronic means when a party objects. By removing this provision, the department can ensure that, even though an expert witness, for example, is unable to personally attend a scheduled hearing, he or she can still testify by telephone or other electronic means.

Necessity: The amendment is necessary to restructure the hearing process to prevent unnecessary delays.

Subsection (c) is amended to eliminate the requirement that objections to telephone, television, and other electronic means must be made at the time the hearing is requested or scheduled. Instead, this section requires that all participants have the opportunity to participate in the proceedings and to observe exhibits.

Necessity: This amendment will ensure that administrative hearings are conducted fairly as a result of this amended section.

Subsection (d) is repealed to eliminate the provision whereby the department may allow a late objection to all or part of a hearing being held by electronic means when good cause exists. Repealing late objections to electronically conducted hearings increases the hearing officer's flexibility in scheduling hearings, thus resulting in improved efficiency.

Necessity: This amendment is necessary to improve the hearing process and to prevent parties from creating delays.

**DEPARTMENTAL DETERMINATIONS**

Technical, Theoretical and/or Empirical Studies, Reports or Documents:

- None relied upon.

Reasonable Alternatives That Would Lessen Any Adverse Impact on Small Business:

- No alternatives were considered or presented that would lessen any adverse impact on small business.

Evidence Supporting Determination of No Significant Adverse Economic Impact on Business:

- This regulation is not expected to have a significant adverse economic impact on business. The proposed regulation only clarifies the hearing request process and streamlines the telephone hearing procedures. Neither of these impact businesses, only drivers.

## **ECONOMIC IMPACT ASSESSMENT**

(Government Code section 11346.3)

The department has made the following determinations when assessing the economic impact associated with this proposed regulation:

- The Creation or Elimination of Jobs Within the State of California

These regulations establish information requirements necessary for the department to gather documentation necessary to adjudicate administrative per se actions in a timely manner. Therefore, the department has determined that this proposal will neither create nor eliminate jobs in California.

- The Creation of New Businesses or the Elimination of Existing Businesses Within the State of California

These regulations establish information requirements necessary for the department to gather documentation necessary to adjudicate administrative per se actions in a timely manner. Therefore, the department has determined that this proposal will neither create new businesses nor eliminate existing businesses in California.

- The Expansion of Businesses Currently Doing Business Within the State of California

These regulations establish information requirements necessary for the department to gather documentation necessary to adjudicate administrative per se actions in a timely manner. Therefore, the department has determined that this proposal is unlikely to expand businesses currently doing business in California.

- Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

This proposed action specifies information required when requesting a hearing and allows the department to conduct hearings where witnesses may appear by telephone. These amendments allow the department to conduct efficient hearings and, as a result, are unlikely to produce benefits to worker safety or the State's environment. However, the welfare of California residents will benefit when the department meets its statutorily required immediate adjudication requirements.

**ECONOMIC AND FISCAL IMPACT DETERMINATIONS**

Cost or savings to any state agency:

- None.

Other nondiscretionary cost or savings imposed on local agencies:

- None.

Cost or Savings in Federal Funding to the State:

- None.

Cost Impact on a Representative Private Person or Business:

- None.

Effect on Housing Costs:

- None.

Local Agency/School Districts Mandate:

- The proposed regulation 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 proposed action is unlikely to impact small business.