

TITLE 13: DEPARTMENT OF MOTOR VEHICLES

Division 1, Chapter 1

Article 2.0 – Driver’s Licenses and Identification Cards

NOTICE IS HEREBY GIVEN

The Department of Motor Vehicles (department) proposes to adopt Section 20.02 in Article 2.0, Chapter 1, Division 1, Title 13 of the California Code of Regulations, related to audio and/or video recordings of driving tests.

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 their 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 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 **September 25, 2023**, 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 these regulations under the authority granted by Vehicle Code section 1651, in order to implement, interpret, or make specific Vehicle Code section 12804.9.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Vehicle Code section 12804.9 requires the department to, among other things, test an applicant’s knowledge and understanding of the operation of vehicles upon the highways and perform an actual demonstration of the applicant’s ability to exercise ordinary and reasonable control of a motor vehicle under the supervision of an examining officer.

The examination process for a driver’s license consists of the vision test, knowledge (or written) test and the behind-the-wheel driving test. When an applicant successfully completes the vision and knowledge portions of the test, they can proceed to scheduling the driving test.

The driving test is administered in two parts. The first part of the driving test requires the applicant to show they are familiar with the operation of the vehicle by demonstrating such functions as the turn signals, vehicle’s headlights and emergency flashers. The second part of the driving test is the road test. The road test is administered by a Licensing-Registration Examiner

(licensing examiner) on a predetermined route. The applicant will be tested in maneuvers such as backing, turning, freeway entry and exit, parking lots, and various intersections.

The department has recently encountered situations where driving test applicants appear for testing in vehicles equipped with interior recording devices. The department has determined that the audio and/or visual recording of driving tests could potentially create privacy concerns within the department's driving test processes. The department administers driving examinations on predetermined routes. Recording those routes could impact the integrity of the examination that and unconsented recording violates the Penal Code. The licensing examiner may object to being recorded inside the vehicle while the driving test is being administered. This proposed action prohibits the audio recordings and video recordings of a vehicle's interior during a driving examination, unless authorized by the department. Prohibiting interior recordings will also protect the applicant's personal identifying information that may arise out of conversations between the driver and the examiner.

CONSISTENCY AND COMPATIBILITY WITH STATE REGULATIONS

The department has conducted a review of other state regulations and has concluded that these are the only regulations related to driving tests and the audio and/or video recording of driving tests. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

COMPARABLE FEDERAL STATUTES OR STATE REGULATIONS

There are no existing federal statutes or regulations that govern driving tests administered by the department.

DOCUMENTS INCORPORATED BY REFERENCE

There are no documents incorporated by reference.

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.
- Effects on Housing Costs: None.
- Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code section 17500 et seq.: 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.

- **Small Business Impact:** This proposed action will not impact small businesses. The driving test procedures have no impact on businesses and the adoption of Section 20.02 will also have no impact on small businesses.
- **Local Agency/School District Mandate:** 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.
- **Significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states:** The department has made the initial determination that this action will not have a significant statewide adverse economic impact directly affecting business nor will it impact the ability of California businesses to compete with businesses in other states. This proposed rule impacts specified individuals, not businesses.

RESULTS OF THE ECONOMIC IMPACT STATEMENT

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

This proposed action is unlikely to 1) create or eliminate jobs within the State of California; 2) create or eliminate businesses within the State of California; or 3) expand businesses currently doing business in the State of California.

The proposed rule will benefit the welfare of California residents by protecting department's licensing examiners who may not want to be recorded while administering a driving examination and will benefit the drive test applicant by preventing circumstances where the applicant's personal identifying information may inadvertently be discussed while the audio or video is recording. This proposed action is unlikely to benefit the state's environment or worker safety.

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 as effective 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

PO 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) 282-7294

Facsimile: (916) 657-6243

E-Mail: LADRegulations@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

Department of Motor Vehicles

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, and Express Terms) may be accessed at <https://www.dmv.ca.gov/portal/about-the-california-department-of-motor-vehicles/california-dmv-rulemaking-actions>.

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.