

Order to Adopt

Title 13, Division 1, Chapter 1

Article 2.4. Driver Safety

§ ~~115.01~~115.00 Applicability.

Sections ~~115.01 through 115.10~~ 115.00 through 115.15 of this article are applicable to hearings conducted before the department pursuant to Article 3 (commencing with Section 14100) of Chapter 3 of Division 6, and Chapter 1 of Division 7 of the Vehicle Code.

Note: Authority cited: Section 1651, Vehicle Code; and Section 11400.20, Government Code.
Reference: Sections 12508, 12517, 12517.2, 12517.3, 12517.4, 12519, 12520, 12523, 12523.5, 12523.6, 12524, 12527, 12800, 12803, 12804.2, 12804.6, 12804.9, 12804.12, 12804.14, 12805, 12806, 12806.5, 12807, 12808, 12809, 12810, 12810.2, 12810.4, 12810.5, 12812, 12813, 12814, 12814.6, 12818, 12819, 13007.5, 13100, 13101, 13102, 13103, 13207, 13353, 13353.1, 13353.2, 13353.3, 13353.4, 13353.5, 13353.6, 13353.8, 13359, 13360, 13361, 13362, 13363, 13367, 13368, 13369, 13370, 13371, 13372, 13373, 13374, 13375, 13376, 13377, 13378, 13555, 13556, 13557, 13558, 13559, 13800, 13801, 13802, 13950, 13951, 13952, 13953, 13954, 14100, 14100.1, 14101, 14103, 14104, 14104.2, 14105.5, 14104.7, 14105, 14105.5, 14106, 14112, 14250, 14250.5, 14251, 14252, 14253, 15250, 15250.3, 15250.5, 15250.6, 15275, 15278, 16000, 16000.1, 16020, 16020.3, 16021, 16050, 16070, 16075, 16076, 16077, 16371, 16484 and 40807, Vehicle Code; and Section 103900, Health and Safety Code.

§ 115.01. Definitions

The following definitions shall apply to this Article:

(a) “Driver” means the person whose driver’s license or driving privilege is at issue in the hearing.

(b) “Hearing Officer” means the following:

(1) The hearing officer or hearing board is not an advocate for the Department but is a neutral decision-maker and determines whether a license or privilege should be issued, renewed, denied, revoked, or suspended under the applicable statutes and regulations.

(2) The hearing officer may investigate, gather evidence, and subpoena witnesses as necessary to make an accurate determination and obtain complete information regarding the case.

(c) “Party”; the parties to a hearing are:

(1) The Department of Motor Vehicles and their representative.

(2) The driver and their representative, if any.

(d) “Representative” means the following:

(1) The representative of the Department of Motor Vehicles is the hearing officer or board assigned to hear the case.

(2) The representative of the driver is the attorney or other person the driver has requested represent them at the hearing.

Note: Authority cited: Sections 29, 1651, and 1801.2, Vehicle Code. Reference: Sections 29 and 1801.2, Vehicle Code.

§ 115.02. Public Observation.

(a) All hearings shall be open to public observation pursuant to Government Code section 11425.20.

~~(a)~~(b) The hearing officer may:

(1) Exclude persons whose conduct impedes the orderly conduct of the hearing;

(2) Restrict attendance because of any of the following:

(A) the physical limitations of the hearing facility; or

(B) to ensure a fair hearing in the circumstances of the particular case; or

(C) the technical limitations of hearings held virtually by telephone, videoconference, or other electronic means;

(3) Take other action to promote due process and the orderly conduct of the hearing; or

(4) Exclude persons or take actions necessary to protect the privacy or personal information of parties, witnesses, or other persons necessary to the hearing.

~~(b) The following provisions apply to hearings conducted by telephone:~~

~~(1)~~(c) Except as otherwise provided by law, the hearing shall be open to public observation, provided a written request to observe a hearing is received by the department ~~in a timely manner~~ ten or more business days before the date set for the commencement of the hearing.

~~(2)~~(d) In lieu of a written request, a request to observe a hearing may, with the approval of the department, be made by telephone or in person.

~~(3)~~(e) Notwithstanding the timeliness requirement in subdivision ~~(b)~~(c), the department may grant a late request to observe a hearing, if it is determined by the department that the public interest would be served by granting that request.

Note: Authority cited: Section 1651, Vehicle Code; and Section 11400.20, Government Code. Reference: Sections 1808, 1808.5, 16070 and 16075, and Article 3 (commencing with Section 14100) of Chapter 3 of Division 6, Vehicle Code; and Sections 11425.10 and 11425.20, Government Code.

§ 115.03. Interpreters and Accommodation.

(a) In addition to the notice required by Government Code section 11435.60, the department shall notify each party of the right to an interpreter at the time they are notified of their right to a hearing.

(b) In any hearing where a party, a party's representative, or a party's expected witness requires an interpreter for any language, including sign language, that party shall be responsible for notifying the department as soon as the requirement is known.

(c) A request for an interpreter or other accommodation pursuant to this section does not stay the action by the department for which the notice is given.

(d) In lieu of a written request, a party's request for an interpreter may, with the approval of the department, be made by telephone or in person.

(e) Any interpreter who assists with the testimony or evidence at a hearing shall first declare, by oath or affirmation, that ~~he or she~~ they will perform ~~his or her~~ their duties truthfully. ~~A suggested model form for the oath or affirmation of an interpreter, based on the language of Evidence Code 751, is as follows:~~

“Do you swear or affirm that you will make a true interpretation of the questions asked and the answers given and that you will make a true translation of any documents which require translation, into the English language, to the best of your skill and judgment?”

(f)(1) In any hearing where a party, a party's representative, or a party's expected witness has a disability requiring accommodation at the hearing, that party shall be responsible for notifying the department as soon as the requirement is known, in order to provide reasonable accommodation.

(2) In any hearing where a party, a party's representative, or a party's expected witness is hearing impaired and requires electronic amplification equipment, that party shall be responsible for notifying the department as soon as the requirement is known.

Note: Authority cited: Section 1651, Vehicle Code; and Section 11400.20, Government Code. Reference: Sections 14100(d), 16070 and 16075, Vehicle Code; and Sections 11435.15, 11435.20 and 11435.60, Government Code.

§ 115.04. Hearing Requests and Late Hearing Requests.

(a) ~~Notwithstanding the requirement of a written request for hearing under subdivision (a) of Section 11506 of Part 1 of Division 3 of Title 2 of the Government Code, a respondent may, with the approval of the department, request a hearing by telephone or in person. Any request for hearing pursuant to Vehicle Code section 14100 shall be made in writing, by telephone, or electronically through the department's online portal.~~

(1) Any request for hearing ~~submitted in writing, by telephone or in person~~ shall contain all of the following information:

(A) ~~The true full name of the subject driver; The name, birth date, driver's license number, current address, email, and current telephone number of the driver;~~

(B) ~~The current mailing address of the subject driver; The date of the arrest, detention, or incident at issue in the hearing, if applicable;~~

(C) ~~The subject driver's date of birth; The name of the agency responsible for arresting, detaining, citing, contacting, and/or providing notice of an order of suspension to the person requesting the hearing, if applicable;~~

(D) ~~The date of arrest, for which the hearing is being requested, if applicable; The name, address, e-mail, and telephone number of the subject driver's attorney or representative, if applicable; and~~

(E) ~~The name of the arresting agency, if applicable; and An indication as to whether the driver and their representative, if any, consents to electronic service pursuant to Section 115.06 of this article.~~

(F) ~~The subject driver's California driver license number.~~

(2) Any request for hearing that does not contain all the information specified in subsection (a)(1) will not be considered a valid request for a hearing pursuant to Vehicle Code section 14100.

(3) The person requesting the hearing or their representative must inform the department of any change in the information provided in subsection (a)(1) within five days of the change.

(b) If the driver fails to request a hearing within ten days, as required by Vehicle Code section 14100, the department may still grant a hearing if the driver provides information establishing all of the following:

(1) The driver or their representative was not responsible for the delay in requesting a hearing; and

(2) The driver or their representative could not reasonably have made a timely request.

Note: Authority cited: Section 1651, Vehicle Code; and Section 11400.20, Government Code. Reference: Sections 16070 and 16075, and Article 3 (commencing with Section 14100) of Chapter 3 of Division 6, Vehicle Code; and Sections 11505 and 11506, Government Code.

§ 115.06. Electronic Service.

If the person requesting the hearing or their representative consents to electronic service, all notices, discovery, and communications between the department and the person requesting the hearing or their representative may be made through email or other electronic means, as consented to by the person requesting electronic service.

Note: Authority cited: Section 1651, Vehicle Code. Section 29, 1801.2, Vehicle Code; Section 11440.20, Government Code.

§ 115.07. Notice of Representation and Withdrawal of Representative.

(a) Any attorney or other representative who has assumed representation of a party shall give written notice to the department, including the representative's name, address, telephone number, e-mail, fax number (if applicable), and the name of the represented party, within ten days after assuming representation.

(b) Any attorney or other representative may withdraw as counsel or representative of record by giving written notice to the department.

(c) Withdrawal or change of attorney or other representative does not alone constitute grounds for continuance of any previously scheduled proceeding.

Note: Authority cited: Section 1651, Vehicle Code. Reference: Section 11440.60, Government Code.

~~§ 115.05. 115.08. Discovery Requests.~~

Notwithstanding the provisions of Section 11507.6 of the Government Code, and, in order to conform to the time constraints for hearings under Chapters 2 and 3 of Division 6 of the Vehicle Code:

~~(a) A party's request for discovery may, with the approval of the department, be made by telephone or in person.~~

~~(b) A request for discovery must be made at least 10 days prior to the date set for commencement of the hearing to receive discovery prior to the hearing.~~

~~(c) A request for discovery may be grounds for a continuance; however, it shall not stay the action by the department.~~

(a) Upon written request, including electronic communication as outlined in section 115.06, by a party within 20 days of a hearing being requested or 10 or more business days before the date set for the commencement of the hearing, whichever is earlier, each party shall provide the other party with the following:

(1) The names of witnesses to the extent known to the other party, including those intended to be called to testify at the hearing, and

(2) A true copy of any document, writing, or thing which is in the possession or custody or under the control of the party and which may be relevant and admissible in evidence.

(A) All digital photographs, video, documents, or other digital-media shall be provided in a format reasonably accessible to the other party.

(B) The hearing officer may order a party to provide the digital photographs, video, documents, or other digital-media in an alternate format.

(C) If the digital-media cannot be accessed or viewed by the hearing officer it shall not be admitted.

(b) Any evidence not provided within the time required shall not be admitted at the hearing unless the proponent of the evidence can show:

(1) They did not have the document, writing, or thing in their possession, custody, or control; and

(2) They provided the evidence as soon as reasonably possible after receiving the evidence.

(c) Discovery may be served electronically by means prescribed by and in the discretion of the hearing officer.

Note: Authority cited: Section 1651, Vehicle Code; and Section 11400.20, Government Code. Reference: Sections 16070 and 16075, and Articles 1-4 (commencing with Section 13800) of Chapter 3 of Division 6, Vehicle Code; and Sections 11507.6 and 11507.7, Government Code.

~~§ 115.06.~~ 115.09. Change of Venue for In-Person Hearings.

~~(a) A hearing~~ In-person hearings will be scheduled by the department at an office of the department, or another location designated by the department, except as otherwise provided by the Vehicle Code.

(b) The parties, by agreement, may select any other place within the state for the hearing.

(c) A motion for a change in the place of the hearing may be made either orally or in writing.

(d) A motion shall be made within 10 days of the service of the notice of action.

~~(e) A motion for a change in the place of the hearing shall not stay the action by the department.~~

Note: Authority cited: Section 1651, Vehicle Code; and Section 11400.20, Government Code.
Reference: Sections 13558(b), 14104 and 16075(e), Vehicle Code; and Section 11508,
Government Code.

§ ~~115.07-~~115.10. ~~Telephone~~-Hearings.

(a) Hearings may be conducted in-person or virtually by telephone, videoconference or other electronic means.

~~(a)(1)~~ (1) Any hearing conducted all or in part virtually by telephone, ~~television,~~ videoconference, or other electronic means must be sufficiently audible that it can be clearly recorded and made part of the official record of the hearing. The hearing officer will grant a continuance of the hearing if at any time the audibility is such that it cannot be clearly recorded.

(2) If a hearing is held virtually by telephone, videoconference, or other electronic means, each party shall ensure that all witnesses called by that party:

(A) Have access to appropriate equipment to participate in the hearing,

(B) Have all information necessary to log in, connect, or otherwise participate in the hearing, including, web links, passwords, or telephone numbers,

(C) Have in their possession a copy of all exhibits and discovery. Exhibits and discovery shall be provided to the witness ten or more business days before the date set for the commencement of the hearing.

(D) Failure to follow the provisions of this section shall result in exclusion of the evidence and/or witness.

~~(b) The hearing officer shall not conduct all or part of a hearing by telephone, television, or other electronic means, if a party objects. A party may object to all or part of a hearing being held virtually by telephone, videoconference, or other electronic means.~~

(1) Any objection to conducting all or part of a hearing held virtually by telephone, videoconference, or other electronic means must be made at the time the hearing is requested or scheduled.

(2) No objection to conducting all or part of a hearing by telephone, videoconference, or other electronic means shall be granted absent a showing of facts demonstrating the following:

(A) Actual prejudice arising from holding the hearing virtually by telephone, videoconference, or other electronic means; and

(B) No reasonable actions could be taken to avoid the prejudice.

(3) The hearing officer may grant or deny the objection or may, in their discretion, deny the objection and make such orders or structure the hearing to address the specific issues or prejudice raised by the objection.

~~(e) Any objection to conducting all or part of a hearing by telephone, television, or other electronic means must be made at the time the hearing is requested or scheduled.~~

~~(d) Notwithstanding the requirement of subdivision (e), the department may allow a late objection to conducting all or part of a hearing by telephone, television, or other electronic means for good cause.~~

Note: Authority cited: Section 1651, Vehicle Code; and Section 11400.20, Government Code. Reference: Sections 13558, 16070 and 16075, and Article 3 (commencing with Section 14100) of Chapter 3 of Division 6, Vehicle Code; and Section 11440.30, Government Code.

~~§ 115.08.~~ 115.11. Motions.

~~(a) Unless a~~ All motions, including a motion pursuant to Sections 115.11, 115.12, or 115.13 of this article and Section 11450.30 of the Government Code, for a protective order or a motion to quash relating to a subpoena, is made during a hearing while on record, it shall be in writing, and shall be made with written notice to all parties, with proof of service upon all parties attached ~~may be made orally, in writing, or electronically, if the parties have agreed to electronic service pursuant to Section 115.06 of this article.~~

~~(b) Except as provided in subdivision (d), a motion to continue a case shall be made pursuant to Section 11524 of the Government Code.~~

~~(e)(b)~~ Any motion shall state in plain language the relief sought and the facts and circumstances the moving party contends support the motion and shall be supported by legal authority.

~~(d) A motion shall be made and filed at least 5 business days before the date set for the commencement of the hearing.~~

(c) All motions shall be made either orally on the record or in writing. Motions made in writing shall be served on the hearing officer either in person, by mail, or electronically in accordance with Section 115.06 if the person requesting the hearing has consented to electronic service.

(1) Any motion not made in accordance with subsection (c) shall not be accepted for filing and the motion will not be considered.

(2) A motion made orally on the record may be made in person or virtually by telephone, videoconference or other electronic means at the discretion of the hearing officer.

~~(e)(d)~~ Any motion filed pursuant to this section may be decided by the department without oral argument. Any party may request an opportunity for oral argument at the time of the filing of the motion or response. Oral argument shall be recorded and, with the approval of the hearing officer, may be made by telephone or in person-made on the record.

~~(f)~~(e) An order deciding any motion made pursuant to this section may be made by the hearing officer either orally on the record or in writing.

Note: Authority cited: Section 1651, Vehicle Code; and Section 11400.20, Government Code. Reference: Sections 16070 and 16075, and Article 3 (commencing with Section 14100) of Chapter 3 of Division 6, Vehicle Code; and Sections 11450.05, 11450.30, 11455.30, 11507.3, 11507.7, 11508(c), 11511 and 11524, Government Code.

§ 115.12. Motion to Seal Evidence.

(a) Any person who receives a Subpoena Duces Tecum may file a motion to seal the evidence subpoenaed.

(1) The motion shall state the reason for the motion, including, the information or items that need to be sealed and the harm that would result if the evidence is not sealed.

(b) If the hearing officer grants a motion to seal, the hearing officer shall provide notice to all parties that:

(1) The motion has been granted,

(2) The requested evidence is under seal, and

(3) The evidence may not be copied, disseminated, or used for any purpose outside of the hearing.

(c) At the conclusion of the hearing, all parties shall return all copies of the evidence to the hearing officer.

(d) The hearing officer may grant a motion to seal in whole or in part.

(1) If a motion to seal is granted in part, an original, complete, and unredacted copy of the evidence shall be sealed. A redacted copy shall be provided to all parties pursuant to Section 115.08 and retained in the record.

(e) Evidence ordered under seal by this section shall not be subject to public inspection absent a court order.

Note: Authority cited: Section 1651, Vehicle Code; and Section 11400.20, Government Code. Reference: Sections 16070 and 16075, and Article 3 (commencing with Section 14100) of Chapter 3 of Division 6, Vehicle Code; and Sections 11450.05, 11450.30, and 11455.30 Government Code; Section 1063, Evidence Code.

§ 115.13. Motion for a Continuance of Hearing.

(a) Any motion for a continuance shall be made pursuant to Government Code section 11524.

(b) No motion for a continuance shall be granted absent a showing of good cause.

(c) Any motion for a continuance shall contain sufficient facts and information to establish good cause including the following:

(1) The nature of the conflict, event, or occurrence which establishes the good cause for the continuance;

(2) The date the conflict, event, or occurrence arose or was discovered; and

(3) The steps or actions taken by the requesting party to avoid the conflict.

(d) Any motion for a continuance shall be made and filed within 10 business days following the time the party discovered or reasonably should have discovered the conflict, event, or occurrence.

(1) Any motion for a continuance made more than 10 business days following the time the party discovered or reasonably should have discovered the conflict shall not be granted.

(2) Notwithstanding subsection (d)(1), the hearing officer may still grant a motion for a continuance made more than 10 business days following the time the party discovered or reasonably should have discovered the conflict if the requesting party can demonstrate facts that support all the following:

(A) The requesting party could not reasonably have requested the continuance any sooner.

(B) The requesting party is not at fault for the conflict necessitating the continuance.

(C) The requesting party has made reasonable, diligent efforts to avoid the conflict.

(e) Failure to include the information required by this section shall result in the denial of the request for a continuance.

(f) Any request for judicial review of a denial of a continuance shall comply with Government Code section 11524(c).

Note: Authority cited: Section 1651, Vehicle Code. Reference: Section 11524, Government Code.

~~§ 415.09.~~ 115.14. Hearing Officer Disqualification.

(a) A hearing officer shall voluntarily disqualify ~~himself or herself~~ themselves and withdraw from any case in which there are clear grounds for disqualification, including disqualification for bias, prejudice, or interest in the proceeding by the assigned hearing officer.

(b) It is not alone or in itself grounds for disqualification, without further evidence of bias, prejudice, or interest, that the hearing officer:

- (1) Is or is not a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of that group.
- (2) Has experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the proceeding.
- (3) Has, as a lawyer or public official, participated in the drafting of laws or regulations or in the effort to pass or defeat laws or regulations, the meaning, effect, or application of which is in issue in the proceeding.

Note: Authority cited: Section 1651, Vehicle Code. Reference: Sections 14104, 14104.2 and 14112, Vehicle Code.

§ ~~115.10~~-115.15. Request for the Disqualification of a Hearing Officer.

(a) Any party may request the disqualification of any hearing officer by filing an affidavit, stating with particularity the grounds upon which it is claimed that the hearing officer is disqualified. The only grounds which will be considered in support of a disqualification request are those which clearly demonstrate the hearing officer's bias, prejudice, or interest in the proceeding.

(b) If notification of the hearing officer assignment has been made to the party ten days prior to the commencement of the scheduled hearing, the affidavit requesting the disqualification must be submitted to the driver safety office where the hearing is scheduled to be conducted at least four business days prior to the scheduled hearing. A written determination will be made on the hearing officer disqualification request, prior to the commencement of the notice hearing, by a person designated by the department. The written determination will be delivered to the requesting party at the noticed hearing prior to the taking of any evidence at the noticed hearing and shall be noted on the record.

(c) If notification of the hearing officer assignment has not been made to the party at least ten days prior to the commencement of the scheduled hearing, the request for disqualification must be made on the record, while the requesting party is under oath, and prior to the taking of any evidence at the noticed hearing. An oral determination on the request for a hearing officer disqualification shall be made on the record prior to the taking of any evidence by the person designated by the department.

(d) The person designated by the department to make the determination in response to a request for a hearing officer disqualification, shall not be the hearing officer who is the subject of the disqualification request.

Note: Authority cited: Section 1651, Vehicle Code. Reference: Sections 14104, 14104.2 and 14112, Vehicle Code.