

Amended
FINAL STATEMENT OF REASONS

1) The Update to the Initial Statement of Reasons

There are no changes to the initial statement of reasons with exception to the following:

Subsection (c)(1) is amended to remove the word ‘horizontal’ from the proposed adoption. Vehicle Code section 11202(a)(1) does not allow for the additional clarification of horizontal feet. The amended language will ensure consistency with statute by requiring a traffic violator school’s business office or place of business be more than 50 feet from the nearest building wall of another traffic violator school.

2) Imposition of Mandate on Local Agencies or School Districts

The department’s regulatory action amending Section 345.50 in Article 4.7, Chapter 1, Division 1, of Title 13, does not impose any mandate on local agencies or school districts and imposes (1) no cost or savings to any state agency, (2) no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, (3) no other discretionary cost or savings to local agencies, and (4) no cost or savings in federal funding to the state. No studies or data were relied upon to make this determination.

3) Summary of Comments Received and Department Response

The proposal was noticed on June 25, 2021 and made available to the public from June 25, 2021 through August 9, 2021. The department received 2 written comments during the 45-day comment period.

- Lynndee Riley, President & CEO
San Joaquin Safety Council/Central California Safety Council

Comment #1: Encourages the department to consider more fully its proposal setting “normal” office hours of 9:00am to 4:00pm on Monday to Friday. The commenter points to changes to business operations due to the pandemic such as the need for employers to attract and retain employees, small businesses only being able to afford one or two employees, increased labor expenses, workers begin more attracted to positions allowing remote work opportunities, and the need for workers to have more flexible hours to achieve a work/life balance.

Department’s Response: Assembly Bill 708 (Chapter 307; Statutes of 2019) amended Vehicle Code section 11202(b) to require a traffic violator school business office to be open during regular business hours Monday to Friday, inclusive, except for state and federal holidays. The reference to “regular business hours” is vague. Specifying the hours identifies a clear, consistent, and measurable way to determine whether this requirement is being met. The suggested hours are based on the previous requirement for a traffic violator school to maintain the same hours as the business office for the county court. The optional mid-day closure was inserted to allow a TVS business office operator or employee flexibility for lunch and other necessary errands. As provided in the statute, an alternate work week schedule is not an option. When the person assigned to staff the office is not available, another traffic violator school employee or the traffic violator school operator must be present during “regular business hours”.

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Comment #2: Suggests requiring a “published, regular schedule” of a minimum number of hours per week for a minimum number of weeks per year. The commenter also suggests that a minimum of 24 hours per week for a minimum of 48 weeks per year would be reasonable. These changes would allow flexibility for very small operations to set hours to accommodate the needs of working parents.

Department’s Response: Vehicle Code section 11202(c) requires a traffic violator school operator or employee to be in each office or place of business during regular business hours. Using social media, websites, or a voicemail system is not an alternative to have the business office appropriately staffed.

Comment #3: The commenter acknowledges that access to reliable information related to business hours is key and suggests requiring that traffic schools keep their hours up to date on their social media, websites, and voicemail systems. This change would allow auditors to know when the location will be available for audits and for clients to know when the business will be open.

Department’s Response: Vehicle Code section 11202(c) specifies a TVS operator or employee in each office or place of business during regular business hours. Using social media, websites, or a voicemail system is not identified as options in statute to having the TVS operator or employee in the business office.

- Roy Pinckard, President
7 Days-A-Week Evening Classes

Comment #1: The stated reasons for the required office hours of 9am to 4pm, without exceptions for lunches, vacations, illness or jury duty serve what purpose? The stated reasons of having our office available for students is easily met by having the student being able to contact a representative by telephone during these hours. In all the years we have been in business we have averaged maybe one person per month actually come into our office for service.

Department’s Response: The department recognizes that in person visits to traffic violator school offices will vary according to the location of the school office. However, Vehicle Code section 11202(a)(2) requires the traffic violator school office to be open to the public and maintain regular business hours Monday to Friday and Vehicle Code section 11202(a)(3) requires an operator or employee in each office during business hours. Allowing a traffic violator school to meet office availability requirements by telephone contradicts the traffic violator school owner requirements established in the Vehicle Code.

Comment #2: The change would allow the department ample opportunity to conduct random audits as schools have used the current exemptions to avoid such audits. What exactly does the department think a random audit will reveal that a scheduled audit will not? Prior to 2012, when the CTSI [California Traffic Safety Institute] began auditing for the department, actual DMV Inspectors would schedule and conduct office audits. I am not aware that CTSI audits have unveiled violations that the scheduled department audits did not. I believe scheduled audits would serve the same purpose as random audits.

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Department's Response: Vehicle Code section 11214 authorizes the department to audit, inspect, and monitor all licensed traffic violator schools. From 2013 to 2015, the department's contracted vendor(s) conducted a total of 1,158 scheduled traffic violator school office audits. Out of these 1,158 scheduled office audits, only 35 offices were found to be closed to the public (0.3%). From 2015 to 2017, the department's contracted vendor(s) conducted a total of 758 random traffic violator school office audits. Out of these 758 random TVS office audits, the department found 213 offices were closed to the public (28%).

This significant increase in the numbers of traffic violator school offices closed to the public raise significant concerns for the department. The department found that scheduling business office audits would result in the traffic violator school opening its business office on the day of the scheduled audit, making it appear as though the office is open year-round while remaining closed to the public for the remainder of the year. Scheduled audits also allowed traffic violator schools to avoid office visits by closing the business office on the day of the scheduled visit.

Therefore, the department determined the best way to ensure all traffic violator schools were compliant with all applicable regulatory and statutory requirements was to conduct random office audits.

Comment #3: As stated in the acknowledgement of the impact on business, the department admits that small schools may need to go out of business because not being able to close for illness or even jury duty would be too great a burden. This would be the case with my school. Perhaps things will change with the reduction of the number of licensed schools, but currently, I could not afford to have extra employees on the off chance I would get called for jury duty or that once every 3 years when I must take my Instructor license exam at a DMV Inspectors office.

Department's Response: The department's initial statement of reasons acknowledged that some schools may be required to hire additional staff to ensure business offices are staffed during the established business hours, as required by Vehicle Code section 11202. Established business hours are necessary to ensure the department and potential traffic violator school students have access to the business office.

The department's initial statement of reasons also acknowledged that some businesses may be impacted, some adversely, due to the changes to Vehicle Code section 11202, requiring 50 feet between schools. However, this provision is statutory, and the department has no discretion but to enforce the requirement that prohibits a licensed traffic violator school from being situated within 50 feet of another licensed traffic violator school.

4) Modified Regulatory Text and 15-day Comment Period

The department amended the originally proposed regulation to remove a provision that is inconsistent with statute. The department provided for comment the Notice of Modification, the Modified Regulatory Text, and the Statement of Reasons for the Modified Regulatory Text.

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The Notice of Modification documents were made available to the public, including posting on the department's internet site, on May 23, 2022. The beginning and ending dates for this public availability period were May 23, 2022 through June 8, 2022.

No comments were received regarding the modified text.

5) Determination of Alternatives

The department has determined 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.