

**Statement of Reasons
for the Modified Regulatory Text**

§ 20.03. Vision Screening.

Subsection (f) is amended to remove the word “may” and replace with the word “will” to resolve potential clarity issues by expressly stating that the department will impose daylight driving restrictions when, 1) the optometrist or ophthalmologist recommends no night driving, 2) the driver wears bioptic telescopic lenses, or 3) the driver has a severe vision condition of worse than 20.50 in both eyes.

Subsection (f)(1) is amended to move reference to “vision specialist” and replace with “optometrist or ophthalmologist.” The term “vision specialist” is overly broad and could include several types of eye care specialists who are not authorized to sign the form DL 62. The amendment recognizes the title of the only two types of license holders who are authorized to sign the DL 62.

Subsection (f)(3) is amended to remove the word “impairment” and replace with “condition.” The term “impairment” only denotes a loss or reduction of function. Revising the regulation to use the word “condition” covers all conditions including those that are stable or progressive.

Subsection (g) is amended to remove the word “may” and replace with the word “will” to resolve potential clarity issues by expressly stating that the department will remove daytime driving restrictions when the optometrist or ophthalmologist recommends night driving or when the driver passes a nighttime driving examination.

Subsection (g)(1) is amended to remove reference to “vision specialist” and replace with “optometrist or ophthalmologist.”

§ 21.00. Definitions Related to Driving Performance Evaluations.

Subsection (d) is amended to remove an unclear reference to “lead to an accident.” This reference is unclear as even a minor driving error could lead to an accident. The department is adding clarification by specifying that a critical driving error is a maneuver that could cause an immediate safety risk.

Subsection (f), related to minor driving errors, is amended to include examples of minor driving errors, such as failing to check traffic by looking both ways and ahead, failing to look over the appropriate shoulder before changing lanes, failing to conduct smooth and safe stops, and driving too fast or slow for current traffic conditions. Minor driving errors are included in the defining to provide clarity that is consistent with the definition of “critical driving error” where examples of critical driving errors are provided in the definition.

Subsection (g) is amended to add reference to Section 21.01, as it relates to driving evaluations.

Subsections (h) and (j) are amended to make clear that a progressive or stable vision condition observed and noted by an optometrist or ophthalmologist does not supersede the stable and progressive designations in specified in the VCAC. For example, an optometrist may indicate a driver's diagnosis of myopia is stable if the condition has not worsened in several years, however, the VCAC, developed by optometrists and ophthalmologists, determines myopia to be a progressive vision condition regardless of whether the driver's condition is stable. In circumstances such as this, the stability referenced in the VCAC always supersedes that noted on the form DL 62 or in the doctor's letter.

Subsection (k) is amended to clarify that twenty-one or more minor driving errors will result in an automatic failure. The definition of "minor driving error" was amended to remove similar verbiage and to remove an incorrect statement that twenty or more minor driving errors will cause an applicant to fail the driving performance evaluation.

Subsection (l) is adopted to provide a definition, origin, and description of the Vision Conditions and Actions Chart. The information is consistent with Section 21.01(a), as originally proposed, with exception to the adoption of text that explains the VCAC was developed by a group of optometrists for the department. The VCAC was amended to add the revision date of the Order of Suspension/Revocation, form FO 439, that is referenced in the regulation.

Order of Suspension/Revocation, form FO 439

The form FO 439 is the document issued to a driver who the department has determined is unable to safely operate a motor vehicle. The form is a two-page fillable document where the DMV employee identifies the driver's name, address, and driver's license number, and provides space for an indication of whether the driver's license is suspended or revoked. In the body of the form, the examiner gives a description of the reasons for which they determined the driver is unable to safely operate a motor vehicle. The body also includes the date in which the driver's privilege to drive is withdrawn. For purposes of the form, the term "withdrawn" applies to both suspended and revoked driver's licenses.

The form states the driving test result was unsatisfactory and the driver does have the right to request a hearing, then provides instruction on how to request that hearing.

The form states the driver can apply for an identification card at any DMV field office and an appointment can be made by visiting the department's website or by calling the toll free phone number. If the license suspension or revocation was taken due to a

medical condition, the form notifies the driver that they may be able to obtain an identification card at no cost upon surrender of their valid driver's license. The form notifies the driver that this suspension/revocation action is independent of any other action taken by a court or by the department. This provides important notification to drivers who may be at risk of losing their driving privilege through other channels.

Lastly, the form contains a Certificate of Service where the DMV employee identifies the method by which the Order was delivered to the driver. An order may be served on a driver in person or by mail at the address shown on the form or another address. The employee will then sign and date under penalty of perjury that the information contained in the form is true and correct.

The second page of the form provides details related to requesting a driver safety hearing, including how to request a hearing, the right to language assistance, right to obtain documents, right to request subpoenas, right to be represented by counsel, right to present their case and present evidence, and right to question witnesses. Lastly, the form notifies the driver of their rights after the hearing, including requesting a transcript or tape of the hearing, and appeal rights.

The provisions listed on the Hearing Information page are consistent with Vehicle Code and Government Code statutes related to administrative hearings:

REQUESTING A HEARING:

You are entitled to a hearing if you contact your local Driver Safety office within 10 days of receiving personal notice of the department's decision or 14 days of the mail date, if received by mail. This provision is consistent with Vehicle Code sections 23 and 14100.

A hearing may be requested by telephone, mail, or in person. This provision is consistent with CCR, Title 13, Article 2.4, Section 115.04

NOTE: If you or your representative do not make a presentation at your hearing and no evidence is submitted, the department may sustain the action based upon the evidence held by the department. Vehicle Code section 13557 authorizes the hearing officer to make a determination by, among other things, a preponderance of the evidence.

You have a right to have the assistance of a sign or language interpreter. If you need assistance, immediately notify this office in order to make arrangements to have an interpreter available at your hearing. This provision is consistent with CCR, Title 13, Article 2.4, Section 115.03.

BEFORE THE HEARING YOU MAY:

See or obtain copies of the department's evidence. You are entitled to review and/or obtain copies of the department's records prior to the hearing under the authority of CVC sec. 14104. If you want the information released to someone else, give them signed permission. This provision is consistent with Vehicle Code section 14104.

Ask the department to issue a subpoena in your behalf if you want a witness present for questioning. You are responsible for serving the subpoena and any related costs required by law. This provision is consistent with Vehicle Code section 14104.5.

DURING THE HEARING YOU MAY:

Be represented by counsel or other person.

Present your case and offer relevant evidence. This provision is consistent with Government Code section 11425.10.

Question your own and opposing witnesses. This provision is consistent with Government Code section 11425.10.

Note: Hearings are recorded and all testimony is taken under oath or affirmation. This provision is consistent with Vehicle Code section 14104.2.

AFTER THE HEARING YOU MAY:

Request a transcript or tape of your hearing for a fee. This provision is consistent with Government Code section 11425.20(b)(1).

Request a review of your hearing:

- To appeal a hearing decision, you may give or send a written request for a department review to the office where your hearing was held, within 15 days of the effective date of the decision (CVC Sec 14105.5)
- To appeal the department review decision, you must file a writ of mandate in superior court in your county of residence within 90 days of the date of the notice of Decision of Department Review as personally serviced or 94 days, if mailed (CV Sec 14401).

§ 21.01. Driving Performance Evaluations.

Subsection (a) is amended to remove the description of the information contained in the VCAC. This information was moved to the definition in Section 21.00(l).

Subsection (a) is amended to clarify the VCAC supersedes any progressive or stable condition noted by an optometrist or ophthalmologist on the DL 62. This text is consistent with the clarification made in Section 21.00, subsections (h) and (j).

Subsections (a)(2)(B), as originally proposed, notes a driver who passes the SDPE with between 11 and 19 minor driving errors will receive a limited term driver's license for one year. Subsection (a)(2)(C), as originally proposed, notes a driver who makes twenty or more minor driving errors will have failed the driving performance evaluation. The department is removing reference to "19" and replacing with "20" in subsection (a)(2)(B) and removing reference to "twenty" and replacing with "twenty-one" in subsection (a)(2)(C). These amendments are necessary to ensure the regulation accurately reflects the scoring during a driving evaluation. A driver can make 20 minor errors during the driving performance evaluation. If the applicant makes twenty-one or more errors they will have failed the driving performance evaluation.

Subsection (c) is adopted to clarify that a progressive or stable vision condition observed and determined by an optometrist or ophthalmologist does not supersede the progressive or stable designations specified in the VCAC.

§ 21.02. Suspension and/or Revocation.

Subsection (c) is amended to add reference to Section 115.04 in Article 2.4. Article 2.4 contains regulations related to the department's driver safety hearing procedures. Section 115.04 specifies how a driver who receives an order of suspension or revocation may request a hearing from the department.