

Statement of Reasons for the Modified Regulatory Text and Addendum to the Initial Statement of Reasons

The Department of Motor Vehicles (department) proposes to amend Sections 120.03 and 124.92 in Article 2.5, and Sections 125.12, 127.00, 127.04, 127.08, 127.10, and 128.01 in Article 2.55, Chapter 1, Division 1, Title 13 of the California Code of Regulations.

On October 5, 2018, the department published its proposed amendments to Articles 2.5 and 2.55. The comment period ended on November 19, 2018, and the department conducted a public hearing on November 19, 2018.

On December 31, 2018, the department submitted the proposed amendments to the Office of Administrative Law for review and approval. After its review, the OAL determined that the department did not provide sufficient clarity in the proposed text and needed to provide additional necessity to several proposed adoptions.

Modifications to the originally proposed regulatory text

Below are sections of the originally proposed regulatory text that are being amended to provide clarity and establish necessity.

§ 120.03. Notice of Non-Compliance.

The proposed adoption of subsection (b) is repealed. As proposed, subsection (b) allowed providers to submit DL 101A forms via electronic medium if authorized by the department. However, it was determined that this subsection lacked clarity related to the process by which a provider becomes authorized by the department to submit the forms electronically. Because there is no process by which a provider becomes authorized, the department ultimately decided it best to remove this subsection and avoid any possible confusion.

§ 124.92. Termination of Suspension or Revocation.

As originally proposed, subsection (d) indicated that the department may determine additional out-of-state residency documents that will assist in verifying an applicant's out-of-state residence on a case-by-case basis. In adopting this subsection, the department did not intend for the rule to be read as allowing the department to request additional residency documents in order to verify any documents that are provided on the list of approved documents in subsection (b)(1) through (b)(18). For instance, if an applicant provided a rental agreement to establish out-of-state residency, the department would not require the applicant to provide additional documentation to verify the rental agreement. To avoid confusion, the department is removing subsection (b) due to lack of necessity as the current list of approved documents is sufficient for an applicant to establish their out-of-state residency.

§ 125.12. Service and Maintenance of Ignition Interlock Devices.

Subsection (a)(1)(A)(i) is amended to clarify the term 'original form DL 920', by specifying that an original DL 920 will contain the green border around the form and will contain the manufacturer's stamp in the top left corner of the form. The manufacturer's stamp shall be an inked or embossed seal. The form DL 920 is a controlled document, meaning the form is not available on the internet and is sent to manufacturer's in bulk quantities. When reviewing the document to ensure it is an original, the

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departmental technician will look for the green border and the inked or embossed stamp in the top of the corner. When those features have been verified, the technician will sign the form verifying it as an original. A corresponding amendment is made to the form DL 920 to remove the words ‘original copy’ and replace with ‘original.’ The form revision date is unchanged as this form has not yet been made available to manufacturers.

§ 127.00. Ignition Interlock Device Restriction for Pilot Program (Veh. Code § 23700).

Subsection (f) is amended to make clear that the provisions of Section 127.00 do not apply to violations occurring on or after January 1, 2019. Violations occurring prior to January 1, 2019 fell under the pilot program of Vehicle Code section 23700 and, because many of those affected drivers could be in the adjudication process and still facing the penalties of the IID pilot program, the department ultimately determined that including subsection (f) is more beneficial to the affected drivers than removing the entire section. The department will continue to receive DUI convictions from courts related to violations that occurred in the four counties involved in the pilot program and will enforce the sanctions and IID requirements accordingly for the next ten years. Pursuant to *Fox v. Alexis* (1985) 38 Cal.3d 621, and subsequent cases, the California appellate court held the driving privilege sanctions in effect at the time of the driver’s violation of the law, not at the time of the conviction, control the Department’s actions against the driver. For this reason, a driver with an offense date prior to January 1, 2019, is subject to the sanctions of the pilot program, Vehicle Code section 23700, and the applicable regulations.

§ 127.04. Exemption from Ignition Interlock Device Requirements for Pilot Program (Veh. Code § 23700).

Subsection (b) is amended to make clear that the provisions of Section 127.04 do not apply to violations occurring on or after January 1, 2019. Violations occurring prior to January 1, 2019 fell under the pilot program of Vehicle Code section 23700 and, because many of those affected drivers may qualify for an exemption, the department ultimately determined that including subsection (b) is more beneficial to the affected drivers than removing the entire section.

Pursuant to *Fox v. Alexis* (1985) 38 Cal.3d 621, and subsequent cases, the California appellate court held the driving privilege sanctions in effect at the time of the driver’s violation of the law, not at the time of the conviction, control the Department’s actions against the driver. For this reason, a driver with an offense date prior to January 1, 2019, is subject to the sanctions of the pilot program, Vehicle Code section 23700, and the applicable regulations.

§ 127.08. Reset of Ignition Interlock Restriction Term for Pilot Program (Veh. Code § 23700).

Subsection (b) is amended to make clear that the provisions of Section 127.08 do not apply to violations occurring on or after January 1, 2019. Violations occurring prior to January 1, 2019 fell under the pilot program of Vehicle Code section 23700 and many of those affected drivers are still affected by the IID reset provisions in Section 127.08. Because Section 127.08 contains rules specifically related to the pilot program and because those rules continue to impact drivers who have IIDs installed under the provisions of Vehicle Code section 23700, the department ultimately determined that including subsection (b) is more beneficial to the affected drivers than removing the entire section.

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Pursuant to *Fox v. Alexis* (1985) 38 Cal.3d 621, and subsequent cases, the California appellate court held the driving privilege sanctions in effect at the time of the driver's violation of the law, not at the time of the conviction, control the Department's actions against the driver. For this reason, a driver with an offense date prior to January 1, 2019, is subject to the sanctions of the pilot program, Vehicle Code section 23700, and the applicable regulations.

§ 127.10. Term of Restriction for Pilot Program (Veh. Code § 23700).

Subsection (b) is amended to make clear that the provisions of Section 127.10 do not apply to violations occurring on or after January 1, 2019. Violations occurring prior to January 1, 2019 fell under the pilot program of Vehicle Code section 23700 and affected drivers who have IIDs installed under the pilot program are still affected by the requirements of Section 127.10. The department determined that including subsection (b) is more beneficial to the affected drivers than removing the entire section.

Pursuant to *Fox v. Alexis* (1985) 38 Cal.3d 621, and subsequent cases, the California appellate court held the driving privilege sanctions in effect at the time of the driver's violation of the law, not at the time of the conviction, control the Department's actions against the driver. For this reason, a driver with an offense date prior to January 1, 2019, is subject to the sanctions of the pilot program, Vehicle Code section 23700, and the applicable regulations.

§ 128.01. Exemption from Ignition Interlock Device Requirements.

Subsection (a) is amended to remove language indicating an exemption is subject to verification from the department. While the verification process at one time was limited to reviewing department records to ensure the applicant does not have a vehicle registered to them in California, the department currently does not conduct that review. Removing this language will ensure the rule is consistent with departmental procedures.

The proposed adoption of subsection (a)(2)(B) is repealed due to lack of necessity as the current list of approved documents is sufficient for an applicant to establish their out-of-state residency.

Amended Forms

Several forms are amended to ensure clarity and necessity. The form revision dates are unchanged as these documents have not yet been made available to the public and are pending approval by the Office of Administrative Law.

- *Verification of Installation, form DL 920*

The DL 920 is adopted in Section 125.12. The form is amended to remove the word 'copy' from Section 8 to ensure the DMV technician is verifying that the document submitted is an original. As explained above in the amendments to Section 125.12, an original will show the green border and the manufacturer's inked or embossed seal in the top left corner of the form.

- *Ignition Interlock Device Installation & Removal Request, form DL 925*

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The originally proposed DL 925 contained a privacy paragraph at the bottom of the page. Due to several clarity and necessity issues related to the information contained in the paragraph, the department determined the paragraph should be removed to avoid confusion.

- Application for Termination of Action, form DL 4006

The second page of the form DL 4006 is amended to remove reference the \$2 fee for a driver record and to remove the \$5 fee for a vehicle registration printout, as the department does not currently have costing prepared to adopt those fees in the form. Also, eliminating reference to the fees will prevent the department having to update the form DL 4006 if either fee is changed at a later date. The form is also amended to add the Vehicle Code sections that support the department collecting a cash deposit in the amount of \$35,000 for proof of financial responsibility (Vehicle Code section 16054.2), or a surety bond in the amount of \$35,000 (Vehicle Code section 16056). In calculating the deposit and bond amounts, the department used the maximum fees allowed by each statute.

- *Ignition Interlock Device Exemption Request, form DL 4062*

The form DL 4062 contains no changes, however, in its review, the Office of Administrative Law determined that the form lacked necessity where the instruction page instructs the applicant to mail the form back to the department. The necessity for this requirement lies in the fact that the form is processed at the department's headquarters in Sacramento and if the applicant were to deliver the form to a field office, inspector office, investigations office, or by any other means than by mail to the address provided on the form, there would be a delay in the review and processing of the request. Mailing the form to the department at the provided address will ensure the application is reviewed and processed as quickly as possible.

- *Ignition Interlock Device Medical Exemption Request, form DL 4063*

The originally proposed version of the form DL 925 contained a paragraph at the top of the form that notified the applicant that the department may verify the accuracy of the information contained on the form. As explained above in the amendments to Section 128.01(a), the department currently does not conduct the verification. Removing the language from the form will ensure the form is consistent with the regulation and with departmental procedures.