

Initial Statement of Reasons
Title 13, Division 1, Chapter 1
Article 2.0 – Driver’s Licenses and Identification Cards

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.

This proposed action prohibits audio and video recordings of a vehicle’s interior during a driving examination, unless authorized by the department. The driving test is necessary for an applicant to receive their license to drive. The integrity of this exam must be protected by prohibiting audio and video recordings of the exam. Pursuant to Government Code section 7929.605 there is an exemption to disclosure for Public Records Act requests of, “...test questions, scoring keys, and other examination data used to administer a licensing examination...” The driving test contains examination data that is protected and not subject to public disclosure. Therefore, it is necessary to protect the integrity of the examination process. Prohibiting interior recordings will protect the applicant’s personal identifying information that may arise out of conversations between the driver and the examiner, will ensure a secure testing process, will ensure the driver and examiner are free of distractions, ensure the testing integrity of the examination, and will ensure the privacy of the department’s licensing examiners who may object to being recorded.

§ 20.02. Driving Tests: Audio and Video Recordings.

The purpose of Section 20.02 is to ensure a secure testing process and to maintain the integrity of the examination while also ensuring privacy protection for the applicant and the licensing examiner by requiring an applicant to disable a video recording device during the driving test. This proposed adoption is necessary to ensure consistent application throughout the state.

Subsection (a) is adopted to make clear that the use of any interior audio and/or visual recording device is prohibited during a behind the wheel drive test unless the recording has been authorized by the department. In an effort to ensure the applicant and the licensing examiner are free of distractions and to ensure the integrity of the examination as well as the privacy of both the driver and licensing examiner, the department has determined it necessary to require any recording device that records the audio and/or video of the vehicle’s interior to be disabled, unplugged, or powered off for the entire duration of the behind-the-wheel driving test.

Subsection (b) is adopted to make clear that a vehicle equipped with a visual recording device that has no audio but cannot be powered off or unplugged, must have the camera covered during the behind-the-wheel driving test.

Subsections (a) and (b) are necessary to ensure privacy of the licensing examiners responsible for administering the driving test who may object to being recorded and to maintain the integrity of the examination as well as to ensure the privacy of the applicant in the event the applicant and the licensing examiner discuss personal identifying information while in the vehicle. This proposed adoption is necessary to ensure consistent application throughout the state and to remove the decision from Licensing-Registration Examiners who may be faced with increasingly volatile situations if they deny an applicant's ability to record a driving exam. While Penal Code section 632 makes it a crime to record private conversations without consent of both parties the department has decided that it is simpler to provide a uniform rule to disallow audio and video recordings of the driving test to protect the integrity of the examination as well as remove the discretion from LREs faced with requests to allow recording. Therefore, to reduce the likelihood of such disputes the department has determined that a state-wide ban uniformly applied is the most efficient and best way to protect the integrity of the examination process and departmental employees.

Subsection (c) is adopted to make clear that if the applicant is unable to or chooses not to disable or turn off the video recording device, the driving test will not proceed and the applicant can reschedule the driving test for another day.

**DEPARTMENTAL DOCUMENTATION SUPPORTING GOVERNMENT CODE
SECTIONS 11346.2(b)(3) THROUGH (b)(8)
ECONOMIC AND FISCAL IMPACT DETERMINATIONS**

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

Cost Impact on Representative Private Persons or Businesses

- None. There is no cost for an applicant to take a department-administered driving test.

Effect on Housing Costs

- None

Local Agency/School District Mandates

- The proposed regulatory action will not impose any costs on local agencies or school districts that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Small Business Impact

- This proposed action will not impact small businesses. The only business that may be impacted by this regulation is a driving school who allows a student to take a department-

administered driving test in a vehicle owned by the driving school. Any impact will be minimal.

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 individuals and is unlikely to impact businesses.

ECONOMIC IMPACT ANALYSIS (Government Code Section 11346.3(b))

The department has made the following determination related to this proposed regulatory action:
Creation or Elimination of Jobs Within the State of California

- This action will not create or eliminate jobs within California. The proposed rule prohibits the audio or video recording of behind-the-wheel driving tests and requires the recording device to be disabled during the driving test. The provisions of the regulation will not impact jobs within the State of California.

Creation or Elimination of Businesses Within the State of California

- This action will not create or eliminate businesses within California. The proposed rule prohibits the audio or video recording of behind-the-wheel driving tests and requires the recording device to be disabled during the driving test. The provisions of the regulation will not impact businesses within the State of California.

Expansion of Businesses Currently Doing Business Within the State of California

- This action will not expand businesses currently doing business in California. The proposed rule prohibits the audio or video recording of behind-the-wheel driving tests and requires the recording device to be disabled during the driving test. The provisions of the regulation will not impact businesses within the State of California.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

- 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.