

CHAPTER 8
DENIAL AND ADMINISTRATIVE DISCIPLINARY ACTION
REVISED APRIL 2009
TABLE OF CONTENTS

<u>DENIAL</u>	8-3
Grounds.....	8-3
Failure to Approve Application.....	8-3
Hearing Entitlement.....	8-3
Headquarters Denial Reporting	8-3
Field Denial Reporting	8-4
<u>COMPLAINTS</u>	8-4
Applicability	8-4
Receipt and Documentation of Complaints	8-4
Acknowledgement and Routing of Initial Complaint	8-4
Documenting the Investigation	8-5
Complaint Resolution	8-5
Complaint Notification.....	8-5
Final Report Disposition	8-5
<u>ADMINISTRATIVE DISCIPLINARY ACTION</u>	8-6
Action Against Licenses and Permits	8-6
Forms of Disciplinary Action	8-6
<u>DISCIPLINARY ACTION PROCEDURES</u>	8-7
Field Processing.....	8-7
Area Commander Review	8-8
Division Chief Review.....	8-9
Headquarters Review	8-9
<u>ADMINISTRATIVE HEARING</u>	8-9
Hearing Officer	8-9
Decision.....	8-10
Decision Distribution.....	8-10
<u>ENFORCEMENT</u>	8-10
Field Enforcement	8-10
Probation Supervision	8-11
Headquarters Implementation	8-11

THIS PAGE INTENTIONALLY LEFT BLANK

CHAPTER 8

DENIAL AND ADMINISTRATIVE DISCIPLINARY ACTION

1. DENIAL.

a. Grounds. The Department may deny or refuse to issue an initial license for the reasons set forth in California Vehicle Code (VC) Sections 2531 or 2541. Renewal of an existing license may not be denied if the application for renewal is received within 30 calendar days following expiration.

b. Failure to Approve Application. When a departmental representative authorized to approve applications for licenses refuses to approve a properly completed application, the said refusal constitutes a denial of the license. Returning an application and any related documents to the applicant which is incomplete or not accompanied by the required documents does not constitute denial of a license.

c. Hearing Entitlement. An applicant who is denied a license is entitled to a hearing upon request, in accordance with Sections 2532 or 2540 VC. Accordingly, care should be exercised in any case of denial in that, such action is pursuant to conditions specified in Sections 2531 or 2541 VC.

d. Headquarters Denial Reporting. Section 32000.5 VC, prohibits the Department from issuing an Initial or New Hazardous Materials Transportation License (HMTL) to a motor carrier unless the carrier is in compliance with the provisions of Section 34501.12, Biennial Inspection Terminals (BIT program) and has a satisfactory rating on file for each terminal from which hazardous materials carrying vehicles are operated. Additionally, the Department is prohibited from issuing an Initial or New HMTL to any motor carrier which has received an unsatisfactory rating within the immediately preceding three years as the result of any inspection conducted pursuant to Sections 34501, 34501.12, or 34520 VC.

(1) Report Required. When an application for an Initial or New HMTL is denied as the result of failure to comply with the BIT program or the assignment of an unsatisfactory rating within the immediately preceding three years, the applicant shall be notified of the denial in writing. The notification shall include the reason(s) for the denial and the date the applicant is eligible to reapply. Additionally, the application and any funds received by the Department for the purpose of issuing the HMTL shall be returned to the applicant.

e. Field Denial Reporting. The Department may be required to provide reasons for the denial action; in such cases, they should be reported to Enforcement Services Division (ESD). The following guidelines are provided as aids in determining which cases shall be reported:

(1) Report Required. When an application for an initial license is not approved for any cause specified in the California Vehicle Code, such denial shall be reported by memorandum to ESD, giving the applicant's name, address, and attendant circumstances. Information be sufficient to support the denial and adequate for preparation of a Statement of Issues similar to the Accusation used in disciplinary procedures. The application shall accompany the memorandum.

(2) Report not Required. Failure to approve an application in the following two circumstances is not considered a denial and subsequent reporting to ESD is, therefore, not required.

(a) An application for an initial license to operate ambulances or armored cars is not approved because none of the applicant's vehicles pass the required vehicle inspection or the applicant has no ambulance or armored car.

(b) An incomplete or incorrectly completed application is not approved pending completion or correction only, or the inclusion of any related documents (e.g. fingerprint cards).

2. COMPLAINTS.

a. Applicability. The procedures contained in this section apply to complaints directed against a licensee's qualifications and operations. Complaints against publicly owned services, in addition to any action initiated by the Department, shall be referred to the agency concerned.

b. Receipt and Documentation of Complaints. Complaints received by telephone or in person shall be documented on a CHP 556, Narrative/Supplemental or CHP 356, Motor Carrier Safety Operations Complaint Against Motor Carrier. All documented complaints shall be reviewed by the command receiving the complaint for the Department and investigated or forwarded to another command as appropriate. In the event a complaint is not investigated, the reason(s) shall be documented thoroughly and retained with the original complaint documentation as outlined in Section 2.g.

c. Acknowledgement and Routing of Initial Complaint. A complaint received by mail shall be acknowledged in writing by the command initially receiving the complaint for the Department. A copy of the acknowledgement shall accompany the complaint report if it is forwarded to another command for investigation. The initial report of a complaint received by any command shall be routed as follows:

(1) Area. Complaints received or initiated by an Area against a licensee within the Area's geographic area of responsibility shall be investigated by the area, forwarded to the Motor Carrier Safety Unit (MCSU), or forwarded to Division, whichever is required by the Division's policy. A complaint received by than Area against a licensee outside the Area's geographic area of responsibility shall be forwarded to Division for investigation or further forwarding to the appropriate Division, Area command, or MCSU.

(2) Division. Complaints received or initiated at a Division office, including those forwarded by Headquarters, should be either investigated by Division or referred to the MCSU, or the appropriate Area for investigation, as determined by the Division chief.

(3) Headquarters. Complaints received by a headquarters office should be referred to ESD for acknowledgement and forwarded to the appropriate field Division for review and appropriate disposition.

d. Documenting the Investigation. The CHP 216, Arrest-Investigation Report and CHP 556, Narrative/Supplemental forms are to be used to document complaint investigations. Alternatively, complaints investigated and documented by Motor Carrier Specialist personnel shall include, at minimum, a CHP 343, Safety Compliance Report/Terminal Record Update.

e. Complaint Resolution. Complaints should be resolved and action taken at the lowest command level practicable. A complaint which cannot be resolved and terminated by a field command may be forwarded through their Division office to ESD. Following review of the complaint and investigation report, ESD will either take the appropriate action or provide the field Division with a recommended course of action for resolving the complaint and terminating the investigation.

f. Complaint Notification. The commander taking the action shall inform the complainant in writing as to the results of the investigation. The complainant should be provided the reasons for any finding other than where the complaint is sustained. If the complaint results in a criminal or administrative action against the licensee, the continued cooperation and appropriate assistance of the complainant in support of such action may be requested.

g. Final Report Disposition. The final report of a completed complaint investigation should be retained by the field command taking the terminal action. A copy or summary of the report together with a copy of the complaint notification shall be forwarded to CVS for retention in the licensee's file. Reports which identify grounds for action against the license or permit authority shall also be forwarded to ESD, "Attention: Commercial Vehicle Section (CVS), Licensing Unit." Divisions, Area commands, and CVS shall retain final reports for at least three years plus the current year. This requirement shall not prohibit retention of reports for longer periods as deemed appropriate.

3. ADMINISTRATIVE DISCIPLINARY ACTION.

a. Action Against Licenses and Permits. Any administrative disciplinary action which involves probation, suspension, or revocation of the license or permit may be taken pursuant to causes listed in Sections 2417, 2531, 2540, 2542, 2544 or 32002.5 VC.

(1) Licenses. Any license issued by the Department may be suspended or revoked as provided in Sections 2531, 2540, or 32002.5 VC as appropriate.

(2) Authorized Emergency Vehicle (AEV) Permit. An AEV Permit may be suspended or revoked for the reasons specified in Section 2417 VC.

b. Forms of Disciplinary Action. The Commissioner may revoke, suspend, or place on probation any license or permit issued by the Department. Section 32002.5 VC provides that the Commissioner may temporarily suspend an HMTL prior to any hearing when, in the Commissioner's opinion, the action is necessary to prevent an imminent and substantial danger to public health. Also, the Commissioner shall suspend an HMTL of a motor carrier, for a period of at least 90 days but not more than 180 days, if the holder of the license permits the transportation of fissile class III shipments or highway route controlled quantity radioactive materials, as defined in Subpart I (commencing with Section 173.401) of Part 173 of Title 49, Code of Federal Regulations, by a person who does not possess a license of the appropriate class and attached radioactive materials driver's certificate or an endorsement issued under Article 6 (commencing with Section 15275) of Chapter 7 of Division 6 VC. With these exceptions, disciplinary action must follow notice and an administrative hearing in accordance with the Administrative Procedures Act (APA) as contained in the California Government Code, commencing with Section 11500.

(1) Revocation. Revocation terminates the license or permit and pursuant to Government Code Section 11522 it shall not be reissued earlier than one year after the effective date of the revocation.

(2) Suspension. Suspension requires cessation of the licensed or permitted activity for a period of up to one year. The temporary suspension of a license to transport hazardous materials provided in Section 32002.5 VC is effective only until completion of a hearing (which must be provided within 10 days of receipt of a notice of defense) and the Commissioner's final determination (which must be made within 10 days of completion of the hearing).

(3) Probation. Probation may be imposed in lieu of all or part of a more severe penalty. It may be imposed as a period of testing to ascertain fitness, or as a withholding penalty during a period of good behavior. Probation promotes compliance without loss of service.

(4) Additional Licenses. If a license is suspended or revoked, any additional license issued to the respondent by the Commissioner may likewise be revoked or suspended.

4. DISCIPLINARY ACTION PROCEDURES.

a. Field Processing. The following procedures should be followed in the processing of disciplinary actions:

(1) Recommendation and Documentation. A recommendation or request to initiate disciplinary action against a licensee or permittee under the APA may be made at any level and initiated as the result of a complaint, one or more terminal evaluations, licensee records/vehicle inspection(s), or other appropriate process. Recommendations shall be submitted by memorandum and be supported by documentation which must include at least the following:

(a) The memorandum shall include the following critical elements:

- 1 Identification of subject and investigating personnel.
- 2 Summary of allegations.
- 3 Supporting evidence or proof.
- 4 Analysis of findings.
- 5 Recommendations.

(b) The CHP 216, CHP 556, or CHP 343 and necessary associated forms may be used as appropriate to document the investigation.

(c) Documentation supporting the recommendation should be comprehensive and shall include as many of the following as practicable:

- 1 Reports of any investigation, inspection, or evaluation.
- 2 Evidence or proof supporting the action or allegations (i.e. vehicle/terminal inspection reports, photos of defective equipment or copies of warning notices, citations with court abstracts, ambulance call records, expired certificates).
- 3 Statements of witnesses, together with address, telephone numbers, and brief summaries of what their testimony may be.
- 4 The current address of all potential respondents.
- 5 A statement of the action taken in efforts to secure compliance.

(2) Requests for disciplinary action against licensees shall be forwarded through channels to ESD and include a Division chief's approval. Two legible copies of the package shall be assembled, indexed, and tabbed essentially as shown in figure 8-1.

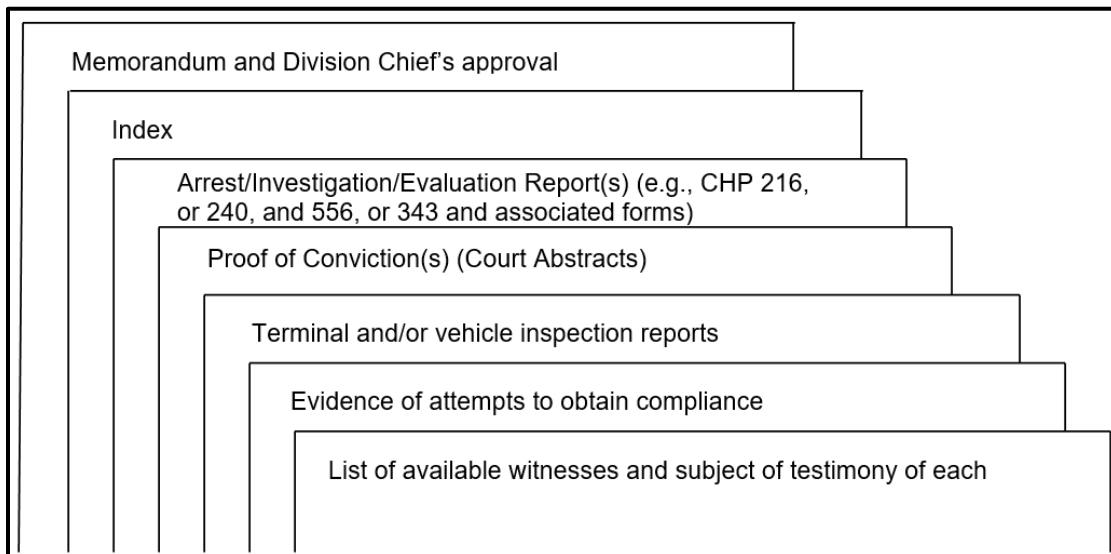


Figure 8-1. Assembly of Disciplinary Action Request

b. Area Commander Review. A recommendation for disciplinary action originating at Area level must be reviewed by the Area commander. The review should ensure the file contains the necessary proof to substantiate the allegation. The recommendation should not infringe upon the prerogatives of the hearing officer, and should be limited to a recommendation for "disciplinary action" without

advocating specific conditions or periods of disciplinary action. Disciplinary action should not be recommended unless:

- (1) All other means of obtaining compliance with all applicable statutes and regulations have been unsuccessful.
- (2) There is a preponderance of facts to support disciplinary action of this nature is necessary to gain compliance.

c. Division Chief Review. A recommendation for disciplinary action approved by an Area commander or MCSU shall be forwarded through the appropriate Division to ESD. Division chiefs not in agreement with the action recommended may return the file to Area or MCSU for appropriate disposition. Concurrence of the Division chief may be indicated by the forwarding endorsement.

d. Headquarters Review. A recommendation for disciplinary action received in Headquarters shall be reviewed for appropriate recommendation and documentation by CVS.

(1) Deficiencies. If a case appears to be inadequately documented to support the recommended action, the field command will be requested to supply additional documentation, evidence, or proof. If the case is insufficient, or it appears that all alternatives have not been explored, it will be returned to the field command with the deficiencies indicated.

(2) Coordination. Commercial Vehicle Section shall coordinate the preparation of accusations with the Office of the General Counsel prior to submission to ESD.

(3) Forwarding. If the case is complete and the recommendation is adequately sustained, CVS shall prepare the accusation for ESD signature and service.

5. ADMINISTRATIVE HEARING.

a. Hearing Officer. All hearings are arranged by the Office of Legal Affairs and are conducted pursuant to the APA by hearing officers on the staff of the Office of Administrative Hearings.

b. Decision. At the conclusion of the hearing, the hearing officer will prepare a proposed decision and transmit it to the Commissioner. The Commissioner may adopt the hearing officer's proposal as the decision in the case; reduce or change

(but not increase) the penalty proposed, or call up the transcript of the case and render an independent decision with or without taking additional evidence.

c. Decision Distribution. Copies of the Commissioner's decision will be mailed to the respondents, their attorneys, the Deputy Attorney General, the Office of Administrative Hearings, also the Division chief, the Area commander and appropriate headquarters offices. When notified of the Commissioner's decision, respondents and their attorneys shall be notified by the Office of General Counsel that they have the right to appeal any such decision as prescribed by the APA.

6. ENFORCEMENT.

a. Field Enforcement. In the event a license or permit has been suspended or revoked, the Division chief will be requested by ESD to have the Area commander or Division MCSU, as appropriate, enforce the decision as follows. This does not prohibit the Division chief from initiating enforcement action independently.

(1) If the decision involves revocation of an ambulance or armored car license or Authorized Emergency Vehicle (AEV) permit, the Area commander shall obtain and forward the license or permit to CVS together with any vehicle identification cards under the license.

(2) If the decision involves a suspension of ambulance or armored car license or AEV permit, the Area commander should retain the license or permit and vehicle identification cards during the period of suspension.

(3) At the conclusion of the period of suspension, a license or permit that has been suspended shall be returned to the licensee or permittee together with the vehicle identification cards. At the discretion of the Area commander, the vehicles should be reinspected to ensure compliance prior to the return of the identification cards.

(4) If the decision involves the suspension or revocation of a Fleet Owner Inspection and Maintenance Station License (IMS) or Hazardous Materials Transportation License, the Division MCSU should obtain the license. Any unused valid IMS stickers should be repossessed. A revoked license and any repossessed stickers resulting from this action should be forwarded to CVS. A suspended license and any repossessed stickers as a result of this action should be retained by the Division MCSU during the period of suspension.

b. Probation Supervision. During any period of probation imposed as part of the decision, the licensee or permittee shall be closely monitored by the appropriate Division or Area personnel to ensure compliance with the terms of probation,

including all applicable statutory and regulatory provisions. Failure to comply with all the terms of probation constitutes grounds for suspension or revocation of license or permit. However, such suspension or revocation may be implemented only after showing evidence of noncompliance, subsequent administrative hearing ruling and concurrence of the Commissioner.

c. Headquarters Implementation. When a license is suspended or revoked, or probation is imposed, CVS will put a copy of the decision in the license file and flag the file for special attention. In the case of revocation, the file will be removed from the active records and the licensee may not apply for another license until a period of one year has elapsed.

THIS PAGE INTENTIONALLY LEFT BLANK