

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

The Department of Motor Vehicles (department) proposes to amend Sections 15.00 and 15.01 and adopt Sections 17.00, 17.02, 17.04, and 17.06 in Article 2.0, Chapter 1, Division 1, of Title 13, California Code of Regulations, related to driver’s licenses and identification cards.

**PROBLEMS THIS DEPARTMENT INTENDS TO ADDRESS AND BENEFITS
ANTICIPATED FROM THE REGULATORY ACTION**

This regulatory action addresses two issues regarding identification and driver’s license cards issued by the department. Cards compliant with the federal REAL ID Act and defined in Vehicle Code section 681 (effective January 1, 2018), have more stringent requirements regarding identification documents than the current “legal presence” standard for legacy cards in California. Federally-compliant cards are currently anticipated to be required to board commercial aircraft and access federal facilities. This proposal adopts the federal standard to allow the department to issue REAL ID compliant licenses for customers desiring this kind of driver’s license or identification card. Second, the department also intends to make it easier for foster youth, minors who do not reside with a custodial parent and Californians who move often, such as students, to show residency and obtain cards. These persons can have difficulty obtaining two documents to establish residency in order to obtain a driver’s license or identification card.

Real ID Compliant License Problem: The federal REAL ID Act, Public Law 109–13, 119 Stat. 302, was enacted May 11, 2005, to address security concerns following investigations after the terrorist attacks of September 11, 2001. REAL ID sets minimum standards for identity verification and security features that States must utilize if their driver’s licenses or identification cards are to be accepted “for official purposes.” REAL ID defines “official purposes” as 1) boarding federally regulated commercial aircraft, 2) accessing federal facilities, and 3) entering nuclear power plants. The federal Department of Homeland Security (DHS) has granted California an extension to allow non-compliant legacy driver’s licenses and identification cards to be used for federal “official purposes” until October 10, 2017. Beginning January 22, 2018, DHS has authorized the Transportation Security Administration (TSA) to begin enforcing REAL ID at airport security screening checkpoints, at which time TSA will not accept state-issued driver’s licenses or identification cards from States that are not compliant with REAL ID Act requirements. As of October 2020, non-compliant legacy driver’s licenses and identification cards may no longer be used for federal official purposes. If the department does not adopt an issuance process in order to provide the opportunity for Californians to obtain a REAL ID compliant card, Californians would face difficulty boarding planes or accessing federal facilities like military bases. Effective January 1, 2018, Vehicle Code section 681 defines a REAL ID driver’s license or identification card as one that complies with these federal requirements. These regulations set forth those requirements to ensure Californians can obtain a REAL ID compliant card.

Residency Proof Problem: Current regulations specify the documents that are required to prove residency in California in order to obtain a driver's license or identification card from the department. Documentation must include the name of the applicant and, with a few exceptions, the address used on the application. The existing requirements may inadvertently exclude or make difficult the issuance of a driver's license or identification card for otherwise qualified California residents. Also currently, the regulations require two documents to establish residency, such as a utility bill or lease agreement, which reduces access to a driver's license or identification card for those individuals who share housing or who frequently change addresses, such as students. Presently, California residents who do not have such documents in their own name may also prove their residency by providing documentation to trace their relationship to the individual named on the residency documentation. For example, a minor can establish residency by producing his or her birth certificate and residency documents with the name of his or her biological parent. At this time, there is no procedure in place for minors who do not reside with a custodial parent or legal guardian, which may prevent foster children from obtaining a driver's license or identification card. Additionally, certain homeless or indigent applicants may struggle to meet the residency documentation requirements, as they lack the established residence necessary to obtain acceptable documents.

ALTERNATIVES CONSIDERED

No reasonable alternatives would be less burdensome and equally effective in achieving the purpose of the statute, so none were considered.

NECESSITY OF EACH PROPOSED ADOPTION TO ACCOMPLISH THE STATED PURPOSE

§ 15.00. Information Required to Establish Legal Presence in the United States (U.S.) for Purpose of Determining Eligibility for an Original Driver's License or Identification Card.

The opening language, "Except as otherwise provided by law," is necessary in order to continue to issue a California legacy driver's license or identification card without conflicting by implication with the laws governing the AB 60 non-citizen driver's license or the newly proposed federally-compliant REAL ID Act driver's license or identification card.

Section 15.00 is amended and reorganized for clarity. The original regulation was organized under several headers identifying necessary documentation for United States citizens, as specified in former subsection (a); for immigrants, as specified in former subsections (b) and (c); for nonimmigrants, as specified in former subsection (d); and to identify other acceptable documents, as specified in former subsection (e). These subsection headers are deleted and the acceptable document list is reformatted into a single list. To avoid duplication of documents, subsection (c)(1) through (c)(5) are deleted as the documents identified in those subsections are already listed at the amended subsection (a)(6). This change is non-substantive.

The language regarding how an applicant establishes legal presence is amended from "legible and unaltered" to "genuine documents bearing his or her true full name." This change is

necessary to clarify what is required for documentation of legal presence. Forged documents require the department to reject an application, but the current regulation only requires the document be legible and unaltered. Since the department does evaluate and reject forgeries, this language conforms the requirement to actual practice.

§ 15.01. Acceptable Proof of California Residency.

The opening language, "Except as otherwise provided by law," is necessary in order to maintain the existing California compliant driver's license and identification card without conflicting by implication with the laws governing the AB 60 non-citizen driver's license or the new federally-compliant REAL ID Act driver's license or identification card.

Subsection (a) is amended to require an applicant to bring one document that establishes residency, rather than two different types of documents. Vehicle Code section 12801.5 authorizes the department to require "satisfactory proof of California residency." In prior rulemaking, the department established the requirement for two documents and set forth a list of acceptable documents. It is within the department's discretion to establish satisfactory proof under Vehicle Code section 12801.5. In promulgating section 15.01, the department sought to show compliance with federal requirements set forth in the REAL ID Act at 6 C.F.R. 37.11(f) which states, "a person must present at least two documents of the State's choice that include the individual's name and principal residence." Since promulgating these regulations, the department reviewed the regulation and procedure adopted by Wisconsin, a state currently determined to be in compliance with the REAL ID Act by DHS, to implement the Federal, two-document standard in part 37.11(f). (See Wis. Admin. Code § Trans. 102.15 4m). In Wisconsin, the second document requirement is satisfied by a different method, called the US mail return service process. In that process, Wisconsin, like the department, mails driver's licenses and identification cards to applicants at the address provided on the driver's license or identification card application, with a return service requested. If the applicant is no longer at that address, the mail is not forwarded to another address; it is returned to DMV. This return service is used in Wisconsin as the second residency proof document. DHS has informally advised the California Department of Motor Vehicles that this process adequately serves as a State's choice of a second document for the purpose of establishing the applicant's address. The department determined that it would be less burdensome on all applicants to require only one document to establish residency at the time of application. The return service document satisfies the requirement for the department to receive a second residency document. In order to maintain the two document verification of the applicant's California address, the department added language that requires applicants to submit proof of the mailing address when a separate mailing address is included on a driver's license or identification card application. This requirement meets federal requirements for REAL ID and satisfactory proof of California residency under Vehicle Code section 12801.5.

Due to the amendments listed in this chapter, the internal cross-references in subsection (a) are amended to conform to the changes. The references to subsection (c) are changed to reflect the correct references to subsection (d).

Subsection (b) has no changes.

Subsection (c) is necessary to permit minors who do not live with a custodial parent or legal guardian to establish California residency and thus obtain a driver's license or identification card. Minors who live in a group home or foster family may, under this proposal, establish residency without the assistance of a custodial parent by providing the department with alternative documentation from a county department administering foster care programs or the California Department of Social Services in order to trace the relationship to the individual whose name appears on the residency documents.

Subsection (d)(21) permits the DL 933 form, required to obtain a no-fee identification card, to serve as proof of residency. This proposal is necessary to permit applicants who are homeless, or whose residency is permanently in California but transient, to satisfy their residency requirement with the same verification that establishes their income or housing status for a low fee or no fee identification card, that being a completed form DL 933. The information collected by those completing the DL 933 to establish the income or housing insecurity includes interviews and verification of living circumstances by third parties who have experience or employment assisting homeless individuals. This information gathering and verification validates those applicants as permanently residing in California. No additional documentation is necessary, or reasonably available, to this population that more effectively establishes their intent to remain in California despite lacking permanent housing or the ability to pay regular bills. This proposed amendment will allow qualifying individuals to prove both residency and their eligibility for a no-fee identification card in compliance with section 15.08. Additionally, as provided in subsection (a), use of the DL 933 to establish residency will exempt an applicant from the requirement that the address on the application match the address on the residency proof document. This proposed exemption is necessary because, for homeless applicants, obtaining an address is difficult or burdensome. The proposed exception allows eligible individuals to submit this form as proof of residence while permitting an alternative address on their driver's license or identification card application.

Section (d) is renumbered to subsection (e) due to the addition of a new section (c) and is a non-substantive change.

§ 17.00. Documentation Required to Obtain a REAL ID-Compliant Driver's License or Identification Card, as Defined in Vehicle Code section 681.

This section establishes the requirements for obtaining a driver's license or identification card compliant with the REAL ID Act. The requirement is for the applicant to satisfy three discrete requirements set forth in the proposed regulation. This separate section is reasonably necessary because it makes the multi-part requirements for a REAL ID compliant card clearer to REAL ID applicants. Subsections (a)(1) and (2) are necessary to establish that an applicant must satisfy the requirements specified in sections 15.01, 17.02, and 17.04 to obtain a license or identification card that complies with the federal REAL ID requirements set forth below.

Driver's Licenses and Identification Cards: Legal Presence/Residency
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(2) A certified copy of a United States birth certificate issued in or by a city, county, or state vital statistics department.	Pursuant to Vehicle Code section 12801.5 and 12800.7 and consistent with 6 C.F.R. 37.11(c)(1)(ii), (d), and (g)(1).
(3) U.S. Certificate of Birth Abroad (FS-545, issued by the U.S. Department of State, or DS-1350, issued by the U.S. Department of State) or a Consular Report of Birth Abroad of U.S. Citizen (FS-240, issued by the U.S. Department of State).	Pursuant to Vehicle Code section 12801.5 and 12800.7 and consistent with 6 C.F.R. 37.11(c)(1)(iii), (d), and (g)(1).
(4) A Certified Birth Certificate issued from: (A) Puerto Rico, on or after July 1, 2010. (B) Guam, on or after April 10, 1899. (C) U.S. Virgin Islands, on or after January 17, 1917. (D) Northern Mariana Islands, after November 4, 1986. (E) American Samoa. (F) Swain's Island. (G) District of Columbia.	Pursuant to Vehicle Code section 12801.5 and 12800.7 and consistent with 6 C.F.R. 37.11(c)(1)(ii), (d), and (g)(1).
(5) A valid, unexpired Permanent Resident Card (I-551, issued by the U.S. Citizenship and Immigration Services or Immigration and Naturalization Service).	Pursuant to Vehicle Code section 12801.5 and 12800.7 and consistent with 6 C.F.R. 37.11(c)(1)(iv), (d), and (g)(1).
(6) Unexpired employment authorization document issued by Department of Homeland Security, Form I-766 or Form I-688B.	Pursuant to Vehicle Code section 12801.5 and 12800.7 and consistent with 6 C.F.R. 37.11(c)(1)(v), (d), and (g)(1).
(7) Unexpired foreign passport with a valid, unexpired U.S. visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the U.S.	Pursuant to Vehicle Code section 12801.5 and 12800.7 and consistent with 6 C.F.R. 37.11(c)(1)(vi), (d), and (g)(2).*
(8) Certificate of Naturalization (N-550, issued by the U.S. Department of Homeland Security, N-570, issued by the U.S. Department of Homeland Security, or issued by the U.S. Department of Homeland Security).	Pursuant to Vehicle Code section 12801.5 and 12800.7 and consistent with 6 C.F.R. 37.11(c)(1)(vii), (d), and (g)(2).*
(9) Certificate of Citizenship (N-560, issued by the U.S. Department of Homeland Security, N-561, issued by the U.S.	Pursuant to Vehicle Code section 12801.5 and 12800.7 and consistent with 6 C.F.R. 37.11(c)(1)(viii), (d), and (g)(1).

Department of Homeland Security, or issued by the U.S. Department of Homeland Security).	
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*Note: Under 37.11(g)(2), if an applicant presents an unexpired employment authorization document or an unexpired foreign passport with valid, unexpired United States visa with an approved I-94 form, the applicant must also present a second document issued by DHS or other federal agency demonstrating lawful status. The department interprets the requirement of a second document to be satisfied by successful verification of one document by the Systematic Alien Verification for Entitlements (SAVE) system. Documents issued by DHS can be verified through SAVE, and this verification serves as proof of lawful status in the United States. This interpretation is supported by text from the Discussion of Comments in the Federal Register, Vol. 73, No. 19, issued January 29, 2008. "DHS agrees with the commenters who suggest that any document verifiable by SAVE is acceptable for proving lawful status, and this is what this final regulation provides." 73 Fed.Reg. 5294 (Jan. 29, 2008). The department also reviewed other agencies' compliance efforts. For example, Vermont provides that so long as DMV is able to authenticate and verify the documents, these documents will also establish lawful status in the United States. (Department of Motor Vehicles, *Identity Documents*, <<http://dmv.vermont.gov/licenses/identity-documents>> [as of June 19, 2017].) For these reasons, only requiring one document in these proposals is consistent with the federal rule and adequately implements P.L. 109-13 as adopted in Vehicle Code section 681.

§ 17.04 Proof of Social Security Number.

Section 17.04 is adopted to establish the requirement for proving the applicant has a valid social security number. This section is necessary to comply with the federal rules described in Title 6 of the Code of Federal Regulations Part 37.11(e) that implement P.L. 109-13, which is referenced in Vehicle Code section 681. Those sections prohibit the issuance of a REAL ID without documentation of a valid social security number, or non-eligibility for a social security number, and this provision ensures California's REAL ID compliant card is acceptable for federal identification purposes.

§ 17.06 Exceptions Process.

Section 17.06 is adopted to establish the process by which applicants can apply for an exception to the document requirement to prove U.S. citizenship. Under federal rules, States are permitted to establish a written, defined exceptions process for applicants who, for reasons beyond their control, are unable to present all necessary documents. This proposal implements that limited exceptions process. It is necessary to alleviate the hardship experienced by a California citizen who seeks a REAL ID but for reasons beyond their control, cannot produce the required document. The exceptions process is limited to U.S. citizens because the federal rule only permits this limited exception.

Federal regulations permit, but do not require, an exceptions process. The process acknowledges that some individuals may be unable to produce a birth certificate due to a natural disaster. For example, applicants who were born in areas affected by Hurricane Katrina may be unable to get a new certified copy of a birth certificate where the original records have been destroyed. The process is not intended to allow applicants to use alternate documents where the documents are retrievable, such as the case where an applicant no longer has a certified copy of a birth certificate but can still obtain one from the original issuer. The department has elected to implement this process to permit the greatest access to REAL ID cards for California citizens while maintaining the integrity of its license and identification cards.

Subdivision (a) requires an applicant to submit to an interview and provide sufficient information to enable to department's investigative division to verify the applicant's citizenship, identity, and date of birth. This proposal is necessary because it clarifies that the department will not undertake review under the exceptions process unless the applicant is eligible, prepared to interview, and provides the necessary information.

Subsection (b) and (c) require an applicant to provide identifying information and to declare the basis for an exception when requesting they be granted an exemption from the U.S. citizenship document requirement. The applicant must submit a REAL ID Exception Process Application, form OL 206 (New 1/2018) and certify, under penalty of perjury, that they meet allowable criteria, such as being mentally disabled, homeless, or unable to produce the document through no fault of their own. These informational requirements are necessary in order for the department to verify the truth of the claim made by the requesting applicant. The penalty of perjury attestation reduces potential fraud in the exception process. Providing key data points facilitates verification of U.S. citizenship and/or fraudulent claims.

Subsection (d) requires the applicant to submit to further scrutiny as reasonably necessary in the estimation of the department, including an interview, cooperation in obtaining and verifying additional documents, giving additional sworn statements and other cooperation as needed. In the estimation of the department, this is necessary given the multitude of circumstances that could lead to an individual requesting an exception to the document requirement. To adequately investigate any request for an exception, the department must have the authority to request additional information reasonably necessary to verify citizenship. The benefit of the performance standard is that it allows each investigation to go forward even if an applicant presents a very unusual case. In this way, the department will be able to issue the maximum number of REAL ID cards to Californians, while maintaining the integrity of the program.

**DEPARTMENTAL DOCUMENTATION SUPPORTING GOVERNMENT CODE
SECTIONS 11346.2(b)(3) THROUGH (b)(5)**

Studies, Reports or Documents - Gov. Code Sec. 11346.2(b)(3)

- No technical, theoretical or empirical studies, reports or documents were relied upon in this proposed action.

Reasonable Alternatives That Would Lessen Any Adverse Impact on Small Business – Gov. Code Sec. 11346.2(b)(4)(B)

- No alternatives were presented that would lessen any adverse impact on small business.

Evidence Supporting Determination of No Significant Adverse Economic Impact on Business – Gov. Code Sec. 11346.2(b)(5)

- This regulation will not have an adverse economic impact on business. This action is adopted to identify documents used to establish residency and legal presence for an applicant applying for a traditional driver's license or identification card or a Real ID compliant driver's license or identification card. None of the provisions established in this action impact business.

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

- The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This action establishes residency and legal presence requirements for driver's license and identification card applicants. No cost impact will be incurred by business and, because the cost of both a traditional driver's license and identification card will be the same as a Real ID compliant driver's license or identification card, the department does not anticipate any cost impact on a private person beyond the current cost of a driver's license or identification card.

Effect on Housing Costs

- None.

Local Agency/School District Mandates

- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Small Business Impact

- This proposed action is unlikely to impact small business. If an affected small business is impacted, the department anticipates the impact will be minimal.

ECONOMIC IMPACT ANALYSIS

(Government Code Section 11346.3(b))

The department has made the following determinations related to this proposed regulatory action:

Creation or Elimination of Jobs Within the State of California

- The department does not anticipate the creation or elimination of jobs within California. The regulations do not impact existing businesses. The regulations identify documentation requirements that an applicant must submit to be issued a driver's license or identification card or a Real ID compliant driver's license or identification card.

Creation or Elimination of Businesses Within the State of California

- The department does not anticipate the creation or elimination of businesses within California. The regulations identify documentation requirements that an applicant must submit to be issued a driver's license or identification card or a Real ID compliant driver's license or identification card. None of the provisions in this proposed action are intended to impact businesses in California.

Expansion of Businesses Currently Doing Business Within the State of California

- The department does not anticipate the expansion of businesses currently doing business in California. The regulations identify documentation requirements that an applicant must submit to be issued a driver's license or identification card or a Real ID compliant driver's license or identification card. None of the provisions in this proposed action are intended to impact businesses in California.

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

- This action is not likely to impact worker safety, the State's environment or health. It may create a positive impact to the welfare of California residents because the regulatory action will be in compliance with Federal Real ID requirements, ensuring California residents' continued access to federal facilities and commercial aircraft without the need to carry another form of identification, such as a passport.