

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 adopt Sections 16.00, 16.02, 16.04, 16.06, 16.08, 16.10, 16.12, 16.14, and 16.16, in Article 2.0, Chapter 1, Division 1, of Title 13, California Code of Regulations, related to driver licenses.

Assembly Bill 60 (Chapter 524; Statute 2013) enacted, among other sections, California Vehicle Code section 12801.9 which requires the Department of Motor Vehicles to adopt regulations by January 1, 2015, setting forth requirements for the issuance of an original driver’s license to an applicant who is unable to submit satisfactory proof that their presence in the United States is authorized under federal law if he or she provides satisfactory proof of his/her identity and California residency and meets all other qualifications for licensure. Additionally, AB 60 requires the department to identify the documents that it deems acceptable for purposes of proving identity and California residency and establish procedures for verifying the authenticity of those documents

On December 4, 2013, the department conducted a meeting with AB 60 stakeholders to hear their concerns, suggestions, and input regarding the impact of the successful implementation of AB 60. Attendees included representatives from legal centers, civil rights and equality groups, union representatives, and labor federations. The conversation was general in nature and allowed the department to interact with interested parties face-to-face to gain better knowledge of the public’s concern surrounding the licensure of an applicant who is unable to provide satisfactory proof that their presence in the United States is authorized under federal law.

In December 2013, the department began meeting with foreign consulate representatives throughout the state. The purpose of the meetings were to discuss, in person, currently issued documents, their issuance processes, their manual/electronic verification processes, and all security features associated with their documents. During these meetings, the department gained a better understanding of the documents currently provided by the consulates to their constituents and their current verification processes. These meetings were helpful in determining possible documents the department could accept for the issuance of a driver’s license.

The department conducted two public workshops in an effort to discuss with the affected individuals the documents that they believe could establish identity and/or residency. During the workshops, the department summarized the provisions of AB 60 and listened to the public express concerns related to financial constraints, access to approved documents, and privacy concerns. The workshops allowed the department to understand and appreciate constituent concerns and their struggle in attaining specific documents.

After meeting with stakeholders and advocacy groups, the department determined that the best way to implement the provisions of AB 60 is to establish document review standards deemed sufficient to prove identity and residency. The department is taking a tiered approach in identifying those documents it deems secure. Section 15.00 of Title 13, establishes documentation that the department has determined sufficient to establish an applicant's legal presence in the United States for purposes of eligibility for driver's license. Applicants unable to provide the documentation specified in Section 15.00, will be required to meet the documentation requirements in Section 16.04(a) of this proposed action which, as specified, establishes acceptable foreign documents. The department has determined these documents to be the most secure as they are most susceptible to verification from the issuing agency.

Applicants unable to meet the requirements of Section 15.00 and Section 16.04(a) will be required to meet the documentation requirements established in Section 16.04(b).

During the department's consultations with stakeholders and immigrant rights advocates, as well as at the two public pre-notice workshops, several commenters expressed concern that many applicants would not have a single document that could be used to establish identity. The department was encouraged to consider reviewing multiple documents to verify the identity of license applicants. In light of these suggestions the department will utilize an exception process for applicants who are unable to comply with any of the requirements established in proposed section 16.04; those applicants will be allowed to submit any of the several documents identified in Section 16.06, which will be subject to a secondary review conducted by the department's Investigations Division. The department is concerned, based on past law enforcement experience and those consultations with other states, that the documents identified in Section 16.06 and Section 16.10 are the type of documents most vulnerable to fraud, therefore requiring an additional review by trained department personnel to verify the identity of the applicant by referral to multiple sources.

PROBLEMS THIS DEPARTMENT INTENDS TO ADDRESS AND BENEFITS

ANTICIPATED FROM THE REGULATORY ACTION: To make specific the requirements that must be satisfied for issuance of an original State of California driver license to people who are unable to provide satisfactory proof that their presence in the United States is authorized under federal law. These regulations will allow all successfully tested driver license, who have met the department's requirements, to receive an original California driver license.

ALTERNATIVES CONSIDERED: The department considered accepting any and all documents that an applicant could submit to prove identity. The goal was to allow anyone in California to provide an identity document to become licensed. Upon further research the department became aware that not every potential document could stand alone for the purposes of proving identity. The department concluded that criteria that will help maintain the integrity of the California driver's license should be adopted. All licensees will benefit from maintaining the reliability of the license resulting from the department utilizing verification criteria in the

application process. The department will consider all documents submitted by applicants, but to maintain the integrity of the driver license the department may require multiple documents to verify identity and California residency.

To reduce the possibility of fraud and the potential influx of non-resident license applicants the department also considered requiring proof of up to 2 years California residency for a California driver license. The department decided that it could be meet the intended purpose of AB 60 and continue to maintain the integrity of the California driver's license by requiring proof of a minimum 6 months residency.

COMPARABLE FEDERAL AND STATE REGULATIONS:

DMV has determined that this proposed regulation is not incompatible with existing regulations and there are no related federal regulations.

The department conducted a review of other agencies and found that the states of Colorado, Connecticut, Illinois, Maryland, New Mexico, Nevada, Oregon, Vermont, Utah, Washington, and the District of Columbia currently have laws/regulations governing the issuance of a card granting driving privileges to an applicant who is unable to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law if he or she meets all other qualifications for licensure.

§ 16.00 Purpose

A California driver license shall not be issued to an applicant by the Department except as permitted under Vehicle Code sections 12801, 12801.5, 12801.6, 12801.8, 12801.9, and the regulations of this article.

§ 16.02 Definition

As used in this article the following definitions apply:

- (a) "Applicant" means the person applying for the issuance of a driver's license.
- (b) "Government" means the entity, office, or authority governing over a country, state, county, city, municipality, district, agency, department, or any other political subdivision of a country or state.

Subsection (c) is adopted to define "Foreign document" to mean a document issued by a government other than the federal or any state of the United States.

Necessity: Proposed Sections 16.04(a), (b) and (c) rely heavily on the use of foreign documents in establishing an applicant's identity. This definition is necessary to clearly define what a foreign document is in the context of the regulation.

Subsection (d) is adopted to define “School documents” to mean any document issued by a public or private primary, or secondary, or post-secondary institution, or college or university and to require that school documents either include the applicant’s date of birth, or for foreign school documents, be sealed by the school providing the document and include a photograph of the applicant at the age the record was issued.

Necessity: This provision is provided by Vehicle Code section 12801.9(c)(6) and allows the department to verify the authenticity of the school documents submitted.

§ 16.04 Primary Identification Documents

Section 16.04 is adopted to specify the documents that are required to establish an applicant’s identity. As described earlier in this Statement of Reasons, the department is relying on a tiered approach when providing standards of documents acceptable in establishing identity.

Necessity: This section is necessary for an applicant to ensure he or she has the appropriate documentation necessary prior to applying for licensure.

Subsection (a) is adopted to establish documentation requirements for an applicant that is unable to meet the documentation requirements provided in Section 15.00 of Title 13. A 16.04(a) applicant will be able to provide a foreign document that meets the acceptable document approval criteria provided in Section 16.08. Additionally, subsection (a) requires the document be valid, the most recently issued version, and susceptible to verification with the issuing agency. Because these documents are more susceptible to verification than those documents provided in subsections (b) or (c), the department has determined 16.04(a) documents to be ~~more~~ the most secure and require less verification on behalf of the department.

Necessity: This provision is necessary to ensure a 16.04(a) applicant has the appropriate documentation necessary to establish his or her identity, prior to appearing at the department.

Subsection (b) and (b)(1) through (b)(4) are adopted to establish documentation requirements for an applicant that is unable to meet the documentation requirements in Section 15.00 and Section 16.04(a). Although more secure, not all applicants will be able to provide approved foreign documents to the department. If an applicant is unable to submit the 16.04(a) documents, the documents established in subsection (b)(1) through (b)(4) are secure, however, they may require a cursory verification by the department.

Necessity: This provision is necessary to ensure a 16.04(b) applicant has the appropriate documentation necessary to establish his or her identity, prior to appearing at the department.

Subsection (c) and (c)(1) through (c)(3) are adopted to establish documentation requirements for an applicant that is unable to meet the documentation requirements of Section 15.00 *and* Section 16.04 (a) and (b). The International Civil Aviation Organization (ICAO) is a Specialized Agency of the United Nations charged with the responsibility for establishing, maintaining and promoting standards related to the issuance and verification of passports, visas and identification cards. Foreign passports issued after 2005 incorporate new globally interoperable ICAO standards for the biometric identification of the holder of a passport.

Subsection (c)(2) (A) requires that a foreign birth certificate be issued by a national civil registry within the six months prior to submission of an application for a driver's license. Subsection (c)(2)(B) requires that a foreign birth certificate be accompanied by an Apostille certification, which is a certification provided under the Hague convention of 1961 for authenticating documents for use in foreign countries. The function of the Apostille certificate is to certify the authenticity of the signature of a document.

Necessity: This provision is necessary to ensure that those applicants who are unable to meet any of the other requirements in this section are able to provide two documents that have been issued under standards that greatly diminish the possibility of counterfeiting and enhance the reliability that the document verifies the identity of the holder.

§16.06 Secondary Review of Documents

Subsection (a) and (a)(1) through (a)(7) are adopted to allow an applicant who is unable to comply with Section 16.04(a), (b), or (c), to submit any of the specified documents that will be verified by the department.

Subsection (a)(1) authorizes the submission of school documents. Any school documents submitted must meet the requirements of Section 16.02(d). Subsection (a)(2) authorizes the submission of a Department of Homeland Security (DHS) Form I-589, Application for Asylum and for Withholding of Removal. The amount of information that is solicited from this document will allow the department to conduct a sufficient review prior to authorizing licensure. Subsection (a)(3) authorizes the department to accept either a DHS Form I-20, Certificate of Eligibility for Nonimmigrant Student Status – For Academic and Language Students or Vocational Students. This form is provided to the student/applicant by a school official once he or she is accepted into a Student and Exchange Visitor Program-certified school. The department has determined that this form is acceptable as it provides a level of assurance that a review has been conducted by an institution and that the student's information has been stored in the Student and Exchange Visitor Information System (SEVIS) database. Subsection (a)(3) additionally authorizes the department to accept a Form DS-2019, Certificate of Eligibility for Exchange Visitor Status. The Form DS-2019 is a Department of State controlled form that can only be produced through SEVIS and serves as the basic document required to support an application for an exchange visitor visa. Each Form DS-2019 is printed with a unique identifier known as a SEVIS ID Number. As with the DHS Form I-20, the department has determined that this form is

acceptable due to initial reviews conducted at the federal level. Subsections (a)(4), (a)(5), (a)(6), and (a)(7) authorize the department to accept a marriage license, a divorce decree, a foreign driver's license, or an income tax return, respectively. These documents also contain information necessary to allow the department to verify an applicant's identity during the secondary review process.

Necessity: Subdivision (a) (1) through (7) is necessary to ensure applicants have clear direction as to alternative documents they can submit to the department when they cannot obtain the documents specified in Section 16.04. These documents will allow the department to verify an applicant's identity, absent the more secure documents provided in Section 16.04.

Subsection (b) is adopted to provide that the department may publish a list of additional documents that it has determined will assist it in verifying an applicant's identity as listed on the document provided pursuant to subsection (a). The department will post the list on its website.

Subsection (c)(1) and (c)(2) are adopted to inform the applicant that, because he or she is submitting the documents identified in this section, a secondary review will be conducted by the department to verify their identity as indicated on those documentation, prior to allowing the applicant to continue through the licensure process.

When the applicant arrives at a department field office to apply for a driver license and he or she submits a document, identified in subsection (a)(1) through (a)(6), to establish identity, he or she will be informed by the department that the document is subject to a secondary review before the application process can continue. Subsection (c)(1) incorporates by reference the Secondary Review Referral Notice, form DL 209A, which is the form that instructs the applicant to make an appointment with the department's Investigations Division, where the documents will be checked and the applicant's identity verified.

Necessity: This provision is necessary to ensure the applicant is aware, not only that submitting the documents identified in subsections (a)(1) through (a)(6) is subject to a secondary review by the department, but also clarify the process that they will going through during this secondary review. Lastly, it's also significant to further clarify that the secondary review will be conducted by an employee trained in the review of documents by the Investigations Division.

Subsection (d) is adopted to explain that, once the document has been deemed genuine and valid by the secondary review, the applicant will be instructed to make an appointment with a department field office to complete the application and testing process.

Necessity: This provision is necessary to make the applicant, applying with documents identified in subsections (a)(1) through (a)(6), aware that once the review is complete and the identity of the applicant has been verified by the secondary review, he or she may complete the licensure process by making an appointment at a field office.

§ 16.08 Acceptable Document Approval Criteria

Subsection (a) is adopted because Vehicle Code section 12801.9(b)(2) requires the department to describe the procedures it will use to verify and approve foreign documents that are submitted by an applicant to provide satisfactory proof of the applicant's identity. The standards in this section are identical to the security features that the department requires for its current driver's licenses and are similar to the standards that other states have adopted for the acceptance of foreign identification documents. In meeting with foreign consulates, the department had an opportunity to discuss the standards they use to verify the identity of a person prior to issuing documents. The department has used the information received in those meetings, the security criteria it has implemented in the production of current driver's licenses, as well as the ICAO Standards to establish a list of those entities which, to the satisfaction of the department, require proof and utilize document production standards that ensure a secure validated identity.

As some consulates have already ensured a secure process for the issuance of identity documents, the department has established the criteria described in subsection (a)(1) and (a)(2), to allow the department to easily verify the authenticity of the documents. Subsection (a)(1) is adopted to allow the approval of a foreign document when it is shown that the issuing government has exerted a sufficient verification process. Subsection (a)(2) provides document security features that are consistent with the security features currently used by the department for the issuance of driver licenses and identification cards. Subsection (a)(3) is adopted to provide the information that is required to be on the face of the document. This information is another feature that will be used to verify the authenticity of the document and the identity of the applicant.

Necessity: Subsection (a) and (a)(1) through (a)(3) are necessary to clearly explain to an applicant those features that the department is looking for when approving a foreign document.

Subsection (b) is adopted to provide that the department will publish a list of documents that it has determined sufficient to provide proof of an applicant's identity. The department will post the list on its website.

Necessity: This provision is necessary to clearly identify, in a centralized and readily-known location, those documents the department has determined to meet the sufficiency requirements. Because the department is adopting security standards, rather than documents, it will be better equipped to update the list as needed, without having to update the regulatory language. This list will be available on the department's website upon adoption of this regulatory action.

§ 16.10 Residency

Subsection (a) is adopted establish proof of residency requirements. Vehicle Code §12800.7 allows the department to require an applicant to produce identification that the department determines verifies an applicant's residence address provided on the application is the applicant's true California residence address.

Necessity: These provisions are necessary to ensure residency proof is sufficient based on the applicant's residency status. In consultations with other states that are currently issuing licenses to undocumented immigrants, the department was informed that those states have seen many applicants that are not residents of their state applying for the license. Other states experienced cases where applicants were provided fraudulent residence addresses, in some instances by people who charged a fee, for the purpose of verifying residency for a license.

Subsection (b) is adopted to allow a parent or legal guardian to attest to a minor's residence and to allow a spouse or domestic partner to use a marriage license or domestic partner registration certificate when using the head of household to whom a residency document has been addressed.

Necessity: This provision is necessary to ensure that a minor, spouse or domestic partner is also afforded access to a driver license by tracing their relationship to a head of household for whom a residency document has been addressed. This provision is important to a minor or a spouse/domestic partner that has no documents that are addressed to him or her.

Subsection (c)(1) through (12) are adopted to identify those documents that the department has determined, as authorized by Vehicle Code section 12801.9(c)(3), are sufficient in establishing an applicant's residency, as authorized by Vehicle Code section 12801.9(c)(3).

Necessity: Other than documents to establish identity, the establishment of residency is a foundation of the AB 60 requirements. These documents will allow an applicant to ensure he or she has the appropriate documentation to establish his or her residency prior to appearing at the department.

Subsection (d) is adopted to provide that the department may publish a list of additional documents that it has determined sufficient verify an applicant's true California residence address. The department will publish the list in various means, including on its internet web site.

Necessity: This section will allow the department to augment the list of acceptable residency documents as it determines additional documents provide sufficient proof of California residency.

§ 16.12 Social Security Number

Subsection (a) requires the applicant to present a social security number, a waiver, or an affidavit of non-eligibility when applying for licensure. The Department anticipates that some applicant's will have a social security number issued under the Bracero Program from 1942 to 1967, however, a social security number issued under the Bracero Program is not sufficient to establish that the applicant's presence in the United States is authorized by federal law. Under this circumstance, the applicant is required to provide the department with the social security number.

Vehicle Code section 12801(c)(1) authorizes an applicant, who is unable to provide proof that his or her presence in the United States is authorized by federal law, to submit an affidavit in lieu of a social security card.

Subsection (b) is adopted to clarify that any social security number provided will be verified with the Social Security Administration.

Necessity: Section 16.12 is necessary for the department to capture the social security number, if applicable, of the applicant or a waiver or affidavit, when a social security number does not exist, as required by Vehicle Code section 12801. This information will allow the department to verify documentation and update its records accordingly.

§16.14 Temporary License

Section 16.14 is adopted to provide a temporary driver's license, valid for up to 60 days, when there is no other cause refusal pending the verification of the documents.

Necessity: This provision is required by Vehicle Code section 12801.9(b) and is necessary not only to ensure that applicant's will be able to immediately utilize the driver license, but will also alleviate the stress on the department's field offices.

DEPARTMENTAL DETERMINATIONS

Technical, Theoretical and/or Empirical Studies, Reports or Documents:

The department relied on the following documents in preparing this proposed regulatory action:

- Consulate documents outlining security features of their identity documents and their verification processes.
- State Department documents outlining security features of their identity documents and their verification processes.

Reasonable Alternatives That Would Lessen Any Adverse Impact on Small Business: No alternatives were considered or presented that would lessen any adverse impact on small business.

Evidence Supporting Determination of No Significant Adverse Economic Impact on Business: This regulation will increase the number of licensed drivers in California and will therefore increase all related vehicle business. The department has no evidence that this regulation will have an adverse impact on business and anticipates that these regulations will have a positive economic impact on California business.

ECONOMIC IMPACT ASSESSMENT (Government Code section 11346.3)

This action adopts the requirements specified in Vehicle Code section 12801.9, related to the issuance of driver's licenses to applicants that are unable to provide proof that their presence in the United States is authorized by federal law, provided the applicant is able to provide proof of residency and identity.

The department anticipates that this action may, 1) create but not eliminate jobs, 2) create businesses but not eliminate existing businesses, and 3) expand businesses currently doing business within the state of California. Any business that relies on employees to drive vehicles could benefit by their employees being issued a driver's licenses.

The benefits of the regulation to the health and welfare of California residents and worker safety may exist due to the reduced instances of vehicle impoundment and the resulting financial impact currently experienced by some unlicensed drivers.

ECONOMIC AND FISCAL IMPACT DETERMINATIONS

Cost or savings to any state agency: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or Savings in Federal Funding to the State: None.

Cost Impact on a Representative Private Person or Business: The DMV anticipates that the fees for a driver's license will be \$33.

Effect on Housing Costs: None.

Local Agency/School Districts Mandate: The proposed regulation 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 may impact small business.