

# DEPARTMENT OF TRANSPORTATION

## DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Sections 302, 2711 and 3102  
(21 Del.C. §§302, 2711 and 3102)  
2 DE Admin. Code 2217

### FINAL

### ORDER

#### **2217 Driver License and Identification Card Application Procedures for Delaware Compliant and Delaware Non-Compliant Identification Documents**

Proposed revised Regulation 2217 establishes regulations and procedures used when issuing Delaware compliant and non-compliant driver licenses and identification cards based on 21 Del.C. §§302, 2711 and 3102 and the Department of Homeland Security's final regulation published in 6 CFR Part 37 or its equivalent, as amended from time to time. The proposed regulation was published in the Delaware *Register of Regulations* on September 1, 2011. The comment period remained open until September 30, 2011. There was no public hearing on proposed revised Regulation 2217.

#### **Summary of the Evidence and Information Submitted**

The Department received a letter from the Governor's Advisory Council for Exceptional Citizens endorsing the proposed revised standards.

#### **Findings of Fact**

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. The proposed revised regulation is not in conflict with Delaware law.
2. The proposed revised regulation is an appropriate exercise of the Department's responsibilities and authority.

#### **Decision and Effective Date**

Based on the provisions of 21 Del.C. §302, §2742, §2743, and §4177, and the record in this docket, I hereby adopt revised Regulation 2217 and as may more fully and at large appear in the version attached hereto to be effective on November 11, 2011.

**IT IS SO ORDERED THIS 13th day of October 2011.**

Shailen P. Bhatt, Secretary of Transportation

#### **2217 Driver License and Identification Card Application Procedures for Delaware Compliant and Delaware Non-Compliant Identification Documents**

The Department of Homeland Security (DHS) Regulation 6 CFR Part 37, as amended from time to time, establishes minimum standards for the state-issued driver licenses and identification cards that are acceptable for official purposes. The Division of Motor Vehicles hereby deletes its interim Administrative Code 2217 in its entirety and incorporates the policies contained in that regulation into this more comprehensive document.

#### **1.0 Authority.**

The authority to promulgate this regulation is 21 Del.C. Sections 302, 2711 and 3102 and the Department of Homeland Security's final regulation published in 6 CFR Part 37 or its equivalent, as amended from time to time.

#### **2.0 Purpose.**

This administrative rule sets forth regulations and procedures used when issuing Delaware compliant and non-compliant driver licenses and identification cards based on the referenced statutes listed in Section 1 of this administrative rule. The applicant has the option to obtain a Delaware compliant document or Delaware non-compliant document provided the applicant meets the minimum qualifications and standards presented in this administrative code.

### 3.0 Definitions.

**"Birth Certificate"** means the record related to a birth that is permanently stored, either electronically or physically, at the State Office of Vital Statistics or equivalent agency in a registrant's state of birth.

**"Certified Copy of a Birth Certificate"** means a copy of the whole or part of a birth certificate registered with the state that the state considers being the same as the original birth certificate on file with the State Office of Vital Statistics or equivalent agency in a registrant's state of birth.

**"Compliant Driver License"** means a driver license that has been issued by Delaware or any other state and has been verified by the Department of Homeland Security to be compliant with 6 CFR 37 or its equivalent as amended from time to time. These compliant documents will be accepted by federal agencies for official purposes and shall bear a DHS-approved security marker that reflects the card's level of compliance.

**"Compliant Identification Card"** means an identification card that has been issued by Delaware or any other state and has been verified by the Department of Homeland Security to be compliant with 6 CFR 37 or its equivalent as amended from time to time. These compliant documents will be accepted by federal agencies for official purposes and shall bear a DHS-approved security marker that reflects the card's level of compliance.

**"DHS"** means the United States Department of Homeland Security.

**"Domestic Violence and Dating Violence"** have the meanings given the terms in Section 3, Universal Definitions and Grant Provisions, of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-119 Stat. 2960, 2964, Jan. 5, 2006); codified in Section 40002, Definitions and Grant Provisions, 42 U.S.C. 13925, or state laws addressing domestic and dating violence.

**"Identification Documents"** includes both state-issued driver licenses and identification cards.

**"Non-Compliant Driver License"** means a driver license that gives the license holder the appropriate driving authority but is not in full compliance with rules established by the Secretary of the Department of Homeland Security. The card must clearly state on the front and in the machine readable zone that the card is not acceptable for official purposes.

**"Non-Compliant Identification Card"** means an identification document issued by the division that is not in full compliance with rules established by the Secretary of the Department of Homeland Security. The card must clearly state on the front and in the machine readable zone that the card is not acceptable for official purposes.

**"Full Legal Name"** means an individual's first name(s), middle name(s), and last name(s) or surname without the use of initials or nicknames unless otherwise acceptable in Section 7 of this document.

**"Lawful Status"** means a person in lawful status is a citizen or national of the United States or an alien, lawfully admitted for permanent or temporary residence in the United States; has conditional permanent resident status in the United States; has an approved application for asylum in the United States or has entered into the United States in a refugee status; has a valid non-immigrant status in the United States; has an application for asylum in the United States; has an application for temporary protected status (TPS) in the United States; has approved deferred action status; or has an application for lawful permanent residence (LPR) or conditional permanent resident status.

**"License"** means any license, temporary instruction permit, or temporary license that is Delaware compliant or Delaware non-compliant issued under the laws of this State pertaining to the licensing of individuals to operate motor vehicles.

**"Material Change"** means any change to the personally identifiable information of an individual as defined in Title 21 and this administrative code. Notwithstanding the definition of personally identifiable information below, a change of address of principal residence does not constitute a material change.

**"Official Purpose"** means accessing federal facilities, boarding federally-regulated commercial aircraft, and entering nuclear power plants.

**"Passport"** means a passport booklet or card issued by the United States Department of State that can be used as a travel document to gain entry into the United States and that denotes identity and citizenship as determined by the United States Department of State.

**"Personally Identifiable Information"** means any information which can be used to distinguish or trace an individual's identity, such as the individual's name, driver license or identification card number, social security number, biometric record, including a digital photograph or signature, alone or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as a date and place of birth or address whether it is stored in a database, on a driver license or on an identification card.

**"Principal Residence Address"** means the location where a person currently resides (i.e. presently resides even if at a temporary address) in conformance with the residency requirements of the state issuing the driver license or identification card, if such requirements exist.

"**SAVE**" means the Department of Homeland Security's Systematic Alien Verification for Entitlements system or such successor or alternate verification system at the DHS secretary's discretion.

"**Sexual Assault and Stalking**" have the meanings given the terms in Section 3, Universal Definitions and Grant Provisions, of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162, 119 Stat. 2960, 2964, Jan. 5, 2006); codified at Section 40002, Definitions and Grant Provisions, 42 U.S.C. 13925, or state laws addressing sexual assault and stalking.

"**Source Document(s)**" means original or certified copies (where applicable) of documents presented by an applicant as required under this regulation to the Division of Motor Vehicles to apply for a driver license or identification card.

"**State**" means a state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands.

"**State Address Confidentiality Program**" means any state-authorized or state-administered program that: (1) allows victims of domestic violence, dating violence, sexual assault, stalking, or a severe form of trafficking to keep, obtain, and use alternative addresses; or (2) provides confidential recordkeeping regarding the addresses of such victims or other categories of persons.

"**Temporary Lawful Status**" means a person in temporary lawful status is a person who has a valid non-immigrant status in the United States; has an pending application for asylum in the United States; has a pending or approved application for temporary protected status (TPS) in the United States; has approved deferred action status; or has an application for LPR or conditional permanent resident status.

"**Verify**" means procedures to ensure that the source document is genuine and has not been altered (i.e. "document authentication") and the identity data contained on the document is valid ("data verification").

#### **4.0 Delaware Driver Licenses and Identification Cards.**

##### **4.1 Application document.**

- 4.1.1 Every application for a Delaware compliant and non-compliant driver license or identification card shall be made on an application furnished by the Delaware Department of Transportation. The original application shall be verified by the applicant before a person authorized by the division to administer oaths. Employees who are specifically trained and assigned duties to issue state identification documents are hereby designated as being able to administer oaths under this section. The applicant will certify on the application if he holds a compliant or non-compliant driver license or identification card in this or any other state. The original application will be electronically scanned and stored.

##### **4.2 Delaware Identification Documents.**

- 4.2.1 When Delaware self certifies to the DHS, and the DHS determines that Delaware has met the requirements of 6 CFR 37 or its equivalent as amended from time to time, the division may issue Delaware compliant identification documents, which will be accepted by federal agencies for official purposes.
- 4.2.2 Unless otherwise specified, identification documents issued in accordance with this administrative code shall be considered compliant identification documents and shall be accepted by federal agencies for official purposes.
  - 4.2.2.1 To be considered eligible for a compliant identification document, the division must reverify, scan, and electronically retain all original source documents of current Delaware driver license and identification card holders upon renewal or reissuance of that person's identification documents.
  - 4.2.2.2 Unless otherwise specified, once verified, scanned, and electronically retained, a compliant identification document holder will not be required to again present the division with the original source document except in cases where a material change occurs or when an applicant's lawful status must be verified.
- 4.2.3 It will be clearly indicated on the face of the identification documents and in the machine readable zone that the license is either a Delaware compliant or non-compliant driver license, temporary driver license, identification card, temporary identification card or limited-term driver license.

##### **4.3 Non-Compliant Driver Licenses and Identification Cards.**

- 4.3.1 Non-compliant driver licenses and identification cards will clearly state on their faces and in the machine readable zones that the card is not acceptable for official purposes.
- 4.3.2 The division may issue non-compliant identification documents and non-compliant temporary or limited-term identification documents in lieu of Delaware compliant documents to persons who:
  - 4.3.2.1 Are citizens of the United States, aliens with permanent resident status, or aliens with acceptable proof of lawful status in accordance with 2 **DE Admin. Code** 2220 who want to operate a motor vehicle or have a state-issued identification card, but who do not need or want a Delaware

compliant identification document to enter federal facilities, board federally-regulated commercial aircraft, or enter nuclear power plants;

4.3.2.2 Are unable to present an authorized source document and must rely upon alternative documents, when approved by the Driver Services Manager, Chief of Driver Services, Deputy Director or Director, to establish a person's name, date of birth, principle residence address, SSN or use alternative documents to demonstrate U.S. citizenship or lawful presence.

4.3.2.3 Have lawful status in the United States, but:

4.3.2.3.1 Are ineligible for a SSN because of their immigration status;

4.3.2.3.2 Are able to provide a temporary residential address (such as a motel or homeless shelter) but do not have a principal residence address in this State (reference Section 9);

4.3.2.3.3 Are able to provide documentation confirming their SSN and/or lawful status, but the division is temporarily unable to electronically verify this data.

#### 4.4 Temporary or Limited-Term Documents.

4.4.1 The division shall issue a temporary or limited-term compliant driver license or identification card, or temporary or limited-term non-compliant driver license or identification card to those persons who have temporary lawful status in the United States in accordance with 2 **DE Admin. Code** 2220 and 21 **Del.C.**, Sections 2715(a) and 3103(a). Before issuing or renewing these limited term documents, the applicant must provide valid documentary evidence, verifiable through SAVE or other DHS-approved means, that the person has lawful status in the United States. These documents may not be issued for a time period longer than the expiration of the applicant's authorized stay in the United States, or if there is no expiration date, for a period no longer than one year or no longer than the maximum term of a driver license or identification card, whichever date is less. Temporary or limited term identification documents must clearly indicate on their faces and in the machine readable zone that they are temporary or limited-term driver licenses or identification cards.

#### 4.5 Renewal of Delaware Driver Licenses and Identification Cards.

4.5.1 Delaware compliant and non-compliant driver licenses will be renewed in person every five years and identification cards will be renewed in person every four years in accordance with 21 **Del.C.**, Sections 2715 and 3103, unless they are designated as temporary or limited-term documents.

4.5.2 Delaware compliant identification documents must be renewed in person unless otherwise specified in Sections 4.5.4 and 98.2.1 of this document.

4.5.3 Holders of temporary or limited-term Delaware compliant or non-compliant driver licenses and identification cards must present evidence of continued lawful status and have their lawful status verified via SAVE or other methods approved by the DHS when renewing their driver licenses or identification cards. The documents must be set to expire when the individual's lawful status expires.

4.5.4 The division may allow a remote renewal but must ensure the Social Security number (SSN) and lawful status is verified before renewing. However, a remote renewal is prohibited when there is a material change in any personally identifiable information. The applicant must have his identification document reissued in person and present a source document that is retained and verified when material changes occur.

#### 4.6 Reissued Driver Licenses and Identification Cards.

4.6.1 Delaware compliant and non-compliant driver licenses will be reissued in accordance with 21 **Del.C.**, Sections 2720 and 3105.

4.6.2 Delaware compliant and non-compliant identification documents must be reissued in person unless otherwise specified in Sections 4.6.3 and 98.2.1 of this administrative code.

4.6.3 The division may allow a remote renewal but must ensure the social security number (SSN) and lawful status is verified before reissuance. However, a remote issuance is prohibited when there is a material change in any personally identifiable information. The applicant must reissue in person and present an original source document that is retained and verified when material changes occur.

### 5.0 Personal Identity: Name, Date of Birth and Gender.

#### 5.1 Identity: Full Legal Name, Date of Birth and Gender.

5.1.1 The name and date of birth on the face of the license or identification card must be the same as the name and date of birth on the source document presented by the applicant to establish identity. When the individual has only one name, that name should be entered in the last name or family name field, and the first and middle name fields should be left blank. Place holders such as NFN, NMN, FNU, LNU and NA shall not be used.

- 5.1.2 If the names, as listed on various source documents (to substantiate the applicant's name, date of birth, gender, SSN and lawful status), are different, the applicant must contact the agency who issued the source document and change the name so that the names on all source documents match.

5.2 Identification Source Documents.

- 5.2.1 To establish an applicant's full legal name, date of birth, and gender, the applicant must present one or more of the following source documents:

- 5.2.1.1 Valid, unexpired United States passport;
- 5.2.1.2 Certified copy of a birth certificate filed with a state Office of Vital Statistics or equivalent agency in the individual's state of birth;
- 5.2.1.3 Consular Report of Birth Abroad (CRBA) issued by the United States Department of State, Form FS-240, DS-1350 or FS-545;
- 5.2.1.4 Valid, unexpired Permanent Resident Card (Form I-551) issued by the United States Department of Homeland Security (DHS) or Citizenship and Immigration Services (CIS);
- 5.2.1.5 Unexpired employment authorization document (EAD) issued by the DHS, Form I-766 or Form I-688B;
- 5.2.1.6 Unexpired foreign passport with a valid, unexpired United States visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States. Applicants presenting these documents must present a SSN or demonstrate non-work authorization status;
- 5.2.1.7 Certificate of Naturalization issued by the DHS, Form N-550 or Form N-570;
- 5.2.1.8 Certificate of Citizenship, Form N-550 or Form N-561, issued by the DHS;
- 5.2.1.9 Compliant driver license or identification card issued in compliance with the standards established by 6 CFR 37 or its equivalent as amended from time to time;
- 5.2.1.10 Such other documents as the DHS may designate by notice published in the Federal Register.

5.3 Name change/exceptions.

- 5.3.1 If an applicant wants to establish a name other than the name that appears on the original source document, the applicant must provide proof of the name change by presenting a valid marriage certificate, divorce decree, adoption papers or court order substantiating the name change.
- 5.3.2 The driving record alias file contains name changes to enable the division to verify the names the applicant used over time. The division must be notified within 30 days after the name change occurs.
- 5.3.3 Exceptions: Older applicants may not have birth certificates because they were born in rural areas not under the care of a physician or for other reasons. If an applicant is unable to present any of the documents listed in Section 5.2 to prove his identity and date of birth, the applicant should contact the Office of Vital Statistics in the state in which he was born to issue a "delayed or alternate" birth certificate in accordance with state procedures.
- 5.3.4 If the procedures listed in Section 5.3.3 are not feasible, as a last resort, the division may issue a non-compliant identification document provided the applicant has sufficient proof (school records, employment documents, social security card, and other records) demonstrating he has used this name, date of birth and gender consistently over a long period of time. The driving record will be annotated showing the identification documents were approved as exceptions and copies of the documents will be retained on file. Exceptions to name change procedures must be approved by Driver Services Manager, Chief of Driver Services, Deputy Director or Director.

- 5.4 Date of Birth Changes. To establish the applicant's date of birth, an individual must present at least one document included in Section 5.2 or a court order that establishes a new date of birth.

- 5.5 Gender/gender changes. The applicant's personal identity will be verified using one or more of the approved source documents listed in Section 5.2. To change a person's gender, the applicant must complete the Request for Gender Change form detailing the applicant's request to have the gender designation on his/her driver license or identification card changed. The form requires the applicant's medical or social service provider to certify that, in his/her professional opinion, what the applicant's true gender identity is. The medical or social service provider's practice must treat patients, including the applicant, seeking gender identity changes.

6.0 Lawful Status.

- 6.1 All driver license and identification card applicants must establish legal presence in the United States to be eligible for a Delaware compliant or Delaware non-compliant identification document. Proof of an applicant's lawful status will be determined in accordance with 2 **DE Admin. Code** 2220, 2 **Del.C.** 21, 2715(a) and

3103(a). Any document not listed in 2 **DE Admin. Code** 2220 that is presented as proof of lawful status must be approved by the DHS as satisfactory evidence of lawful status. Lawful status must be verified through SAVE.

6.2 Exceptions.

- 6.2.1 Alternate documents to demonstrate lawful status will only be allowed to demonstrate U.S. citizenship. For example, a document issued by a state Office of Vital Statistics that substantiates the person was born in that state and establishes the individual's name and date of birth in lieu of the original birth certificate.
- 6.2.2 Persons born overseas to parents who were U.S. citizens and one was a member of the U.S. military, but who are unable to provide a Consular Report of Birth Abroad, Certificate of Naturalization or Certificate of Citizenship may present military and hospital records substantiating these facts after they exhausted their attempts to obtain the aforementioned documents. They may be issued a Delaware non-compliant card upon approval from the Director or Chief of Driver Services. The driving record will be annotated to show they submitted lawful status documents under the exception provision and the documents will be retained on file.

**7.0 Name change/exceptions.**

- 7.1 ~~If an applicant wants to establish a name other than the name that appears on the original source document, the applicant must provide proof of the name change by presenting a valid marriage certificate, divorce decree, adoption papers or court order substantiating the name change.~~
  - 7.1.1 ~~The State of Delaware does not recognize same sex marriages in this state or any other state as a valid marriage. Therefore, a same sex marriage certificate cannot be accepted as a legal document for an official name change.~~
- 7.2 ~~The driving record alias file contains name changes to enable the division to verify the names the applicant used over time. The division must be notified within 30 days after the name change occurs.~~
- 7.3 ~~Exceptions: Older applicants may not have birth certificates because they were born in rural areas not under the care of a physician or for other reasons. If an applicant is unable to present any of the documents listed in Section 5.2 to prove his identity and date of birth, the applicant should contact the Office of Vital Statistics in the state in which he was born to issue a "delayed or alternate" birth certificate in accordance with state procedures.~~
- 7.4 ~~If the procedures listed in Section 7.3 are not feasible, as a last resort, the division may issue a non-compliant identification document provided the applicant has sufficient proof (school records, employment documents, social security card, and other records) demonstrating he has used this name, date of birth and gender consistently over a long period of time. The driving record will be annotated showing the identification documents were approved as exceptions and copies of the documents will be retained on file. Exceptions to name change procedures must be approved by Driver Services Manager, Chief of Driver Services, Deputy Director or Director.~~
- 7.5 ~~Date of Birth Changes.~~
  - 7.5.1 ~~To establish the applicant's date of birth, an individual must present at least one document included in Section 5.2 or a court order that establishes a new date of birth.~~
- 7.6 ~~Gender/gender changes.~~
  - 7.6.1 ~~The applicant's gender will be verified using one of the approved source documents listed in Section 5.2. To change a person's gender, the applicant must provide a letter from a physician licensed in this State or the physician who completed the gender change procedure stating a gender change has been completed and a letter from the applicant requesting the division to change his gender designation in its files.~~

**87.0 Social Security Number (SSN).**

- 87.1 Every applicant must present a valid social security source document. The SSN will be electronically verified using the Social Security On-Line Verification (SSOLV) system, and the source document will be electronically stored.
- 87.2 SSN Exception:
  - 87.2.1 Those applicants whose immigration status places them in a non-working status are ineligible for a SSN. Therefore, those applicants who enter the United States with the source document listed in Section 5.2 may present a letter from the Social Security Administration (SSA) verifying that their non-working immigration status prevents them from being issued a SSN. They are ineligible for a compliant identification card and may be issued a non-compliant identification document that expires with their immigration status expiration date until such time as they have a valid SSN. In every case, the applicant should either return home or his immigration status must be changed allowing him to work by the time he

comes back to the DMV for renewal. Therefore, the immigrant must provide a verifiable SSN or an approval letter from the SSA verifying that his non-working immigration status prevents him from obtaining a SSN and new immigration documents at the time of renewal.

**87.3 SSN Disclosure Statement:**

- 87.3.1 Disclosure of the applicant's SSN is mandatory. Federal and state laws authorize such disclosure (see Public Law 109-13, and 21 **Del.C.**, Sections 2718(a) and 3104(a)). The division will use SSNs solely for the administration of the driver license and identification card program to ensure accurate identification. SSNs will not be released to businesses or private individuals but may be released to state agencies to carry out their governmental functions. If you obtained an identification document without a SSN and have subsequently obtained a SSN, it is your responsibility to notify the Division of Motor Vehicles within 30 days.

**98.0 Principal Residence Address.**

- 98.1 The division and Delaware State Police must be able to contact every identification document holder at the physical location where he lives in this State. Therefore, every applicant must provide two documents that show the individual's name and principal Delaware residence using such documents as utility bills, auto or life insurance policies, W-2 or filed tax forms, voter registration card, bank account records, credit card statements, employment records, signed contract to purchase home in this State, rental agreement or any other document specifically approved by the Chief of Driver Services or Director. These source documents will be electronically stored and when possible, verified. The applicant should notify the division within 30 days after he changes his address. No proof is needed to change a person's address, and it can be accomplished by mail. A Delaware compliant driver license or identification card will not be issued to an applicant unless the applicant has established a principal residence address in this State at the time of application.

**98.2 Principal Address Exceptions.**

**98.2.1 Military members.**

- 98.2.1.1 Members of the U.S. military and their dependents that were issued a Delaware driver license or identification card may renew and retain these identification documents when transferred by the military to another state or country until such time as their active military service is terminated. They cannot upgrade to a Delaware compliant document unless they appear in person and meet all other requirements. Upon renewal the division will only issue non-compliant identification documents to members of the military and their dependents living in another state unless they currently hold a Delaware compliant driver license or identification card issued by Delaware.
- 98.2.1.2 The eye examination is waived and the digital photograph on file will be used when the military member is unable to renew in person provided the photograph was taken within the last 16 years. Upon renewal the military member must provide the division with a valid, unexpired military ID showing his active duty status, his principal residence address, and mailing address in the out-of-state location. At times the dependent's address will be different than the military member's.
- 98.2.1.3 Military members and their dependents that are transferred into this State have the option of applying for a Delaware identification document or retaining their out-of-state driver license or identification card while serving in the military in this State.

**98.2.2 Homeless - Temporary Lodging.**

- 98.2.2.1 After meeting all other requirements, persons living in temporary lodging such as a homeless shelter or motel may be issued a non-compliant identification document provided they substantiate: (1) they are living in temporary quarters in this State pending their subsequent move into a designated principal residence address; and (2) the agency offering temporary lodging certifies they are allowed residency for 30 or more days, and they may receive mail at this address.

**98.2.3 Those Living on Boats or in Recreational Vehicles.**

- 98.2.3.1 Those applicants whose principal residence address is on a personally-owned boat and who do not have another residency in this or any other state must provide proof that the boat is registered in their name in this State; have a 12-month or longer boat slip contract with a Delaware company; and provide a valid mailing address.
- 98.2.3.2 Those persons whose principal residence address is in a recreational vehicle on land in this State and who do not have a residency in this or any other state must provide proof that they have a 12-month or longer contract with a recognized Delaware RV campground or trailer court, or reside at the Dover Air Force Base RV campground, and have a valid mailing address.

98.2.3.3 Those living on a boat or in a recreational vehicle will be issued a non-compliant identification document because the nature of their residency suggests frequent travel away from the place where they live and the State cannot be assured they can be easily contacted when away from their designated boat slip or campground.

98.2.4 Mailing Address.

98.2.4.1 If mail cannot be delivered to the applicant's principal residence address or if he is living in temporary quarters without mail service, he must provide the division with a mailing address. Those under the confidential address program must submit a mailing address.

98.3 Confidentiality program.

98.3.1 Law Enforcement Confidential Program.

98.3.1.1 States are not required to comply with compliant requirements when issuing compliant driver licenses or identification cards in support of federal, state, or local criminal justice agencies or other programs that require special licensing or identification to safeguard persons in support of their official duties. The Delaware State Police and DOT IT Support Section will manage the confidential licenses and identification cards for all law enforcement and criminal justice agencies. The program will follow the guidelines established under the memorandum of understanding between the Delaware State Police, Department of Transportation and Division of Motor Vehicles.

98.3.2 Victims of domestic violence, dating violence, sexual assault, stalking, or other forms of abuse may use an alternative address under the State's Victims of Abuse Address Confidentiality Program. The Victims of Abuse Address Confidentiality Program will follow the guidelines established under the memorandum of agreement between Delaware's Department of Justice, Department of Transportation and Division of Motor Vehicles.

**409.0 Verification Requirements and Other Restrictions/Limitations.**

409.1 Verification of Source Documents.

409.1.1 The division will verify the source documents used to determine an applicant's name, date of birth, SSN, principal residence address, lawful status, gender or any material changes to this data with the issuer of the source document whenever. An electronic validation of the document and identity data will occur as systems become available or by alternative methods approved by the DHS. All source documents and identification document applications will be scanned and electronically retained by the division.

409.1.2 A SSN check (SSOLV) and lawful status verification check (SAVE) will be conducted upon initial issue and/or renewal when a material change occurs, and whenever a new identification document is produced. If an applicant has previously proven/established United States citizenship, a SAVE check may not be required.

409.1.3 The division may not remotely reissue a Delaware compliant driver license or identification card where there has been a material change in any personally identifiable information since prior issuance. All material changes must be established by an applicant applying in person at a division facility and presentation of an original source document that is verified before the material change is accepted.

409.1.4 A Delaware compliant or non-compliant identification document may be issued remotely as long as the SSN and lawful status is verified.

409.1.5 The division will electronically verify information that it was not able to verify at a previous issuance or renewal if the systems or processes exist to do so.

409.2 Electronic Verification Details.

409.2.1 Systematic Alien Verification for Entitlements (SAVE). Any documents listed in Section 5.2 and issued by the DHS, including the I-94, will be verified through the SAVE system or alternate method approved by the DHS. If two DHS-issued documents are shown, only one must be verified. In the event of a non-match, the division must not issue a Delaware compliant or non-compliant identification document to an applicant and must refer the individual to the U.S. Citizenship and Immigration Services for resolution. The division will not issue a compliant or non-compliant identification document unless the applicant has lawful status in the United States.

409.2.2 Social Security On-Line Verification (SSOLV). The division will verify SSNs with the Social Security Administration (SSA) using SSOLV or through another method approved by the DHS. In the event of a non-match with the SSA, the division will use existing procedures to resolve non-matches. If unable to resolve non-matches, the division will deny issuance to those applying for their first Delaware identification document. A Delaware compliant or non-compliant identification document will not be issued until the mismatch condition is resolved. However, upon renewal of a Delaware-issued identification document, the document holder may be issued one 60-day temporary non-compliant identification document to give him



time to resolve the mismatch condition with the SSA. The division may establish procedures and exceptions through memorandums.

409.2.3 Commercial Driver License Information Systems (CDLIS). Mandated by the Commercial Motor Vehicle Safety Act (CMVSA) of 1986, the division will verify all driver license transactions through CDLIS to ensure the applicant does not hold a commercial motor vehicle compliant or non-compliant identification document in another jurisdiction. If a match is found in another jurisdiction, the applicant must surrender his existing identification document from the other jurisdiction to obtain a Delaware compliant or non-compliant identification document. During the renewal process, if a match is found with a status of "not eligible", the applicant must downgrade his Delaware commercial compliant or non-compliant identification document to a Class D and be issued a 60-day temporary non-compliant identification document until the status becomes "eligible". At that time the applicant may be reissued his Delaware commercial compliant or non-compliant identification document.

409.2.4 Problem Driver Pointer System (PDPS). In conjunction with the National Driver Registry (NDR), the division will verify all driver license transactions through PDPS to ensure the applicant's eligibility to obtain valid driving authority and carry a compliant or non-compliant identification document. If a match is found from another jurisdiction with a status of "not eligible" during an initial or transfer transaction, the applicant is denied a Delaware compliant or non-compliant identification document until the jurisdiction reports a status of "eligible". During an identification document change, duplicate or renewal process, if a "not eligible" status is found, the applicant is issued a 60-day temporary non-compliant identification document until the status becomes "eligible". At that time the applicant may be reissued his Delaware compliant or non-compliant identification document.

409.2.5 Electronic Verification of Vital Events (EVVE). Birth certificates must be verified by using the EVVE system or other electronic systems whenever the system or records become available. If the document does not appear authentic upon inspection or the data does not match, a Delaware compliant or non-compliant identification document will not be issued until the information is verified. The applicant must return to the issuing agency for resolution.

409.2.6 Department of State Documents. Documents issued by the Department of State will be verified with the Department of State or through methods approved by the DHS when or if the verification system becomes available.

409.2.7 Compliant Documents. Compliant identification documents will be verified with the state of issuance when or if the verification system becomes available.

#### 409.3 Non-Match Verification Results and System Failure Procedures.

409.3.1 Initial Issue and Transfer. The division will deny the initial issuance of a Delaware compliant or non-compliant identification document whenever a verification check (SSOLV, SAVE or EVVS) results in a non-match condition.

409.3.2 Renewal - Missing Source Document. A Delaware resident holding a valid driver license or identification card who is unable to present the required source documents at the time of renewal may be issued a Delaware non-compliant identification document until they can provide the required source documents and meet all other requirements for a Delaware compliant identification document. There is no additional fee for changing a non-compliant identification document to a compliant identification document.

409.3.3 Renewal - Mismatch Condition. Should a mismatch condition occur for those applicants renewing a Delaware-issued identification document, they may be issued a 60-day temporary non-compliant identification document to give them time to resolve the problem with the issuing agency.

#### 409.4 Renewal and Verification System Failure.

409.4.1 If an electronic verification system fails when an applicant is renewing his Delaware-issued identification document, the following may occur depending on which verification system failed:

409.4.1.1 The applicant may be denied issuance;

409.4.1.2 The applicant may be issued a 60-day temporary non-compliant identification document;

409.4.1.3 The applicant may be permitted to renew his identification document when the SAVE verification fails if all other systems have passed. However, the SAVE verification must be immediately performed when the system comes back online. The applicant's immigration documents must show an expiration date that can be used on the renewal for a Delaware non-compliant identification document. The comment section of the driving record must be annotated to reflect what transpired.

409.4.1.4 Delaware compliant identification documents require full verification of all systems for initial issuance.

409.4.2 If a verification system fails when the applicant is applying for his initial Delaware identification document, the application will be denied until the verification check is completed.

409.4.3 Regardless of the above procedures, no identification documents will be issued if there is reason to believe the applicant is attempting to commit fraud by presenting altered or fraudulent source documents or by finding non-matching or inconsistent data on various electronic databases, or by other factors that would lead a reasonable person to conclude the applicant is attempting to commit fraud. In such instances, an electronic record will be established, a digital photograph will be captured, the record will be annotated as denied, and fraudulent or altered documents will be confiscated. A division investigator or a law enforcement officer will be asked to investigate to determine future action.

**409.5 Prohibition Against Holding More Than One Compliant ID Card or More Than One Driver License.**

409.5.1 The division will ensure the applicant does not have more than one valid compliant or non-compliant driver license issued in this or any other state, thereby supporting the one driver license, one driving record concept as expressed in the Driver License Agreement.

409.5.2 An individual may hold only one compliant identification document. Nothing shall preclude an individual from holding a compliant driver license and a non-compliant identification card or vice versa. If a person holds a compliant identification document in another state, he will not be issued a Delaware compliant identification document in this State until the individual or division has terminated the compliant identification document issued by another state.

409.5.3 Problem Driver Pointer System (PDPS), Commercial Driver License Information System (CDLIS), National Law Enforcement Telecommunication System (NLETS) and other national systems may be used to electronically verify, within the limits of each network, whether or not an applicant has a valid compliant identification document issued by another state.

409.5.4 Motor Vehicle System software performs name and social security cross checks to identify persons who are mistakenly assigned multiple driving or identification card records on the division's files. Multiple records will be combined into one record when discovered.

409.5.5 An applicant's identity will be verified each time a Delaware compliant or non-compliant identification document is renewed or reissued to ensure that the individual receiving a Delaware identification document is the same individual to whom the document was originally issued.

409.5.6 An applicant must be denied a Delaware-issued compliant identification document until the compliant document issued by another state is terminated or soon to be terminated. If the applicant must terminate a compliant identification document issued by another state, then the division, as allowed under the Driver License Compact, may act on behalf of the applicant and inform that state that Delaware has issued a Delaware compliant identification document in this State and request the other state cancel the one issued by its agency. A Delaware compliant identification document will be issued pending the termination of the out-of-state document.

**409.6 Other Restrictions/Limitations.**

409.6.1 If the division discovers a person holds a compliant or non-compliant identification document in multiple or different names issued by this or any other state, the division may deny issuance of an identification document, investigate the matter and suspend the applicant pursuant to Title 21, Section 2733(a)(5).

409.6.2 An applicant cannot obtain his initial Delaware driver license or transfer a license from another state if his driver license is suspended or revoked in any state for a violation that would result in a suspension or revocation in this State. Renewal exception: Those applicants renewing a valid Delaware-issued driver license may be issued a 60-day, non-compliant temporary driver license to give them an opportunity to resolve the out-of-state suspension or revocation. Once the out-of-state suspension or revocation is cleared, the applicant may be issued a valid Class D license. If a driver holds a CDL, he must downgrade to a Class D license before being issued a temporary license.

**140.0 Other Mandatory Data Collection and Source Documents Retention.**

**140.1 Digital photograph images.**

140.1.1 An identification document shall not be valid unless it contains the applicant's full facial image and signature. The mandatory facial image must be captured and retained even if no identification document is issued. The applicant for an initial Delaware compliant identification document must appear in person to update his full facial digital image. Upon approval by the Director of the Division of Motor Vehicles, at the Director's discretion, the requirements for this appearance may be waived for those with an existing Delaware-issued compliant or non-compliant identification document whose full facial digital image and electronic signature is on file when circumstances prevent the applicant from appearing on or near the time

of renewal or reissue provided the full facial digital image printed on the license was taken within the previous 16 years.

140.1.2 The digital photograph must be full faced and provide an unobstructed view of the person's facial features. This enables the photograph on the license to be used as a means of proper identification for motor vehicle, emergency and public safety purposes. For more specific details consult current Division photograph image procedures. Digital imaging driver license facial recognition one-to-many technology compares each digital photograph taken against all other digital photographs on file to ensure the driver license or identification card applicant does not have multiple identification documents in different or same names on file in this State. One-to-many facial comparisons will be conducted on all initial issuance and transfers of compliant and non-compliant identification documents. This same technology completes a one-to-one verification check by comparing the latest digital photograph taken against all other photographs on an applicant's current record. One-to-one facial comparisons will be conducted on all compliant and non-compliant identification document renewals. This is designed to prevent a digital photograph from appearing on another person's identification document. Whenever the facial recognition technology pinpoints potential duplication, fraud or mistaken assignment of a photo, the applicant will not be issued an identification document until the discrepancy is resolved.

140.1.3 A new digital photo image will be made every time a person appears in person to renew his identification document, have his identification document reissued, materially changed, or have his address changed on his identification document.

140.1.4 If the division issues an identification document without a photo image or one that does not meet division standards, the customer will be notified in writing that he must return to a division facility within seven days to replace the deficient document. If he fails to comply, his identification document status will be changed to "denied", and the driver will be notified of the change. Identification document holders will be denied renewal or reissued documents until the photo image meets division standards.

#### 140.2 Signature.

140.2.1 Every holder of an identification document shall sign an application under the penalty of perjury that the information on the application is true and correct. The applicant will use his normal signature. The identification document shall not be valid until signed by the applicant. By signing the application he acknowledges the following and any other information that may be included on the application in the future:

140.2.2 He is a bona fide resident of Delaware;

140.2.3 Consent to chemical tests of his breath, blood or urine to determine the amount of alcohol or drugs in his blood;

140.2.4 That convicted sex offenders must register with the Delaware State Police within seven days after coming into this State (Megan's Law);

140.2.5 That the division will send personal information pertaining to male applicants under the age of 26 years to the Selective Service for the purpose of registration in the Selective Service System as required by federal and state laws;

140.2.6 That he is physically and mentally able to safely operate a motor vehicle;

140.2.7 That he must report if he holds a license in another state or if his driving privileges are suspended or revoked in any state.

#### 140.3 Retaining Source Documents.

140.3.1 The source documents submitted by the applicant to the division are used to determine the person's name, date of birth, gender, SSN (if eligible), address of principal residence, unless enrolled in a state address confidentiality program, and lawful status and shall be retained by the division in either paper or electronic format. The identification document application signed by the applicant will also be retained.

#### 140.4 Miscellaneous.

140.4.1 For identification purposes, the division will also collect the applicant's height, weight, and eye color based upon verbal information provided by the applicant.

### **121.0 Source Document Retention Period.**

121.1 At a minimum the division will retain the following documents including copies of the application, declarations, source documents and documents used to establish all names recorded by the division. The division will protect any personally identifiable information collected. The division may retain these documents for a longer time period than the period specified in the following:

121.2 The full facial image/photograph will be retained by the Department of Transportation for at least five years if no identification document is issued and at least two years beyond the expiration date of the identification document;

- 121.3 All paper copies of source documents must be retained for a minimum of seven years;
- 121.4 Microfiche documents must be retained for a minimum of ten years;
- 121.5 Digital images of source documents must be retained for a minimum of ten years;
- 121.6 Digital, microfiche and paper identification document applications and declarations will be retained for a minimum of ten years;
- 121.7 All photograph images must be stored and be retrievable by the division if properly requested by statute or regulation;
- ~~12.8 Upon request by an applicant, the division may record and retain the applicant's name, date of birth, certificate numbers, date filed, and issuing agency in lieu of an image or copy of the applicant's birth certificate if such procedures are required by State law.~~

#### **132.0 Division Databases.**

- 132.1 The Division must maintain a motor vehicle database that contains, at a minimum:
  - 132.1.1 All data fields printed on identification documents issued by this State, individual serial numbers of the documents and SSNs;
  - 132.1.2 A record of the full legal name and recorded name, as applicable, without truncation;
  - 132.1.3 All additional data fields included in the machine readable zone (MRZ) but not printed on the identification document; and
  - 132.1.4 Motor vehicle driver's histories, including motor vehicle violations, revocations, disqualifications, suspensions, and points on driver's licenses.
  - 132.1.5 The Division must protect the security of personally identifiable information as prescribed in State law and information technology policies and procedures.

#### **143.0 Severability.**

If any part of this rule is held to be unconstitutional or otherwise contrary to law by the court of competent jurisdiction, said portions shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

#### **154.0 Effective Date.**

The following regulation shall be effective ten days from the date the order is signed, and it is published in its final form in the Register of Regulations in accordance with 29 **Del.C.**, Section 10118(e). Delaware compliant identification documents will become available once Delaware self certifies to the DHS and the DHS determines Delaware has met the requirements of 6 CFR 37 or its equivalent as amended from time to time, the division may issue Delaware compliant identification documents, which will be accepted by federal agencies for official purposes.

**13 DE Reg. 1226 (03/01/10)**

**15 DE Reg. 687 (11/01/11) (Final)**