

i. United States citizens and persons who are not United States citizens must submit at least one document from the list below.

<u>Document</u>	<u>Value</u>
Valid New Jersey digitized driver license issued on or after *[(the effective date of this new section)]* <b>September 19, 2016*</b> (a secondary document for non-United States citizens only)	4
Unexpired special learner permit with digital image issued on or after *[(the effective date of this new section)]* <b>September 19, 2016*</b> (a secondary document for non-United States citizens only)	4
Unexpired examination permit with digital image issued on or after *[(the effective date of this new section)]* <b>September 19, 2016*</b> (a secondary document for non-United States citizens only)	4
Valid Probationary license with digital image issued on or after *[(the effective date of this new section)]* <b>September 19, 2016*</b> (a secondary document for non-United States citizens only)	4
Legal name change court order signed by a judge or court clerk	3
Civil marriage or civil union certificate or divorce decree	3
United States adoption papers	3
Current United States military photo identification card	3
Current United States military dependent card	3
United States military photo retiree card	3
New Jersey firearm purchaser card	3
Valid United States government employee driver license	2
Valid United States government employee photo identification card	2
United States military discharge papers (DD214)	2
Federal Aviation Administration pilot license	2
United States school photo identification card with transcript or school records	2
United States college photo identification card with transcript	2
Current photo driver license of any state of the United States including New Jersey and the District of Columbia *[(issued prior to the effective date of this new section)]* <b>September 19, 2016*</b>	1
State professional license	1
New Jersey public assistance card with photo	1
Social Security card with Social Security Administration (SSA) verification	1
High school diploma or GED (general equivalency diploma)	1
Bank statement/record (cannot be submitted in conjunction with ATM card)	1
ATM (automated teller machine) card with preprinted name and applicant's signature (cannot be submitted in conjunction with bank statement)	1
Current health insurance card or current prescription card	1
Current employee identification card accompanied by a printed pay stub	1
Property tax statement, bill or receipt issued by a New Jersey municipality	1
High school certificate (written test waiver)	1
Veteran's Administration universal access photo identification card	1

(d) Each applicant must present for inspection two acceptable proof of principal residence documents, which may be, but are not limited to, the following:

1. A utility or credit card bill displaying applicant's name at current address, issued within the last 90 days;
2. A property tax bill, statement, or receipt within the last year;
3. Any letter or correspondence (including tax bills) received from the Federal Internal Revenue Service or any state tax office within the past year;
4. An original lease or rental agreement with the name of the applicant listed as the lessee or renter;
5. First class mail from any government agency within six months, including a Commission-issued driver license renewal form;
6. A checking or savings account statement (bank or credit union) issued within the last 60 days; or

7. A certification, verifying the address of an applicant under 18 years of age who does not have his or her own proof of address verification, from a parent or guardian.

(e) Pursuant to N.J.S.A. 39:3-9b, victims of domestic violence and other specified crimes and those the Chief Administrator determines to have good cause may show a mailing address on documents in this list as a post office box, an address other than the applicant's address, or other contact point as acceptable proof of principal residence.

(f) Each applicant must present for inspection acceptable proof of Social Security number documentation (which will be verified through the Social Security Online Verification system), which shall be either:

1. Social Security card;
2. W-2 form issued within the past year;
3. Pay stub with applicant's name and Social Security number;
4. SSA-1099 form issued within the past year; or
5. Non-SSA-1099 form issued within the past year.

(g) Any person from a foreign country who is in New Jersey for a period of one year or less may operate a motor vehicle in this State if he or she is the holder of a current driver license in good standing from the country in which he or she resides, provided that such license authorizes operation of the class of vehicle to be operated in this State. The Chief Administrator may deny, suspend, or revoke the driving privilege conferred by this subsection for violation of any of the provisions of Title 39 of the Revised Statutes or on other reasonable grounds upon notice and an opportunity to be heard pursuant to the procedures in N.J.A.C. 13:19-1.

(h) Any person from a foreign country who is in New Jersey for a period of one year or less and who would be entitled to operate a motor vehicle in this State pursuant to (g) above but for the fact that he or she is not the holder of a driver license from the country in which he or she resides shall be eligible to make application for a New Jersey driver license or permit. If a New Jersey driver license or permit is issued, the Commission shall fix the expiration date at a date based on the period in which the person is authorized to be present in the United States under Federal immigration laws. The Commission may renew the driver license or permit only if it is demonstrated that the person's continued presence in the United States is authorized under Federal law.

(i) The Commission shall not issue a driver license or permit to a person who is entitled to operate a motor vehicle in this State pursuant to (g) above or who is entitled to operate a motor vehicle in this State under a reciprocity privilege granted by any law, unless said reciprocity privilege is revoked or terminated by the establishment of residence in this State and the surrender of said person's current out-of-State driver license to the Commission upon issuance of a New Jersey driver license.

(j) The Commission shall take a photo of each applicant for a new or renewed REAL ID compliant special learner permit with photo, examination permit with photo, driver license, commercial driver license, or non-driver identification card upon submission of the application.

(a)

**MOTOR VEHICLE COMMISSION**

**Licensing Service and Document Scanning**

**Adopted Amendments: N.J.A.C. 13:21-8.2 and 13:82-8.20**

Proposed: October 5, 2015, at 47 N.J.R. 2428(a).

Adopted: June 14, 2016, by the Motor Vehicle Commission, Raymond P. Martinez, Chairman and Chief Administrator.

Filed: July 7, 2016, as R.2016 d.088, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 12:7-72, 12:7-85, 39:2A-2.j, 39:3-4, 39:3-9c, 39:3-10, and 39:3-10f.

Effective Date: September 19, 2016.

Expiration Dates: December 4, 2020, N.J.A.C. 13:21; January 4, 2017, N.J.A.C. 13:82.

**Summary** of Public Comments and Agency Responses:

Comments were received from the following people.

1. Ronald K. Chen, Co-Dean of the Rutgers Law School representing the Rutgers Law School Constitutional Rights Clinic and Edward Barocas of the American Civil Liberties Union of New Jersey
2. Stephen G. Carellas, P.E., Director of Government and Public Affairs, New Jersey Chapter of the National Motorists Association
3. Ondra Mayfield
4. Barbara Sachau
5. David Donsky
6. Ernest Matthews
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COMMENT: Why does the New Jersey Motor Vehicle Commission (MVC) need to retain copies of documents instead of just examining or inspecting them once the identity of the individual has been confirmed by an authorized MVC official? (1, 2, and 5 through 708)

RESPONSE: As a result of concerns that were raised through public comments, the MVC will only be scanning the applications and documents of applicants who are applying for REAL ID compliant driver licenses and non-driver identification cards. For non-REAL ID compliant driver license, non-driver identification card applicants, and stand-alone boat license applicants, only the applications will be imaged and retained, which is the current practice, and is done pursuant to N.J.S.A. 39:3-28.

Reasons for retaining copies of documents instead of just examining or inspecting them are: (a) the Federal REAL ID Act requires the retention of source documents that are submitted to a motor vehicle authority to prove the identity of a person who is applying for a REAL ID compliant driver license or non-driver identification card; (b) for security reasons: if there is ever an allegation that a catastrophic event occurred because the MVC issued a particular driver license or non-driver identification card that it should not have issued, the MVC would have copies of the documents that the MVC relied on when it issued the particular driver license or non-driver identification card; (c) for customer service reasons: scanned images of documents can be checked when a customer needs a duplicate driver license or non-driver identification card; and (d) for auditing reasons: auditors can check to see whether employees are following the law, rules, and procedures when issuing driver licenses or non-driver identification to customers.

COMMENT: Why should customers' personal information be retained to catch employee misconduct? (1 and 5 through 708)

RESPONSE: Scanning identification documents that are submitted when customers apply for REAL ID compliant driver licenses or non-driver identification cards helps to prevent both employee and customer misconduct. If a customer submits insufficient or altered, false, or counterfeit documentation and an employee processes the transaction and issues a driver license or non-driver identification card, the only way to prove it is for the Commission to retain copies of the documents submitted. Once the Commission publicizes and implements the practice of scanning documents submitted to obtain REAL ID compliant driver licenses and non-driver identification cards, knowing that the Commission implements this practice should serve as a deterrent for both employees and customers. State rules require image processing systems to create and retain a record of the location, date, operator, and equipment involved in the production of all images it copies or produces. Further, imaging systems are required to create and maintain logs of all system and file access and activities, and requires that only authorized persons have access to logs and other documentation of security subsystems and procedures.

COMMENT: In 2011, six MVC employees faced criminal charges for selling fake driver licenses, and at least one was sentenced to jail. Giving MVC employees access to more of the public's data seems like a route for more identity theft and fraud, not less. (1, 2, and 4 through 708)

RESPONSE: While the comment is inaccurate in its statement that the charged employees were selling fake driver licenses, the Commission's Security, Investigation, and Internal Audit Division routinely monitors and observes the work of the MVC employees and works with law enforcement to, among other things, alert them of instances where MVC employees misuse personal information of MVC customers. So, in many instances, it is the MVC that uncovers this type of employee misconduct

on its own. This monitoring will continue with the scanning of documents.

COMMENT: What protections will be put in place to safeguard personal information? (1 through 708)

RESPONSE: The MVC uses the latest encryption software in compliance with standards to protect personal information. Only MVC employees who have undergone background and fingerprint checks have access to personal information. N.J.A.C. 15:3-4.8(f) requires image processing systems to create and retain a record of the location, date, operator, and equipment involved in the production of all images it copies or produces. Further, imaging systems are required to create and maintain logs of all system and file access and activities, and requires that only authorized persons have access to logs and other documentation of security subsystems and procedures.

COMMENT: More public outreach and public notice should occur before this proposal is implemented. (2 and 3)

RESPONSE: The Commission held a public meeting to authorize publication of this regulatory proposal. The Commission also transmitted this regulatory proposal to the Office of Administrative Law (OAL) for publication in the New Jersey Register. The Commission held a public meeting to adopt this regulatory proposal and transmitted the regulatory adoption to the OAL for publication in the New Jersey Register. The MVC also plans to create a public information campaign prior to implementation.

COMMENT: If a customer does not want a "gold standard" of identification, can the customer opt for a bronze standard if the customer is more interested in protecting his or her privacy than being able to access high security areas? (3)

RESPONSE: The Commission has listened to this customer's concerns. Customers will have a choice between obtaining a REAL ID compliant driver license or non-driver identification card (the "gold standard"), for which documents will be scanned, and a non-REAL ID compliant driver license or non-driver identification card (the "bronze standard"), for which documents submitted will not be scanned, (which we would consider more of a "silver standard" once REAL ID documents are available).

COMMENT: What is the procedure for opting out of having one's document's scanned and stored? (3)

RESPONSE: Applicants can opt for a non-REAL ID compliant driver license or non-driver identification card. As a result of public comments received, only the applications for non-REAL ID compliant driver licenses and non-driver identification cards will be scanned; other source documents will not be scanned as a requirement for issuance of non-REAL ID compliant driver licenses and non-driver identification cards.

COMMENT: Where will the data be stored? (3)

RESPONSE: The data will be stored on servers at a New Jersey Department of the Treasury's data center.

COMMENT: How is the data safer than the data that was stolen from major corporate and Federal government agencies such as the CIA and the FBI and the OPM? (1, 3, 54, 61, 423, 683, and 697)

RESPONSE: The MVC does not know what security protocols were in place at the CIA and the FBI when the data was stolen.

COMMENT: Is the MVC a monopoly or can customers do business elsewhere? (3)

RESPONSE: The MVC is a government agency and is the only source for the issuance of driver licenses and "non-driver identification cards" in New Jersey.

COMMENT: What new training and security will be required of Commission employees and vendors who have access to this personal information data? (3)

RESPONSE: No new training and security requirements are anticipated for employees. All Commission employees are already required to take "Securing the Human," which trains them on how to keep personally identifiable information secure. Employees are also required to undergo background checks, and are guided by the Driver Privacy Protection Act.

COMMENT: The economic impact says there will not be any additional cost to the consumer, what about the cost of allowing one's personal data to be so vulnerable? (3)

RESPONSE: The cost of vulnerability to individuals' stored data, wherever personal data is stored, is not quantifiable, but could be substantial. That is why the Commission is making every effort to protect the security of all sensitive data in its custody.

COMMENT: What is the substantial and legitimate need to retain copies of personal documents that can contain extremely sensitive personal information once the original documents have been inspected and the identity of the individual established by an authorized MVC official? (1, 2, and 5 through 708)

RESPONSE: The Federal REAL ID Act requires the retention of source documents that are submitted to a motor vehicle authority to prove the identity of a person who is applying for a REAL ID compliant driver license or non-driver identification card. Situations such as 9/11 showed a need for the ability for the Commission to refer back and see what documents were submitted by whom to obtain a particular driver license or non-driver identification card.

COMMENT: Even if there were a legitimate need to retain copies of individual source documents, the proposed rules (despite the cross-reference to the DORES statutes and retention schedules) do not provide for adequate safeguards to protect the security, confidentiality, and integrity of the personally identifiable information collected, stored, and maintained by the MVC, safeguards that would guard against unauthorized disclosure. Nor does the reference to DORES retention schedules give adequate guidance on how long the documents will be retained. (1)

RESPONSE: The Commission, like any other organization that works with personally identifiable information, is always looking to strengthen the way it handles, stores, and secures such information. The Commission's aim is to be the leading or model motor vehicle authority in the United States with regard to safety and security in the way it handles the information that is entrusted to it. The Commission works with its vendor, Morpho Trust, and the State Office of Information Technology (OIT) to maintain the integrity of its database. The Commission uses the latest encryption software to comply with standards to protect personally identifiable information. DORES schedules provide retention requirements that govern State documents. DORES, the OIT, and the MVC will be working together to protect the security, confidentiality, and integrity of the personally identifiable information collected, stored, and maintained by the MVC. MVC employees are required to abide by the New Jersey Driver Privacy Protection Act (DPPA), which can be found at N.J.S.A. 39:2-3.3 through 39:2-3.7.

COMMENT: The existing photo database resolves most issues associated with the MVC's license processing and auditing. (2)

RESPONSE: The photo database is a tremendous asset and it does resolve many license processing and auditing issues. However, the photos need to be cross-referenced with the documents, so that the photos can be identified. To fully and properly identify an individual, one needs to have the individual's photo and documents.

COMMENT: External security systems do more for ensuring security and public safety than a driver's license will. (2)

RESPONSE: Both external security systems and driver licenses are important for ensuring security and public safety. Driver licenses and non-driver identification cards have become extremely important identification documents that are relied on by many entities. Accordingly, although the Commission utilizes external security systems extensively, it also must be particularly concerned about the accuracy, integrity, and security of every facet of the processing and issuance of driver license and non-driver identification cards because they are documents that are issued by the Commission and it needs to ensure the integrity of those documents.

COMMENT: After documents are submitted, a picture is taken once, and the driver license or non-driver identification document is issued, why does one need to bring their documents back to the MVC each time they renew their driver license or non-driver identification document? (4)

RESPONSE: The Commission needs to, at the very least, continue requiring the presentation of six points of identification until it can scan all submitted documents. Once the Commission has gone through a complete cycle of scanning documents when issuing driver licenses and non-driver identification cards, it can then reevaluate whether it needs to repeat the process on every renewal or not.

COMMENT: Why do you want to do this when you want to give driver licenses to illegal immigrants that don't have these items. I do not want you to have copies of my personal private papers. We have one of the most secure driver licenses now leave it alone. (4 and 705)

RESPONSE: The MVC requires applicants to provide proof of legal presence in the United States in order to obtain a driver license or a non-driver identification card. Scanning identification documents that are submitted when customers apply for driver licenses or non-driver identification helps to prevent both employee and customer misconduct. If a customer submits insufficient or altered, false, or counterfeit documentation and an employee processes the transaction and issues a driver license or non-driver identification card, the only way to prove it is for the Commission to retain copies of the documents submitted. Once the Commission publicizes and implements the practice of scanning documents submitted to obtain driver licenses and non-driver identification cards, knowing that the Commission implements this practice should serve as a deterrent for both employees and customers. State rules require image processing systems to create and retain a record of the location, date, operator, and equipment involved in the production of all images it copies or produces. Further, imaging systems are required to create and maintain logs of all system and file access and activities, and requires that only authorized persons have access to logs and other documentation of security subsystems and procedures.

#### Summary of Agency-Initiated Changes:

At N.J.A.C. 13:21-8.2(b)9 and 8.20(a)9, recodified upon adoption as N.J.A.C. 13:21-8.2(j) and 8.20(h), respectively, the Commission replaced the word "documents" with "images" for clarity, and replaced the reference to the Division of Revenue and Enterprise Services standards with the statutory and regulatory citations, for clarity. These changes are not substantial changes, as defined by N.J.A.C. 1:30-6.3.

The Commission has determined that it will offer both REAL ID compliant and non-REAL ID compliant driver licenses and non-driver identification cards. See 48 N.J.R. 569(a); however, based on public comments received, the Commission has further determined that it will only scan the documents that are submitted by applicants for REAL ID compliant driver licenses and non-driver identification documents. It will not scan the documents that are submitted by applicants for non-REAL ID compliant driver licenses, non-driver identification cards, or stand-alone boat licenses. The Commission will, however, continue its existing practice of scanning all driver license, non-driver identification card, and stand-alone boat license applications as required by N.J.S.A. 39:3-28.

#### Federal Standards Statement

The adopted amendments do not cause the rules to, or amend any rule that does, exceed Federal standards or requirements. The adopted amendments meet Federal document retention standards for application, declaration, and source documents. Federal law specifically permits the respective states to utilize Social Security numbers and to retain applications, declarations, and documents required by the Commission's six-point identification system in the administration of driver license or motor vehicle registration laws. See 6 CFR 37.31 and 42 U.S.C. § 405(c)(2)(C)(i).

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

**(Agency Note:** The text of N.J.A.C. 13:21-8.2 below reflects the adoption of amendments published elsewhere in this issue of the New Jersey Register.)

### CHAPTER 21 LICENSING SERVICE

#### SUBCHAPTER 8. DRIVER LICENSES

13:21-8.2 Non-REAL ID age requirements; proof of identity and date of birth; proof that presence in United States is authorized under Federal law; proof of address

(a) A non-REAL ID document (special learner permit, examination permit, driver license, commercial driver license, or non-driver



identification card) will indicate that it is not acceptable for official purposes as determined by the Federal government. New Jersey allows each applicant to choose whether to apply for a non-REAL ID document (requirements are listed in this section) or REAL ID document (requirements are listed in N.J.A.C. 13:21-8.2A).

(b) Each applicant for a license, permit, or non-driver identification card shall be required to furnish to the Commission, upon request, proof of identity and date of birth and proof that the applicant's presence in the United States is authorized under Federal law. Such proof may be established by submission of the original or certified (by the issuing authority) copy of the primary and/or secondary documents that are listed in (c) below, as follows:

1.-5. (No change.)

6. The Commission shall refuse to grant any permit or license or non-driver identification card, if the Commission has reasonable cause to believe that a document is altered, false, or otherwise invalid.

7. An applicant who is not a United States citizen must submit proof of continued legal presence in the United States, as evidenced by a document listed in (c)1ii below or by a document issued by the United States Department of Homeland Security or another Federal agency that establishes the applicant's legal right to be in the United States as of the time the proof is presented.

8. For persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity or date of birth, Commission-authorized personnel may review, approve, or accept documentation that proves the applicant's identity and date of birth, and that the applicant's presence in the United States is authorized under Federal law.

9. The identity of the applicant shall be deemed to be the name recorded on the document(s) submitted to the Commission pursuant to this section unless evidence of a different name is established by the submission of a civil marriage or civil union certificate, divorce decree, or order of court.

\*[9. Commission staff members are authorized to scan all applications, declarations, and documents presented or accepted toward satisfying document requirements. All scanned documents will be retained electronically in accordance with Division of Revenue and Enterprise Services (DORES) statutes and retention schedules.]\*

10. The Commission reserves the right to make changes to the list of acceptable documents found in (c) below. Such changes will be posted on the Motor Vehicle Commission's website, [www.njmvc.gov](http://www.njmvc.gov), and will be available at all motor vehicle agencies.

(c)-(i) (No change.)

**\*(j) Commission staff members are authorized to scan all applications presented or accepted toward satisfying document requirements. All scanned images will be retained electronically in accordance with N.J.S.A. 47:3-15 et seq., and N.J.A.C. 15:3-2.1 through 2.7 and 4.1 through 4.11.\***

## CHAPTER 82 BOATING REGULATIONS

### SUBCHAPTER 8. REGISTRATION AND LICENSING

13:82-8.20 Operator license; proof of age and identity; expiration

(a) Each applicant for a boat operator license shall, upon request, furnish proof of identity and date of birth and proof that the applicant's presence in the United States is authorized under Federal law. Such proof may be established by submission of the original or certified (by the issuing authority) copy of the primary and/or secondary documents that are listed in (b) below as follows:

1.-8. (No change.)

\*[9. Commission staff members are authorized to scan all applications, declarations, and documents presented or accepted toward satisfying document requirements. All scanned documents will be retained electronically in accordance with Division of Revenue and Enterprise Services (DORES) statutes and retention schedules.]\*

\*[10.]\* \*9.\* (No change in text.)

(b)-(g) (No change.)

**\*(h) Commission staff members are authorized to scan all applications presented or accepted toward satisfying document requirements. All scanned images will be retained electronically in accordance with N.J.S.A. 47:3-15 et seq., and N.J.A.C. 15:3-2.1 through 2.7 and 4.1 through 4.11.\***