



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Department of Motor Vehicles
<b>VAC Chapter Number:</b>	24VAC 20-70
<b>Regulation Title:</b>	Regulations Governing Requirements for Proof of Residency to Obtain a Virginia Driver's License or Photo Identification Card
<b>Action Title:</b>	Amendment: Rescind Use of Residency Document
<b>Date:</b>	February 11, 2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The proposed regulation is intended to amend current regulations pertaining to acceptable processes and documentation for providing proof of residency in the Commonwealth of Virginia pursuant to the driver's license and identification card application process. The proposed regulation specifically rescinds use of the Residency Certification (DL-51) as an acceptable means of proving of residency. Rescission of the DL-51 is proposed in response to widespread and growing abuse of the form.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

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Legal authority to promulgate the contemplated regulation is found in Va. Code §§ 46.2-203, 46.2-323, and 46.2-345. Va. Code § 46.2-203 provides the Commissioner of DMV with general authority to promulgate regulations in order to carry out the laws administered by DMV. Furthermore, pursuant to Va. Code §§ 46.2-323 and 46.2-345 DMV may adopt regulations to determine the process by which applicants prove that they are residents of the Commonwealth. In each of the foregoing instances, the authority to promulgate regulations is permissive. Because the authority to promulgate regulations in these matters is permissive, the Commissioner also has, by implication, the authority to modify, amend or repeal any regulations promulgated under such authority.

The office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state law.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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The regulatory action will address the process and requirements by which driver's licenses, commercial driver's licenses, endorsements, photo-identification cards, learner's permits and/or temporary driver's permits (DMV credentials/documents) are issued by the Department of Motor Vehicles (DMV). The regulations that are the subject of this action were implemented in 1994 in response to legislation which created a new residency requirement for obtaining a Virginia DMV credential/document and which permitted, but did not require, the agency to promulgate regulations pertaining to proof of residency. The Residency Certification or DL-51 (a certification, consisting of a signed written statement vouching for the residency of the applicant) was included as an acceptable means for proving residency in order to enable immigrants, who may have left their native country under extreme circumstances and without identification to legitimately apply for and receive driver's licenses and identification cards.

This regulation/action is necessary to address an imminent threat to public safety and is essential to protect the safety and welfare of citizens of the Commonwealth to protect and enhance national security.

In recent years, the process for obtaining a DMV credential/document has been subjected to widespread abuse and fraud, primarily by an industry consisting of criminal organizations and facilitators who assist non-Virginia residents, many of them immigrant and non-immigrant aliens, in obtaining Virginia driver's licenses and identification cards by fraudulent means. In the recent past, these organizations and facilitators victimized their clientele by charging them large sums for assistance in obtaining DMV credentials/documents and by encouraging the submission of, during the application process, falsified Residency Certifications (DL-51s) which were executed by facilitators or their agents who attested to the false information contained therein. The magnitude of this abuse is evidenced by the recent trial and conviction of a facilitator in U.S. District Court. This facilitator had established a lucrative business, in which thousands of victims were brought to Virginia from New Jersey, New York and Maryland on a routine basis in order to obtain a Virginia DMV-issued credential/document by fraudulent means. The primary defense put forth by the defendant in the case was the assertion that DMV promoted or encouraged this activity by virtue of the fact that the agency had created and permitted the use of these forms in the application process. Federal prosecutors in the case strongly encouraged elimination of these forms.

On September 21, 2001, an emergency regulation was enacted to amend 24 VAC20-70-30 by repealing subsection (D), thereby removing the Residency Certification (DL-51) as a document that may be utilized for providing proof of residency in the Commonwealth in the application process for DMV credentials/documents. This regulatory action is intended to repeal subsection (D) on a permanent basis, which will have the effect of eliminating acceptability of the DL-51 as a document for proving residency in the application process for DMV credentials/documents. Permanent repeal of 24VAC20-70-30(D) is necessary to ensure that DMV-issued credentials/documents are less likely to be the product of fraudulent submissions in the application process and are henceforth issued under the strictest and most reliable standards possible.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

DMV is proposing this regulatory action which consists of permanent repeal of acceptability and use of the DL-51 in the process by which driver's licenses, commercial driver's licenses, endorsements, photo-identification cards, learner's permits and/or temporary driver's permits (DMV credentials/documents) are issued by DMV. Specifically, this regulatory action will repeal 24 VAC20-70-30(D).

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

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The primary disadvantage/inconvenience of this regulatory action is to members of the public who seek Virginia driver's licenses, commercial driver's licenses, endorsements, photo-identification cards, learner's permits and/or temporary driver's permits (DMV credentials/documents). The Residency Certification (DL-51) afforded an applicant for a DMV credential/document the convenience of avoiding the requirement of providing documentary proof that the applicant resided in Virginia. In lieu of producing such documentation, the applicant could simply request that a Virginia-licensed driver execute a Residency Certification before a notary or a DMV employee, certifying that the applicant lived in Virginia. With elimination of the Residency Certification, applicants are required to produce documentary proof of Virginia Residency, such as a payroll check stub, voter registration card, bank statement, utility bill or school transcript.

The primary advantage of this regulatory action is directed at members of the general public. Tightening the requirements for obtaining Virginia DMV credentials/documents by increasing the standard for proving Virginia residency will serve to ensure that only those individuals who are lawfully entitled receive these credentials/documents. Those facilitators and organizations which, in the past, have used the Residency Certification form in their fraudulent schemes, will no longer have this vehicle to commit such fraud and will no longer find the Commonwealth to be an attractive venue for their businesses. Increasing the standards for issuing DMV credentials/documents will also serve to ensure that those who would inflict harm upon the citizens of Virginia and the United States do not target the Commonwealth in order to obtain identification. State issued credentials, such as driver's licenses, often serve as breeder documents and enable those individuals who obtain them to obtain various identity documents from other states. Increasing the standards for issuing Virginia DMV credentials/documents by requiring applicants to prove that they are residents of Virginia will help to ensure that applicants who do not live in this Commonwealth are not able to obtain a Virginia DMV credential/document as a means of obtaining other states' credentials.

The regulation will also present a disadvantage to DMV. Elimination of the Residency Certification form has and will likely continue to generate complaints from applicants because of the inconvenience and added complexity now associated with proving residency. In response, the agency is evaluating, and will continue to evaluate, other documents that may be accepted as proof of residency, in order to ameliorate the impact on applicants and the agency.

This regulatory action may also serve as a disadvantage to other state entities, such as the Department of Education, which issue documentation that is acceptable as proof of residency. Schools, in particular, have experienced an increase in requests for school records and transcripts from their students who are seeking DMV credentials/documentation since the Residency Certification was rescinded by emergency regulation.

DMV plans to hold a public hearing to provide the public with opportunity to present their comments regarding these and other issues that may be presented by this regulatory action.

### Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

There is no reliable method to calculate the fiscal impact(s) associated with this regulatory action. It is estimated that the number of individuals who annually apply for a DMV credential/document under circumstances which would require proof of Virginia residency is 668,047. Rescission of the Residency Certification will result in added inconvenience to some applicants for DMV credentials/documents, specifically those who have no readily available documentary proof that they reside in Virginia. However, since the number of individuals who would be so impacted cannot be estimated and because the "costs" associated with obtaining documentary proof of residency are not necessarily measurable, it would be impossible to estimate the projected cost of the regulation for affected individuals, businesses, the Commonwealth or other entities.

### Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

This regulatory action amends 24VAC 20-70-30 by striking/removing all language contained in subsection (D). The consequence of the proposed change will be to rescission of the Residency Certification (DL-51) as an acceptable means of proving Virginia residency.

### Alternatives

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

The only alternative to this proposal (rescission of the Residency Certification, DL-51) would be to implement methods and procedures to detect and prosecute inappropriate or fraudulent use of

the form. Because of the large numbers of DL-51s which were submitted to DMV when the form was in use, and because many of the individuals who used the form for fraudulent purposes were transient and left the Commonwealth immediately upon obtaining Virginia DMV credentials/documents, it is apparent that the alternatives of implementing fraud detection measures and/or prosecuting those who fraudulently use the form would not be feasible.

### Public Comment

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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The Notice of Intended Regulatory Action (NOIRA) was published on December 17, 2001. No public comments directed at this regulatory action were received during the NOIRA comment period. The agency has received complaints from various entities pertaining to the difficulties faced by particular groups, immigrant and non-immigrant aliens and minors, in particular, and by specific individuals, who have experienced difficulty in obtaining documentation to prove residency in Virginia since elimination of the Residency Certification (DL-51). The agency has attempted to accommodate the needs of groups and individuals who may have difficulty in proving residency without use of the Residency Certification by expanding the list of documents that may be used to prove Virginia residency. The agency continues to examine possible documents or processes that may prove to be acceptable means of proving Virginia residency.

### Clarity of the Regulation

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

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Because this regulatory action serves to merely strike/rescind a portion of an already existing regulation—this action and its impact are easily understandable by the individuals and entities affected.

### Periodic Review

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

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Since this regulatory action will replace an Emergency Regulatory Action, which is identical in form and substance, DMV will have the opportunity to evaluate the potential effectiveness and impact of this proposal during the year in which the Emergency Regulatory Action is in effect, which ends on September 21, 2002. Evaluation of the effectiveness and impact is expected to be

on-going. The agency plans to schedule weekly meetings to deal with issues related to issuance of DMV credentials/documents for an indefinite period and will address proof of residency issues as they are brought to the attention of the agency by the public, legislators, or state and federal governmental entities.

**Family Impact Statement**

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The potential impact of this regulatory action upon families will be to alter the process and tighten the standards by which applicants (family members) seek to obtain driver's licenses, commercial driver's licenses, endorsements, photo-identification cards, learner's permits and/or temporary driver's permits (DMV credentials/documents). Such credentials/documents are often used to identify the individual for purposes of various critical life functions, including, but not limited to, employment, obtaining government-provided benefits, law enforcement, and cashing checks. While the proposed action will heighten the requirements associated with obtaining these credentials/documents, the result will be credentials/documents that are more reliable as forms of identification. The proposed action is expected to have no impact upon families in the four factors provided above.