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law, any information protected from disclosure by the CII Act coming to the officer or employee in the course of his or her employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under title 18 of the United States Code, imprisoned not more than one year, or both, and shall be removed from office or employment.

(2) In addition to the penalties set forth in paragraph (d)(1) of this section, if the PCII Program Manager determines that an entity or person who has received PCII has violated the provisions of this Part or used PCII for an inappropriate purpose, the PCII Program Manager may disqualify that entity or person from future receipt of any PCII or future receipt of any sensitive homeland security information under section 892 of the Homeland Security Act, provided, however, that any such decision by the PCII Program Manager may be appealed to the Office of the Under Secretary for Preparedness.

**PART 37—REAL ID DRIVER'S LICENSES AND IDENTIFICATION CARDS**

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- 37.71 Driver's licenses and identification cards issued under section 202(d)(11) of the REAL ID Act.

AUTHORITY: 49 U.S.C. 30301 note; 6 U.S.C. 111, 112.

SOURCE: 73 FR 5331, Jan. 29, 2008, unless otherwise noted.

**Subpart A—General**

**§ 37.1 Applicability.**

(a) Subparts A through E of this part apply to States and U.S. territories that choose to issue driver's licenses and identification cards that can be accepted by Federal agencies for official purposes.

(b) Subpart F establishes certain standards for State-issued driver's licenses and identification cards issued by States that participate in REAL ID, but that are not intended to be accepted by Federal agencies for official purpose under section 202(d)(11) of the REAL ID Act.

**§ 37.3 Definitions.**

For purposes of this part:

*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.

*Card* means either a driver's license or identification card issued by the State Department of Motor Vehicles (DMV) or equivalent State office.

*Certification* means an assertion by the State to the Department of Homeland Security that the State has met the requirements of this Part.

*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 to be 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.

*Covered employees* means Department of Motor Vehicles employees or contractors who are involved in the manufacture or production of REAL ID driver's licenses and identification cards, or who have the ability to affect the identity information that appears on the driver's license or identification card.

*Data verification* means checking the validity of data contained in source documents presented under this regulation.

*DHS* means the U.S. Department of Homeland Security.

*DMV* means the Department of Motor Vehicles or any State Government entity that issues driver's licenses and identification cards, or an office with equivalent function for issuing driver's licenses and identification cards.

*Determination* means a decision by the Department of Homeland Security that a State has or has not met the requirements of this Part and that Federal agencies may or may not accept the driver's licenses and identification cards issued by the State for official purposes.

*Digital photograph* means a digital image of the face of the holder of the driver's license or identification card.

*Document authentication* means determining that the source document pre-

sented under these regulations is genuine and has not been altered.

*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. 109-162, 119 Stat. 2960, 2964, Jan. 5, 2006); codified at section 40002, Definitions and grant provisions, 42 U.S.C. 13925, or State laws addressing domestic and dating violence.

*Driver's license* means a motor vehicle operator's license, as defined in 49 U.S.C. 30301.

*Duplicate* means a driver's license or identification card issued subsequent to the original document that bears the same information and expiration date as the original document and that is reissued at the request of the holder when the original is lost, stolen, or damaged and there has been no material change in information since prior issuance.

*Federal agency* means all executive agencies including Executive departments, a Government corporation, and an independent establishment as defined in 5 U.S.C. 105.

*Federally-regulated commercial aircraft* means a commercial aircraft regulated by the Transportation Security Administration (TSA).

*Full compliance* means that the Secretary or his designate(s) has determined that a State has met all the requirements of Subparts A through E.

*Full legal name* means an individual's first name, middle name(s), and last name or surname, without use of initials or nicknames.

*IAFIS* means the Integrated Automated Fingerprint Identification System, a national fingerprint and criminal history system maintained by the Federal Bureau of Investigation (FBI) that provides automated fingerprint search capabilities.

*Identification card* means a document made or issued by or under the authority of a State Department of Motor Vehicles or State office with equivalent function which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

*INS* means the former-Immigration and Naturalization Service of the U.S. Department of Justice.

*Lawful status:* 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; with conditional permanent resident status in the United States; who has an approved application for asylum in the United States or has entered into the United States in refugee status; who has a valid nonimmigrant status in the United States; who has a pending application for asylum in the United States; who has a pending or approved application for temporary protected status (TPS) in the United States; who has approved deferred action status; or who has a pending application for lawful permanent residence (LPR) or conditional permanent resident status. This definition does not affect other definitions or requirements that may be contained in the Immigration and Nationality Act or other laws.

*Material change* means any change to the personally identifiable information of an individual as defined under this part. Notwithstanding the definition of personally identifiable information below, a change of address of principal residence does not constitute a material change.

*Material compliance* means a determination by DHS that a State has met the benchmarks contained in the Material Compliance Checklist.

*NCIC* means the National Crime Information Center, a computerized index of criminal justice information maintained by the Federal Bureau of Investigation (FBI) that is available to Federal, State, and local law enforcement and other criminal justice agencies.

*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 U.S. 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 U.S. Department of State.

*Personally identifiable information* means any information which can be used to distinguish or trace an individual's identity, such as their name; driver's 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's license or identification card, or in the machine readable technology on a license or identification card.

*Principal residence* 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's license or identification card, if such requirements exist.

*REAL ID Driver's License or Identification Card* means a driver's license or identification card that has been issued by a State that has been certified by DHS to be in compliance with the requirements of the REAL ID Act and which meets the standards of subparts A through D of this part, including temporary or limited-term driver's licenses or identification cards issued under § 37.21.

*Reissued card* means a card that a State DMV issues to replace a card that has been lost, stolen or damaged, or to replace a card that includes outdated information. A card may not be reissued remotely when there is a material change to the personally identifiable information as defined by the Rule.

*Renewed card* means a driver's license or identification card that a State DMV issues to replace a renewable driver's license or identification card.

*SAVE* means the DHS Systematic Alien Verification for Entitlements system, or such successor or alternate verification system at the Secretary's discretion.

*Secretary* means the Secretary of Homeland Security.

*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 these regulations to the Department of Motor Vehicles to apply for a driver's license or identification card.

*State* means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the 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 record-keeping regarding the addresses of such victims or other categories of persons.

*Temporary lawful status:* A person in temporary lawful status is a person who: has a valid nonimmigrant status in the United States; has a 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 a pending application for LPR or conditional permanent resident status.

*Verify* means procedures to ensure that:

(1) The source document is genuine and has not been altered (i.e., “document authentication”); and

(2) The identity data contained on the document is valid (“data verification”).

### **§ 37.5 Validity periods and deadlines for REAL ID driver's licenses and identification cards.**

(a) Driver's licenses and identification cards issued under this part, that are not temporary or limited-term driver's licenses and identification cards, are valid for a period not to ex-

ceed eight years. A card may be valid for a shorter period based on other State or Federal requirements.

(b) On or after December 1, 2014, Federal agencies shall not accept a driver's license or identification card for official purposes from individuals born after December 1, 1964, unless such license or card is a REAL ID-compliant driver's license or identification card issued by a State that has been determined by DHS to be in full compliance as defined under this subpart.

(c) On or after December 1, 2017, Federal agencies shall not accept a driver's license or identification card for official purposes from any individual unless such license or card is a REAL ID-compliant driver's license or identification card issued by a State that has been determined by DHS to be in full compliance as defined under this subpart.

(d) Federal agencies cannot accept for official purpose driver's licenses and identification cards issued under § 37.71 of this rule.

### **Subpart B—Minimum Documentation, Verification, and Card Issuance Requirements**

#### **§ 37.11 Application and documents the applicant must provide.**

(a) The State must subject each person applying for a REAL ID driver's license or identification card to a mandatory facial image capture, and shall maintain photographs of individuals even if no card is issued. The photographs must be stored in a format in accordance with § 37.31 as follows:

(1) If no card is issued, for a minimum period of five years.

(2) If a card is issued, for a period of at least two years beyond the expiration date of the card.

(b) *Declaration.* Each applicant must sign a declaration under penalty of perjury that the information presented on the application is true and correct, and the State must retain this declaration. An applicant must sign a new declaration when presenting new source documents to the DMV on subsequent visits.

(c) *Identity.* (1) To establish identity, the applicant must present at least one of the following source documents:

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- (i) Valid, unexpired U.S. passport.
- (ii) Certified copy of a birth certificate filed with a State Office of Vital Statistics or equivalent agency in the individual's State of birth.
- (iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545.
- (iv) Valid, unexpired Permanent Resident Card (Form I-551) issued by DHS or INS.
- (v) Unexpired employment authorization document (EAD) issued by DHS, Form I-766 or Form I-688B.
- (vi) Unexpired foreign passport with a valid, unexpired U.S. visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States.
- (vii) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570.
- (viii) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS.
- (ix) REAL ID driver's license or identification card issued in compliance with the standards established by this part.
- (x) Such other documents as DHS may designate by notice published in the FEDERAL REGISTER.

(2) Where a State permits an applicant to establish a name other than the name that appears on a source document (for example, through marriage, adoption, court order, or other mechanism permitted by State law or regulation), the State shall require evidence of the name change through the presentation of documents issued by a court, governmental body or other entity as determined by the State. The State shall maintain copies of the documentation presented pursuant to § 37.31, and maintain a record of both the recorded name and the name on the source documents in a manner to be determined by the State and in conformity with § 37.31.

(d) *Date of birth.* To establish date of birth, an individual must present at least one document included in paragraph (c) of this section.

(e) *Social security number (SSN).* (1) Except as provided in paragraph (e)(3) of this section, individuals presenting the identity documents listed in

§ 37.11(c)(1) and (2) must present his or her Social Security Administration account number card; or, if a Social Security Administration account card is not available, the person may present any of the following documents bearing the applicant's SSN:

- (i) A W-2 form,
- (ii) A SSA-1099 form,
- (iii) A non-SSA-1099 form, or
- (iv) A pay stub with the applicant's name and SSN on it.

(2) The State DMV must verify the SSN pursuant to § 37.13(b)(2) of this subpart.

(3) Individuals presenting the identity document listed in § 37.11(c)(1)(vi) must present an SSN or demonstrate non-work authorized status.

(f) *Documents demonstrating address of principal residence.* To document the address of principal residence, a person must present at least two documents of the State's choice that include the individual's name and principal residence. A street address is required except as provided in § 37.17(f) of this part.

(g) *Evidence of lawful status in the United States.* A DMV may issue a REAL ID driver's license or identification card only to a person who has presented satisfactory evidence of lawful status.

(1) If the applicant presents one of the documents listed under paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), (c)(1)(iv), (c)(1)(vii) or (c)(1)(viii) of this section, the issuing State's verification of the applicant's identity in the manner prescribed in § 37.13 will also provide satisfactory evidence of lawful status.

(2) If the applicant presents one of the identity documents listed under paragraphs (c)(1)(v) or (c)(1)(vi), or (c)(1)(ix) of this section, the issuing State's verification of the identity document(s) does not provide satisfactory evidence of lawful status. The applicant must also present a second document from § 37.11(g)(1) or documentation issued by DHS or other Federal agencies demonstrating lawful status as determined by USCIS. All documents shall be verified in the manner prescribed in § 37.13.

(h) *Exceptions Process.* A State DMV may choose to establish a written, defined exceptions process 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. Alternative documents to demonstrate lawful status will only be allowed to demonstrate U.S. citizenship.

(1) Each State establishing an exceptions process must make reasonable efforts to establish the authenticity of alternate documents each time they are presented and indicate that an exceptions process was used in the applicant's record.

(2) The State shall retain copies or images of the alternate documents accepted pursuant to § 37.31 of this part.

(3) The State shall conduct a review of the use of the exceptions process, and pursuant to subpart E of this part, prepare and submit a report with a copy of the exceptions process as part of the certification documentation detailed in § 37.55.

(i) States are not required to comply with these requirements when issuing REAL ID driver's 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 or in support of their other official duties. As directed by appropriate officials of these Federal, State, or local agencies, States should take sufficient steps to safeguard the identities of such persons. Driver's licenses and identification cards issued in support of Federal, State, or local criminal justice agencies or programs that require special licensing or identification to safeguard persons or in support of their other official duties shall not be distinguishable from other REAL ID licenses or identification cards issued by the State.

**§ 37.13 Document verification requirements.**

(a) States shall make reasonable efforts to ensure that the applicant does not have more than one driver's license or identification card already issued by that State under a different identity. In States where an individual is permitted to hold both a driver's license and identification card, the State shall ensure that the individual has not been issued identification documents in

multiple or different names. States shall also comply with the provisions of § 37.29 before issuing a driver's license or identification card.

(b) States must verify the documents and information required under § 37.11 with the issuer of the document. States shall use systems for electronic validation of document and identity data as they become available or use alternative methods approved by DHS.

(1) States shall verify any document described in § 37.11(c) or (g) and issued by DHS (including, but not limited to, the I-94 form described in § 37.11(c)(vi)) through the Systematic Alien Verification for Entitlements (SAVE) system or alternate methods approved by DHS, except that if two DHS-issued documents are presented, a SAVE verification of one document that confirms lawful status does not need to be repeated for the second document. In the event of a non-match, the DMV must not issue a REAL ID driver's license or identification card to an applicant, and must refer the individual to U.S. Citizenship and Immigration Services for resolution.

(2) States must verify SSNs with the Social Security Administration (SSA) or through another method approved by DHS. In the event of a non-match with SSA, a State may use existing procedures to resolve non-matches. If the State is unable to resolve the non-match, and the use of an exceptions process is not warranted in the situation, the DMV must not issue a REAL ID driver's license or identification card to an applicant until the information verifies with SSA.

(3) States must verify birth certificates presented by applicants. States should use the Electronic Verification of Vital Events (EVVE) system or other electronic systems whenever the records are available. If the document does not appear authentic upon inspection or the data does not match and the use of an exceptions process is not warranted in the situation, the State must not issue a REAL ID driver's license or identification card to the applicant until the information verifies, and should refer the individual to the issuing office for resolution.

(4) States shall verify documents issued by the Department of State with

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the Department of State or through methods approved by DHS.

(5) States must verify REAL ID driver's licenses and identification cards with the State of issuance.

(6) Nothing in this section precludes a State from issuing an interim license or a license issued under §37.71 that will not be accepted for official purposes to allow the individual to resolve any non-match.

### § 37.15 Physical security features for the driver's license or identification card.

(a) *General.* States must include document security features on REAL ID driver's licenses and identification cards designed to deter forgery and counterfeiting, promote an adequate level of confidence in the authenticity of cards, and facilitate detection of fraudulent cards in accordance with this section.

(1) These features must not be capable of being reproduced using technologies that are commonly used and made available to the general public.

(2) The proposed card solution must contain a well-designed, balanced set of features that are effectively combined and provide multiple layers of security. States must describe these document security features in their security plans pursuant to §37.41.

(b) *Integrated security features.* REAL ID driver's licenses and identification cards must contain at least three levels of integrated security features that provide the maximum resistance to persons' efforts to—

(1) Counterfeit, alter, simulate, or reproduce a genuine document;

(2) Alter, delete, modify, mask, or tamper with data concerning the original or lawful card holder;

(3) Substitute or alter the original or lawful card holder's photograph and/or signature by any means; and

(4) Create a fraudulent document using components from legitimate driver's licenses or identification cards.

(c) *Security features to detect false cards.* States must employ security features to detect false cards for each of the following three levels:

(1) *Level 1.* cursory examination, without tools or aids involving easily

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identifiable visual or tactile features, for rapid inspection at point of usage.

(2) *Level 2.* Examination by trained inspectors with simple equipment.

(3) *Level 3.* Inspection by forensic specialists.

(d) *Document security and integrity.* States must conduct a review of their card design and submit a report to DHS with their certification that indicates the ability of the design to resist compromise and document fraud attempts. The report required by this paragraph is SSI and must be handled and protected in accordance with 49 CFR part 1520. Reports must be updated and submitted to DHS whenever a security feature is modified, added, or deleted. After reviewing the report, DHS may require a State to provide DHS with examination results from a recognized independent laboratory experienced with adversarial analysis of identification documents concerning one or more areas relating to the card's security.

### § 37.17 Requirements for the surface of the driver's license or identification card.

To be accepted by a Federal agency for official purposes, REAL ID driver's licenses and identification cards must include on the front of the card (unless otherwise specified below) the following information:

(a) *Full legal name.* Except as permitted in §37.11(c)(2), the name on the face of the license or card must be the same as the name on the source document presented by the applicant to establish identity. Where 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, and NA should not be used.

(b) *Date of birth.*

(c) *Gender,* as determined by the State.

(d) *Unique Driver's license or identification card number.* This cannot be the individual's SSN, and must be unique across driver's license or identification cards within the State.

(e) *Full facial digital photograph.* A full facial photograph must be taken pursuant to the standards set forth below:

(1) States shall follow specifically ISO/IEC 19794-5:2005(E) Information technology—Biometric Data Interchange Formats—Part 5: Face Image Data. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these incorporated standards from <http://www.ansi.org>, or by contacting ANSI at ANSI, 25 West 43rd Street, 4th Floor, New York, New York 10036. You may inspect a copy of the incorporated standard at the Department of Homeland Security, 1621 Kent Street, 9th Floor, Rosslyn, VA (please call 703-235-0709 to make an appointment) or at the National Archives and Records Administration (NARA). For information on the availability of material at NARA, call 202-741-6030, or go to [www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

These standards include:

(i) Lighting shall be equally distributed on the face.

(ii) The face from crown to the base of the chin, and from ear-to-ear, shall be clearly visible and free of shadows.

(iii) Veils, scarves or headdresses must not obscure any facial features and not generate shadow. The person may not wear eyewear that obstructs the iris or pupil of the eyes and must not take any action to obstruct a photograph of their facial features.

(iv) Where possible, there must be no dark shadows in the eye-sockets due to the brow. The iris and pupil of the eyes shall be clearly visible.

(v) Care shall be taken to avoid “hot spots” (bright areas of light shining on the face).

(2) Photographs may be in black and white or color.

(f) *Address of principal residence*, except an alternative address may be displayed for:

(1) Individuals for whom a State law, regulation, or DMV procedure permits display of an alternative address, or

(2) Individuals who satisfy any of the following:

(i) If the individual is enrolled in a State address confidentiality program which allows victims of domestic violence, dating violence, sexual assault, stalking, or a severe form of traf-

ficking, to keep, obtain, and use alternative addresses; and provides that the addresses of such persons must be kept confidential, or other similar program;

(ii) If the individual’s address is entitled to be suppressed under State or Federal law or suppressed by a court order including an administrative order issued by a State or Federal court; or

(iii) If the individual is protected from disclosure of information pursuant to section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

(3) In areas where a number and street name has not been assigned for U.S. mail delivery, an address convention used by the U.S. Postal Service is acceptable.

(g) *Signature*. (1) The card must include the signature of the card holder. The signature must meet the requirements of the March 2005 American Association of Motor Vehicle Administrators (AAMVA) standards for the 2005 AAMVA Driver’s License/Identification Card Design Specifications, Annex A, section A.7.7.2. This standard includes requirements for size, scaling, cropping, color, borders, and resolution. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these standards from AAMVA on-line at <http://www.aamva.org>, or by contacting AAMVA at 4301 Wilson Boulevard, Suite 400, Arlington, VA 22203. You may inspect a copy of these incorporated standards at the Department of Homeland Security, 1621 Kent Street, 9th Floor, Rosslyn, VA (please call 703-235-0709 to make an appointment) or at the National Archives and Records Administration (NARA). For information on the availability of material at NARA, call 202-741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(2) The State shall establish alternative procedures for individuals unable to sign their name.

(h) *Physical security features*, pursuant to § 37.15 of this subpart.

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(i) *Machine-readable technology on the back of the card*, pursuant to § 37.19 of this subpart.

(j) *Date of transaction*.

(k) *Expiration date*.

(l) *State or territory of issuance*.

(m) *Printed information*. The name, date of birth, gender, card number, issue date, expiration date, and address on the face of the card must be in Latin alpha-numeric characters. The name must contain a field of no less than a total of 39 characters, and longer names shall be truncated following the standard established by International Civil Aviation Organization (ICAO) 9303, "Machine Readable Travel Documents," Volume 1, Part 1, Sixth Edition, 2006. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of ICAO 9303 from the ICAO, Document Sales Unit, 999 University Street, Montreal, Quebec, Canada H3C 5H7, e-mail: [sales@icao.int](mailto:sales@icao.int). You may inspect a copy of the incorporated standard at the Department of Homeland Security, 1621 Kent Street, 9th Floor, Rosslyn, VA (please call 703-235-0709 to make an appointment) or at the National Archives and Records Administration (NARA). For information on the availability of material at NARA, call 202-741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(n) The card shall bear a DHS-approved security marking on each driver's license or identification card that is issued reflecting the card's level of compliance as set forth in § 37.51 of this Rule.

### § 37.19 Machine readable technology on the driver's license or identification card.

For the machine readable portion of the REAL ID driver's license or identification card, States must use the ISO/IEC 15438:2006(E) Information Technology—Automatic identification and data capture techniques—PDF417 symbology specification. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these incor-

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porated standards at <http://www.ansi.org>, or by contacting ANSI at ANSI, 25 West 43rd Street, 4th Floor, New York, New York 10036. You may inspect a copy of the incorporated standard at the Department of Homeland Security, 1621 Kent Street, 9th Floor, Rosslyn, VA (please call 703-235-0709 to make an appointment) or at the National Archives and Records Administration (NARA). For information on the availability of material at NARA, call 202-741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). The PDF417 bar code standard must have the following defined minimum data elements:

(a) Expiration date.

(b) Full legal name, unless the State permits an applicant to establish a name other than the name that appears on a source document, pursuant to § 37.11(c)(2).

(c) Date of transaction.

(d) Date of birth.

(e) Gender.

(f) Address as listed on the card pursuant to § 37.17(f).

(g) Unique driver's license or identification card number.

(h) Card design revision date, indicating the most recent change or modification to the visible format of the driver's license or identification card.

(i) Inventory control number of the physical document.

(j) State or territory of issuance.

### § 37.21 Temporary or limited-term driver's licenses and identification cards.

States may only issue a temporary or limited-term REAL ID driver's license or identification card to an individual who has temporary lawful status in the United States.

(a) States must require, before issuing a temporary or limited-term driver's license or identification card to a person, valid documentary evidence, verifiable through SAVE or other DHS-approved means, that the person has lawful status in the United States.

(b) States shall not issue a temporary or limited-term driver's license or identification card pursuant to this section:

(1) 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 longer than one year; and

(2) For longer than the State's maximum driver's license or identification card term.

(c) States shall renew a temporary or limited-term driver's license or identification card pursuant to this section and § 37.25(b)(2), only if:

(1) the individual presents valid documentary evidence that the status by which the applicant qualified for the temporary or limited-term driver's license or identification card is still in effect, or

(2) the individual presents valid documentary evidence that he or she continues to qualify for lawful status under paragraph (a) of this section.

(d) States must verify the information presented to establish lawful status through SAVE, or another method approved by DHS.

(e) Temporary or limited-term driver's licenses and identification cards must clearly indicate on the face of the license and in the machine readable zone that the license or card is a temporary or limited-term driver's license or identification card.

**§ 37.23 Reissued REAL ID driver's licenses and identification cards.**

(a) *State procedure.* States must establish an effective procedure to confirm or verify an applicant's identity each time a REAL ID driver's license or identification card is reissued, to ensure that the individual receiving the reissued REAL ID driver's license or identification card is the same individual to whom the driver's license or identification card was originally issued.

(b) *Remote/Non-in-person reissuance.* Except as provided in paragraph (c) of this section a State may conduct a non-in-person (remote) reissuance if State procedures permit the reissuance to be conducted remotely. Except for the reissuance of duplicate driver's licenses and identification cards as defined in this rule, the State must reverify pursuant to § 37.13, the applicant's SSN and lawful status prior to

reissuing the driver's license or identification card.

(c) *In-person reissuance.* The State may not remotely reissue a driver's 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 through an applicant's presentation of an original source document as provided in this subpart, and must be verified as specified in § 37.13.

**§ 37.25 Renewal of REAL ID driver's licenses and identification cards.**

(a) *In-person renewals.* States must require holders of REAL ID driver's licenses and identification cards to renew their driver's licenses and identification cards with the State DMV in person, no less frequently than every sixteen years.

(1) The State DMV shall take an updated photograph of the applicant, no less frequently than every sixteen years.

(2) The State must reverify the renewal applicant's SSN and lawful status through SSOLV and SAVE, respectively (or other DHS-approved means) as applicable prior to renewing the driver's license or identification card. The State must also verify electronically information that it was not able to verify at a previous issuance or renewal if the systems or processes exist to do so.

(3) Holders of temporary or limited-term REAL ID driver's licenses and identification cards must present evidence of continued lawful status via SAVE or other method approved by DHS when renewing their driver's license or identification card.

(b) *Remote/Non-in-person renewal.* Except as provided in (b)(2) a State may conduct a non-in-person (remote) renewal if State procedures permit the renewal to be conducted remotely.

(1) The State must reverify the applicant's SSN and lawful status pursuant to § 37.13 prior to renewing the driver's license or identification card.

(2) The State may not remotely renew a REAL ID driver's license or identification card where there has been a material change in any personally identifiable information since

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prior issuance. All material changes must be established through the applicant's presentation of an original source document as provided in Subpart B, and must be verified as specified in § 37.13.

### **§ 37.27 Driver's licenses and identification cards issued during the age-based enrollment period.**

Driver's licenses and identification cards issued to individuals prior to a DHS determination that the State is materially compliant may be renewed or reissued pursuant to current State practices, and will be accepted for official purposes until the validity dates described in § 37.5. Effective December 1, 2014, Federal agencies will only accept REAL ID cards for official purpose from individuals under 50 as of December 1, 2014. Individuals age 50 or older on December 1, 2014, must obtain and present REAL ID cards for official purposes by December 1, 2017.

### **§ 37.29 Prohibition against holding more than one REAL ID card or more than one driver's license.**

(a) An individual may hold only one REAL ID card. An individual cannot hold a REAL ID driver's license and a REAL ID identification card simultaneously. Nothing shall preclude an individual from holding a REAL ID card and a non-REAL ID card unless prohibited by his or her State.

(b) Prior to issuing a REAL ID driver's license,

(1) A State must check with all other States to determine if the applicant currently holds a driver's license or REAL ID identification card in another State.

(2) If the State receives confirmation that the individual holds a driver's license in another State, or possesses a REAL ID identification card in another State, the receiving State must take measures to confirm that the person has terminated or is terminating the driver's license or REAL ID identification card issued by the prior State pursuant to State law, regulation or procedure.

(c) Prior to issuing a REAL ID identification card,

(1) A State must check with all other States to determine if the applicant

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currently holds a REAL ID driver's license or identification card in another State.

(2) If the State receives confirmation that the individual holds a REAL ID card in another State the receiving State must take measures to confirm that the person has terminated or is terminating the REAL ID driver's license or identification card issued by the prior State pursuant to State law, regulation or procedure.

### **Subpart C—Other Requirements**

#### **§ 37.31 Source document retention.**

(a) States must retain copies of the application, declaration and source documents presented under § 37.11 of this Part, including documents used to establish all names recorded by the DMV under § 37.11(c)(2). States shall take measures to protect any personally identifiable information collected pursuant to the REAL ID Act as described in their security plan under § 37.41(b)(2).

(1) States that choose to keep paper copies of source documents must retain the copies for a minimum of seven years.

(2) States that choose to transfer information from paper copies to microfiche must retain the microfiche for a minimum of ten years.

(3) States that choose to keep digital images of source documents must retain the images for a minimum of ten years.

(4) States are not required to retain the declaration with application and source documents, but must retain the declaration consistent with applicable State document retention requirements and retention periods.

(b) States using digital imaging to retain source documents must store the images as follows:

(1) Photo images must be stored in the Joint Photographic Experts Group (JPEG) 2000 standard for image compression, or a standard that is interoperable with the JPEG standard. Images must be stored in an open (consensus) format, without proprietary wrappers, to ensure States can effectively use the image captures of other States as needed.

(2) Document and signature images must be stored in a compressed Tagged Image Format (TIF), or a standard that is interoperable with the TIF standard.

(3) All images must be retrievable by the DMV if properly requested by law enforcement.

(c) Upon request by an applicant, a State shall 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, where such procedures are required by State law.

#### § 37.33 DMV databases.

(a) States must maintain a State motor vehicle database that contains, at a minimum—

(1) All data fields printed on driver's licenses and identification cards issued by the State, individual serial numbers of the card, and SSN;

(2) A record of the full legal name and recorded name established under § 37.11(c)(2) as applicable, without truncation;

(3) All additional data fields included in the MRZ but not printed on the driver's license or identification card; and

(4) Motor vehicle driver's histories, including motor vehicle violations, suspensions, and points on driver's licenses.

(b) States must protect the security of personally identifiable information, collected pursuant to the REAL ID Act, in accordance with § 37.41(b)(2) of this part.

### Subpart D—Security at DMVs and Driver's License and Identification Card Production Facilities

#### § 37.41 Security plan.

(a) *In General.* States must have a security plan that addresses the provisions in paragraph (b) of this section and must submit the security plan as part of its REAL ID certification under § 37.55.

(b) Security plan contents. At a minimum, the security plan must address—

(1) Physical security for the following:

(i) Facilities used to produce driver's licenses and identification cards.

(ii) Storage areas for card stock and other materials used in card production.

(2) Security of personally identifiable information maintained at DMV locations involved in the enrollment, issuance, manufacture and/or production of cards issued under the REAL ID Act, including, but not limited to, providing the following protections:

(i) Reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the personally identifiable information collected, stored, and maintained in DMV records and information systems for purposes of complying with the REAL ID Act. These safeguards must include procedures to prevent unauthorized access, use, or dissemination of applicant information and images of source documents retained pursuant to the Act and standards and procedures for document retention and destruction.

(ii) A privacy policy regarding the personally identifiable information collected and maintained by the DMV pursuant to the REAL ID Act.

(iii) Any release or use of personal information collected and maintained by the DMV pursuant to the REAL ID Act must comply with the requirements of the Driver's Privacy Protection Act, 18 U.S.C. 2721 *et seq.* State plans may go beyond these minimum privacy requirements to provide greater protection, and such protections are not subject to review by DHS for purposes of determining compliance with this Part.

(3) Document and physical security features for the card, consistent with the requirements of § 37.15, including a description of the State's use of biometrics, and the technical standard utilized, if any;

(4) Access control, including the following:

(i) Employee identification and credentialing, including access badges.

(ii) Employee background checks, in accordance with § 37.45 of this part.

(iii) Controlled access systems.

(5) Periodic training requirements in—

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(i) Fraudulent document recognition training for all covered employees handling source documents or engaged in the issuance of driver's licenses and identification cards. The fraudulent document training program approved by AAMVA or other DHS approved method satisfies the requirement of this subsection.

(ii) Security awareness training, including threat identification and handling of SSI as necessary.

(6) Emergency/incident response plan;

(7) Internal audit controls;

(8) An affirmation that the State possesses both the authority and the means to produce, revise, expunge, and protect the confidentiality of REAL ID driver's licenses or identification cards issued in support of Federal, State, or local criminal justice agencies or similar programs that require special licensing or identification to safeguard persons or support their official duties. These procedures must be designed in coordination with the key requesting authorities to ensure that the procedures are effective and to prevent conflicting or inconsistent requests. In order to safeguard the identities of individuals, these procedures should not be discussed in the plan and States should make every effort to prevent disclosure to those without a need to know about either this confidential procedure or any substantive information that may compromise the confidentiality of these operations. The appropriate law enforcement official and United States Attorney should be notified of any action seeking information that could compromise Federal law enforcement interests.

(c) *Handling of Security Plan.* The Security Plan required by this section contains Sensitive Security Information (SSI) and must be handled and protected in accordance with 49 CFR Part 1520.

### § 37.43 Physical security of DMV production facilities.

(a) States must ensure the physical security of facilities where driver's licenses and identification cards are produced, and the security of document materials and papers from which driver's licenses and identification cards are produced or manufactured.

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(b) States must describe the security of DMV facilities as part of their security plan, in accordance with § 37.41.

### § 37.45 Background checks for covered employees.

(a) *Scope.* States are required to subject persons who are involved in the manufacture or production of REAL ID driver's licenses and identification cards, or who have the ability to affect the identity information that appears on the driver's license or identification card, or current employees who will be assigned to such positions ("covered employees" or "covered positions"), to a background check. The background check must include, at a minimum, the validation of references from prior employment, a name-based and fingerprint-based criminal history records check, and employment eligibility verification otherwise required by law. States shall describe their background check process as part of their security plan, in accordance with § 37.41(b)(4)(ii). This section also applies to contractors utilized in covered positions.

(b) *Background checks.* States must ensure that any covered employee under paragraph (a) of this section is provided notice that he or she must undergo a background check and the contents of that check.

(1) *Criminal history records check.* States must conduct a name-based and fingerprint-based criminal history records check (CHRC) using, at a minimum, the FBI's National Crime Information Center (NCIC) and the Integrated Automated Fingerprint Identification (IAFIS) database and State repository records on each covered employee identified in paragraph (a) of this section, and determine if the covered employee has been convicted of any of the following disqualifying crimes:

(i) *Permanent disqualifying criminal offenses.* A covered employee has a permanent disqualifying offense if convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction, of any of the felonies set forth in 49 CFR 1572.103(a).

(ii) *Interim disqualifying criminal offenses.* The criminal offenses referenced in 49 CFR 1572.103(b) are disqualifying

if the covered employee was either convicted of those offenses in a civilian or military jurisdiction, or admits having committed acts which constitute the essential elements of any of those criminal offenses within the seven years preceding the date of employment in the covered position; or the covered employee was released from incarceration for the crime within the five years preceding the date of employment in the covered position.

(iii) *Under want or warrant.* A covered employee who is wanted or under indictment in any civilian or military jurisdiction for a felony referenced in this section is disqualified until the want or warrant is released.

(iv) *Determination of arrest status.* When a fingerprint-based check discloses an arrest for a disqualifying crime referenced in this section without indicating a disposition, the State must determine the disposition of the arrest.

(v) *Waiver.* The State may establish procedures to allow for a waiver of the requirements of paragraphs (b)(1)(ii) or (b)(1)(iv) of this section under circumstances determined by the State. These procedures can cover circumstances where the covered employee has been arrested, but no final disposition of the matter has been reached.

(2) *Employment eligibility status verification.* The State shall ensure it is fully in compliance with the requirements of section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) and its implementing regulations (8 CFR part 274A) with respect to each covered employee. The State is encouraged to participate in the USCIS E-Verify program (or any successor program) for employment eligibility verification.

(3) *Reference check.* Reference checks from prior employers are not required if the individual has been employed by the DMV for at least two consecutive years since May 11, 2006.

(4) *Disqualification.* If results of the State's CHRC reveal a permanent disqualifying criminal offense under paragraph (b)(1)(i) or an interim disqualifying criminal offense under paragraph (b)(1)(ii), the covered employee may not be employed in a position described

in paragraph (a) of this section. An employee whose employment eligibility has not been verified as required by section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) and its implementing regulations (8 CFR part 274A) may not be employed in any position.

(c) *Appeal.* If a State determines that the results from the CHRC do not meet the standards of such check the State must so inform the employee of the determination to allow the individual an opportunity to appeal to the State or Federal government, as applicable.

(d) Background checks substantially similar to the requirements of this section that were conducted on existing employees on or after May 11, 2006 need not be re-conducted.

### Subpart E—Procedures for Determining State Compliance

#### § 37.51 Compliance—general requirements.

(a) *Full compliance.* To be in full compliance with the REAL ID Act of 2005, 49 U.S.C. 30301 note, States must meet the standards of subparts A through D or have a REAL ID program that DHS has determined to be comparable to the standards of subparts A through D. States certifying compliance with the REAL ID Act must follow the certification requirements described in § 37.55. States must be fully compliant with Subparts A through D on or before May 11, 2011. States must file the documentation required under § 37.55 at least 90 days prior to the effective date of full compliance.

(b) *Material compliance.* States must be in material compliance by January 1, 2010 to receive an additional extension until no later than May 10, 2011 as described in § 37.63. Benchmarks for material compliance are detailed in the Material Compliance Checklist found in DHS' Web site at <http://www.dhs.gov>.

EFFECTIVE DATE NOTE: At 74 FR 68478, Dec. 28, 2009, in § 37.51, paragraph (b) was stayed from Jan. 1, 2010 until further notice.

#### § 37.55 State certification documentation.

(a) States seeking DHS's determination that its program for issuing REAL ID driver's licenses and identification

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cards is meeting the requirements of this part (full compliance), must provide DHS with the following documents:

(1) A certification by the highest level Executive official in the State overseeing the DMV reading as follows:

“I, [name and title (name of certifying official), (position title) of the State (Commonwealth)] of \_\_\_\_\_, do hereby certify that the State (Commonwealth) has implemented a program for issuing driver’s licenses and identification cards in compliance with the requirements of the REAL ID Act of 2005, as further defined in 6 CFR part 37, and intends to remain in compliance with these regulations.”

(2) A letter from the Attorney General of the State confirming that the State has the legal authority to impose requirements necessary to meet the standards established by this part.

(3) A description of the State’s exceptions process under §37.11(h), and the State’s waiver processes under §37.45(b)(1)(v).

(4) The State’s Security Plan under §37.41.

(b) After DHS’s final compliance determination, States shall recertify compliance with this Part every three years on a rolling basis as determined by DHS.

#### §37.59 DHS reviews of State compliance.

State REAL ID programs will be subject to DHS review to determine whether the State meets the requirements for compliance with this part.

(a) *General inspection authority.* States must cooperate with DHS’s review of the State’s compliance at any time. In addition, the State must:

(1) Provide any reasonable information pertinent to determining compliance with this part as requested by DHS;

(2) Permit DHS to conduct inspections of any and all sites associated with the enrollment of applicants and the production, manufacture, personalization and issuance of driver’s licenses or identification cards; and

(3) Allow DHS to conduct interviews of the State’s employees and contractors who are involved in the application and verification process, or the manufacture and production of driver’s

licenses or identification cards. DHS shall provide written notice to the State in advance of an inspection visit.

(b) *Preliminary DHS determination.* DHS shall review forms, conduct audits of States as necessary, and make a preliminary determination on whether the State has satisfied the requirements of this part within 45 days of receipt of the Material Compliance Checklist or State certification documentation of full compliance pursuant to §37.55.

(1) If DHS determines that the State meets the benchmarks of the Material Compliance Checklist, DHS may grant the State an additional extension until no later than May 10, 2011.

(2) If DHS determines that the State meets the full requirements of subparts A through E, the Secretary shall make a final determination that the State is in compliance with the REAL ID Act.

(c) *State reply.* The State will have up to 30 calendar days to respond to the preliminary determination. The State’s reply must explain what corrective action it either has implemented, or intends to implement, to correct any deficiencies cited in the preliminary determination or, alternatively, detail why the DHS preliminary determination is incorrect. Upon request by the State, an informal conference will be scheduled during this time.

(d) *Final DHS determination.* DHS will notify States of its final determination of State compliance with this Part, within 45 days of receipt of a State reply.

(e) *State’s right to judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. Chapter 7.

#### §37.61 Results of compliance determination.

(a) A State shall be deemed in compliance with this part when DHS issues a determination that the State meets the requirements of this part.

(b) The Secretary will determine that a State is not in compliance with this part when it—

(1) Fails to submit a timely certification or request an extension as prescribed in this subpart; or

(2) Does not meet one or more of the standards of this part, as established in a determination by DHS under §37.59.

**§ 37.63 Extension of deadline.**

(a) A State may request an initial extension by filing a request with the Secretary no later than March 31, 2008. In the absence of extraordinary circumstances, such an extension request will be deemed justified for a period lasting until, but not beyond, December 31, 2009. DHS shall notify a State of its acceptance of the State's request for initial extension within 45 days of receipt.

(b) States granted an initial extension may file a request for an additional extension until no later than May 10, 2011, by submitting a Material Compliance Checklist demonstrating material compliance, per § 37.51(b) with certain elements of subparts A through E as defined by DHS. Such additional extension request must be filed by December 1, 2009. DHS shall notify a State whether an additional extension has been granted within 45 days of receipt of the request and documents described above.

(c) Subsequent extensions, if any, will be at the discretion of the Secretary.

[73 FR 5331, Jan. 29, 2008, as amended at 74 FR 49309, Sept. 28, 2009]

**§ 37.65 Effect of failure to comply with this Part.**

(a) Any driver's license or identification card issued by a State that DHS determines is not in compliance with this part is not acceptable as identification by Federal agencies for official purposes.

(b) Driver's licenses and identification cards issued by a State that has obtained an extension of the compliance date from DHS per § 37.51 are acceptable for official purposes until the

end of the applicable enrollment period under § 37.5; or the State subsequently is found by DHS under this Subpart to not be in compliance.

(c) Driver's licenses and identification cards issued by a State that has been determined by DHS to be in material compliance and that are marked to identify that the licenses and cards are materially compliant will continue to be accepted by Federal agencies after the expiration of the enrollment period under § 37.5, until the expiration date on the face of the document.

**Subpart F—Driver's Licenses and Identification Cards Issued Under Section 202(d)(11) of the REAL ID Act****§ 37.71 Driver's licenses and identification cards issued under section 202(d)(11) of the REAL ID Act.**

(a) Except as authorized in § 37.27, States that DHS determines are compliant with the REAL ID Act that choose to also issue driver's licenses and identification cards that are not acceptable by Federal agencies for official purposes must ensure that such driver's licenses and identification cards—

(1) Clearly state on their face and in the machine readable zone that the card is not acceptable for official purposes; and

(2) Have a unique design or color indicator that clearly distinguishes them from driver's licenses and identification cards that meet the standards of this part.

(b) DHS reserves the right to approve such designations, as necessary, during certification of compliance.