

(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.

(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

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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 January 15, 2013. 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>.

[73 FR 5331, Jan. 29, 2008, as amended at 76 FR 12271, Mar. 7, 2011]

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