

§ 37.55 State certification documentation.

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

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(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

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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.