

**HB**

**390**



# Representative Scott Jiu Wo Kawasaki

Alaska State Legislature

District 9 Fairbanks

## MEMORANDUM

Date: Tuesday, March 04, 2008

To: Representative Bob Lynn, Chair  
House State Affairs Committee

From: Scott Kawasaki  
Representative District 9

 for Scott  
Kawasaki

RE: House Bill 390

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I respectfully request that you schedule a hearing in the House State Affairs for HB 390, "Prohibit State Spending for Real ID."

A copy of the bill, a sponsor statement, and additional material are attached. Due to the high volume of information I have not included all of the documents on Real ID; please contact my office for additional resources if the committee needs more information than provided in the bill packet.

There will be several people from various locations around the state and out of state who wish to testify via teleconference.

If you have any questions or need additional information, please call Brodie Anderson at 465-3466.



# Representative Scott Jiu Wo Kawasaki

Alaska State Legislature

District 9 Fairbanks

## HB 390 Sponsor Statement

Alaska has a long tradition of representing diverse populations and protecting civil rights. Alaska has always stood for the expansive protections guaranteed by the United States constitution and Alaska State Constitution. The Real ID Act of 2005 has serious Constitutional and privacy problems that threaten every Alaskan. Through Real ID the federal government is attempting to interfere with states' sovereignty and force the states to implement the program through state-issued driver's licenses. HB 390 prohibits the use of state money to implement the Real ID Act of 2005 in order to protect Alaskans from these infringements.

Real ID will require that states place specified information on electronically readable driver's licenses or the licenses will not be honored by federally regulated airlines and federal agencies. Implementation of the REAL ID Act will place additional, undue burden on Alaska implementing the Act and even jeopardize employment for certain workers. Alaskans will be subject to longer waiting periods and lines while our Nations borders will not be any more secure. The Federal Government will also require mandatory access to shared information to all states and governmental security agencies.

The REAL ID Act was passed without due deliberation among federal policy makers and affected constituents creating a flawed law. It serves as unwarranted intrusion on the privacy of individuals, widens access to those who would commit identity theft and ignores many of the rights guaranteed to Americans by the United States Constitution.

The implementation of Real ID is one of top concerns for states across the nation. Eighteen states have already passed legislation that opposes Real ID. Similar bills are pending in eighteen other states. It is time for Alaska to join the effort and stand up for state sovereignty, personal privacy and oppose Real ID.

I urge your support on this important bill to protect the privacy of the citizens of Alaska.



## The History of Federal Requirements for State Issued Driver's Licenses and Identification Cards

### Today: Where We Stand

On January 11, 2008, the U.S. Department of Homeland Security (DHS) released final regulations to implement the requirements of the Real ID. The release of the final regulations precede the May 11, 2008 deadline by a mere 120 days. DHS estimates the costs for states to implement the Real ID will not exceed \$3.9 billion.

On May 11, 2008, state driver's licenses and identification cards will not be accepted for federal purposes unless DHS determines a state is compliant with the Real ID or a state has been approved for an extension by DHS. States will have until March 31, 2008, to seek an **initial** extension of the Real ID compliance date.

According to a study conducted by NCSL, the National Governors Association and the American Association of Motor Vehicle Administrators, the act will cost states more than \$11 billion to implement over five years and will have a major impact on services to the public.

To date, Congress has appropriated only \$90 million to assist states with implementation of the Real ID, of which only \$6 million has been obligated. The President's budget proposals have not included any funding requests to assist states with the implementation of the Real ID.

To read a copy of the Final Real ID Regulations, [click here](#).

### December 2007

December 26, 2007, President Bush signed into law the Consolidated Appropriations Act of 2008 (H.R. 2764, P.L. 110-161), which included \$50 million to assist states with the implementation of the Real ID. *To read the full text of the Consolidated Appropriations Act of 2008, [click here](#).*

On December 13, 2007, the Department of Homeland Security (DHS) released grant guidance for a Real ID Grant Program, which provides \$31 million to states to assist with the implementation of the Real ID. The grant guidance indicates a preference for state applications that demonstrate a willingness to work collaboratively with other states or entities in the development of the personal identification verification systems.

To view a copy of the DHS Real ID Grant Guidance, [click here](#).

To download a copy of the Real ID Grant Application Package, [click here](#).

### March 2007

On March 1, the Department of Homeland Security (DHS) issued the long awaited draft regulations on Real ID Act implementation. The regulations were subject to a 60-day comment period, which expired on May 8, 2007. The draft regulations incorporated a number of recommendations made to DHS by NCSL, governors and motor vehicle administrators. However, recommendations to provide a 10-year reenrollment period and exempt certain populations from the Real ID process, which would have reduced costs, were not included. DHS estimated the cost of implementation at \$23.1 billion over 10 years, of which \$10 billion to \$14 billion are costs to states.

### September 2006:

According to a study conducted by NCSL, the National Governors Association and the American Association of Motor Vehicle Administrators, the act will cost states more than \$11 billion to implement over five years and will have a major impact on services to the public. All 245 million driver's license (DL) and identification card (ID) holders will be required to make an in-person visit to their DMV in order to obtain a Real-ID compliant license. As a result, states will need to hire more employees and expand business hours to meet the deadline.

### May 2005: Real ID Act of 2005

On May 11, 2005, President Bush signed into law the "Emergency Supplemental Appropriation for Defense, the Global War on Terror, and Tsunami Relief, 2005" (H.R. 1268, P.L. 109-13), which included the "Real ID Act of 2005." Title II of Real ID—"Improved Security for Driver's License and Personal Identification Cards"—repeals the provisions of a December 2004 law (P.L. 108-458) that established a

negotiated rule making process to create federal standards for driver's licenses and instead directly imposes prescriptive federal driver's license standards.

To read the full text of the Real ID Act, [click here](#).

#### **December 2004: Intelligence Reform Legislation**

In December 2004, President George W. Bush signed into law the National Intelligence Reform Act of 2004 (P.L. 108-458). The legislation was in response to the recommendations made by the 9/11 commission to reform the U.S. Intelligence community and to implement other security measures to prevent future terrorist attacks against the U.S. The law, among other things, required the U.S. Secretary of Transportation to establish a negotiated rule making process to establish minimum standards for state-issued driver's licenses (DL) and identification cards (ID). The negotiated rule making process was repealed with the enactment of "*Emergency Supplemental Appropriation for Defense, the Global War on Terror, and Tsunami Relief, 2005*" (H.R. 1268, P.L. 109-13), which included the "Real ID Act of 2005."

#### **July 2004: 9/11 Commission Report**

In July 2004, the 9/11 Commission issued a 585 page report on how to reform the United States Intelligence community and to implement other security measures to prevent future terrorist attacks against the United States. On page 390, under the heading Immigration Law and Enforcement, the Commissioner recommended the following: "Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of identification, such as driver's licenses. Fraud in identification document is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists."

([Download PDF version, 585 pages: The 9/11 Commission Report](#)) To read portable document format (.pdf) files, you must install [Adobe Acrobat Reader](#).

#### **July 2002: National Strategy for Homeland Security**

On October 8, 2001, President Bush established the Office of Homeland Security within the White House, and its first responsibility was to produce the first *National Strategy for Homeland Security*, which was released in July 2002. Recognizing the role of states in homeland security, the report outlines major state initiatives, including driver's licenses. In particular the report states: "While the issuance of driver's licenses falls squarely with the powers of the states, the federal government can assist the states in crafting solutions to curtail the future abuse of driver's licenses by terrorist organizations. Therefore, the federal government, in consultation with state government agencies and non-governmental organizations, should support state-led efforts to develop minimum standards for driver's licenses, recognizing that many states should and will exceed these standards."

#### **September 11, 2001:**

On September 11, 2001, America was attacked. The sheer horror of that day mobilized the nation. The resources and resolve of federal, state and local government, and the public at large, were now in service to secure our homeland. While prior to September 11th, states were already implementing numerous security measures to counter issues with counterfeit driver's licenses (DLs) and identification cards (IDs) and dated licensing procedures, after September 11th states accelerated these efforts to ensure that their DLs/IDs were secure.

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NATIONAL CONFERENCE  
of STATE LEGISLATURES

*The Forum for America's Ideas*



American Association of  
Motor Vehicle Administrators

May 8, 2007

Department of Homeland Security  
Attn: NAC 1-12307  
Washington, D.C. 20528

**Re.: DHS-2006-0030 – Minimum Standards for Driver's Licenses and Identification Cards  
Acceptable by Federal Agencies for Office Purposes**

To whom it may concern:

In response to the Notice of Proposed Rulemaking (NPRM), the National Governors Association (NGA), National Conference of State Legislatures (NCSL) and the American Association of Motor Vehicle Administrators (AAMVA) respectfully submit the following comments and recommendations.

Governors, state legislators and motor vehicle administrators share the goal of improving the security and integrity of state issued driver's license and identification cards. They believe that state innovation in this vein, both before and immediately after 2001, is noteworthy and will remain the foundation for secure identification documents while maintaining customer service standards and meeting the needs of the traveling public. During this regulatory process and the implementation phases to follow, close cooperation between the Department of Homeland Security (DHS) and state officials—especially state policymakers and state driver's license administrators—will be crucial to ensuring that the processes and the products envisioned for Real ID create the desired, secure identification document without unduly burdening states or citizens.

Governors, state legislators and motor vehicle administrators acknowledge that the draft regulations released in early March by DHS reflect a number of recommendations for implementation made in the attached September 2006 Report—*The Real ID Act: National Impact Analysis*—issued by our state groups. For example, the draft regulations provide states important flexibility through the self-certification process. They allow states to develop waiver and exceptions processes, define which categories of department of motor vehicle (DMV) employees are subject to background checks, and potentially determine the physical security requirements of the DMV facilities. We encourage DHS to maintain these flexibilities in the final regulation.

The draft regulations, however, do not address several major state recommendations designed to ensure successful and cost-effective implementation of the act. For example, we called on DHS to extend Real ID's compliance deadlines and implement a ten year reenrollment period for all citizens. The proposed May 11, 2008 start date and 2013 completion date do not provide sufficient time for states to prepare for implementation or to reenroll their populations. Failure to follow state developed recommendations, all of which are designed to improve systems, increase security and manage taxpayer resources in a

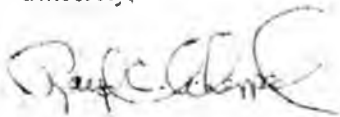
responsible manner, will only serve to undermine state efforts to conform with the requirements of Real ID. Specifically, NGA, NCSL and AAMVA reiterate the following recommendations:

- Provide a workable extension of the compliance deadline;
- Provide funds necessary for states to comply with the Real ID;
- Allow states to implement a 10-year, progressive reenrollment period;
- Allow reciprocity for persons already vetted by the federal government;
- Provide the federal electronic systems necessary to comply with the law;
- Require states to employ electronic verification systems only as they become available;
- Adopt uniform naming conventions to facilitate electronic verification between files; and
- Establish card security criteria based on performance, not technology.

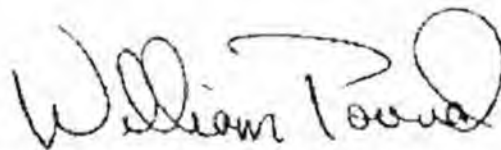
Many of these recommendations apply directly to provisions outlined in the NPRM and should be included in the final rule to better facilitate state implementation of Real ID. (Detailed recommendations are attached, *see* Appendix A.) The American Association of Motor Vehicle Administrators submitted additional comments reflecting a number of these recommendations and made additional recommendations on behalf of their membership.

Governors, state legislators and motor vehicle administrators remain committed to secure driver's licenses and identification cards. The changes we are recommending for the proposed rule will help ensure that states, if they choose to do so, are able to implement the Real ID program in a cost-effective, customer-friendly, and logical manner. We look forward to working with Congress on issues beyond the scope of DHS rulemaking authority. However, we believe that all of our recommendations in response to the NPRM are within DHS' authority to adopt and will advance the goals of Real ID. We look forward to working with DHS toward implementation of our recommendations.

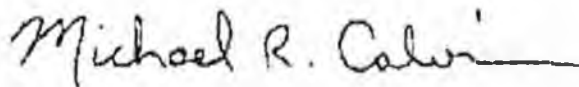
Sincerely,



Raymond C. Scheppach  
Executive Director  
National Governors Association



William T. Pound  
Executive Director  
National Conference of State Legislatures



Michael R. Calvin  
Interim President and CEO  
American Association of Motor Vehicle  
Administrators

Attachments: *The Real ID Act: National Impact Analysis*

## Appendix A

### **Section 37.3 - Definitions**

- Ensure the final regulations maintain the department's narrow definition of "official purpose"—accessing federal facilities, boarding federally regulated commercial aircraft and entering nuclear power plants.
- Establish an official process, to include state policymakers and administrators, for future application/expansion of the definition of "official purpose."

### **Section 37.5 - Deadlines and Validity Periods for Real ID Driver's Licenses and Identification Cards**

- Extend from May 11, 2013 to May 11, 2018, the date by which states will need to reenroll all existing driver's licenses and identification card holders. For states receiving an extension to December 31, 2009, allow the reenrollment period to begin on January 1, 2010. All states must be provided the ability to have up to 10 years to reenroll existing driver's licenses and identification cards.
- Allow states to waive the verification process for individuals already vetted by the federal government. The final regulations should allow individuals with, for example, military identification cards, federal employee credentials, U.S. Passports and/or Transportation Worker Identification Credentials to be considered pre-qualified for a Real ID compliant driver's license or identification card.
- Exempt from the Real ID process certain segments of applicants. We recommend this be based on certain requirements related to applicable risk such as year of birth or duration of continuous relationship with the state of licensure.

The draft regulations pose the question whether individuals born before 1935 who have established histories with a state should be wholly exempt from the birth certificate verification requirements of this regulation, or whether, as proposed, such cases should be handled under each state's exceptions process.

- Governors, legislators and motor vehicle administrators support the exemption of this population, and those with a long-standing relationship with the state from the requirements of the Real ID.

### **Section 37.11 – Application and Documents the Applicant Must Provide**

- Provide states the flexibility to engineer their system and business processes to allow for a facial image to be captured prior to a credential being denied. Do not limit a state by requiring the picture to be taken upon "application."
- Eliminate the requirement that states provide DHS with quarterly reports analyzing the use of the exceptions process and any trends that indicate potential vulnerabilities. DHS can review these as part of their audit process or states can submit this as part of the annual self-certification process.

**Section 37.13 – Document Verification Requirements**

- Ensure the final regulations explicitly exempt states from employing the electronic verification systems until a date in the future when they are operational at a national level.
- Prohibit federal agencies from charging the states transaction fees for use of the required electronic verification of federal information.

**Section 37.15 – Physical Security of Features for the Driver's License or Identification Card**

- Establish card security requirements based on performance and not technology. While not explicitly stated, it is implied that states will need to use polycarbonate card stock. The final regulations must provide states more flexibility in the choice of card stock.

**Section 37.17 – Requirements for the Face of the Driver's License or Identification Card**

DHS posed the following question in the draft regulations: How can DHS tailor the address of principal residence requirement to provide for the security of classes of individuals such as federal judges and law enforcement officers?

- Allow states to continue to use current practices for masking address of principal residence for those individuals in protected classes.

**Section 37.19 – Machine Readable Technology on the Driver's License or Identification Card**

- Ensure the final regulations do not require states to encrypt the information contained in the machine readable zone of the card.
- Allow state laws to govern the use and protection of this information.

**Section 37.21 – Temporary Driver's License and Identification Card**

- Replace the requirement that temporary driver's licenses and identification cards must clearly state on the face of the card, in bold lettering, that it is temporary and instead allow states to use a restriction code on the front with clarifying language on the back, as is standard for other license restrictions. P.L. 109-13 only requires that the card clearly indicate it is temporary.

**Section 37.23 – Renewed and Reissued Driver's Licenses and Identification Cards**

- Eliminate the requirement in Section 37.23 (b)(1)(ii), as it relates to address changes.
- Allow states to propose interim methods of tracking address changes between renewal cycles without the requirement for the full issuance of a replacement credential.

**Section 37.31 – Source Document Retention**

- Exempt from this requirement documents presented by an applicant to prove principal address.

**Section 37.33 – Database Connectivity with Other States**

- Consider the Commercial Driver's License Information System (CDLIS) as a possible model on which to base a "pointer system" to establish connectivity between state DMV databases.

**Section 37.43 – Physical Security of DMV Facilities**

- Do not require state DMVs to adopt the American National Standards Institute/North American Security Products Organization's "Security Assurance Standards for the Document and Product Security Industries," ANSI/NASPO-SA-v3.OP-2005, Level II, as the preferred performance-based standard for physical security of DMV facilities
- Either require states to address this requirement as part of their self-certification process or establish a working group of state policymakers and administrators to develop appropriate standards.

**Section 37.45 – Background Checks for Covered Employees**

- Make the requirement of a financial history check of employees a state option instead of a mandate. P.L. 109-13 only requires "appropriate security clearance requirements."
- Prohibit the Federal Bureau of Investigation from charging states a fee for accessing their systems.

DHS specifically requested comments on the federalism aspects of the background check requirements proposed under this rule.

- Ensure the final regulations continue to provide states maximum flexibility to determine which employees are subject to the requirements of this section.

**Section 37.55 – Initial State Certification**

- Eliminate the requirement that states submit a copy of all statutes, regulations, and administrative procedures and practices that demonstrate the state's implementation program for this part. This is unnecessary and overly burdensome.

**Section 47.57 – Annual State Certification and Section 37.59 – DHS Reviews of State Compliance**

- Establish timeframes, similar to those imposed on the states (30 days) in both of these sections in which DHS must respond/reply to states.

**Section 37.63 – Extension of Deadline**

- Provide states that are granted an extension with the full reenrollment period, provided for in the final regulations. Governors, legislators and motor vehicle administrators recommend a 10-year reenrollment period.

**Section 37.67 – Non-Real ID Driver's Licenses and Identification Cards**

- Allow states to meet this requirement by placing a restriction code on the front of the license, with clarifying language on the back.

# Information Alert

National Conference of State Legislatures  
Office of State-Federal Relations

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## Real ID Regulations ... Finally Updated February 12, 2008

### *Brief 1*

#### *Deadlines, Definition of Official Purpose, Reenrollment, State Certification and Reporting, State Exceptions Process, and Funds*

On January 11, 2008, the Department of Homeland Security (DHS) issued the long awaited final regulations on Real ID Act implementation, a mere 120 days before the May 11, 2008 deadline. The regulations were printed in the *Federal Register* on January 29, 2008. The final regulations incorporate a number of recommendations made to DHS by NCSL, governors and motor vehicle administrators. However, DHS still estimates the cost of implementation to the states at \$3.99 billion.

Over the next week, NCSL will publish a series of briefs summarizing different sections of the regulations. In addition, this will include a comparison of the requirements to the recommendations included in the September 2006 report—*The Real ID: National Impact Analysis*—issued by NCSL, governors and motor vehicle administrators. Brief 2 will focus on Physical Security of DMV Facilities and Databases, and Employee and Applicant Background Checks.

A copy of the final regulations, the September 2006 report, and other resources on Real ID are available at: <http://www.ncsl.org/realid>

#### *State Deadlines*

In order for a state's driver's license (DL) or identification card (ID) to be accepted for federal purposes, a state must certify to DHS that the state is compliant with the requirements of the Real ID on or before May 11, 2008. Initially, state certification may take two forms:

- A state may certify that it fully complies with the requirements of the Real ID: **OR**
- A state may request an initial extension by **March 31, 2008**. DHS will notify states of the initial extension within 45 days or receipt of the state's request. The initial extension would expire on December 31, 2009.

States may request an additional extension until May 10, 2011, by submitting a Material Compliance Checklist (see *State Certification and Reporting* below), which requires states to indicate their level of compliance with the Real ID. States must file for the additional extension by October 11, 2009.

Additional extensions may be granted at the discretion of Secretary of Homeland.

A state-issued DL and ID will be accepted for federal purposes if a state has received an extension or the state is deemed fully compliant with the requirements of the Real ID.

#### *Official Purpose*

As recommended by NCSL, governors and motor vehicle administrators, the final regulations limit the "official purpose" of the Real ID to the uses expressly stated in the Act: accessing federal facilities, boarding commercial aircraft and entering nuclear power plants.

#### *Reenrollment*

A state-issued DL and ID must meet the requirements of the Real ID:

- By December 1, 2014 for individuals born after December 1, 1964; AND
- By December 1, 2017 for individuals born before December 1, 1964.

NCSL, governors and motor vehicle administrators had recommended DHS adopt a 10 year reenrollment period.

#### *State Certification and Reporting*

The final regulations create two levels of compliance for states prior to May 11, 2011: material compliance versus full compliance.

Under the material compliance threshold, a state must provide DHS with the status and operational date of state compliance with the Real ID. DHS will require states to submit a "Material Compliance Checklist." A state must be materially compliant with the requirements of the Real ID by January 1, 2010, to receive an additional extension to May 10, 2011 date (see *State Deadlines* above).

Under the full compliance threshold, a state must meet all the requirements of the Real ID OR "have a Real ID Program that DHS has determined to be comparable to the standards" of the Real ID. A state must certify that it meets these requirements at least 90 days prior to the effective date of full compliance.

States must submit the following to DHS for review to be deemed fully compliant with the Real ID:

- A certification by the highest level Executive official in the state overseeing the Department of Motor Vehicles that reads as follows: "I, [name and title (name 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."
- A letter from the state Attorney General confirming the state has the legal authority to impose the requirements necessary to meet the standards established;
- A description of the states exception process and the state's waiver process (see below); and
- The state's security plan.

States will have to re-certify every three years and are subject to DHS review at any time. Under the final regulations, states must provide any reasonable information to DHS "pertinent to determining compliance," and permit DHS to "conduct inspections of any and all sites associated with the enrollment of applicants...production, manufacture, personalization and issuance of [DL] and [ID]."

#### *Exceptions Process*

NCSL, governors and motor vehicle administrators advocated for an exceptions process to address certain circumstances. Under the final regulations, states may use the exceptions process for individuals who have difficulties producing some of the required identification documents, such as proof of identity or date of birth, and must therefore rely upon other alternate documents.

Under the state's exception process, a state must:

- Make reasonable efforts to establish the authenticity of the alternate documents;
- Maintain a record that the exception process was used in the application process;
- Retain a copy or image of the alternate documents used in the application process in the same manner as for other source documents;
- Conduct a review of the state's exception process; and
- Provide DHS with a copy of the state's review of its exception process as part of the state's certification.

The exception process does not apply to precautions taken on behalf of state-issued DL and ID for federal, state and local officials, including criminal justice agencies that require safeguards due to official duties.

#### *Funds*

To date, Congress has appropriated only \$90 million to assist states with implementation of the Real ID, of which only \$9 million has been obligated. The President's FY 2006, FY 2007 and FY 2008 budget proposals did not include any funds to assist states with the implementation of the Real ID.

DHS will again enable states to use up to 20 percent of their State Homeland Security Grant Program (SHSGP) Funds for implementation of the Real ID. Under current law states are required to pass 80 percent of these funds to local governments, leaving only 20 percent for the states. This program received \$890 million in federal funds in FY 2008, which represented an increase over FY 2007 through the consolidation of the Law Enforcement Terrorism Prevention Program.

**For more information contact NCSL staff Jeremy Meadows ([Jeremy.Meadows@ncsl.org](mailto:Jeremy.Meadows@ncsl.org), 202-624-8664) or Garner Girthoffer ([garner.girthoffer@ncsl.org](mailto:garner.girthoffer@ncsl.org); (202) 624-7753).**



# Information Alert

National Conference of State Legislatures  
Office of State-Federal Relations

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January 16, 2008

## *Real ID Final Regulations: Brief 2*

### **Identification Documents, Verification Systems and Privacy**

This is the second brief in a series summarizing the final regulations for implementation of the Real ID Act of 2005. In particular, this brief relates to sections of subparts B, C, and D of the regulations. Brief #3 will focus on the physical security requirements for the department of motor vehicle (DMV) facilities and background checks for DMV employees and Brief #4 will address requirements for the Real ID compliant card. The final regulations, Brief 1 and other resources on Real ID are available at: <http://www.ncsl.org/realid>

#### *Identification Documents*

Under the Real ID Act, states and territories are required to verify, with the issuing agency, the validity of the identification documents an applicant presents to establish:

- identity;
- date of birth;
- proof of social security number or that the person is not eligible for a social security number;
- the person's name and address of principal residence; and
- the person's lawful status in the United States.

The regulations define "verify" to mean authenticating that a source document is genuine and has not been altered and then validating identity data contained on the document.

An applicant would have to present at least one of the acceptable documents proposed by the Department of Homeland Security (DHS) and sign a declaration under penalty of perjury that the information presented is true and correct:

- a valid unexpired U.S. Passport (approximately 25 percent of Americans hold passports);
- a certified copy of a birth certificate;
- a consular report of birth abroad;
- a valid, unexpired permanent resident card (Form I-551);
- an unexpired employment authorization document (EAD) (Form I-766 or I-688B);
- an unexpired foreign passport with valid U.S. visa affixed accompanied by Form I-94;
- a U.S. certificate of citizenship;
- a U.S. certificate of naturalization;
- a REAL ID driver's license (DL) or identification card (ID) issued subsequent to the standards established by the regulations; or
- such other documents as DHS may designate later in the Federal Register.

States must retain a copy of the declaration and a new declaration must be signed when applicants present new source documents.

If an individual's name has changed through adoption, marriage, divorce or other court order, the individual must present documents showing the legal name change. The documents must come from a court, government agency, or other entity as determined by the state. States must maintain copies of documentation as well as a record of both the recorded name and the name on the source documents. Depending on the form in which documents are retained, states must maintain them for a minimum of seven (7) years up to a maximum of ten (10). Brief #6 will address documentation and retention in greater detail.

States can have an exceptions process for individuals who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity. Alternative documents for lawful presence may only be used to demonstrate U.S. citizenship. For more on the exceptions process, see Brief #1.

### *Verification of Identity Documents*

NCSL, governors and motor vehicle administrators recommended that states be required to employ electronic verification systems only as they become available. They also recommended that DHS prohibit federal agencies from charging states transaction fees for accessing the required systems. The final regulation calls on states to use these systems as they become available or to use alternative methods approved by DHS, and it appears that states can still expect to pay transactional access costs.

The Act contemplates that states will need to have access to 6 national databases for the purposes of verifying the validity of the required identification documents. This includes access to:

<b>Verification System</b>	<b>Status</b>
Social Security On-Line Verification (SSOLV)	Almost all states currently use this system.
Department of State	DHS is working with the Department of State to make it available.
Electronic Verification and Vital Events (EVVE)	System is currently in a pilot phase.
Systematic Alien Verification for Entitlements (SAVE)	All 50 states have Memorandums of Understanding (MOUs) for access to SAVE; however, only 20 are currently using it to verify lawful status.
Student and Exchange Visitor Information System (SEVIS)	DHS expects states to access SEVIA via SAVE, and the draft regulations suggested that connection could be in place by May 2008.
All-State DL/ID Records System	DHS issued a request for proposals largely intended to develop this system in December 2007.

DHS stated in the draft regulations that it will support the development of, but will not operate, a federated querying system, where a state could conduct all queries through one portal. State participation will be voluntary. DHS is proposing to leave the operation of this data query, including the development of the business rules, to the states. Working toward this end, on December 13, 2007 DHS published grant guidelines requesting that states submit proposals, preferably collaboratively, to develop this "hub." Applications are due to DHS on January 28, 2008.

### *Verification of Address of Principal Residence*

NCSL, governors and motor vehicle administrators recommended that the address of principal residence be determined by having the applicant provide an affidavit and by providing corroborating documentation.

DHS defines principal address as, "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." DHS is requiring applicants to present at least two documents of the state's choice that include the individual's name and principal residence. A street address is generally required.

### *Verification of Birth Certificates*

DHS anticipates states will be able to electronically verify the issuance of birth certificates through EVVE or another electronic system. If documents do not appear authentic or data does not match and an exceptions process is not appropriate, DHS forbids the state from issuing a REAL ID DL or ID until the information verifies. States are to refer applicants to the document's issuing agency for resolution of the match failure.

### *Verification of U.S. Passports or Consular Reports of Birth Abroad*

It is anticipated that a state will be able to verify these documents with the U.S. Department of State or through other methods approved by DHS.

### *Verification of Valid U.S. Visas Affixed in an Unexpired Foreign Passport*

Individuals presenting this form of documentation would require a SAVE and SSOLV check.

### *Verification of Lawful Status*

NCSL, governors and motor vehicle administrators recommended limiting the acceptance of foreign documents to official passports accompanied by appropriate and clearly defined U.S. immigration documents. The states also recommended limiting document verification to what could be accomplished through an enhanced SAVE program that is fully developed, operational in real-time and accessible to all jurisdictions at no cost to states. The state groups also recommended the expansion of SAVE to include Certificates of Naturalization.

### *Verification of Social Security Number*

DHS proposes allowing an applicant to establish their social security number by presenting a social security card, a W-2 form, a SSA 1099, a non-SSA 1099, or a pay stub with the applicant's name and SSN on it. An alien in the United States without authorization to work is generally not eligible for a SSN. In order to prove ineligibility for a SSN, an alien must present evidence that he or she is currently in a non-work authorized non-immigrant status. States will be required to check the validity of the number using SSOLV.

### *State Database and Connectivity to Other States' Databases*

The regulations require a state to maintain a motor vehicle database that contains at a minimum:

- all data fields printed on the driver's license and identification cards, individual serial numbers of the card, and social security numbers;
- a record of the full legal name and recorded name (as noted above), without truncation;
- all data fields included on the machine-readable zone that are not printed on the front of the card; and
- motor vehicle driver histories, including motor vehicle violations, suspensions and points.

Prior to issuing a Real ID compliant license, states must check with all other states to determine if any state has already issued a Real ID driver's license or card to the applicant. If a state receives confirmation that the applicant holds another Real ID, the regulations require the state to confirm that the applicant has terminated or is terminating the extant Real ID pursuant to state law before issuing a new REAL ID.

DHS is exploring use of AAMVAnet or expansion of Commercial Driver's License Information System (CDLIS) or some other service as the platform for the state-to-state exchange.

### *Privacy*

NCSL, governors and motor vehicle administrators recommended the "masking" of an address for persons in certain protected classes while securely retaining the information in the database. The state groups also recommended that the Driver Privacy Protection Act (DPPA) (18 U.S.C. Sec. 2721, etc. sec) be reconciled to reflect the new responsibilities of DMVs and advances in technology since the DPPA was passed.

The DHS privacy office issued a Privacy Impact Assessment (PIA) on the notice of proposed rulemaking ([http://www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_realidfr.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_realidfr.pdf)), which analyzed:

- concerns that the Real ID creates a national identity card or database;
- how personal information will be protected from unauthorized access or use;
- whether and how the personal information stored in digital format on the credentials will be protected against unauthorized use;
- the use of a photograph and address on the credential; and
- the requirement that DMVs conduct a financial history check on covered employees.

In response to these concerns, the DHS privacy office issued a PIA on the final rule. The PIA explains how the final rule addressed the concerns of the initial PIA. A copy of the report can be accessed at: [http://www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_realidfr.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_realidfr.pdf).

NCSL has identified a number of provisions in the final regulations that remain of interest as they relate to the protections of individuals' identity.

#### Security Plan/Certification

A state's security plan, as submitted for certification, is required to outline how it will protect the privacy of personally identifiable information collected, disseminated or stored. States must establish a privacy policy regarding personally identifiable information collected and maintained by the DMV. The regulations set the Driver's Privacy Protection Act as the floor for use of personal information collected by DMVs, but states may set more stringent requirements, which will not be subject to DHS review.

#### Protection of Information Contained in Machine Readable Zone (MRZ) of the Card

At this time, DHS is not requiring the encryption of the information contained in the MRZ of the card. States are required to use a PDF417 2D bar code, with the following defined minimum data elements – expiration date, full legal name, transaction date, date of birth, gender, address as listed on card, unique identification number, revision date, inventory control number of the physical document, and state or territory of issuance.

#### Masking the Address for Persons in Certain Protected Classes

States are not required to comply with certain requirements when issuing driver's licenses or identification cards in support of federal, state or local criminal justice agencies or programs that require special licensing and safeguards. These cards must not be distinguishable from other Real ID licenses or cards issued by a state.

**For more information contact NCSL staff Jeremy Meadows ([Jeremy.Meadows@nesl.org](mailto:Jeremy.Meadows@nesl.org), 202-624-8664) or Garner Girthoffer ([Garner.Girthoffer@nesl.org](mailto:Garner.Girthoffer@nesl.org), 202-624-7753).**



# Information Alert

National Conference of State Legislatures  
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January 16, 2008

*Real ID: Brief 3*

*Physical Security of DMV Facilities and Databases; DMV Employee and Applicant Background Checks*

This is the third brief in a series summarizing "Subpart D" of the final regulations for implementation of the Real ID Act of 2005. Brief 4 will focus on the physical security features of the Real ID card. A copy of the final regulations and other NCSL resources on Real ID, including other briefs, are available at: <http://www.ncsl.org/realid>

*Physical Security of DMV Facilities and Databases*

Under the Real ID Act, a state must ensure "the physical security of locations where drivers' licenses (DL) and identification cards (ID) are produced and the security of document materials and papers from which DLs and IDs are produced."

NCSL, governors and motor vehicle administrators recommended that facility-based risk assessments and mitigation plans be included as part of a state's self-certification process (for additional information on state self-certification, see Brief #1).

*State Security Plans*

The final regulations require that a state's comprehensive security plan address:

- the physical security of the facilities used to produce and store materials used in Real ID card production;
- the security of personally identifiable information maintained at Department of Motor Vehicles (DMV) locations;
- documents and physical security features of Real ID cards (see *Brief #4*);
- access controls for DMV employees and contractors, including:
  - employee identification and credentialing,
  - employee background checks, and
  - controlled access systems;
- periodic training requirements for employees, including fraudulent document recognition programs and security awareness training;
- emergency/ incident response plans;
- internal audit controls; and
- an affirmation that the state has the authority and means to protect the confidentiality of persons issued Real ID compliant ID and DL in support of federal, state and local criminal justice agencies, or special licensing or identification programs to safeguard ID holders in their official capacity.

### ***Physical Security Requirements of Real ID Facilities and Storage Areas***

States must take measures to ensure the physical security of facilities used in the manufacture and issuance of Real ID-compliant DLs and IDs, however, DHS does not stipulate the manner in which a state secures its facilities.

### ***Security of Personally Identifiable Information***

The regulations stipulate that states must take reasonable efforts to protect the personal information used to comply with the requirements of the Real ID, including protections to prevent unauthorized access, use or dissemination of such information. State security plans must detail policies and procedures for document retention and destruction; states must also institute a privacy policy for information collected and maintained by the DMV under the requirements of the Real ID. In addition, states must maintain minimum protections regarding the release and use of personal identifiable information under existing federal law (contact NCSL for more information).

### ***Employee Background Checks***

Under the Real ID Act, a state must ensure that "all persons authorized to manufacture or produce drivers' licenses and identification cards [are subject] to appropriate security clearance requirements."

NCSL, governors and motor vehicle administrators recommended that states be allowed to:

- identify those staff (employee/vendor/contractor) involved in the manufacture and production of DLs and IDs who require security clearance, as part of the state's self-certification;
- subject employees to a minimum of a state and federal background checks;
- grant new hires provisional clearance pending results of a background check ;
- enumerate disqualifying criteria in the state self-certification, as well as procedures for interim hiring pending results of background checks; and
- have a means to deal with the realities of operative personnel laws, regulations and labor relations agreements applying to pre-existing employees.

Under the final regulations, states must conduct background checks on:

- all persons involved in the manufacture or production of a Real ID compliant DL and ID;
- persons that may affect the information on a Real ID compliant DL and ID; or
- current employees or contractors that will be assigned to such positions, or a "covered employee" that meets the first two qualifications.

"Covered employees" are defined as "DMV employees or contractors who are involved in the manufacture or production of Real ID [DL] or [ID], or who have the ability to affect the identity information that appears on the [DL] or [ID]."

Each state will determine which applicants, employees or contractors will be subject to the background check. States will also be required to provide notice to the applicant, employee and contractor that a background check will be conducted.

The background check must include, at a minimum:

- a validation of references from prior employment;
- a name-based and fingerprint-based criminal history records check through the state and two FBI's databases—National Crime Information Center (NCIC) and Integrated Automated Fingerprint Identification System (IAFIS) (at the cost of the state); and
- employment verification as otherwise required by law.

However, background checks substantially similar to the requirements of the regulations do not have to be repeated if conducted on or after May 11, 2006.

The regulations established a bifurcated system for disqualifying an applicant for employment due to a criminal history. Under a "permanent disqualifying criminal offenses," any "covered" applicant, existing employee or contractor is disqualified from employment if the employee or applicant is convicted of certain felonies (for more details contact NCSL).

Under a "interim disqualifying criminal offenses," a "covered" applicant, employee or contractor may also be disqualified, absent a state adopting a waiver process, if:

- convicted of a disqualifying offense within 7 years of the date of employment;
- released from incarceration within 5 years of the date of employment; and
- under a felony warrant until the warrant is released.

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# Information Alert

National Conference of State Legislatures  
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January 18, 2008  
*Real ID: Brief 4*

## *Requirements for the Real ID Compliant Card*

This is the fourth brief in a series summarizing the regulations for implementation of the Real ID Act of 2005. This brief relates to several sections of subpart B of the regulations, which focus on the features of the Real ID card. Brief 5 will address regulations for the non-compliant card and temporary cards. A copy of the regulations and other NCSL resources on the Real ID, including other briefs, are available at: <http://www.ncsl.org/realid>

### *Minimum Data Element Requirements*

The Real ID Act prescribes that a certain set of information and features appear on Real ID compliant, state-issued driver's licenses (DL) and identification cards (ID). The law stipulates the following nine as minimums:

1. The person's *full legal name*;
2. The person's *date of birth*;
3. The person's *gender*;
4. The person's *DL or ID number*;
5. A *digital photograph* of the person;
6. The person's *address of principal residence*;
7. The person's *signature*;
8. *Physical security features* designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes; and
9. A common *machine-readable technology*, with defined minimum data elements.

NCSL, governors and motor vehicle administrators made a number of recommendations addressing data element requirements. They include: requiring the capture of up to 125 characters for full legal name; requiring the federal government to adopt and universally apply common naming conventions to its systems; and, with input from states, developing and applying naming truncation guidelines to all systems accessed under the Real ID. In addition, states recommended that the regulations provide states the necessary flexibility to engineer their system and business processes as it relates to the capture of facial images as long as the image is captured when a DL/ID is issued and before a credential is denied.

The regulations detail the statutorily included nine elements that must be included on the face of the Real ID and add the following to the list:

10. *Issue date*;
11. *Expiration date*;
12. *State or territory of issuance*; and
13. *DHS approved security marking*.

The *full legal name* for the Real ID card must be identical to the name shown on the identity document used to obtain the DL/ID (see Brief 2 for more on identity documents). Any name variations due to marriage, divorce, adoption, or court order must be documented. States must maintain a complete record of an individual's name history. The regulations adopt the International Civil Aviation Organization (ICAO) 9303 Standard for the name as it will appear on the face of the DL/ID. This standard requires Latin alphabet characters, allows a total of 39 characters on the face of the card, and provides standards for truncation of longer names.

Each DL/ID must display a unique *card number*. As federal law prohibits the display of a person's Social Security Number (SSN) on a DL, states must generate a different and unique document number.

States must capture a full facial *digital image* of everyone applying for a DL/ID. If a DL/ID is issued, the image must appear on the face of the card; photographs may be black and white or color. If a DL/ID is not issued, DHS requires that states retain the image for at least five years, regardless of the reason for non-issuance. Digital photographs should comply with ICAO standards, including diffused lighting over the full face eliminating shadows or "hotspots," a full face image from the crown to the base of the chin and from ear-to-ear, and prohibition of veils, headdresses or eyewear that obscure facial features or the eyes or create shadows. DHS contends that the law makes no allowances for the exclusion of facial photographs based on religious or other beliefs, but states may issue non-compliant DL and ID in such cases. An applicant's photo should be taken upon reapplication, but not less frequently than every 16 years.

The person's *address of principal residence* must appear on the face of the card. Conforming to recommendations from NCSL, governors, and motor vehicle administrators, the regulations allow for a state exemption processes for confidential addresses (of judges, victims of domestic violence, protected witnesses, etc.) and applicants with no fixed address be continued.

The person's *signature* must meet the size, scaling, cropping, color, borders, and resolution requirements stated in existing American Association of Motor Vehicle Administrators (AAMVA) standards.

The regulations require states to use the existing AAMVA standard 2D bar code for the *machine-readable technology* on the card. DHS requires that the PDF-417 2D bar code approved by AAMVA store the minimum data elements - expiration date, bearer's name, issue date, date of birth, gender, address, unique DL/ID number, DL/ID format revision date, inventory control number, and state or territory of issuance. DHS is not requiring encryption of this machine-readable information.

The card shall also include a *DHS approved security marking* to indicate the card's level of compliance with the Real ID— full v. material compliance (see Brief #1).

#### *Physical Security Features*

The Real ID Act requires states to utilize multiple layers of *physical security features* on a DL and ID that are not reproducible using commonly used or available technologies in order to deter forgery and counterfeiting and to promote an adequate level of confidence in the authenticity of the document.

NCSL, governors and motor vehicle administrators recommended that the regulations establish performance requirements for DL/ID cards rather than mandating use of a specific set of security features. Recommendations also included initiating an advisory group composed of document security experts from federal and state agencies to establish national performance criteria and creating a testing program, in cooperation with states, to determine the resistance of DL/ID cards to tampering, counterfeiting or duplication for fraudulent purposes.

The final regulations require states to employ three levels of card security features for Real ID compliant DL/ID:

- Level 1 must provide for easily identifiable visual or tactile features to allow a cursory examination for rapid inspection;
- Level 2 provides for an examination by trained inspectors with simple equipment; and
- Level 3 provides for inspection by forensic specialists.

For example, a state would choose several features, such as tamper-proof printed information, an optically variable feature or an ultraviolet (UV) responsive feature, and satisfy each level of security required under the final regulations.

However, the regulations do not mandate specific security features or card stock for DL/ID cards. States must conduct a review of it's DL/ID design and submit a report to DHS that indicates the ability that the card design is resistant to compromise and document fraud. DHS may request an independent laboratory conduct analysis regarding the card's security features. States must also notify DHS whenever a security feature is modified, added or deleted.

For more information contact NCSL staff Jeremy Meadows ([Jeremy.Meadows@ncsl.org](mailto:Jeremy.Meadows@ncsl.org), 202-624-8664) or Garner Girthoffer ([Garner.Girthoffer@ncsl.org](mailto:Garner.Girthoffer@ncsl.org); (202) 624-7753).



# Information Alert

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January 21, 2008  
*Real ID Final Regulations: Brief 5*

## *Non-Compliant and Temporary Driver's Licenses and Identification Cards*

This is the fifth brief in a series summarizing the final regulations for implementation of the Real ID Act of 2005. This brief focuses on the non-compliant and temporary driver's licenses (DLs) and identification cards (IDs) and relates to sections of Subparts B and F of the regulations. Brief 5 will focus on document and record retention. The final regulations, prior briefs, and other resources on Real ID are available at <http://www.ncsl.org/realid>.

### *Non-Compliant Real ID Driver's License and Identification Cards*

The Real ID Act itself stipulates that a state complying with REAL ID that also issues non-compliant DLs and IDs must:

- clearly state on the face of the DL/ID that it may not be accepted by any federal agency for federal identification or any other official purpose; and
- use a unique design or color indicator to alert federal agency and other law enforcement personnel that the DL/ID may not be accepted for any such purpose.

NCSL, governors and motor vehicle administrators recommended that the regulations allow states to meet the requirement at reduced cost by placing a restriction code on the front of license, with clarifying language on back.

DHS is requiring that the card clearly states on its face and in the machine readable zone that it may not be accepted by any federal agency for federal identification or any other official purpose. DHS is also requiring states to incorporate a unique design or color indicator to distinguish it from the state's REAL IDs and to alert federal agencies and other law enforcement personnel that it may not be accepted for federal purposes. DHS reserves the right to approve the non-compliant cards designations during the state compliance certification process.

### *Temporary Driver's Licenses and Identification Cards*

Under the Real ID Act, a state must issue a temporary or limited-term DL or ID if an applicant has temporary lawful status and provides evidence, verifiable through SAVE or another DHS-approved method, by presenting one of the following:

- a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States;
- a pending application for asylum in the United States;

- a pending or approved application for temporary protected status in the United States;
- approved deferred action status; or
- a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

Temporary or limited-term DLs and IDs must clearly indicate on the face of the card and in the machine-readable zone that they are temporary. The law stipulates that the date on which a temporary DL/ID expires must also be clearly indicated (see NCSL Brief #4). The temporary DLs and IDs may only be valid for the time period of the applicant's authorized stay in the United States, but not longer than the state's maximum DL/ID term. If there is no definite end period for the authorized stay, then the DL/ID shall be good for a period of one year.

A state may not reissue a temporary DL/ID unless the document of lawful presence has been extended by DHS or the person has qualified for another lawful status. A renewal of a temporary DL/ID must be in person.

NCSL, governors and motor vehicle administrators recommended that the regulations needed to clarify that the requirements of this provision apply to those deemed temporary due to limited duration of lawful presence, rather than other state-issued "temporary" licenses (e.g. medical restrictions, etc.). It was also recommended that the minimum requirement for identifying restricted license duration should be indicated as a restriction code on the front of the license, with clarifying language on back, as is standard for other license restrictions.

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# Information Alert

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January 21, 2008

## *Real ID Regulations: Brief 6*

### *Document and Record Retention*

This is the sixth brief in a series summarizing the final regulations for implementation of the Real ID Act of 2005. This brief relates to a section of subpart C of the regulations, which focuses on the document and record retention requirements of the final regulations. Brief 7 will address regulations for the renewal and re-issuance process for Real ID compliant driver's licenses (DL) and identification cards (ID). A copy of the regulations and other NCSL resources on the Real ID, including other briefs, are available at <http://www.ncsl.org/realid>.

Under the Real ID Act, states are required to retain copies or images of source documents for issuance of Real ID compliant DL and ID. Copies of source documents must be retained for at least 7 years; images of source documents must be retained for at least 10 years.

NCSL, governors and motor vehicle administrators recommended that the states not be required to capture documents presented by an applicant to verify address of principal residence. It was also recommended that DHS clarify the need for and ability of states to electronically transfer source documents.

Under the regulations, DHS requires states to retain copies of the following documents:

- signed declaration affirming that the information presented by the applicant is true and accurate as required under state law;
- an original or certified copy of identity documents or source documents, such as a birth certificate or passport (see NCSL Brief #2);
- if applicable, the alternate documents used to demonstrate a name change as permitted under state law;
- if applicable, the alternate documents accepted or copies thereof used under a state's exceptions process (see NCSL Brief #1); and
- digital photograph of the applicant or cardholder (also see NCSL Brief # 4).

A state must also describe its standards and procedures for safeguarding and destroying source documents in the state's security plan (see Brief #8).

The regulations require that states retain:

- paper copies of source documents for a minimum of 7 years;
- microfiche copies of source documents for a minimum of 10 years;
- digital images of a source documents for a minimum of 10 years; AND
- digital photograph of the cardholder for at least 2 years beyond the expiration of the card; OR
- digital photograph of the applicant (if a DL/ID is not issued) for at least 5 years.

States that choose to store source documents in a digital format must:

- store photo images in Joint Photographic Experts Group (JPEG) 2000 format, or standard that is interoperable with this format;
- store document and signature images in a compressed Tagged Image Format (TIF), or a standard that is interoperable with the TIF standard;
- ensure all images are retrievable if properly requested by law enforcement; and
- upon request by the DL/ID applicant, record and retain the applicant's birth certificate information in lieu of an image or copy thereof.

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# Information Alert

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February 8, 2008

*Real ID Final Regulations: Brief 7*

*Renewal and Reissuance Process for Real ID Compliant  
Driver's Licenses and Identification Cards*

On January 11<sup>th</sup>, the Department of Homeland Security (DHS) issued the long-awaited final regulations for implementation of the Real ID Act of 2005. This is the seventh brief in a series summarizing the rules and processes for renewing and reissuing Real ID driver's licenses (DL) and identification cards (ID). It relates to sections of Subpart B of the regulations. Brief 8 will focus on state security plans and reporting requirements. The final regulations, prior briefs, and other resources on Real ID are available at <http://www.ncsl.org/realid/>.

*Renewal and Reissuance of Real ID Compliant Cards*

The regulations define a "reissued card" as a card that a state DMV issues to replace a card that has been lost, stolen, or damaged or that contains outdated information. A "renewed card" is a DL or ID that a state issues to replace a renewable DL or ID, presumably on or around the date of expiration.

The Real ID Act limits the period of validity of all Real ID DL/ID cards that are not temporary to a period not to exceed eight years. While states can have validity periods of less than eight years, an individual must apply for a renewal in person at a DMV office at least every 16 years. At least every 16 years, the DL/ID photograph must be updated, the applicant's Social Security number and lawful status must be reverified, and the state must electronically verify any other information that it was not previously able to verify (due to system unavailability or for other reasons).

For renewals between the initial issuance of a Real ID and that occurring in the 16<sup>th</sup> year, states may establish procedures to permit remote (or "non-in-person") renewals. Social Security numbers and lawful presence must be reverified and there can be no "material change" in any of the personally identifiable information (see Brief #2). A change in address of principal residence, however, does not constitute a "material change."

*Renewal and Reissuance of Temporary Cards*

States must verify lawful status via the Systematic Alien Verification for Entitlements system (SAVE) or another method approved by DHS before renewing or reissuing temporary or time-limited Real ID DL/ID. (see Brief #2)

*Renewal and Reissuance of Non-Compliant Cards*

The renewal process of non-Real ID compliant DL/ID cards is not subject to the regulation.

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# Information Alert

National Conference of State Legislatures  
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February 13, 2008

## *Real ID Final Regulations: Brief 8*

### *State Security Plans and Reporting Requirements*

This is the eighth brief in a series summarizing the final regulations for implementation of the Real ID Act of 2005. This brief relates to sections of subpart B, D and E of the regulations, which focus on state security plans and other reporting requirements as outlined in final regulations. A copy of the regulations and other NCSL resources on the Real ID, including other briefs, are available at <http://www.ncsl.org/realid>.

Under the Real ID Act, the Secretary of the Department of Homeland Security may prescribe the requirements of a state's self-certification request to comply with the Real ID. (see Brief #1)

The final regulations require states to submit a security plan in conjunction with a state's certification. At a minimum, state security plans must address:

- the physical security of the facilities used in the production and storage of Real ID cards;
- the security of personally identifiable information collected, stored, accessed or disseminated by DMV, including a privacy policy regarding personally identifiable information;
- the document and security features of a Real ID compliant card, including the state's use of biometrics and standards utilized;
- access controls for employee credentialing, employee background checks and controlled access to various systems utilized in the production of a Real ID;
- state training programs for fraudulent document recognition, threat identification and the handling of sensitive security information;
- a state's emergency and incident response plan;
- a state's internal audit controls; and
- a state's affirmation to protect the confidentiality of card holder information issued in support of federal, state and local criminal justice activities or protection of the identity of persons serving in an official capacity.

A state security plan must be handled and protected in accordance with federal standards for sensitive security information as determined by the Department of Transportation (see [49 CFR 1520](#)).

### *State Reporting Requirements*

If applicable, states must also provide the Department of Homeland Security (DHS) with the following:

- state request for an extension of the Real ID requirements deadline (see Brief #1);
- state certification documentation (see Brief #1);
- documentation of any exceptions and waiver procedures (see Brief #1); and
- state report(s) on a state's card security evaluation (updated with any security feature modification change)(see Brief #4).

If applicable, a state may also reply to a preliminary DHS finding of non-compliance under the state certification process. The state reply must include an explanation of any corrective action to remedy non-compliance or provide a detailed analysis of why a finding of non-compliance was incorrect. A state's reply must be filed within 30 days of a DHS finding of non-compliance.

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# ALASKA

## Jurisdiction Impact Analysis Real ID Act

REAL ID ACT REQUIREMENT	IMPACT	ASSUMPTIONS
Introduce Full Legal Name into Driver Licensing System (in Record, on Document)	No impact, required by statute for issuance	
Have following data elements/features on the document <ul style="list-style-type: none"> <li>10. Full Legal Name</li> <li>11. Person's Date of Birth</li> <li>12. Person's Gender</li> <li>13. Person's DL or ID Card Number</li> <li>14. Digital Photograph of Person (and retention)</li> <li>15. Person's Address of Principle Residence</li> <li>16. Person's Signature</li> <li>17. Physical Security Features to prevent tampering, counterfeiting or duplication</li> <li>18. Common Machine Readable Technology.</li> </ul>	Currently Required Currently Required Currently Required Currently Required Currently Required Currently printing mailing address with principal residence in database Currently Required Currently Incorporated 2D Machine readable bar code	Reprogramming to print principal residence address
Introduce temporary DL/ID cards and tying end of stay to expiration of DL/ID card (or issuance for no more than 1 year)	Reprogramming required	
Amending card design to show/indicate that it is a temporary document with a "different than usual" expiration date	Reformatting required	
Verification at Source: Enabling your system to electronically verify documentation with: <ul style="list-style-type: none"> <li>1. SSOLV</li> <li>2. SAVE</li> </ul>	SSOLV expected by 6/06 SAVE must be developed	

REAL ID ACT REQUIREMENT	IMPACT	ASSUMPTIONS
3. DEERS (DOD) 4. Other jurisdiction (DL/ID card) 5. Birth certificate 6. Other...i.e. third party vendors	Need information on this database Must develop PDPS only check Must develop	
Developing access capability to SAVE system	Must develop	
Introduce equipment into system to capture digital images of identity source documents so that images can be retained in electronic storage in a transferable format	Must develop	
Retain paper copies of source documents for a minimum of 7 years or images of source documents presented for a minimum of 10 years	Must develop	
Subject each person applying for a driver's license or identification card to mandatory facial image capture	Currently required (digital image)	
Establish an effective procedure to confirm or verify a renewing applicant's information	Currently required	
In the event that a social security account number is already registered to or associated with another person to which any state has issued a DL/ID card, the state shall resolve the discrepancy and take appropriate action	In state can identify duplicate number Must connect to SSOLV and set up verification of use between states	
Check other states if a person already was issued a DL in another state	Current tool is PDPS which could be expanded or utilize CDLIS for this purpose	
Ensure physical security of locations where DL/ID cards are produced	Current Practice	
Subject all person's authorized to manufacture or produce DL/ID cards to appropriate security clearance requirements	Needs to be done	
Establish fraudulent document recognition training programs for appropriate employees engaged in the issuance of DL/ID cards	Needs to be implemented	
Limit period of validity of DL/ID cards that are not temporary to a period not exceeding 8 years	Current Licenses/ID's expire in 5 yrs	

REAL ID ACT REQUIREMENT	IMPACT	ASSUMPTIONS
Alternative document design if it does not meet federal standard	Need to develop new format	
Legal Presence Requirement	Legislation introduced with expected passage in 2006	
Provide electronic access to all other states to information contained in the motor vehicle database of the state	Needs to be developed	
Maintain a state motor vehicle database that contains at a minimum: <ul style="list-style-type: none"> <li>▪ All data fields printed on DL/ID cards</li> <li>▪ motor vehicle driver's histories, including motor vehicle violations, suspensions and points on licenses</li> </ul>	Current practice Current practice	
<b>Optional</b> Development and issuance of a certificate of driving – not for federal identification purposes – for those who cannot prove lawful presence.	May consider as option	

**What questions does your jurisdiction have as a result of the passing of the Real ID Act?**

**Alaska will be introducing the DLA in the next session. If it does not pass in 06' will be unable to qualify for grants and federal assistance. This was our comprehension of the REAL ID Act language**

**If your jurisdiction has done an impact analysis please provide us with a copy of the analysis.**

**Alaska has not completed an impact analysis but is in the process.**

## KEY PROVISIONS IN TITLE I OF THE UNFUNDED MANDATES REFORM ACT

Title I of the Unfunded Mandates Reform Act of 1995 (UMRA) attempts to ensure that the Congress has more information about the potential direct costs of federal mandates before enacting legislation. It also establishes procedures designed to make it more difficult for the Congress to enact legislation containing unfunded mandates on other levels of government.

### Defining Mandates and Their Costs

The act defines a mandate as any provision in legislation, statute, or regulation that would impose an *enforceable duty* on state, local, or tribal governments or the private sector, or that would reduce or eliminate the amount of funding authorized to cover the costs of existing mandates. Duties that arise as a condition of federal assistance or from participation in a voluntary federal program are not mandates. In the case of large entitlement grant programs, a new condition or a reduction in federal assistance is a mandate, but only if states lack the flexibility to offset the new costs or the loss of federal funding with reductions elsewhere in the program. Certain provisions--such as those enforcing constitutional rights or those necessary for national security--are excluded from UMRA's procedures.

Direct costs are defined as amounts that mandated entities would be required to spend to comply with the enforceable duty. They also include amounts that states, localities, and tribes "would be prohibited from raising in revenues." Direct costs exclude amounts that would be spent under current laws and programs. They are offset by any direct savings resulting from compliance with the mandate.

### Mandate Cost Statements: CBO's Role

The law requires the Congressional Budget Office (CBO) to provide a statement to Congressional authorizing committees about whether reported bills contain federal mandates. If the total direct costs of all mandates in a bill are above a specified threshold in any of the first five fiscal years in which the mandate is effective, CBO must provide an estimate of those costs (if feasible) and the basis of its estimate. The statutory threshold is \$50 million for intergovernmental mandates and \$100 million for private-sector mandates, adjusted annually for inflation. Authorizing committees must publish CBO's mandate statements in their reports or in the *Congressional Record* before a bill is considered on the floor of the House or Senate.

The CBO statement must also include an assessment of whether the bill authorizes or otherwise provides funding to cover the costs of any new federal mandate. In the case of intergovernmental mandates, the cost statement must, under certain circumstances, estimate the appropriations needed to fund such authorizations for up to 10 years after the mandate takes effect.

Conference committees must, "to the greatest extent practicable," ensure that CBO prepares statements for conference agreements or amended bills if they contain mandates not previously considered by either House or if they impose greater direct costs than the version considered earlier. At the request of a Senator, CBO must estimate the costs of intergovernmental mandates contained in an amendment the Senator may wish to offer.

The Congress may also call on CBO to prepare analyses at other stages of the legislative process. If asked by the Chairman or Ranking Minority Member of a committee, CBO will help committees analyze the impact of proposed legislation, conduct special studies of legislative proposals, or compare a federal agency's estimate of the costs of proposed regulations to implement a federal mandate with CBO's estimate made when the law was enacted.

### Enforcement Mechanisms

Section 425 of UMRA sets out rules for both the House and Senate that prohibit them from considering legislation that contains mandates unless certain conditions are met. Consideration of a reported bill is not "in order" unless the committee has published a CBO statement about the costs of mandates. It is also not in order to consider any bill, amendment, motion, or conference report that would create an intergovernmental mandate, or would increase the direct costs of an existing intergovernmental mandate by more than \$50 million, unless the legislation provides direct spending authority or authorizes appropriations sufficient to cover the costs. Such authorizations would have to be specified for each year (up to 10 years) after the effective date; in the Senate, they would also have to be consistent with the estimated costs of the mandate in the legislation as determined by the Senate Budget Committee. In addition, any bill, amendment, motion, or conference report that authorizes the appropriation of funds to pay for an intergovernmental mandate contained in the bill whose costs exceed the threshold is not in order unless it provides a way to terminate or scale back the mandate if agencies determine that the appropriated funds are not sufficient to cover those costs.

Finally, although UMRA does not specifically require CBO to analyze the cost of mandates in appropriation bills, it is not in order to consider legislative provisions in such bills--or amendments to them--that increase the direct costs of intergovernmental mandates unless an appropriate CBO statement is available.

Those rules are not self-enforcing, however; a Member must raise a point of order to enforce them. In the House, if a Member raises a point of order, the full House votes on whether to consider the bill regardless of whether there is a violation. In the Senate, if a point of order is raised and sustained, the bill is essentially defeated.