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DEPARTMENT OF HOMELAND SECURITY Office of the Secretary
6 CFR Part 37 [Docket No. DHS-2006-0030] RIN 1601-AA37
Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies
for Official Purposes
AGENCY: Office of the Secretary, DHS.
ACTION: Notice of proposed rulemaking.

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I. Background

A. Statutory Authority

The REAL ID Act of 2005 (the Act) prohibits Federal agencies, effective May 11, 2008, from accepting a driver's license or DMV-issued personal identification card issued by a State for an official purpose unless the issuing State is meeting the requirements of the Act. The Act requires DHS to determine whether a State is meeting the Act's requirements based upon certifications submitted by each State in a manner prescribed by DHS. The Secretary of Homeland Security is authorized under section 203 of the Act to issue regulations as necessary to set the standards required under the Act. This rule proposes implementation standards for States to meet the Act's requirements for issuance of driver's licenses and identification cards intended for acceptance by Federal agencies for official purposes.

C. Summary of the Proposed Rule

1. Connectivity of Databases Mandated by the Act DHS envisions

that the operation of both the State data query of Federal reference databases and the State-to-State data exchanges will be left to the States, as is currently the practice in driver's licensing.

The proposal by DHS to leave the operation of licensing verification with the States should resolve concerns about a centralized database operated by the Federal Government.

documents.

b. The State-to-State Data Exchange. Section 202(d)(12) of the Act mandates that States provide electronic access to information contained in the motor vehicle database of the State to all other States; and section 202(d)(13) requires that the State motor vehicle database contains, at a minimum, all data fields printed on driver's license and identification cards, and motor vehicle driver's histories, including motor vehicle violations, suspensions, and points on licenses.

D. Document Standards for Issuing a REAL ID Driver's License or Identification Card

Section 202(c)(1) and (2) of the Act requires that States issuing REAL ID driver's licenses and identification cards obtain and verify from applicants documentation establishing--

(1) The applicant's identity, through a photo identity document, or a non-photo identity document that includes full legal name and date of birth if a photo identity document is not available;

(2) Date of birth;

(3) Proof of SSN or ineligibility for an SSN;

(4) The applicant's address of principal residence; and

(5) Lawful status in the United States.

E. Verification of Information Presented

Section 202(c)(3)(A) of the Act requires verification from the issuing agency for issuance, validity, and completeness of documentation to establish the following:

Identity.

Date of birth.

Proof of SSN, or that the person is not eligible for an SSN.

The person's name and address of principal residence.

The person's lawful status in the United States.

The documents that individuals are required to present are described in section II.D.1 and are listed in Sec. 37.11 of the proposed regulation. F. Exceptions Processing for Extraordinary Circumstances

DHS recognizes that there may be extraordinary circumstances where the required documents verifying an applicant's identity, date of birth, SSN, principal address or lawful status may be unavailable. This would include applicants such as a homeless person with no fixed address, as well as an individual who has lost all documentation to a natural disaster such as Hurricanes Katrina and Rita. In such circumstances, DHS believes that the States should have the flexibility to accept alternative documents to establish a particular data element, provided that the State follows defined, written, procedures that are approved by DHS as part of the State certification process for REAL ID. Therefore, DHS proposes that, where a State chooses to establish an exceptions process, that process must include, at a minimum, the following requirements:

The driver record maintained by the DMV must indicate when an alternate document is accepted.

H. Minimum Driver's License or Identification Card Data Element Requirements

To meet the requirements of section 202(b) of the Act, a State is required to include, at a minimum, the following information and features on each driver's license and identification card:

- (1) Full legal name;
- (2) Date of birth;
- (3) Gender;
- (4) Driver's license or identification card number;
- (5) A digital color photograph;
- (6) Address of principal residence;
- (7) Signature;
- (8) Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for any fraudulent purpose;
- (9) A common MRT, with defined minimum data elements.official purposes. DHS looked at several types of technology that could be used, including:
 - A 1D bar code, commonly used for tracking inventory, mostly used by supermarket scanners. This does not have the capability to store significant amounts of information.
 - A 2D bar code. This is currently used by 45 of 50 States, plus the District of Columbia. It stores a greater amount of information than the 1D bar code, although the "scanning" process is extremely similar to the 1D bar code. This is also the current AAMVA standard.
 - An optical stripe. This is currently used on DHS-issued permanent resident cards and border crossing cards, and stores information digitally, much like a compact disc.
 - A contact integrated circuit chip. A contact integrated circuit chip (ICC) in a document could be read by inserting the document in a contact ICC reader.
 - A contactless integrated circuit chip. A contactless integrated circuit chip in a document could be read by transmitting data via radio frequency to readers.

Of these five options, DHS believes the following are inappropriate for the purposes of this proposal:

The 1D bar code does not have the storage capacity to hold the amount of data that the Act requires, and would inhibit States from storing additional State-specific information on the card, should they so choose.

The integrated contactless chip was not deemed an appropriate technology for this particular document, as there is not an identifiable need for driver's licenses and identification cards to be routinely read at a distance.