

States' Responsibilities Under the REAL ID Act of 2005

Improved Security for State-Issued* Driver's Licenses and Identification Cards

Minimum Document Requirements and Issuance Standards for Federal Recognition

In order for state-issued driver's licenses and ID cards to be accepted by any federal agency for any official purpose[†] on or after May 11, 2008, the issuing state must be certified by the Department of Homeland Security (DHS) as meeting the following requirements.

A. Minimum document requirements—A state must, at a minimum, include the following information and features on each license and ID card:

- ▶ The applicant's full legal name, date of birth, gender, and address of principle residence;

[Many states do not require use of the full legal name, so people can use middle names or nicknames and thus ensure that law enforcement cannot match them against prior records. Each of these data requirements will help to differentiate people with the same name and result in fewer false matches on lists like the "No Fly" list.]

- ▶ The applicant's unique license or ID card number;

[Not all states currently include such a number on temporary licenses and ID cards, which makes them hard to validate.]

- ▶ A digital photograph of the applicant;

[Some 20 states still use regular photos, which are sealed onto the license with plastic laminate. These can easily be altered by cutting the laminate and substituting a different

* The law applies to the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

† The term "official purpose" includes, but is not limited to, accessing federal facilities, boarding commercial aircraft, entering nuclear power plants or other critical infrastructure, and any other purposes the Secretary of Homeland Security determines.

photo. A digital photo, which is printed directly on the card, can be stored inexpensively and transmitted to law enforcement quickly.]

- ▶ The applicant's signature;
- ▶ Physical security features to prevent tampering, counterfeiting, and duplication of licenses and ID cards; and

[It is up to each state to decide which security features to adopt.]

- ▶ A common, machine-readable technology, with defined minimum data elements.

[Both the common machine-readable technology and the defined minimum data elements have been tested and recommended by the American Association of Motor Vehicle Administrators (AAMVA), which is comprised of representatives of the motor vehicle administrations of all the states, plus the District of Columbia. AAMVA also has recommended model legislation to protect the privacy of the data contained on the machine-readable strip. Machine-readable technology should in the relatively near future allow less data to appear on the face of the card, and more to be stored securely on the data strip.]

B. Minimum Issuance Standards—A state must, at a minimum, require presentation and verification of the following information before issuing a license or ID card:

- ▶ A photo identity document (or a non-photo identity document, if it includes both the applicant's full legal name and date of birth);
- ▶ Documentation showing the applicant's date of birth;
- ▶ Proof of the applicant's social security number or verification that the applicant is not eligible for a social security number;
- ▶ Documentation showing the applicant's name and address of principle residence; and
- ▶ Documentary evidence that the applicant:

1. Is a U.S. citizen or national;
2. Is an alien lawfully admitted for permanent or temporary residence;

[This includes all green card holders, who are permanent, and humanitarian parolees, for example, who are temporary.]

3. Has conditional permanent resident status;

[These are fiancés, for the most part, who are admitted conditionally for two years to ensure that the marriage is legitimate.]

4. Is an approved asylee or refugee;
5. Has a valid nonimmigrant visa;

[These are temporary workers, foreign students, visiting professors and researchers, etc.]

6. Has approved deferred action status; or

[These are aliens who were unlawfully present, but have been granted permission to stay for humanitarian reasons.]

7. Has a pending application for adjustment of status to that of a permanent resident or a conditional permanent resident.

[For the most part, these are people who entered legally with nonimmigrant visas and married a citizen or found an employer to sponsor them. The exception is a group of a few hundred thousand illegal aliens who have applied for legal status under a provision of the law that expired in 2000, but who have not yet received green cards either because of processing delays at DHS or because the quotas for the category under which they are being admitted (i.e., family-based or employment based) are oversubscribed.]

NOTE: States retain their prerogative to decide which U.S.-issued documents will be accepted to meet the requirements above. Any combination of acceptable documents may be presented, as long as, together, they establish the applicant's legal name, DOB, social security number, principle address, and legal status. Examples of acceptable combinations include 1) a passport and a social security card; 2) a military ID (which shows a social security number) and a birth certificate; 3) a current driver's license, a paycheck stub (which shows a social security number), and a birth certificate; 4) a foreign passport, a utility bill and a social security card; and 5) a state-issued ID card, a voter registration card, and a social security card.

C. Temporary Licenses and ID Cards—A state may only issue temporary licenses or ID cards to applicants who present documentation establishing that they fall under categories 5 through 7 above. Each temporary license or ID card must expire on the same date as the applicant's authorized stay in the United States. If there is no specific expiration date on such an applicant's immigration documentation, the license or ID card must expire after one year. The cards must clearly indicate that they are temporary and must state the expiration date. They may be renewed only if the applicant presents valid documentation that his/her lawful status has been extended.

D. Verification of Documents—Before issuing a driver's license or ID card, a state must verify with the issuing agency each document presented to satisfy the minimum issuance standards in paragraph 2 above.

- ▶ Other than an official passport, no foreign documents may be accepted to satisfy the issuance standards.

[This is the provision that prohibits the states from accepting the matricula consular and other identification documents issued by foreign consulates.]

- ▶ By September 11, 2005, each State must enter into a memorandum of understanding with DHS to use the automated, internet-based Systematic Alien Verification for Entitlements (SAVE) system to verify immigration documents presented by applicants to prove legal presence.

[The SAVE system is the same one that is used to verify employment authorization under the Basic Pilot program.]

E. Other Requirements—A state must adopt the following practices in the issuance of licenses and ID cards:

- ▶ Capture and retain in a transferable format digital images of identity source documents;
- ▶ Retain paper copies of source documents for at least seven years or electronic copies for 10 years;

[These two requirements will expedite the license renewal process, since the applicant will not have to resubmit the documents in most cases. They also will assist law enforcement in identity theft and concealed identity investigations.]

- ▶ Require each applicant for a license or ID card to submit to a facial image capture;

[This is believed by some to be a biometric identifier provision, since facial image capture could be used with facial recognition software. While states are not precluded from using the images as biometric identifiers, there is no requirement in the law that they do so. The prohibitive expense of creating a useful facial recognition system is likely to dissuade most states.]

- ▶ Verify social security numbers with the Social Security Administration;

[SSA already has an electronic verification system, which most state motor vehicle departments already use.]

- ▶ Refuse to issue a license to an applicant who has a valid license from another state without confirmation that the other license has been or will be terminated;
- ▶ Ensure the physical security of locations where licenses and ID cards are produced and of the materials used to produce them;
- ▶ Subject all persons authorized to produce licenses and ID cards to appropriate security clearance requirements;
- ▶ Establish fraudulent document recognition training programs for employees who issue licenses and ID cards;

- ▶ Limit the period of validity of all licenses and ID cards to no more than eight years;
- ▶ If a state decides to issue licenses or ID cards that do not meet all the requirements [e.g., Tennessee’s driving certificate for those who cannot establish legal presence], clearly state on the face of such cards that they may not be accepted for federal identification or other official purpose and use a unique design or color to make them stand out;
- ▶ Provide electronic access to all other states to information contained in the motor vehicle database of the state; and

[All states except Michigan and Wisconsin already provide electronic access to other states through two compacts—the Driver License Compact and the Non-Resident Violators Compact. Such access permits motor vehicle and law enforcement personnel to verify that a license is valid and was issued to the bearer and to check whether the license has been suspended or revoked or had points subtracted for violations. State and Federal privacy laws govern access to and use of the data in the state databases. REAL ID would not affect those privacy laws.]

- ▶ Maintain a state motor vehicle database that contains, at a minimum, all data fields printed on licenses and ID cards and drivers’ histories, including violations, suspensions, and points.

[All states already maintain such databases.]

F. Grants to States/Authority/Extension of Deadline—DHS is authorized to make grants to states between 2005 and 2009 to assist them in conforming to all the standards specified in the new law. DHS is required to consult with the states in developing regulations, setting standards, and issuing grants authorized by this law. Finally, if a state provides adequate justification, DHS is authorized to grant an extension of the three-year period the law gives the states to come into compliance if their licenses and ID cards are to be accepted for federal purposes.

[Since the authorization and appropriations processes are separate at the federal level, the REAL ID Act only authorizes funding for the grants to states. The money will have to be appropriated each year. Congress is off to a good start, though, as \$100 million was earmarked for these grants in the FY 2006 DHS appropriations bill that passed the House on May 17. The bill now awaits action in the Senate.]