



9110-9B

## DEPARTMENT OF HOMELAND SECURITY

### **Agency Information Collection Activities: REAL ID: Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Office Purposes**

[Docket No. DHS – 2019-0018]

**AGENCY:** Office of the Secretary, Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; Extension without change of a currently approved collection, 1601-0005.

**SUMMARY:** The Department of Homeland Security (DHS), Office of the Secretary, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted until [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This process is conducted in accordance with 5 CFR 1320.1

**ADDRESSES:** You may submit comments, identified by docket number DHS-2019-0018, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Please follow the instructions for submitting comments.
- **E-mail:** [dhs.pra@hq.dhs.gov](mailto:dhs.pra@hq.dhs.gov). Please include docket number DHS-2019-0018 in the subject line of the message.

**SUPPLEMENTARY INFORMATION:** The REAL ID Act of 2005 (the Act) prohibits

Federal agencies from accepting State-issued drivers' licenses or identification cards for any official purpose – defined by the Act and regulations as boarding commercial aircraft, accessing federal facilities, or entering nuclear power plants – unless the license or card is issued by a State that meets the requirements set forth in the Act. Title II of Division B of Pub. L. 109-13, codified at 49 U.S.C. 30301 note. The REAL ID regulations, which DHS issued in January 2008, establish the minimum standards that States must meet to comply with the Act. See 73 FR 5272, also 6 CFR part 37 (Jan. 29, 2008). These include requirements for presentation and verification of documents to establish identity and lawful status, standards for document issuance and security, and physical security requirements for driver's license production facilities. For a State to achieve full compliance, the Department of Homeland Security (DHS) must make a final determination that the State has met the requirements contained in the regulations and is compliant with the Act.<sup>1</sup> The regulations include new information reporting and record keeping requirements for States seeking a full compliance determination by DHS. As discussed in more detail below, States seeking DHS's full compliance determination must certify that they are meeting certain standards in the issuance of driver's licenses and identification cards and submit security plans covering physical security of document production and storage facilities as well as security of personally identifiable information. 6 CFR 37.55(a). States also must conduct background checks and training for employees involved in the document production and issuance processes and retain and store applicant photographs and other source documents. 6 CFR 37.31 and 37.45. States must recertify compliance with REAL ID every three years on a rolling basis as determined by the Secretary of Homeland Security. 6 CFR 37.55.

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### *Certification and Recertification Process Generally*

Section 202(a)(2) of the REAL ID Act requires the Secretary to determine whether a State is meeting its requirements, “based on certifications made by the State to the Secretary.” To assist DHS in making a final compliance determination, 37.55 of the rule requires the submission of the following materials:

- 1) A certification by the highest level Executive official in the state overseeing the DMV that the state has implemented a program for issuing driver’s licenses and identification cards in compliance with the REAL ID Act.
- 2) A letter from the Attorney General of the State confirming the State has the legal authority to impose requirements necessary to meet the standards.
- 3) A description of a State’s exceptions process to accept alternate documents to establish identity and lawful status and wavier process used when conducting background checks for individuals involved in the document production process.
- 4) The State’s security plan.
- 5) State Certification Checklist

Additionally, after a final compliance determination by DHS, states must recertify compliance every three years on a rolling basis as determined by DHS. 6 CFR 37.55(b).

State REAL ID programs will be subject to DHS review to determine whether the state meets the requirements for compliance. States must cooperate with DHS’s compliance review and provide any reasonable information requested by DHS relevant to determining compliance. Under the rule, DHS may inspect sites associated with the enrollment of applicants and the production, manufacture, personalization, and issuance

of driver's licenses or identification cards. DHS also may conduct interviews of employees and contractors involved in the document issuance, verification, and production processes. 6 CFR 37.59(a).

Following a review of a State's certification/recertification package, DHS may make a preliminary determination that the State needs to take corrective actions to achieve full compliance. In such cases, a State may have to respond to DHS and explain the actions it took or plans to take to correct any deficiencies cited in the preliminary determination or alternatively, detail why the DHS preliminary determination is incorrect. 6 CFR 37.59(b).

### *Security Plans*

In order for States to be in compliance with the Act, they must ensure the security of production facilities and materials and conduct background checks and fraudulent document training for employees involved in document issuance and production. REAL ID Act sec. 202(d)(7)-(9). The Act also requires compliant licenses and identification cards to include features to prevent tampering, counterfeiting, or duplication. REAL ID Act sec. 202(b). To document compliance with these requirements the regulations require States to prepare a security plan and submit it as part of their certification package. 6 CFR 37.41. At a minimum, the security plan must address steps the State is taking to ensure:

- The physical security of production materials and storage and production facilities;
- Security of personally identifiable information maintained at DMVs including a privacy policy and standards and procedures for document retention and destruction;

- Document security features including a description of the use of biometrics and the technical standards used;
- Facility access control including credentialing and background checks;
- Fraudulent document and security awareness training;
- Emergency response;
- Internal audit controls; and
- An affirmation that the State possesses the authority and means to protect the confidentiality of REAL ID documents issued in support of criminal justice agencies or similar programs.

*Background checks and waiver process*

Within its security plans, the rule requires States to outline their approach to conducting background checks of certain DMV employees involved in the card production process. 6 CFR § 37.45. Specifically, States are required to perform background checks on persons who are involved in the manufacture or production of REAL ID driver's licenses and identification cards, as well as on individuals who have the ability to affect the identity information that appears on the driver's license or identification card and on current employees who will be assigned to such positions. The background check must include a name-based and fingerprint-based criminal history records check, an employment eligibility check, and for newer employees a prior employment reference check. The regulation permits a State to establish procedures to allow for a waiver for certain background check requirements in cases, for example, where the employee has been arrested, but no final disposition of the matter has been reached.

### *Exceptions Process*

Under the rule, a State DMV may choose to establish written, defined exceptions process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity, and date of birth. 6 CFR 37.11(h). Alternative documents to demonstrate lawful status will only be allowed to demonstrate U.S. citizenship. The State must retain copies or images of the alternate documents accepted under the exceptions process and submit a report with a copy of the exceptions process as part of its certification package.

### *Recordkeeping*

The rule requires States to maintain photographs of applicants and records of certain source documents. Paper or microfiche copies of these documents must be retained for a minimum of seven years. Digital images of these documents must be retained for a minimum of ten years. 6 CFR 37.31.

The collection of the information will support the information needs of DHS in its efforts to determine state compliance with requirements for issuing REAL ID driver's licenses and identification cards. States may submit the required documents in any format that they choose. DHS has not defined specific format submission requirements for states. DHS will use all of the submitted documentation to evaluate State progress in implementing the requirements of the REAL ID Final Rule. DHS has used information provided under the current collection to grant extensions and track state progress.

Submission of the security plan helps to ensure the integrity of the license and identification card issuance and production process and outlines the measures taken to protect personal information collected, maintained, and used by state DMVs.

Additionally, the collection will assist other Federal and State agencies conducting or assisting with necessary background and immigration checks for certain employees. The purpose of the name-based and fingerprint based CHRC requirement is to ensure the suitability and trustworthiness of individuals who have the ability to affect the identity information that appears on the license; have access to the production process; or who are involved in the manufacture or issuance of the licenses and identification cards.

In compliance with GPEA, States will be permitted to electronically submit the information for their security plans, certification packages, recertifications, extensions, and written exceptions processes. States will be permitted to submit electronic signatures but must keep the original signature on file. Additionally, because they contain sensitive security information (SSI), the security plans must be handled and protected in accordance with 49 CFR part 1520. 6 CFR 37.41(c). The final rule does not dictate how States must submit their employees' fingerprints to the FBI for background checks; however it is assumed States will do so via electronic means or another means determined by the FBI.

This information will be collected directly from the States to assist DHS in making REAL ID compliance determinations and is not otherwise available.

The information collection discussed in this analysis applies to states, state agencies, and certain employees involved in the card production process. Therefore, it is DHS's belief that the information collection does not have a significant impact on a substantial number of small businesses.

In accordance with the regulations, submission of certification materials and security plans will assist DHS in determining full compliance. DHS may also review

documents, audit processes, and conduct inspections. Failure to make a compliance determination would prevent state-issued licenses and identification cards from being used for official purposes, which includes boarding commercial aircraft and accessing federal facilities. Additional requirements for recordkeeping, document retention and storage, as well as background checks for certain employees help to ensure the integrity of the card production and issuance process and will assist DHS during audits or inspections of a state's processes.

Information provided will be protected from disclosure to the extent appropriate under applicable provisions of the Freedom of Information Act, the Privacy Act of 1974, the Driver's Privacy Protection Act, as well as DHS's Privacy Impact Assessment for the REAL ID Act.

There has been no program changes or new requirements established as a result of this collection request.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**ANALYSIS:**

AGENCY: Office of the Secretary, DHS

Title: Agency Information Collection Activities: REAL ID: Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Office Purposes

OMB Number: 1601-0005

Frequency: Annually

Affected Public: State, local, and tribal governments.

Number of Respondents: 18

Estimated Time Per Respondent: 750 hours

Total Burden Hours: 13,500 hours

**Dated:** April 8, 2019.

Scott Ewalt,

Acting Executive Director,

Enterprise Business Management Office

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