

# 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.

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