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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: Final rule; date change.

SUMMARY: Pursuant to the Department of Homeland Security's REAL ID regulations, States seeking an extension of the date by which they must begin to comply with REAL ID requirements currently must submit a request for extension by October 11, 2009. This final rule changes that date to December 1, 2009.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE
FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Steve Kozar, Office of State-Issued
Identification Support, Screening Coordination Office, Department of Homeland
Security, Washington, DC 20528 (202) 447-3368.

SUPPLEMENTARY INFORMATION:

I. ANALYSIS OF THIS FINAL RULE

The REAL ID Act of 2005 (the Act)¹ prohibits Federal agencies, effective May 11, 2008, from accepting a driver's license or personal identification card for any official purpose unless the license or card has been issued by a State that is meeting the requirements set forth in the Act. The Act sets forth certain minimum standards applicable to the driver's license issuance process. Section 205(b) of the REAL ID Act authorizes the Secretary of Homeland Security to grant States extensions of time to meet the requirements of the Act if the State provides adequate justification for noncompliance.

On January 29, 2008, DHS promulgated a final rule implementing the requirements of the Act. See 73 FR 5272; also 6 CFR part 37. The final rule, pursuant to the Secretary's authority under § 205(b) of the REAL ID Act, extended the original compliance date from May 11, 2008 to January 1, 2010, for each State that timely filed a request for extension. All States timely filed the required requests for extensions and were granted an extension of the compliance date. The final rule further provided that any State requiring an extension of the compliance date must submit a request for such an extension to DHS no later than October 11, 2009, and include with that submission a material compliance checklist demonstrating that the State has met certain compliance milestones. See 6 CFR 37.63.

DHS has determined that additional time is warranted for States to submit a request for an additional extension. Accordingly, under this final rule, DHS is revising the regulatory text at 6 CFR 37.63(b) to change the deadline by which States must file a

¹ Division B – REAL ID Act of 2005, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. 109-13m 119 Stat. 231, 302 (May 11, 2005) (codified at 49 U.S.C. 30301 note).

request for an extension of the compliance date from October 11, 2009 to December 1, 2009.

II. REGULATORY ANALYSES

A. Administrative Procedure Act

This final rule addresses requirements that are procedural in nature. This rule does not change the January 1, 2010 compliance date - the date by which States must begin to issue licenses and identification cards that are in compliance with the standards and requirements under the REAL ID Act and regulations - but merely changes the date by which States may seek a further extension of that deadline. This rule, therefore, does not alter the substantive rights of, nor impose new requirements on, any State or individual. This final rule, therefore, is exempt from notice and comment requirements under 5 U.S.C. 553(b)(A). For the same reason, under 5 U.S.C. 553(d)(3), this rule is effective immediately upon publication in the **Federal Register**.

B. Executive Order 12866 (Regulatory Planning and Review)

This final rule is not a “significant regulatory action” under section 3(f)(1) of Executive Order 12866, “Regulatory Planning and Review,” therefore the Office of Management and Budget has not reviewed this rule. DHS anticipates that the changed filing deadline in this final rule will not increase REAL ID-related compliance costs to the affected entities and, in most cases, will provide advantages by changing the filing deadline.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121),

requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. This final rule, however, makes changes for which notice and comment are not necessary. Accordingly, DHS is not required to prepare a regulatory flexibility analysis. 5 U.S.C. 603, 604.

D. Paperwork Reduction Act

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

E. Executive Order 13132 (Federalism)

A rule has implications for federalism under Executive Order 13132, “Federalism,” if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Unfunded Mandates Reform Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. This final rule will not result in such an expenditure.

G. Executive Order 13175 (Tribal Consultation)

This rule does not have tribal implications under Executive Order 13175,

“Consultation and Coordination with Indian Tribal Governments,” because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

H. Executive Order 13211 (Energy Impact Analysis)

We have analyzed this rule under Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.” We have determined that it is not a “significant energy action” under that Order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 6 CFR Part 37

Document security, driver’s licenses, identification cards, incorporation by reference, motor vehicle administrations, physical security.

THE AMENDMENTS

For the reasons set forth above, the Department of Homeland Security amends 6 CFR part 37 as follows:

TITLE 6—HOMELAND SECURITY

CHAPTER I—DEPARTMENT OF HOMELAND SECURITY, OFFICE OF THE SECRETARY


§ 37.63 Extension of deadline.

1. The authority citation for part 105 continues to read as follows:

Authority: 49 U.S.C. 30301 note; 6 U.S.C. 111, 112.

§ 37.63 [Amended]

2. Amend §37.63(b) by removing the date "October 11, 2009" and adding in its place the date "December 1, 2009".



Janet Napolitano,
Secretary.