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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; stay.

SUMMARY: Pursuant to the Department of Homeland Security's REAL ID regulations, States must be in material compliance with the REAL ID ACT of 2005, 49 U.S.C. 30301 note, by January 1, 2010. This final rule stays that date. Any new material compliance dates will be announced in a future **Federal Register** document.

DATES: Effective on December 28, 2009, 6 CFR 37.51(b) is stayed from January 1, 2010, until further notice. The Department of Homeland Security will lift the stay and announce any new compliance dates by publication in a document 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: 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. Section 205(b) of the 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 extended the initial compliance date from May 11, 2008 to May 11, 2011. The final rule allowed States to apply for two extensions to meet these requirements—the first extension, given to States in March 2008, is set to expire on December 31, 2009. States may request an extension that would give States until May 11, 2011 to fully comply with the Act and the implementing regulations.

Based on ongoing communications with the States throughout the development of the REAL ID program, a large majority of States and territories—46 of 56—have informed DHS that they will not be able to meet the REAL ID material compliance deadline. To avoid the unnecessary disruption of commercial air travel over the upcoming holiday season that would result if Federal agencies cannot accept State-issued identification cards from travelers beginning January 1, 2010, the Secretary of Homeland Security, under the authority granted to her under section 205(b) of the Act, is staying the material compliance deadline of January 1, 2010, until further notice. Although the material compliance date has been stayed, the full compliance date of May 11, 2011, remains in effect.

This stay is a temporary approach, but is not an acceptable solution over the long-term. DHS continues to urge Congress to enact a permanent legislative solution to fulfill this key 9/11 Commission recommendation. That is why Secretary Napolitano has supported the efforts of Governors and Congress to enact PASS ID, which puts States on the path to implementing national security standards for State identification cards that will enhance security across the country.

II. Regulatory Analyses

A. Administrative Procedure Act

The Administrative Procedure Act (APA) provides that an agency may

dispense with notice and comment rulemaking procedures when an agency, for “good cause,” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” *See* 5 U.S.C. 553(b)(B). As noted earlier in this preamble, DHS has communicated extensively with States throughout the development of the REAL ID program. Based on these communications, and the recent submissions from the States, DHS has determined that, although States are making significant enhancements to the security of their driver's licenses and State-issued identification documents, the vast majority of States cannot meet all of the statutorily-mandated requirements under the REAL ID Act by January 1, 2010. In order to minimize impact on the American public as well as to ensure States continue to invest in security enhancements, the January 1, 2010, material compliance deadline is stayed until further notice.

The REAL ID Act prohibits Federal agencies from accepting driver's licenses or personal identification cards for any official purpose unless the issuing State is meeting the requirements set forth in the Act. “Official purpose” is defined in both the Act and in the regulations to include boarding Federally-regulated commercial aircraft. If the vast majority of States are unable to meet the January 1, 2010 material compliance deadline, in the absence of an extension, Federal agencies, including TSA screeners, beginning January 1, 2010, would not be able to accept State-issued driver's licenses or identification cards from residents of these States for official purpose, including for use in boarding commercial aircraft. Travelers would have to use alternative, non-State-issued documents to demonstrate identity, as described in TSA's procedures, to pass through security at airports. All U.S. residents traveling by commercial aircraft would experience very significant travel delays; in fact, commercial aviation would be severely impacted. Such a disruption to air travel is not in the public's best interest in particular during the holiday season. It would also be contrary to the public interest, therefore, to seek public comment prior to extending the compliance date, given that such comments reasonably could not be

¹ The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Public Law 109-13, 119 Stat. 231, 302 (May 11, 2005) (codified at 49 U.S.C. 30301 note).

received and acted upon prior to the date.

Based on the above, DHS finds that pre-promulgation notice and comment for this rule would be impracticable, unnecessary, and contrary to the public interest. For this same reason, good cause exists to make this rule effective immediately upon publication in the **Federal Register**. See 5 U.S.C. 553(d)(3).

B. Executive Order 12866 (Regulatory Planning and Review)

This rule constitutes a “significant regulatory action” under Executive Order 12866, and therefore has been reviewed by the Office of Management and Budget. Under Executive Order 12866, a significant regulatory action is subject to an Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Executive Order defines “significant regulatory action” as one that is likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. Because this rule eliminates the material compliance date and is part of a previously published rule that received considerable public attention, this rule raises novel policy issues and, thereby, is subject to OMB review.

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 (Pub. L. 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 million (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:

PART 37—REAL ID DRIVER’S LICENSES AND IDENTIFICATION CARDS

■ 1. The authority citation for part 37 continues to read as follows:

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

§ 37.51 [Amended]

■ 2. In Section 37.51, paragraph (b) is stayed from January 1, 2010 until further notice.

Janet Napolitano,
Secretary.

[FR Doc. E9–30638 Filed 12–24–09; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS-2008-0147]

Change in Disease Status of the Republic of Korea With Regard to Foot-and-Mouth Disease and Rinderpest

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to add the Republic of Korea to the list of regions that are considered free of rinderpest and foot-and-mouth disease (FMD). We are taking this action because we have conducted an evaluation and determined that the Republic of Korea is free of rinderpest and FMD. We are also adding the Republic of Korea to the list of regions that are subject to certain import restrictions on meat and meat products because of their proximity to or trading relationships with rinderpest- or FMD-affected countries. These actions will update the disease status of the Republic of Korea with regard to rinderpest and FMD while continuing to protect the United States from an introduction of those diseases by providing additional requirements for meat and other animal products imported into the United States from the Republic of Korea.

DATES: *Effective Date:* January 12, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Julia Punderson, Senior Staff