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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Minta Montalbo
Department of Administration

FROM: Scott Meriwether, Office of the Lieutenant Governor
465.4081

DATE: November 16, 2018

RE: Filed Permanent Regulations: Department of Administration

A handwritten signature in blue ink, appearing to be "Scott Meriwether".

Department of Administration Regulation re: State Issued Driver's Licenses and
Identification Cards that are federally compliant (2 AAC 90.420; 2 AAC 90.550 - 670)

Attorney General File:	2018200305
Regulation Filed:	11/15/2018
Effective Date:	1/1/2019
Print:	228, January 2018

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO REGULATIONS
OF DEPARTMENT OF ADMINISTRATION

The attached 20 pages of regulations, dealing with driver's licenses and identification cards that are federally compliant (REAL ID), are adopted and certified to be a correct copy of the regulation changes that the Department of Administration adopts under the authority of AS 28.05.011 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

Although no public comments were received, the Department of Administration paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on January 1, 2019, as provided in AS 44.62.180.

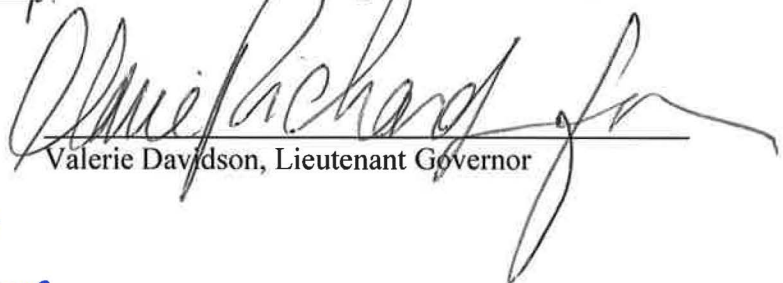
Date: 11-13-18


Leslie Ridle, Commissioner

 FILING CERTIFICATION

I, Valerie Davidson, Lieutenant Governor for the State of Alaska, certify that on

Nov 15, 2018, at 3:24 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.


Valerie Davidson, Lieutenant Governor

Effective: January 1, 2019

Register: 228, January 2019

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

**I, VALERIE NURR'ARAALUK DAVIDSON, LIEUTENANT GOVERNOR OF THE
STATE OF ALASKA, designate the following state employees to perform the
Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:**

**Claire Richardson
Scott Meriwether
April Simpson
Kady Levale**

**IN TESTIMONY WHEREOF, I have
signed and affixed the Seal of the State of
Alaska, in Anchorage, on October 24,
2018.**



A handwritten signature in blue ink, appearing to read "Valerie", is written over a horizontal dotted line.

**VALERIE NURR'ARAALUK DAVIDSON
LIEUTENANT GOVERNOR**

2 AAC 90.420(a) is amended to read:

(a) An application for a driver's license, **including a driver's license that is federally compliant**, must be made on the form prescribed and provided by the department. The application will include questions concerning the applicant's eligibility for a license, including the existence of a physical or mental disability that may impair the ability of the applicant to operate a motor vehicle safely. If the applicant's answers to these questions indicate the existence of a physical or mental disability that may affect the safe operation of a motor vehicle by the applicant, the department may require an examination of the applicant by a licensed physician, psychiatrist, optometrist, or other competent medical authority before issuance of a driver's license. The expense of the examination must be paid by the applicant. The results of an examination within the previous six months meets the requirement of this subsection, unless the condition began or changed since that examination was conducted. If the applicant seeks a commercial driver's license, a valid medical certificate is required in accordance with 49 C.F.R. 383.71, adopted by reference in 2 AAC 90.250.

2 AAC 90.420(b) is amended to read:

(b) An applicant for an original driver's license must furnish valid documentary proof of the applicant's date of birth and lawful status in the United States, and one form of identification to verify the applicant's full legal name; **an applicant for a driver's license that is federally compliant must furnish the documentary proof required by 2 AAC 90.570**. The form of identification for proof of date of birth and full legal name **for a driver's license** must consist of one of the following:

...

2 AAC 90.420 is amended to add a new subsection to read:

(t) An applicant for a driver's license that is federally compliant must provide the documentation required by 2 AAC 90.570; and must comply with (a), (f), ^(g)~~(g)~~, ~~(h)~~, ~~(i)~~, ~~(j)~~, ~~(k)~~, ~~(l)~~, ~~(m)~~, ~~(n)~~, ~~(o)~~, ~~(p)~~, ~~(q)~~, ~~(r)~~, and (s) of this section.

(Eff. 7/1/2006, Register 178;
am. 1/1/2011, Register 196;
am 6/27/2014, Register 210;
am 1/12/2018, Register
225; am 1/1/2019, Register 228)

Authority: AS 18.65.310

AS 28.05.011

AS 28.15.041

AS 28.15.081

AS 28.15.111

AS 28.15.211

2 AAC 90 is amended by adding new article to read:

Article 8. Driver's Licenses and Identification Cards That Are Federally Compliant.

Section

550. Applicability of 2 AAC 90.550 - 2 AAC 90.720

560. Expiration dates for driver's licenses and identification cards that are federally compliant

570. Application and documents for a driver's license or identification card that is federally compliant

580. Document verification requirements

590. Temporary or limited term driver's licenses and identification cards

600. Reissued driver's licenses and identification cards that are federally compliant

610. Renewal of driver's licenses and identification cards that are federally compliant

620. Driver's licenses and identification cards issued during the age-based enrollment period

630. Prohibition against holding more than one card that is federally compliant or more than one driver's license

640. Source document retention

650. Background checks for covered employees

660. Non-compliant driver's licenses and identification cards

670. Definitions

2 AAC 90.550. Applicability of 2 AAC 90.550 – 2 AAC 90.720. (a) The provisions of 2 AAC 90.550 – 2 AAC 90.670 establish standards for the issuance of driver's licenses and identification cards that are federally compliant; the provisions of 2 AAC 90.420 – 2 AAC 90.490 not specific to a driver's license or identification card that is federally compliant ~~still~~ apply to the issuance of a driver's license and identification card that is federally compliant.

(b) In addition to the requirements in 2 AAC 90.420 to 2 AAC 90.490, 2 AAC 90.660 establishes certain standards for driver's licenses and identification cards that are not intended to be accepted by federal agencies for official purpose under section 202(d)(11) of the REAL ID Act. (Eff. 1/1/2019, Register 228)

Authority: AS 18.65.310 AS 28.15.041

2 AAC 90.560. Expiration dates for driver's licenses and identification cards that are

federally compliant. A driver's license or identification card that is federally compliant and not temporary or limited-term expires under the time periods in AS 18.65.310 and AS 28.15.101.

The department may issue a card for less than eight years if the period of the applicant's authorized stay in the United States is less than eight years, or with a validity of up to eight years if the period of authorized stay is indefinite. (Eff. 1/1/2019, Register 228)

Authority: AS 18.65.310 AS 28.15.041 AS 28.15.101

2 AAC 90.570. Application and documents for a driver's license or identification card that is federally compliant. (a) An applicant for a driver's license that is federally compliant must

comply with the requirements of this section in addition to the requirements of 2 AAC 90.420

(a), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), and 2 AAC 90.410, 425, 440, 450,

455, 470, 475, 480, 485, and 490. An applicant for an identification card that is federally

compliant must comply with the requirements of this section in addition to the requirements of 2

AAC 90.420 (a), (f), (m), (p), (r), (s), and 2 AAC 90.410, 425, 470, 475, 480, 485, and 490.

(b) Each applicant for a driver's license or identification card that is federally compliant must bear a full facial image capture under 2 AAC 90.485; the applicant's iris and pupils of the eyes shall be clearly visible.

(c) The department shall maintain a photograph of an applicant under (b) of this section even if no driver's license or identification card is issued. The photographs must be stored in a format required under 2 AAC 90.640. If no driver's license or identification card is issued to the applicant, the photograph must be stored for a minimum of five years. If a driver's license or identification card that is federally compliant is issued to the applicant, the photo must be stored

for a period of at least two years beyond the expiration date.

(d) Each applicant must sign a declaration under penalty of perjury that the information presented on the application is true and correct, and the department must retain this declaration. An applicant must sign a new declaration when presenting new source documents to the department on subsequent visits.

(e) An applicant for a driver's license or identification card that is federally compliant must present at least one of the following source documents to establish identity:

(1) a valid, unexpired United States passport issued by the United States Department of State;

(2) a certified original or certified copy of the applicant's birth certificate filed with a state or territory of the United States Office of Vital Statistics or equivalent agency in the applicant's state or territory of birth;

(3) a consular Report of Birth Abroad issued by the United States Department of State, Form FS-240, DS-1350 or FS-545;

(4) a valid, unexpired Permanent Resident Card issued by the United States Department of Homeland Security or the United States Immigration and Naturalization Service;

(5) an unexpired employment authorization document issued by the United States Department of Homeland Security, Form I-766 or Form I-688B;

(6) an unexpired foreign passport with a valid, unexpired United States visa

affixed accompanied by the approved I-94 form documenting the applicant's most recent entry into the United States;

(7) a Certificate of Naturalization issued by the Department of Homeland Security, Form N-550 or Form N-570;

(8) a Certificate of Citizenship, Form N-560 or Form N-561, issued by the United States Department of Homeland Security;

(9) A driver's license or identification card that is federally compliant issued in accordance with the standards established by this chapter; or

(10) other evidence of comparable validity designated by the United States Department of Homeland Security in notice published in the Federal Register.

(f) Where the department permits an applicant to establish a name other than the name that appears on a source document, through marriage, adoption, court order, or other mechanism permitted by state law or regulation, the applicant must present documentary evidence of the name change through the presentation of documents issued by a court, governmental body, or other entity of comparable authority as determined by the department. The department shall maintain copies of the documentation presented under 2 AAC 90.640 and maintain a record of both the recorded name and the name on the source documents in a manner to be determined by the department and in conformity with 2 AAC 90.640.

(g) To establish date of birth, an applicant must present at least one document included in paragraph (e) of this section.

(h) Except as provided in paragraph (e)(6) of this section, an applicant who presents the

identity documents listed in (e)(1) and (2) of this section must also present a United States Social Security Administration account number card or, if a Social Security Administration account card is not available, the applicant may present any of the following documents bearing the applicant's social security number:

- (1) a W-2 form;
- (2) a SSA-1099 form;
- (3) a non-SSA-1099 form; or
- (4) a pay stub bearing the applicant's name and social security number.

(A) The department must verify the applicant's Social Security Number under 2 AAC 580.

(B) An applicant presenting the identity document listed in 2 AAC 90.570(e)(6) must present a social security number or demonstrate non-work authorized status.

(i) To document the principal residence address, an applicant must present at least two documents acceptable to the department that include the individual's name and principal residence.

(j) The department shall issue a driver's license or identification card that is federally compliant only to a person who has presented satisfactory evidence of lawful status and met other requirements of P.L. 109-13, Division B, (REAL ID Act of 2005). If the applicant presents one of the documents listed under 2 AAC 90.570 (e)(1), (e)(2), (e)(3), (e)(4), (e)(7) or (e)(8) the

department's verification of the applicant's identity in the manner prescribed in 2 AAC 90.580 will also provide satisfactory evidence of lawful status; Presentation of one of the identity documents listed under paragraphs (e)(5), (e)(6) or (e)(9) of this section, does not provide satisfactory evidence of lawful status. The applicant must also present a second document listed under 2 AAC 90.570 (e)(1), (e)(2), (e)(3), (e)(4), (e)(7) or (e)(8) or documentation issued by the Department of Homeland Security or other federal agencies demonstrating lawful status as determined by the United States Citizenship and Immigration Services. All documents must be verified in the manner prescribed in 2 AAC 90.580. (Eff. 1/1/2019, Register 228)

Authority: AS 18.65.310 AS 28.05.068 AS 28.15.041
AS 28.15.101

2 AAC 90.580. Document verification requirements. (a) The department shall make reasonable efforts to ensure that the applicant does not have more than one driver's license or identification card that is federally compliant already issued by this state under a different identity. In cases where an individual is permitted to hold both a driver's license and identification card, the department shall ensure that the individual has not been issued identification documents in multiple or different names. The department shall also comply with the provisions of 2 AAC 90.630 before issuing a driver's license or identification card.

(b) The department must verify the documents and information required under 2 AAC 90.570 with the issuer of the document. The department must use systems for electronic validation of document and identity data as they become available or United States Department of Homeland Security approved alternate methods.

(c) The department shall verify a document described in 2 AAC 90.570(e) or (j) and issued by the United States Department of Homeland Security including, the I-94 form described in 2 AAC 90.570 through the Systematic Alien Verification for Entitlements system or alternate methods approved by the Department of Homeland Security, except that if the applicant presents two or more Department of Homeland Security issued documents, a Systematic Alien Verification for Entitlements system verification of one document that confirms lawful status does not need to be repeated for the additional document. In the event of a non-match between the information in the presented document, and the verification system, the department may not issue a driver's license or identification card that is federally compliant to an applicant and must refer the applicant to the United States Citizenship and Immigration Services for resolution.

(d) The department must verify an applicant's social security number with the Social Security Administration or through a Department of Homeland Security approved method. In the event of a non-match with the Social Security Administration, the department may use existing procedures to resolve the non-match. If the department is unable to resolve the non-match, and the use of an exceptions process is not warranted in the situation, the department may not issue a driver's license or identification card that is federally compliant to an applicant until the information verifies with the Social Security Administration.

(e) The department must verify a birth certificate presented by an applicant using the Electronic Verification of Vital Events system or a Department of Homeland Security approved alternate method. If the document does not appear authentic upon inspection or there is a non-match, and the use of an exceptions process is not warranted in the situation, the department may not issue a driver's license or identification card that is federally compliant to the applicant until the information verifies. The department may refer the applicant to the appropriate issuing office

for resolution.

(f) The department shall verify documents issued by the Department of State with the Department of State or through methods approved by the Department of Homeland Security.

(g) The department must verify driver's licenses and identification cards that are federally compliant with the State of issuance.

(h) Nothing in this section prohibits the department from issuing a temporary license or a license issued under 2 AAC 90.660 that will not be accepted for official purposes, to allow the individual to resolve any non-match. (Eff. 1/1/2019, Register 228)

Authority: AS 18.65.310 AS 28.05.068 AS 28.15.041
AS 28.15.101

2 AAC 90.590. Temporary or limited term driver's licenses and identification cards. (a)

The department may only issue a temporary or limited-term driver's license or identification card that is federally compliant to an applicant who has temporary lawful status in the United States. Before issuing a temporary or limited-term driver's license or identification card that is federally compliant, the department must require the applicant provide valid documentary evidence of lawful status in the United States; that evidence must be verifiable through the Systematic Alien Verification for Entitlements or other Department of Homeland Security-approved means.

(b) The department may not issue a temporary or limited-term driver's license or identification card to an applicant for

(1) a period beyond the expiration date of the applicant's authorized stay in the United States, or, if there is no expiration date, for a period longer than one year; and

(2) longer than the maximum term of a driver's license or identification card.

(c) The department shall renew a temporary or limited-term driver's license or identification card pursuant to this section and 2 AAC 90.610(b) only if the applicant presents valid documentary evidence that

(1) the status by which the applicant qualified for the temporary or limited-term driver's license or identification card is still in effect, or

(2) the applicant qualifies for lawful status under paragraph (a) of this section.

(e) A temporary or limited-term driver's license and identification card must clearly indicate on the face of the license and in the machine-readable zone that the license or card is a temporary or limited-term driver's license or identification card. (Eff. 1/1/2019, Register 228)

Authority: AS 18.65.310 AS 28.15.041 AS 28.15.101

2 AAC 90.600. Reissued driver's licenses and identification cards that are federally

compliant. (a) The department will verify an applicant's identity each time a driver's license or identification card that is federally compliant is reissued, to ensure that the individual receiving the reissued driver's license or identification card that is federally compliant is the same individual to whom the driver's license or identification card was originally issued.

(b) Except as provided in paragraph (c) of this section, the department may conduct a remote or non-in-person reissuance under AS 28.15.101(c). Except for the reissuance of a duplicate driver's license and identification card, the department must verify under 2 AAC 90.580, the applicant's Social Security Number and lawful status prior to reissuing the driver's license or

identification card.

(c) The department may not remotely reissue a driver's license or identification card where there has been a material change in any personally identifiable information since prior issuance. All material changes must be established through an applicant's presentation of an original source document and must be verified as specified in 2 AAC 90.580. (Eff. 1/1/2019, Register 228)

Authority: AS 18.65.310 AS 28.15.041 AS 28.15.101

2 AAC 90.610. Renewal of driver's licenses and identification cards that are federally compliant. (a) Driver's licenses and identification cards that are federally compliant must be renewed with the department in person under the time periods established in AS 18.65.310 and AS 28.15.101; at the time of a required in-person renewal, the department will take a photograph of the applicant that complies with 2 AAC 90.485 and 2 AAC 90.570(a). In addition, the department must verify the renewal applicant's Social Security Number and lawful status through the Social Security Online Verification system and the Systematic Alien Verification for Entitlements, respectively, or other Department of Homeland Security-approved means, as applicable prior to renewing the driver's license or identification card. The department must also verify electronically information that it was not able to verify at a previous issuance or renewal if the systems or processes exist to do so. In addition to the requirements of (a) and (b) of this section, a holder of a temporary or limited-term driver's license or and identification card that is federally compliant must present evidence of continued lawful status via the Systematic Alien Verification for Entitlements or other method approved by the Department of Homeland Security when renewing their driver's license or identification card.

(b) The department may conduct a remote or non-in-person renewal under AS 28.15.101(c). The department must reverify the applicant's Social Security Number and lawful status pursuant to 2 AAC 90.580 prior to renewing the driver's license or identification card. The department may not remotely renew a driver's license or identification card that is federally compliant where there has been a material change in any personally identifiable information since prior issuance. All material changes must be established through the applicant's presentation of an original source document as provided in 2 AAC 90.570 and must be verified as specified in 2 AAC 90.580. (Eff. 1/1/2019, Register 228)

Authority: AS 18.65.310 AS 28.15.041 AS 28.15.101

2 AAC 90.620. Driver's licenses and identification cards issued during the age-based enrollment period. A driver's license or identification card issued to an individual before a Department of Homeland Security determination that this state is materially compliant may be renewed or reissued pursuant to current department practices and will be accepted for official purposes until the validity dates described in 6 C.F.R. 37, S, revised as of December 29, 2014. (Eff. 1/1/2019, Register 228)

Authority: AS 18.65.310 AS 28.15.041 AS 28.15.111

2 AAC 90.630. Prohibition against holding more than one card that is federally compliant or more than one driver's license. (a) A person may hold only one card that is federally compliant. A person cannot simultaneously hold a driver's license that is federally compliant and an identification card that is federally compliant. A person may hold multiple card types issued

by this state, provided only one card type is federally compliant. The department may require the applicant to surrender any driver's license or identification cards previously issued by another state or territory of the United States. Upon issuance of a driver's license or identification card in this state, any cards issued by another state or territory of the United States may be canceled according to the laws of the issuing state or territory of the United States.

(b) Before issuing a driver's license that is federally compliant; the department must check with all other states to determine if the applicant currently holds a driver's license or identification card that is federally compliant in another state. If the department receives confirmation that the individual holds a driver's license in another state or possesses an identification card that is federally compliant in another state, the department must take measures to confirm that the person has terminated or is terminating the driver's license or identification card that is federally compliant issued by the prior state.

(c) Before issuing an identification card that is federally compliant, the department must check with all other states to determine if the applicant currently holds a driver's license or identification card that is federally compliant in another state. If the department receives confirmation that the individual holds a card that is federally compliant in another state, the department must take measures to confirm that the person has terminated or is terminating the driver's license or identification card that is federally compliant issued by the prior state. (Eff.

1/1/2019, Register 228)

Authority: AS 18.65.310 AS 28.05.068 AS 28.15.041
AS 28.15.101

2 AAC 90.640. Source document retention. (a) The department will retain copies of an application, declaration and source documents presented under 2 AAC 90.570, including documents used to establish all names recorded by the department under 2 AAC 90.570. The department shall take measures to protect any personally identifiable information collected pursuant to AS 18.65.101, AS 28.15.111, and 6 C.F.R. 37.41, revised as of March 31, 2008.

(Eff. 1/1/2019, Register 228)

Authority: AS 18.65.310 AS 28.05.068 AS 28.15.041
AS 28.15.111 AS 40.21

2 AAC 90.650. Background checks for covered employees. The Department shall conduct background checks for covered employees as provided for in 6 CFR 37.45, revised as of March 31, 2008, and adopted by reference. (Eff. 1/1/2019, Register 228)

Authority: AS 18.65.310 AS 28.15.041

2 AAC 90.660. Non-compliant driver's licenses and identification cards. A driver's license and identification card issued by the department that is not acceptable by federal agencies for official purposes must

(1) clearly state on its face and in the machine-readable zone that the driver's license or identification card is not acceptable for official purposes; and

(2) include a unique design or color indicator that clearly distinguishes the driver's license or identification card from a driver's license or and identification card that is federally compliant.

(Eff. 1/1/2019, Register 228)

Authority: AS 18.65.310 AS 28.15.041

2 AAC 90.670. Definitions. (a) Unless the context requires otherwise, in 2 AAC 90.550 – ^{2 AAC.90}670.

(1) “birth certificate” means the record related to a birth that is permanently stored either electronically or physically at a State or territory of the United States Office of Vital Statistics or equivalent agency in an applicant's State or territory of birth^h;

(2) “card” means either a driver's license or identification card issued by the ^dDepartment of ^aAdministration, ^dDivision of ^mMotor ^vVehicles^o;

(3) “certified copy of a birth certificate” means a copy of the whole or part of a birth certificate registered with the State that the State considers to be the same as the original birth certificate on file with a State or territory of the United States Office of Vital Statistics or equivalent agency in an applicant's State or territory of birth;

(4) “covered employees” means employees or contractors of the ^dDepartment of ^aAdministration who are involved in the manufacture or production of driver's licenses and identification cards that are federally compliant, or who can affect the identity information that appears on a driver's license or identification card;

(5) “digital photograph” means a digital image of the face of the holder of a driver's license or identification card;

(6) “driver's license” has the meaning given in AS 28.90.990;

(7) “driver’s license that is federally compliant” has the meaning in AS 28.90.990;

(8) “duplicate” means a driver's license or identification card issued after the original document that bears the same information and expiration date as the original document and that is reissued at the request of the holder when the original is lost, stolen, or damaged and there has been no material change in information since prior issuance;

(9) “federally-regulated commercial aircraft” means a commercial aircraft regulated by the United States Transportation Security Administration.

(10) “full legal name” means an individual's first name(s), middle name(s), and last name(s) or surname(s), without use of initials or nicknames.

(11) “identification card” means a document made or issued by or under the authority of the Department of Administration, when completed with information concerning an individual, is of a type intended or commonly accepted for the purpose of identification of individuals;

(12) “identification card that is federally compliant” has the meaning in AS 18.65.310;

(13) “lawful status” has the meaning given in 2 AAC 90.420;

(14) “material change” means any change to the personally identifiable information of an individual. Notwithstanding the definition of personally identifiable information, a change of address of principal residence does not constitute a material change; ;

(15) “official purpose” means accessing federal facilities, boarding federally-regulated commercial aircraft, and entering nuclear power plants; ;

(16) “United States passport” means a passport booklet or card issued by the United States Department of State that can be used as a travel document to enter the United States and that denotes identity and citizenship as determined by the United States Department of State; ;

(17) “personally identifiable information” means any information which can be used to distinguish or trace an individual's identity, such as their name; driver's license or identification card number; social security number; biometric record, including a digital photograph or signature; alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as a date and place of birth or address, whether it is stored in a database, on a driver's license or identification card, or in the machine readable technology on a license or identification card; ;

(18) “principal residence” means the location where a person currently resides or presently resides even if at a temporary address in conformance with the residency requirements of the department to issue a driver's license or identification card; ;

(19) “reissued card” means a card that the department issues to replace a card that has been lost, stolen or damaged, or to replace a card that includes outdated information; ;

A card may not be reissued remotely when there is a material change to the personally identifiable information;

(20) “renewed card” means a driver's license or identification card that the department issues to replace a renewable driver's license or identification card;

(21) “secretary” means the Secretary of Homeland Security;

(22) “source documents” means original or certified copies, where applicable, of documents presented by an applicant as required under these regulations to the department to apply for a driver's license or identification card;

(23) “state” has the meaning given in AS 01.10.060;

(24) “Systematic Alien Verification for Entitlements System” means the electronic system operated by the Department of Homeland Security that aids federal, state and local benefit-issuing and licensing agencies in verifying the immigration status of applicants for public benefits or licenses;

(25) “temporary lawful status” has the meaning given in 2 AAC 90.420;

(26) “verify” means procedures that may include document and data authentication to ensure that

(A) the source document is genuine and has not been altered; and

(B) the identity data contained on the document is valid.

(Eff. 1/1/2019, Register 228)

Authority:	AS 18.65.310	AS 28.05.068	AS 28.15.041
	AS 28.15.101	AS 28.15.111	

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Valerie Nurr'araaluk
Davidson
Lieutenant Governor

Date: November 15, 2018

File No.: 2018200305

Tel. No.: 465-3600

From: Susan R. Pollard *SRP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Re: Department of Administration:
Regulation re: State Issued Driver's
Licenses and Identification Cards that
are federally compliant (2 AAC
90.420; 2 AAC 90.550 - 670)

The Department of Law has reviewed the attached regulations of the Department of Administration against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations were adopted by the Department of Administration after the close of the public comment period. The regulations concern implementation of ch. 8, SLA 2018, establishing standards for issuance of driver's licenses and identification cards that are federally compliant. *Please note that the adoption order sets an effective date of January 1, 2019 to coincide with the effective date in sec. 21, ch. 8, SLA 2018.*

The regulations include conforming amendments to existing regulations to account for the application process for driver's licenses and, where necessary, adoption of federal regulations regarding background checks for covered employees (the proposed regulations clearly set out the background check requirements). The May 29, 2018 public notice and the November 13, 2018 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SRP:lbp

cc: Honorable Leslie Ridle, Commissioner
Department of Administration

Nichole Tham, Driver Licensing Manager
Division of Motor Vehicles
Department of Administration

Minta Montalbo, Special Assistant to the Commissioner
Department of Administration

Michael Stanker, Assistant Attorney General
Labor and State Affairs Section
Department of Law

NOTICE OF PROPOSED CHANGES ON APPLICATION AND CONTENT FOR
IDENTIFICATION CARDS, NON-COMMERCIAL DRIVER'S LICENSES AND
COMMERCIAL DRIVER'S LICENSES.

BRIEF DESCRIPTION

The Department of Administration, Division of Motor Vehicles proposes to adopt regulations in Title 2, Chapter 90 of the Alaska Administrative Code, adding a new article dealing with state issued driver's licenses and identification cards that can be accepted by federal agencies for official purposes (REAL ID compliant cards) including the following:

- (1) The proposed regulation would set standards for the issuance of driver's licenses and identification cards that may be accepted by federal agencies for official purposes.
- (2) The proposed regulation would set standards for driver's licenses and identification cards that may not be accepted by federal agencies for official purposes.
- (3) The proposed regulations would set standards from other aspects of the DMV's operations that would allow it to issue driver's licenses and identification cards that may be accepted by federal agencies for official purposes including security plans, employee background checks, document retention and division database requirements.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Nichole Tham at 1300 W. Benson Blvd, Ste. 100, Anchorage, Alaska 99503. Additionally, the Division of Motor Vehicles will accept comments by facsimile at 907-269-3774 and by electronic mail at Nichole.tham@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System, by accessing this notice on the system and using the comment link. The comments must be received not later than 5:00pm on June 23, 2018.

You may submit written questions relevant to the proposed action to Nichole Tham by email (Nichole.tham@alaska.gov), by facsimile at 907-269-3774 or by mail at 1300 W. Benson Blvd, Ste. 100, Anchorage, Alaska 99503. The questions must be received at least 10 days before the end of the public comment period. The Division of Motor Vehicles will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and the Division of Motor Vehicles website (<http://doa.alaska.gov/dmv/>). Written comments are public records subject to public inspection.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Nichole Tham by email (Nichole.tham@alaska.gov) or at 907-269-3770 not later than 3:00pm, June 23, 2018 to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Nichole Tham by email (Nichole.tham@alaska.gov) or at 907-269-3770.

A copy of material proposed for adoption by reference may be viewed at the agency's office at 1300 W. Benson Blvd, Ste. 100, Anchorage, Alaska 99503.

After the public comment period ends, the Division of Motor Vehicles will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. You should comment during the time allowed if your interests could be affected.


Statutory authority: AS 18.65.310; AS 28.05.011; AS 28.05.041; AS 28.05.068; AS 28.15.011; AS 28.15.041; AS 28.15.051; AS 28.15.101; AS 28.15.111; AS 28.15.141; AS 28.15.161.

Statutes being implemented, interpreted, or made specific: AS 18.65.310; AS 28.05.068; AS 28.15.041; AS 28.15.101.

Fiscal information: The proposed regulation changes do not require an increased appropriation. The estimated annual cost to: a private person, other state agencies, and municipalities or boroughs to comply with the proposed regulations is zero.

Date: _____

5/22/18



Marla Thompson, Division Director

(AS 44.62.190(d))¹

5. Reason for the proposed action:

(x) Compliance with new or changed state statute

(x) Development of program standards

() Other (identify): _____

7. Estimated annual cost to comply with the proposed action to:

Another state agency: \$0.00

A municipality: \$0.00

- | | Initial Year
FY 2019__ | Subsequent
Years |
|----------------|---------------------------|---------------------|
| Operating Cost | \$ 0.00 | \$ 0.00 |
| Capital Cost | \$ 0.00 | \$ 0.00 |

1003 General fund match \$ \$

1004 General fund*	\$	\$
--------------------	----	----

1005 General fund/

program \$ _____ \$ _____

Other (identify)	\$	\$
------------------	----	----

9. The name of the contact person for the regulation:

Name: Nichole Tham
Title: Driver Licensing Manager
Address: 1300 W. Benson Blvd, Ste. 100
Telephone: 907-269-3770
E-mail address: Nichole.tham@alaska.gov

10. The origin of the proposed action:

☒ Staff of state agency
☒ Federal government
☐ General public
☐ Petition for regulation change
☐ Other (identify): _____

11.

Date:

6/22/19

Prepared by:

Marla Thompson

Name: Marla Thompson

Title: Division Director

Telephone: 907-269-5559

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 288758

ST OF AK/DMV
1300 W. BENSON BLVD, STE 400
ANCHORAGE, AK 99503

Order# 0001421931
Cost \$283.86

Product ANC-Anchorage Daily News
Placement 0300
Position 0301

STATE OF ALASKA THIRD JUDICIAL DISTRICT

Joleesa Stepetin

being first duly sworn on oath deposes and says that he/she is a representative of the Anchorage Daily News, a daily newspaper. That said newspaper has been approved by the Third Judicial Court, Anchorage, Alaska, and it now and has been published in the English language continually as a daily newspaper in Anchorage, Alaska, and it is now and during all said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the annexed is a copy of an advertisement as it was published in regular issues (and not in supplemental form) of said newspaper on

May 27, 2018

and that such newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing publication is not in excess of the rate charged private individuals.

Signed Joleesa Stepetin
Joleesa Stepetin

Subscribed and sworn to before me
this 29th day of May, 2018

Britney Thompson
Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska

MY COMMISSION EXPIRES

2/23/2019

Notary Public
BRITNEY L. THOMPSON
State of Alaska
My Commission Expires Feb 23, 2019

ADDITIONAL REGULATION NOTICE INFORMATION (AS 44.62.190(d))

1. Adopting agency: Department of Administration, Division of Motor Vehicles
2. General subject of regulation: Federally compliant Driver's licenses and ID cards
3. Citation of regulation (may be grouped): 2 AAC 90
4. Department of Law file number, if any:
5. Reason for the proposed action:
() Compliance with federal law or action (identify):
(x) Compliance with new or changed state statute
() Compliance with federal or state court decision (identify):
(x) Development of program standards
() Other (identify):

6. Appropriation/Allocation:

7. Estimated annual cost to comply with the proposed action to:

A private person: \$0.00
Another state agency: \$0.00
A municipality: \$0.00

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY 2019	Subsequent Years
Operating Cost	\$ 0.00	\$ 0.00
Capital Cost	\$ 0.00	\$ 0.00

1002 Federal receipts	\$	\$
1003 General fund match	\$	\$
1004 General fund	\$	\$
1005 General fund/ program	\$	\$
Other (identify)	\$	\$

9. The name of the contact person for the regulation:

Name: Nichole Tham
Title: Driver Licensing Manager
Address: 1300 W. Benson Blvd, Ste. 100
Telephone: 907-269-3770
E-mail address: Nichole.tham@alaska.gov

10. The origin of the proposed action:

☒ Staff of state agency
☒ Federal government
☐ General public
☐ Petition for regulation change
☐ Other (identify):

11. Date: _____ Prepared by: _____

Name: Marla Thompson
Title: Division Director
Telephone: 907-269-5559

Published: May 27, 2018

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 288758

ST OF AK/DMV
1300 W. BENSON BLVD, STE 400
ANCHORAGE, AK 99503

Order#
Cost

0001421929
\$378.50

Product ANC-Anchorage Daily News
Placement 0300
Position 0301

STATE OF ALASKA THIRD JUDICIAL DISTRICT

Joleesa Stepetin

being first duly sworn on oath deposes and says that he/she is a representative of the Anchorage Daily News, a daily newspaper. That said newspaper has been approved by the Third Judicial Court, Anchorage, Alaska, and it now and has been published in the English language continually as a daily newspaper in Anchorage, Alaska, and it is now and during all said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the annexed is a copy of an advertisement as it was published in regular issues (and not in supplemental form) of said newspaper on

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Signed

Joleesa Stepetin
Joleesa Stepetin

Subscribed and sworn to before me
this 29th day of May, 2018

Britney Thompson

Notary Public in and for
The State of Alaska,
Third Division
Anchorage, Alaska

MY COMMISSION EXPIRES

2/23/2019
Notary Public
BRITNEY L. THOMPSON
State of Alaska
My Commission Expires Feb 23, 2019

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Statutory authority: AS 18.65.310; AS 28.05.011; AS 28.05.041; AS 28.05.068; AS 28.15.011; AS 28.15.041; AS 28.15.051; AS 28.15.101; AS 28.15.111; AS 28.15.141; AS 28.15.161.

Statutes being Implemented, Interpreted, or made specific: AS 18.65.310; AS 28.05.068; AS 28.15.041; AS 28.15.101.

Fiscal Information: The proposed regulation changes do not require an increased appropriation. The estimated annual cost to: a private person, other state agencies, and municipalities or boroughs to comply with the proposed regulations is zero.

Date:

Marla Thompson, Division Director

Published: May 27, 2018

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Marla Thompson, Director, of the Division of Motor Vehicles, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to Title 2, Chapter 90 of the Alaska Administrative Code, adding a new article dealing with state issued driver's licenses and identification cards that can be accepted by federal agencies for official purposes (REAL ID compliant cards) has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulation;
- (5) furnished electronically to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Division of Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulation, to the Legislative Affairs Agency, the chairs of the Finance, Judicial, Labor and Commerce, State Affairs, and Transportation Committees of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 6/27/2018 ⁴


Marla Thompson, Director

Subscribed and sworn to before me at 1300 W Benson Blvd on 6/27/18
(date)




Katie Smith
Notary Public in and for the State of Alaska
my commission expires with office

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Marla Thompson, Director of the Division of Motor Vehicles, being duly sworn, state the following:

The Division of Motor Vehicles did not receive any factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Division of Motor Vehicles proposed adoption of changes to Title 2 Chapter 90 of the Alaska Administrative Code dealing with state issued driver's licenses and identification cards that can be accepted by federal agencies for official purposes (REAL ID compliant cards).

Date: 7/2/2018

Marla Thompson
Marla Thompson, Director

Subscribed and sworn to before me at Anchorage, Alaska on
July 2nd 2018
(date)

Lauren M. Whiteside
Notary Public in and for the State of Alaska



Office of the Secretary, DHS

§ 37.45

(i) Fraudulent document recognition training for all covered employees handling source documents or engaged in the issuance of driver's licenses and identification cards. The fraudulent document training program approved by AAMVA or other DHS approved method satisfies the requirement of this subsection.

(ii) Security awareness training, including threat identification and handling of SSI as necessary.

(6) Emergency/incident response plan;

(7) Internal audit controls;

(8) An affirmation that the State possesses both the authority and the means to produce, revise, expunge, and protect the confidentiality of REAL ID driver's licenses or identification cards issued in support of Federal, State, or local criminal justice agencies or similar programs that require special licensing or identification to safeguard persons or support their official duties. These procedures must be designed in coordination with the key requesting authorities to ensure that the procedures are effective and to prevent conflicting or inconsistent requests. In order to safeguard the identities of individuals, these procedures should not be discussed in the plan and States should make every effort to prevent disclosure to those without a need to know about either this confidential procedure or any substantive information that may compromise the confidentiality of these operations. The appropriate law enforcement official and United States Attorney should be notified of any action seeking information that could compromise Federal law enforcement interests.

(c) *Handling of Security Plan.* The Security Plan required by this section contains Sensitive Security Information (SSI) and must be handled and protected in accordance with 49 CFR Part 1520.

§ 37.43 Physical security of DMV production facilities.

(a) States must ensure the physical security of facilities where driver's licenses and identification cards are produced, and the security of document materials and papers from which driver's licenses and identification cards are produced or manufactured.

(b) States must describe the security of DMV facilities as part of their security plan, in accordance with § 37.41.

§ 37.45 Background checks for covered employees.

(a) *Scope.* States are required to subject persons who are involved in the manufacture or production of REAL ID driver's licenses and identification cards, or who have the ability to affect the identity information that appears on the driver's license or identification card, or current employees who will be assigned to such positions ("covered employees" or "covered positions"), to a background check. The background check must include, at a minimum, the validation of references from prior employment, a name-based and fingerprint-based criminal history records check, and employment eligibility verification otherwise required by law. States shall describe their background check process as part of their security plan, in accordance with § 37.41(b)(4)(ii). This section also applies to contractors utilized in covered positions.

(b) *Background checks.* States must ensure that any covered employee under paragraph (a) of this section is provided notice that he or she must undergo a background check and the contents of that check.

(1) *Criminal history records check.* States must conduct a name-based and fingerprint-based criminal history records check (CHRC) using, at a minimum, the FBI's National Crime Information Center (NCIC) and the Integrated Automated Fingerprint Identification (IAFIS) database and State repository records on each covered employee identified in paragraph (a) of this section, and determine if the covered employee has been convicted of any of the following disqualifying crimes:

(i) *Permanent disqualifying criminal offenses.* A covered employee has a permanent disqualifying offense if convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction, of any of the felonies set forth in 49 CFR 1572.103(a).

(ii) *Interim disqualifying criminal offenses.* The criminal offenses referenced in 49 CFR 1572.103(b) are disqualifying

§37.51

6 CFR Ch. I (1–1–09 Edition)

if the covered employee was either convicted of those offenses in a civilian or military jurisdiction, or admits having committed acts which constitute the essential elements of any of those criminal offenses within the seven years preceding the date of employment in the covered position; or the covered employee was released from incarceration for the crime within the five years preceding the date of employment in the covered position.

(iii) *Under want or warrant.* A covered employee who is wanted or under indictment in any civilian or military jurisdiction for a felony referenced in this section is disqualified until the want or warrant is released.

(iv) *Determination of arrest status.* When a fingerprint-based check discloses an arrest for a disqualifying crime referenced in this section without indicating a disposition, the State must determine the disposition of the arrest.

(v) *Waiver.* The State may establish procedures to allow for a waiver of the requirements of paragraphs (b)(1)(ii) or (b)(1)(iv) of this section under circumstances determined by the State. These procedures can cover circumstances where the covered employee has been arrested, but no final disposition of the matter has been reached.

(2) *Employment eligibility status verification.* The State shall ensure it is fully in compliance with the requirements of section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) and its implementing regulations (8 CFR part 274A) with respect to each covered employee. The State is encouraged to participate in the USCIS E-Verify program (or any successor program) for employment eligibility verification.

(3) *Reference check.* Reference checks from prior employers are not required if the individual has been employed by the DMV for at least two consecutive years since May 11, 2006.

(4) *Disqualification.* If results of the State's CHRC reveal a permanent disqualifying criminal offense under paragraph (b)(1)(i) or an interim disqualifying criminal offense under paragraph (b)(1)(ii), the covered employee may not be employed in a position described

in paragraph (a) of this section. An employee whose employment eligibility has not been verified as required by section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) and its implementing regulations (8 CFR part 274A) may not be employed in any position.

(c) *Appeal.* If a State determines that the results from the CHRC do not meet the standards of such check the State must so inform the employee of the determination to allow the individual an opportunity to appeal to the State or Federal government, as applicable.

(d) Background checks substantially similar to the requirements of this section that were conducted on existing employees on or after May 11, 2006 need not be re-conducted.

Subpart E—Procedures for Determining State Compliance

§37.51 Compliance—general requirements.

(a) *Full compliance.* To be in full compliance with the REAL ID Act of 2005, 49 U.S.C. 30301 note, States must meet the standards of subparts A through D or have a REAL ID program that DHS has determined to be comparable to the standards of subparts A through D. States certifying compliance with the REAL ID Act must follow the certification requirements described in §37.55. States must be fully compliant with Subparts A through D on or before May 11, 2011. States must file the documentation required under §37.55 at least 90 days prior to the effective date of full compliance.

(b) *Material compliance.* States must be in material compliance by January 1, 2010 to receive an additional extension until no later than May 10, 2011 as described in §37.63. Benchmarks for material compliance are detailed in the Material Compliance Checklist found in DHS' Web site at <http://www.dhs.gov>.

§37.55 State certification documentation.

(a) States seeking DHS's determination that its program for issuing REAL ID driver's licenses and identification cards is meeting the requirements of