

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through XX pertaining to the) PROPOSED ADOPTION
requirements for the issuance,)
replacement, or renewal of a REAL)
ID compliant driver's license or)
identification card)

TO: All Concerned Persons

1. On August 14, 2018, at 10:00 a.m. the Department of Justice will hold a public hearing in the auditorium of the Department of Public Health and Human Services, 111 North Sanders, at Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice Motor Vehicle Division no later than 5:00 p.m. on July 26, 2018, to advise us of the nature of the accommodation that you need. Please contact Michele Snowberger, Department of Justice Motor Vehicle Division, 302 North Roberts, PO Box 201430, Helena, Montana, 59620; telephone (406) 444-1776; fax (406) 444-2086; or e-mail msnowberger@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I PURPOSE (1) The purpose of these rules is to establish the various requirements for the issuance, replacement, or renewal of a REAL ID compliant driver's license or identification card.

AUTH: 61-5-125, 61-5-128, MCA
IMP: 61-5-128, 61-5-129, MCA

NEW RULE II DEFINITIONS (1) "AAMVA" means the American Association of Motor Vehicle Administrators.

(2) "Applicant" means any individual applying to the department for a Montana credential.

(3) "Authorized presence" means an individual who is a U.S. citizen or who is a foreign national admitted for permanent or temporary residence in the United States.

(4) "Certified birth certificate" means a copy of the whole or part of a record of birth registered with the state that the state considers to be the same as the original record of birth on file with the state Office of Vital Statistics or equivalent government agency in an applicant's state of birth.

(5) "Credential" means any department-issued driver's license, driver permit, or identification card that contains the applicant's full legal name, digital photograph, date of birth, and address. This definition excludes department-issued employee identification cards.

(6) "Department" means the Montana Department of Justice.

(7) "DHS" means the United States Department of Homeland Security.

(8) "Employee identification card" means an identification card issued by the department for identification of employees of an entity without proving identity.

(9) "Exception processing" means the procedure the department has established for persons who are unable, for reasons beyond their control, to present all necessary documents and must rely on alternative documents to establish identity, date of birth, and authorized presence. Alternative documents to demonstrate authorized presence are only allowed to demonstrate U.S. citizenship.

(10) "First name" means the name that appears first in an individual's full name or is the individual's first given name.

(11) "Foreign national" means an individual who is in the United States and is not currently a citizen.

(12) "Full legal name" means the applicant's first name, middle name(s), and last name, without the use of initials or nicknames, as it appears on the applicant's presented source documents.

(13) "Identification card" means a credential issued by the department but that does not permit the individual to operate a motor vehicle.

(14) "Identity" means any information which can be used to distinguish or trace an individual, such as their name, driver's license or identification card, social security number, biometric record, including physical characteristics or a photograph or digital image, 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.

(15) "Last name" means the final name or surname on a primary document. When the final two names are connected with a hyphen, it is both names connected by the hyphen.

(16) "Mailing address" means the postal address where the individual receives mail.

(17) "Middle name" means the name or names between the individual's first name and last name.

(18) "Montana resident" means an individual who resides in Montana as determined under 1-1-215, MCA.

(19) "Nonresident" means an individual who is not a Montana resident.

(20) "Permanent resident status" means a foreign national whose authority to lawfully remain in the United States is permanent.

(21) "REAL ID Driver's License or Identification Card" means a driver's license or identification card that has been issued by a state that has been certified by the DHS to be in compliance with the requirements of the REAL ID Act and accompanying regulations, including limited-term driver's licenses or identification cards.

(22) "Residency" means the physical address of where an individual lives.

(23) "SAVE" means the Department of Homeland Security Systematic Alien Verification for Entitlements system.

(24) "Source document" means an original document certified by the issuing agency, an amended original document certified by the issuing agency, or a true copy certified by the issuing agency, excluding miniature, wallet sized, or photocopies of documents.

(25) "SSA" means the Social Security Administration

(26) "SSN" means the Social Security Number issued to an individual by the SSA.

(27) "SSOLV" means Social Security Online Verification managed by the Social Security Administration.

(28) "State" means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(29) "Temporary lawful status" means a foreign national whose authority to lawfully remain in the United States is temporary.

(30) "United States citizen" means an individual who is either a natural born citizen or who has lawfully become a citizen of the United States under the U.S. Constitution and laws.

(31) "United States passport" means a passport booklet or card issued by the U.S. Department of State that denotes identity and citizenship as determined by the U.S. Department of State.

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

NEW RULE III DECLARATION (1) Each applicant shall declare under penalty of perjury that the information submitted on their application is true and correct in a format approved by the department.

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

NEW RULE IV SOURCE DOCUMENTS (1) When applying for a credential, the applicant shall provide source documents verifying proof of legal name, date of birth, social security number, authorized presence, and Montana residency.

(2) All documents presented must be legible and unaltered from the original (for example, no lamination, hand-writing, or hole punch), or a copy certified by the issuing agency.

(3) An applicant shall appear in person to apply for a REAL ID credential for the first time.

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

NEW RULE V SOURCE DOCUMENT TRANSLATION PROCESS (1) All documents submitted to the department by the applicant must be in English or have been translated into English.

(2) The original and corresponding translated documents must be presented together at the time of application.

(3) All translated documents must have the following signed declaration included at the end, or of substantially similar wording (must be typed or electronically printed on the same page as the translation, not on separate pieces of paper or the translation will not be accepted by the department):

(a) "I, [insert printed translator's full name], declare under penalty of perjury that: (1) the translation is a complete and accurate translation from [insert foreign language] to the English language to the best of my ability. (2) I am fully competent to translate from [insert foreign language] to the English language and I am proficient in both languages."

(b) the number and state of issuance of the translator's unexpired driver's license, instruction permit, or identification card.

(c) translator's signature.

(d) date of translation.

(4) All translated documents and information required under this rule must be included in the applicant's driver record.

(5) Applicants are responsible for all translation costs.

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

NEW RULE VI TRANSLATOR REQUIREMENTS (1) A translator shall be:

- (a) certified by the American Translators Association;
- (b) approved by an embassy or consulate of the United States or diplomatic or consular official of a foreign country assigned or accredited to the United States;
- (c) affiliated or approved by the DHS, or other U.S. government agency;
- (d) an attorney licensed to practice in the U.S.; or
- (e) an individual approved by the department at a regional manager level or above.

(2) A translator shall not be related by blood or marriage to the applicant, except as authorized by the department at a regional manager level or above.

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

NEW RULE VII PROOF OF NAME AND DATE OF BIRTH (1) When applying for a REAL ID driver's license or identification card, each applicant shall submit one of the following primary source documents to prove full legal name and date of birth:

(a) certified U.S. birth certificate;

(b) valid, unexpired U.S. passport;

(c) consular report of birth abroad issued by the U.S. Department of State, Form FS-240, DS-1350, or FS-545;

- (d) certificate of naturalization issued by DHS, Form N-550 or Form N-570;
- (e) certificate of citizenship, Form N-560 or Form N-561, issued by DHS;
- (f) valid, unexpired permanent resident card, Form I-551, issued by DHS;
- (g) valid, unexpired REAL ID driver's license;
- (h) valid, unexpired REAL ID identification card;
- (i) unexpired employment authorization document issued by DHS, Form I-766 or Form I-688B; or
- (j) unexpired foreign passport with a valid, unexpired U.S. visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States or an I-551 stamp.

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

NEW RULE VIII ESTABLISHMENT OF NAME (1) The department shall use the full legal name as recorded on the presented primary source document, unless:

(a) the applicant submits one or more documents specified in [NEW RULE XX] verifying a name change; or

(b) the name has been truncated according to (2).

(2) The department shall use the applicant's full legal name on the credential unless the name must be truncated to fit in the available space. The department will apply the AAMVA 2016 card design standards for truncation.

(3) The department shall:

(a) record the individual's last name. If an individual has only one name, the department shall record the name as the individual's last name.

(b) only record hyphenations if the name is hyphenated on the presented primary source document.

(c) record a personal name suffix only if it appears in the presented primary source document (for example, "Jr." or "III").

(d) not record address titles (for example, "Ms." or "Dr.").

(e) not record an individual's first name if it is unknown.

(f) not record professional or academic name suffixes (for example, "Esq." or "MBA").

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

NEW RULE IX ESTABLISHMENT OF NAME OTHER THAN THE NAME THAT APPEARS ON THE PRIMARY SOURCE DOCUMENT (1) When an applicant wants to establish a name other than the name that appears on the primary source document, the individual shall present one of the listed documents proving the name change. There must be evidence of the name change on the presented document.

(2) An applicant shall submit one of the following documents by a government agency or court to prove a name change because of a marriage, common law marriage, or domestic partnership:

(a) marriage license;

(b) certificate of marriage;
(c) declaration of marriage;
(d) domestic partnership registration; or
(e) an equivalent documentation of marriage or domestic partnership from the issuing government jurisdiction.

(3) The department cannot accept an affidavit of common law marriage to prove a name change.

(4) An applicant shall submit one of the following documents to prove a name change because of a divorce or dissolution from a court of competent jurisdiction:

- (a) dissolution of marriage decree;
- (b) divorce decree; or
- (c) an equivalent documentation of a dissolution.

(5) An applicant shall submit one of the following documents to prove a name change by other means:

- (a) court order from a court of competent jurisdiction granting a name change;
 - (b) certificate of naturalization issued by DHS, Form N-550 or Form N-570; or
 - (c) certificate of citizenship issued by DHS.
- (6) All documents presented must be certified by the issuing agency.

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

NEW RULE X SOCIAL SECURITY NUMBER (1) Individuals who apply for a REAL ID compliant credential shall present their SSA card.

(2) If an SSA card is not available, the individual may present any of the following documents bearing the applicant's name and SSN:

- (a) W-2 form;
- (b) SSA-1099 form;
- (c) non-SSA-1099 form; or
- (d) pay stub.

(3) Individuals who present an unexpired foreign passport shall present a SSN or demonstrate non-work authorized status.

(4) The department shall verify the SSN with the SSA or through another method approved by DHS. The department cannot issue a REAL ID credential to an applicant until the information is verified with SSA.

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

NEW RULE XI CHANGE TO NAME, DATE OF BIRTH, OR SOCIAL SECURITY NUMBER (1) If there is any change to the applicant's name, date of birth, or social security number, after the department issues a credential to an applicant, the department shall not issue a new credential, a replacement, or renew the credential unless the applicant appears in person and submits proof of the change.

(a) The department cannot issue a REAL ID credential to an applicant until the information is verified with SSA.

(2) The applicant shall pay the associated fees for either a new issuance, replacement, or renewal to receive a credential with the name as demonstrated on the presented documents.

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

NEW RULE XII PROOF OF AUTHORIZED PRESENCE (1) When applying for a REAL ID driver's license or identification card, each applicant shall present satisfactory evidence of authorized presence.

(2) It is satisfactory evidence of authorized presence when the applicant submits one of the following primary source documents:

(a) certified U.S. birth certificate;

(b) valid, unexpired U.S. passport;

(c) consular report of birth abroad issued by the U.S. Department of State, Form FS-240, DS-1350, or FS-545;

(d) certificate of naturalization issued by DHS, Form N-550 or Form N-570;

(e) certificate of citizenship, Form N-560 or Form N-561, issued by DHS; or

(f) valid, unexpired permanent resident card, Form I-551, issued by DHS.

(3) Secondary source document. If an applicant submits a primary source document not listed in (2), the applicant must also submit:

(a) a second document from [NEW RULE VII(1)]; or

(b) documentation issued by DHS or other federal agencies demonstrating lawful status.

(4) The department shall complete all required document verifications.

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

NEW RULE XIII PROOF OF MONTANA RESIDENCY (1) When applying for a REAL ID driver's license or identification card, each applicant shall submit satisfactory evidence of Montana residency (physical address).

(2) If the applicant has a different mailing address than residency (physical address), the applicant shall provide a separate mailing address.

(3) The Montana residency address must be displayed on the credential except that an alternative address may be displayed for an applicant whom a statute, regulation, or department business standard permits the display of an alternative address.

(4) The residency of an unmarried minor is:

(a) the residency of the minor's parents or parent;

(b) the residency of the legal guardian or custodian appointed by a court of competent jurisdiction;

(c) as determined by district court order; or

(d) as approved by the department.

(5) The residency of a married minor is the minor's residency.

- (6) The residency of an emancipated minor is the minor's residency.
- (7) The residency address must be:
 - (a) the number and street name assigned for U.S. mail delivery;
 - (b) an address convention used by the U.S. postal service in areas where a number and street name have not been assigned; or
 - (c) a descriptive address of the location where the applicant resides (for example, under the west end of the east street bridge) if the applicant does not have a standard address or is homeless.
- (8) The document must show the applicant's name and current residency.
- (9) Each applicant shall establish residency by submitting two documents from the following list:
 - (a) valid Montana credential;
 - (b) valid Montana REAL ID credential;
 - (c) expired Montana credential;
 - (d) expired Montana REAL ID credential;
 - (e) a Montana hunting or fishing license or permit;
 - (f) utility bill;
 - (g) credit card statement;
 - (h) school transcript or report card;
 - (i) bank statement;
 - (j) mortgage document;
 - (k) rental agreement or rent receipt;
 - (l) insurance policy;
 - (m) tax document;
 - (n) pay stub;
 - (o) vehicle registration or title;
 - (p) voter registration;
 - (q) phone bill;
 - (r) federally recognized tribal identification;
 - (s) Montana recognized tribal identification;
 - (t) certified court documents (for example, court order, judgment, subpoena, warrant); or
 - (u) first class mail with postmark.
- (10) If the applicant is homeless, the applicant shall submit:
 - (a) a separate mailing address;
 - (b) a written statement from a social service agency on the agency's letterhead verifying the applicant's homeless status and the descriptive address given by the applicant.

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

NEW RULE XIV EXCEPTION PROCESS (1) Applicants who, for reasons beyond their control, are unable to present all necessary documents may request that the department issue a REAL ID credential through an exception process.

(2) If an exception is necessary, an applicant shall request an exception in writing on a form approved by the department and provide alternative documents.

(3) Alternative documents to demonstrate authorized presence will only be allowed to demonstrate U.S. citizenship.

(4) The request for an exception must be reviewed by the department. The department shall make reasonable efforts to establish the authenticity of the alternative documents at the time they are submitted.

(5) If the department grants an exception, the department shall note this decision on the driver record.

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

NEW RULE XV DOCUMENT VERIFICATION REQUIREMENTS (1) For foreign nationals, the department shall verify the authenticity of the document through the SAVE system or alternative methods approved by DHS.

(2) The department shall verify social security numbers with SSA or through another method approved by DHS.

(3) The department shall verify the authenticity of U.S. passports through the U.S. passport verification system.

(4) If the documents presented do not appear authentic, the data does not match, and the use of an exception process is not warranted, the department shall not issue a credential and refer the applicant to the issuing office for resolution.

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

NEW RULE XVI DENIAL OF APPLICATIONS (1) The department may delay issuing a credential to verify any document presented by an applicant.

(2) The department shall deny an application if the applicant presents fraudulent or altered documents or commits any other fraud in the application process.

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

NEW RULE XVII FULL FACIAL DIGITAL PHOTOGRAPH (1) The department shall take a full facial photograph of the applicant and place it on the front of the credential.

(a) The applicant shall remove all head coverings.

(b) The applicant shall not wear eyewear that obstructs the iris or pupil of the eyes and shall not take any action to obstruct a photograph of their facial features.

(2) The department shall:

(a) ensure lighting is equally distributed on the face;

(b) ensure that the head from crown to the base of the chin and from ear-to-ear is clearly visible and free of shadows;

(c) ensure where possible, that there are no dark shadows in the eye-sockets due to the brow and that the iris and pupil are clearly visible; and

(d) take care to avoid "hot spots" (bright areas of light shining on the face).

(3) An applicant requesting to wear a head covering for religious purposes shall complete a statement under penalty of perjury on a form designated by the department.

(4) If the department grants a religious exception, but receives credible evidence that the applicant does not wear a religious head covering while in public, except when removal is necessary, the department shall cancel the credential.

(5) An applicant requesting to wear a head covering for medical reasons shall complete a statement under penalty of perjury on a form designated by the department.

(6) If the department grants a religious or medical exception, the applicant may wear a head covering that does not obscure any facial features. The exception must be noted on the driver record.

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

NEW RULE XVIII FOREIGN NATIONAL WITH TEMPORARY AUTHORIZED PRESENCE (1) The department may only issue a temporary or limited-term credential to a foreign national after verifying the individual's authorized presence in the United States.

(2) The department shall not issue a temporary or limited-term credential for a period longer than:

(a) the expiration 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

(b) the maximum credential duration term.

(3) The department shall clearly indicate on the face of the credential that the license or card is a temporary or limited-term credential.

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

NEW RULE XIX PROHIBITION AGAINST HOLDING MORE THAN ONE REAL ID CREDENTIAL (1) An individual may hold only one REAL ID credential. An individual cannot hold a REAL ID driver's license and a REAL ID identification card at the same time.

(2) An individual may hold at the same time:

(a) a REAL ID driver's license and a non-REAL ID identification card;

(b) a non-REAL ID driver's license and a REAL ID identification card;

(c) a non-REAL ID driver's license, a REAL ID identification card, and a non-REAL ID identification card; or

(d) a non-REAL ID driver's license and non-REAL ID identification cards at the same time.

(3) If the department confirms an individual holds a driver's license or identification card in another state, the department shall void the other state's credential and notify the other state to cancel the other state's credential.

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

NEW RULE XX SOURCE DOCUMENT RETENTION (1) The department shall retain copies of the application, declaration, and documents submitted to prove legal name, date of birth, social security number, authorized presence, and Montana residency.

(2) The department must scan and retain the digital images for the retention period required under state law, but not less than ten years.

AUTH: 61-5-125, 61-5-128, MCA

IMP: 61-5-128, 61-5-129, MCA

REASON: The 2017 Montana Legislature adopted SB 366 which authorized the department to develop driver's licenses and identification cards (credentials) which comply with the Federal REAL ID Act of 2005 (Public Law 109-13). The legislation allows Montana citizens to choose whether they want such REAL ID compliant credentials or not and included other provisions to aid in the implementation of this new credential production process.

The federal government has adopted extensive rules (6 CFR Part 37) which detail the specific requirements for states to develop a process for the issuance, replacement, or renewal of REAL ID compliant driver's licenses and identification cards and these rules are generally proposed to bring Montana's newly established REAL ID production process in line with the federal requirements.

Proposed New Rule I is necessary to clearly state a purpose for the rules proposed. Proposed New Rule II is necessary to create the definitions for words and phrases used in the proposed rules. Proposed New Rule III is advanced to require a declaration from any applicant for a REAL ID compliant credential to attest as to the application's truth and correctness.

Proposed New Rule IV is necessary to identify the subjects that must be verified in any application for the REAL ID compliant credentials. Proposed New Rules V and VI are necessary to establish translation requirements for REAL ID required documentation. Proposed New Rules VII, VIII, and IX are necessary to establish the requirements for proof of legal name on any REAL ID compliant credential.

Proposed New Rule X details the requirements for an applicant to prove the validity of the required social security number. Proposed New Rule XI is needed to address possible changes to an individual's name, date of birth, or social security number. Proposed New Rules XII and XIII are necessary to establish how an applicant proves authorized presence in the United States and Montana residency, both of which are required under current Montana law.

Proposed New Rule XIV is necessary to create a process for an applicant to apply to the department for an exception to the requirement that they provide all necessary documentation in an application for a REAL ID compliant credential. Such

exceptions are allowed by federal law and regulations. Proposed New Rule XV is needed to detail how the department will verify required application documents. Proposed New Rule XVI is necessary to detail the circumstances under which the department may deny an application for REAL ID compliant credentials.

Proposed New Rule XVII is needed to provide guidance to the department and applicants as to the nature of the photo to be used on any REAL ID compliant credentials. Proposed New Rule XVIII is needed to address the situation when a foreign national has a limited authorized presence in the United States. Proposed New Rule XIX is needed to establish a prohibition on any individual holding more than one REAL ID compliant credential. It is also addressed to the situation where an individual is a Montana applicant but currently holds a credential issued by another state. Proposed New Rule XX is needed to specify how long the department must maintain REAL ID application documents.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Michele Snowberger, Department of Justice Motor Vehicle Division, 302 North Roberts, P.O. Box 201430, Helena, Montana, 59620; telephone (406) 444-1776; fax (406) 444-2086; or e-mail msnowberger@mt.gov, and must be received no later than 5:00 p.m., August 17, 2018.

5. Jeff Hindoien, Department of Justice, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the department.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by mail on June 27, 2018.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Matthew T. Cochenour
Matthew T. Cochenour
Rule Reviewer

/s/ Timothy C. Fox
Timothy C. Fox
Attorney General
Department of Justice

Certified to the Secretary of State July 10, 2018.