

The Impact of North Carolina Driver's License Requirements and the REAL ID Act of 2005 on Unauthorized Immigrants

Shea Riggsbee Denning

The identification requirements for obtaining a North Carolina driver's license have changed significantly over the past fifteen years. Amendments to the state's driver's license requirements have been enacted to achieve various purposes not directly tied to the ability of an unauthorized immigrant to be licensed, including the enforcement of child support laws and residency requirements. Statutory amendments enacted after the federal REAL ID Act of 2005, however, have expressly aimed to prohibit the issuance of licenses to unauthorized immigrants.¹ This article describes the evolution of the state law governing the issuance of driver's licenses, the state's current licensing requirements, the requirements of the REAL ID Act and its implementing regulations, and North Carolina's efforts toward REAL ID compliance.

Legislative History

North Carolina law has long included Social Security numbers among the categories of information requested from applicants for a driver's license, a learner's permit, or an identification card from the North Carolina Division of Motor Vehicles (NCDMV).² Until 1997, however, there was no legal bar to issuing a driver's license to a person who failed to provide a Social Security Number. The first such prohibition was enacted as part of a package of statu-

tory amendments designed to enhance enforcement of child support.³ Unlike more recent amendments to statutory requirements for obtaining a driver's license, these changes stemmed from legislation targeting concerns not directly related to an applicant's citizenship or immigration status, though they doubtless had an effect on the ability of unauthorized immigrants to obtain a license.⁴

In spite of these changes, by 2001, North Carolina had a widespread reputation for being a state in which a person could easily obtain a driver's license, whether or not he or she resided in the state and regardless of his or her immigration status.⁵ Political pressure to enforce the residency requirement for obtaining a North Carolina driver's license led to the introduction of bills in the General Assembly in spring 2001 requiring that applicants submit proof of their state residency to NCDMV as part of a driver's license application. In the act eventually passed by the General Assembly, the state legislature again sanctioned the issuance of driver's licenses to people who did not have a Social Security Number by allowing the issuance of licenses to people who could provide an Individual Taxpayer Identification Number.⁶ The act was ratified on September 21, 2001.

The terrorist attacks of September 11, 2001, had occurred ten days earlier, though, and the focus on immigration status was about to become nearly singular in its intensity and its influence over state driver's license laws.⁷

A commission established to study the events of 9/11 released a report not-

ing that "[a]ll but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud." One of the recommendations in the report was that the federal government "set standards for the issuance of birth certificates and sources of identification, such as drivers licenses" because "[a]t many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists."⁸

In December 2003, NCDMV adopted new security measures and procedures aimed at preventing driver's license fraud. In the press release announcing Operation Stop Fraud, Brian Beatty, then the secretary of crime control and public safety, explained, "Since the terrorist attacks, the focus of driver licensing nationwide has shifted from just highway safety to public safety."⁹

One of the ways in which the U.S. Congress responded to the 9/11 commission report and concerns about domestic security was by enacting the REAL ID Act of 2005.¹⁰ The act initially provided that, beginning May 11, 2008, persons could use state-issued driver's licenses or identification cards to board federally regulated commercial aircraft, access federal facilities, or enter nuclear power plants only if the state was issuing licenses in compliance with the mandatory minimum requirements set forth in the act. All states were subsequently granted a compliance extension until December 31, 2009.¹¹

The REAL ID Act requires that states issuing REAL ID driver's licenses

The author is a School faculty member specializing in motor vehicle law. Contact her at denning@sog.unc.edu.

and identification cards incorporate certain information and security features into the cards, require proof of the identity and the U.S. citizenship or the legal status of the applicant, verify source documents provided by the applicant, and establish specified security standards for officers who issue licenses and identification cards.

Because all the states were granted a compliance extension, the impact of the act on the air-traveling public and on people seeking access to federal facilities has not yet been fully realized. However, the impact on NCDMV operations and on unauthorized immigrants who have been unable to obtain or renew North Carolina driver's licenses already has been significant.¹²

Given the post-9/11 emphasis on securing the integrity of the licensing process, combined with the focus on immigration status, it is not surprising that the 2001 amendments to North Carolina's driver's license laws allowing licenses to be issued on the basis of Individual Taxpayer Identification numbers rather than Social Security numbers were short-lived. On August 27, 2006, the requirement that an applicant for an original North Carolina driver's license provide a valid Social Security Number was reinstated when Governor Mike Easley signed the Technical Corrections Act.¹³ The 2006 act eliminated the exception that allowed NCDMV to issue driver's licenses to people providing an Individual Taxpayer Identification Number, thereby removing people without Social Security numbers and, consequently, all unauthorized immigrants, from the people eligible to obtain a North Carolina driver's license.

The 2006 legislation enacted one exception to the requirement that an applicant for a driver's license present a valid Social Security Number. The exception authorized NCDMV to issue a driver's license of limited duration to an applicant present in the United States under a valid visa issued by the U.S. Department of Homeland Security (DHS).¹⁴

Now, in addition to proving that he or she lives in the state, an applicant for a North Carolina driver's license must prove that his or her presence in the state is lawful. A person who is

unable to produce a Social Security Card or other documentation issued by the U.S. government proving his or her lawful presence in the United States may not obtain a license. The upshot is that unauthorized immigrants may no longer obtain a North Carolina driver's license.

Many states and privacy advocates have opposed implementation of REAL ID requirements.¹⁵ Among the states opposing it is Arizona, whose former governor, Janet Napolitano, is the current secretary of homeland security.¹⁶ Secretary Napolitano has said that she is working with governors to repeal the REAL ID Act and to substitute "something else that pivots off the driver's license but accomplishes some of the same goals."¹⁷ Although the future of REAL ID is somewhat uncertain, it seems highly unlikely, given the compliance efforts already undertaken and the amendments to licensing rules made independently of REAL ID, that North Carolina will return anytime soon to practices of licensing people regardless of their immigration status.

North Carolina Driver's License Requirements

As noted earlier, North Carolina's driver's license eligibility rules for unauthorized immigrants are easy to state. Unauthorized immigrants are ineligible to obtain a North Carolina driver's license, learner's permit, or identification card.

The rules and the procedures that govern the issuance of North Carolina driver's licenses to people who are eligible for a license on the basis of citizenship or lawful immigration status are not easy to state. They are many and complex.

The laws governing the licensing of drivers are contained in the Uniform Driver's License Act, Article 2 of Chapter 20 of the North Carolina General Statutes (hereinafter G.S.).¹⁸ G.S. 20-7 requires that a person be licensed by NCDMV to drive a motor vehicle on a highway.¹⁹

Rules for Nonresidents

Nonresidents who are at least sixteen years old and are licensed by their home state or country are excepted

from the requirement that a person be licensed by NCDMV to drive on a highway in this state.²⁰ To meet the exception, the nonresident must have in his or her immediate possession a valid driver's license issued to him or her in his or her home state or country.

An international driver's permit (sometimes called an international driver's license or an international driving privilege) does not satisfy this requirement. The United States is a party to a United Nations treaty that gives residents of one country the right to drive in other countries using the driver's license issued by the government of the jurisdiction in which they live.²¹ International driver's permits were created under this treaty to facilitate local officials' determination of whether a person is validly licensed by his or her home country.²² These permits translate government-issued driver's licenses into ten languages to assist officials in interpreting a foreign driver's license. International driver's permits issued to residents of the United States have no use, purpose, or effect within the United States.²³ They do not replace state-issued driver's licenses or restore revoked driving privileges, and they are not proof of identity.²⁴

A "nonresident" is defined as "[a]ny person whose legal residence is in some state, territory, or jurisdiction other than North Carolina or in a foreign country." Any person who has resided in North Carolina for "other than a temporary or transitory purpose for more than six months" is presumed to be a resident of the state, and "absence from the State for more than six months shall raise no presumption that the person is not a resident of this State."²⁵ An exemption from license requirements for nonresidents "specifically applies to nonresident military spouses, regardless of their employment status, who are temporarily residing in North Carolina due to active military orders of a spouse."²⁶

A question may arise regarding whether an unauthorized immigrant can have a legal residence in North Carolina. The term "legal residence," as defined in G.S. 20, may fairly be equated with the term "domicile." "Domicile" is "one's permanent, established home as distinguished from a

temporary, although actual, place of residence.²⁷ Domicile is the place to which a person intends to return when absent from it, and the place in which a person intends to remain permanently, for an indefinite length of time, or until some unexpected event occurs to induce the person to leave.²⁸ Thus a person's domiciliary status in North Carolina depends on the person's intention regarding his or her stay in the state.²⁹

A question also may arise regarding whether an unauthorized immigrant subject to deportation can form the requisite intent to stay indefinitely in the state and, if so, whether the law recognizes that intent and equates it with domiciliary status. The North Carolina Court of Appeals has not addressed this issue for purposes of determining residency under G.S. 20, though the definition of nonresident remains the same as it was when unauthorized immigrants who resided in North Carolina were permitted to obtain driver's licenses. Traditionally the interpretation of residency for G.S. 20 purposes has not hinged on a person's citizenship or immigration status. Moreover, courts across the country have determined that a person's status as an unauthorized immigrant does not preclude him or her from establishing domiciliary status within a state or a territory for various legal purposes not related to immigration.³⁰ A North Carolina court is likely to reach the same conclusion.

A person whose legal residence under G.S. 20 is North Carolina must obtain a North Carolina driver's license to drive on the highways of this state lawfully and may not rely on a license issued by his or her former state or jurisdiction of residence.³¹ A new resident of the state who has a regular driver's license issued by another jurisdiction must obtain a license from NCDMV within sixty days after becoming a resident.³²

In addition to nonresidents who are licensed in their home state or country, three more categories of people are exempted from otherwise applicable driver's license requirements. First, a person may lawfully operate a motor vehicle owned by and in the service of the U.S. armed forces without a North

Carolina driver's license. This exemption does not extend to people who operate vehicles of the U.S. Civil Conservation Corps.

Second, a person may lawfully drive a road machine, a farm tractor, or an implement of husbandry temporarily on a highway without a North Carolina driver's license.³³

Finally, a person who is at least sixteen years old may lawfully operate a moped on a highway without being licensed.³⁴

Application for an Original License

To obtain an original (as distinguished from a renewed) North Carolina driver's license, an applicant must appear in person at an NCDMV office.³⁵ The applicant must provide the following information about himself or herself:

- Full name
- Mailing address and residence address
- A physical description, including sex, height, eye color, and hair color
- Date of birth
- A valid Social Security Number
- A signature

NCDMV requires that an applicant present a valid Social Security Card rather than simply a number.³⁶ The only exception to this requirement applies to an applicant who presents valid documentation issued by, or under the authority of, the U.S. government that proves his or her legal presence of limited duration in the United States. NCDMV must issue to an applicant who presents such valid documentation and meets other licensing requirements a license of limited duration, which may not expire later than the expiration of the authorization of the applicant's legal presence in the United States.³⁷

Thus, G.S. 20-7 groups driver's license applicants into two categories: those who have Social Security numbers and those who have legal presence of limited duration. There is, however, a third group of applicants who may not be included in either statutory category. Some immigrants, such as lawful permanent residents and refugees, are authorized to remain in the United

States permanently, but may not have Social Security cards. Although NCDMV includes documents establishing permanent legal status among the documents that it accepts as establishing a legal presence of *limited* duration, immigrants with permanent legal status are issued driver's licenses of regular duration (that is, five or eight years, depending on their age) regardless of whether they also have a Social Security Card.

Examples of documents that NCDMV will accept as establishing a legal presence of limited duration are as follows:³⁸

- I-551 Permanent Resident Card
- I-20 SEVIS (Student and Exchange Visitor Information System) Form
- I-94 Arrival/Departure Record
- I-766 Employment Authorization Card
- I-797 Notice of Action
- DS-2019 SEVIS Form
- Visa/Temp I-551 Language
- Temporary I-551 Stamp
- I-512L Parole/Alien
- I-571 Refugee Travel
- Conditional Two-Year I-551
- I-688A Employment Authorization Card
- I-688B Employment Authorization Document
- I-688 Temporary Resident Card

This is not an exhaustive list. Other documents may establish legal presence of a limited duration.

Licenses issued to noncitizens have the wording "Legal Presence Expiration Date [xx/xx/xxxx]" printed on the back.³⁹ The legal-presence expiration date, which may differ from the license expiration date, is based on the expiration date of the document submitted to establish legal presence. The expiration date of the document does not always coincide with the expiration of the authorization of the applicant's legal presence in the United States. Licenses issued to certain refugees and people granted asylum, as well as lawful permanent residents whose I-551 Permanent Resident cards have no expiration date, but who have Social Security cards, will not bear the "legal presence" notation.⁴⁰

In addition to completing an application, an applicant for an original license in North Carolina must present at least two forms of identification of the type approved by the commissioner of motor vehicles.

Proof of Residency

As noted earlier, only North Carolina residents are eligible to obtain a North Carolina driver's license. Therefore, applicants must submit verified or verifiable residency and address information contained on any of the following types of documents:⁴¹

- A document issued by an agency of the United States or by the government of another nation—for example:
 - ♦ Military orders
 - ♦ A valid passport
 - ♦ Immigration and Naturalization Service documents or Citizenship and Immigration Services documents
 - ♦ Correspondence from the Department of Veterans Affairs or the Social Security Administration
 - ♦ A *Matricula Consular* (an identification card) issued by the Mexican Consulate for North Carolina
- A document issued by the State of North Carolina; a political subdivision of the State; or another state, the Commonwealth of Puerto Rico, or a U.S. territory—for example:
 - ♦ A valid North Carolina vehicle registration form
 - ♦ Correspondence or a service card from the social services department of a county or a municipality
 - ♦ A property tax statement
 - ♦ A library card
 - ♦ A North Carolina voter registration card
 - ♦ A preprinted bank or corporate statement or business letterhead
- Any other document deemed reliable by NCDMV—for example:
 - ♦ A pay stub with the payee's address
 - ♦ A utility bill showing the address of the applicant-payor

- ♦ A contract for an apartment, a house, a modular unit, or a manufactured home with a North Carolina address, signed by the applicant
- ♦ A receipt for personal property taxes paid to a North Carolina locality
- ♦ A receipt for real property taxes paid to a North Carolina locality
- ♦ A current automobile insurance policy issued to the applicant and showing the applicant's address
- ♦ A monthly or quarterly financial statement from a North Carolina regulated financial institution
- ♦ A *Matricula Consular* or a substantially similar document issued by the Mexican Consulate for North Carolina
- ♦ A document similar to the preceding one, issued by the consulate or the embassy of another country, if NCDMV has consulted with the U.S. Department of State and is satisfied with the reliability of such document
- ♦ School records signed by a school official, including driver education certificates
- ♦ Computer-generated tax records (in addition to receipts)
- ♦ A current life, health, or property insurance policy or binder (automobile insurance is included earlier)
- ♦ A letter from a homeless shelter
- ♦ A document from the social services department of a county or a municipality

An applicant who cannot produce any approved documentation of residency or, in the case of a minor applicant, a parent or a legal guardian of the applicant who cannot produce such documentation, may complete an affidavit on a form provided by NCDMV and sworn to before an NCDMV official indicating the applicant's current residence address.⁴²

Proof of Age and Identity

To obtain a regular driver's license, a person must have reached the minimum age required by the class of

license: Class A: eighteen years old; Class B: eighteen years old; and Class C: sixteen years old.⁴³

An applicant may prove his or her age and identity by presenting a valid or an expired North Carolina driver's license, learner's permit, or identification card. If an applicant does not have one of these documents, he or she must present two documents from the following list. The name must be the same on both documents, and at least one document must reflect the applicant's date of birth. The documents may not come from the same category (such as two school documents):

- A driver's license or a state-issued identification card from another state, Puerto Rico, a U.S. territory, or a Canadian province
- A certified birth certificate issued by a government agency in the United States, Puerto Rico, a U.S. territory, or Canada, or a U.S. Consular Report of Birth Abroad
- An original Social Security Card (not a metal or plastic card or a laminated card or other reproductions)
- Official North Carolina school registration records signed by a school official, and diplomas or General Educational Development (GED) credentials issued by North Carolina schools, including secondary schools, community colleges, colleges, and universities
- Unexpired U.S. military identification, including Form DD-2, Form DD-214, a Common Access Card, and a U.S. military dependent's card
- A valid, unexpired passport from any nation

Physical and Mental Requirements

To obtain a driver's license, a person must demonstrate his or her physical or mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. A person seeking only an identification card does not have to make such a showing.

Proof of Financial Responsibility

NCDMV may not issue a driver's license to a person until he or she has

furnished proof of financial responsibility in a prescribed format.⁴⁴ This requirement does not apply to a person who seeks to renew his or her driver's license or to an applicant for a learner's permit or an identification card.

Additional License Restrictions

Additional restrictions on NCDMV's authority to issue licenses, but not identification cards, apply. They are based on an applicant's driving and criminal history, as well as substance abuse and mental health issues.⁴⁵ Among the restrictions is a prohibition against issuance of a driver's license to a person whose license or driving privilege has been cancelled, suspended, or revoked in any jurisdiction, if the basis for the action would be grounds for like action in North Carolina.⁴⁶ Any such cancellation, suspension, or revocation does not prohibit issuance for a period in excess of eighteen months. In addition, NCDMV may not license an applicant who currently holds a license to drive in another state, unless the applicant surrenders the out-of-state license.⁴⁷

Duration of Licenses

A person between the ages of sixteen and eighteen may, on meeting statutory requirements, be issued a full provisional license, which grants all the privileges of a regular driver's license, but bars drivers under age eighteen from using a mobile telephone while driving.⁴⁸ A full provisional license issued to a person under the age of eighteen expires on the person's twenty-first birthday.⁴⁹

An original regular driver's license issued to a person at least eighteen years old, but less than fifty-four years old, expires on the birthday of the licensee in the eighth year after issuance. An original driver's license issued to a person who is at least fifty-four years old expires on the birthday of the licensee in the fifth year after issuance.⁵⁰

A renewed driver's license issued to a person at least eighteen but less than fifty-four years old expires eight years after the expiration date of the license that is renewed. A renewed driver's license issued to a person at least fifty-four years old expires five years after the expiration date of the license that is renewed.⁵¹

NCDMV may determine that a license of shorter duration should be issued for applicants who have legal presence of limited duration in the United States. A license of limited duration may not expire later than the expiration of the authorization for the applicant's legal presence in the United States.⁵²

Renewal Procedures

A person may apply to NCDMV to renew a license during the 180-day period before the license expires.⁵³ Most people must appear in person to renew a driver's license. Only two groups of people may renew a driver's license by mail: (1) people serving on active duty in the U.S. armed forces and stationed outside the state and (2) North Carolina residents who have been residing outside the state for at least thirty continuous days. When a person is renewing by mail, NCDMV may waive the examination that would otherwise be required for the renewal, but may impose other conditions that it finds advisable. A license renewed by mail is a temporary license that expires sixty days after the licensee returns to North Carolina.⁵⁴

Central Issuance and Mailing of Licenses

In the past, a person seeking an original or a renewed driver's license could visit any NCDMV office, provide the appropriate documentation, have his or her photograph taken, pay the applicable fee, and leave with a newly minted driver's license in hand. That practice began to change July 1, 2008, when NCDMV launched a central system for issuing licenses.⁵⁵ Under this system, driver's licenses, learner's permits, and identification cards are produced and issued from a central location and are mailed to license holders, permit holders, and cardholders at their home addresses. The system is currently operational only in Harnett and Wake counties, but NCDMV plans to implement it statewide in fall 2009.

People seeking to renew their license who do not meet the criteria for renewal by mail must appear at an NCDMV driver's license office, provide necessary documentation, have their photograph taken, and pay the fee for

renewal.⁵⁶ Once the central issuance system is effective statewide, instead of departing with a renewed driver's license in hand, such people will leave NCDMV with their existing license and a temporary driving certificate that does not contain their photograph. The temporary driving certificate is valid for twenty days and confirms only a person's privilege to drive. It may not be used for identification purposes.

(Indeed, a person applying for an identification card rather than a driver's license does not receive a temporary certificate, but must await receipt of a centrally issued identification card.) NCDMV will produce the driver's license at a central location and send it to the applicant's residence address by first class mail. Licenses may be mailed to a post office box only if the licensee is not eligible to receive U.S. Postal Service mail delivery at his or her residence address or if the applicant's only mailing address before July 1, 2008, was a post office box in North Carolina, provided that NCDMV has verified the applicant's residential address.

Format for the Driver's License

A North Carolina driver's license must be tamperproof and contain the following information:⁵⁷

- Identification of North Carolina as the issuer of the license.
- The license holder's full name.
- The license holder's residence address.
- A color photograph of the license holder or a properly applied laser-engraved picture on polycarbonate material, taken by NCDMV. There is no longer an exception allowing the issuance of licenses without photographs for people for whom the taking of photographs violates their religious convictions. NCDMV uses a red border for photographs of licensees who are less than eighteen years old, a yellow border for licensees who are at least eighteen but less than twenty-one years old, and a green border for licensees who are twenty-one years old or older.
- A physical description of the license holder, including sex, height, eye color, and hair color. If an applicant

so requests, the license also must reflect the applicant's race.

- The license holder's date of birth.
- An identifying number for the license holder, assigned by NCDMV. The identifying number may not be the license holder's Social Security Number.
- Each class of motor vehicle that the license holder is authorized to drive and any endorsements or restrictions that apply.
- The license holder's signature.
- The date on which the license was issued and the date on which it expires.

Since October 1, 2008, driver's licenses, learner's permits, and special identification cards issued to applicants under the age of twenty-one have been printed in a vertical format, whereas driver's licenses issued to applicants at least twenty-one years of age continue to be printed horizontally. The contrasting format is designed to help sales clerks who sell age-restricted products such as alcoholic beverages and tobacco distinguish underage people from those who are at least twenty-one years old.

Notice of Change of Address or Name

A person whose address changes from the address stated on his or her driver's license must notify NCDMV of the change within sixty days after the change occurs.⁵⁸ If the person's address changed because the person moved, the person must obtain a duplicate license within sixty days stating the new address. Violation of these provisions is a Class 2 misdemeanor, punishable by up to sixty days in jail and a \$1,000 fine.⁵⁹ A person whose address changes because of a governmental address change rather than a move may not be charged with violating this subsection.

A person whose name changes from the name stated on a driver's license must notify NCDMV of the change within sixty days after the change occurs and obtain a duplicate driver's license stating the new name.

A person may obtain a duplicate of a license issued by NCDMV by paying a fee of \$10 and giving NCDMV satisfactory proof that any of the following have occurred: (1) the person's license

has been lost or destroyed; (2) it is necessary to change the name or the address on the license; (3) because of age, the person is entitled to a license with a different-color photographic background or a different-color border; or (4) NCDMV revoked the person's license, the revocation period has expired, and the period for which the license was issued has expired.⁶⁰

Violations of License Requirements

As noted earlier, a person must be licensed by NCDMV to drive a motor vehicle on a highway in North Carolina (unless the person is exempt from licensing requirements) and must carry the license while driving the motor vehicle. A violation of this provision is a Class 2 misdemeanor. A person may not be convicted of the offense of failure to carry a regular driver's license if the person produces in court a regular driver's license issued to the person that was valid when the person was charged. Likewise, a person may not be convicted if the person shows the following: (1) at the time of the offense, the person had an expired license; (2) the person renewed the license within thirty days after it expired; and (3) the person could not have been charged with driving without a license if the person had the renewed license when charged with the offense.⁶¹

If a person with a restricted license drives in violation of the restrictions—which may include, for example, a requirement that a person wear corrective lenses while driving—the person is deemed to have committed the offense of operating a motor vehicle without a license.⁶²

G.S. 20-30 renders unlawful a number of other acts, which, except where otherwise specified, constitute Class 2 misdemeanor offenses.

It is a Class I felony to knowingly make a false affidavit or knowingly swear or affirm falsely to any matter required by the terms of the Uniform Driver's License Act (Article 2 of G.S. 20) to be sworn or affirmed.⁶³ It also is unlawful for any person to cause or knowingly permit any minor under the age of eighteen to drive a motor vehicle on a highway as an operator, unless the minor is licensed by NCDMV.⁶⁴ It is unlawful for a person

to permit a motor vehicle owned by him or her or under his or her control to be driven by any person who has no legal right to do so.

REAL ID Requirements

As mentioned in the introduction to this article, the REAL ID Act of 2005 initially required compliance by May 11, 2008, but DHS extended the deadline to allow states time to meet the requirements of the act.⁶⁵ Now the first deadline for partial compliance with REAL ID is December 31, 2009.⁶⁶ By that date, states must check the lawful status of all applicants for licenses to ensure that unauthorized immigrants do not obtain REAL ID licenses.

On January 29, 2008, DHS adopted a final rule establishing minimum standards that states must follow to comply with the REAL ID Act.⁶⁷ Those standards became effective March 30, 2008. The standards provide a more detailed explanation of how a state may meet the general requirements of the act.

On December 31, 2009, the initial extension granted to every state terminates unless the state, no later than October 11, 2009, submits to DHS a request for an additional extension, along with a statement that the state has achieved the eighteen mandatory benchmarks set forth in the Material Compliance Checklist (for a copy of the checklist, see Appendix A).⁶⁸ The benchmarks require certain documentation for issuance of driver's licenses and identification cards, verification by the state of information presented by an applicant, integration of security features on driver's licenses and identification cards, and internal security measures, including conducting background checks of employees handling source documents and issuing driver's licenses and identification cards. As of this writing, NCDMV has met nearly all the benchmarks. It is implementing improvements necessary to satisfy benchmarks 16 and 17, which require criminal history and employment eligibility checks for certain employees and material compliance by the earlier of January 1, 2010, or within ninety days of the submission of its material com-

pliance statement. The other two unsatisfied benchmarks, 11 and 18, cannot be satisfied until the state begins issuing REAL IDs.

The final rule provides that as of May 11, 2011, driver's licenses and identification cards will not be accepted from states that are not in full compliance with the provisions of REAL ID.⁶⁹

As of December 1, 2014, federal agencies may not accept a driver's license or an identification card for official purposes from any person under fifty years old unless DHS has determined that the issuing state is in compliance with REAL ID regulations, and the card presented by the person meets federal standards.⁷⁰ As of December 1, 2017, federal agencies will not accept any state-issued driver's license or identification card for official purposes regardless of the cardholder's age unless the card has been issued by a state that has certified to DHS its compliance with federal REAL ID regulations.⁷¹

States retain the option under REAL ID of issuing two types of driver's licenses and identification cards: REAL ID-compliant cards and noncompliant cards.⁷² Noncompliant cards issued by REAL ID-compliant states must clearly state on their face and in the machine-readable zone that they are not acceptable for official purposes, and they must have a unique design or color indicator that clearly distinguishes them from REAL ID-compliant cards.⁷³ North Carolina has no plans to implement a dual-track licensing system.⁷⁴

Features of a REAL ID

The REAL ID Act requires that a state include, at a minimum, the following information and features on each driver's license and identification card issued to a person by the state:⁷⁵

- The person's full legal name
- The person's date of birth
- The person's gender
- A unique driver's license or identification card number, which may not be the person's Social Security Number
- A full facial digital photograph of the person
- The person's address of principal residence⁷⁶

- The person's signature
- The date of the transaction
- The expiration date of the license or the card
- The state or the territory of issuance

As previously mentioned, North Carolina driver's licenses contain all the preceding information.

The card must contain physical-security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes and "common machine-readable technology, with defined minimum data elements."⁷⁷

Physical-Security Features

In general, states are required to include document-security features on REAL ID driver's licenses and identification cards "designed to deter forgery and counterfeiting, promote an adequate level of confidence in the authenticity of the cards, and facilitate detection of fraudulent cards."⁷⁸ REAL ID driver's license and identification cards must contain at least three levels of integrated-security features that provide "maximum resistance" to efforts to do the following:⁷⁹

- Counterfeit, alter, simulate, or reproduce a genuine document
- Alter, delete, modify, mask, or tamper with data concerning the original or lawful cardholder
- Substitute or alter the original or lawful cardholder's photograph and/or signature by any means
- Create a fraudulent-looking document using components from legitimate driver's licenses or identification cards

States are required to employ security features designed to detect false cards for each of the following levels:⁸⁰

- Level 1: cursory examination, without tools or aids, involving easily identifiable visual or tactile features, for rapid inspection at point of usage
- Level 2: Examination by trained inspectors with simple equipment
- Level 3: Inspection by forensic specialists

NCDMV is currently issuing driver's licenses and identification cards with integrated-security features that satisfy each level.

Machine-Readable Technology

The back of a REAL ID-compliant driver's license or identification card must contain certain information in a specified machine-readable format.⁸¹ The machine-readable bar code must contain the following data elements: (1) expiration date; (2) full legal name, unless the state permits an applicant to establish a name other than the name that appears on a source document; (3) date of transaction; (4) date of birth; (5) gender; (6) address; (7) driver's license or identification card number; (8) the date on which the design (format) of the card was revised; (9) inventory control number of the physical document; and (10) state or territory of issuance.⁸²

Minimum Standards for Issuance

In addition to imposing requirements related to the physical nature of the card, REAL ID mandates that states require presentation of documents that verify the following information about an applicant before issuing a driver's license or an identification card to him or her:

- Identity
- Date of birth
- Social Security Number or verification of ineligibility for a Social Security Number
- Address of principal residence
- Lawful status in the United States

Identity and Date of Birth

To establish identity and date of birth, an applicant must present at least one of the following documents:⁸³

- A valid, unexpired U.S. passport
- A certified copy of a birth certificate filed with a state office of vital statistics or an equivalent agency in the person's state of birth
- A Consular Report of Birth Abroad issued by the U.S. Department of State, Form FS-240, DS-1340, or FS-545
- A valid, unexpired Permanent Resident Card (Form I-551, issued

by DHS or Immigration and Customs Enforcement)

- An 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
- A Certificate of Naturalization, Form N-550 or Form N-570, issued by DHS
- A Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS
- A REAL ID driver's license or identification card issued in compliance with the REAL ID Act and its implementing regulations
- Such other documents as DHS may designate by notice published in the Federal Register

A state may permit a person to establish a name other than the name that appears on a source document if the person presents documents issued by the official entity establishing the name change.⁸⁴

Because North Carolina accepts state-issued driver's license and identification cards as proof of age and identity, and no states are yet issuing REAL IDs, North Carolina is not in technical compliance with the preceding requirements.

Social Security Number

An applicant for a REAL ID must present a Social Security Card or, if one is not available, one of the following documents bearing the applicant's Social Security Number:⁸⁵

- A W-2 form
- An SSA 1099 form
- A non-SSA 1099 form
- A pay stub with the applicant's name and Social Security Number on it

The state DMV must then verify the Social Security Number with the Social Security Administration or through another method approved by DHS. NCDMV implemented the Social Security On-Line Verification (SSOLV) process in March 2004.⁸⁶ Pursuant to REAL ID regulations, an applicant who proves his or her identity by presenting an unexpired foreign passport with a

U.S. visa must present a Social Security Number or demonstrate that he or she is lawfully present but not authorized to work.⁸⁷

Address of Principal Residence

To demonstrate address of principal residence, a person must present at least two documents of the type designated by the state that include the person's name and principal residence. Currently, NCDMV requires only one acceptable document to verify residency.⁸⁸

Evidence of Lawful Status

A state may issue a REAL ID driver's license or identification card only to a person who presents satisfactory evidence of lawful status.

A state must require, before issuing a driver's license or an identification card to a person, valid documentary evidence that the person meets one of the following requirements:⁸⁹

1. Is a citizen or a national of the United States
2. Is an alien lawfully admitted for permanent or temporary residence in the United States
3. Has conditional permanent resident status in the United States
4. Has an approved application for asylum in the United States or has entered the United States with refugee status
5. Has a valid, unexpired nonimmigrant visa for entry into the United States
6. Has a pending application for asylum in the United States
7. Has a pending or approved application for temporary protected status in the United States
8. Has approved deferred-action status
9. Has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent residence in the United States

If a person presents evidence of any of the types in 5–9, the state may issue only a temporary driver's license or identification card to the person that is valid only during the time of the

applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, for one year.⁹⁰

A temporary driver's license or identification card issued pursuant to the requirements set forth earlier may be renewed only on presentation of valid documentary evidence that the status by which the applicant qualified for the temporary driver's license or identification card has been extended by the secretary of homeland security.⁹¹

If a person presents, as proof of identity, a U.S. passport, a birth certificate, a Consular Report of Birth Abroad, a Permanent Resident Card, a Certificate of Naturalization, or a Certificate of Citizenship meeting the requirements stated earlier for establishing identity and age, that document, once verified pursuant to the procedures required under REAL ID, also establishes lawful status.⁹² People who present as evidence of identity an employment authorization document, a foreign passport, or a REAL ID driver's license or identification card must, in contrast, present one of the following additional documents to demonstrate lawful status: a U.S. passport, a birth certificate, a Consular Report of Birth Abroad, a Permanent Resident Card, a Certificate of Naturalization, or a Certificate of Citizenship meeting the requirements stated earlier for establishing identity and age, or documentation issued by the federal government demonstrating lawful status as determined by the U.S. Citizenship and Immigration Service.⁹³ All these documents must be verified as described later.

A state may establish a written, defined process to make exceptions for people who, "for reasons beyond their control, are unable to present all necessary documents and must rely on alternat[iv]e documents to establish identity or date of birth." People may use alternative documents to demonstrate U.S. citizenship, but not any other type of lawful status. The state must make reasonable efforts to establish the authenticity of any alternative document presented and must note the use of the exceptions process in the applicant's record. The state must retain copies or images of the alternative documents presented.⁹⁴

Verification of Documents

States must verify any document issued by DHS and used to establish identity, age, or lawful status, including a foreign passport with a U.S. visa affixed that is accompanied by the approved I-94 form, through the Systematic Alien Verification for Entitlements (SAVE) system or alternative methods approved by DHS. NCDMV currently verifies lawful status through SAVE. If two DHS documents are presented, the state need confirm lawful status through a SAVE verification of only one document. In the event of a non-match, the state DMV may not issue a REAL ID driver's license or identification card and must refer the person to U.S. Citizenship and Immigration Services for resolution.

States must verify Social Security numbers with the Social Security Administration or through another method approved by DHS. A state may use existing procedures to resolve a nonmatch with the Social Security Administration. If the state cannot resolve the nonmatch, and no exceptions procedures apply, the state may not issue a REAL ID driver's license or identification card to an applicant until the information is verified with the Social Security Administration.

States must likewise verify birth certificates presented by applicants. Regulations provide that states should use the Electronic Verification of Vital Events (EVVE) system or other electronic systems whenever the records are available. If the document does not appear to be authentic, the data do not match, and no exceptions procedures apply, the state may not issue a REAL ID driver's license or identification card to the applicant until the information is verified.⁹⁵

States must verify documents issued by the U.S. Department of State with that department or through other DHS-approved methods. States must verify REAL ID licenses and identification cards with the state that issued the card.⁹⁶

Document Retention

Federal regulations governing REAL ID implementation also require that states retain copies of application, declaration, and source documents, including documents used to establish all names recorded by a state DMV. States that

choose to keep paper copies of documents must retain the copies for at least seven years. States that transfer information to microfiche or digital images must retain the microfiche or images for at least ten years.⁹⁷

Physical Security of DMV Production Facilities and Employee Background Checks

In addition to requiring more information from applicants for driver's licenses and verifying the information provided, to issue REAL ID-compliant driver's licenses and identification cards, states must ensure the physical security of the facilities where those licenses and cards are produced, and the security of the materials and the papers from which driver's licenses and identification cards are produced or manufactured.⁹⁸ As noted earlier, NCDMV began producing some driver's licenses and identification cards at a central location on July 1, 2008, and plans to implement central issuance statewide sometime in 2009.

States also must conduct background checks on people who are involved in manufacturing or producing REAL ID driver's licenses and identification cards or who have the ability to affect the information that appears on such licenses and cards.⁹⁹

The North Carolina General Assembly implemented a background-check requirement in 2008 by enacting G.S. 114-19.24, which authorizes NCDMV to obtain the criminal history of certain people who are (or will be) involved in manufacturing or producing driver's licenses and identification cards or who have (or will have) the ability to affect identity information that appears on such licenses and cards. NCDMV may request criminal history information from the U.S. Department of Justice for applicants for employment, current employees, contractual employees or applicants, and employees of a contractor who meet the foregoing criteria. DMV must keep confidential all information that it obtains pursuant to G.S. 114-19.24.

DMV Databases

REAL ID-compliant states must maintain motor vehicle databases that

include, at a minimum, the following information:¹⁰⁰

- All data fields printed on driver's licenses and identification cards issued by the state, individual serial numbers of the licenses and the cards, and Social Security numbers
- A record of the license holder's or cardholder's full legal name and recorded name, if different, without truncation
- All additional fields included in the machine-readable zone, but not printed on the driver's license or the identification card
- Motor vehicle drivers' histories, including motor vehicle violations, suspensions, and points on driver's licenses

To achieve REAL ID compliance, a state also must provide all other states with electronic access to all the information contained in its motor vehicle database.¹⁰¹

Temporary Cards

States may issue a temporary or limited-term REAL ID driver's license or identification card only to a person who has temporary lawful status in the United States. Before issuing such a license or card, states must require valid documentary evidence, verifiable through SAVE or other DHS-approved means, that the person has lawful status in the United States.¹⁰²

The temporary or limited-term REAL ID driver's license or identification card must expire no later than the end of the applicant's authorized stay in the United States. If there is no expiration date for the applicant's stay in the United States, the license or the card must be issued for no longer than one year. In no event may a temporary or limited-term license or identification card remain valid for longer than the state's maximum driver's license or identification card term.¹⁰³

Temporary or limited-term driver's licenses and identification cards may be renewed if the person presents valid documentary evidence that he or she continues to qualify for lawful status. A license's or card's temporary nature or limited term must be clearly indicated on its face and in the machine-readable zone.¹⁰⁴

Reissuance of Cards

States must establish procedures to confirm or verify an applicant's identity each time a REAL ID driver's license or identification card is reissued. Reissuance might occur, for example, when a license holder loses his or her license and applies for a duplicate.¹⁰⁵

Renewal of Cards

Driver's licenses and identification cards meeting REAL ID standards must be valid for no more than eight years. States must require holders of REAL ID driver's licenses and identification cards to renew them in person at least every sixteen years. Thus, if a state issues driver's licenses and identification cards that are valid for eight years—the longest issuance period permitted by REAL ID—license holders or cardholders must appear in person to renew their licenses or cards at least every other period. REAL ID requires that states take an updated photograph of the applicant at least every sixteen years and reverify the renewal applicant's Social Security Number and lawful status through SSOLV and SAVE or other DHS-approved means. States may permit driver's license or identification card renewals not conducted in person as long as there is no 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, and verified.¹⁰⁶

The Next Chapter

The universe of drivers who may obtain licenses in North Carolina has shrunk significantly in recent years, and the REAL ID Act of 2005 has unquestionably influenced this evolution of state law and practice. Whether the state achieves full compliance with REAL ID, or whether REAL ID itself is reshaped, its influence on the state's driver's license laws as well as on the unauthorized immigrants who reside in the state is likely to be long-lasting.

Notes

1. REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (2005), 49 U.S.C. § 30301 note (2009 Supp.).

2. The application requirements for a learner's permit and a special identification card are the same as those for a driver's license. See Section 20-7(b1) of the North Carolina General Statutes (hereinafter G.S.) (setting forth identical application requirements to obtain identification card, learner's permit, or driver's license); see also G.S. 20-37.7(b) (requiring person to complete application used to obtain driver's license to obtain identification card). The remainder of this article refers only to driver's license requirements, which also govern the issuance of learner's permits and identification cards, except where specifically noted.

3. S.L. 1997-433, pt. 4, § 4 (amending G.S. 20-7(b1)).

4. In this article, the term "unauthorized immigrant" refers to noncitizens residing in the United States without permission from the federal government. It includes people who entered the United States unlawfully and people who entered the United States lawfully on a temporary basis, but remained past their authorized period of stay. For an overview of immigration law, policy, and procedures, including a description of categories of noncitizens, see Sejal Zota, "An Introduction to Federal Immigration Law for North Carolina Government Officials," *Immigration Law Bulletin* no. 1 (November 2008).

5. See, e.g., Scott Bowles, "State DMVs Get Stricter on IDs, Driver's Licenses," *USA Today*, October 16, 2001, p. 4A (reporting that nearly 400,000 North Carolina driver's licenses were issued on basis of nonexistent Social Security Number 999-99-9999, which NCDMV clerks were instructed to enter if applicants did not present Social Security Number); David Firestone, "In U.S. Illegally, Immigrants Get License to Drive," *New York Times*, August 4, 2001, p. A1 (reporting that NCDMV accepted military identification cards from Mexico and voter registration cards from other countries in lieu of Social Security Card); Anne Hull, "In N.C., Anxiety and Animosity Put an Edge on Old Dream," *Washington Post*, November 25, 2001, p. A1 (discussing North Carolina's "lax residency requirements" for obtaining license).

6. S.L. 2001-424, § 27.10A (amending G.S. 20-7(b1)). Individual Taxpayer Identification numbers are tax-processing numbers issued by the Internal Revenue Service to people regardless of immigration status to facilitate compliance with federal tax laws and to process and account for tax returns and payments for people not eligible for Social Security numbers. See Internal Revenue Service, "Individual Taxpayer Identification Number," www.irs.gov/individuals/article/0,,id=96287,00.html.

7. See Yilu Zhao, "The Law: Illegal Aliens Travel to Other States for Driver's License," *New York Times*, March 2, 2003, sec. 14WC, Westchester Weekly Desk, p. 5

(reporting impact on unauthorized immigrants of actions by motor vehicle departments to guard against terrorism).

8. National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (Washington, DC: U.S. Government Printing Office, n.d.), 408, 390, www.gpoaccess.gov/911/pdf/fullreport.pdf.

9. North Carolina Department of Transportation, press release, "NCDOT DMV Announces Operation Stop Fraud," December 30, 2003, www.nccrimecontrol.org/newsrels/shp/2003/NCDOTopStopFraud.html.

10. REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (2005), 49 U.S.C. § 30301 note (2009 Supp.); Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes, 73 Fed. Reg. 5,272, 5,273 (January 29, 2008) (stating that "Congress enacted the [REAL ID] Act in response to the 9/11 Commission's recommendations").

11. U.S. Department of Homeland Security, press release, "All Jurisdictions Meet Initial REAL ID Requirements," April 2, 2008, www.dhs.gov/xnews/releases/pr_1207167055742.shtm. Maine was the last state to receive an extension, which it received on the governor's promise to seek legislation to end the issuance of licenses to people not lawfully present in the United States.

12. See Kristin Collins, "More Illegal Immigrants Driving without N.C. License," *Raleigh News & Observer*, June 1, 2008, www.newsobserver.com/141/story/1092203.html; Lorenzo Perez, "License Rule Hurts Car Sales," *Raleigh News & Observer*, January 30, 2008, www.newsobserver.com/news/story/911943.html.

13. S.L. 2006-264, § 35.2. (amending G.S. 20-7(b1)).

14. G.S. 20-7(s).

15. Wilson P. Dizzard III, "States Fall in Line with Real ID," *Government Computer News*, March 7, 2008, <http://gc.com/articles/2008/03/07/states-fall-in-line-with-real-id.aspx>; Electronic Privacy Information Center, *REAL ID Implementation Review: Few Benefits, Staggering Costs* (Washington, DC: Electronic Privacy Information Center, 2008), http://epic.org/privacy/id-cards/epic_realid_0508.pdf; Declan McCullagh, "States Say No (and Yes) to Real ID before May Deadline," *CNET News: Politics and Law*, March 4, 2008, http://news.cnet.com/8301-13578_3-9885311-38.html.

16. Thomas Frank, "Feds to 'Rethink' License Mandate," *USA Today*, January 22, 2009, www.usatoday.com/news/washington/2009-01-22-securelicense_N.htm.

17. "Homeland Security Chief Seeks to Repeal REAL ID Act," *CNN.com*, April 22, 2009, www.cnn.com/2009/POLITICS/04/22/real.ID.debate/index.html.

18. Article 2B of G.S. 20 governs the issuance of identification cards for North Carolina residents who do not drive. As noted earlier, G.S. 20-37.7 requires that a person complete the application used to obtain a driver's license to obtain an identification card.

19. A person "drives" a motor vehicle when he or she is in actual physical control of the vehicle that is in motion or has the engine running. A "motor vehicle" is "[e]very vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle." G.S. 20-4.01(23). A "highway" is "[t]he entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic." The terms "highway" and "street" have the same meaning. G.S. 20-4.01(13).

20. G.S. 20-8(3).

21. Convention on Road Traffic, April 16, 1952, art. 24, ann. 10, 3.3 U.S.T. 3008, 3016, 3048; *see also* AAA Carolinas, "International Drivers Permit—Frequently Asked Questions," www.aaacarolinas.com/Travel/International/idpfaq.htm (explaining benefit of international driver's permit); FTC Consumer Alert, "Ads for International Drivers' Licenses or Permits Could Be a Dead End," www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt108 (cautioning consumers that although international driver's permit is real document when issued by proper authorities, it is not legal alternative to state-issued license).

22. FTC Consumer Alert, "Ads." *See also* USA.gov, "Foreign Visitors Driving in the U.S.," www.usa.gov/Topics/Foreign_Visitors_Driving.shtml (stating that purpose of international driver's permit is to "supplement, not replace, valid government issued licenses").

23. NCDMV's website states, "International drivers licenses are not honored by NC law enforcement authorities." NCDMV, www.ncdot.org/dmv. This is one of the rotating messages that appears in the Did You Know? box on the home page. It may or may not be posted when a visitor logs in.

24. FTC Consumer Alert, "Ads" (noting that U.S. Department of State has authorized only two organizations, American Automobile Association (AAA) and American Automobile Touring Alliance (AATA), to issue international driver's permits to U.S. residents). The AAA and the AATA may sell international driver's permits only to people who are at least eighteen years old and have a valid driver's license issued by a U.S. state or territory. *Ibid.*

25. G.S. 20-4.01(24), (34).

26. G.S. 20-8(3).

27. *Hall v. Wake County Board of Elections*, 280 N.C. 600, 605, 187 S.E.2d 52,

55 (1972), *holding modified by Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979) (approving factors and procedure established by *Hall* to determine domicile but holding that student who intends to remain in his or her college community only until graduation may not, for that reason alone, be denied right to vote in that community).

28. *Ibid.*

29. Letter to Major John Laws, State Highway Patrol, 40 N.C.A.G. 427 (1969).

30. *See, e.g., In re LaFontant*, 161 Misc. 2d 840 (N.Y. Sur. Ct. 1994) (finding petitioner's status as illegal alien immaterial to issue of domicile for purposes of receiving letters of guardianship); *St. Joseph's Hosp. v. Maricopa County*, 688 P.2d 986 (Ariz. 1984) (holding that illegal entry into United States does not disqualify noncitizen from becoming resident of county for purposes of medical care); *Cabral v. State Bd. of Control*, 112 Cal. App. 3d 1012 (Cal. Ct. App. 1980) (holding that unauthorized immigrants possessed legal capacity to change their domiciles from Mexico to California and had done so); *Rzeszotarski v. Rzeszotarski*, 296 A.2d 431 (D.C. App. 1972), *overruled on other grounds by* *Bazemore v. Davis*, 394 A.2d 1377 (1978) (holding that husband's temporary status and subsequent lack of status under immigration laws were irrelevant to issue of domicile).

31. G.S. 20-7(a).

32. *Ibid.* A regular driver's license is a license to drive a noncommercial motor vehicle or a commercial motor vehicle that is exempt from the commercial driver's license requirements. *Ibid.* Special provisions apply to holders of commercial driver's licenses, the issuance of which, and the qualifications and the requirements for which, are set forth in the Commercial Driver License Act, Article 2C of G.S. 20.

33. The term "road machine" is not defined in G.S. 20. The court of appeals held in *State v. Ellison*, 122 N.C. App. 638, 471 S.E.2d 130 (1996), that an automobile was not a "road machine" and that "a road machine differs from an automobile in that it involves only temporary operation for purposes other than travel." A "farm tractor" is a motor vehicle designed and used primarily as a farm implement for pulling plows and agricultural vehicles. G.S. 20-4.01(11). An "implement of husbandry" is a vehicle designed for agricultural purposes and used exclusively to carry out agricultural operations. G.S. 20-4.01(15).

34. G.S. 20-8(c)(7). A "moped" is "[a] vehicle that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 30 miles per hour on a level surface." *See* G.S. 20-4.01(21a) (incorporating definition of moped in G.S. 105-164.3(2)).

35. A person may acquire an identification card to use for identification purposes only. It confers no driving privileges.

36. The Social Security Number of an applicant is not public record. NCDMV may not disclose an applicant's Social Security Number except as allowed by federal law. NCDMV may disclose a Social Security Number obtained on a driver's license application only (1) to its own staff to administer the driver's license laws; (2) to the Department of Health and Human Services Child Support Enforcement Program to establish paternity or child support or enforce a child support order; (3) to the Department of Revenue to verify taxpayer identity; (4) to the Office of Indigent Defense Services to verify the identity of a represented client and enforce a court order to pay for the legal services rendered; and (5) to each county jury commission to verify the identity of deceased people whose names should be removed from the jury lists. The application must contain disclosures concerning the request for an applicant's Social Security Number required by Section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896, 1909, 5 U.S.C. § 552a note (2006).

37. G.S. 20-7(f)(3).

38. Tony W. Spence (Acting Director, Driver and Vehicle Services, NCDMV), memorandum to NCDMV Driver and Vehicle Services staff, March 27, 2009), 6.

39. *Ibid.*, 4.

40. *Ibid.*, 10-12.

41. G.S. 20-7; North Carolina Department of Transportation, Division of Motor Vehicles, *Driver's Handbook* (Raleigh, NC: Division of Motor Vehicles, North Carolina Department of Transportation, 2008), www.ncdot.gov/dmv/driver_services/drivers_handbook/download/NCDL_English.pdf.

42. The affidavit must contain the provisions of G.S. 20-15(a) (authorizing NCDMV to cancel license or endorsement on determining that licensee was not entitled to issuance of license, failed to give required or correct information, or is no longer authorized under federal law to be legally present in United States) and G.S. 20-17(a)(5) (providing for mandatory revocation of license by NCDMV on conviction of perjury or making of false affidavit or statement under oath to NCDMV) and must indicate the civil and criminal penalties for completing a false affidavit.

43. G.S. 20-9.

44. G.S. 20-7(c1). This requirement does not apply to certain applicants who do not own currently registered motor vehicles, but who meet other requirements. *Ibid.*

45. G.S. 20-9.

46. G.S. 20-9(f).

47. G.S. 20-9(h).

48. G.S. 20-11(a), (g); G.S. 20-137.3(b).

49. G.S. 20-7(f)(1).

50. G.S. 20-7(f)(2).

51. G.S. 20-7(f)(2a).
52. G.S. 20-7(f)(3).
53. G.S. 20-7(f)(3a).
54. G.S. 20-7(f)(4). North Carolina residents on active duty and their spouses and dependent children may, on request, receive driver's licenses with a military designation. A driver's license with a military designation may be renewed by mail up to two times during the license holder's lifetime. Unlike other renewals by mail, a renewal by mail of this type of driver's license is permanent and does not expire when the license holder returns to North Carolina. In addition, a driver's license with a military designation issued to a person on active duty may be renewed up to one year before its expiration on presentation of military or Department of Defense credentials. G.S. 20-7(q).
55. G.S. 20-7(f)(5). For a story on Wake's plans to implement the system, see Bruce Siceloff, "Wake Licenses to Be Mailed," *Raleigh News & Observer*, June 30, 2009, www.newsobserver.com/248/story/1589027.html.
56. The fee due on license renewal is \$4.00 for each year in the renewal period. The fee for a motorcycle endorsement is \$1.75 per year for the period for which the endorsement is issued. The person must pay the fee before the endorsement may be issued.
57. G.S. 20-7(n).
58. G.S. 20-7.1.
59. G.S. 20-35(a); G.S. 15A-1340.23 (setting forth sentencing grid containing authorized punishment for each class of misdemeanor based on prior conviction level).
60. G.S. 20-14.
61. G.S. 20-35.
62. G.S. 20-7(e).
63. G.S. 20-31.
64. G.S. 20-32.
65. REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (2005), 49 U.S.C. § 30301 note (2009 Supp.).
66. U.S. Department of Homeland Security, press release, "DHS Releases REAL ID Regulation," January 11, 2008, www.dhs.gov/xnews/releases/pr_1200065427422.shtm.
67. 6 C.F.R. pt. 37 (2009).
68. 6 C.F.R. § 37.63(b) (2009) (incorporating by reference Material Compliance Checklist, Appendix A to initial version of 6 C.F.R. pt. 37 (on file with author)).
69. 6 C.F.R. § 37.51(a) (2009).
70. 6 C.F.R. § 37.5(b) (2009).
71. 6 C.F.R. § 37.5(c) (2009).
72. REAL ID Act of 2005, Pub. L. No. 109-13, § 202(d)(11), 119 Stat. 231, 311 (2005), 49 U.S.C. § 30301 note (2009 Supp.); 6 C.F.R. § 37.71 (2009).
73. 6 C.F.R. § 37.71 (2009).
74. See North Carolina Division of Motor Vehicles, "Central Issuance of Driver Licenses & Implementation of U.S. REAL ID Act" (presentation to the Joint Legislative Transportation Oversight Committee, February 27, 2008), 25, www.ncleg.net/documentsites/committees/JLTOC/February%2027,%202008/Presentations/JLT%20Presentation022708.pdf (stating that "NC DMV does not intend to issue non-compliant licenses after implementation if federal resources are made available").
75. REAL ID Act of 2005, Pub. L. No. 109-13, § 202(a), 119 Stat. 231, 312, 49 U.S.C. § 30301 note (2009 Supp.); 6 C.F.R. § 37.17 (2009).
76. An alternative address may be displayed for people enrolled in a state address-confidentiality program or when state or federal law prevents disclosure of the information. In addition, for people residing in areas to which the U.S. Postal Service has not assigned a number and street name for U.S. mail delivery, the card may contain the address used by the U.S. Postal Service. 6 C.F.R. § 37.17 (2009).
77. REAL ID Act of 2005, Pub. L. No. 109-13, § 202(a), 119 Stat. 231, 312, 49 U.S.C. § 30301 note (2009 Supp.).
78. 6 C.F.R. § 37.15 (2009).
79. 6 C.F.R. § 37.15(b) (2009).
80. 6 C.F.R. § 37.15(c) (2009).
81. Cards must use the "ISO/IEC 15438:2006(E) Information Technology—Automatic identification and data capture techniques—PDF417 symbology specification." 6 C.F.R. § 37.19 (2009).
82. *Ibid.*
83. 6 C.F.R. § 37.11(c) (2009).
84. *Ibid.*
85. 6 C.F.R. § 37.11(e) (2009).
86. State of North Carolina, Office of State Auditor, *Strategic Review: North Carolina Division of Motor Vehicles* (Raleigh, NC: Office of State Auditor, 2007), 4, www.ncauditor.net/EPSSWeb/Reports/StrategicAudit/SAR-2007-0673.pdf.
87. 6 C.F.R. § 37.11(e) (2009).
88. North Carolina Department of Transportation, *Driver's Handbook*.
89. REAL ID Act of 2005, Pub. L. No. 109-13, § 202(c)(2)(B), 119 Stat. 231, 313 (2005), 49 U.S.C. § 30301 note (2009 Supp.).
90. REAL ID Act of 2005, Pub. L. No. 109-13, § 202(c)(2)(C), 119 Stat. 231, 313 (2005), 49 U.S.C. § 30301 note (2009 Supp.).
91. *Ibid.*, 119 Stat. at 313–14, 49 U.S.C. § 30301 note (2009 Supp.).
92. 6 C.F.R. § 37.11(g)(1) (2009).
93. 6 C.F.R. § 37.11(g)(2) (2009).
94. 6 C.F.R. § 37.11(h) (2009).
95. 6 C.F.R. § 37.13(b)(3) (2009).
96. 6 C.F.R. § 37.13(4), (5) (2009).
97. 6 C.F.R. § 37.31 (2009).
98. 6 C.F.R. § 37.43 (2009).
99. 6 C.F.R. § 37.45 (2009).
100. 6 C.F.R. § 37.33 (2009).
101. REAL ID Act of 2005, Pub. L. No. 109-13, § 202(d)(12), 119 Stat. 231, 313 (2005), 49 U.S.C. § 30301 note (2009 Supp.).
102. 6 C.F.R. § 37.21 (2009).
103. *Ibid.*
104. *Ibid.*
105. 6 C.F.R. § 37.23 (2009).
106. 6 C.F.R. § 37.25 (2009).

Appendix A: Material Compliance Checklist

#	Section	Does the State—	Yes, is met	No, will meet by [date]	Special Instructions
1	§ 37.11(a)	Subject each applicant to a mandatory facial image capture and retain such image even if a driver license (DL) or identification card (ID) is not issued			
2	§ 37.11(b)	Have each applicant sign a declaration under penalty of perjury that the information presented is true and correct, and the State must retain this declaration			
3	§ 37.11(c)(1)	Require an individual to present at least one of the source documents listed in subsections (i) through (x) when establishing identity			
4	§ 37.11(d)–(g)	Require documentation of: <ul style="list-style-type: none"> • Date of birth • Social Security Number • Address of principal residence • Evidence of lawful status 			
5	§ 37.11(h)	Have a documented exceptions process that meets the requirements established in 37.11(h)(1)–(3) (if States choose to have such a process)			
6	§ 37.13(a)	Make reasonable efforts to ensure that the applicant does not have more than one DL or ID already issued by that State under a different identity			
7	§ 37.13(b)(1)	Verify lawful status through SAVE or another method approved by DHS			If not through SAVE, describe method
8	§ 37.13(b)(2)	Verify Social Security account numbers with the Social Security Administration or another method approved by DHS			If not through SSOLV, describe method
9	§ 37.15(b)	Issue DLs and IDs that contain Level 1, 2 and 3 integrated security features			
10	§ 37.17(a)–(l)	Surface (front and back) of cards include the following printed information in Latin alpha-numeric characters: <ul style="list-style-type: none"> • Full legal name • Date of Birth • Gender • Unique DL/ID number • Full facial digital photograph • Address of principal residence [with exceptions] • Signature [with exceptions] • Date of transaction • Expiration date • State or territory of issuance 			

#	Section	Does the State—	Yes, is met	No, will meet by [date]	Special Instructions
11	§ 37.17(n)	Commit to mark materially compliant DLs and IDs with a DHS–approved security marking.			
12	§ 37.21	Issue temporary or limited-term licenses to all individuals with temporary lawful status and tie license validity to end of lawful status			
13	§ 37.41	Have a documented security plan for DMV operations in accordance with the requirements set forth in § 37.41			
14	§ 37.41(b)(2)	Have protections in place to ensure the security of personally identifiable information			
15	§ 37.41(b)(5)(i)–(ii)	Require all employees handling source documents or issuing DLs or IDs to attend and complete the AAMVA approved (or equivalent) fraudulent document recognition training and security awareness training			
16	§ 37.45	Conduct name-based and finger print-based criminal history and employment eligibility checks on all employees in covered positions or an alternative procedure approved by DHS			
17	§ 37.51(b)(1)	Commit to be in material compliance with Subparts A through D no later than January 1, 2010, or within 90 days of submission of this document, whichever date is earlier			
18	§ 37.71(b)(1)	Clearly state on the face of non-compliant DLs or IDs that the card is not acceptable for official purposes, except for licenses renewed or reissued under § 37.27			

Source: See Material Compliance Checklist, Appendix A to the initial version of 6 C.F.R. pt. 37. It is reproduced from the version of the regulation released by DHS before publication of the regulation in the Federal Register.