

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### 6 CFR Part 37

[Docket No. TSA–2023–0003]

RIN 1652–AA77

### Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Phased Approach for Card-Based Enforcement

**AGENCY:** Transportation Security Administration (TSA), Department of Homeland Security (DHS).

**ACTION:** Final rule.

**SUMMARY:** This rule ensures that Federal agencies have appropriate flexibility to implement the card-based enforcement provisions of the REAL ID regulations after the May 7, 2025, enforcement deadline by explicitly permitting agencies to implement these provisions in phases. Under this rule, agencies may implement the card-based enforcement provisions through a phased enforcement plan if they determine it is appropriate upon consideration of relevant factors including security, operational feasibility, and public impact. The rule also requires agencies to coordinate their plans with DHS, make the plans publicly available, and achieve full enforcement by May 5, 2027.

**DATES:** Effective January 14, 2025.

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#### SUPPLEMENTARY INFORMATION:

#### Availability of Rulemaking Document

You can find an electronic copy of this rulemaking using the internet by accessing the Government Publishing Office's web page at <https://www.govinfo.gov/app/collection/FR/> to view the daily published **Federal Register** edition or accessing the Office of the Federal Register's web page at <https://www.federalregister.gov>. Copies are also available by contacting the individual identified for "General" in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

### Abbreviations and Terms Used in This Document

APA—Administrative Procedure Act  
 DHS—Department of Homeland Security  
 DL/IDs—Driver's Licenses and Identification Cards  
 DMV—Departments of Motor Vehicles  
 EDL—Enhanced Driver's Licenses  
 NPRM—Notice of Proposed Rulemaking  
 TSA—Transportation Security Administration

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### I. Executive Summary

#### A. Purpose of the Regulatory Action

Secure driver's licenses and identification documents are a vital component of our national security framework. The REAL ID Act,<sup>1</sup> passed by Congress in 2005, enacted the 9/11 Commission's recommendation that the

Federal Government "set standards for the issuance of . . . sources of identification, such as drivers licenses."<sup>2</sup> The REAL ID Act and its implementing regulations set minimum security standards for State-issued driver's licenses and identification cards (DL/IDs), which are designed to improve the security and reliability of those documents. These requirements allow Federal agencies that accept State-issued DL/IDs for official purposes to determine with greater accuracy whether individuals presenting a DL/ID are who they say they are.

Pursuant to the REAL ID regulations, REAL ID card-based enforcement begins on May 7, 2025. Card-based enforcement means that Federal agencies may only accept DL/IDs for official purposes, defined in the REAL ID Act and regulation, if the DL/IDs are issued in accordance with REAL ID requirements.<sup>3</sup> In order to fully realize the enhanced security provided by the REAL ID requirements, DHS is committed to beginning card-based enforcement on May 7, 2025. However, as of January 2024, only approximately 56 percent of DL/IDs in circulation nationally are REAL ID-compliant.<sup>4</sup> In 34 States,<sup>5</sup> less than 60 percent of DL/IDs in circulation are REAL ID-compliant, and, of those, in 22 States less than 40 percent are REAL ID-compliant.<sup>6</sup> Further, because of a history of REAL ID deadlines being extended, DHS believes that the public may continue to expect that additional extensions are likely and not feel urgency to obtain a REAL ID-compliant card. DHS believes this lack of urgency is likely to delay increased adoption in many States despite best efforts to inform the public, potentially leading to

<sup>2</sup> The 9/11 Commission Report, Final Report of the National Commission on Terrorist Attacks upon the United States (July 2004) (9/11 Commission Report), p. 390, available at <https://www.govinfo.gov/app/details/GPO-911REPORT> (last visited April 16, 2024).

<sup>3</sup> 6 CFR 37.5(b).

<sup>4</sup> Based on REAL ID issuance data, as of January 2024, voluntarily submitted monthly to DHS by the compliant states. While REAL ID issuance data through October 2024 is available, based on the most recent data, DHS expects the percentage of REAL IDs by the card-based enforcement date to be on par with the forecasts presented in the NPRM. As a result, the regulatory analyses (section V(b)(2)(d) *Adoption of REAL ID-Compliant DL/IDs*) maintains the values used in the NPRM which DHS published in September 2024.

<sup>5</sup> DHS uses "states" and "licensing jurisdictions" interchangeably throughout this document to refer collectively to the 56 different U.S. jurisdictions that issue DL/IDs that are governed by the REAL ID regulations. These jurisdictions are the 50 states, the District of Columbia, and the territories of Puerto Rico, U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa. 6 CFR 37.3.

<sup>6</sup> See *supra* note 4.

<sup>1</sup> Public Law 109–13, 119 Stat. 231, 302 (May 11, 2005) (codified at 49 U.S.C. 30301 note).

last-minute surges in demand for REAL ID-compliant IDs leading up to the deadline.

DHS believes this surge could overwhelm some States with low levels of adoption and result in backlogs and delays in REAL ID issuance. In light of this, DHS anticipates that a significant number of individuals seeking to use their DL/ID for a REAL ID official purpose on and after May 7, 2025, may not have a compliant DL/ID. DHS recognizes that this could result in a situation where individuals are unable to present a compliant DL/ID to access a Federal facility, board a federally regulated commercial aircraft, or enter a nuclear power plant on a large scale. For some agencies, this scenario may raise serious concerns related to security, agency operations, and potential impact to the public. While these concerns are especially acute in an airport security environment, DHS anticipates that other Federal agencies that operate facilities visited frequently by the general public<sup>7</sup> may also face similar concerns. This rule recognizes these concerns and provides flexibility by permitting agencies to, for a period of up to 2 years, implement REAL ID card-based enforcement using a phased approach tailored to their specific operations.

DHS believes that this approach will be more effective at achieving full enforcement than further extensions of the enforcement deadline. This rule demonstrates that the Government is preparing for and planning to begin enforcement on May 7, 2025, and provides an opportunity for States and the public to prepare for full enforcement. After May 7, 2025, when agencies begin full enforcement or implement a phased enforcement plan, as appropriate, the public will be further incentivized to obtain a REAL ID as they realize and anticipate consequences for presenting a non-compliant DL/ID. At the same time, the rule is intended to allow a transition to full enforcement that mitigates the potential negative impact to agencies and the public if every agency was required to begin full enforcement immediately on the card-based enforcement date. Given the current percentage of REAL ID-

compliant DL/IDs that have been issued (as a percentage of all DL/IDs), the challenges many States are experiencing as they seek to increase adoption of compliant DL/IDs, and the resulting concerns Federal agencies may have, the rule provides important flexibility to agencies to ensure a smooth transition to card-based enforcement. The rule balances the increased security benefits of beginning card-based enforcement with an understanding of the significant risks that some Federal agencies may experience as a result of an immediate transition to full enforcement.<sup>8</sup>

#### *B. Summary of the Major Provisions of the Regulatory Action*

Under the REAL ID regulations, Federal agencies may not accept non-compliant DL/IDs for REAL ID official purposes on and after the card-based enforcement of May 7, 2025. Under this rule, Federal agencies are still required to commence REAL ID card-based enforcement on May 7, 2025. However, this rule provides agencies, for a period of up to 2 years, the flexibility to implement a phased approach to card-based enforcement, after considering relevant factors including security, operational feasibility, and impact to the public. The rule provides an enforcement approach that allows agencies to maximize security gains in contexts where a swift transition to full enforcement poses little risk, while minimizing the risks in contexts where large numbers of individuals seeking to use noncompliant DL/IDs raises serious concerns.

To ensure that agencies' phased enforcement plans consistently and appropriately advance the objectives of the REAL ID regulations, this rule requires agencies to coordinate their phased enforcement plans with DHS and begin full enforcement no later than May 5, 2027. To ensure transparency and public visibility, the rule requires agencies that use a phased enforcement plan to make their plan publicly available on their web page and require DHS to make publicly available a list of agencies that have coordinated phased enforcement plans with DHS. Finally, the rule's preamble provides guidance to Federal agencies on types of phased enforcement plans that agencies may consider.

#### *C. Costs and Benefits*

As described in the notice of proposed rulemaking (NPRM) (89 FR 74137, September 12, 2024) and

discussed below, DHS estimates the cost of the rule, over 2 years, is \$1.73 million undiscounted and \$1.70 million discounted at 2 percent. DHS, as the agency administering the REAL ID program, and other Federal agencies will largely bear the cost of the rule related to facilitating phased enforcement while benefits include flexibility to Federal agencies that may reduce operational disruptions as well as to States and individuals associated with additional time to obtain and process REAL IDs.

Specifically, DHS will incur costs to coordinate with Federal agencies on their phased enforcement plans and provide guidance on phased enforcement. DHS estimates the 2-year cost to DHS is \$0.033 million undiscounted and \$0.031 million discounted at 2 percent. Federal agencies will incur costs to familiarize themselves with the rule, assess whether to implement a phased enforcement plan, and if so, develop a plan. DHS estimates the 2-year cost to Federal agencies is \$1.70 million undiscounted and \$1.67 million discounted at 2 percent.

DHS also identifies other non-quantified costs that affected parties may incur. A portion of the benefits associated with the REAL ID rule will be delayed as a result of agencies implementing a phased approach, with the full security benefit not realized until full enforcement occurs. Federal agencies will also incur costs related to phased enforcement plan implementation which may include training personnel on the policies of the plan and efforts to inform the public of the new identity verification policies related to plans. Individuals may also incur costs to become aware of phased enforcement plans and respond accordingly.

DHS identifies various non-quantified benefits associated with the final rule. Federal agencies will have flexibility to enforce the REAL ID card-based regulations in a phased manner that may reduce security vulnerabilities, operational disruption and public impact but will not unnecessarily delay REAL ID enforcement for those Federal agencies ready to fully implement on the card-based enforcement deadline. A phased approach will also allow individuals more time to obtain a REAL ID-compliant DL/ID, reduce potential queuing and associated delays at access points, and may help mitigate potential application backlogs at State licensing agencies.

<sup>7</sup> The requirements of the REAL ID Act and regulation apply only in contexts where individuals are required to present an identification document to Federal agencies for official purposes. Accessing a Federal facility that is normally open to the public and does not require visitors to establish their identity to enter is generally not an official purpose under the REAL ID Act and regulation. See REAL ID Act of 2005 Implementation: An Interagency Security Committee Guide (2019), p. 4–7, available at <https://www.cisa.gov/resources-tools/resources/isc-guide-real-id-act-2005-implementation> (last visited October 3, 2024).

<sup>8</sup> “Full enforcement” or “full card-based enforcement” means that an agency will not accept noncompliant DL/IDs for REAL ID official purposes.

## II. Background

### A. Statutory and Regulatory History

The REAL ID Act sets minimum security requirements for the issuance and production of DL/IDs issued by the States, territories, and the District of Columbia in order for Federal agencies to accept these documents for official purposes.<sup>9</sup> Official purposes include: (1) accessing Federal facilities, (2) boarding federally regulated commercial aircraft, (3) entering nuclear power plants, and (4) any other purposes that the Secretary of Homeland Security shall determine.<sup>10</sup>

On January 29, 2008, DHS published a final rule implementing the REAL ID Act's requirements (2008 Final Rule).<sup>11</sup> The regulations include both a deadline for State compliance with the REAL ID requirements and a separate deadline after which individuals must present a REAL ID-compliant license or identification card in order for Federal agencies to accept the document for official purposes.<sup>12</sup> DHS refers to these deadlines as "state-based" and "card-based" enforcement, respectively. Under the REAL ID regulations, card-based enforcement begins on May 7, 2025.<sup>13</sup> On and after this date, Federal agencies may not accept for official purposes a DL/ID issued by a State unless that DL/ID was issued in accordance with the REAL ID standards by a REAL ID-compliant jurisdiction.<sup>14</sup>

### B. Phased Enforcement Rulemaking

Based on REAL ID data compiled by compliant licensing jurisdictions, as of January 2024, DHS estimates that compliant States, territories, and the District of Columbia have issued approximately 162 million REAL ID-compliant DL/IDs, which represents approximately 56 percent of the population possessing a State-issued

DL/ID.<sup>15</sup> Data from the States also indicates that the States have approximately 110 million noncompliant marked DL/IDs and approximately 14 million legacy licenses without any markings (issued before a State's REAL ID compliance determination) still in circulation.<sup>16</sup> Further, the national adoption rate as of January 2024, stands at approximately 0.56 percent per month. As detailed in the regulatory analyses (section IV(b)(2)(e) *Adoption of REAL ID-Compliant DL/IDs*) DHS estimates that only about 61.2 percent of DL/IDs in circulation will be REAL ID-compliant by the card-based enforcement deadline of May 7, 2025.<sup>17</sup>

Even taking these estimates into account, DHS believes that beginning card-based enforcement on May 7, 2025, is the most effective path to achieve full implementation of the REAL ID Act and regulations. The requirements of the REAL ID Act and regulations provide significant security benefits by improving the accuracy of identity verification processes.<sup>18</sup> Beginning card-based enforcement will mark an important step towards full realization of these increased security standards. However, DHS recognizes that for some agencies, an immediate transition to full enforcement may not be appropriate. On September 12, 2024, DHS published an NPRM that proposed explicitly permitting agencies to implement card-based enforcement in phases if an

agency determines that a phased approach is appropriate after considering relevant factors.<sup>19</sup>

### C. Broad DHS Approach

This rulemaking represents one aspect of DHS' broad approach towards transitioning to enforcement of the REAL ID requirements on May 7, 2025. Although this rule is critical to providing agencies with the necessary flexibility to ensure a smooth transition to full card-based enforcement, DHS is also engaged in a number of efforts to improve adoption rates. This layered approach includes heavy engagement with States that have low REAL ID adoption rates, a public advertising campaign raising awareness of upcoming REAL ID enforcement and the benefits of obtaining a REAL ID,<sup>20</sup> and communication with the travel industry. This rule, in combination with these other efforts, lays the necessary foundation for transitioning the nation to enforcement of REAL ID requirements on May 7, 2025.

## III. General Discussion of the Rulemaking

### A. Rulemaking Objectives

DHS is issuing this rule in recognition that without a significant increase in the adoption rate leading up to the May 7, 2025, deadline, millions of noncompliant cards will still be in circulation on that date. Even assuming a substantial increase in the adoption rate, it is difficult to predict the number of people who will seek to use noncompliant DL/IDs for Federal official purposes when enforcement begins on May 7, 2025. Further, the population-wide adoption rate likely will differ from the adoption rate of specific populations who will need to present a REAL ID for official purposes including boarding federally regulated commercial aircraft or entering a Federal facility. The adoption rate also is likely to differ across geographic areas with certain regions having relatively higher or lower concentrations of individuals without a REAL ID-compliant DL/ID.

This rulemaking acknowledges the possible risks to Federal agencies and potential public impact should a significant number of individuals seek to use non-REAL ID-compliant DL/IDs for REAL ID official purposes when enforcement begins on May 7, 2025. In

<sup>9</sup> Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Public Law 109–13, Div. B, title II, sections 201 to 207, May 11, 2005, as amended (codified at 49 U.S.C. 30301 note).

<sup>10</sup> *Id.* at section 201.

<sup>11</sup> See 73 FR 5272 (Jan. 29, 2008) (codified as amended at 6 CFR part 37).

<sup>12</sup> 6 CFR 37.51(a) and 37.5.

<sup>13</sup> 6 CFR 37.5(b); 88 FR 14473 (Mar. 9, 2023) (extending the REAL card-based enforcement deadline from May 3, 2023, to May 7, 2025). Additional background related to extensions of card-based deadline as a result of the COVID–19 pandemic is provided in the Notice of Proposed Rulemaking, 89 FR 74137.

<sup>14</sup> Under the REAL ID Act and regulations, States may also issue noncompliant licenses and identification cards, which will not be acceptable by Federal agencies for official purposes after the card-based deadline. 6 CFR 37.71; REAL ID Act sec. 202(d)(11). The REAL ID regulations authorize, but do not require, Federal agencies to accept these noncompliant cards until card-based enforcement begins. 6 CFR 37.5(c).

<sup>15</sup> DHS began to collect data voluntarily submitted by licensing jurisdictions including the total number of DL/IDs, number of REAL IDs, number of non-compliant cards, and number of "legacy" cards in July 2019. Beginning in October 2019, DHS began to receive the data on a monthly basis. While REAL ID issuance data through October 2024 is available, based on the most recent data, DHS expects the percentage of REAL IDs by the card-based enforcement date to be on par with the forecasts presented in the NPRM. As a result, the regulatory analyses (section V(b)(2)(d) *Adoption of REAL ID-Compliant DL/IDs*) maintains the values used in the NPRM which DHS published in September 2024.

<sup>16</sup> Additional background regarding DHS' efforts to support implementation of the REAL ID Act and factors impacting the pace of REAL ID adoption, including the effect of the COVID–19 pandemic, is provided in the Notice of Proposed Rulemaking, 89 FR 74137.

<sup>17</sup> Over the twelve months between January 2023 and January 2024, the national compounded monthly growth rate for the adoption of REAL IDs was 0.56 percent. DHS applied the 0.56 compounded growth rate over the 16 months between January 2024 and May 2025 to forecast the percentage of REAL IDs in circulation by May 2025, relative to all DL/IDs in circulation.

<sup>18</sup> See 73 FR 5325–5326, and accompanying Regulatory Evaluation, Department of Homeland Security, January 17, 2008, Regulatory Evaluation, Docket Number DHS–2006–0030; 9 H.R. Rep. No. 109–72, 176–185 (2005) available at <https://www.congress.gov/109/crpt/hrpt72/CRPT-109hrpt72.pdf> (last visited June 17, 2024).

<sup>19</sup> 89 FR 74137.

<sup>20</sup> DHS Launches "Be Your REAL ID Self" Public Awareness Campaign, January 15, 2021, <https://www.dhs.gov/real-id/news/2021/01/15/dhs-launches-be-your-real-id-self-public-awareness-campaign>.

some cases, a sudden transition to full enforcement may impact how agencies provide certain services or conduct business with the public. If many individuals seek to use noncompliant DL/IDs at the same location, this could result in significant backlogs at access points to Federal facilities and TSA security checkpoints. In the example of TSA, if large numbers of individuals arrived at an airport security checkpoint with noncompliant DL/IDs,<sup>21</sup> they will not be able use that DL/ID to proceed through screening, potentially resulting in missed flights. Additionally, long lines, confusion, and frustrated travelers at the checkpoint may greatly increase security risks both to passengers and TSA personnel by drawing the resources and attention of TSA personnel away from other passengers, including those known to pose an elevated risk. DHS anticipates that other Federal agencies may also experience a negative impact if they begin full enforcement on May 7, 2025.

Given that approximately 56 percent of DL/IDs in circulation are REAL ID-compliant as of January 2024, the low current adoption rates, and DHS' estimate that 61.2 percent of REAL IDs, relative to all DL/IDs in circulation, will be REAL ID-compliant by May 7, 2025, there is a real possibility of disruptions like those described above could occur if all agencies begin full enforcement on the deadline.<sup>22</sup> Additionally, even if population-wide adoption rates are significantly higher than they are currently, these outcomes may nonetheless unfold if adoption rates remain low in specific States or amongst specific groups of individuals. Operational disruptions could still occur at locations in areas that have a high concentration of individuals without REAL ID-compliant DL/IDs or during times of the year when large numbers of people who do not fly frequently, and who may not possess a REAL ID-compliant DL/ID seek to travel. DHS anticipates that other agencies that operate facilities nationwide or experience substantial shifts in the number of individuals presenting identification for official purposes

throughout the year may have similar concerns about the possibility of disruption based on the current trend in REAL ID adoption rates.

Recognizing these challenges and the uncertainty in the number of individuals Federal agencies may encounter who do not have a REAL ID-compliant DL/ID on May 7, 2025, this rule provides Federal agencies added flexibility to implement enforcement of the REAL ID regulations in a manner that takes into account relevant factors including security, operational feasibility, and public impact. The ability to implement the card-based requirements under a phased approach, for a 2-year period, allows Federal agencies to start card-based enforcement in a manner that limits potential disruption to operations, reduces negative public impact, and supports a smooth transition to full card-based enforcement and the increased security benefits of REAL ID. For example, agencies will have the ability to begin enforcement by issuing warning notices or through progressive consequences if they determine that those measures would most effectively mitigate the risks of an immediate transition to full enforcement. Without this flexibility, and especially if the adoption rate remains low leading up to May 7, 2025, DHS believes Federal agencies could face a serious risk of operational disruption, negative public impact, and potential security vulnerabilities.

Further, implementation of card-based enforcement through a phased approach is consistent with DHS' approach to State-based enforcement.<sup>23</sup> DHS' approach to State-based enforcement demonstrated that phased enforcement can be effective in achieving compliance with REAL ID requirements. This rule provides Federal agencies the flexibility to determine whether a phased plan to implement the REAL ID card-based enforcement requirements beginning on May 7, 2025, is appropriate in particular circumstances. This flexibility allows agencies to begin card-based enforcement as part of a measured, responsible, and achievable plan leading to full enforcement of the REAL ID regulations.

<sup>23</sup> Beginning in January 2013, DHS incrementally enforced the State-based regulatory deadline prohibiting agencies from accepting licenses and cards issued by States that were not compliant with the REAL ID standards. State-based enforcement concluded with the final phase, boarding federally regulated commercial aircraft, going into effect in 2018. DHS Releases Phased Enforcement Schedule for REAL ID (Dec. 20, 2013), available at <https://www.dhs.gov/news/2013/12/20/dhs-releases-phased-enforcement-schedule-real-id>.

Providing agencies the flexibility to begin enforcement using a phased approach may also facilitate increased adoption of REAL ID-compliant DL/IDs. DHS anticipates that agencies announcing concrete plans for beginning enforcement on May 7, 2025, will demonstrate that the deadline is not being extended and will likely incentivize individuals to obtain a REAL ID-compliant DL/ID. An agency's specific enforcement phase may also encourage increased adoption. For example, agencies may choose to issue a written or verbal warning the first time an individual attempts to use their non-compliant DL/ID after the May 7, 2025, enforcement deadline, letting that individual know they will be denied entry if they attempt to use their non-compliant card at that location another time. Individualized warnings like this may be more effective at encouraging compliance than broad public messaging.

Finally, increased demand leading up to and after the deadline may outpace the ability of licensing jurisdictions to meet that demand. During DHS' engagement with States in preparation for the beginning of card-based enforcement, some States have expressed concern with ability to meet potential demand.<sup>24</sup> Allowing agencies to use a phased approach may also provide licensing jurisdictions the opportunity to make adjustments to alleviate potential backlogs.

## B. Summary of Regulatory Provisions

### 1. Agency Determination in Consideration of Relevant Factors

This rule permits agencies to make a determination that phased enforcement is appropriate, in consideration of relevant factors including security, operational feasibility, and public impact. The rule recognizes that individual Federal agencies are in the best position to determine how to ensure successful implementation of the REAL ID requirements within their own unique operational contexts. It allows individual agencies to use their own expertise to structure enforcement plans in such a manner that will lead to successful enforcement of the REAL ID regulations while mitigating potential

<sup>21</sup> Although a segment of the population may not possess a REAL ID, they may have other forms of identification acceptable for official purposes (e.g., a U.S. passport, U.S. passport card, or military identification). TSA's acceptable ID list is available at <https://www.tsa.gov/travel/security-screening/identification>. Other Federal agencies may also accept identification in addition to REAL ID-compliant DL/IDs. Individuals who need to visit a Federal facility should check in advance whether the agency requires identification for access purposes and, if they do, review the agency's access control policies.

<sup>22</sup> *Supra* note 15.

<sup>24</sup> For example, Oregon has recently approved an increase in DMV staff dedicated to issuing REAL ID-compliant DL/IDs in anticipation of the May 7, 2025, deadline. Oregon Department of Transportation (ODOT), ODOT Operational Report to the Oregon Transportation Commission (March 5, 2024), available at [https://www.oregon.gov/odot/Get-Involved/OTCSupportMaterials/Agenda\\_F\\_Operational\\_Report\\_PACKET.pdf](https://www.oregon.gov/odot/Get-Involved/OTCSupportMaterials/Agenda_F_Operational_Report_PACKET.pdf) (last visited April 17, 2024).

risks of immediately transitioning to full enforcement on May 7, 2025.

In making a determination of whether phased enforcement instead of an immediate transition to full enforcement is appropriate, agencies must, at a minimum, consider three relevant factors that will inform their decision. DHS identified the three factors it believes are most likely to impact efficient and successful implementation of card-based enforcement: security, operational feasibility, and public impact. In addition to these factors, agencies may consider other factors they deem relevant and necessary to make their determination.

In considering security, agencies should weigh both the security benefits that card-based enforcement provides as well as potential security vulnerabilities that an immediate transition to full enforcement might create. For many agencies, DHS anticipates that the increased security provided by card-based enforcement weighs in favor of an immediate transition to full enforcement. However, in certain contexts, an immediate transition to full enforcement may result in security vulnerabilities. For example, no longer accepting noncompliant DL/IDs may lead to long lines and crowding at access points to Federal facilities or airport security checkpoints<sup>25</sup> creating soft targets for terrorists or violent extremists.<sup>26</sup> Additionally, an atmosphere of confusion and frustrated individuals who are denied access risks distracting security personnel from correctly executing their procedures. Agencies should take a holistic approach in evaluating the security implications of transitioning to full enforcement.

Regarding operational feasibility, agencies should consider any implications that transitioning to full enforcement may have on their ability to continue effectively carrying out operations in support of their mission. DHS anticipates that in many cases, immediately transitioning to full enforcement would have little to no impact on agencies' ability to execute their missions and would enhance

security. Agencies may have limited interactions with the general public that necessitate individuals seeking to access Federal facilities to present proof of identity for entry. In other circumstances, agencies may be able to easily adjust the manner in which they interact with the public or provide a service to alleviate the need for individuals to use their DL/ID for a REAL ID official purpose. For example, agencies may be able to hold meetings in facilities that do not require the presentation of identification documents or hold virtual meetings. For certain agencies whose missions include operations requiring frequent use of identification documents for a REAL ID official purpose, an immediate transition to full enforcement may challenge an agency's ability to effectively carry out its mission if a large number of individuals seek to use noncompliant DL/IDs after the May 7, 2025, deadline. For these agencies, implementing card-based enforcement through a phased approach would allow for the opportunity to observe changes in the number of noncompliant cards they encounter after the deadline and transition to full enforcement in a manner that ensures continuity of operations.

Finally, agencies should assess whether an immediate transition to full enforcement would negatively impact the public and the provision of services. The requirements of the REAL ID Act and regulation apply only in contexts where individuals must present an identification document to Federal agencies for REAL ID official purposes.<sup>27</sup> Card-based enforcement does not impact access to Federal facilities that do not require identification (for example, public areas of the Smithsonian museums). Card-based enforcement also does not impact public services that require identification for purposes other than an official purpose as defined by the Act and regulation (for example, applying for or receiving Federal benefits is not a REAL ID official purpose). However, in cases where a government function impacting the public does involve a REAL ID official purpose (for example, boarding a federally regulated commercial aircraft or providing a public service that necessitates members of the public accessing a Federal facility that requires proof of identity for entry), agencies should consider the extent to

which an immediate transition to full enforcement would impact their ability to carry out that function.

DHS anticipates that agencies' consideration of all relevant factors will be informed by changes in the adoption rate leading up to the card-based enforcement deadline. Certain factors may be given more or less weight depending on the number of noncompliant DL/IDs agencies are likely to encounter on and after the deadline. For agencies that determine that beginning full card-based enforcement on May 7, 2025, would not pose significant risks after considering security, operational feasibility, public impact, and other relevant factors, this rule maintains the current regulatory default of an immediate transition to full enforcement. Agencies that determine that commencing full card-based enforcement on May 7, 2025, is not appropriate after considering the relevant factors, may utilize a phased approach. A phased approach would allow them to facilitate continued secure and orderly operations and minimize impacts to the public while implementing enforcement phases that lead to full enforcement. This flexibility allows these agencies to maintain operational efficiency; reduce security risks born from long lines, incidents, and distractions caused by additional identity verification procedures or turning away individuals who do not have acceptable identification; decrease potential public backlash to security personnel enforcing REAL ID; and limit potential negative impacts to the public.

## 2. Coordination of Phased Enforcement Plans With DHS

Should an agency determine that phased enforcement is appropriate, DHS also recognizes that the individual agency is best positioned to structure its enforcement plan to account for its particular operational setting. The rule therefore allows agencies to develop individual phased enforcement plans best suited for specific contexts. Although this rule does not prescribe the form that phased enforcement plans must take in incrementally implementing enforcement of the requirements, DHS does provide some options that agencies may consider.<sup>28</sup> For example, agencies' plans may include an initial phase during which warning notices are issued and/or a phase involving progressive enforcement measures—such as a “three-strikes” system or other methods—that enable agencies to begin

<sup>25</sup> The requirements of the REAL ID Act and regulations specifically apply to Federal agencies accepting DL/IDs for official purposes. As such, the official purpose of boarding a federally regulated commercial aircraft is primarily operationalized at the TSA security checkpoint rather than at an airport departure gate where passengers physically board commercial aircraft.

<sup>26</sup> See U.S. Department of Homeland Security Soft Targets and Crowded Places Security Plan Overview, 5–6 (May 2018), available at [https://www.cisa.gov/sites/default/files/publications/DHS-Soft-Target-Crowded-Place-Security-Plan-Overview-052018-508\\_0.pdf](https://www.cisa.gov/sites/default/files/publications/DHS-Soft-Target-Crowded-Place-Security-Plan-Overview-052018-508_0.pdf) (last visited October 9, 2024).

<sup>27</sup> See REAL ID Act of 2005 Implementation: An Interagency Security Committee Guide (2019), p. 4–7, available at <https://www.cisa.gov/resources-tools/resources/isc-guide-real-id-act-2005-implementation> (last visited October 9, 2024).

<sup>28</sup> More detailed discussion of these options is provided in section D. below.



enforcement without immediately denying access to individuals with noncompliant identification on the card-based enforcement deadline.

In order to ensure that agencies' enforcement plans appropriately advance the objectives of the REAL ID regulations and maintain consistent progress towards full enforcement, the plans must be coordinated with DHS. The REAL ID Act grants DHS authority to implement the Act's requirements.<sup>29</sup> Requiring agencies that make a determination to implement the REAL ID regulations through a phased enforcement plan to coordinate their plan with DHS ensures consistency, as appropriate. It also maintains DHS oversight of successful implementation of the Act and regulatory requirements. Agencies seeking to use a phased enforcement plan are required to coordinate with DHS through the TSA REAL ID Program Office.<sup>30</sup>

DHS strongly encourages agencies to make a determination of whether a phased enforcement plan is appropriate and, where appropriate, develop their plan in advance of the May 7, 2025, deadline. However, DHS recognizes that while agencies may seek to begin full enforcement on the deadline, they may encounter unanticipated challenges. Similarly, agencies that developed a phased enforcement plan may encounter or have unforeseen issues in implementing the plan they developed. In such cases, agencies may coordinate a new or modified phased enforcement plan with DHS after the enforcement deadline. Additional information regarding how agencies should coordinate with DHS will be provided on the DHS REAL ID web page.<sup>31</sup>

### 3. Public Notice

DHS acknowledges the potential for some confusion resulting from the possibility of agencies implementing phased enforcement plans that vary across agencies. The rule seeks to mitigate that potential confusion by (1) requiring agencies using a phased approach to make their plan publicly available on their web page, and (2) requiring DHS to post a list of agencies that have coordinated phased enforcement plans with DHS on the

DHS REAL ID web page<sup>32</sup> to provide public notice of the agencies implementing phased approaches. Agencies should also clearly provide their policies for access control, including other acceptable forms of identification.

### 4. Two-Year Phased Enforcement Period

Under the rule, any agency that chooses to implement card-based enforcement under a phased approach must fully enforce the card-based requirements no later than May 5, 2027. On and after that date, agencies may not accept noncompliant marked DL/IDs or legacy DL/IDs for official purposes. As mentioned above, DHS anticipates that shortly before, and as REAL ID card-based enforcement begins on May 7, 2025, individuals' urgency to obtain a compliant DL/ID will likely increase as they realize that they will need a compliant DL/ID when they seek to use their DL/ID for REAL ID official purposes. In States with low adoption rates, large numbers of individuals may rapidly seek to obtain REAL ID-compliant DL/IDs. This potential increase in demand may challenge the capacity of licensing jurisdictions and may create backlogs in issuance of REAL ID-compliant cards. The 2-year window during which agencies may implement enforcement in phases is designed, in part, to provide States additional time to meet increases in demand for REAL ID-compliant cards. Agencies that decide to use a phased enforcement plan may choose to implement plans that reach full enforcement in less than 2 years, but all phased plans must conclude, reaching full card-based enforcement, no later than May 5, 2027.

DHS also considered setting the maximum phased enforcement period for other durations between at 1 and 5 years. DHS chose 2 years as the maximum period during which agencies may implement phased enforcement plans to balance delay in fully realizing the security benefits of REAL ID with allowing sufficient time for Federal agencies' phased enforcement plans to incentivize greater adoption rates, limit negative enforcement impacts (where appropriate), and provide States time to meet increased demand.

DHS believes that a 1-year timeframe may not provide agencies sufficient flexibility to develop a phased enforcement plan with a long enough duration time to leverage the anticipated effects of phased enforcement, reflected in increased adoption rates. Many individuals may only seek to use their

DL/ID for official purposes once or twice a year (for example, boarding a commercial flight to travel for a holiday or vacation). If agencies were limited to a 1-year phased enforcement period, they would not be able to design a plan that would account for individuals who learn of the need to obtain a REAL ID-compliant DL/ID towards the end of that 1-year period—possibly through a warning notice as part of an agency's phased enforcement plan—and who may not have sufficient time to obtain a compliant DL/ID before full enforcement begins. Additionally, if increased demand for compliant DL/IDs leading up to and right after the deadline results in backlogs at State Departments of Motor Vehicles (DMVs),<sup>33</sup> 1 year may not be sufficient time for States to make any necessary adjustments to process potential backlogs. Although a 1-year phased enforcement period would provide a shorter delay in obtaining the full security benefits of REAL ID,<sup>34</sup> DHS believes it may not provide a long enough period for agencies to leverage the effects of phased enforcement as individuals and States both apprehend the need for action as a result of card-based enforcement and take the necessary actions.

DHS did not select 3, 4, or 5 years because DHS believes a maximum time period longer than 2 years would unduly delay the security benefits of REAL ID and is unlikely to provide the same incentive for individuals to prioritize obtaining a compliant DL/ID. DHS believes that 2 years after the card-based enforcement deadline strikes the appropriate balance and provides a sufficient amount of time for individuals to obtain and States to provide REAL ID-compliant DL/IDs to any eligible individual who seeks to obtain one. DHS believes that allowing more time for phased enforcement beyond 2 years is unlikely to offer a meaningful additional opportunity for individuals and States to take necessary action and could further delay the security benefits of REAL ID. Additionally, allowing for phased enforcement for more than 2 years may

<sup>33</sup> Throughout this rule DHS uses "DMV" to generally refer to licensing jurisdictions' motor vehicle licensing agencies.

<sup>34</sup> The regulatory evaluation for the Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes Final Rule identifies the primary benefit of REAL ID as improving security and lessening the vulnerability of Federal buildings, nuclear facilities, and aircraft to terrorist attacks. Department of Homeland Security, January 17, 2008, Regulatory Evaluation, Docket Number DHS-2006-0030. <https://www.regulations.gov/document/DHS-2006-0030-10704>. pgs. 129–130.

<sup>29</sup> 49 U.S.C. 30301 note; 73 FR 5271.

<sup>30</sup> On December 29, 2022, the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), was signed into law, authorizing the transfer of the REAL ID Program from the DHS Office of Strategy, Policy, and Plans to TSA. On May 22, 2023, the Secretary of Homeland Security approved a delegation formally vesting in TSA the authority to manage, administer, and coordinate DHS actions necessary for implementation of the REAL ID Act.

<sup>31</sup> <https://www.dhs.gov/real-id>.

<sup>32</sup> *Id.*

discourage individuals and States from prioritizing necessary action.

#### 5. Acceptance of Noncompliant Marked DL/IDs

Finally, to avoid any confusion about the ability of Federal agencies to continue to accept noncompliant marked DL/IDs issued under § 37.71, the rule clarifies that Federal agencies may continue to accept these licenses past May 7, 2025, if they are doing so pursuant to an enforcement plan coordinated with DHS. Although some agencies may accept noncompliant marked DL/IDs for official purposes as part of a phased enforcement plan, other agencies may choose not to accept noncompliant marked DL/IDs as part of their phased enforcement plan; may determine that phased enforcement is not appropriate; or currently do not accept noncompliant marked DL/IDs for official purposes.<sup>35</sup> Individuals who need to visit a Federal facility should check in advance whether the agency requires identification for access purposes and, if they do, review the agency's access control policies.

#### C. Maintaining the May 7, 2025, Card-Based Enforcement Deadline

During the development of this rule, DHS also considered further extending the REAL ID card-based enforcement deadline to allow for more time for the adoption rate to increase. However, based on DHS' observation of public behavior following prior extensions, DHS has concluded that many individuals will continue to delay obtaining a REAL ID in part due to a perceived lack of need. DHS believes that maintaining the deadline of May 7, 2025, while providing agencies the flexibility to implement the requirements through a phased enforcement plan where appropriate, will allow for a faster and smoother transition to full card-based enforcement than another extension of the deadline.

DHS prefers this rule's approach rather than an extension for several reasons. By maintaining the current deadline, agencies that do not determine that phased enforcement is appropriate will immediately transition to full card-based enforcement on May 7, 2025. This allows the security benefits of REAL ID to be fully realized in contexts where full enforcement is unlikely to create other security risks, interfere with operational feasibility, or disrupt public

services. If DHS had extended the deadline, agencies that could have immediately transitioned to full enforcement on May 7, 2025, would likely have waited until the new deadline, delaying security benefits that were otherwise available. DHS expects that a significant number of agencies will begin full enforcement on the deadline because doing so is appropriate within their operational context.

Further, DHS believes that this rulemaking's approach is likely to have a positive impact on the REAL ID adoption rate, while an extension would not have incentivized an increase in demand for REAL ID-compliant DL/IDs. Since the most recent extension in March 2023, DHS has observed the rate of growth in adoption of compliant DL/IDs remains very low (0.56 percent).<sup>36</sup> Because of the history of extensions related to REAL ID enforcement, DHS expects that there is some confusion, lack of awareness, and apathy associated with the May 7, 2025, deadline. Given this prior history, DHS believes that the public may continue to expect that additional extensions are likely and not feel urgency to obtain a REAL ID-compliant DL/ID. As a result, DHS believes that an extension of the card-based enforcement date would not have been an effective means of incentivizing changed behavior.

Conversely, DHS expects that allowing agencies to enforce the May 7, 2025, deadline through a phased approach will incentivize increased demand for REAL ID-compliant DL/IDs in at least two ways. First, it will incentivize increased adoption rates as the deadline approaches. In part due to concerns related to low adoption rates, DHS has previously extended the card-based deadline several months before the enforcement date, limiting the effect of urgency to obtain a compliant DL/ID related to the deadline. As the May 7, 2025, deadline approaches, and DHS does not issue an extension, DHS expects individuals that were otherwise relying on another extension will obtain a compliant DL/ID. This rule demonstrates that DHS is planning for enforcement to begin on May 7, 2025, and not extending the deadline. DHS expects that as this becomes apparent to the public, more individuals will prioritize obtaining a REAL ID.

Second, DHS expects individuals who may not be aware of the deadline to be incentivized to obtain a compliant DL/ID when they experience the consequences of enforcement. During the phased enforcement period,

individuals will experience varying levels of consequences including warning notices and progressive enforcement (as part of a phased enforcement plan), or full enforcement (where agencies transition to full enforcement on the deadline). These consequences will incentivize individuals who experience them to obtain a REAL ID-compliant DL/ID. Further, because the individuals who most frequently use their DL/ID for REAL ID purposes will be the most likely to experience consequences, DHS expects that phased enforcement will especially incentivize increased adoption amongst this population. A phased approach will in turn lessen the likelihood of disruption when agencies transition to full enforcement because the individuals who most often use DL/IDs for REAL ID official purposes will have been motivated to obtain a REAL ID during the phased enforcement period. Additionally, individuals may share their experience with personal contacts, potentially incentivizing others to obtain a compliant DL/ID. DHS expects that as awareness that REAL ID is being enforced becomes widespread, individuals who intend to use their DL/ID for official purposes will be motivated to obtain a REAL ID-compliant DL/ID.

#### D. Phased Enforcement Guidance

Under this rule, agencies have broad discretion to determine the structure of their phased enforcement plan so long as they comply with the requirements in the rule to:

- (1) Make a determination that a phased enforcement plan is appropriate in consideration of relevant factors including security, operational feasibility, and public impact;
- (2) Coordinate the phased enforcement plan with DHS;
- (3) Make the phased enforcement plan publicly available on the agency's web page; and
- (4) Achieve full enforcement of the card-based REAL ID requirements no later than May 5, 2027.

The required coordination with DHS will provide DHS with visibility on Government-wide implementation of REAL ID. It will also allow DHS to serve in a liaison role between agencies where there may be overlapping equities. During the coordination process, DHS will seek to provide agencies guidance on how best to use their phased plan to transition to full enforcement. DHS may offer feedback or suggestions related to an agency's plan during this process. However, as long as agencies comply with the requirements in this rule, they

<sup>35</sup> For example, the U.S. Department of Defense (DoD) recently finalized an update to its DoD-Wide installation security policy and is in the process of no longer accepting noncompliant marked cards across all of its facilities and installations.

<sup>36</sup> *Supra* note 17.

have broad discretion as to how they structure their plans.

As guidance to Federal agencies and to promote consistency, DHS provides the below examples of enforcement models as options agencies may consider if they determine that a phased approach to REAL ID card-based enforcement on May 7, 2025, is appropriate. DHS anticipates that informed compliance would be the enforcement model best suited to most agencies that decide to implement through a phased enforcement plan. Federal agencies that do not make a determination that phased enforcement is appropriate and do not coordinate a phased enforcement plan with DHS must begin full card-based enforcement on May 7, 2025. Under full card-based enforcement, Federal agencies may only accept a State-issued DL/ID for official purposes if that DL/ID is issued in accordance with REAL ID requirements by a REAL ID-compliant State.

***Informed Compliance Model.*** Under an informed compliance model, agencies would provide written and verbal notice to any individual that seeks to use a noncompliant DL/ID for an official purpose on or after the card-based enforcement date of May 7, 2025. Individuals would then be permitted to continue the process for accessing a Federal facility or boarding a commercial aircraft. The written notice agencies provide should inform the individual that their DL/ID is noncompliant with REAL ID requirements, that they should contact their DMV for further information regarding obtaining a REAL ID-compliant DL/ID, and what to expect if the individual presents a noncompliant DL/ID and no other acceptable form of identification in the future. An accompanying verbal notice should briefly summarize the written notification and, at a minimum, inform the individual they are not in compliance with REAL ID requirements and direct the individual to reference the written notice. Under this model, agencies would not maintain a record of individuals who have presented a noncompliant DL/ID and have been issued a notice. Individuals who present an alternate acceptable form of identification (for example, a passport at the TSA checkpoint) would not receive a noncompliance notification. Under this model, agencies would continue to employ existing security and identity verification processes to confirm the authenticity and validity of the noncompliant DL/ID presented.<sup>37</sup>

***Informed Compliance with Limits.*** Under an Informed Compliance with Limits model, agencies would limit the number of times an individual may present a noncompliant DL/ID for an official purpose. Once an individual exceeds the prescribed number of allowable attempts, they would be denied the ability to use their noncompliant DL/ID for the REAL ID official purpose (e.g., use the noncompliant DL/ID for purposes of accessing a Federal facility) if they have no other acceptable form of identification. Employing this model would likely create significant requirements and obligations for the agency. Specifically:

1. The agency would collect personally identifiable information (PII), including name, DL/ID State, and DL/ID number, as well as other information necessary to reliably identify the individual. This PII would need to be collected, maintained, and used in accordance with all applicable Federal guidelines and policy requirements related to collection of PII. This would likely require agencies to obtain an Office of Management and Budget (OMB)-approved Paperwork Reduction Act (PRA) information collection and prepare a Privacy Threshold Analysis, Privacy Impact Assessment, System of Records Notice, and other documentation for collection, storage, and use of PII.

2. The individual would attest that the PII provided is theirs and accurate.

3. The agency would need to be able to demonstrate that they delivered a notification of noncompliance to the individual (i.e., record of transmittal).

4. The agency may wish to obtain the individual's acknowledgement of receipt of the noncompliance notification at the time the individual presents the noncompliant DL/ID.

5. The agency would need to develop a system to track the number of instances the individual presented a noncompliant DL/ID and no other acceptable ID.

6. The agency would need to determine a limit on the number of times an individual may be authorized access after presenting a noncompliant DL/ID and no other acceptable form of identification.

7. The agency would need to define an appropriate period of time (in days/weeks) during which the individual may continue to use a noncompliant DL/ID for purposes of accessing the agency, after which the applicant would

be given another notification of noncompliance if they again presented a noncompliant DL/ID (in other words, how long individuals may continue to use their noncompliant DL/ID on the same "strike" or "warning" before incurring a subsequent "strike" or "warning").

Agencies would need to choose an appropriate time period during which individuals would continue to use their noncompliant DL/ID without it being treated as an additional instance of noncompliance ("strike" or "warning"). Agencies should choose a time period appropriate to their operations. For agencies where the identity verification for official purposes is rare or isolated, it may be appropriate to treat each time an individual presents a noncompliant DL/ID as an instance of noncompliance. However, DHS believes that in certain cases individuals may need to use their DL/ID for a REAL ID official purpose for multiple instances within a short period of time (e.g., boarding a return flight from a destination or returning to a Federal facility to follow-up on the purpose of the initial visit). Individuals may not be able to obtain a REAL ID in between such related instances, so in these cases agencies may choose a time period that allows for multiple uses of a noncompliant DL/ID as part of the same instance of noncompliance. After the allotted time period expires, the presentation of a noncompliant DL/ID would be treated as another instance of noncompliance.

Agencies employing an Informed Compliance with Limitations model should provide individuals who present a noncompliant DL/ID with specific notice whenever an instance is being counted towards that individual's limit. The notice should reference the agency's overall policy and how the particular instance would affect the individual in the future. Agencies may choose to adopt different nomenclature for initial and subsequent instances of an individual presenting a noncompliant DL/ID. This may include language or consequences of subsequent notifications under this that progress in seriousness. For example, an agency may choose to permit access on the first two instances of noncompliance and deny access on the third (and any subsequent instance). Upon the third instance, the individual would be issued a "final" notification that their State-issued DL/ID is noncompliant and can no longer be accepted by that agency for the REAL ID official purpose. The Federal agency would not accept the individuals noncompliant DL/ID at that time and on all future instances unless the individual obtains a REAL ID

<sup>37</sup> As an example, the NPRM discussed DHS' use of an Informed Compliance model to enforce the

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. See 89 FR 74145.



or presents an alternative, acceptable form of identification.

DHS acknowledges that an Informed Compliance with Limitations enforcement plan would likely demand significant agency resources. DHS expects many agencies to begin full enforcement on the May 7, 2025, deadline. Of the agencies that do determine a phased approach is appropriate, DHS expects most will use a simple plan that provides a time-limited warning period (*i.e.*, “Informed Compliance”). Given the resources required, including the need for secure systems, DHS expects very few agencies to choose an enforcement plan that tracks individual instances of noncompliance.

*Additional considerations.* Agencies may determine to implement a phased approach that employs only one of these models followed by full enforcement. For example, an agency may choose to begin enforcement with an Informed Compliance Phase or Informed Compliance with Limits Phase for a set period of time (*e.g.*, 3 months, 6 months, 1 year) followed by a transition to full enforcement at the end of that period. Alternatively, agencies may develop a plan that combines both models before transitioning to full enforcement. For example, an agency may begin enforcement with an initial Informed Compliance Phase for a set period of time, followed by an Informed Compliance with Limits Phase for an additional period of time, before beginning full enforcement. Agencies have the flexibility to determine the model(s) and timing that best suit their operational environment.

Although DHS believes the models discussed above are likely to be the most common and effective, they are not exclusive. Agencies may develop plans based on other models. However, all phased enforcement plans, whether based on the above models or a different model must be coordinated with DHS and must conclude, and agencies must fully enforce REAL ID card-based requirements, no later than May 5, 2027. For agencies that make a determination that phased enforcement is appropriate, the same factors that they considered to make that determination should inform their determination of how to structure their plan.

Finally, although REAL ID adoption rates should inform agencies when developing their enforcement plans, agencies’ plans should be consistent across all States and territories. In other words, agencies should have a consistent national policy and individuals should not be subject to different consequences based on the

adoption rate of a particular jurisdiction. To reduce the potential for confusion, ensure fair and equitable treatment of residents of all States, and ensure operational consistency, agencies that have operations or facilities spanning multiple States and territories should have one plan for all their facilities. Agencies’ plans may make distinctions based on the types of facilities they operate (*e.g.*, agencies may wish to begin full enforcement at certain types of facilities but use a phased approach at another type of facility) as long as the same policies apply to the same types of facilities nationwide and treat all DL/ID holders similarly. For example, agencies may choose to begin full enforcement at their headquarters facility while implementing a phased approach at field offices where the public more frequently seeks to use DL/IDs for official purposes, but (in this example) the same phased enforcement policy should apply to all field offices no matter where they are located. Agencies should provide information regarding their plans on their website and take other appropriate measures to inform the public and provide notice regarding their plan.

DHS acknowledges that some agencies may maintain offices in or conduct operations out of leased facilities or multi-tenant facilities where the agency does not have direct control over the access control policies of the facility. Agencies leasing space in their facilities to other agencies and lead tenants as part of facility security committees determining physical security policies for multi-tenant facilities should develop plans that take into account the operations of tenant agencies and potential public impact associated with those operations when developing phased enforcement plans. As previously discussed, agencies may make distinctions based on the types of facilities they operate. Depending on the context, it may be appropriate for an agency developing a phased enforcement plan to draw a distinction between facilities that are shared by with agencies and facilities that are used solely by the agency developing the plan.

#### IV. Discussion of Comments

DHS published the NPRM on September 12, 2024,<sup>38</sup> and the deadline for public comments was October 15, 2024.<sup>39</sup> During the 30-day comment

period, DHS received over 11,000 comments on the NPRM. DHS carefully considered every comment received as part of the official record. DHS also received 103 comments submitted after the comment period closed. Although DHS did not consider comments submitted after the comment period closed, DHS determined that these comments were substantively similar to other comments received within the comment period and are addressed by DHS’ response to those comments.

DHS received several comments suggesting that the 30 days provided for comment was not long enough. DHS considered these comments and determined not to extend the comment period for the NPRM. As discussed above, under the REAL ID regulations, Federal agencies may only accept compliant State-issued DL/IDs for official purposes beginning on May 7, 2025, which at the time of publication, is less than 6 months away. Given the importance of providing clarity for Federal agencies and to the public on agencies’ authority to implement card-based enforcement through a phased approach, extending the comment period beyond 30 days would delay issuance of this final rule, thereby depriving Federal agencies certainty and valuable time as they plan to begin card-based enforcement. Further, suggestions that a longer comment period would be appropriate did not articulate any particular reason why the 30-day comment period was insufficient, and instead provided generalized statements that additional time would allow for greater public awareness. Moreover, the regulatory changes made by this rule are not overly complex, and DHS believes that 30 days provided sufficient time for the public to provide meaningful comments.

#### A. General Opposition to REAL ID

*Comments:* Many commenters expressed general opposition to the requirements of the REAL ID Act and implementing regulations. Several commenters asserted that the REAL ID Act and implementing regulations are generally unconstitutional, including under the 1st (individual freedoms), 4th (search and seizure), 5th (criminal procedures), 6th (criminal procedures), 7th (jury trial), 9th (rights not enumerated), 10th (rights reserved to states or people), and 14th (due process and equal protection) amendments to the U.S. Constitution. In making these claims, commenters asserted that the

<sup>38</sup> 89 FR 74137.

<sup>39</sup> The NPRM provided for a comment period of 30 days. The *Regulations.gov* system was unavailable on October 12th and 13th due to a

planned outage, so the comment period closed on October 15th to provide the public with the full 30 days to comment.

REAL ID Act and regulations violate privacy or put personal information at risk, including by establishing a national ID or social credit reporting system; mandating a digital ID, collecting biometrics unlawfully; intruding on citizens privacy and facilitating government surveillance; creating a vast collection of sensitive personal data that makes citizens more vulnerable to identity theft; or allowing for sharing of individuals' information with foreign governments and international organizations. Other comments asserted that the REAL ID Act and regulations interfere with a constitutionally protected right to interstate travel. Some commenters asserted that the REAL ID Act and implementing regulations are unauthorized, including claims that they exceed the Federal government's statutory jurisdiction; create a system whereby the Secretary of DHS has unilateral authority to add new official purposes and curtail constitutional rights; waste taxpayer money; or constitute Government overreach. Regarding the impact on States, commenters asserted that the REAL ID Act and regulations are inconsistent with State authority, including by encroaching on state sovereignty; undermining principles of federalism; imposing significant costs on States, which would require increased Federal funding and technical support; and imposing these costs as an unfunded mandate on states.

Commenters also state that the REAL ID Act and regulations negatively affect individuals by burdening certain populations unjustly, including non-citizens, who may not have sufficient documentation to obtain a REAL ID, which would thereby limit their access to essential services and travel; by constituting a significant financial burden to obtain a REAL ID-compliant DL/ID; or by imposing an undue burden on individuals that have changed their name (for example, in relation to marriage or divorce). Additionally, commenters suggested that indefinite phased enforcement be used to nullify the REAL ID act and regulations, or that the phased enforcement rule be revised to instead provide an individual opt-out mechanism from the REAL ID requirements. Finally, commenters assert that the REAL ID Act and implementing regulations are outdated, do not actually provide increased security benefits, and will not make the nation safer. On a related issue, several commenters raised concerns that DHS takes for granted that DHS has certified all 56 licensing jurisdictions when, in

the commenter's view, all DHS certifications erroneously determine the states to comply; and that the rulemaking will result in inconsistent DL/ID issuance procedures across the states.

**DHS response:** DHS appreciates the many comments received regarding the REAL ID Act and regulations. Although these concerns are sometimes represented as directed at the current rulemaking, DHS did not propose substantive amendments to the REAL ID requirements, and comments expressing opposition to those underlying requirements or their implementation by current State implemented REAL ID issuance processes are outside of the scope of this rulemaking. Congress passed the REAL ID Act in 2005, enacting the 9/11 Commission's recommendation that the Federal government set minimum standards for the issuance of sources of identification, such as drivers' licenses, and charged DHS with implementing the statutory requirements.<sup>40</sup> DHS went through notice and comment rulemaking and published a final rule on January 29, 2008, implementing the REAL ID Act's requirements. In 2020, Congress reaffirmed its commitment to REAL ID by passing the REAL ID Modernization Act, which updated certain provisions of the original statutory language.<sup>41</sup> The Phased Enforcement NPRM did not propose changes to the existing regulatory requirements that provide the substantive standards for REAL ID issuance. Under the REAL ID regulations card-based enforcement begins on May 7, 2025. This rule only modifies provisions related to the enforcement deadline to provide Federal agencies with the flexibility to implement card-based enforcement through a phased enforcement plan where appropriate. This final rule does not alter any of the substantive requirements of the REAL ID regulations and only amends the provisions related to the deadline for card-based enforcement. As DHS did not propose substantive amendments to REAL ID requirements, comments expressing opposition to those underlying requirements are outside the scope of this rulemaking.

#### *B. Legal Authority*

**Comments:** Some commenters stated that the REAL ID Act does not provide authority for this rulemaking. Another commenter expressed the view that the

flexibility provided by this rule constitutes an improper delegation of authority to DHS components and other agencies and exceeds DHS' authority under the REAL ID Act. The commenter suggests that, through this rule, DHS is redelegating its regulatory authority to other agencies. The commenter noted that instead of setting standards for the acceptance of IDs, this rule allows agencies to make decentralized and nonstandard determinations regarding the acceptance or rejection of noncompliant DL/IDs. Additionally, the commenter stated that agencies' phased enforcement plans, themselves, would constitute Federal regulations.

**DHS response:** DHS disagrees that the REAL ID Act does not provide authority for this rulemaking, as the statute explicitly authorizes DHS to promulgate regulations to implement the Act's requirements. Section 205 of the REAL ID Act provides that "[a]ll authority to issue regulations . . . shall be carried out by the Secretary."<sup>42</sup> In issuing this rule, DHS is exercising its rulemaking authority to implement the REAL ID requirements in consideration of Federal agencies' authority to make agency-specific decisions about enforcement actions affecting individuals presenting DL/IDs which are not compliant with the REAL ID Act and regulations.<sup>43</sup> Under the REAL ID Act and regulations, all agencies are still required to begin card-based enforcement on May 7, 2025, but the rule provides a formal structure under which agencies may flexibly exercise their existing enforcement authority. The rule clarifies and reinforces that the general principles underpinning agencies' enforcement authority apply to the prohibition on Federal agency "acceptance" of noncompliant DL/IDs.

DHS further disagrees with the position that this rule inappropriately delegates rulemaking authority to other agencies. This rule does not provide agencies with any authority or discretion to modify the substantive requirements of the REAL ID regulations. Agencies' phased enforcement plans cannot alter the standards that govern whether a DL/ID is REAL ID-compliant. DHS also disagrees with the notion that REAL ID authority was provided solely to DHS, and that agencies' phased enforcement plans constitute regulations. Although the REAL ID Act generally granted DHS authority to implement the Act's provisions, Congress vested the authority to enforce acceptance of REAL ID-compliant DL/IDs with each

<sup>40</sup> 49 U.S.C. 30301 note.

<sup>41</sup> Title X of Division U of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 2304.

<sup>42</sup> Sec. 205(a) of the REAL ID Act.

<sup>43</sup> 49 U.S.C. 30301 note, section 202(a)(1).

individual agency.<sup>44</sup> This rule acknowledges the statutory authority of other agencies to enforce acceptance of REAL ID-compliant DL/IDs in matters under their purview. The rule enhances agencies' existing enforcement authority by explicitly providing temporary, limited flexibility for agencies to begin card-based enforcement in a manner that takes into account relevant factors, allowing agencies to more smoothly transition to full card-based enforcement. The rule also provides DHS oversight of phased enforcement plans by requiring agencies to coordinate such plans with DHS, which mitigates the commenter's concern by allowing DHS to ensure that plans advance the objectives of the REAL ID regulations and maintain consistent progress towards full enforcement and to ensure consistency, as appropriate.

*Comments:* One commenter stated that this rule purports to impose a new ID requirement for airline passengers because it implies that passengers who do not present a REAL ID-compliant DL/ID or acceptable alternative would not be able to board federally regulated commercial aircraft.

*DHS response:* This rule only relates to Federal agency, including TSA, acceptance of State-issued DL/IDs for defined REAL ID official purposes. Boarding federally regulated commercial aircraft is an official purpose under the REAL ID Act and regulations. Upon full card-based enforcement, TSA may not accept noncompliant State-issued DL/IDs at security screening checkpoints for the purpose of boarding federally regulated commercial aircraft.<sup>45</sup> This rule does not otherwise effect TSA's policies related to acceptable forms of identification and identity verification.

### C. General Support for the Rulemaking

*Comments:* Several commenters expressed general support for the proposed rule. Commenters wrote that they agreed that a phased roll out was a necessary step to begin enforcement and that this approach is a blend of practicality and foresight that benefits everyone. One commenter noted that the rule balances the purpose of the REAL ID Act and regulations with practical considerations. The commenter stated that by allowing agencies to gradually implement

enforcement, the rule may alleviate potential disruptions at airports and Federal facilities. Other commenters noted that allowing agencies to use a phased enforcement plan is a practical and thoughtful approach that will ensure security while giving agencies the opportunity to address challenges associated with enforcement. Another commenter shared that this approach allows some agencies to quickly transition to full enforcement where they do not anticipate challenges while allowing other agencies flexibility to make necessary plans to enforce the requirements efficiently.

*DHS response:* DHS agrees with these comments and believes that this rule provides appropriate flexibility that will enable Federal agencies to help ease the transition to full implementation of the card-based enforcement provisions of the REAL ID regulations. DHS believes this rule appropriately balances the security benefits that card-based enforcement provides with the negative effects that some Federal agencies may experience if they were to immediately transition to full enforcement on May 7, 2025.

### D. Immediate Transition to Full Enforcement

*Comments:* Several commenters expressed opposition to agencies using a phased approach and any delay to full card-based enforcement. Commenters pointed to a number of reasons supporting the position that full enforcement should begin on May 7, 2025, including: that the public has had ample time to obtain REAL ID-compliant DL/IDs; that agencies have had twenty years to determine how to enforce REAL ID; and that allowing phased enforcement will serve as a disincentive to adoption if the public delays obtaining a REAL ID because they either (1) expect agencies to use a phased approach and not enforce immediately or (2) simply perceive this as an extension of the deadline; and that many individuals can provide alternative, acceptable identification, such as passports to reduce operational impacts. Commenters also noted that REAL ID requirements help protect the aviation transportation system and that phased enforcement would delay the security benefits of card-based enforcement. One commenter stated DHS' estimate that only 4 percent of agencies may determine that a phased enforcement plan is appropriate implies that the rule is unnecessary. Yet another commenter suggested that in lieu of a regulation allowing phased enforcement, DHS should conduct a public awareness campaign to inform

the public about the card-based enforcement deadline and to understand to what degree individuals are aware of REAL ID.

*DHS response:* DHS considered not issuing this rule and allowing card-based enforcement to begin across all Federal agencies as an alternative and agrees with the comments about the important security benefits that REAL ID provides. However, DHS believes that providing agencies flexibility to consider relevant factors and make a determination to, in some cases, begin implementation through phased enforcement will facilitate a smoother transition to full card-based enforcement and mitigate potential risks associated with an immediate transition across all agencies.

Given the current number of DL/IDs that are non-compliant, DHS anticipates that a significant number of individuals seeking to use their DL/ID for a REAL ID official purpose on and after May 7, 2025, may not have a REAL ID-compliant DL/ID. DHS delayed implementation of the REAL ID deadline for a number of years to allow for more individuals to obtain REAL ID-compliant DL/ID. Despite the Federal government's years of preparation for REAL ID, the adoption rate remains low and instances of individuals seeking to use a noncompliant DL/ID for a defined official purpose may occur on a large scale, raising concerns related to security, agency operations, and potential impact to the public. In contexts where agency operations involve large numbers of individuals presenting DL/IDs for REAL ID official purposes or where agencies have limited capacity to conduct identity verification processes where REAL ID is required, this may result in longer lines, general delays, confusion, and frustration. Disruptions to agency operations caused by large numbers of individuals attempting to use noncompliant DL/IDs are also likely to have broader effects and impact individuals who bring a valid form of identification. Such disruptions pose potential security risks at access points to TSA security checkpoints or other Federal facilities. DHS believes that the potential risks an immediate transition to full enforcement would cause for some agencies will be mitigated by the flexibility provided by phased enforcement.

In addition, some commenters may have misunderstood this rule as an extension of the card-based deadline until May 5, 2027. As explained above,<sup>46</sup> this rule is not an extension of

<sup>44</sup> 49 U.S.C. 30301 note, section 202(a)(1), "Beginning 3 years after the date of the enactment of this division, a Federal agency may not accept, for any official purpose, a driver's license or identification card issued by a State to any person unless the State is meeting the requirements of this section" (emphasis added).

<sup>45</sup> 6 CFR 37.5(b).

<sup>46</sup> *Supra* III.C.

the deadline. The rule maintains an immediate transition to full enforcement on May 7, 2025, for those agencies that do not determine that a phased approach to enforcement is appropriate. Recognizing the security benefits provided by REAL ID, this rule provides an enforcement approach that allows agencies to realize security gains in contexts where a swift transition to full enforcement poses little risk, while reducing the risks in contexts where large numbers of individuals seeking to use noncompliant DL/IDs raises serious concerns. Under this rule, agencies must specifically consider security when determining whether a phased enforcement plan is appropriate. DHS anticipates that for many agencies, phased enforcement will not be appropriate where the benefits of beginning full card-based enforcement on May 7, 2025, outweigh the other factors and benefits of phased enforcement. A phased approach will be more likely for those agencies where potential risks related to security, operational feasibility, and public impact strongly weigh in favor of and support implementing a phased enforcement plan. In this way, the rule appropriately balances obtaining the security benefits of REAL ID with the need to mitigate potential risks.

DHS also does not agree that allowing agencies to enforce through a phased approach will disincentivize the public in obtaining a REAL ID-compliant DL/ID. Rather, implementation of this rule and enforcing the regulatory deadline beginning May 7, 2025, will incentivize the public to obtain compliant DL/IDs while considering the need of some agencies to enforce through a phased approach to address security and public interest concerns. Beginning May 7, 2025, DHS anticipates that many agencies will begin full enforcement, and not accept non-compliant DL/ID. Those agencies that choose to implement the regulatory deadline using a phased approach will decide the timeline and conditions appropriate for their agency to implement within the 2-year period. DHS expects the public to see the tangible results of attempting to use a non-compliant ID/ID for official purposes, either directly, through media coverage, or via DHS and agency public messaging, and decide to obtain a compliant DL/ID.

DHS' estimate that only 4 percent of agencies may ultimately determine that a phased enforcement plan is appropriate does not indicate that the rule is unnecessary. The frequency and volume of Federal agencies' interactions with the public that may require presentation of a DL/ID for a REAL ID

official purpose varies significantly. Based on its stakeholder engagements with Federal agencies, DHS believes that the vast majority of agencies do not handle a significant volume of individuals presenting DL/IDs for an official purpose under the REAL ID Act and regulation. However, other agencies (for example, TSA) encounter a much larger volume of individuals on a daily basis that must present an identification document for a REAL ID official purpose. Although DHS estimates that only 4 percent of agencies will make a determination to use a phased enforcement plan, this rule acknowledges that each individual agency is in the best position to consider the relevant factors and make a determination based on the agency's own mission and operational context. DHS believes it is important for all agencies to have the flexibility provided by this rule as they prepare to begin card-based enforcement on May 7, 2025.

Finally, DHS also appreciates the value of increasing public awareness of REAL ID requirements. TSA has undertaken efforts to conduct surveys on the public's awareness of REAL ID and is engaged in public awareness campaigns through multiple media outlets. Given the modest changes to the REAL ID adoption rate over the past year notwithstanding DHS' significant public outreach, DHS does not believe a public awareness campaign on its own would sufficiently increase the adoption rate of compliant DL/IDs by May 7, 2025, to effectively mitigate the risks some agencies may face if they immediately transitioned to full enforcement.

#### *E. Extension of the Card-Based Enforcement Deadline*

*Comments:* Some commenters suggested that rather than beginning card-based enforcement on May 7, 2025, DHS should issue an extension of the card-based enforcement deadline. Commenters wrote that the deadline should be extended because of low rates of adoption of REAL ID-compliant DL/IDs, the impact of the COVID-19 pandemic on States' ability to issue REAL ID-compliant DL/IDs, and a lack of public awareness. One commenter wrote that an extension of 2 or 3 years would be appropriate. Other commenters suggested that REAL ID enforcement should be extended for 5 years, 7 years, 10 years or more. Some commenters stated that individuals had encountered challenges in obtaining a REAL ID due to complexity in meeting eligibility requirements or unequal access to DMVs due to physical distance from DMV locations, work schedules,

and lack of transportation. Another commenter stated that REAL ID enforcement should not begin until the Federal government or State governments provide funding such that the cost of obtaining a REAL ID-complaint DL/ID is not passed on to individuals.

*DHS response:* DHS considered an extension to the card-based enforcement deadline but chose the approach provided by this rule for several reasons. As discussed above,<sup>47</sup> DHS believes that maintaining the deadline of May 7, 2025, will continue to encourage REAL ID adoption whereas an extension of the deadline would reduce adoption incentives. Maintaining the deadline while providing agencies the flexibility of phased enforcement where appropriate will allow for a faster and smoother transition to full card-based enforcement than another extension of the deadline.

This approach maintains the current deadline, facilitating an immediate transition to full enforcement for agencies that do not determine phased enforcement is appropriate. In this way, the security benefits of REAL ID can be fully realized in contexts where full enforcement poses little risk of creating other security risks, interfering with operational feasibility, or disrupting public services. Further, DHS believes that this approach will encourage REAL ID adoption by maintaining the urgency to obtain a compliant DL/ID prior to the deadline and after the deadline, when individuals experience the consequences of card-based enforcement. As individuals learn that their noncompliant DL/ID can no longer be used for defined official purposes, they will be incentivized to obtain a REAL ID-compliant DL/ID.

DHS appreciates concerns raised that an extension is necessary due to the current REAL ID adoption rate and the impact of COVID-19 to State's ability to issue REAL ID-compliant IDs. DHS has previously issued a number of extensions to account for slow growth in the REAL ID adoption rate, as well as COVID-19 impact, however, even given these prior extensions the rate of REAL ID issuance remains low. To increase adoption and realize the benefits of the REAL ID Act, the REAL ID deadline must be enforced. DHS believes that maintaining the enforcement date along with measures encouraging adoption as part of phase enforcement plans will help increase adoption rates thereby providing the security benefits of REAL ID while also addressing concerns about low adoption rates and State's ability to

<sup>47</sup> *Supra* III.C.

issue REAL ID-compliant IDs. Specifically, DHS recognizes that many individuals still do not have a compliant DL/ID, and beginning full enforcement on May 7, 2025, may not be practical for all Federal agencies. As such, the rule allows for agencies to determine, after considering relevant factors including security, operational feasibility, and public impact that they should implement the deadline through a phase approach.

DHS does not agree that the date should be extended due to the lack of public awareness. DHS, in close coordination with States, airlines, airports, and other industry partners, has messaged the importance of obtaining a REAL ID-compliant DL/ID for a number of years. DHS believes that continued messaging alone will not result in a substantial increase in adoption rates. DHS believes that beginning enforcement, with the flexibility phased enforcement provides, will increase public awareness and increase REAL ID adoption rates more quickly than an extension of the deadline.

DHS recognizes some individuals have encountered challenges in obtaining a REAL ID-compliant DL/ID due to an inability to meet eligibility requirements. DHS recommends that individuals contact their State licensing agency directly to determine if they are able to meet issuance requirements. In addition, many agencies allow for individuals to provide other acceptable forms of identification or allow individuals to proceed using alternative access control procedures. DHS recommends that individuals without a REAL ID-compliant ID contact the Federal agency in question to determine that agency's unique access control requirements.

DHS also does not agree that the deadline should be extended because of challenges that individuals may face in obtaining a REAL ID-compliant DL/ID due to unequal access to DMVs. DHS recognizes that some individuals may have a more difficult time traveling to a DMV to obtain a REAL ID-compliant DL/ID than others. However, to realize the security benefits of REAL ID, DHS believes that beginning card-based enforcement on May 7, 2025, is appropriate and that individuals will have had sufficient time to obtain a REAL ID-compliant DL/ID before that date. To the extent agencies implement card-based enforcement through phased enforcement plans, this rule may provide additional time after the deadline for individuals to obtain REAL ID-compliant DL/IDs.

Finally, DHS disagrees with the comment that DHS should delay card-based enforcement until Federal or State funding reduces the costs of obtaining a REAL ID compliant-DL/ID. Congress passed the REAL ID Act in 2005 and DHS issued a final rule implementing the Act's requirements in 2008. The Act and regulations provide for the statutory and regulatory framework for REAL ID. Under this framework, neither Congress nor DHS set parameters on the cost to individuals to obtain a REAL ID-compliant DL/ID. Therefore, DHS believes enforcement of REAL ID requirements should not be tied to the cost of obtaining a REAL ID-compliant DL/ID.

*Comment:* One commenter suggested extending the deadline because Washington state does not issue REAL ID DL/IDs.

*DHS response:* The State of Washington issues Enhanced Driver's Licenses (EDLs), which are designated as acceptable border-crossing documents by DHS under the Western Hemisphere Travel Initiative and are an acceptable form of identification for REAL ID official Federal purposes such as accessing a Federal facility or boarding a commercial aircraft. Michigan, Minnesota, New York, Vermont, and Washington are the only States that currently issue EDLs. For more information on EDLs, please visit the DHS website.<sup>48</sup>

#### *F. Confusion Associated With Phased Enforcement Generally*

*Comments:* Multiple commenters stated that the REAL ID requirements, delays, and shifting deadlines were already confusing, and that a phased approach will only add more confusion and complexity. Some commenters noted that the proposed rule could cause confusion through inconsistent enforcement timelines across Federal agencies. Another commenter noted that DHS did not prescribe the form that agencies' plans must take, claiming it would cause unspecified harm, which DHS assumes refers to confusion related to inconsistent enforcement plans across agencies. Other commenters also expressed concerns over public awareness of the proposed rule. These commenters suggested that a lack of public awareness could impede the effectiveness of the rule in encouraging REAL ID adoption, and result in demand surges at DMVs at the end of the phased enforcement period.

There were also comments about public awareness of the REAL ID

requirements and enforcement plans. Specifically, some commenters expressed concerns that people who do not fly often may not see postings by TSA and may not be aware of REAL ID requirements. Others who supported the rule emphasized the importance of an expansive public campaign.

*DHS response:* DHS appreciates that some commenters are concerned that REAL ID messaging, to date, has been confusing, and that the phased implementation plans allowed through this rule could add to that confusion. To mitigate potential confusion regarding the REAL ID dates changes in the regulation, DHS has worked closely with States, industry and media partners to ensure the public was aware of the REAL ID extensions. DHS will continue its current messaging that the REAL ID deadline will not be extended past May 7, 2025, and that individuals should obtain a REAL ID-compliant ID, or other acceptable form of identification, as soon as possible. To ensure public visibility and reduce confusion regarding individual enforcement plans, agencies that implement card-based enforcement using a phased approach must make their plan publicly available on their web page. DHS must also make publicly available a list of agencies that have implemented a phased enforcement plan. Additionally, to prepare the public for REAL ID enforcement, DHS is conducting public awareness campaigns through internet, currently, and television and radio campaigns starting in 2025, which will continue through the card-based enforcement date.

TSA's REAL ID Program is also working closely with States and the travel industry to support efforts to raise awareness among their citizens and customers. This includes a media campaign "toolkit," which provides stakeholders with digital, print, social media, and audio/video materials, that can be used by stakeholders in their own media campaigns.<sup>49</sup> DHS has also collaborated with States and other stakeholders on media events designed to increase public awareness of the REAL ID deadline. DHS believes these public awareness efforts will help mitigate, but not eliminate, the risk of demand surges towards the end of the phased enforcement period. DHS believes that despite public awareness campaigns, many individuals will choose to wait until the last minute to obtain a REAL ID compliant-DL/ID, so it may not be possible to eliminate all risk

<sup>48</sup> <https://www.dhs.gov/enhanced-drivers-licenses-what-are-they>.

<sup>49</sup> "Be Your REAL ID Self" Campaign Toolkits, <https://www.dhs.gov/real-id/campaign-toolkits> (last visited November 20, 2024).

of a demand surge. However, by targeting messaging at individuals more likely to need a compliant DL/ID (e.g., domestic commercial air travelers) media campaigns will likely encourage some individuals to obtain a compliant DL/ID, mitigating a potential surge approaching the deadline.

DHS acknowledges that this rule could potentially create confusion due to the possibility of inconsistent enforcement timelines, with some agencies implementing full enforcement and other agencies implementing varying phased enforcement plans. The rule's requirement that agencies post their plans publicly on their web page is intended to provide transparency and mitigate potential confusion. To the extent variation in enforcement across Federal agencies still results in some confusion, DHS believes that the approach offered by this rule will be more effective than other alternatives that may offer more straightforward messaging. Although immediately beginning full card-based enforcement across all agencies or extending the deadline for card-based compliance might present a simpler message to communicate to the public, as explained above in DHS' response to other comments,<sup>50</sup> DHS believes the approach provided in this rule will better enable a smooth transition to full card-based enforcement. DHS believes that the benefit of allowing enforcement to begin with the flexibility for phased enforcement, where appropriate, outweighs the risk of potential confusion, particularly with the mitigation through public communication.

Finally, DHS acknowledges that a successful implementation of REAL ID enforcement relies on public awareness of the REAL ID requirements, upcoming deadline, and phased enforcement plans. For years, DHS has made significant efforts to raise public awareness of REAL ID enforcement, to include providing information at the TSA security checkpoint about the upcoming REAL ID deadline, and will continue to do so through May 7, 2025. To continue DHS's commitment to transparency and public awareness regarding REAL ID requirements, as discussed below, this final rule requires agencies to post their phased enforcement plans, if they choose to use them, on their agency website.

#### *G. Public Availability of Agencies' Phased Enforcement Plans*

*Comment:* One commenter expressed concern that online publication of

agency phased enforcement plans may not provide sufficient public awareness or adequately prepare the public for what to expect when seeking to use a noncompliant DL/ID for a defined official purpose. The commenter suggested that agencies should also be required to maintain information regarding their phased enforcement plans on site at locations where individuals may need to use a DL/ID for a defined official purpose.

*DHS response:* DHS appreciates this comment highlighting the importance of ensuring that information regarding agencies' phased enforcement plans is available to the public. Given the scope of potential phased enforcement plans, which range from full enforcement to non-enforcement through the 2-year period, DHS does not believe it is appropriate to prescribe specific means by which the individual agency must inform members of the public about their plan, beyond the general requirement to make it publicly available on an agency website. One of DHS' goals in requiring agencies to make their plans available on their websites is to allow individuals to prepare in advance of arriving at an agency location and seeking to use to a noncompliant DL/ID for a REAL ID official purpose. This requirement does not prevent agencies from also providing their plan, or information about their plan, "on-site" for individuals who arrive and seek to use a noncompliant DL/ID.

As a component of the individual agency plan, that agency may choose to engage in a variety of outreach and engagement activities relevant to their specific goals; but imposition of general requirements in this rule cannot effectively account for the specific needs of the plan, variation in agency location and operations, and relevant audience. For example, in the informed compliance phased enforcement model described above,<sup>51</sup> agencies could provide a notice to individuals presenting a noncompliant DL/ID. The notice could inform the individual that their DL/ID is noncompliant with REAL ID requirements and that they should contact their DMV for further information regarding obtaining a REAL ID-compliant DL/ID. The notice could also tell the individual what to expect if the individual presents a noncompliant DL/ID and no other acceptable form of identification in the future.

As noted above, DHS is engaged in a layered approach to improve adoption, including heavy engagement with States

that have low REAL ID adoption rates, a public advertising campaign raising awareness of upcoming REAL ID enforcement and the benefits of obtaining a REAL ID,<sup>52</sup> and communication with the travel industry.

#### *H. Length of Phased Enforcement Period*

*Comments:* Multiple commenters expressed support for a phased approach but highlighted concerns over the timeframe for the phased enforcement period. Some commenters believe a phased enforcement period of 2 to 3 years is appropriate. Other commenters expressed that DHS did not provide sufficient data or evidence to support a 2-year phased enforcement period. One commenter states a 2-year period is not long enough based on adoption rates to date and the current proportion of DL/ID holders that have a REAL ID-compliant DL/ID. The commenter notes that 2 years might not allow for a significant increase in the proportion of REAL ID-compliant DL/IDs and that Federal agencies may experience the same operational risks at the end of the 2-year enforcement period in the presence of significant REAL ID noncompliance. Another commenter noted that many individuals have obtained noncompliant marked DL/ID with validity periods of up to 8 years, depending on the state, and that these individuals would need to visit a DMV in advance of the expiration of their current DL/ID in order to obtain a REAL ID-compliant DL/ID. This commenter suggested that DHS should, at a minimum, extend the phased enforcement period to 4 years, which would align with shortest validity period amongst most populous states. Still other commenters proposed that Federal agencies should be permitted to specify their own dates for achieving full enforcement, that the phased enforcement period should be indefinite, or that DHS consider future rulemaking to modify the phased enforcement period if necessary.

*DHS response:* DHS appreciates the thoughtful comments it received regarding the appropriate length of the phased enforcement period. In determining the length of the phased enforcement period, DHS balanced factors supporting a shorter period of phased enforcement with those possibly warranting a longer period. In support of providing a shorter phased enforcement period, DHS seeks to reduce the delay in realizing the

<sup>50</sup> *Supra* IV.D., IV.E.

<sup>51</sup> *Supra* III.D.

<sup>52</sup> DHS Launches "Be Your REAL ID Self" Public Awareness Campaign, January 15, 2021, <https://www.dhs.gov/real-id/news/2021/01/15/dhs-launches-be-your-real-id-self-public-awareness-campaign>.



security benefits associated with REAL ID, and additionally seeks to ensure that imminent enforcement provides a compelling rationale for members of the public to obtain a REAL ID-compliant DL/ID. In support of a longer phased enforcement period, DHS seeks to provide sufficient time for phased enforcement plans to exert an effect on public perception, to limit negative enforcement impacts on agency operations and the public, and to provide sufficient time for States to meet increased demand. DHS has balanced these factors to arrive at an up to 2-year period available for phased enforcement. The 2-year period allows agencies to develop plans that adjust for operational impacts and provides individuals and States time to take necessary action. This period allows States to adjust or reallocate resources to meet increased demand over annual budgeting cycles, while still maintaining a level of urgency necessary to prioritize such action. Allowing for more than 2 years for phased enforcement would potentially further delay the security benefits of REAL ID and would likely not provide members of the public a compelling reason to prioritize obtaining a REAL ID compliant DL/ID.

DHS also does not believe that it would be appropriate to allow each Federal agency to specify the duration of their own phased enforcement period beyond the 2 years permitted by this rule. Doing so would permit agencies to use a phased approach indefinitely, avoiding the implementation of the legal requirements associated with the REAL ID act and regulations. Allowing a more lengthy phased enforcement period than 2 years would also unnecessarily delay realization of the security benefits of REAL ID. Finally, a common defined available period for phased enforcement ensures consistent, accountable, and transparent national action, while still allowing agencies to balance operational needs, security benefits, and public impact to determine the individualized timeframe of their own enforcement, within those bounds.

As described above, one comment suggested that DHS should base the phased enforcement period on the minimum length of the validity period for DL/IDs in some states, rather than balancing various factors to determine the enforcement. The commenter recommended 4 years because this is the shortest validity period amongst more populous States. Since there is not a single common validity period among all states, the choice of a 4-year period rather than the many longer periods in other States implicitly acknowledges the

interests DHS has described above compelling shorter phased enforcement periods. The diversity in length of validity periods across States also suggests that there is highly limited benefit to tying the phased enforcement period to one particular validity period, as it would not be common to most members of the public. In addition, the length of validity of DL/IDs has limited utility in light of states ability to continue issuance of non-REAL ID compliant DL/IDs. While DHS acknowledges that some individuals who have recently obtained noncompliant DL/IDs may need to obtain a REAL ID-compliant DL/ID before their noncompliant DL/ID expires, the avoidance of this circumstance in some limited instances (namely, the class of persons who have a DL/ID which would specifically expire between 2 and 4 years from the REAL ID enforcement date) is not compelling when compared to the broader interests DHS has considered in providing a shorter period of phased enforcement, as described above.

Individuals may also continue to choose to obtain a noncompliant DL/ID, even after the enforcement date, because they do not anticipate needing an acceptable form of identification to verify their identity for a defined official purpose or because they had another identity document, such as a passport, that is widely accepted. DHS does not believe it is appropriate to further delay the security benefits of REAL ID based on individual's decisions to obtain noncompliant-marked cards. For any individual holding a noncompliant DL/ID, who realizes that they need to obtain a compliant DL/ID, a 2-year phased enforcement period provides sufficient time for them to do so.

Additionally, some commenters discussing the appropriate maximum phased enforcement period appear to assume that 100 percent of state-issued DL/IDs in circulation must be REAL ID-compliant before the Federal Government begins full card-based enforcement. This is incorrect. In the 2008 final rule DHS assumed, in response to public comments, that only 75 percent of DL/ID holders may ever obtain a REAL ID-compliant DL/ID.<sup>53</sup> Individuals may choose not to obtain a REAL ID-compliant DL/ID for a number of reasons, including that they do not anticipate needing identification for a REAL ID official purpose or that they have another form of acceptable identification (e.g., a passport). Although the balance point that the actual percentage of REAL ID-compliant

DL/IDs will eventually reach is uncertain (i.e., it could be more or less than 75 percent), DHS anticipates that the number of individuals presenting noncompliant DL/IDs for REAL ID official purposes at the time agencies transition from phased enforcement to full enforcement will have fallen and thereby reduce potential security risks, operational disruption, or significant public impact.<sup>54</sup>

Finally, DHS appreciates the recommendation that DHS consider future rulemaking to modify the phased enforcement period if necessary. As with this rulemaking, DHS will leverage its rulemaking authority as necessary to ensure successful implementation of the REAL ID requirements.

#### *1. Relevant Factors and Resources for Development and Approval of Phased Enforcement Determinations by Federal Agencies*

*Comments:* Some commenters expressed that the relevant factors DHS identified and that the rule requires agencies to consider when determining whether a phased approach is appropriate are overly broad and allow Federal agencies too much discretion in determining whether to implement a phased enforcement plan and what form the plan would take, resulting in widely varying policies that may hinder compliance and enforcement by individuals and agencies, respectively. These commenters also expressed concern that with this discretion, agencies may transition to full enforcement prior to the end of the 2-year maximum phased enforcement period, arguing instead that REAL ID should be repealed or extended outright for 2 years, citing general concerns regarding the REAL ID Act unrelated to this rulemaking. One commenter expressed concern about the adequacy of the TSA REAL ID Program's resources to support the required DHS coordination of agencies' phased enforcement plans. The commenter suggested that DHS should work to achieve a common understanding of the REAL ID regulations across all Federal agencies.

*DHS response:* Under this rule, DHS intentionally provides Federal agencies significant discretion and flexibility to implement the REAL ID requirements using an approach that is best suited to their operations and contexts. Given the large number of Federal agencies, their variety of missions and operational settings, and significant variation in the

<sup>54</sup> See *infra* table 5. DHS forecasts that the number of DL/IDs that are REAL ID-compliant may rise to 83 percent by May 2027.

<sup>53</sup> 73 FR 5272, 5322.

frequency and volume of interactions with the public in the context of a defined REAL ID official purpose, DHS believes that attempting to develop a uniform phased enforcement approach or more specific list of factors is not feasible. Further, DHS believes that each individual agency is in a better position than DHS to weigh factors and make judgments regarding whether phased enforcement is appropriate and, if so, what form an agency's phased enforcement plan should take. The rule requires that agency plans be coordinated with DHS, which will allow DHS to ensure a level of consistency, as appropriate, and oversight of successful implementation of the REAL ID requirements.

As discussed above,<sup>55</sup> this rule maintains the card-based enforcement deadline and a regulatory default of full enforcement on May 7, 2025, absent an affirmative determination by an agency to use a phased enforcement plan. The rule is structured in this way to facilitate each agency's transition to full implementation of REAL ID requirements as soon as practicable. DHS anticipates that many agencies will determine that a phased approach is not necessary or appropriate and will transition to full enforcement immediately on May 7, 2025. For agencies that do determine that phased enforcement is appropriate, DHS does not expect that all phased enforcement plans will take the entire 2-year period. In some cases, agencies' phased enforcement plans may provide for reaching full enforcement well in advance of May 5, 2027.

Finally, DHS notes that the TSA REAL ID Program is well-prepared to support DHS coordination of agencies' phased enforcement plans. Since Fall 2023, the TSA REAL ID Program Office has been hosting monthly stakeholder engagement sessions with Federal agencies. During these sessions, DHS has briefed Federal agencies on the REAL ID regulations' card-based enforcement requirements and this rulemaking to allow agencies the flexibility to implement card-based enforcement through a phased approach, if appropriate. Through interagency discussion during these sessions, DHS has built an understanding of which agencies may consider phased enforcement plans and what form those plans may take. Although the rule provides agencies broad discretion to structure their phased enforcement plans in a manner best suited to their operations, the rule requires agencies to coordinate their

plans with DHS to ensure that plans advance the objectives of the REAL ID regulations and maintain consistent progress towards full enforcement. Through this coordination, DHS will maintain oversight of successful implementation of the REAL ID Act and ensure consistency, as appropriate.

#### *J. Phased Enforcement Implementation Concerns*

*Comments:* DHS received some comments related specifically to the official purpose of boarding a federally regulated commercial aircraft and card-based enforcement at TSA security screening checkpoints. These commenters expressed concerns that beginning card-based enforcement at TSA security checkpoints may increase passenger wait times and congestion in the public areas of airports, potentially increasing the burden on law enforcement officers who respond to issues arising at airports. One commenter suggested that TSA should develop a plan that clearly provides criteria for incidents that rise to level requiring notification to law enforcement. Another commenter suggested that, as part of phased enforcement, TSA should require individuals enrolled in TSA Precheck® to present a REAL ID-compliant DL/ID to use the TSA Precheck® lane. Multiple commenters recommended that TSA develop a "contingency" plan to address travelers who may be unable to use their noncompliant DL/ID to proceed through the screening checkpoint.

DHS also received comments asserting that the proposed phased approach would exacerbate costs to individuals and to the Federal Government, for example, because individuals may need to update their identification multiple times to comply with evolving standards. Other commenters asked that DHS provide more detail about the consequences of the rule; and concerns that phased enforcement will be "increasingly painful" on the public and is thus not in their best interests.

*DHS response:* DHS appreciates the thoughtful comments received regarding TSA's implementation of card-based enforcement. This rule allows TSA to make a determination, after considering relevant factors, that a phased approach to card-based enforcement may be appropriate. Consistent with this rule, TSA is planning for a number of scenarios, including considering a phased approach to enforcement. In making its determination, TSA will take into account the relevant factors of security, operational feasibility, and

public impact, including TSA checkpoint operations that involve interaction with law enforcement and potential impact to travelers and transportation stakeholders.

Concerns regarding costs associated with compliance with requirements of the REAL ID Act and regulation were addressed in the 2008 final rule and are outside the scope of this rulemaking. Regarding the concern that a phased approach will add additional costs to implementation because of a need to update identification multiple times, DHS notes that the REAL ID card-based requirements, issued through the 2008 final rule, were not amended by this rulemaking. Further, nothing in this rule will impact the requirements for issuance. The rule instead provides individuals potentially more time to obtain a REAL ID compliant license if they plan to present their DL/ID to an agency that is implementing the May 7, 2025, enforcement deadline through a phased approach.

Regarding commenters' questions about the consequences of the rule, if an individual attempts to provide a non-compliant DL/ID after May 7, 2025, and the agency does not have a phased enforcement plan in place, the Federal agency may not accept that non-compliant DL/ID. Each individual agency is responsible for determining access control procedures at their facilities, and what alternatives may be available, such as other acceptable forms of identification. If the agency does have a phased enforcement plan in place, that plan must be posted on the agency website. For example, an agency may only accept a non-compliant DL/ID from an individual twice before it is rejected. In that instance, the individual will be subject to the agency's published plan.

DHS understands that some commenters are concerned that the phased enforcement plans may be "increasingly painful" on the public. However, without the flexibility for a phased approach, no Federal agencies may accept non-compliant DL/IDs for REAL ID official purposes on and after May 7, 2025. This rule provides flexibility to agencies, allowing them to implement phased enforcement plans that provide more time for individuals to obtain a REAL ID-compliant DL/ID.

*Comments:* Some commenters expressed concern that agencies' phased enforcement plans may involve the collection of personal information and privacy issues, particularly if agencies implement a phased enforcement plan using the informed compliance with limits model. One commenter expressed

<sup>55</sup> *Supra* III.C.

the need for transparency and clear policies to protect PII.

*DHS response:* DHS appreciates these comments and acknowledges the importance of privacy protections and safeguarding of personally identifiable information. This rule only provides agencies with the flexibility to implement the card-based enforcement deadline through a phased approach and, as noted above.<sup>56</sup> Any PII collected as part of an agency's phased enforcement plan must be collected, maintained, and used in accordance with all applicable Federal guidelines and requirements related to collection of PII. Depending on the type and manner of information collected, this will likely require agencies to obtain an OMB-approved PRA information collection, or to prepare a Privacy Threshold Analysis, Privacy Impact Assessment, System of Records Notice, and other documentation to ensure adequate protections are in place regarding the collection, storage, and use of PII.

*Comments:* One commenter expressed concern that Federal agencies' implementation of phased enforcement plans may result in a burden on States because individuals will seek information from State DMVs regarding Federal card-based enforcement.

*DHS response:* DHS appreciates concerns related to increasing the burden on States. Overall, DHS believes this rule lessens the burden on States by allowing agencies to implement card-based enforcement using a phased approach. In the event of backlogs at State DMVs due to increased demand leading up to and after the deadline, this rule may provide States additional time to make adjustments to meet increases in demand for REAL ID-compliant cards. DHS acknowledges that States, including DMV personnel, may receive inquiries regarding Federal agencies' phased enforcement plans. To mitigate potential confusion associated with phased enforcement, this rule requires agencies using a phased approach to make their plans available on their website. It also requires DHS to make available on the DHS REAL ID web page a list of agencies that have coordinated phased enforcement plans. DHS welcomes States to direct individuals with questions regarding Federal card-based enforcement to the DHS REAL ID web page.

#### K. Alternative Approaches to Phased Enforcement

*Comments:* One commenter suggested an alternative approach to phased enforcement based on the issuance date

of the identification document. In the suggested alternative, Federal agencies could choose to accept, for a period up to 2 years after the card-based enforcement deadline, noncompliant DL/IDs with issuance dates before May 7, 2025. After the phased enforcement period, Federal agencies would only accept REAL ID-compliant identification for official purposes.

*DHS response:* DHS appreciates this comment suggesting an alternative to the phased enforcement approach taken by this rule. DHS believes that if an agency determines that phased enforcement is appropriate, the agency is in the best position to structure a phased enforcement plan that meets the needs of its operational context. While the rule requires agencies to coordinate phased enforcement plans with DHS, the rule provides agencies broad discretion to design a plan that will achieve a smooth transition to full enforcement within their context. DHS provides some phased enforcement models that agencies may consider,<sup>57</sup> but agencies have discretion to develop their own models.

A phased enforcement plan based on DL/ID issuance date would be compatible with the broad scope of discretion given to individual agencies under this rule. That is, individual agencies could adopt such a model of enforcement if they choose to do so based on their specific circumstances. It is, however, not appropriate to adopt universally, because DHS believes that each individual agency is in the best position a phased enforcement plan that meets their own particular circumstances. In light of agencies' varying operational contexts and interaction with REAL ID requirements, DHS believes that providing agencies broad discretion is preferable to universally mandating a specific phased enforcement plan for every agency.

#### L. Costs of the Rule

*Comment:* One commenter expressed opposition to the rule, citing the financial implications and estimated costs of the REAL ID Act. The commenter stated an additional delay in card-based enforcement will only exacerbate costs and demand further financial backing for the eventual enforcement in a decades old policy, without citing specific amounts in additional costs.

*DHS response:* The rule results in an estimated \$1.73 million in quantifiable costs over 2 years to Federal agencies and DHS, which are separate, and a fraction of the estimated costs related to

the REAL ID Act. In addition, the rule will help individuals without REAL ID-compliant identification, or an acceptable alternative, avoid costs that they may face when attempting to use a DL/ID for an official purpose during the phased enforcement period.

DHS does not possess data on State expenditures, but as all States have met the state-based deadline for compliance, many of the costs associated with implementation of the REAL ID Act have already been incurred and will not be impacted by this rule. States and individuals would continue to incur costs related to obtaining REAL IDs; with or without this rule, which may be impacted by the rate at which they occur. As stated in the rule, DHS anticipates providing the opportunity for a phased approach may actually reduce and/or spread overall costs (rather than processing a higher number of REAL ID requests in a shorter period of time and consequences of a large portion of the population not having acceptable ID).

### V. Statutory and Regulatory Analyses

#### A. Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 553(d) requires publication of an amendment in the **Federal Register** at least 30 days before the effective date of the final rule, unless good cause, as prescribed in the APA, is found. Here, DHS has concluded there is good cause to make this rule effective immediately. In determining whether the good cause exception of section 553(d) may be invoked to allow an immediate publication date, an agency is required to balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded reasonable time to prepare for the effective date of the rule.<sup>58</sup> Agencies may also dispense with the delayed effective date requirement for rules that "recognize an exemption or relieve[] a restriction."<sup>59</sup>

Here, finalizing the provisions of this rule immediately may serve to lessen a burden on the public by providing agencies more time before the May 7,

<sup>58</sup> *United States v. Gavrilovic*, 551 F.2d 1099 (8th Cir. 1977) (noting that the "legislative history of the APA" indicates that the waiting period "was not intended to unduly hamper agencies from making a rule effective immediately," but intended "to 'afford persons affected a reasonable time to prepare for the effective date of a rule . . . or to take other action which the issuance may prompt'" (citing S. Rep. No. 752, 79th Cong., 1st Sess. 15 (1946); H.R. Rep. No. 1980, 79th Cong., 2d Sess. 25 (1946))).

<sup>59</sup> 5 U.S.C. 553(d)(1). See *Independent U.S. Tanker Owners Commission v. Skinner*, 884 F.2d 587, 591 (D.C. Cir. 1989).

<sup>56</sup> *Supra* III.D.

<sup>57</sup> *Supra* III.D.

2025, enforcement date to determine whether to implement phased enforcement plans and, if using a phased enforcement plan, to develop and communicate that plan to the public. If agencies choose to implement card-based enforcement using phased enforcement plans, the public may be provided with additional time beyond the enforcement date to obtain a REAL ID-compliant DL/ID, reducing potential negative impacts on May 7, 2025. Further an immediate effective date would not result in unfairness because the REAL ID requirements of the 2008 final rule are already in effect and this rule does not alter any of the substantive REAL ID requirements or the enforcement date. Therefore, there are no new requirements that States or the public need to prepare to meet because of this final rule. The purpose of the waiting period is “to give affected parties time to adjust their behavior before the final rule takes effect.”<sup>60</sup> As this rule does not alter the substantive REAL ID requirements or enforcement date, a waiting period is not necessary because this rule does not change the date by which the public must adjust their behavior. Allowing this rule to become immediately effective does not alter the May 7, 2025, date on which agencies will begin card-based enforcement, so finalizing the provisions in this rule does not require anyone to change their conduct or to take any particular steps in advance of the effective date.<sup>61</sup>

#### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of 44 U.S.C. 3507(d), obtain approval from the OMB for each collection of information

it conducts, sponsors, or requires through regulations. This final rule itself does not directly call for new collection of information under the PRA as the rulemaking relates to Federal agency submission of phased enforcement plans which are not covered under the PRA. However, agencies that utilize a phased enforcement plan, depending on the requirements associated with their respective plan, will likely need to submit or modify an OMB information collection request.

#### C. Economic Impact Analyses

##### 1. Regulatory Impact Analysis Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order (E.O.) 12866 (Regulatory Planning and Review),<sup>62</sup> as affirmed by E.O. 13563 (Improving Regulation and Regulatory Review),<sup>63</sup> and as amended by E.O. 14094 (Modernizing Regulatory Review)<sup>64</sup> directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (RFA) requires agencies to consider the economic impact of regulatory changes on small entities.<sup>65</sup> Third, the Unfunded Mandates Reform Act of 1995 (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million (\$183 million in 2023 dollars) or more annually (adjusted for inflation).<sup>66</sup>

##### 2. Executive Orders 12866, 13563, and 14094 Assessment

Executive Order 12866 (Regulatory Planning and Review), as affirmed by

Executive Order 13563 (Improving Regulation and Regulatory Review) and amended by Executive Order 14094 (Modernizing Regulatory Review), directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

DHS summarizes the findings:

- In accordance with E.O. 12866, the OMB has designated this rulemaking a “significant regulatory action” as defined under section 3(f)(1) of E.O. 12866, as amended by E.O. 14094. Accordingly, the rule has been reviewed by OMB.

- The Secretary, pursuant to 5 U.S.C. 605(b), certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule is only applicable to Federal Government agencies, who under the RFA are not considered small entities.

- This final rule is not likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million (\$183 million in 2023 dollars) or more annually (adjusted for inflation) such that a written statement is not required under UMRA.

##### a. OMB A–4 Statement

The OMB A–4 Accounting Statement presents the annualized costs and benefits, as well as the qualitative benefits of the final rule.

TABLE 1—OMB CIRCULAR A–4 ACCOUNTING STATEMENT  
[\$ Millions]

Category	Estimates			Units			Notes
	Primary	Low	High	Year dollar	Discount rate	Time horizon	
Benefits							
Annualized Monetized .....	N/A	N/A	N/A	N/A	2%	N/A	Not Quantified.
Annualized Quantified, But Non-Monetized .....	N/A	N/A	N/A	N/A	2%	N/A	Not Quantified.

<sup>60</sup> *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1485 (9th Cir. 1992).

<sup>61</sup> See *United States v. Gavrilovic* 551 F.2d 1099 (8th Cir. 1977).

<sup>62</sup> 58 FR 51735 (Oct. 4, 1993).

<sup>63</sup> 76 FR 3821 (Jan. 21, 2011).

<sup>64</sup> 88 FR 21879 (Apr. 11, 2023).

<sup>65</sup> Public Law 96–354, 94 Stat. 1164 (Sept. 19, 1980) (codified at 5 U.S.C. 601 *et seq.*, as amended

by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)).

<sup>66</sup> Public Law 104–4, 109 Stat. 66 (Mar. 22, 1995) (codified at 2 U.S.C. 1181–1538).

TABLE 1—OMB CIRCULAR A-4 ACCOUNTING STATEMENT—Continued  
[\$ Millions]

Category	Estimates			Units			Notes
	Primary	Low	High	Year dollar	Discount rate	Time horizon	
Unquantified .....	The final rule will provide Federal agencies the flexibility to decide whether to enforce the REAL ID card-based regulations in a phased manner that may reduce security vulnerabilities, operational disruption and public impact related to official Federal purposes. A phased approach will not unnecessarily delay REAL ID enforcement for those Federal agencies ready to fully implement on the card-based enforcement deadline. A phased approach will also allow individuals more time to obtain a REAL ID and may help mitigate potential application backlogs at State licensing agencies. Furthermore, a phased approach may reduce potential queuing and associated delays at access points.						
Costs							
Annualized Monetized .....	\$0.87	N/A	N/A	2023	2%	2 Years	Not Quantified.
Annualized Quantified, But Non-Monetized .....	N/A	N/A	N/A	N/A	2%	N/A	
Unquantified .....	Full security benefits associated with REAL ID rule will not be realized, as a result of agencies implementing a phased approach, until full enforcement occurs. Federal agencies will also incur costs related to plan implementation, including, but not limited to training personnel on the policies of the plan, and efforts to inform individuals of the new identity verification policies related to plans. Individuals may also incur costs to become aware of phased enforcement plans and respond accordingly.						
Transfers							
Annualized Monetized Federal Budgetary Transfers .....	N/A	N/A	N/A	N/A	2%	N/A	Not Quantified.
From/To .....	From:			To:			
Other Annualized Monetized Transfers .....	N/A	N/A	N/A	N/A	2%	N/A	Not Quantified.
From/To .....	From:			To:			
Net Benefits							
Annualized Monetized Net Benefits .....	N/A	N/A	N/A	N/A	2%	N/A	Not Quantified.
Effects							
State, Local, and/or Tribal Government .....	None.						
Small Business .....	None.						
Wages .....	None.						
Growth .....	Not measured.						

## b. Need for regulation

In January 2008, DHS published the Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes Final Rule to implement the requirements of the Act. Since the publication of the original Final Rule, DHS extended the original compliance date multiple times in response to challenges in REAL ID adoption, including but not limited to, the COVID-19 pandemic. In accordance with the Final Rule published in March 2023, Federal agencies are required to commence card-based enforcement on May 7, 2025, at which point Federal agencies may not accept for official purposes a license or identification card issued by a State unless that license or card was issued in accordance with the

REAL ID standards by a REAL ID-compliant jurisdiction.<sup>67</sup>

DHS does not intend to extend the card-based enforcement deadline further and intends to commence enforcement of the REAL ID card-based requirements on May 7, 2025. However, based on current adoption rates of REAL ID-compliant DL/IDs and the projected number of compliant DL/IDs in circulation by the card-based enforcement date (discussed in the succeeding section), DHS believes this rulemaking is necessary to provide flexibility to mitigate potential risks related to security, operational feasibility, and public impact.

Without the flexibility the final rule permits, agencies may be faced with serious concerns that immediate implementation of full enforcement may create including security vulnerabilities,

operational challenges, and disruption of Government services. For instance, there could be cases where an agency needs to conduct work with a subject-matter expert or specialist that does not have REAL ID-compliant identification and is therefore unable to access the Federal facility. Barring a phased enforcement plan, the agency may need to come up with alternate accommodations, which could include holding meetings or presentations offsite or standing up a virtual option. These options may result in additional costs that would otherwise not be incurred if the agency was operating under a phased enforcement plan. Additionally, absent a phased enforcement plan, individuals without a REAL ID-compliant DL/ID or acceptable alternative will not have an acceptable form of identification to board federally regulated aircraft upon card-based enforcement. This represents a large use

<sup>67</sup> See 88 FR 14473 (Mar. 9, 2023), codified at 6 CFR 37.5.

case for REAL ID. These individuals will not have an acceptable form of identification to access the security checkpoint which could result in backlogs and other negative outcomes on travel (e.g., delayed or missed flights). This may also have a potential impact on the customer experience and air travel. Long lines, confusion, and frustrated travelers at the checkpoint may also increase security risks.<sup>68</sup> Given the current level of REAL ID adoption across various States, the start of card-based enforcement may also create an increased demand on States to issue REAL IDs, which could result in strained resources and a potential delay of application processing time or backlog. Additional disruptive impacts to those who currently rely upon non-REAL ID-compliant DL/IDs for official Federal purposes may also occur.

Federal agencies that determine an immediate transition to full enforcement would raise concerns related to security, operational feasibility, or negatively impact the public, will benefit from phased enforcement, and will be able to implement a phased enforcement plan, coordinated with DHS, to provide a smoother transition to full card-based enforcement.<sup>69</sup> This final rule will also enable these agencies to minimize negative impact to individuals who do not have REAL ID-compliant DL/IDs and provide States time to issue and individuals time to obtain REAL ID-compliant DL/IDs during initial phases of enforcement.

### c. Baseline Summary

The baseline represents DHS' best assessment of what the world will be like absent this regulatory action.<sup>70</sup>

<sup>68</sup> The requirements of the REAL ID Act and regulations specifically apply to Federal agencies accepting DL/IDs for official purposes. To the extent air carriers also require individuals to present a compliant DL/ID for check-in or to drop off luggage, lines and crowding may also occur at ticket counters and baggage drop-off locations at airports. See U.S. Department of Homeland Security, "Soft Targets and Crowded Places Security Plan Overview" (May 2018). Available at [https://www.cisa.gov/sites/default/files/publications/DHS-Soft-Target-Crowded-Place-Security-Plan-Overview-052018-508\\_0.pdf](https://www.cisa.gov/sites/default/files/publications/DHS-Soft-Target-Crowded-Place-Security-Plan-Overview-052018-508_0.pdf). Accessed on Apr. 17, 2024.

<sup>69</sup> Card-based enforcement should not impact access to Federal facilities that do not require identification (e.g., public areas of the Smithsonian). Card-based enforcement also should not impact public services that require identification for purposes other than an official purpose as defined by the Act and regulation (e.g., applying for or receiving Federal benefits is not a REAL ID official purpose). However, in cases where provision of a public service does involve a REAL ID official purpose, agencies should consider the extent to which an immediate transition to full enforcement will impact their ability to provide that service.

<sup>70</sup> Office of Information and Regulatory Affairs. Circular No. A-4. November 9, 2023. <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf>. Accessed February 12, 2024.

Absent this regulatory action, beginning on May 7, 2025 (card-based enforcement date), all Federal agencies will be prohibited from accepting non-REAL ID-compliant State-issued DL/IDs for REAL ID official purposes.<sup>71</sup> If an individual does not have a REAL ID-compliant DL/ID, the individual may use another acceptable form of identification as determined by individual agencies' identity verification and access policies.<sup>72</sup> In accordance with the 2008 Final Rule, enforcement on the card-based enforcement date will be applied unilaterally, across all respective agency locations in the United States and its territories including, accessing Federal facilities, boarding federally regulated commercial aircrafts (i.e., TSA airport security checkpoints), and entering nuclear power plants.

DHS estimates that by the card-based enforcement date, approximately between 61 and 66 percent of all State-issued DL/IDs will be REAL ID-compliant based on adoption data provided by States, to DHS, through January 2024. The lower-end values represent a monthly adoption rate similar to current rates through card-based enforcement.<sup>73</sup> However, DHS expects that the adoption rate may also increase ahead of the card-based enforcement date as a result of both natural adoption prior to enforcement and efforts by DHS to drive awareness and action. Ahead of the card-based enforcement deadline, DHS plans to launch additional phases of its public service campaign "Be Your REAL ID Self", which in part, provides toolkits for Government and industry partners. To account for this increased rate of adoption, DHS uses a Compounded Monthly Growth Rate of 1.03 percent (compared to a current 0.56 percent

<sup>71</sup> The Act does not require individuals to present identification where it is not currently required to access a Federal facility (such as to enter the public areas of the Smithsonian).

<sup>72</sup> Alternate acceptable forms of identification may include, and are not limited to, U.S. passports, and passport cards.

<sup>73</sup> In section IV(B)(2)(d)(4), Forecast of REAL ID Compliance Under Phased Enforcement, DHS estimates 61.2 percent of REAL ID Compliant DL/IDs by applying a 0.56 percent compounded monthly growth rate which represents the adoption of REAL IDs between January 2023 and January 2024. This represents a lower-end forecast where DHS assumes the monthly adoption rate of REAL IDs remains unchanged leading up to the card-based enforcement date of May 7, 2025. DHS also presents a high-end forecast of 66.0 percent of REAL ID compliant DL/IDs that uses a compounded monthly growth rate of 1.03 percent and represents the adoption of REAL IDs between January 2020 and January 2024 which captures periods of high and low adoption of REAL IDs.

CMGR) for its higher-end value of 66 percent of REAL ID compliant DL/IDs by the card-based enforcement date.

As a result, approximately between 34 percent and 39 percent of DL/IDs in circulation will be non-compliant (either legacy or non-compliant marked DL/IDs). Individuals with non-REAL ID-compliant DL/IDs will not be permitted to use those DL/IDs to access Federal facilities nationwide, including the security checkpoint at airports, unless they are able to present an approved alternate form of identification such as a passport.<sup>74</sup>

### d. Adoption of REAL ID-Compliant DL/IDs

Prior to the onset of the COVID-19 pandemic in the United States in October 2019, DHS estimated that approximately 33 percent, or 90.9 million of the 274.8 million DL/IDs in circulation, were REAL ID-compliant.<sup>75</sup> In April 2020, DHS issued an amended final rule to further delay the card-based enforcement date from October 1, 2020, to October 1, 2021. DHS noted that the COVID-19 pandemic had caused significant disruption citing that State and local government offices, including the DMV, have restricted all but the most essential services, and that in some cases, had been temporarily closed to the public. In October 2020, national REAL ID compliance was approximately 41 percent.<sup>76</sup> Three years later, in

<sup>74</sup> In 2008, DHS issued the Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes Final Rule. In the Regulatory Evaluation for the Final Rule, DHS noted that 25 percent of the population already held a valid passport and that in a few years' time the Department of State anticipated that the figure would increase to approximately 33 percent. As of 2023, the Department of State reports that 160,668,889 valid passports (including passport books) are in circulation (<https://travel.state.gov/content/travel/en/about-us/reports-and-statistics.html>). Over the 10-year period of 2014 to 2023, approximately 13.24 percent of passports issued were passport cards. The Department of State notes that one customer may also have both a passport book and card which counts as two valid passports. To prevent double counting for individuals that hold both a passport book and a passport card, DHS multiplies 160,668,889 by 1 minus 13.24 percent to estimate 139,396,328 passports. Using the Census Bureau's projected population for 2023, DHS estimates that approximately 41 percent of the population has a passport. DHS acknowledges that some percentage of individuals with REAL-ID compliant DL/IDs may also hold a passport and thus there is uncertainty with how many individuals with non-compliant IDs will be able to use a passport as an alternate form of identification.

<sup>75</sup> DHS began to collect data from the states including, total number of DL/IDs, number of REAL IDs, number of non-compliant cards, and number of "legacy" cards in July 2019. Monthly reporting subsequently began in October 2019.

<sup>76</sup> 41.08 Percent of REAL ID-compliant IDs in October 2020 = 112,807,718 REAL IDs ÷ 274,611,013 Total IDs in Circulation.



October 2023, the national REAL ID compliance rate increased to approximately 56 percent.<sup>77</sup> Despite a modest increase in the number of compliant REAL IDs between October 2023 and January 2024, the percentage of REAL ID DL/ID remains unchanged at 56 percent over this time period, with the remaining 44 percent of State-issued DL/IDs being noncompliant.<sup>78</sup>

However, individual State compliance includes a wider range of rates. Table 2 presents REAL ID compliance over time based on the 56 licensing jurisdictions percentage of REAL IDs issued relative to the total number of IDs in circulation for each jurisdiction. As shown in the table, State compliance rates have generally increased over time. For instance, the number of licensing jurisdictions where the percentage of

REAL IDs, relative to all DL/IDs in circulation, is greater than 75 percent has increased from eight jurisdictions in October 2019 to 17 in January 2024. Similarly, the number of licensing jurisdictions where the percentage of REAL IDs, relative to all DL/IDs in circulation, is less than 25 percent has decreased from 31 in October 2019 to 9 in January 2024.

TABLE 2—REAL ID COMPLIANCE OVER TIME

Range (REAL IDs as a percentage of total IDs in circulation by jurisdiction)	Number of licensing jurisdictions			
	October 2019	October 2020	October 2023	January 2024
0%–24% .....	31	22	12	9
25%–49% .....	11	15	16	18
50%–74% .....	6	9	12	12
75%–100% .....	8	10	16	17

1. Compounded Monthly Growth Rates (CMGR)

DHS began receiving monthly data on the number of REAL IDs for each of the 56 licensing jurisdictions in October 2019 (and has monthly data through early 2024). Using this data, DHS calculates the growth, or increase, in number of REAL IDs month over month, relative to the total number of DL/IDs in circulation. Using the historic adoption data, DHS calculates CMGRs which represents growth over various intervals of time. In subsequent sections, DHS uses CMGRs to forecast REAL ID compliance.

In the first 6 months that DHS began to receive monthly data, between October 2019 and March 2020, the CMGR of REAL IDs was approximately 2.5 percent. Between April and May of 2020, the CMGR of REAL IDs had decreased to 0.5 percent. The CMGR later increased to approximately 2.0 percent between June 2020 and October 2020. Over the 3 years following October 2020, the CMGR of REAL IDs was 1.3 percent between October 2020 and September 2021, 0.9 percent between October 2021 and September 2022, and 0.8 percent between October 2022 and September 2023. Over the 12-month period, between January 2023 and January 2024, the national CMGR

for the adoption of REAL IDs was 0.56 percent.<sup>79</sup>

2. Projection of Total Number of DL/IDs

DHS leverages monthly data received from the 56 licensing jurisdictions to estimate the total number of DL/IDs in future months. The report provides DHS with the total number of DL/IDs in circulation, including the proportions of REAL-ID compliant, “legacy” cards, and non-compliant cards. Based on the January 2024 data from the licensing jurisdictions, there were 287,321,596 DL/IDs in circulation.

DHS uses this value as a starting overall DL/ID population. Next, DHS leverages the U.S. Census Bureau’s Monthly Population Estimates for the United States to estimate the total U.S. population and proportion with a DL/ID. DHS first estimates the total population using Census Bureau annual population data to calculate a compound annual growth rate (CAGR) of 0.60 percent in the U.S. population from 2012 to 2022.<sup>80</sup> DHS divides the CAGR of 0.60 percent by 12 to calculate a simple compound monthly growth rate (CMGR) of 0.05 percent. DHS then uses Census Bureau monthly population estimates through December 2023, and applies the simple CMGR of 0.05 percent to forecast the population for each month through October 2027.<sup>81</sup>

DHS estimates a total population of 355,966,451 in January 2024.

Last, DHS divides the total number of DL/IDs by the total population. As of January 2024, 85.5 percent of the population held a driver’s license or identification card.<sup>82</sup> DHS assumes this proportion of the population holds true through October 2027 (some portion of the adult population may not need a DL/ID, along with most of the population under the legal driving age). DHS multiplies the 85.5 percent proportion by the projected population each month to estimate the total number of DL/IDs in circulation.

3. Forecast of REAL ID Compliance Under Status Quo

If full card-based enforcement, absent phased enforcement, were to take place on May 7, 2025, DHS assumes that the adoption of REAL ID-compliant DL/IDs will spike leading up to, and continuing for a period of time past, the card-based enforcement date as individuals, who may otherwise have held off on acquiring a REAL ID-compliant DL/IDs, will take steps to ensure they will not be turned away from Federal facilities where a REAL ID will be required for official purposes.

DHS assumes such a spike will be similar to a 23 percent increase that the Department of State experienced in

<sup>77</sup> 56.11 Percent of REAL ID-compliant IDs in October 2023 = 160,039,272 REAL IDs ÷ 285,246,641 Total IDs in Circulation.

<sup>78</sup> 56.42 Percent of REAL ID-compliant IDs in January 2024 = 162,111,658 REAL IDs ÷ 287,321,596 Total IDs in Circulation.

<sup>79</sup> 0.56 percent CMGR (January 2023 through January 2024) = ((162,111,658 REAL IDs in January 2024 ÷ 151,652,714 REAL IDs in January 2023) ^ (1 ÷ 12) – 1).

<sup>80</sup> U.S. Census Bureau (December 2019). Annual Estimates of the Resident Population for the United States: April 1, 2010, to July 1, 2019 (NST–EST2019–01). Retrieved from <https://www.census.gov/data/tables/time-series/demo/popest/2010s-national-total.html>. Accessed on May 12, 2023.

<sup>81</sup> U.S. Census Bureau (December 2023). Monthly Population Estimates for the United States: April 1, 2020, to December 1, 2024 (NA–EST2023–POP).

Retrieved from <https://www.census.gov/data/tables/time-series/demo/popest/2020s-national-total.html>. Accessed on January 4, 2024.

<sup>82</sup> 85.5 percent of the population as DL/ID holders in January 2024 = 287,321,596 (DL/IDs in circulation as of January 2024) ÷ 355,966,451 (total population in January 2024).

passport applications after implementation of the first phase of the Western Hemisphere Travel Initiative (WHTI).<sup>83</sup> Specifically, in fiscal year 2007, the Department of State experienced an influx of passport applications prior to, and after, the implementation of its first phase of the WHTI, which established new document requirements for travelers entering the United States from within the Western Hemisphere. At the time, the Department of State forecasted it would receive approximately 15 million passport applications in the 2007 fiscal year, however, it ended up receiving approximately 18.6 million passport applications, an approximate 23 percent increase over the original estimate.<sup>84</sup>

As aforementioned, in January 2024, 56.42 percent or 162.1 million of the 287.3 total IDs in circulation are REAL ID-compliant. Based on the data range of January 2023 through January 2024, DHS expects that through April 2024, the 0.56 percent CMGR for the adoption of REAL IDs to remain unchanged,<sup>85</sup> bringing the percentage of REAL IDs relative to all IDs in circulation to 57.3 percent. In the year leading up to the card-based enforcement deadline, DHS considers a similar situation as the influx of passports leading up to, and through, the implementation of WHTI, and applies a 23 percent increase in the adoption of REAL IDs (equivalent to a CMGR of 1.61 percent).<sup>86</sup> Using this methodology,<sup>87</sup> by May 2025,

approximately 70 percent or 202.7 million of the total 289.6 million IDs in circulation would be REAL-ID compliant.<sup>88</sup>

Following the card-based enforcement date, DHS expects the spike to remain in place for approximately 4 to 5 months as individuals work to secure appointments with their local DMV.<sup>89</sup> DHS applies the 1.61 percent CMGR to estimate the percentage of REAL IDs in October 2025. DHS estimates approximately 75 percent of DL/IDs in circulation would be REAL ID-compliant.<sup>90</sup>

To forecast beyond October 2025, under the status quo of full enforcement beginning May 2025, DHS assumes a 50-percent decrease of the initial spike in the adoption of REAL IDs between October 2025 and October 2026.<sup>91</sup> DHS estimates that by October 2026, one and a half years after the card-based enforcement deadline, approximately 83 percent of DL/IDs in circulation would be REAL ID-compliant.<sup>92</sup> Subsequently,

under Phased Enforcement beginning May 7, 2025, DHS evaluates two scenarios in section IV(B)(2)(d)(4), Forecast of REAL ID Compliance Under Phased Enforcement. First, a lower estimate which assumes no changes to the 0.56 percent CMGR which results in 61.2 percent of all DL/IDs in May 2025 being REAL ID compliant. Second, a higher estimate which uses a 1.03 percent CMGR resulting in 66 percent of all DL/IDs being REAL ID compliant in May 2025.

<sup>88</sup> 70.00 Percent of REAL IDs in May 2025 =  $202,749,772 \text{ REAL IDs in May 2025} \div 289,641,636 \text{ IDs in Circulation in May 2025}$ .

<sup>89</sup> The WHTI was implemented in two phases with the second impacting land and seaports beginning at the end of January 2008 (2008 fiscal year). As such, following the initial spike in passport applications within fiscal year 2007, the Department of State also issued a higher than historical number of passports in fiscal year 2008 despite the total number of passports issued being lower than the preceding year. (Department of State, Reports and Statistics, U.S. Passports Issued Per Fiscal Year (1996–2023). Retrieved from <https://travel.state.gov/content/travel/en/about-us/reports-and-statistics.html>. Accessed on March 15, 2024.) Absent the final rule, following the card-based enforcement date, full enforcement would begin so there would be no similar resurgence as seen with WHTI implementation. However, a similar spike may be seen with the implementation of the phased enforcement rule. Under which, following the initial spike, there will likely be a decrease in adoption rates, before a second spike leading up to the May 2027 full compliance date.

<sup>90</sup> 75.09 Percent of REAL IDs Compliant in October 2025 =  $218,052,964 \text{ REAL IDs in October 2025} \div 290,370,483 \text{ IDs in Circulation in October 2025}$ .

<sup>91</sup>  $11.5 \text{ Percent Increase in REAL IDs (One Year After Card-Based Enforcement)} = (23 \text{ Percent Initial Surge} \div 2) \times 100$ . Equivalent to a 0.91 Percent CMGR.  $0.91 \text{ Percent CMGR} = ((243,121,919 \text{ REAL IDs in October 2026} \div 218,052,964 \text{ REAL IDs in October 2025}) \wedge (1 \div 12) - 1)$ .

<sup>92</sup> In the Regulatory Evaluation for the 2008 Final Rule, DHS assumed 75 percent of the population that hold DL/IDs would seek to obtain a REAL ID. DHS describes this assumption further in the subsequent section, however, the 83 percent compliance rate by October 2026, roughly over one-

to estimate the percentage of REAL IDs relative to all DL/IDs in circulation, 2 years after the card-based enforcement date, DHS assumes an additional 50-percent decrease in the adoption of REAL IDs between October 2026 and October 2027.<sup>93</sup> Under this assumption, DHS estimates that approximately 87 percent of DL/IDs would be REAL ID-compliant by October 2027.<sup>94</sup>

DHS assumes that once the percentage of REAL IDs, relative to all DL/IDs in circulation reach a natural adoption threshold or equilibrium<sup>95</sup> (with all those who want/need a REAL ID largely have them or an alternate form of identification), which DHS currently assumes as 75 percent, the increase in the proportional value over subsequent months and years would be minimal.<sup>96</sup> In 2008, DHS issued the Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes Final Rule. The NPRM which preceded the 2008 Final Rule included DHS's assumption that 100 percent of the population that hold DL/IDs would seek to obtain a REAL ID. However, in the 2008 Final Rule, the assumption was revised to 75 percent.<sup>97</sup> DHS noted that the 100 percent assumption was unrealistic if States do not require all applicants to obtain REAL IDs. DHS further cited, that if States offer a choice of either compliant or non-compliant licenses to applicants, that some portion of the population will choose to receive non-compliant licenses because they may not need a REAL ID for Federal

and-a-half-years post card-based enforcement exceeds the 75 percent assumption. DHS notes that the adoption rate for REAL ID may decrease when REAL ID reaches a natural adoption threshold.

<sup>93</sup>  $5.75 \text{ Percent Increase in REAL IDs} = ((11.5 \text{ Percent Initial Surge} \div 2) \times 100)$ . Equivalent to a 0.47 Percent CMGR.  $0.47 \text{ Percent CMGR} = ((257,101,923 \text{ REAL IDs in October 2027} \div 243,121,919 \text{ REAL IDs in October 2026}) \wedge (1 \div 12) - 1)$ .

<sup>94</sup> *Supra* note 76.

<sup>95</sup> The natural adoption threshold or equilibrium is the estimated proportion at which TSA assumes most people who want a REAL ID largely have them, and it is unlikely to change much in the absence of any changes in conditions. This accounts for some portion of the population that chooses not to obtain a REAL ID (as States continue to offer non-compliant DL/IDs).

<sup>96</sup> DHS anticipates future renewal surges associated with existing REAL-ID holders, and additional initial adoptions associated with population growth.

<sup>97</sup> In 2008, DHS noted that approximately 25 percent of the population held a valid passport. Furthermore, DHS noted that 20 percent of the population has never flown on a commercial plane, and 47 percent flies rarely or never. Combining the two groups, at least 40 percent of the population would not need to obtain a REAL ID. However, DHS assumed some proportion of the combined grouping would obtain a REAL ID regardless, reducing the estimate to 25 percent. Subtracting this 25 percent estimate from the initial 100 percent assumption results in 75 percent that would obtain a REAL ID.

<sup>83</sup> The populations affected by WHTI and REAL ID, while not exact, are similar in the sense that both initiatives affect identity documentation required by the traveling public and are not intended to represent the population of those who are obtaining government services. DHS believes WHTI represents a situation similar enough to REAL ID to serve as a proxy absent better information. See 71 FR 68412 (November 24, 2006).

<sup>84</sup> Government Accountability Office (GAO) (July 2008). State Department: Comprehensive Strategy Needed to Improve Passport Operations. GAO-08-891, page 16. Retrieved from <https://www.gao.gov/assets/gao-08-891.pdf>. Accessed on March 15, 2024.

<sup>85</sup> See footnote 63.

<sup>86</sup> Based upon the WHTI scenario, DHS assumes a 23 percent increase to the total number of REAL IDs in April 2024 (164,837,213 REAL IDs), approximately one-year prior to card-based enforcement. TSA assumes the 23 percent increase will be spread across the 13 months leading up to card-based enforcement on May 7, 2025.

$202,749,772 \text{ REAL IDs in May 2025} = 164,837,213 \text{ REAL IDs in April 2024} \times (1 + 23 \text{ Percent})$ . Since the 23 percent increase is spread out over the year leading up to the card-based enforcement date, DHS uses the resulting number of REAL IDs in May 2025 to calculate a 1.61 Percent CMGR.  $1.61 \text{ Percent CMGR} = (202,749,772 \text{ REAL IDs in May 2025} \div 164,837,213 \text{ REAL IDs in April 2024}) \wedge (1 \div 13) - 1$ .

<sup>87</sup> Under the status quo, which would result in full, and immediate, card-based enforcement on May 7, 2025, DHS estimates a 23 percent increase in the adoption of REAL IDs in the year leading up to card-based enforcement, adopted based on the implementation of WHTI. Absent this influx, and

official purposes or they may already possess a compliant alternate form of identification.<sup>98</sup> While DHS maintains the 75 percent assumption from the 2008 Final Rule, DHS acknowledges the uncertainty and that the natural threshold for REAL ID compliance may be above or below 75 percent.

In subsequent sections, DHS refers to the 75 percent assumption as the 75 percent threshold. The threshold represents an assumed natural point where REAL ID adoption will slow and essentially not grow in proportion as all those willing to get a REAL ID have done so. While DHS assumed this value to be approximately 75 percent, the actual rate could be higher or lower.<sup>99</sup>

4. Forecast of REAL ID Compliance Under Phased Enforcement

To estimate the percentage of REAL ID-compliant DL/IDs by the card-based enforcement date, May 7, 2025, DHS uses the 0.56 percent CMGR estimated from January 2023 to January 2024.<sup>100</sup> Next, DHS applies the 0.56 CMGR over the 16 months between January 2024 and May 2025 to forecast the percentage of REAL IDs in circulation by May 2025, relative to all IDs in circulation. Using this methodology, DHS estimates that approximately 61 percent of all IDs in circulation would be REAL ID-compliant by the card-based enforcement date.

The aforementioned methodology assumes that the 16 months between January 2024 and May 2025 will be similar to the trends seen between January 2023 and January 2024.<sup>101</sup>

Accordingly, DHS provides an alternate forecast on the percentage of REAL ID-compliant DL/IDs in May 2025 using the 1.03 percent CMGR for the adoption of REAL ID over last 4-years.<sup>102</sup> DHS applies the 1.03 percent CMGR over the 16 months between January 2024 and May 2025 to forecast that approximately 66 percent of IDs in circulation by May 2025 would be REAL ID-compliant by the card-based enforcement date.

Using the aforementioned CMGRs, 0.56 percent and 1.03 percent, DHS estimates that approximately 61 percent (lower-end of forecast) and 66 (upper-end of forecast) of all DL/IDs in circulation by May 2025 would be REAL ID-compliant, respectively. Table 3 reflects the forecasted number of REAL IDs using the two CMGR described in this section.

TABLE 3—FORECASTED NUMBER, AND PERCENTAGE OF, REAL IDs IN MAY 2025

	Last 12 month trend (0.56 percent CMGR)	Last 4 year trend (1.03 percent CMGR)
Approx. IDs in Circulation .....	289,641,636	
Forecasted Number of REAL IDs .....	177,187,465	191,027,256
REAL IDs as a Percentage of All IDs .....	61.2%	66.0%

As shown in table 3, under both the 0.56 percent CMGR and the 1.03 percent CMGR, the forecasted percentage of REAL IDs relative to all DL/IDs in circulation for May 2025, 61.2 percent and 66.0 percent, respectively, falls below the 2008 assumption that 75 percent of all holders would seek to obtain a REAL ID. In table 4, DHS illustrates the breakdown of how many DL/IDs would need to be REAL ID-compliant by the card-based enforcement date to meet the 75 percent

threshold. Applying the 75 percent assumption from the 2008 Rule results in approximately 217.2 million of the 289.6 million IDs in circulation, in May 2025, would be REAL ID-compliant. As shown, in addition to the 25 percent of DL/IDs in circulation that DHS assumes would be non-compliant, an additional 40.0 million and 26.2 million DL/IDs that would have been assumed to be REAL ID-compliant, respectively, would not be able to be used for official purposes beginning May 7, 2025.

Next, DHS estimates the CMGR needed to reach the 75 percent of REAL ID-compliant licenses and identification cards by the card-based enforcement date using the January 2024 national compliance rate for REAL ID of 56 percent. In the sixteen months between January 2024 and May 2025, the average monthly CMGR for the adoption of REAL ID would need to increase to 1.85 percent.<sup>103</sup>

TABLE 4—NUMBER OF REAL IDs IN MAY 2025 TO ACHIEVE 75 PERCENT THRESHOLD

	Last 12 month trend (0.56 percent CMGR)	Last 4 year trend (1.03 percent CMGR)	75% assumption (1.85 percent CMGR)
Approx. IDs in Circulation .....	289,641,636		
Number of REAL IDs Needed to Achieve 75% Threshold.	217,231,227 (75.0%)		
DHS Forecasted REAL IDs .....	177,187,465 (61.2%) .....	191,027,256 (66.0%) .....	217,231,227
Difference Between Threshold and Forecasted.	40,043,762 (13.8%) .....	26,203,971 (9.0%) .....	0 (0.0%)

<sup>98</sup> Department of Homeland Security. April 28, 2008. Regulatory Evaluation for REAL ID Program. Docket DHS–2006–0030. <https://www.regulations.gov/document/DHS-2006-0030-10704>.

<sup>99</sup> DHS believes there is a greater likelihood of the actual REAL ID threshold being greater than 75 percent rather than lower than 75 percent.

<sup>100</sup> *Supra* note 76.

<sup>101</sup> DHS acknowledges that there is a level of uncertainty with compliance rates. For instance, closer to the card-based enforcement date, the adoption rate may increase. Furthermore, the final rule, and by extent, subsequent phased enforcement plans adopted by some agencies may provide individuals additional time to become compliant and thus result in lower or stagnant adoption rates.

<sup>102</sup> 1.03 percent CMGR (January 2020 through January 2024) = ((162,111,658 REAL IDs in January

2024 ÷ 99,076,573 REAL IDs in January 2020) ^ (1 + 48) – 1). DHS uses the last 4 years of data reported by all licensing jurisdictions to represent a more comprehensive timeframe, capturing periods of high and low adoption of REAL IDs.

<sup>103</sup> 1.85 percent CMGR = ((217,231,227 REAL IDs to Achieve 75 Percent Threshold in May 2025 ÷ 162,111,658 REAL IDs in January 2024) ^ (1 + 16) – 1).

Next, DHS uses two scenarios to forecast the national compliance rate following the card-based enforcement date. First, DHS assumes the 61.2 percent and 66.0 percent REAL ID adoption trends presented in table 3 remain unchanged after the start of card-based enforcement. Under this scenario, 2 years after card-based enforcement, in May 2027, which is when phased approach plans would need to commence full enforcement by, the national REAL ID rate would be 69.1 percent and 83.4 percent.<sup>104</sup>

Following the card-based enforcement date, DHS expects a change in the rate of adoption. Phased enforcement plans could result in REAL ID compliance being spread over time compared to continued increases in compliance if full card-based enforcement went into effect across all agencies. Phased enforcement may also incentivize some portion of the public to obtain a REAL ID as DHS begins card-based enforcement in May 2025 without further extensions and as non-compliant DL/ID holders attempt to use non-compliant identification for official purposes during the period of phased enforcement. For this second scenario, DHS uses the midpoint of the two CMGRs (0.56 percent and 1.03 percent) used to estimate the national REAL ID rate in May 2025 to estimate the national REAL ID rate after the card-based enforcement date. Using this methodology, DHS calculates a 0.79

percent CMGR which would likely capture a balance between potential high and low adoption rates for REAL IDs.<sup>105</sup> Next, DHS applies the 0.79 percent CMGR to the 61.2 percent and 66.0 percent estimates for May 2025. Two years after the commencement of card-based enforcement, by May 2027, DHS estimates approximately 73.1 percent and 78.8 percent of DL/IDs issued would be REAL ID-compliant, respectively.<sup>106</sup> Depending on the scenario, the 75 percent threshold may be reached as early as July 2026. However, under a lower CMGR, in which the CMGR stays at 0.56 percent, the 75 percent threshold may not be reached until October 2028.

#### 5. Summary of REAL ID Compliance

Table 5 describes the proportion of all DL/IDs that are REAL ID-compliant under the baseline scenario and phased enforcement at 6-month intervals leading up to, and after, the card-based enforcement date. In the baseline scenario, as discussed in section IV.B.2.d.3, DHS assumes a spike in REAL ID compliance in the year leading up to the card-based enforcement date (1.61 percent CMGR). DHS then assumes a reduction in the CMGR to 0.91 percent from October 2025 to October 2026 and to 0.47 percent after October 2026. This accounts for anticipated increases leading up to and through enforcement including natural adoption prior to a deadline, additional informational campaigns, and increased

incentives for those without REAL ID compliant DL/IDs that would be denied when using non-compliant DL/IDs for official purposes.

DHS also presents two phased enforcement scenarios that each include a lower and upper bound range, as discussed in section IV.B.2.d.4. Under the first phased enforcement scenario, DHS assumes trend growth rates remain the same before and after the card-based enforcement date (0.56 percent CMGR for the lower bound estimate, 1.03 percent CMGR for the upper bound estimate). This scenario assumes no change in identified trends leading up or after enforcement where the lower value represents current adoption rates (unchanged) and the higher value accounts for enforcement and phased enforcement impacts on adoption rates. Under the second phased enforcement scenario, DHS assumes the 0.56 percent CMGR for the lower bound estimate and 1.03 percent CMGR for the upper bound estimate up to the card-based enforcement date. After the card-based enforcement date, DHS assumes a change in the CMGR to 0.79 percent, the midpoint of the lower bound and upper bound trend rates to represent possible changes in behavior post enforcement date. Specifically, that in the lower end, more individuals will get REAL DL/IDs and on the higher end, less will seek REAL DL/IDs. However, DHS acknowledges there is a level of uncertainty with such adoption rates.

TABLE 5—REAL ID COMPLIANCE BY SCENARIO

Month	Baseline (%)	Phased enforcement scenario 1 (constant rates)		Phased enforcement scenario 2 (post enforcement change)	
		Lower bound (%)	Upper bound (%)	Lower bound (%)	Upper bound (%)
May 24 .....	58.2	57.6	58.7	57.6	58.7
Nov 24 .....	63.8	59.3	62.2	59.3	62.2
May 25 .....	70.0	61.2	66.0	61.2	66.0
Nov 25 .....	75.7	63.1	69.9	64.0	69.0
May 26 .....	79.7	65.0	74.1	66.9	72.1
Nov 26 .....	83.6	67.0	78.6	69.9	75.4
May 27 .....	85.7	69.1	83.4	73.1	78.8

The baseline and phased enforcement scenarios present different trade-offs. Under the baseline scenario, the REAL ID compliance rate grows and increases more quickly as a result of more rapid surges in adoption. Such a surge in

application for REAL IDs, may lead to potential backlogs at State DMVs and provide individuals reduced options after the enforcement date (e.g., denied DL/ID use for official purpose). This may serve as a strong motivator but may

also have negative consequences (e.g., not allowed to board a commercial flight for a critical matter).

Under a phased approach, DHS forecasts a slower adoption of REAL ID, as compared to the baseline, with

<sup>104</sup> The 83.4 percent compliance rate by May 2027, 2 years after the card-based enforcement deadline, exceeds the 75 percent assumption from the 2008 Regulatory Evaluation. DHS notes that the adoption rate for REAL ID may dampen as it approaches or starts to exceed 75 percent of the population.

<sup>105</sup> 0.79 Percent CMGR = (0.557 Percent CMGR (Last Twelve Months) + 1.031 Percent CMGR (Last 48 Months)) ÷ 2.

<sup>106</sup> In the Regulatory Evaluation for the 2008 Final Rule, DHS assumed 75 percent of the population that hold DL/IDs would seek to obtain a REAL ID.

However, the 78.8 percent compliance rate by May 2027, roughly 2 years post card-based enforcement exceeds the 75 percent assumption. DHS notes that the adoption rate for REAL ID may decrease when REAL ID reaches a natural adoption threshold.

compliance increases being spread over the 2-year phased enforcement period. This approach provides individuals more time to obtain a REAL compliant DL/ID and allows individuals who possess non-compliant DL/IDs to use such DL/IDs for official purposes while also creating opportunities for enforcement mechanisms (e.g., warnings) that may serve to incentivize the public to obtain a REAL ID without, or reduced, negative consequences.

DHS notes that differences in compliance rates between the baseline and scenarios could have large impacts. For example, TSA screens approximately 2.5 million passengers a day.<sup>107</sup> If one percent of those passengers were to present a noncompliant DL/ID at a checkpoint, it would result in 25,000 passengers being unable to use the noncompliant DL/ID at the checkpoint in just a single day. If this was extrapolated out a week the number increases to 175,000, then 750,000 in a month and 2,250,000 in three months all of which may result in operational and security concerns. DHS recognizes TSA is a large use case, but also recognizes that impacts on a smaller scale could apply to other Federal agencies. If TSA chooses to employ phased enforcement at security screening checkpoints, the impacts associated with travelers presenting non-compliant DL/IDs would be reduced and spread out over the course of the phased enforcement plan, rather than absorbed in the initial days of enforcement. TSA may also employ other actions to limit or address concerns and mitigate any impediments on the traveling public associated with enforcement, but any such actions and associated impacts are separate from this rule. Regardless, DHS believes a phased enforcement approach will help reduce challenges that large numbers of non-compliant DL/ID holders could present compared to full and immediate enforcement under the baseline.

#### a. Phased Enforcement Population

Under the REAL ID Act and regulations, on and after the card-based enforcement date, Federal agencies are prohibited from accepting non-REAL ID-compliant DL/IDs for official purposes. The rulemaking will allow Federal agencies to implement the card-based enforcement requirement of the REAL ID Act and regulations under a phased approach if the agency determines a significant security or operational risk,

or if public services offered by the agency will be impacted with full enforcement. Federal agencies that opt to do so must coordinate a plan with DHS. After coordination of a plan with DHS, a Federal agency may continue to accept non-REAL ID-compliant licenses and IDs on and after May 7, 2025, as part of a phased enforcement plan. To ensure that agencies' enforcement plans appropriately advance the objectives of the REAL ID regulations, this rule requires agencies' plans to include measures for full card-based enforcement by May 5, 2027.

Based on agency information in the **Federal Register**, DHS estimates there are 434 Federal agencies, including cabinet-level departments, who may require REAL IDs for official Federal purposes.<sup>108</sup> To estimate the number of Federal agencies that will submit a phased enforcement plan under this rulemaking, DHS considered three factors; (1) agencies that are on track to not accept noncompliant marked cards on, or before, the card-based enforcement date; (2) agencies that do not *typically* require forms of identification for official purposes (e.g. to be presented for entry); and (3) DHS' monthly engagements with Federal stakeholders.

*Agencies on track to not accept noncompliant marked cards on or before the card-based enforcement date.* First, each Federal agency has the authority to set its own minimum security access requirements and, if desired, can decide not to accept noncompliant marked cards before the card-based enforcement date. For example, the U.S. Department of Defense (DoD) finalized an update to its DoD-wide installation security policy and is in the process of no longer accepting noncompliant marked cards across all of its facilities and installations.<sup>109</sup> DHS assumes Federal agencies on track to implement enforcement by the effective date, are more likely to not pursue a phased enforcement plan.

*Agencies that do not, or do not typically, require forms of identification to be displayed for entry.* Each facility makes a risk-based decision to determine if a form of identification is needed for entry, and if so, which forms will be accepted. For instance, an

agency may require identification as part of their overall security strategy including, but not limited to, checking the individual against a checklist, or to verify that the individual is on an invitation or approved visitors list. If an agency only requires an individual to present a form of identification solely to record the individual's presence as opposed to for screening and access purposes, the requirements under the REAL ID Act of 2005 would not apply.

There are agencies that do not typically require forms of identification for official purposes or only experience of low volume of such interactions. A key factor in an agency's consideration may be the number of individuals that enter, or pass through, the Federal facility in a given day. For some Federal agencies, access to certain areas of the facility is presently granted without the need for an individual to present a form of identification for entry. For instance, the public areas of the Smithsonian and the National Park Service (NPS). While the Smithsonian and NPS will still be required to enforce REAL ID requirements on the card-based enforcement date, the enforcement will be limited to the individuals attempting to access the non-public areas. Presumably, as the number of individuals to this restricted entry area are significantly fewer than the daily number of visitors to Smithsonian facilities and National Parks, agencies like the Smithsonian and NPS may not need to submit phased enforcement plans due to limited security or operational risks.

#### DHS' Monthly Engagements With Federal Stakeholders

In Fall 2023 and the first quarter of 2024, DHS began hosting monthly stakeholder engagement sessions with Federal agencies.<sup>110</sup> During these sessions, DHS briefed agencies regarding the card-based enforcement date and this rulemaking to allow agencies the option for a phased approach if they determine such a plan is appropriate. Through hosting the sessions, DHS was able to establish a greater understanding, across the Government, on which agencies may consider a phased approach based on security, operational, or public impact risks associated with full enforcement. For instance, some agencies noted that they will follow guidance put forth by their cabinet-level department. Of the sample of agencies invited,

<sup>107</sup> Transportation Security Administration. TSA checkpoint travel numbers (current year versus prior year/same weekday). Passenger Volumes. Retrieved from: <https://www.tsa.gov/travel/passenger-volumes>. Accessed on August 1, 2024.

<sup>108</sup> **Federal Register**. Retrieved from <https://www.federalregister.gov/agencies>. Accessed on May 10, 2023.

<sup>109</sup> DoD will continue to accept state-issued noncompliant unmarked "legacy" cards until the May 7, 2025, deadline. Department of Homeland Security. REAL ID Frequently Asked Questions. Retrieved from <https://www.dhs.gov/real-id/real-id-faqs>. Accessed on August 2, 2024.

<sup>110</sup> While engagements with Federal stakeholders have continued since the publication of the NPRM, there have not been significant updates that would impact the supporting analysis. As such, DHS retains its initial assumptions for the Final Rule.

approximately 63 percent attended one or more stakeholder meetings. Based on feedback from agencies and recurring attendance over months, DHS assumes that 50 percent of agencies that attended one or more meetings will pursue a phased enforcement plan.

Based on these three factors, DHS assumes that of the 434 Federal agencies, 96 percent will not submit a phased enforcement plan. As such, these agencies will join the Department of Defense and begin full card-based enforcement on May 7, 2025. While individuals will need to present a REAL-ID compliant identification or an approved alternate identification for official purposes from that date forth; based on engagements with DHS subject matter experts (SMEs) and Federal agencies, the vast majority of agencies do not handle a significant volume, on a daily basis, of individuals required to present REAL ID for official Federal purposes.<sup>111</sup>

DHS assumes that the remaining 4 percent of Federal agencies will develop

and coordinate phased enforcement plans with DHS. The majority of such plans are anticipated to represent a low-to-medium use case (e.g., visitor access to a facility) with TSA representing a high-use case given the volume of individuals boarding federally regulated commercial aircraft per day.<sup>112</sup>

#### b. Cost of the Final Rule

The following summarizes the estimated costs of the final rule over a 2-year period of analysis. Specifically, impacts are evaluated between 2024 and 2025 to align with agency efforts to develop a phased enforcement plan prior to the current card-based enforcement date.<sup>113</sup>

Federal agencies will incur costs to familiarize themselves with the rule, assess whether to implement a phased enforcement plan, and if so, develop a plan. DHS, as the agency administering the REAL ID program, will incur costs to coordinate with Federal agencies that voluntarily implement a phased enforcement plan.

#### Compensation Rates

DHS estimates the labor-related costs for DHS and other Federal agencies. First, DHS uses the GS, step 3 wage scale for the Washington DC metro area to represent the annual wage for each GS level.<sup>114</sup> For Senior Executive Service (SES) employees, DHS uses the midpoint of the range of basic pay as the estimate for the SES annual wage.<sup>115</sup>

DHS then multiplies annual wages for each GS level and SES by a compensation factor that represents fully loaded compensation rates. The compensation factor is the sum of all annual compensation which includes wages and internal DHS data on awards, bonuses, personnel benefits, and transit benefits, divided by the annual wage.

DHS calculates a compensation rate per hour by dividing the annual fully loaded compensation rates by 2,087, which represents the number of annual work hours.<sup>116</sup> Table 6 summarizes the compensation rates per hour for the relevant labor categories DHS uses in the analysis.

TABLE 6—COMPENSATION RATES PER HOUR

Labor category	Annual wage a	Compensation factor <sup>117</sup> b	Annual compensation rate c = a × b	Compensation rate per hour d = c ÷ 2,087
GS-13 .....	\$119,482	1.353	\$161,673	\$77.47
GS-14 .....	141,192	1.349	190,482	91.27
GS-15 .....	166,079	1.346	223,507	107.09
SES .....	176,561	1.345	237,416	113.76

**Note:** Calculation may not be exact due to rounding.

#### DHS Costs

DHS will incur costs related to coordinating with Federal agencies on their phased enforcement plans to address any potential concerns ahead of the REAL ID card-based enforcement date. This includes the cost to develop guidance for agencies on phased enforcement and time to review and coordinate with agencies on their plans. Furthermore, DHS will publish the list

of agencies that have coordinated phased enforcement plans.

DHS will develop guidance to inform Federal agencies that they may implement REAL ID card-based enforcement using a phased approach, how to do so, and the level of coordination necessary with DHS. DHS consulted with internal SMEs who estimate a range to develop guidance between 60 to 100 hours. DHS uses the

midpoint of this range, 80 hours, to calculate the cost to develop guidance. DHS assumes this time will be split between GS-13, GS-14, and GS-15 employees, with a respective burden of 45 percent, 45 percent, and 10 percent. DHS calculates a weighted average guidance development compensation rate of \$86.64 per hour by summing the product of the compensation rates and the proportion of burdens for the

<sup>111</sup> DHS notes that most Federal employees and contractors have existing access to their respective facilities via employee identification/access cards and will not require separate submission of a REAL ID for access.

<sup>112</sup> TSA presents a unique and the largest use case for REAL ID enforcement. Each day, the agency screens over two million passengers at airport security checkpoints across the United States and its territories.

<sup>113</sup> TSA Checkpoint Travel Numbers (Current Year Versus Prior Year(s)/Same Weekday). <https://www.tsa.gov/travel/passenger-volumes>. Accessed August 18, 2023.

<sup>114</sup> DHS retains the evaluation of cost for the rule over a 2-year period, as presented in the NPRM. Based on engagements with stakeholders, DHS believes that federal agencies have already incurred

some costs in 2024 as they have discussed the necessity, and the possibility of, implementing a phased enforcement plan. DHS also acknowledges there are minimal impacts to cost in terms of discounting.

<sup>115</sup> Salary Table No. 2023—DCB, Pay & Leave: Salaries & Wages, Office of Personnel Management, <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/23Tables/html/DCB.aspx>. DHS typically uses the DHS Modular Cost Model (not publicly available) which leverages DC-area locality, Step 3, for budgeting to assist with calculating benefits, and other forms of compensation for Federal employees. DHS uses Step 3 for wages to align with DHS Modular Cost Model.

<sup>116</sup> The basic pay for SES employees in 2023 ranged from \$141,022 to \$212,200 with a midpoint

of \$176,561. Salary Table No. 2023—ES, Pay & Leave: Salaries & Wages, Office of Personnel Management, [www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/23Tables/exec/html/ES.aspx](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/23Tables/exec/html/ES.aspx).

<sup>117</sup> OPM changed the 2,080 work hours to 2,087 by amending 5 U.S.C. 5504(b), the latter is assumed to capture year-to-year fluctuations in work hours. Source: Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272, April 7, 1986).

<sup>118</sup> Compensation factors for the different GS levels and SES vary because DHS calculates some benefits as a percentage of wages and other benefits are static amounts that are equal for all GS levels and SES.



respective groups of employees contributing to the efforts.<sup>118</sup> DHS estimates a \$6,931 guidance development cost by multiplying the 80-hour burden and the weighted average guidance development compensation rate of \$86.64 per hour.

DHS coordination will also include reviewing phased enforcement plans to ensure compliance with the REAL ID Act and regulations (but will not include approval of plans). DHS consulted with internal SMEs who estimate a range to coordinate and review plans between 8 and 24 hours per plan.<sup>119</sup> DHS uses the midpoint of the range, 16 hours per plan, to calculate DHS coordination costs. DHS assumes this time will be split between GS-13 and GS-14 employees, with a respective burden of 50 percent and 50 percent. DHS estimates a weighted average coordination compensation of \$84.37 per hour by summing the product of the compensation rates and

the proportion of burdens for the respective groups of employees contributing to the efforts.<sup>120</sup> DHS estimates the coordination cost by multiplying the 18 agencies that will develop plans, the 16-hour time burden, and weighted average coordination compensation rate of \$84.37 per hour for a total coordination cost of \$24,298.<sup>121</sup>

DHS will also incur costs to make publicly available a list of agencies that have coordinated phased enforcement plans with DHS. DHS will publish the list of agencies on a web page on DHS's REAL ID website prior to the card-based enforcement date. DHS SMEs estimate it will take 16 hours to create, review, approve, and publish content on its existing REAL ID website. DHS assumes this time would be split between GS-13 and GS-14 employees, with a respective burden of 50 percent and 50 percent. DHS estimates a weighted average publishing compensation of \$84.37 per

hour by summing the product of the compensation rates and the proportion of burdens for the respective groups of employees contributing to the efforts.<sup>122</sup> DHS calculates a publishing cost of \$1,350 by multiplying the 16-hour burden and weighted average publishing compensation rate of \$84.37 per hour. DHS assumes the incremental maintenance costs for this one web page will be minimal because DHS already maintains the DHS REAL ID website. Furthermore, DHS will not need to update the website content frequently because all Federal agencies that voluntarily implement a phased enforcement plan will need to do so by May 7, 2025.

DHS estimates the 2-year total cost for phased enforcement coordination to be \$0.033 million undiscounted and \$0.031 million discounted at 2 percent. Table 7 describes the total costs of the final rule to DHS.

TABLE 7—TOTAL COST TO DHS  
[Actual dollars, 2023 dollars]

Year	Cost to develop guidance	Cost to coordinate	Cost to publish list	Total cost	
				d = a + b + c	
	a	b	c	Undiscounted	Discounted at 2%
2024: 1 .....	\$6,931	\$0	\$0	\$6,931	\$6,795
2025: 2 .....	0	24,298	1,350	25,648	24,652
Total .....	6,931	24,298	1,350	32,579	31,447

**Note:** Totals may not add due to rounding.

Federal Agency Costs

All Federal agencies will need to familiarize themselves with the final rule and phased enforcement concept and determine if a phased enforcement plan is necessary. DHS assumes at least one attorney and one manager at the GS-14 and GS-15 levels within each agency will review the rule. DHS estimates that each person reviewing the rulemaking will spend an average of 1.1 hours.<sup>123</sup> DHS calculates a weighted average familiarization compensation rate of \$99.18 per hour by summing the

product of the compensation rates and the proportion of burdens for the respective groups of employees contributing to the efforts.<sup>124</sup> DHS estimates the cost for all Federal agencies to familiarize themselves with phased enforcement by multiplying the 434 Federal agencies, the two employees per agency reviewing the rulemaking, the 1.1 hours familiarization burden and the weighted average familiarization compensation rate of \$99.18 per hour for an initial familiarization cost of \$94,145.<sup>125</sup>

In addition to familiarization, all Federal agencies will need to determine if based on their specific environment, developing and coordinating a phased enforcement plan is necessary. DHS SMEs estimate Federal agencies will spend, on average, between 10 to 40 hours to make a determination. DHS uses the midpoint of the range, 25 hours, to calculate the cost to make a determination. DHS assumes this time will be split between a GS-15 and SES, with a respective burden of 50 percent and 50 percent. DHS calculates a

<sup>118</sup> \$86.64 guidance development compensation per hour = (45 percent GS-13 burden × \$77.47 GS-13 compensation per hour) + (45 percent GS-14 burden × \$91.27 GS-14 compensation per hour) + (10 percent GS-15 burden × \$107.09 GS-15 compensation per hour).

<sup>119</sup> Phased Enforcement Plan coordination and review time estimate is less than it would take for a formal approval.

<sup>120</sup> \$84.37 coordination compensation per hour = (50 percent GS-13 burden × \$77.47 GS-13 compensation per hour) + (50 percent GS-14 burden × \$91.27 GS-14 compensation per hour).

<sup>121</sup> DHS assumes 4 percent of the 434 Federal agencies will submit phased enforcement plans, or

about 18 agencies (see Phased Enforcement Population). DHS coordination cost = 18 agencies × 16 hours × \$84.37 = \$24,298.

<sup>122</sup> \$84.37 weighted average publishing compensation per hour = (50 percent GS-13 burden × \$77.47 GS-13 compensation per hour) + (50 percent GS-14 burden × \$91.27 GS-14 compensation per hour).

<sup>123</sup> DHS estimates a familiarization cost and time burden based on the time required to read all of the words in the final rule. DHS also assumes that individuals responsible for reviewing the final rule read at a rate of 238 words per minute. 1.09 familiarization time burden = 15,616 words in final rule ÷ 238 words per minute ÷ 60 minutes.

Brysbaert, Marc, "How many words do we read per minute? A review and meta-analysis of reading rate." *Journal of Memory and Language* (Aug. 2019).

<sup>124</sup> DHS estimates one GS-14 and one GS-15 employee will spend an equal amount of time to review the final rule (i.e., a 50 percent burden for the GS-14 level and 50 percent burden for the GS-15 level). \$99.18 weighted average familiarization compensation per hour = (50 percent GS-14 burden × \$91.27 GS-14 compensation per hour) + (50 percent GS-15 burden × \$107.09 GS-15 compensation per hour).

<sup>125</sup> Note: Calculation may not be exact due to rounding.

weighted average plan determination compensation of \$110.43 per hour by summing the product of the compensation rates and the proportion of burdens for the respective groups of employees contributing to the efforts.<sup>126</sup> DHS estimates the cost for all Federal agencies to determine a need for a phased enforcement plan by multiplying the 434 Federal agencies, the 25-hour burden, and the plan determination compensation rate of \$110.43 per hour. This plan determination cost is \$1.20 million.<sup>127</sup>

Federal agencies that develop phased enforcement plans will also incur costs to develop and coordinate their

respective plans with DHS. DHS assumes plan development and coordination will include preparing briefing materials for the public and updating the agency's website to inform the public of the phased enforcement plan and policies. DHS SMEs estimate Federal agencies will spend, on average, between 150 and 300 hours to develop plans. DHS uses the midpoint of the range, 225 hours, to calculate the cost to develop plans. DHS assumes this time will be split between GS-14, GS-15, and SES employees, with a respective burden of 45 percent, 45 percent, and 10 percent. DHS estimates a weighted average plan development

compensation of \$100.64 per hour by summing the product of the compensation rates and the proportion of burdens for the respective groups of employees contributing to the efforts.<sup>128</sup> DHS multiplies the 18 agencies that develop plans,<sup>129</sup> the 225-hour development time burden, and the plan development compensation rate of \$100.64 per hour to calculate a plan development cost of \$407,594.<sup>130</sup>

Table 8 presents the total Federal cost estimates over the 2-year period of analysis which equates to \$1.70 million undiscounted and \$1.67 million discounted at 2 percent.

TABLE 8—TOTAL QUANTIFIED COST TO FEDERAL AGENCIES  
[\$ Actual dollars, 2023 dollars]

Year	Familiarization cost	Plan determination cost	Plan development cost	Total cost to Federal agencies	
	a	b	c	d = a + b + c	
				Undiscounted	Discounted at 2%
2024: 1 .....	\$94,145	\$1,198,136	\$407,594	\$1,699,874	\$1,666,543
2025: 2 .....	0	0	0	0	0
Total .....	94,145	1,198,136	407,594	1,699,874	1,666,543

**Note:** Totals may not add due to rounding.

#### Unquantified Costs

The final rule will also include non-quantified impacts and costs to affected entities. Such impacts are difficult to quantify largely due to a high degree of uncertainty. One such impact is the delay of benefits from the original rule by implementing the card-based enforcement requirement of the REAL ID rule in a phased manner. Full security benefits associated with the REAL ID rule will not be realized, as a result of agencies implementing a phased approach, until full enforcement occurs. As the benefits associated with the 2008 rule are difficult to quantify, so too is the quantification of their delay.<sup>131</sup> Nonetheless, this final rule will have less unrealized or delayed

security benefits compared to an extension of the full compliance date.

Federal agencies that voluntarily implement card-based enforcement in a phased approach will incur costs related to plan implementation. However, DHS assumes there will be a high degree of variability among such plans, and agencies will have discretion to determine what aspects to include in a phased enforcement plan. Nonetheless, Federal agencies will likely incur costs related to training necessary personnel on the processes and procedures of phased enforcement plans. Federal agencies will also likely incur costs to inform the public or appropriate stakeholders impacted about the new identity verification procedures related

to the agencies' phased enforcement plans (e.g., awareness campaign through media, signage at access points, and/or providing notices for individuals with non-compliant identification). Such costs may extend through agencies' phased enforcement plans, beyond years one and two of this analysis. Individuals may also incur costs to become aware of phased enforcement plans and respond accordingly.

#### Total Cost of Phased Enforcement Rule

Table 9 presents the 2-year total cost of the phased enforcement final rule. DHS estimates the total cost of the final rule to be \$1.73 million undiscounted and \$1.70 million discounted at 2 percent.

<sup>126</sup> DHS assumes the burden to make a plan determination is split with 50 percent of the effort by GS-15 employees and 50 percent by SES employees because the determination will be made by senior level employees. \$110.43 weighted average plan determination compensation per hour = (50 percent GS-15 burden × \$107.09 GS-15 compensation per hour) + (50 percent SES burden × \$113.76 SES compensation per hour).

<sup>127</sup> Note: Calculation may not be exact due to rounding.

<sup>128</sup> \$100.64 weighted average plan development compensation per hour = (45 percent GS-14 burden × \$91.27 GS-14 compensation per hour) + (45 percent GS-15 burden × \$107.09 GS-15 compensation per hour) + (10 percent SES burden × \$113.76 SES compensation per hour).

<sup>129</sup> DHS assumes 4 percent of the 434 Federal agencies will submit phased enforcement plans, or about 18 agencies (see Phased Enforcement Population).

<sup>130</sup> Note: Calculation may not be exact due to rounding.

<sup>131</sup> In GAO Report 12-893 (Driver's License Security), GAO highlights the steps taken by States to detect counterfeit documents and identity thefts, many of the same requirements of the REAL ID Act. For instance, the verification of Social Security as well as the use of SAVE have helped reduced the number of fraudulent licenses issued. Retrieved from <https://www.gao.gov/assets/gao-12-893.pdf>. Accessed on August 28, 2024.

TABLE 9—TOTAL COST OF PHASED ENFORCEMENT RULE  
[Actual dollars, 2023 dollars]

Year	Cost to DHS	Cost to Federal agencies	Total cost	
	a	b	c = a + b	
			Undiscounted	Discounted at 2%
2024: 1 .....	\$6,931	\$1,699,874	\$1,706,805	\$1,673,339
2025: 2 .....	25,648	0	25,648	24,652
Total .....	32,579	1,699,874	1,732,453	1,697,991
Annualized .....				874,549

**Note:** Totals may not add due to rounding.

#### a. Benefits of the Final Rule

Phased enforcement provides Federal agencies the flexibility on how to start enforcing REAL ID card-based enforcement requirements in a manner that may reduce operational disruption, security risk, and public impact. This is especially relevant for Federal agencies that process large numbers of individuals and require identification for access purposes. Phased enforcement provides Federal agencies more time to implement strategies to engage stakeholders and encourage REAL ID adoption. It can also provide time for agencies to develop alternative means to ensure continued operations for services or activities that require use of REAL ID for official purposes. Allowance of a phased approach will not unnecessarily delay REAL ID enforcement for those Federal agencies ready to fully implement while also allowing more time for those Federal agencies who they themselves, or their stakeholders, will benefit from more time to implement.

Phased enforcement of the card-based requirement will provide the public more time to obtain REAL-ID compliant DL/IDs. This may mitigate a potential backlog of applications for States with lower compliance rates.<sup>132</sup> The percentage of DL/IDs that are REAL ID-compliant lags well behind the national average in some States and those States may otherwise experience a surge in REAL ID applications in the absence of phased enforcement. States may thus be able to avoid an increase in processing times and costs related to measures to alleviate backlogs in applications, such as longer operating hours, increasing staff, and overtime pay. States and their

DMVs may also be able to smooth out their operational needs, as the phased enforcement approach may mitigate a surge in REAL ID applications prior to full enforcement.

A higher proportion of individuals with compliant identification also reduces potential queuing and associated delays. For example, if an individual presents valid, non-REAL ID-compliant identification at an access point, security or screening workforce may require additional time to confirm the individual's identity, and/or explain the requirements of REAL ID and thus delay the individual, or not provide the individual access.<sup>133</sup> Such delays may also have downstream impacts and cause longer delays for other individuals waiting in line at the access point, including for those who may possess a REAL ID-compliant document. However, under a phased enforcement plan, after verifying the individual's identity, the individual may be able to use the valid, non-compliant identification to access Federal facilities (for a temporary period of time).

Finally, any benefits to individuals or States associated with procuring a noncompliant card will be extended to those impacted through the phase-in period of card-based enforcement to the extent the agencies such individuals interact with for official purposes determine to implement card-based enforcement through a phased approach, in place of full and immediate enforcement on May 7, 2025; however, the security benefits

associated with full enforcement will also be delayed.

#### b. Alternatives Considered

DHS considered two alternatives under the proposed rule, the no action baseline scenario which would commence full card-based enforcement in May 2025 and an extension of the card-based enforcement deadline.

##### Alternative 1: Baseline Scenario

In the no action baseline scenario (Alternative 1), full card-based enforcement would begin in May 2025 without further extensions of the enforcement date or a phased approach to enforcement.

In the baseline scenario, absent phased enforcement, DHS forecasts that by May 2025, approximately 70 percent of all State-issued DL/IDs would be REAL ID-compliant. Full card-based enforcement when a significant percentage of the population could present non-compliant identification may increase operational risks to Federal agencies; especially agencies that process a large number of individuals per day.<sup>134</sup> Federal agencies would be unable to accept noncompliant DL/IDs and may have to turn away individuals unable to present REAL ID-compliant identification, or another form of acceptable identification. Federal agencies would also spend additional time adjudicating such transactions where individuals present non-compliant identification, including handling additional questions and waiting for individuals to present compliant identification. Individuals without compliant identification and those waiting in long queues could become frustrated and cause incidents,

<sup>132</sup> DHS forecasts the rate of REAL IDs under the baseline scenario would reach 85.7 percent by May 2027 whereas, DHS forecasts the rate under phased enforcement would be between 69.1 to 83.4 percent by May 2027. This 2.3 to 16.6 difference helps spread the processing of REAL ID requests for states as well as reducing additional negative impacts associated with rapid enforcement.

<sup>133</sup> Delays may be short and straight forward or lengthy and more complex. For example, simply explaining the REAL ID requirements and providing an alternative form of identification may only take a few minutes whereas individuals unable to use a noncompliant DL/ID may escalate the situation, refusing to leave the access point, request to speak with supervisors, or even assaulting security or screening workforce which represent longer customer interactions and consume more resources (e.g., additional workforce and/or law enforcement) to resolve each interaction.

<sup>134</sup> For example, if an agency processes 2.5 million visitors a day and 30 percent of visitors have non-compliant DL/IDs, it could potentially result in 750,000 visitors being unable to use their DL/IDs to gain access per day. Such large numbers of individuals with non-compliant identification could result in operational and security concerns as well as negative public impacts.

such as a backlash to security personnel enforcing REAL ID.

The additional time required to adjudicate transactions involving the presentation of non-compliant identification could lead to delays including accessing Federal facilities and federally regulated commercial aircraft, which could impact both individuals with non-compliant identification and individuals waiting in queues, increasing their time burden and associated opportunity costs. These delays could have a significant effect on the travel industry, with individuals unable to present compliant identification at TSA checkpoints being denied access, or individuals caught in long queues, that may result in canceling, postponing, or adjusting travel plans and incurring associated costs. This may include making alternative travel arrangements whose substitution may include less efficient modes of transportation (*e.g.*, travelers deciding to drive rather than fly).

While nationwide, approximately 56.4 percent of all DL/IDs are REAL ID-compliant as of January 2024, there is a wide distribution of compliance across States with some lagging well behind the national average. Implementation of full card-based enforcement in May 2025 may lead to a surge in REAL ID applications and visits to the Department of Motor Vehicles, especially in those States with lower levels of REAL ID adoption. As a result, States may incur additional costs to resolve such potential surges in applications, including, but not limited to, operating longer hours, hiring more workers, and providing overtime pay for employees. Surges in applications could also lead to additional costs for individuals, including increased processing times to obtain a REAL ID and increased waiting times at the Department of Motor Vehicles.

For example, in 2007, DHS and the Department of State implemented the WHTI rule.<sup>135</sup> The WHTI rule imposed new documentation requirements for U.S. citizens and nonimmigrant aliens from certain countries entering the United States from countries within the Western Hemisphere. The WHTI rule led to a larger than anticipated increase in passport applications in 2007, longer passport processing times from 5 weeks to 10 to 12 weeks, and longer lines and crowded waiting rooms at Department of State facilities. The Department of State incurred \$42.8 million in costs (in 2007 dollars) to alleviate the surge in applications through additional staff, overtime pay, travel for temporary staff,

telephone services for its call centers, equipment, and furniture.<sup>136</sup>

Implementing full card-based REAL ID enforcement would allow for the full realization of the benefits of the REAL ID rule without further delay. Specifically, DHS believes the primary benefit of REAL ID enforcement, as discussed in the 2008 rule, would be a potential increase to U.S. national security by reducing the vulnerability to criminal or terrorist activity of Federal buildings, nuclear power plants, and aircraft. An additional possible benefit of the 2008 rule includes reducing fraud, by increasing the difficulty of fraudulently obtaining a valid license and increasing the cost to create false licenses.

DHS rejects Alternative 1 as it limits the flexibility Federal agencies can use to implement REAL ID card-based enforcement. The potential for large numbers of individuals presenting non-REAL ID-compliant identification as a means to verify identity to access Federal facilities could cause operational risks to Federal agencies; especially those that process large numbers of individuals (*e.g.*, the airport security environment). Surges in REAL ID applications may also cause negative impacts to States in issuing REAL IDs, and individuals in obtaining them. The preferred alternative allows Federal agencies to take such factors into account and make determinations about how to address potential full card-based enforcement risks associated with the card-based enforcement date.

#### Alternative 2: Extension of Card-Based Enforcement Deadline

In this alternative, DHS would issue a rule to extend the card-based enforcement date from May 7, 2025, to some date between 1 and 2 years later (Alternative 2). Alternative 2 is distinct from the preferred alternative because it extends the card-based enforcement date for all Federal agencies and does not specifically include an option to implement card-based enforcement through a phased approach. Under Alternative 2, Federal agencies would be prohibited from accepting noncompliant cards by a new date.

While Alternative 2 would afford the public more time to obtain REAL ID-compliant identification, implementing Alternative 2 would potentially allow those without REAL ID-compliant DL/ID to prolong obtaining such document. REAL ID adoption rates may continue to

decrease further than they have over the last 12 months. Issuing another extension may send a signal to individuals and industry that full implementation of REAL ID is delayed indefinitely and that additional extensions continue to be real possibilities thereby not providing sufficient encouragement or incentive for the public to obtain REAL IDs.

This alternative would also delay the security benefits associated with the REAL ID rule across all Federal agencies until the extended card-based enforcement date.

Under the Alternative 2, DHS and Federal agencies would be able to avoid the quantifiable and unquantifiable costs related to the preferred alternative. For Federal agencies, this includes phased enforcement plan development and implementation. Alternative 2 also shares some of the same benefits as the proposed rule. For example, extending the card-based enforcement date would provide the public more time to obtain a REAL ID and may mitigate a potential backlog of applications for States with lower compliance rates (or may simply further put off the issue without a real solution). States may be able to avoid costs related to measures to alleviate backlogs in applications for a period of time. The alternative would help Federal agencies that process large numbers of individuals avoid operational disruption in May 2025 because agencies would be able to continue to accept valid and unexpired non-REAL ID-compliant identification.

DHS does not prefer Alternative 2. Since 2020, DHS has extended the card-based enforcement date on three occasions and by nearly 5 years. DHS believes the vast majority of Federal agencies will be ready to fully enforce the card-based deadline on May 7, 2025. Another extension may give the public and industry the impression that REAL ID will continue to be delayed and not enforced in the near future. Thus, the preferred alternative maintains the effective date for those Federal agencies able to implement yet also provides flexibilities for those who will benefit from additional time.

#### 3. Regulatory Flexibility Assessment

The RFA of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to consider the potential impact of regulations on small businesses, small government jurisdictions, and small organizations during the development of their rules.<sup>137</sup> The Secretary, pursuant

<sup>136</sup> State Department: Comprehensive Strategy Needed to Improve Passport Operations, United States Government Accountability Office (Jul. 28, 2008), available at <https://www.gao.gov/assets/gao-08-891.pdf>.

<sup>137</sup> Public Law 96–354, 94 Stat. 1164 (Sept. 19, 1980), codified at 5 U.S.C. 601 *et seq.*, as amended

to 5 U.S.C. 605(b), certifies that this rule will not have a significant economic impact on a substantial number of small entities. The final rule is only applicable to Federal agencies who under the RFA are not considered small entities. Accordingly, DHS is not required to prepare a regulatory flexibility analysis.

#### 4. Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, DHS generally must prepare a written Statement, including a cost-benefit analysis, for proposed and final rules with “federal mandates” that may result in expenditures by State, local, and Tribal governments in the aggregate or by the private sector of \$100 million or more (adjusted for inflation) in any one year.

Before DHS promulgates a rule for which a written statement is required, section 205 of the UMRA generally requires TSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rulemaking. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows DHS to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the proposed or final rule provides an explanation why that alternative was not adopted.

Before DHS establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of DHS regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

When adjusted for inflation, the threshold for expenditures becomes \$183 million in 2023 dollars. DHS has determined that this rule does not contain a Federal mandate that may result in expenditures that exceed that

amount either for State, local, and Tribal governments in the aggregate in any one year thus a written statement is not required under UMRA.

#### D. Executive Order 13132 (Federalism)

A rule has federalism implications under E.O. 13132, “Federalism” (64 FR 43255, Aug. 10, 1999), if it has a substantial direct effect on State governments, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. DHS has analyzed this final rule under E.O. 13132 and has determined that although this rulemaking may indirectly affect the States, it does not impose substantial direct compliance costs or preempt State law. The direct compliance costs to States for implementation of REAL ID requirements were already accounted for in DHS 2008 final rule.<sup>138</sup> In fact, the final rule is responsive to concerns expressed by State agencies regarding the upcoming deadline and will potentially provide States’ residents more time to obtain a REAL ID-compliant DL/ID if agencies determine to implement card-based enforcement through a phased approach. The key impact of the rulemaking is to allow Federal agencies the authority to provide a phased enforcement approach.

#### E. Executive Order 13175 (Tribal Consultation)

This final rule does not have Tribal implications under E.O. 13175, “Consultation and Coordination with Indian Tribal Governments,” because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The REAL ID Act applies solely to issuance and Federal acceptance of state issued DL/ID. Section 202(a)(1) specifically provides, “a Federal agency may not accept, for any official purpose, a driver’s license or identification card issued by a state to any person unless the state is meeting the requirements of this section.” Section 201(5) defines the term “state” to mean “a state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.” Because Tribal governments do not fall within the statutory

definition of “state,” identification cards issued by Tribal governments are not subject to REAL ID requirements.

#### F. Environmental Analysis

DHS and its components review actions to determine whether National Environmental Policy Act<sup>139</sup> (NEPA) applies to them and, if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 (Directive) and Instruction Manual 023–01–001–01,<sup>140</sup> Rev. 01 (Instruction Manual) establishes the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations<sup>141</sup> for implementing NEPA.

The CEQ regulations allow Federal agencies to establish in their NEPA implementing procedures categories of actions (“categorical exclusions”) which experience has shown normally do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an environmental assessment or environmental impact statement.<sup>142</sup>

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.<sup>143</sup>

The clarification and notice provided by this final rule fits within categorical exclusion A3(d) “Promulgation of rules . . . that interpret or amend an existing regulation without changing its environmental effect.” Instruction Manual, appendix A, table 1. Furthermore, the final rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental impacts. Therefore, the final rule is categorically excluded from further NEPA review.

#### G. Energy Impact Analysis

The energy impact of this rulemaking has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended

<sup>139</sup> See Public Law 91–190, 42 U.S.C. 4321–4347.

<sup>140</sup> See DHS, Implementing the National Environmental Policy Act, *DHS Directive 023–01, Rev 01* (Oct. 31, 2014), and *DHS Instruction Manual 023–01–001–01, Rev. 01* (Nov. 6, 2014), <https://www.dhs.gov/publication/directive-023-01-rev-01-and-instruction-manual-023-01-001-01-rev-01-and-catex> (last visited July 17, 2024).

<sup>141</sup> 40 CFR parts 1500 through 1508.

<sup>142</sup> See 40 CFR 1501.4(a).

<sup>143</sup> See Instruction Manual, section V.B.2 (a–c).

(42 U.S.C. 6362). DHS has determined that this rulemaking will not be a major regulatory action under the provisions of the EPCA.

*H. Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act)*

Under the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, the Administrator of the Office of Information and Regulatory Affairs has determined that this final rule meets the criteria in 5 U.S.C. 804(2). The CRA generally provides a 60-day delayed effective date for such rules<sup>144</sup> but an agency can bypass that requirement “for good cause.”<sup>145</sup> Because this rule provides flexibility for agencies to implement phased enforcement plans none of which will have any impact on the public until the REAL ID effective date on May 7, 2025, DHS has for good cause found that the 60-day delay typically required under 5 U.S.C. 801(a)(3)(A) is unnecessary. Therefore, consistent with 5 U.S.C. 808(2), this rule will become effective January 14, 2025.

**List of Subjects in 6 CFR Part 37**

Document security, Driver’s licenses, Identification cards, Motor vehicle administrations, Physical security.

**Regulatory Amendments**

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

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

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

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

■ 2. Amend § 37.5 by revising paragraphs (b) and (c) and adding paragraphs (d) and (e) to read as follows:

**§ 37.5 Validity periods and deadlines for REAL ID driver’s licenses and identification cards.**

\* \* \* \* \*

(b) Except as provided in paragraph (d) of this section, on or after May 7, 2025, Federal agencies shall not accept a driver’s license or identification card for official purposes from any individual unless such license or card is a REAL ID-compliant driver’s license or identification card issued by a State that has been determined by DHS to be in full compliance as defined under this subpart.

(c) Through the end of May 6, 2025, Federal agencies may accept for official purposes a driver’s license or identification card issued under § 37.71.

Except as provided in paragraph (d) of this section, on or after May 7, 2025, Federal agencies shall not accept for official purposes a driver’s license or identification card issued under § 37.71.

(d) Federal agencies may implement the requirements of paragraphs (b) and (c) of this section through a phased enforcement plan if the agency determines phased implementation is appropriate. Federal agencies that implement phased enforcement plans authorized by this paragraph (d) must:

(1) Make a determination that a phased enforcement plan is appropriate in consideration of relevant factors including security, operational feasibility, and public impact;

(2) Coordinate the phased enforcement plan with DHS;

(3) Make the phased enforcement plan publicly available on the agency’s web page; and

(4) Achieve full enforcement of the requirements of paragraphs (b) and (c) of this section no later than May 5, 2027.

(e) DHS will make publicly available on the DHS REAL ID web page a list of agencies that have coordinated phased enforcement plans with DHS pursuant to paragraph (d) of this section.

Dated: January 7, 2025.

**David P. Pekoske,**  
*Administrator.*

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<sup>144</sup> See 5 U.S.C. 801(a)(3).

<sup>145</sup> See 5 U.S.C. 808(2).