

Rules and Regulations

Federal Register

Vol. 88, No. 46

Thursday, March 9, 2023

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 37

[Docket No. DHS–2022–0061]

RIN 1601–AB03

Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Extending Enforcement Date

AGENCY: Office of the Secretary, DHS.

ACTION: Final rule.

SUMMARY: On May 3, 2021, DHS published an interim final rule (IFR) extending the card-based enforcement deadline to May 3, 2023. This rule finalizes that IFR and further extends the date for card-based enforcement of the REAL ID regulations from May 3, 2023 until May 7, 2025. Beginning on that date, Federal agencies are prohibited from accepting a state-issued driver's license or identification card for official purposes unless such license or card is a REAL ID compliant driver's license or identification card issued by a state that DHS has determined is in full compliance as defined under this part. The current regulations also permit Federal agencies to accept noncompliant driver's licenses and identification cards for official purposes until May 2, 2023. This rule also extends that date, authorizing Federal agencies to continue to accept non-compliant driver's licenses and identification cards for official purposes until May 6, 2025.

DATES: This rule is effective on March 9, 2023.

FOR FURTHER INFORMATION CONTACT: Steve Yonkers, Director, REAL ID Program Office; telephone (202) 447–3274; email steve.yonkers@hq.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. The REAL ID Act and Implementing Regulations

The REAL ID Act (the Act) sets minimum security requirements for the issuance and production of driver's licenses and identification cards issued by the states, territories, and the District of Columbia in order for Federal agencies to accept these documents for official purposes.¹ 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.²

On January 29, 2008, DHS published a final rule implementing the Act's requirements.³ The regulations include both a deadline for state compliance with the REAL ID requirements and a deadline by which individuals must obtain a REAL ID compliant license or identification card in order to use that document for official purposes.⁴ DHS refers to these deadlines as “state-based” and “card-based” enforcement, respectively.

Under existing regulations, card-based enforcement is scheduled to begin on May 3, 2023.⁵ Beginning on the card-based enforcement date, Federal agencies are prohibited from accepting a license or identification card issued by a state for official purposes unless the license or card itself was issued in accordance with the REAL ID standards by a REAL ID compliant state.⁶

In addition to compliant licenses and identification cards, states may issue noncompliant licenses and identification cards, which are not acceptable by Federal agencies for official purposes, to individuals who are unable or unwilling to present the documents and information necessary to

obtain a REAL ID compliant license or card. These noncompliant licenses and cards must (1) clearly state that the card is not acceptable for official purposes, and (2) have a unique design or color indicator that clearly distinguishes them from compliant licenses and identification cards.⁷ The REAL ID regulations authorize, but do not require, Federal agencies to accept these noncompliant cards until card-based enforcement begins.⁸

B. Progress Towards Full Implementation

Since its enactment in 2005, DHS has worked with the states to implement the requirements of the REAL ID Act. DHS has provided funding, technical assistance, outreach, and engagement efforts. DHS has awarded over \$263 million in grant funding to assist in enhancements to driver's license security programs.⁹ These efforts have yielded significant progress towards full REAL ID implementation. Fifty-five of the 56 jurisdictions subject to REAL ID have achieved compliance with the REAL ID standards and are currently issuing REAL ID-compliant licenses and identification cards.¹⁰ Based on REAL ID data compiled by compliant states, DHS estimates that compliant states, territories and the District of Columbia have issued approximately 151 million REAL ID compliant licenses and cards, which represent approximately 53 percent of the population possessing a state-issued driver's license or identification card.¹¹ Notwithstanding these efforts, however, DHS estimates that at the current 0.5 percent monthly REAL ID issuance rate, only approximately 56 percent of the population will have a REAL ID by the current May 3, 2023 card-based

⁷ 6 CFR 37.71; REAL ID Act section 202(d)(11).

⁸ See 86 FR 23237 (May 3, 2021) (codified at 6 CFR 37.5) (clarifying that the deadline by which Federal agencies may no longer accept non-compliant driver's licenses and identification cards for official purposes applies to all non-compliant cards, including state-issued driver's licenses and identification cards marked to indicate that they may not be used for official Federal purposes).

⁹ Secure Identification State Progress Report-Fiscal Year 2012 Report to Congress.

¹⁰ American Samoa, the remaining noncompliant jurisdiction, has been delayed in implementing some of the REAL ID requirements due to COVID-19-related travel restrictions. American Samoa is currently under DHS review for a compliance determination.

¹¹ Based on REAL ID issuance data voluntarily submitted monthly to DHS by the compliant states.

¹ Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Public Law 109–13, div. B, title II, May 11, 2005, as amended (codified at 49 U.S.C. 30301 note) (REAL ID Act).

² *Id.* at section 201.

³ See 73 FR 5272 (Jan. 29, 2008) (codified as amended at 6 CFR part 37).

⁴ 6 CFR 37.51(a) and 37.5.

⁵ 6 CFR 37.5(b).

⁶ The REAL ID Act and regulations define “state” to include the 50 U.S. states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. REAL ID Act section 201(5), 6 CFR 37.3.

enforcement date. Data also indicates that states have issued approximately 113 million noncompliant marked licenses and identification cards and approximately 22 million individuals still have legacy licenses without any markings that were issued before a state's compliance determination. Without an extension of the card-based enforcement date, DHS estimates that beginning on May 3, 2023, 44 percent of the remaining population would need another acceptable form of identification, where identification is required for REAL ID official purposes, including for use as identification at the TSA airport security checkpoint.¹²

Since the card-based enforcement deadline was last extended by DHS on April 27, 2021, DHS has completed the nationwide REAL ID advertising campaign "Be Your REAL ID Self" and produced an advertising toolkit available for free to all DHS stakeholders. DHS continues to work with stakeholders to reach full implementation of the REAL ID Act.

C. Coronavirus Disease 2019 (COVID-19)

On March 13, 2020, the President declared a national emergency under sections 201 and 301 of the National Emergencies Act, 50 U.S.C. 1601 et seq, in response to COVID-19.¹³ In February of 2022, the President issued a continuation of the National Emergency concerning the COVID-19 pandemic.¹⁴ On January 11, 2023, the Secretary of the Department of Health and Human Services renewed the nationwide "public health emergency,"¹⁵ originally declared on January 31, 2020, under section 319 of the Public Health Service Act, 42 U.S.C. 274d.¹⁶

As of January 31, 2023, there have been 753,479,439 million confirmed

cases of COVID-19 identified globally, resulting in 6,812,798 million deaths.¹⁷ In the United States, 102,171,644 cases have been identified, with 1,103,615 reported deaths due to the disease.¹⁸ Currently, the FDA's *List of Approved Vaccines for Use in the United States* contains two COVID-19 vaccines¹⁹ and CDC guidance states that eligible individuals should receive COVID-19 vaccine booster shots after certain periods of time.²⁰ Ongoing research demonstrates that while there is high effectiveness of approved vaccines among eligible individuals, fully vaccinated individuals continue to experience breakthrough COVID-19 infections and may be either symptomatic or asymptomatic.²¹ Nevertheless, CDC reports show that individuals who are unvaccinated have a greater risk of testing positive for COVID-19 and a greater risk of dying from COVID-19 than individuals who are fully vaccinated.²²

Although COVID-19 rates of infection and death are decreasing,²³ at least one study indicated that the COVID-19 pandemic is driven by seasonality.²⁴ Another study indicated that seasonal factors, alongside the increased demand for healthcare resources due to seasonal influenza, should be taken into account when developing future intervention measures.²⁵ Throughout this pandemic, state and local jurisdictions across the

¹⁷ WHO Coronavirus (COVID-19) Dashboard (as of February 1, 2023), <https://covid19.who.int>.

¹⁸ CDC COVID Data Tracker (as of February 1, 2023), <https://covid.cdc.gov/covid-data-tracker>.

¹⁹ FDA, Vaccines Licensed for Use in the United States (July 5, 2022), <https://www.fda.gov/vaccines-blood-biologics/vaccines/vaccines-licensed-use-united-states>.

²⁰ CDC, COVID-19 Vaccine Booster Shots (updated Jan. 25, 2023), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/booster-shot.html>; FDA, COVID-19 Frequently Asked Questions (updated Dec. 8, 2022), <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-frequently-asked-questions>; CDC, Stay Up to Date with Your Vaccines (updated Jan. 23, 2023), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/stay-up-to-date.html>.

²¹ CDC, The Possibility of COVID-19 after Vaccination: Breakthrough Infections (updated June 23, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/why-measure-effectiveness/breakthrough-cases.html>.

²² CDC, Rate of COVID-19 Cases and Deaths by Vaccination Status, <https://covid.cdc.gov/covid-data-tracker/#rates-by-vaccine-status>.

²³ CDC, COVID Data Tracker, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home>.

²⁴ Mario Coccia, COVID-19 Pandemic Over 2020 (With Lockdowns) and 2021 (With Vaccinations): Similar Effects for Seasonality and Environmental Factors, 208 *Environmental Research* (2022), <https://www.sciencedirect.com/science/article/pii/S001393512200038X?via%3Dihub>.

²⁵ NIH, The role of seasonality in the spread of COVID-19 pandemic (Feb. 19, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7892320/>.

United States engaged in various social distancing practices and other efforts to reduce and mitigate against further spread of COVID-19, including closing or reducing service times at government offices and by accepting in-person visits by appointment only.²⁶ Although states have generally resumed normal operations, many have expressed concerns that it could take months or years for their DMVs to eliminate the backlogs caused by the pandemic-related delays and closures.²⁷ States have also raised concerns about their residents being turned away at airports and Federal buildings beginning on May 3, 2023.

D. The 2021 Interim Final Rule

Considering the impact of the COVID-19 pandemic on state and local government operations and the desire to reduce further spread by encouraging continued social distancing, DHS extended the card-based enforcement deadline twice during the pandemic. In April 2020 DHS issued a final rule extending the REAL ID card-based enforcement date for one year until October 1, 2021,²⁸ and in May 2021, DHS further extended the card-based enforcement date until May 3, 2023, through the issuance of an interim final rule (IFR) requesting comments.²⁹ DHS received one comment in response to the IFR.³⁰ The commenter supported the extension until May 3, 2023 stating that "state agencies have either closed offices, shortened operating hours, or greatly limited occupancy in offices."³¹ The commenter concludes their comments stating "[p]roviding additional time to receive compl[ia]nt identifications assists those persons that do not have access to internet, those persons with serious health conditions that cannot visit government offices due to risks of contraction of the COVID-19 virus, and those persons that are in states or territories where health guidelines prohibit or limit 'in-person' contact."³²

DHS issued these extensions to assist the states in avoiding in-person driver's licensing agency visits and in recognition of the fact that, as a result

²⁶ <https://www.nj.gov/governor/news/news/562020/20200315c.shtml> (Mar. 15, 2020); and PennDOT closes all driver and photo license centers across Pennsylvania (*wtae.com*) (Mar. 16, 2020);

²⁷ See, section 1:1. Introduction, 24 N.J. Prac., Motor Vehicle Law and Practice section 1:1 (5th ed.) (Nov. 2022).

²⁸ 85 FR 23205 (Apr. 27, 2020).

²⁹ 86 FR 23237 (May 3, 2021).

³⁰ See, <https://www.regulations.gov/comment/DHS-2021-0019-0002>.

³¹ *Id.*

³² *Id.*

¹² Although a significant segment of the population may not currently 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 tsa.gov/travel/security-screening/identification.

¹³ Proclamation 9994 of Mar. 13, 2020 on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, 85 FR 15337 (Mar. 18, 2020).

¹⁴ Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic, 87 FR 10289 (Feb. 23, 2022); Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID-19) Outbreak, 85 FR 15337 (Mar. 18, 2020).

¹⁵ HHS, "Renewal of Determination that a Public Health Emergency Exists," COVID-19: Renewal of Determination that a Public Health Emergency Exists ([hhs.gov](https://www.hhs.gov)).

¹⁶ HHS, "Determination that a Public Health Emergency Exists," <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>.

of the pandemic, most if not all states severely curtailed driver's licensing agency operations and service hours and authorized extensions for expiring driver's licenses.

E. Further Extending the Card-Based Enforcement Deadline

The Secretary recognizes that significant challenges continue to persist with the upcoming REAL ID card-based enforcement deadline in light of the COVID-19 pandemic and related issuance backlogs. Based on discussions and information provided by the states, the COVID-19 pandemic has continuing impacts on state DMV operations and the issuance of REAL ID compliant licenses and identification cards. Reduced DMV service hours and facility closures during the pandemic caused many states to offer grace periods and extensions to those with expiring licenses and although states have generally resumed normal operations, the temporary procedures put in place during the pandemic continue to have a lingering impact on REAL ID issuance rates. States have expressed concern that they may not have enough time to process and issue REAL ID compliant cards before the upcoming deadline. DHS has heard similar concerns from individual license holders about their ability to make appointments at their local DMV to obtain a REAL ID. As a result, DHS does not believe that REAL ID adoption rates will significantly change by the current May 3, 2023, card-based enforcement date.

DHS's estimates of the REAL ID issuance rates align with these concerns. For example, since the beginning of the COVID-19 pandemic, the rate of REAL ID issuance has been reduced by almost half. Before the pandemic, the REAL ID adoption rate was increasing at over 1 percent per month. By contrast, the current adoption rate continues to stand at about half of that amount or at about 0.5 percent per month. At this rate of adoption, DHS estimates that only about 56 percent of the state driver's licenses and identification cards in circulation will be REAL ID compliant by the current May 3, 2023 card-based enforcement deadline.

As a result, without a change to the current card compliance deadline, DHS estimates that a significant number of individuals may arrive at an airport screening checkpoint without an acceptable form of identification.³³ TSA estimates up to half a million passengers per day without alternate acceptable IDs

could be denied access to security screening. This could result in significant backlogs at the TSA security checkpoint, which would not only cause delays and missed flights but may also create a significant security risk both to passengers and TSA personnel by diverting the resources and attention of TSA personnel away from other passengers, including those known to pose an elevated risk.

The Secretary, with the commitment to fairness and equity in mind,³⁴ is taking this action to provide additional time for individuals to obtain a REAL ID compliant license or identification card. Notwithstanding this extension, DHS encourages those who are able and eligible to obtain a REAL ID at the earliest possible point, instead of waiting until the end of this extension period.

Accordingly, the Secretary is finalizing the 2021 interim final rule and extending the date when individuals must present a REAL ID compliant driver's license or identification card to use that document for official purposes until May 7, 2025. This extension is intended to provide sufficient time for individuals to obtain a REAL ID and for DMVs across the country to fully accommodate the demand for those licenses and identification cards.

Finally, to avoid any confusion about the ability of Federal agencies to continue to accept noncompliant licenses and identification cards issued under § 37.71, DHS also is extending the date by which Federal agencies may continue to accept these licenses and identification cards for official purposes until the end of May 6, 2025. Although some agencies, including TSA, accept noncompliant licenses and identification cards for official purposes, others may decide not to accept, or currently do not accept, noncompliant cards for official purposes. Individuals who need to visit a Federal facility, building, or office should check in advance whether the agency requires identification for access purposes and, if they do, the forms of identification they accept.

II. Regulatory Analysis

A. Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553) authorizes agencies to dispense with certain rulemaking

procedures under certain circumstances. Section 553(d)(1) allows an agency to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553(d), when a substantive rule grants or recognizes an exemption or relieves a restriction.

This final rule extends the card-based enforcement deadline due to the continuing impacts on REAL ID issuance caused by the measures put in place by state DMVs to address the COVID-19 pandemic, including temporary grace periods and extended expiration dates for expiring driver's licenses. Although states have generally resumed regular DMV operations, REAL ID adoption rates have not risen to meet their pre-pandemic levels. Before the start of the pandemic states were increasing their REAL ID adoption rates by over 1 percent a month. These rates dropped to 0.5 percent or less in May of 2020 and have not reached their pre-pandemic levels. At these rates, DHS estimates that only approximately 56 percent of the population will have a REAL ID by the May 3, 2023 card-based enforcement date. This rule reduces the burden on States to comply with the current deadline by further extending the card-based enforcement deadline to May 7, 2025. This new deadline allows States more time to fully recover from the COVID-19 pandemic and its continued impacts on their DMVs. Therefore, DHS is making this rule effective immediately.

B. Paperwork Reduction Act

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

C. Executive Orders 12866 and 13563 Assessment

This rule constitutes a “significant regulatory action” under Executive Order 12866, as supplemented by Executive Order 13563, and therefore has been reviewed by the Office of Management and Budget (OMB). Executive Order 12866 defines “significant regulatory action” as one that is likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements,

³³ TSA's acceptable ID list is available at tsa.gov/travel/security-screening/identification.

³⁴ See E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 FR 7009 (published Jan. 25, 2021); E.O. 13563, Improving Regulation and Regulatory Review, 76 FR 3821 (published Jan. 21, 2011).

grants, user fees, or loan programs or the rights or obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. DHS is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the urgent needs described above.

D. Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires Federal agencies to consider the potential impact of regulations on small businesses, small government jurisdictions, and small organizations during the development of their rules. This rule, however, makes changes for which notice and comment are not necessary. Accordingly, DHS is not required to prepare a regulatory flexibility analysis. See 5 U.S.C. 603, 604.

E. Executive Order 13132 (Federalism)

A rule has federalism implications under Executive Order 13132, “Federalism,” 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 rule under that Order and has determined that although this rule affects the states, it does not impose substantial direct compliance costs or preempt state law. In fact, the rule is responsive to concerns expressed by state agencies regarding the upcoming deadlines. DHS has determined that the rule is consistent with Executive Order 13132.

F. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Unfunded Mandates Reform Act addresses actions that may result in the expenditure by a state, local, or Tribal government, in the aggregate, or by the private sector of \$100 million (adjusted for inflation) or more in any one year. This rule will not result in such an expenditure.

G. Executive Order 13175 (Tribal Consultation)

This rule does not have Tribal Implications under Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,”

because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

H. Environment

DHS reviews actions to determine whether the National Environmental Policy Act (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 Rev. 01 (Instruction Manual) establish the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (“categorical exclusions”) which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(2)(ii), 1508.4. 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. Instruction Manual section V.B(2)(a)–(c).

The delay effectuated by this rule fits within categorical exclusion A3(a) “Promulgation of rules . . . of a strictly administrative or procedural nature.” Instruction Manual, Appendix A, Table 1. Furthermore, the rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental impacts. Therefore, the rule is categorically excluded from further NEPA review.

I. Congressional Review Act

This rule is not a major rule as defined by the legislation commonly known as the Congressional Review Act, see Public Law 104–121, sec. 251, 110 Stat. 847, 868 (1996) (codified in relevant part at 5 U.S.C. 804) (“CRA”). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the

ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. The Department has complied with the CRA's reporting requirements and has sent this rule to Congress and to the Comptroller General as required by 5 U.S.C. 801(a)(1).

List of Subjects in 6 CFR Part 37

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

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

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

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

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

Subpart A—General

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

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

* * * * *

(b) 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. 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.

* * * * *

Alejandro N. Mayorkas,

Secretary, Department of Homeland Security.

[FR Doc. 2023–04496 Filed 3–8–23; 8:45 am]

BILLING CODE 9110–9M–P