

# Proposed Rules

Federal Register

Vol. 89, No. 177

Thursday, September 12, 2024

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## 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:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This proposed rule would ensure 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 card-based enforcement in phases. This rulemaking proposes that 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 proposed rule would also require agencies to coordinate their plans with DHS, make the plans publicly available, and achieve full enforcement by May 5, 2027.

**DATES:** Interested persons are invited to submit comments on or before October 15, 2024.

**ADDRESSES:**

*Comments:* You may submit comments, identified by the TSA docket number to this rulemaking, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system. To avoid duplication, please use only one of the following methods:

- *Electronic Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments.
  - *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. The Department of Transportation (DOT), which maintains and processes TSA’s official regulatory dockets, will scan the submission and post it to FDMS.
  - *Fax:* (202) 493–2251.
- See the **SUPPLEMENTARY INFORMATION** section for format and other information about comment submissions.

**FOR FURTHER INFORMATION CONTACT:**

George Petersen, Senior Program Manager, REAL ID Program, Enrollment Services and Vetting Programs, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598; telephone: (571) 227–2215; email: [george.petersen@tsa.dhs.gov](mailto:george.petersen@tsa.dhs.gov).

Please do not submit comments to these addresses.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

DHS invites interested persons to participate in this NPRM by submitting written comments, including relevant data. Comments that will provide the most assistance to DHS will reference a specific portion of this proposed rule, explain the reason for any suggestion or recommended change, and include data, information, or authority that supports such suggestion or recommended change.

*Submitting Comments*

DHS will review all comments received on this proposed rule, but may choose not to post off-topic, inappropriate, or duplicative comments. To submit a comment:

- Go to <https://www.regulations.gov> and follow the instructions for submitting comments for docket number TSA–2023–0003. If your material cannot be submitted using <https://www.regulations.gov>, contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternative instructions.
- All submissions received must include the agency name and docket number for this rulemaking.

- Comments posted to <https://www.regulations.gov> are posted without change and will include any personal information provided. For more information about privacy and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

**Abbreviations and Terms Used in This Document**

DHS—U.S. Department of Homeland Security  
 DL/IDs—Driver’s Licenses and Identification Cards  
 NPRM—Notice of Proposed Rulemaking  
 TSA—Transportation Security Administration

**Table of Contents**

- I. Executive Summary
  - A. Purpose of the Regulatory Action
  - B. Overview of the Proposed Rule
- II. Background
  - A. The REAL ID Act and Implementing Regulations
  - B. Progress Towards Full Implementation
  - C. Factors Impacting REAL ID Adoption Rates
- III. Summary of the Proposed Rule
  - A. Phased Enforcement Plans
  - B. Consideration of Further Extending the Card-Based Enforcement Deadline
  - C. Broad DHS Approach
  - D. Phased Enforcement Guidance
- IV. Regulatory Analyses
  - A. Paperwork Reduction Act
  - B. Economic Impact Analyses
  - C. Executive Order 13132 (Federalism)
  - D. Executive Order 13175 (Tribal Consultation)
  - E. Environmental Analysis
  - F. Energy Impact Analysis

**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 requirements of the

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

<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).

REAL ID Act and its implementing regulations set minimum security standards for the issuance of DL/IDs, which are designed to improve the reliability of those State-issued 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 current REAL ID regulations, after REAL ID card-based enforcement begins on May 7, 2025, Federal agencies may only accept State-issued driver's licenses and identification cards (DL/IDs) for official purposes, as defined in the REAL ID Act and regulation, if that DL/ID is issued in accordance with REAL ID requirements by a REAL ID-compliant State.<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 in 22 States less than 40 percent are REAL ID-compliant.<sup>6</sup> Further, because of the history of extensions related to REAL ID enforcement, DHS believes that the public may continue to expect that additional extensions are likely and not feel urgency to obtain a REAL ID. DHS believes this pattern is likely to delay increased adoption in many States despite best efforts to inform the public, potentially leading to last-minute surges in demand for REAL IDs leading up to the deadline.

DHS believes this surge could overwhelm States 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 purposes 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 or board a federally

regulated commercial aircraft 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 proposed rule recognizes these concerns and would provide 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. By demonstrating that the government is preparing for and planning to begin enforcement, the proposed rule reiterates for the public that REAL ID card-based enforcement will start 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 anticipate consequences for presenting a non-compliant DL/ID. At the same time, the proposed rule is intended to allow a transition to full enforcement that mitigates the potential negative impact to agencies and the public if full enforcement began 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/ID, and the resulting concerns of Federal agencies, the proposed rule would provide important flexibility to agencies to ensure a smooth transition to card-based enforcement. The proposed 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 the transition to full enforcement.<sup>8</sup>

### B. Overview of the Proposed Rule

Under current regulations, Federal agencies may not accept non-compliant DL/IDs for REAL ID official purposes when card-based enforcement is required on May 7, 2025. While Federal agencies would still be required to commence REAL ID card-based enforcement on May 7, 2025, this proposed rule would provide agencies, for a period of up to 2 years, flexibility to determine that a phased approach to card-based enforcement is appropriate after considering relevant factors including security, operational feasibility, and impact to the public offered by their agency. The proposed rule seeks to provide 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 proposed rule would require 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 proposed rule would require 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 proposed rule's preamble provides guidance to Federal agencies on types of phased enforcement plans that agencies may consider.

## II. Background

### A. The REAL ID Act and Implementing Regulations

All but one of the September 11, 2001, terrorist hijackers acquired some form of identification document, some by fraud, and used these forms of identification to assist them in boarding commercial flights, renting cars, and other necessary activities leading up to the attacks.<sup>9</sup> Consequently, the 9/11 Commission recommended that the Federal Government set standards for the issuance of more secure sources of

<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.

<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 3.

<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. 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 April 19, 2024).

<sup>8</sup> "Full enforcement" or "full card-based enforcement" means that an agency only accepts REAL ID-compliant DL/IDs for official purposes.

<sup>9</sup> *Id.*

identification for use in, among other activities, boarding aircraft and accessing vulnerable facilities.<sup>10</sup>

The REAL ID Act of 2005 (the REAL ID Act) addressed the 9/11 Commission's recommendation that the Federal Government "set standards for the issuance of . . . sources of identification, such as drivers licenses."<sup>11</sup> 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>12</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>13</sup>

On January 29, 2008, DHS published a final rule implementing the REAL ID Act's requirements.<sup>14</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>15</sup> 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 7, 2025.<sup>16</sup> On this date, 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.

In addition to compliant licenses and identification cards, States may issue noncompliant licenses and identification cards, which will not be acceptable by Federal agencies for official purposes after the card-based deadline, 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.<sup>17</sup> The REAL ID regulations authorize, but do not require, Federal agencies to accept these noncompliant cards until card-based enforcement begins.<sup>18</sup>

### 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. DHS has awarded over \$263 million in grant funding to assist in enhancements to drivers' license security programs.<sup>19</sup> These efforts have yielded significant progress towards full REAL ID implementation. All 56 licensing jurisdictions subject to REAL ID have achieved REAL ID certification. DHS also completed one phase of a 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 and regulations.

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 three times during the pandemic. In April 2020, DHS issued a final rule extending the REAL ID card-based enforcement date for 1 year until October 1, 2021;<sup>20</sup> 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;<sup>21</sup> and,

on March 9, 2023, DHS issued a final rule finalizing the May 2021 IFR and extending the card-based enforcement deadline to May 7, 2025.<sup>22</sup>

### C. Factors Impacting REAL ID Adoption Rates

The U.S. has 56 different jurisdictions that issue DL/IDs and are subject to REAL ID requirements, including 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. All but five States offer their residents the option to obtain a noncompliant DL/ID for various reasons including State privacy requirements, implementation costs to the State and residents, and to provide the opportunity to obtain a DL/ID to residents who may not be able to obtain a REAL ID-compliant DL/ID.<sup>23</sup>

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/ID, which represent approximately 56 percent of the population possessing a State-issued DL/ID.<sup>24</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.

There are a number of factors that impact the REAL ID adoption rate in any given State resulting in significant variability in adoption rates from State to State. These factors include: (1) the date a State became REAL ID certified and began issuing REAL ID-compliant DL/IDs, (2) whether the State offers a noncompliant DL/ID, (3) the number of legacy cards (DL/IDs issued before a State became REAL ID certified) still in circulation, (4) the validity period of DL/IDs issued by a State, (5) the disruption to Department of Motor Vehicles (DMV) operations and ability to provide services during the COVID-19 pandemic, and (6) State resource constraints, including budgetary and staffing constraints.

<sup>17</sup> 6 CFR 37.71; REAL ID Act sec. 202(d)(11).

<sup>18</sup> See 86 FR 23237 (May 3, 2021) (codified at 6 CFR 37.5(c)) (clarifying that the deadline by which Federal agencies may no longer accept noncompliant driver's licenses and identification cards for official purposes applies to all noncompliant cards, including state-issued driver's licenses and identification cards marked to indicate that they may not be used for official Federal purposes), and 88 FR 14473 (extending the deadline by which Federal agencies may continue to accept noncompliant cards for official purposes until May 7, 2025).

<sup>19</sup> Secure Identification State Progress Report-Fiscal Year 2012 Report to Congress.

<sup>20</sup> 85 FR 23205 (Apr. 27, 2020).

<sup>21</sup> 88 FR 23237 (May 3, 2021). DHS received one comment in response to the IFR. See, <https://www.regulations.gov/comment/DHS-2021-0019-0002>. 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." *Id.*

<sup>22</sup> 88 FR 14473.

<sup>23</sup> The five states that only offer REAL ID-compliant DL/IDs are Florida, Georgia, Mississippi, Texas, and Wyoming.

<sup>24</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.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</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>13</sup> *Id.* at section 201.

<sup>14</sup> See 73 FR 5272 (Jan. 29, 2008) (codified as amended at 6 CFR part 37).

<sup>15</sup> 6 CFR 37.51(a) and 37.5.

<sup>16</sup> 6 CFR 37.5(b); 88 FR 14473 (Mar. 9, 2023) (extending the REAL ID card-based enforcement deadline from May 3, 2023, to May 7, 2025).

Generally, States that have become REAL ID certified more recently are more likely to have a lower REAL ID adoption rate than States that were certified earlier, as their populations have had less time to obtain a REAL ID-compliant DL/ID. While some licensing jurisdictions have been issuing REAL ID-compliant cards for many years and have high adoption rates, nearly half (27) of the jurisdictions have only been certified since 2018. States that issue cards with longer validity periods generally have lower adoption rates than States that issue cards with shorter validity periods, as it takes longer for legacy cards to cycle through their validity period. REAL ID adoption rates are also influenced by whether a State offers its population the option to receive a noncompliant card. There are many reasons States choose to offer residents the option to obtain a noncompliant card when an individual's DL/ID is due for renewal, including the ability to meet eligibility requirements for a compliant DL/ID, potential greater monetary and time costs associated with obtaining a compliant DL/ID, and the convenience of renewing a legacy or existing noncompliant DL/ID online instead of travelling in person to the DMV (this became particularly relevant during the extended COVID-19 pandemic). In States that offer noncompliant cards, a substantial number of individuals choose to obtain a noncompliant card, rather than a compliant DL/ID, when they seek to renew an existing legacy or noncompliant DL/ID. DHS understands that individuals may choose to obtain a noncompliant card for a number of reasons including lower monetary costs, reduced time burden of collecting necessary documents, and avoiding in-person visits to physical DMV locations.

As a result of the COVID-19 pandemic, most State licensing agencies were forced to close branches or operate at a reduced capacity for extended periods of time, limiting the ability of their residents to obtain REAL ID-compliant DL/IDs. The impact of pandemic-related mitigation measures on REAL ID adoption was accentuated by two additional factors. First, 27 jurisdictions were certified between 2018 and 2022, meaning they had very little or no time to issue REAL ID-compliant DL/IDs prior to the mitigation measures implemented during the pandemic. As a result, these States had only issued a relatively low number of REAL ID-compliant DL/IDs when adoption rates started falling during, and continuing after, the pandemic. The combination of low numbers of

compliant DL/IDs issued pre-pandemic and the decreased rate of adoption during the pandemic suggests that the current number of compliant DL/IDs issued in these States is unlikely to be significantly higher than the pre-pandemic number. Second, REAL ID-compliant DL/IDs cannot be issued without the physical presence of the applicant, but during the pandemic many States extended license expiration dates and offered individuals the ability to obtain noncompliant DL/IDs without an in-person visit to the DMV (through an online or mail process, for example). To avoid visiting the DMV for many individuals who might have otherwise obtained a REAL ID likely chose to obtain a noncompliant card instead.

DHS observed widespread decreases in REAL ID adoption rates coupled with significant increases in noncompliant card issuance rates during, and immediately after, the pandemic. This trend resulted in reduced adoption rates. Prior to the pandemic, the national REAL ID adoption rate was approximately 2.5 percent per month, however, this rate dropped to less than 0.5 percent in April and May of 2020. As of January 2024, the national adoption rate has not reached its pre-pandemic level and continues to stand 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 would be REAL ID-compliant by the card-based enforcement deadline of May 7, 2025.<sup>25</sup>

The significant increase in the issuance of noncompliant cards to individuals renewing existing noncompliant and legacy DL/IDs will also likely continue to depress adoption rates for several years. All States provide their residents with the opportunity to obtain a REAL ID-compliant DL/ID when their current DL/ID comes up for renewal or if they are seeking their first driver's license in the State. Depending on the State, DL/IDs may be valid anywhere from 3 to 8 years. Because REAL ID adoption has been strongly tied to the renewal cycle and period of validity of existing DL/IDs, DHS expected adoption rates to rise as residents in States with long validity periods needed to renew their DL/IDs. However, the significant increase in

<sup>25</sup> Over the last 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 next 16 months to forecast the percentage of REAL IDs in circulation by May 2025, relative to all DL/IDs in circulation.

issuance of noncompliant DL/IDs during the pandemic in States where this option was offered as a less burdensome alternative for individuals to renew their DL/IDs disrupted this expected effect, as a substantial number of individuals chose to obtain a noncompliant DL/ID rather than a compliant DL/ID. The impact of the pandemic is then two-fold; it not only drove down adoption rates by limiting opportunities for individuals to obtain a compliant DL/ID, but also delayed the strongest catalyst for REAL ID adoption, the renewal of a legacy DL/ID. As a result, many individuals have been issued noncompliant DL/IDs with full validity periods, and thus would not be incentivized to obtain a REAL ID based upon renewal until their noncompliant DL/ID expires, which depending on the State validity period could be years away.

### III. Summary of Proposed Rule

#### A. Phased Enforcement Plans

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>26</sup> Beginning card-based enforcement will accelerate the timeline for full realization of these increased security standards. The most recent card-based enforcement extension until May 7, 2025, was intended to provide sufficient time for individuals to obtain a REAL ID and for DMVs across the country to fully accommodate the demand for REAL ID-compliant DL/IDs. This proposed rule recognizes the importance of retaining the May 7, 2025, deadline to begin enforcement while recognizing that for some agencies an immediate transition to full enforcement may not be appropriate in light of relevant factors.

Today, the REAL ID adoption rate continues to remain well below the pre-pandemic rate. DHS recognizes 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 non-

<sup>26</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).

REAL ID-compliant IDs for Federal official purposes when enforcement begins on May 7, 2025. The population-wide adoption rate will likely 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 is also likely to differ across geographic areas with certain regions having relatively higher or lower concentrations of individuals without a REAL ID-compliant DL/ID.

DHS also acknowledges the possible risks to Federal agencies and 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. In some cases, this 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 with the potential to result in significant negative downstream outcomes and poor customer experience. In TSA's example, if a large number of individuals arrived at an airport security checkpoint with noncompliant DL/IDs,<sup>27</sup> they would 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 significantly 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. Although DHS is most engaged with the REAL ID official purpose of boarding federally-regulated commercial aircraft and TSA's operations, other Federal agencies may also experience an impact if they begin full enforcement May 7, 2025.

Given that approximately 56 percent of DL/IDs in circulation are REAL ID-compliant as of January 2024 and the low current adoption rates, there is a real possibility of disruptions like those described above that could occur if all agencies begin full enforcement on May 7, 2025. Using the compounded monthly growth rate for the last 12 months (0.56 percent), DHS estimates that 61.2 percent of REAL IDs, relative

to all DL/IDs in circulation, would be REAL ID-compliant.<sup>28</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 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 or other acceptable form of identification, seek to travel. DHS anticipates that other agencies that operate facilities nationwide or experience significant 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 or other acceptable identification on May 7, 2025, Federal agencies would benefit from 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. This proposed rule would permit agencies to make a determination that phased enforcement is appropriate, in consideration of these factors. The rulemaking would allow 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 risks of immediately transitioning to full enforcement on May 7, 2025.

The ability to implement the card-based requirements under a phased approach after the deadline, for a two-year period, would allow Federal agencies to start card-based enforcement in a manner that reduces 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 would 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>29</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. The enforcement schedule began with DHS headquarters and other Federal facilities in 2014 with the final phase, boarding a Federally regulated commercial aircraft, going into effect in 2018.<sup>30</sup> This phased enforcement period allowed States to continue to build the infrastructure and institutional capacity to issue REAL ID-compliant DL/IDs before enforcement began in the most impactful context (boarding federally regulated commercial aircraft).

DHS' approach to State-based enforcement demonstrated that phased enforcement can be effective in achieving compliance with REAL ID requirements. This proposed rule would provide 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 for its particular circumstances. Such flexibility would allow agencies to begin card-based enforcement as part of measured, responsible, and achievable plan leading to full enforcement of the REAL ID regulations.

Additionally, permitting agencies to begin enforcement using a phased approach may facilitate increased adoption of REAL ID-compliant DL/IDs. It would allow agencies to reiterate that further extensions of the May 7, 2025, enforcement deadline are unlikely by demonstrating that the government is planning and preparing to begin enforcement. DHS anticipates that agencies announcing concrete plans for commencing enforcement on May 7, 2025, could likely incentivize individuals to obtain a REAL ID-

<sup>29</sup> 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>.

<sup>30</sup> TSA to Notify Travelers of Upcoming 2018 REAL ID Airport Enforcement—Signs at Airports to Inform Travelers of ID Requirements at Security Checkpoints (Dec. 12, 2016), available at <https://www.dhs.gov/news/2016/12/12/tsa-notify-travelers-upcoming-2018-real-id-airport-enforcement>.

<sup>27</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>.

<sup>28</sup> DHS calculates the compounded monthly growth rate for the last 12 months in section IV(b)(2)(e) *Adoption of REAL ID-Compliant DL/IDs*.

compliant DL/ID and result in increased demand at State DMVs. Increased demand leading up to and after the deadline may outpace the ability of licensing jurisdictions to meet that demand. The TSA REAL ID Program has been working with States in preparation for the beginning of REAL ID enforcement. During this engagement, some States have expressed concern with ability to meet potential demand.<sup>31</sup> Using a phased approach may also allow agencies to provide licensing jurisdictions the opportunity to make adjustments to alleviate potential backlogs.

This proposed rule also recognizes that individual Federal agencies are in the best position to determine how to ensure successful implementation of the REAL ID requirements within their operational context. 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 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 weigh 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>32</sup> creating soft targets for terrorists or violent extremists.<sup>33</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 card-based 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 public that necessitate members of the public seeking to access Federal facilities that require proof of identity for entry. In cases where agencies currently interact with members of the public at such facilities, 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 significant 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 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 to the public. 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>34</sup> Card-based enforcement

should not impact access to Federal facilities that do not require identification (for example, public areas of the Smithsonian museums). 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 (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 provide that service.

In addition to these factors, agencies may consider other factors they deem relevant and necessary to make their determination. 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 REAL ID 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, the proposed 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 that would allow them to facilitate continued secure and orderly operations and minimize impacts to the public while implementing enforcement phases that lead to full REAL ID enforcement. This flexibility would allow 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.

Should an agency determine that phased enforcement is appropriate, DHS

<sup>31</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).

<sup>32</sup> The requirements of the REAL ID Act and regulations specifically apply to Federal agencies accepting DL/IDs for official purposes.

<sup>33</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 April 18, 2024).

<sup>34</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>.

also recognizes that the individual agency is best positioned to structure its enforcement plan to account for its particular operational setting. The proposed rule would allow agencies to develop a phased enforcement best suited to ensuring a successful transition to phased enforcement in their specific context. Although this proposed 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>35</sup> For example, agencies' plans may include an initial phase during which warning notices are issued and/or a phase involving progressive enforcement measures—like a “three-strikes” system or other methods—that enable agencies to begin 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 charges DHS with authority to implement the Act's requirements.<sup>36</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, and DHS oversight of successful implementation of the Act and regulatory requirements. Agencies seeking to use a phased enforcement plan would be required to coordinate with DHS through the TSA REAL ID Program Office.<sup>37</sup> DHS expects and strongly encourages agencies to make a determination on 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 agencies may seek to begin full enforcement on the deadline and encounter unanticipated challenges or agencies may encounter 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>38</sup>

DHS acknowledges the potential for some confusion resulting from the possibility of various agencies implementing different phased enforcement plans. This proposed 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>39</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. Ultimately, even with the risk of some confusion, DHS believes this approach is preferable to full enforcement on May 7, 2025, with the potential to cause significant disruption or another extension of the deadline, which is unlikely to incentivize increased REAL ID adoption.

The proposed rule also would require that 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 rapid increase in demand may challenge the capacity of licensing jurisdictions and may create backlogs in issuance of REAL ID-compliant cards. The two-year window during which agencies may implement enforcement in phases is designed, in part, to provide States sufficient additional time to meet increases in demand for REAL ID-compliant cards. Agencies who 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 chose a two-year 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 to encourage greater adoption rates and limit negative enforcement impacts, where appropriate, and for States to meet the increased demand as individuals seek to obtain compliant DL/IDs. DHS also considered phased enforcement periods of one, three, four, or five years' duration. DHS chose 2 years as it believes this time period provides sufficient opportunity for individuals to obtain a compliant DL/IDs, while maintaining an impending need (incentive) to do so, and for States to process them (e.g., time to budget any short term ramp up that may be necessary) but also requests public comment on the length of the phased enforcement period.

DHS did not select 1 year because DHS believes this timeframe would not provide enough time for the anticipated effects of the enforcement deadline and phased enforcement plans to be realized and reflected in 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). In a one-year phased enforcement period, individuals who learn of the need to obtain a REAL ID-compliant DL/ID towards the end of that one-year period—possibly through a warning notice as part of an agency's phased enforcement plan—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 DMVs, DHS believes 1 year may not be sufficient time for States to make any necessary adjustments to process potential backlogs. Although a one-year phased enforcement period would provide a shorter delay in obtaining the full security benefits of REAL ID as described in the 2008 rule,<sup>40</sup> DHS does

<sup>35</sup> More detailed discussion of these options is provided in section D. below.

<sup>36</sup> 49 U.S.C. 30301 note; 73 FR 5271.

<sup>37</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>38</sup> <https://www.dhs.gov/real-id>.

<sup>39</sup> *Id.*

<sup>40</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.



not believe it is a long enough period for individuals and States to both apprehend the need for action as a result of card-based enforcement and take action to obtain or make adjustments needed to issue REAL ID-compliant DL/IDs.

DHS did not select three, four, or five years because DHS believes a time period longer than 2 years would further delay the security benefits of REAL ID and is unlikely to provide the same incentive for individuals to obtain a compliant DL/ID. DHS believes that 2 years after the card-based enforcement deadline is 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 discourage individuals and States from prioritizing necessary action.

Finally, to avoid any confusion about the ability of Federal agencies to continue to accept noncompliant marked DL/IDs issued under § 37.71, the proposed rule would clarify 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>41</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.

#### *B. Consideration of Further Extending the Card-Based Enforcement Deadline*

As an alternative to the approach this rule proposes, DHS also considered further extending the REAL ID card-based enforcement deadline to allow for more time for the adoption rate to increase. However, DHS believes that

maintaining the deadline of May 7, 2025, while providing agencies the flexibility to make a determination that phased enforcement is appropriate will allow for a faster and smoother transition to full card-based enforcement than another extension of the deadline.

DHS prefers the approach proposed in this rule rather than an extension for several reasons. First, 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 poses little risk of creating other security risks, interfering with operational feasibility, or disrupting public services. If the deadline is extended, agencies that could immediately transition to full enforcement are unlikely to do so before the new deadline, delaying security benefits that would otherwise be 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.

Second, DHS believes that the approach provided by this rulemaking is likely to have a positive impact on the REAL ID adoption rate, but that an extension would not incentivize an increase in demand for REAL ID-compliant DL/IDs. 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 the 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 until DHS demonstrates that another extension is unlikely. Further, 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>42</sup> As a result, DHS believes that further extensions of the card-based enforcement date are not an effective means of incentivizing changed behavior.

Instead, DHS expects that allowing agencies to enforce the May 7, 2025, deadline through a phased approach will incentivize increased demand for REAL 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 deadline approaches, and DHS does not issue an extension, DHS expects individuals that were otherwise relying on another extension to obtain a compliant DL/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. 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. This will in turn lessen the likelihood of disruption when agencies transition to full enforcement because the individuals who most often use State-issued 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 compliant DL/ID.

#### *C. Broad DHS Approach*

This proposed rule represents one aspect of DHS' broad approach towards transitioning to enforcement of the REAL ID requirements on May 7, 2025. Although this proposed rulemaking is critical to providing agencies with the necessary flexibility to ensure a smooth transition to full card-based enforcement, DHS is 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>43</sup>

<sup>41</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>42</sup> *Supra* note 26.

<sup>43</sup> DHS Launches "Be Your REAL ID Self" Public Awareness Campaign, January 15, 2021, <https://>



and engagement with the travel industry. This proposed rule, in combination with these other efforts, works to lay the necessary foundation for transitioning the nation to enforcement of REAL ID requirements on May 7, 2025.

#### D. Phased Enforcement Guidance

Under this proposed rule, agencies would 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 as well as allow DHS to serve in liaison role between agencies where there may be overlapping equities. During the coordination process, DHS 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 proposed requirements in this rule, they would have broad discretion to structure their plans.

As guidance to Federal agencies and to promote consistency, DHS provides the below discussion and 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 for most agencies that determine phased enforcement is appropriate. 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 valid, unexpired, 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, the date on which the agency will either begin fully enforcing REAL ID requirements or will proceed to a subsequent enforcement phase, and what to expect if the individual presents a noncompliant DL/ID and no other acceptable form of identification after that date. 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.

DHS has previously utilized an informed compliance model to balance the need to begin enforcement of an identity verification-related mandate while minimizing the impact of enforcement on commerce. DHS effectively employed Informed Compliance as an enforcement mechanism for 6 months after it began enforcing the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).<sup>44</sup> SAFETEA-LU mandated that all foreign commercial hazardous materials (hazmat) licensed drivers were required to pass a background check that was comparable to that required under the USA PATRIOT Act for U.S. commercial

hazmat drivers. DHS determined that the background check required to obtain the U.S. Customs and Border Protection Free and Secure Trade (FAST) card was comparable to that required for U.S. licensed commercial drivers. However, DHS estimated that at the start of enforcement, a large number of drivers would not have accomplished the background check process, and there was risk of significant impact to cross-border commerce. DHS implemented a 6-month period of Informed Compliance at the start of enforcement. At border checkpoints, foreign commercial drivers who did not have the FAST background check were provided a written notice that they were not in compliance and had until a final enforcement date to achieve compliance, but were allowed to drive in the United States in the interim. After the period of Informed Compliance, drivers without the appropriate background check were not allowed into the United States.

*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 identify and communicate reliably with the individual. This PII would need to be collected, maintained, and used in accordance with all applicable Federal guidelines and requirements related to collection of PII. This may require agencies to obtain an Office of Management and Budget (OMB)-approved Paperwork Reduction Act (PRA) information collection and prepare a Privacy Impact Analysis, System of Record 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., email, text, or other record of transmittal to address acknowledged by individuals).

[www.dhs.gov/real-id/news/2021/01/15/dhs-launches-be-your-real-id-self-public-awareness-campaign](http://www.dhs.gov/real-id/news/2021/01/15/dhs-launches-be-your-real-id-self-public-awareness-campaign).

<sup>44</sup> Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109-59, August 10, 2005.

4. The agency would need 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 (violations).

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" before incurring a subsequent "strike").

Agencies would need to choose an appropriate time period during which individuals can continue to use the noncompliant DL/ID without it being treated as an additional instance of noncompliance ("strike"). 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. DHS recommends that the language and consequences of subsequent notifications under this model should progress in seriousness. For example, assume an agency chooses to permit access on the first two instances of noncompliance and deny access on the third (and any subsequent instance). Agencies may choose to refer to the notice issued to an individual presenting a noncompliant card for the first time as a "warning" and a notice issued on a subsequent instance counting against that individual's limit as "counseling." 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 used for the REAL ID official purpose. The Federal agency would deny access to the individual at that time and on all future instances unless the individual obtains a REAL ID 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 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 would 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 polices 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. Regulatory Analyses**

**A. 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 proposed 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, may need to submit or

modify an OMB information collection request.

**B. Economic Impact Analyses**

**1. Regulatory Impact Analysis Summary**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order (E.O.) 12866 of October 4, 1993 (Regulatory Planning and Review),<sup>45</sup> as supplemented by E.O. 13563 of January 21, 2011 (Improving Regulation and Regulatory Review),<sup>46</sup> and E.O. 14094 of April 6, 2023 (Modernizing Regulatory Review)<sup>47</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>48</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>49</sup>

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

Under the requirements of E.O. 12866, as amended by E.O. 14094, agencies must 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). These requirements were supplemented by E.O. 13563, which emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

DHS summarizes the findings:

- In accordance with E.O. 12866, the Office of Management and Budget (OMB) has designated this rulemaking a “significant regulatory action” as defined under section 3(f) of E.O. 12866, as amended by E.O. 14094 but not significant under section 3(f)(1). Accordingly, the proposed rule has been reviewed by OMB.

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

- This proposed 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 would not be 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 proposed rule.

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

Category	Estimates			Units			Notes
	Primary	Low	High	Year dollar	Discount rate (%)	Time horizon (years)	
<b>Benefits</b>							
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.
Unquantified .....	The proposed rule would provide Federal agencies 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 would not unnecessarily delay REAL ID enforcement for those Federal agencies ready to fully implement on the card-based enforcement deadline. A phased approach would 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.						

<sup>45</sup> 58 FR 51735 (Oct. 4, 1993).

<sup>46</sup> 76 FR 3821 (Jan. 21, 2011).

<sup>47</sup> 88 FR 21879 (Apr. 11, 2023).

<sup>48</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>49</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 (years)	
<b>Costs</b>							
Annualized Monetized .....	\$0.87	N/A	N/A	2023	2	2	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 would not be realized, as a result of agencies implementing a phased approach, until full enforcement occurs. Federal agencies would 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.						
<b>Transfers</b>							
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:			
<b>Net Benefits</b>							
Annualized Monetized Net Benefits .....	N/A	N/A	N/A	N/A	2	N/A	Not Quantified.
<b>Effects</b>							
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>50</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 proposed rulemaking is necessary to provide flexibility to mitigate potential risks related to security, operational feasibility, and public impact.

Without the flexibility the proposed 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 would be unable to board federally regulated aircraft upon card-based enforcement. This represents a large use case for REAL ID. These individuals would not be able to use their noncompliant DL/ID 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>51</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

<sup>51</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>50</sup> See 88 FR 14473 (Mar. 9, 2023), codified at 6 CFR 37.5.

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, would benefit from phased enforcement, and would be able to implement a phased enforcement plan, coordinated with DHS, to provide a smoother transition to full card-based enforcement.<sup>52</sup> This proposed rule would 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.

TSA requests comments on the assumptions and estimates presented within this economic impact analysis. Comments that will provide the most assistance to TSA will reference a specific portion of this proposed rule, explain the reason for any suggestion or recommended change, and include data, information, or authority that supports such suggestion or recommended change.

#### c. Baseline Summary

The baseline represents DHS' best assessment of what the world would be like absent this regulatory action.<sup>53</sup>

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 REAL ID Act of 2005.<sup>54</sup> Since the publication of the Final Rule in 2008, DHS has delayed the card-based enforcement date for REAL ID multiple times due to various challenges that have prevented full enforcement

<sup>52</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 would impact their ability to provide that service.

<sup>53</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.

<sup>54</sup> 73 FR 5272, codified at 6 CFR part 37.

including, most recently, the COVID-19 pandemic. The last extension was issued in March 2023, when DHS extended the card-based enforcement date from May 3, 2023, to May 7, 2025.

Absent this regulatory action, beginning on that date, all Federal agencies would be prohibited from accepting non-REAL ID-compliant State-issued DL/IDs for REAL ID official purposes.<sup>55</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>56</sup> In accordance with the 2008 Final Rule, enforcement on the card-based enforcement date would 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 would be REAL ID-compliant based on adoption data provided by States, to DHS, through January 2024.<sup>57</sup> The lower-end values represent a monthly adoption rate similar to current rates through card-based enforcement. 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

<sup>55</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>56</sup> Alternate acceptable forms of identification may include, and are not limited to, Enhanced Driver's Licenses (EDL), U.S. passports, and passport cards.

<sup>57</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.

adoption, DHS uses a Compounded Monthly Growth Rate of 1.03 percent (compared to a current 0.56 percent 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 would be non-compliant (either legacy or non-compliant marked DL/IDs). Individuals with non-REAL ID-compliant DL/IDs would 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>58</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>59</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

<sup>58</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 would be able to use a passport as an alternate form of identification.

<sup>59</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.

41 percent.<sup>60</sup> Three years later, in October 2023, the national REAL ID compliance rate increased to approximately 56 percent.<sup>61</sup> Although there has been a modest increase in the number of compliant REAL IDs, the overall percentage as of January 2024 remains unchanged at 56 percent, with the remaining 44 percent of State-issued DL/IDs being noncompliant.<sup>62</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 next 3 years, 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>63</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>64</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>65</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>66</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 would 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, would take steps to ensure they would not be turned away from Federal facilities where a REAL ID would be required for official purposes.

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

<sup>60</sup> 41.08 Percent of REAL ID-compliant IDs in October 2020 = 112,807,718 REAL IDs ÷ 274,611,013 Total IDs in Circulation.

<sup>61</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>62</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>63</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>64</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>65</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>66</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).

implementation of the first phase of the Western Hemisphere Travel Initiative (WHTI).<sup>67</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 airports of entry. 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>68</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>69</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>70</sup> Using this methodology, 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>71 72</sup> DHS requests public comment on the assumptions related to the forecast of REAL ID compliance under the status quo, including the estimate and duration of the spike in REAL ID compliance.

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>73</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>74</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 but requests public comment on the duration and level of decrease in the months following card-based enforcement.<sup>75</sup> DHS estimates that by

<sup>71</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>72</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 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 REAL DL/IDs being REAL ID compliant in May 2025.

<sup>73</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 proposed 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 would likely be a decrease in adoption rates, before a second spike leading up to the May 2027 full compliance date.

<sup>74</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>75</sup> 11.5 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.  $0.91 \text{ Percent CMGR} = ((243,121,919 \text{ REAL IDs in October 2026} \div 218,052,964 \text{ REAL IDs in October 2025}) \wedge (1 + 12) - 1)$ .

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>76</sup> Subsequently, 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>77</sup> Under this assumption, DHS estimates that approximately 87 percent of DL/IDs would be REAL ID-compliant by October 2027.<sup>78</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>79</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>80</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 included DHS's previous 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>81</sup> DHS noted that

<sup>76</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-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>77</sup> 5.75 Percent Increase in REAL IDs =  $(11.5 \text{ Percent Initial Surge} \div 2) \times 100$ . Equivalent to a 0.47 Percent CMGR.  $0.47 \text{ Percent CMGR} = ((257,101,923 \text{ REAL IDs in October 2027} \div 243,121,919 \text{ REAL IDs in October 2026}) \wedge (1 + 12) - 1)$ .

<sup>78</sup> *Supra* note 76.

<sup>79</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>80</sup> DHS anticipates future renewal surges associated with existing REAL-ID holders, and additional initial adoptions associated with population growth.

<sup>81</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>67</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, but also requests public comment on this estimate.

<sup>68</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>69</sup> See footnote 63.

<sup>70</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-base enforcement date, DHS uses the resulting number of REAL IDs in May 2025 to calculate a 1.61 Percent CMGR.  $1.61 \text{ Percent CMGR} = (202,749,772 \text{ REAL IDs in May 2025} \div 164,837,213 \text{ REAL IDs in April 2024}) \wedge (1 + 13) - 1$ .



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 would choose to receive non-compliant licenses because they may not need a REAL ID for [Federal] official purposes or they may already possess a compliant alternate form of identification.<sup>82</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 would 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>83</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>84</sup> Next, DHS applies the 0.56 CMGR over the next 16 months to forecast the percentage of REAL IDs in circulation by May 2025, relative to all IDs in circulation.<sup>85</sup> 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 next 16 months would

be similar to the trends seen over the last year.<sup>86</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>87</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>88</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

<sup>82</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>83</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>84</sup> *Supra* note 76.

<sup>85</sup> 16 months between January 2024 and May 2025 (card-based enforcement begins).

<sup>86</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 proposed 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>87</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>88</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).

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

	Last 12 month trend (0.56 percent CMGR)	Last 4 year trend (1.03 percent CMGR)	75% Assumption (1.85 percent CMGR)
Difference Between Threshold and Forecasted .....	40,043,762 (13.8%)	26,203,971 (9.0%)	0 (0.0%)

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, two 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>89</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>90</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>91</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 and seeks public comment on anticipated adoption and compliance rate impacts.

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

<sup>89</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>90</sup> 0.79 Percent CMGR = (0.557 Percent CMGR (Last Twelve Months) + 1.031 Percent CMGR (Last 48 Months)) ÷ 2.

<sup>91</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.

TABLE 5—REAL ID COMPLIANCE BY SCENARIO—Continued

Month	Baseline	Phased enforcement scenario 1 (constant rates)		Phased enforcement scenario 2 (post enforcement change)	
		Lower bound (%)	Upper bound (%)	Lower bound (%)	Upper bound (%)
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 compliance increases being spread over the two-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>92</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 impacts on a smaller scale could also apply to other Federal agencies. In any scenario, DHS believes a phased enforcement approach would 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 would 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 would 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 proposed rule would require 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>93</sup> To estimate the number of Federal agencies that would submit a phased enforcement plan under this rulemaking, DHS considers 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>94</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 would 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

<sup>92</sup> Transportation Security Administration. (n.d.). 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>93</sup> **Federal Register**. Retrieved from <https://www.federalregister.gov/agencies>. Accessed on May 10, 2023.

<sup>94</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 2nd, 2024.

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 would still be required to enforce REAL ID requirements on the card-based enforcement date, the enforcement would 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. During these sessions, DHS briefed agencies regarding the card-based enforcement date and the proposed 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 would follow guidance put forth by their cabinet-level department. Of the sample of agencies invited,

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 would pursue a phased enforcement plan.

Based on these three factors, DHS assumes that of the 434 Federal agencies, 96 percent would not submit a phased enforcement plan. As such, these agencies would join the Department of Defense and begin full card-based enforcement on May 7, 2025. While individuals would 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>95</sup>

DHS assumes that the remaining 4 percent of Federal agencies would 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>96</sup>

b. Cost of the Proposed Rule

The following summarizes the estimated costs of the proposed 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.

Federal agencies would incur costs to familiarize themselves with the proposed rule, assess whether to implement a phased enforcement plan, and if so, develop a plan. DHS, as the agency administering the REAL ID program, would 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>97</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>98</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>99</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>100</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

<sup>95</sup> DHS notes that most Federal employees and contractors have existing access to their respective facilities via employee identification/access cards and would not require separate submission of a REAL ID for access.

<sup>96</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.

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

<sup>97</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>98</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>99</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. Law 99-272, April 7, 1986).

TABLE 6—COMPENSATION RATES PER HOUR—Continued

Labor category	Annual wage a	Compensation factor <sup>100</sup> b	Annual compensation rate c = a × b	Compensation rate per hour d = c ÷ 2,087
SES .....	176,561	1.345	237,416	113.76

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

DHS Costs

DHS would 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 must publish the list of agencies that have coordinated phased enforcement plans.

DHS would 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 would 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 respective groups of employees contributing to the efforts.<sup>101</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 would also include reviewing phased enforcement plans to ensure compliance with the REAL ID Act and regulations (but would 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>102</sup> DHS uses the midpoint of the range, 16 hours per plan, to calculate DHS coordination costs. 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 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>103</sup> DHS estimates the coordination cost by multiplying the 18 agencies that would 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>104</sup>

DHS would also incur costs to make publicly available a list of agencies that have coordinated phased enforcement plans with DHS. DHS assumes it would publish the list of agencies on a web

page on DHS’s REAL ID website in year two of the analysis, just prior to the card-based enforcement date. DHS SMEs estimate it would 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>105</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 incremental maintenance costs for this one web page would be minimal because DHS would already maintain the DHS REAL ID website. Furthermore, DHS would not need to update the website content frequently because all Federal agencies that voluntarily implement a phased enforcement plan would 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 proposed rule to DHS.

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

Year	Cost to develop guidance a	Cost to coordinate b	Cost to publish list c	Total cost	
				Undiscounted d = a + b + c	Discounted at 2%
2024: 1 .....	\$6,931	\$0	\$0	\$6,931	\$6,795

<sup>100</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.

<sup>101</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>102</sup> Phased Enforcement Plan coordination and review time estimate is less than it would take for a formal approval.

<sup>103</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>104</sup> DHS assumes 4 percent of the 434 Federal agencies would submit phased enforcement plans, or about 18 agencies (see Phased Enforcement Population). DHS coordination cost = 18 agencies × 16 hours × \$84.37 = \$24,298.

<sup>105</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).

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

Year	Cost to develop guidance	Cost to coordinate	Cost to publish list	Total cost	
				Undiscounted	Discounted at 2%
	a	b	c	d = a + b + c	
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 would need to familiarize themselves with the proposed 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 would review the proposed rule. DHS estimates that each person reviewing the rulemaking would spend an average of 1.1 hours.<sup>106</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>107</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>108</sup>

In addition to familiarization, all Federal agencies would need to

determine if based on their specific environment, developing and coordinating a phased enforcement plan is necessary. DHS SMEs estimate Federal agencies would 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 would be split between a GS-15 and SES, with a respective burden of 50 percent and 50 percent. DHS calculates a 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>109</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>110</sup>

Federal agencies that develop phased enforcement plans would incur costs to develop and coordinate their respective plans with DHS. DHS assumes plan

development and coordination would also 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 would 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 would 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>111</sup> DHS multiplies the 18 agencies that develop plans,<sup>112</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>113</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.

<sup>106</sup> DHS estimates a familiarization cost and time burden based on the time required to read all of the words in the notice of proposed rulemaking. DHS also assumes that individuals responsible for reviewing the proposed rule read at a rate of 238 words per minute. 1.09 familiarization time burden = 15,616 words in NPRM ÷ 238 words per minute ÷ 60 minutes.

Brysaert, 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>107</sup> DHS estimates one GS-14 and one GS-15 employee would spend an equal amount of time to review the proposed 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>108</sup> Note: Calculation may not be exact due to rounding.

<sup>109</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 would 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>110</sup> Note: Calculation may not be exact due to rounding.

<sup>111</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>112</sup> DHS assumes 4 percent of the 434 Federal agencies would submit phased enforcement plans, or about 18 agencies (see Phased Enforcement Population).

<sup>113</sup> Note: Calculation may not be exact due to rounding.

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	
				Undiscounted	Discounted at 2%
	a	b	c	d = a + b + c	
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 proposed rule would 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 would 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>114</sup> Nonetheless, this proposed rule would 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 would incur costs related to plan implementation. However, DHS assumes there would be a high degree of variability among such plans, and agencies would have discretion to determine what aspects to include in a phased enforcement plan. Nonetheless, Federal agencies would likely incur costs related to training necessary personnel on the processes and procedures of phased enforcement plans. Federal agencies would 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 two-year total cost of the phased enforcement proposed rule. DHS estimates the total cost of the proposed rule to be \$1.73 million undiscounted and \$1.70 million discounted at 2 percent.

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

Year	Cost to DHS	Cost to Federal agencies	Total cost	
			Undiscounted	Discounted at 2%
	a	b	c = a + b	
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 Proposed 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 would 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, would benefit from more time to implement.

Phased Enforcement of the card-based requirement would provide the public more time to obtain REAL-ID compliant DL/IDs. This may mitigate a potential backlog of applications for States with

<sup>114</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.



lower compliance rates.<sup>115</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>116</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 would 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;

<sup>115</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 of reducing additional negative impacts associated with rapid enforcement.

<sup>116</sup> Delays may be short and straightforward 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.

however, the security benefits associated with full enforcement would also be delayed.

#### b. Alternatives Considered

DHS considered one alternative in addition to the baseline scenario and the proposed rule.

##### 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>117</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, 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

<sup>117</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.

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>118</sup> The WHTI rule imposed new passport 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>119</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 facilities, and aircraft. An additional possible benefit of the

<sup>118</sup> 71 FR 68412 (November 24, 2006).

<sup>119</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>.

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, however, 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 proposed rule 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 one and two years later (Alternative 2). Alternative 2 is distinct from the proposed rule 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 proposed rule. 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 would 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 would continue to be delayed and not enforced in the near future. Thus, the proposed rule maintains the effective date for those Federal agencies able to implement yet also provides flexibilities for those who would benefit from additional time.

#### 1. Regulatory Flexibility Assessment

The RFA of 1980 requires agencies to consider the potential impact of regulations on small businesses, small government jurisdictions, and small organizations during the development of their rules.<sup>120</sup> The Secretary, pursuant to 5 U.S.C. 605(b), certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The NPRM would only be applicable to Federal agencies who under the RFA are not considered small entities. Accordingly, DHS is not required to prepare a regulatory flexibility analysis. See 5 U.S.C. 603, 604.

#### 2. 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 proposed 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 would not be required under UMRA. DHS will publish a final analysis, including its response to public comments, when it publishes a final rule.

#### C. 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 proposed rule under E.O. 13132 and has determined that although this rulemaking may indirectly affect the States, it does not impose

<sup>120</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).

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>121</sup> In fact, the proposed rule is responsive to concerns expressed by State agencies regarding the upcoming deadline and would 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. DHS has determined that the proposed rule is consistent with E.O. 13132.

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

This proposed 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.

#### E. Environmental Analysis

DHS reviews actions to determine whether 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) establishes 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 or environmental impact statement. 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 clarification and notice provided by this proposed 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 proposed rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental impacts. Therefore, the proposed rule is categorically excluded from further NEPA review.

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

#### 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 proposes to amend 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 paragraph (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 a list of agencies that have coordinated phased enforcement plans with DHS pursuant to paragraph (d) of this section.

Dated: September 6, 2024.

**David P. Pekoske,**  
Administrator.

[FR Doc. 2024-20616 Filed 9-11-24; 8:45 am]

**BILLING CODE 9110-05-P**

#### DEPARTMENT OF ENERGY

#### Federal Energy Regulatory Commission

#### 18 CFR Part 35

[Docket No. RM24-9-000]

#### Alliance for Tribal Clean Energy; Notice of Petition for Rulemaking and Intent To Hold Tribal Consultation Meetings

**SUMMARY:** Take notice that, on August 9, 2024, the Alliance for Tribal Clean Energy, pursuant to Rule 207(a)(4) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, filed a petition requesting that the Commission conduct an expedited rulemaking to revise the *pro forma* Large Generator Interconnection Procedures (LGIP) to defer the time at which certain tribal energy developers must post commercial readiness deposits and exempt them from potential withdrawal penalties. The Commission intends to conduct Tribal consultation per the Commission's *Policy Statement on Consultation with Indian Tribes in*

<sup>121</sup> See 73 FR 5272 (Jan. 29, 2008).