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**DEPARTMENT OF HOMELAND SECURITY**

**6 CFR Part 37**

**[Docket No. DHS-2006-0030]**

**RIN 1601-AA92**

**Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Deadline for No Longer Accepting Non-Compliant Driver's Licenses and Identification Cards for Official Purposes**

**AGENCY:** Office of Strategy, Policy and Plans, Department of Homeland Security (DHS).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the REAL ID regulation to clarify that the October 1, 2020, deadline by which Federal agencies may no longer accept non-compliant driver's licenses and identification cards for official purposes applies to all non-compliant cards, including state-issued driver's licenses and identification cards marked to indicate that they may not be used for official Federal purposes. This regulation is consistent with enforcement dates in previous DHS public statements, information posted on the DHS website, and communication with industry stakeholders.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Steve Yonkers, Director, Biometrics and Credentialing/REAL ID Program, Department of Homeland Security, Washington, DC 20528, telephone (202) 447-3274; e-mail [Steve.Yonkers@hq.dhs.gov](mailto:Steve.Yonkers@hq.dhs.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Availability of Rulemaking Document**

You may obtain an electronic copy of the rule using the Internet by--

(1) Searching the electronic Federal Docket Management System (FDMS) web page at <http://www.regulations.gov>; or

(2) Accessing the Government Publishing Office's web page at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR> to view the daily published *Federal Register* edition; or accessing the "Search the Federal Register by Citation" in the "Related Resources" column on the left, if you need to do a Simple or Advanced search for information, such as a type of document that crosses multiple agencies or dates.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

### **I. Background**

The REAL ID Act (the Act) sets minimum security requirements for the issuance and production of State and territory driver's licenses and identification cards in order for Federal agencies to accept these documents for official purposes.<sup>1</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>2</sup>

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<sup>1</sup> Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. 109-13, 119 Stat. 231, 302 (May 11, 2005) (codified at 49 U.S.C. 30301 note).

<sup>2</sup> *Id.*

On January 29, 2008, DHS published a final rule implementing the Act's requirements.<sup>3</sup> The regulation includes both a State compliance deadline and a schedule describing when individuals must obtain a compliant driver's license or identification card in order to use that card for official purposes.<sup>4</sup> DHS refers to these two deadlines as "state-based" and "card-based" enforcement, respectively.<sup>5</sup>

For state-based enforcement, the regulation prohibits Federal agencies from accepting cards issued by States and territories that are not compliant with the REAL ID standards.<sup>6</sup> DHS incrementally enforced this regulatory deadline through a Phased Enforcement Schedule.<sup>7</sup> This phased schedule included initial enforcement at DHS headquarters, followed by Federal facilities and nuclear power plants.<sup>8</sup> The final phase of the enforcement schedule, applicable to individuals boarding federally-regulated commercial aircraft, began January 22, 2018.<sup>9</sup>

Card-based enforcement begins October 1, 2020, pursuant to the regulation.<sup>10</sup> On and after this date, Federal agencies are prohibited from accepting for official purposes a state or territory issued driver's license or identification card unless the card is compliant

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<sup>3</sup> Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Final Rule, 73 FR 5272 (Jan. 29, 2008); codified at 6 CFR part 37 (2008 Final Rule). DHS subsequently issued four other Final Rules amending the regulation, including changes to compliance deadlines and state extension submission dates. *See* 74 FR 49308 (Sep. 28, 2009), 74 FR 68477 (Dec. 28, 2009) (Final Rule, stay), 76 FR 12269 (Mar. 7, 2011), 79 FR 77836 (Dec. 29, 2014). In addition to Final Rules, DHS also published an Information Collection Request in the *Federal Register* in 2016. *See* 81 FR 8736 (Feb. 22, 2016).

<sup>4</sup> *See id.* at §§37.5(b), 37.51(a). *See* 79 FR 77836 (Dec. 29, 2014).

<sup>5</sup> *See* <https://www.dhs.gov/federal-enforcement>.

<sup>6</sup> *See* 6 CFR 37.51(a).

<sup>7</sup> *See* DHS Releases Phased Enforcement Schedule for REAL ID, *available at* <https://www.dhs.gov/news/2013/12/20/dhs-releases-phased-enforcement-schedule-real-id>.

<sup>8</sup> *Id.*

<sup>9</sup> *See* Statement By Secretary Jeh C. Johnson on the Final Phase of REAL ID Act Implementation, *available at* <https://www.dhs.gov/news/2016/01/08/statement-secretary-jeh-c-johnson-final-phase-real-id-act-implementation>.

<sup>10</sup> 6 CFR 37.5(b).

with the REAL ID Act and regulation.<sup>11</sup> This deadline applies to all cards used for official purposes under the REAL ID Act and regulation.<sup>12</sup>

## II. Non-Compliant Cards–Enforcement Deadline

Under the REAL ID Act and regulation, once a State is REAL ID compliant, the State is permitted to continue issuing both compliant and non-compliant cards to residents.<sup>13</sup> The non-compliant cards, however, must be “marked” to clearly distinguish both on their face and in the card’s machine readable zone that they are not acceptable by Federal agencies for official purposes.<sup>14</sup> DHS approved several variations of this non-compliant marking, including, “Not For REAL ID Purposes,” “Not Valid for Federal Identification,” “Not Valid for Federal Official Purposes,” “Not Acceptable for Federal Purposes,” “Not for Federal Identification,” and “Federal Limits Apply.” The non-compliant “marked” cards must also have a unique design or color that clearly distinguishes them from the State’s REAL ID compliant driver’s licenses and identification cards.<sup>15</sup>

The REAL ID regulation provides that beginning October 1, 2020, Federal agencies may only accept for official purposes State or territory-issued licenses and identification cards if those licenses and cards are REAL ID compliant.<sup>16</sup> Although the regulation also notes that Federal agencies will not accept non-compliant “marked” cards

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

<sup>12</sup> *Id.* at § 37.3.

<sup>13</sup> REAL ID Act, sec. 202(d)(11); 6 CFR 37.5, 37.71.

<sup>14</sup> *Id.*

<sup>15</sup> 6 CFR 37.71.

<sup>16</sup> *Id.* at §37.5(b). In addition to state or territory-issued driver’s licenses and identification cards, agencies may accept other forms of identification (for example, a passport), pursuant to their own policies. Individuals should consult in advance with agencies they plan on visiting to obtain information regarding identification requirements.

for official purposes, it does not reiterate the October 1, 2020, deadline.<sup>17</sup> This final rule clarifies that Federal agencies may no longer accept non-compliant marked cards beginning October 1, 2020.

Many REAL ID compliant states offer both compliant and non-compliant cards to their residents. Based on anecdotal information, DHS believes that a significant number of individuals are obtaining non-compliant “marked” cards instead of REAL ID compliant cards. Although non-compliant “marked” cards may be valid for some uses, such as driving, they will not be accepted by Federal agencies for official purposes—including boarding federally-regulated commercial aircraft—beginning October 1, 2020.

DHS is providing this clarification to avoid any potential public confusion as the final REAL ID deadline for card-based enforcement approaches. The clarification in this final rule is consistent with DHS’s previous public messaging of the regulation’s enforcement dates. For example, through press statements, website postings, and stakeholder outreach, DHS explained that Federal agencies may continue to accept all non-compliant cards issued by compliant states and territories (or those with an extension) until October 1, 2020.<sup>18</sup> The Transportation Security Administration (TSA) also engaged in outreach to stakeholders regarding compliance dates. This outreach included updates during regular briefings for airports, air carriers, and stakeholder groups such as Airports Council International-North America, and the American Association of Airport Executives. In addition, TSA posted REAL ID updates on the Homeland Security Information Network), which is accessible by all regulated domestic airports and air

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<sup>17</sup> See *id.* at §37.5(c), “Federal agencies cannot accept for official purpose driver's licenses and identification cards issued under § 37.71 of this rule.”

<sup>18</sup> See, e.g., Statement by Secretary Johnson, *supra* n. 9. See also REAL ID Federal Enforcement, Frequently Asked Questions, available at <https://www.dhs.gov/federal-enforcement> and <https://www.dhs.gov/real-id-public-faqs>.

carriers. DHS is continuing efforts to raise awareness with stakeholders and the public concerning the October 1, 2020, deadline.

Some Federal agencies may decide not to accept non-compliant “marked” cards for access to their Federal facilities sooner than the regulatory deadline pursuant to their own authorities and requirements. For example, the U.S. Department of Defense (DoD) recently finalized an update to its DoD-wide installation security policy that includes a prohibition on the acceptance of non-compliant “marked” cards for purposes of accessing its facilities and installations. Because Federal agencies may only accept compliant State or territory-issued driver’s licenses and identification cards for official purposes beginning October 1, 2020, no agency will be able to accept non-compliant cards, including non-compliant “marked” cards for such purposes beginning on that date.<sup>19</sup>

Many individuals rely on their State or territory-issued driver’s license or identification card as identification to pass through TSA airport security checkpoints. Beginning October 1, 2020, travelers presenting a non-compliant State or territory-issued driver’s license or identification card to TSA will be asked to provide an acceptable form of identification.<sup>20</sup> If the traveler cannot produce an acceptable form of identification or TSA cannot otherwise verify the individual’s identity, the individual will not be permitted through the security checkpoint.

DHS encourages individuals to obtain REAL ID compliant cards as soon as possible, particularly if they wish to use a State or territory issued driver’s license or

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<sup>19</sup> In addition to licenses and identification cards that are marked non-compliant in accordance with 6 CFR 37.71, licenses and identification cards issued before a state’s REAL ID compliance determination and that were not issued in accordance with the REAL ID standards (sometimes referred to as “legacy” cards) are also noncompliant and will not be accepted for official purposes beginning on October 1, 2020.

<sup>20</sup> TSA provides a list of identification currently acceptable at the checkpoint on its website. *See* <https://www.tsa.gov/travel/security-screening/identification>.

identification card to board a federally-regulated commercial aircraft, or for any other official Federal purpose. DHS posted images of both compliant and non-compliant “marked” cards on its website, at <https://www.dhs.gov/real-id#>, to assist individuals in determining whether their driver’s license or identification card is REAL ID compliant. A REAL ID compliant card includes a compliance marking (which is a star on the upper portion of the card). Non-compliant “marked” cards include one of several warnings indicating that they are not acceptable for official purposes. Individuals should check with their Department of Motor Vehicles to learn how to obtain a REAL ID compliant license for the applicable State or territory.

### **III. Regulatory Analysis**

#### *A. Administrative Procedure Act*

DHS takes this action without prior notice and public comment and with an effective date of less than 30 days after publication in the *Federal Register*.

Sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. 553) authorize agencies to dispense with certain notice procedures for rules when they find “good cause” to do so. Under section 553(b), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that these procedures are “impracticable, unnecessary, or contrary to the public interest.” Section 553(d) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553.

This final rule is consistent with DHS’s previous messaging regarding the regulation’s enforcement dates in public statements, information posted on the DHS website, and communication with industry stakeholders. In these communications, DHS

explained that all non-compliant cards issued by compliant states and territories (or those with an extension) will be accepted until October 1, 2020. This final rule does not change when individuals will need to obtain a compliant driver's license or identification card. All individuals still have until October 1, 2020, to obtain a compliant card for official purposes, as defined by the Act and regulation. Given that this final rule simply clarifies what is already widely communicated, and does not change the date by which individuals may no longer use a non-compliant "marked" card, DHS assesses no additional burden to any party from this final rule.

Based on the above, DHS finds that notice and public comment to this final rule are impracticable, unnecessary, and contrary to the public interest.

*B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires Federal agencies to consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulation. DHS determined that this rule calls for no new collection of information under the PRA. Information collection requirements associated with this final rule previously have been approved by OMB and have been assigned OMB Number: 1601-0005.

As protection provided by the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

### *C. Executive Orders 12866 and 13563 Assessment*

Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

In conducting these analyses, DHS determined that this rule does not constitute a “significant regulatory action” under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB has not reviewed this rule. DHS anticipates that the clarification of the existing enforcement date in this final rule will not increase REAL ID-related compliance costs to the affected agencies or to the public.

### *D. Regulatory Flexibility Act Assessment*

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

### *E. Executive Order 13132 (Federalism)*

A rule has implications for federalism under Executive Order 13132 if it has a substantial direct effect on State or local governments and would either preempt State law

or impose a substantial direct cost of compliance on them. DHS analyzed this rule under this Order and determined it does not have these implications for federalism.

*F. Unfunded Mandates Assessment*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Unfunded Mandates Reform Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100 million (adjusted for inflation) or more in any one year. This final rule will not result in such an expenditure.

*G. Executive Order 13175 (Tribal Consultation)*

This rule does not have Tribal Implications under Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

*H. Executive Order 13211 (Energy Impact Analysis)*

DHS analyzed this rule under Executive Order 13211 and determined that it is not a “significant energy action” under that Order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

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

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

## **The Amendments**

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

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

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

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

#### **Subpart A—General**

2. Revise § 37.5(c) to read as follows:

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

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(c) Until September 30, 2020, Federal agencies may accept for official purposes a driver’s license or identification card issued under § 37.71. On or after October 1, 2020, Federal agencies shall not accept for official purposes a driver’s license or identification card issued under § 37.71.

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**Kevin K. McAleenan,**

**Acting Secretary of Homeland Security.**

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