



DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 37

[Docket No. DHS-2020-0028]

Public Meeting and Extension of Comment Period on Request for Information:

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

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

ACTION: Notification of public meeting and request for comments; extension of comment period.

SUMMARY: On April 19, 2021, the Department of Homeland Security (DHS) published a request for information (RFI) soliciting comments from the public to help inform a potential rulemaking that would amend DHS regulations to set the minimum technical requirements and security standards for mobile or digital driver's licenses/identification cards (collectively "mobile driver's licenses" or "mDLs") to enable federal agencies to accept mDLs for official purposes under the REAL ID Act and regulation. In advance of the closing date for comments submitted in response to the RFI, DHS will hold a virtual public meeting on June 30, 2021, to answer questions regarding the RFI and to provide an additional forum for comments by stakeholders and other interested persons regarding the issues identified in the RFI. DHS is also extending the comment period for the RFI by 42 calendar days to provide an additional period for comments to be submitted after the public meeting.

DATES: *Virtual public meeting:* The virtual public meeting will be held on Tuesday, June 30, 2021, from 10:00 a.m. to 1:00 p.m. (EDT). Requests to attend the meeting and request for accommodations for a disability must be received by June 25, 2021.

Comments on request for information: The comment period on the RFI is extended by 42 days, from June 18, 2021, to July 30, 2021.

ADDRESSES: The virtual public meeting requires pre-registration. To register, interested persons must visit the following website:

<https://app.smartsheet.com/b/form/1a98299bbeeb4e6f988ede29f36d222b> and provide the required information. Virtual attendance information will be provided after registration.

Participants and persons unable to join the meeting may submit comments electronically through the Federal eRulemaking portal at <http://www.regulations.gov>. Use the Search bar to find the docket, using docket number DHS-2020-0028. See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Steve Yonkers, Director, REAL ID Program, Office of Strategy, Policy, and Plans, United States Department of Homeland Security, Washington, DC 20528, Steve.Yonkers@hq.dhs.gov, (202) 447-3274, or George Petersen, Senior Program Manager, Enrollment Services and Vetting Programs, Transportation Security Administration, Springfield, VA 20598, George.Petersen@tsa.dhs.gov, (571) 227-2215. Please do not submit comments to these addresses.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

DHS invites interested persons to comment on the RFI by submitting written comments, data, or views. See **ADDRESSES** above for information on where to submit comments. Except as stated below, all comments received may be posted without change to <http://www.regulations.gov>, including any personal information you have provided.

Commenter Instructions

DHS continues to invite comments on any aspect of RFI through the extended comment period, and welcomes any additional comments and information that would promote an understanding of the broader implications of acceptance of mobile or digital driver's licenses by Federal agencies for official purposes. This request includes comments relating to the economic, privacy, security, environmental, energy, or federalism impacts that might result from a future rulemaking based on input received as a result of the RFI. In addition, DHS included specific questions in the RFI immediately following the discussion of the relevant issues. *See* Section IV of the RFI at 86 FR 20325-26. DHS asks that each commenter include the identifying number of the specific question(s) to which they are responding. Each comment should also explain the commenter's interest in the RFI and how their comments should inform DHS's consideration of the relevant issues.

DHS asks that commenters provide as much information as possible, including any supporting research, evidence, or data. In some areas, DHS requests very specific information. Whenever possible, please provide citations and copies of any relevant studies or reports on which you rely, as well as any additional data which supports your comment. It is also helpful to explain the basis and reasoning underlying your comment. Although responses to all questions are preferable, DHS recognizes that providing detailed comments on every question could be burdensome and will consider all comments, regardless of whether the response is complete.

Handling of Confidential or Proprietary Information and SSI Submitted in Public Comments

Do not submit comments that include trade secrets, confidential business information, or sensitive security information¹ (SSI) to the public regulatory docket. Please submit such comments separately from other comments on the RFI. Commenters submitting this type of information should contact the individual in the **FOR FURTHER INFORMATION CONTACT** section for specific instructions.

DHS will not place comments containing SSI, confidential business information, or trade secrets in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. DHS will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access and place a note in the public docket explaining that commenters have submitted such documents. DHS may include a redacted version of the comment in the public docket. If an individual requests to examine or copy information that is not in the public docket, DHS will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and DHS's FOIA regulation found in 6 CFR part 5.

Background

The REAL ID Act of 2005 and the DHS implementing regulation set minimum requirements for state-issued driver's licenses and identification cards accepted by federal agencies for official purposes, which the Act defines as accessing federal facilities, boarding federally regulated commercial aircraft, entering nuclear power plants, and any other purposes that the Secretary shall determine.² The REAL ID Modernization Act, enacted in December 2020, clarifies that the REAL ID Act applies to mobile or digital

¹ "Sensitive Security Information" or "SSI" is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

² The REAL ID Act of 2005—Title II of division B of the FY05 Emergency Supplemental Appropriations Act, as amended, Public Law 109–13, 49 U.S.C. 30301 note; REAL ID Driver's Licenses and Identification Cards, 6 CFR part 37.

driver's licenses that have been issued in accordance with regulations prescribed by the Secretary.³

On April 19, 2021, DHS published an RFI to solicit comments from the public to help inform a potential rulemaking that would amend 6 CFR Part 37 to set the minimum technical requirements and security standards for mDLs to enable federal agencies to accept mDLs for official purposes under the REAL ID Act and regulation.⁴ On April 27, 2021, DHS announced a 19-month extension of the REAL ID Act full enforcement date due to circumstances resulting from the COVID-19 pandemic.⁵ Beginning on May 3, 2023, federal agencies may only accept driver's licenses and state-issued identification documents for official purposes that are REAL ID-compliant and issued by a REAL ID compliant state.⁶

Specific Issues for Discussion

The RFI lists several issues for which DHS seeks information and comment.⁷ At the public meeting, DHS seeks to focus on several key areas in particular that DHS must explore with respect to a potential rulemaking to amend the REAL ID regulation. The comments at the meeting need not be limited to these issues, and DHS invites comments on other aspects of mDLs. The key issues are:

- (1) **Security risks** arising from the use of mDLs by federal agencies for official purposes, solutions to mitigate such risks, and digital security features to provide security that enable mDLs to provide security that is commensurate to that of physical security features for physical driver's licenses.

³ REAL ID Modernization Act, Title X, Div. U of the Consolidated Appropriations Act, 2021, Pub. L. 116-260 (Dec. 27, 2020).

⁴ See "Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Mobile Driver's Licenses" (86 FR 20320).

⁵ Press Release, DHS Announces Extension of REAL ID Full Enforcement Deadline (April 27, 2021), available at: <https://www.dhs.gov/real-id/news/2021/04/27/dhs-announces-extension-real-id-full-enforcement-deadline>. On May 3, 2021, DHS published an Interim Final Rule to amend the deadlines in 6 CFR 37.5 to effectuate the extension. See 86 FR 23237 (May 3, 2021).

⁶ See 6 CFR 37.5(b) and (c), as amended by 86 FR at 23240.

⁷ See 86 FR at 20325-26.

- (2) **Privacy concerns** arising from mDL transactions, and digital security features to protect the privacy of information submitted in mDL transactions.
- (3) Concerns arising from the adoption, in a proposed regulation, of certain requirements set forth in industry standard **ISO/IEC 18013-5**; proposals to address issues that are important to mDL transactional security but that are not included, undefined, or ambiguous in the standard, which if addressed by a federal regulatory framework, would improve interoperability and security; initial and ongoing costs to a stakeholder to implement this standard.
- (4) Digital security features and other protocols to enable secure **provisioning** of mDLs; estimated costs for a state Department of Motor Vehicles (DMV) to implement in-person or remote provisioning
- (5) Advantages and disadvantages of mobile device hardware- and software-based security architecture to **store** mDL data on a mobile device.
- (6) Proposals regarding appropriate periods for mDLs to **synchronize** with their issuing database; estimated costs for a stakeholder to implement such synchronization periods
- (7) The appropriateness of **Public Key Infrastructure** to provide the level of privacy and security sufficient to implement a secure and trusted operating environment; estimated costs for a DMV or Federal agency to implement necessary IT security infrastructure.
- (8) **Estimated costs and savings**, to an individual to obtain an mDL, including time and effort required to obtain an mDL, and fees charged by a DMV.

For more information on the mDLs and the issues for which DHS solicits comments, please see the RFI.⁸

⁸ 86 FR at 20325-26.

Participation at the Meeting

Due to the limits of the virtual platform, meeting capacity is limited, and slots will be filled on a first-come, first served basis. Members of the public interested in attending must register no later than June 25, 2021. When registration is confirmed, registrants will be provided the virtual meeting information/teleconference call-in number and passcode. Registrants are responsible for paying associated costs (long-distance charges, cell phone fees, internet connectivity) for participation.

The meeting is expected to begin at 10:00 a.m. and end by 1:00 p.m. (EDT). Following an introduction by DHS, members of the public will be invited to ask clarifying questions or present their views.

Anyone wishing to present an oral statement must indicate their request in their registration. DHS will schedule these requests on a first come, first served basis to the extent permitted by time. All participants may address statements, questions, comments during the virtual meeting's specified "open floor" times, in the order they present themselves to the moderator. To accommodate as many questions as possible, the amount of time allocated to each speaker may be limited by DHS.

Public Meeting Procedures

DHS will use the following procedures to facilitate the meeting:

(1) There will be no admission fee or other charge to attend or to participate in the meeting. The meeting will be open to all persons who are registered. DHS will make every effort to accommodate all persons who wish to participate, but admission will be subject to virtual meeting capacity constraints. The meeting may adjourn early if DHS determines it is appropriate, *e.g.*, scheduled presentations are complete and there appear to be no remaining questions from meeting participants.

(2) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, will be limited to a 5-minute statement and scheduled on a first-come, first-served basis.

(3) Any speaker prevented by time constraints from speaking will be encouraged to submit written remarks to the docket, which will be made part of the record.

(4) For information on services for individuals with disabilities or to request technical assistance at the meeting, please email DHSMeetingSupport@icf.com by June 25, 2021.

(5) Representatives of DHS will preside over the meeting.

(6) The meeting will be recorded by a court reporter. The transcript will be made available at www.regulations.gov. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly.

(7) Statements made by DHS representatives are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a DHS representative is not intended to be, and should not be construed as, DHS's official position.

(8) The meeting is designed to invite public views and gather additional information. No individual will be subject to cross-examination by any other participant; however, DHS representatives may ask questions to clarify a statement.

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