

disproportionate impact on certain groups. There is no evidence that many of these groups lack the documents required to establish an individual's name, date of birth, SSN, and lawful status. Should States determine that the economically disadvantaged individuals are experiencing a hardship in obtaining the necessary documents or cannot afford the license fee established by the State, nothing in the rule precludes a State from offering the driver's license or identification card or copy of a birth certificate at a reduced cost or waiving the fee altogether. In addition, the final rule enables States to establish an exceptions process for a variety of situations and circumstances, including circumstances where a particular suite of documents are unavailable following a natural disaster.

13. REAL ID Will Be a Burden to End-Users

Comment: Two commenters wrote that the responsibility for validating REAL ID cards is a government function and should not be delegated to air carriers. Instead, DHS should provide "readers," similar to those used by Immigration and Customs Enforcement, for use at airports. Two commenters requested the rule make clear that the current option regarding individuals submitting to a more extensive physical search rather than showing ID before passing through airport security will not be affected by the REAL ID Act.

Response: Neither the NPRM nor this final rule govern what documents should be accepted or procedures followed at airports and Federal facilities when an individual is unable to present a REAL ID-compliant document as his or her form of identification. DHS does not agree with the comment that validating a REAL ID is exclusively a government function, and believes that a wide variety of entities would want to validate a REAL ID document before accepting it as a valid form of identification.

Comment: Another commenter asked how end-users could continue routine functions if, after 2013, State-issued driver's licenses do not meet REAL ID standards, since REAL ID would be required for access to nuclear facilities. If a State is not in compliance or elects not to participate in the REAL ID program, access by persons with licenses from those States would be prohibited, and the ability of the plants to function could be seriously impaired. A commenter mentioned that an access authorization program supervised by the Nuclear Regulatory Commission is already in place. One commenter wrote that while commercial nuclear power

plants are licensed by the NRC, they are privately owned and operated and security is the responsibility of the owner/operator, not the Federal government; therefore, they should be exempted from the final rule requirements.

Response: Since the REAL ID Act specifically included access to a nuclear facility as an example of an "official purpose," DHS cannot simply exempt nuclear power plants from the scope of the rules. DHS agrees with the commenter that access authorization programs supervised by the Nuclear Regulatory Commission may provide sufficient safeguards concerning access to nuclear facilities. The NRC-supervised programs may set forth alternative procedures or acceptable forms of identification for persons seeking access to a nuclear facility; however, if an individual is presenting a driver's license or State-issued identification card, it must be REAL ID-compliant pursuant to the REAL ID Act.

Comment: One commenter expressed concern about the impact of REAL ID on commercial truck drivers, and suggested that drivers without REAL ID identification cards would be far less valuable to carriers. One commenter wrote that motor carriers domiciled in non-compliant States would be at a severe disadvantage in finding drivers, and commercial drivers themselves will have to absorb the additional costs of REAL ID, including increased fees to obtain licenses and lost income.

Response: Any additional fees that DMVs may charge to obtain a REAL ID document will not fall disproportionately on commercial drivers. Nothing in the rules precludes companies employing commercial drivers from subsidizing the costs incurred by the drivers they employ. Furthermore, a REAL ID driver's license is not the sole document a commercial driver could use to access a Federal facility. Since a Federal facility may accept other forms of identification or establish alternative procedures to admit individuals with non-compliant licenses to Federal facilities, DHS does not believe that commercial driver's license holders will be disadvantaged by living in a State that chooses not to comply with the REAL ID requirements.

B. Scope, Applicability, and Definitions

Comment: Two State commenters and the AAMVA requested clarification of the terms verification, authentication, and validation. Two commenters asked for a clear definition of the term "Federal facility." One commenter wrote that it is a statutory requirement to consult with the U.S. Department of

Transportation in developing new definitions for driver licensing terms. Commenters also requested clarification regarding what age individuals will be required to obtain a REAL ID. It was suggested that the age requirement should be consistent with the age airlines require passengers to have their own identification documents. One commenter expressed the need to inform the public, in detail, how individuals will be impacted by not obtaining a REAL ID.

Response: DHS agrees that the term "verification" should be clarified. The final rule defines "verify" to include two processes: Ensuring that the source document is genuine and has not been altered and that the identity data contained on the document are valid.

DHS does not believe that the term Federal facility needs further definition and cannot predict how individuals without a REAL ID-compliant driver's license or identification card (either through their own choice or because a State does not issue compliant documents) will be impacted. DHS notes that individuals without a REAL ID-compliant document will still be able to enter Federal facilities and board commercial aircraft, and these rules cannot determine what alternative documents are acceptable for those purposes. DHS believes that each State can determine the appropriate minimum age to issue a REAL ID-compliant driver's license or identification card to its residents and does not believe that a single Federal standard is necessary in this area.

1. Definition of "Official Purpose"

Comment: Two States wrote that since many Federal areas require identification, all "official purposes" must be clearly stated in the rule so that States can make informed decisions on whether to be REAL ID-compliant based upon the impact on the State budget versus the negative convenience impact on its citizens. Numerous commenters wrote that the definition of "official purpose" captures the requirements of the REAL ID Act and they are opposed to expanding the definition. Commenters stated that, should DHS decide on expanding the definition of "official purpose," it should not be done without an open comment period. One commenter wrote that DHS has arbitrarily chosen to restrict the required presentment of REAL ID-compliant documents to a much smaller set of official uses than was contemplated by Congress, and this contradicts and undermines DHS's statutory mandate to enforce Federal immigration law. One State suggested that DHS create a list of

applicable Federal facilities. One commenter voiced concern over possible expansion of the definition to include Federally licensed firearms dealers and that residents of non-compliant States could be blocked from purchasing firearms. One commenter encouraged DHS to consider all the ways in which REAL ID could be used and not limit it to boarding of Federally-regulated commercial aircrafts, entering of Federal facilities, and nuclear power plants.

Response: DHS agrees with those commenters who noted that the proposed definition of “official purpose” is consistent with Congressional intent. DHS is neither expanding nor limiting the definition further in this rule. DHS will continue to consider additional ways in which a REAL ID license can or should be used and will implement any changes to the definition of “official purpose” or determinations regarding additional uses for REAL ID consistent with applicable laws and regulatory requirements. DHS does not agree that it must seek the approval of Congress as a prerequisite to changing the definition in the future (except of course to remove one of the three statutorily-mandated official purposes) as § 201(3) of the Act gives discretion to the Secretary of Homeland Security to determine other purposes.

DHS does not intend that a REAL ID document become a de facto national ID based on the actions of others outside of DHS to limit the acceptance of an identity document to a REAL ID-compliant driver’s license or identification card.

Comment: Commenters proposed other acceptable documents, including over-the-counter interim identification cards and tribal identification documents that should be accepted for official purposes. Another State noted that Canadian citizens drive to the United States and fly out of local airports and that it would benefit them economically to accept Canadian passports as identification cards for Federal purposes. AAMVA wrote that for States choosing not to comply with REAL ID, an alternate form of identification is essential to ensure that commercial carriers and drivers who deliver to Federal facilities continue to have unimpeded access to these facilities and that interstate commerce is not impeded. One commenter wrote that tribal ID issues must be incorporated into the regulation at the outset. One commenter wrote that DHS’s disallowing of Transportation Worker Identification Credential (TWIC) as an alternative to a REAL ID document

because of “slow progress” in implementing the TWIC program will be invalid if DHS extends REAL ID implementation. The commenter suggests permitting use of TWIC because like REAL ID, TWIC also is a Federally-vetted identification card.

Response: As noted in other responses, the REAL ID rule does not control what other, if any, alternative documents can be accepted by Federal agencies where an individual seeks to present an identification document other than a State-issued driver’s license or identification card (which, under the Act and this final rule, must be REAL ID-compliant).

2. Other Definitions

Comment: One State asked for several amendments to the rule definitions. Specifically, the State asked that “ability to affect” be clarified to mean “direct ability to affect”; that digital photograph should read as “a digitally printed color reproduction of the face of the holder of the license or ID card”; that a definition be added for foreign passports; clarification that providing a foreign passport with a valid visa is an acceptable document for validating a REAL ID; clarification that “principal residence” is not a residency requirement, but merely defines principal address; and clarification that Secretary means “Secretary of the U.S. Department of Homeland Security.” AAMVA suggested that the term “reissued” be amended to include “only when material changes are required such as name changes.”

Response: DHS agrees that the term “principal residence” needs additional clarification and has defined the term in the rule to mean the location where a person is currently domiciled (i.e., presently resides even if at a temporary address) in conformance with the residency requirements of the State of domicile, if such requirements exist. DHS agrees with the comment regarding material changes and the rule now states that a State may conduct a remote reissuance if State procedures permit as long as there has been no material change in the applicant’s information since prior issuance. DHS believes that the definitions of “ability to affect” and “foreign passport” do not need further clarification. DHS decided against the proposed definition of “digital photograph” since certain high-security features work best with a black and white photograph and DHS does not want to preclude States from using such technology to secure their licenses.

C. Compliance Period

Comment: Many commenters, including at least twenty States and AAMVA, wrote that the compliance period is too short and is impossible to meet. Specific reasons cited for why the compliance period is too short included the following: The compliance deadline fails to take into account the States’ cycles for valid driver’s licenses and identifications; systems that DMVs must use to verify documents under REAL ID either do not exist or are not operational; the compliance deadline compels States to take on the unfunded expenses of hiring and training more staff and making significant infrastructure changes, waiting times for customers at DMVs will increase, the compliance deadline reflects a failure to understand how State legislatures work and how complex the process is for issuing State driver’s licenses and identification cards, and compliance deadline leaves insufficient time for States to appropriate funds for the cost of implementing REAL ID. Commenters also wrote that States have no incentive for requesting such extensions, and several State legislatures have declined to even attempt compliance with the Act or the rule.

Response: DHS agrees with the commenters that States would be unable to fulfill the entire range of REAL ID regulatory requirements by May 11, 2008. Therefore, DHS is taking several measures to reduce the impact of the rule. First, States meeting specific DHS benchmarks for progress toward REAL ID compliance will be granted additional extensions until no later than May 10, 2011. Second, DHS is adopting an age-based approach to REAL ID enrollment and will only require individuals born after December 1, 1964 to enroll by December 1, 2014, in order to receive cards acceptable for official purposes on December 1, 2014. Thus, individuals aged fifty or older on December 1, 2014, will not be required to be enrolled until December 1, 2017. These measures will substantially reduce the impact of REAL ID enrollment on DMV operations and budgets.

DHS has chosen this approach as the most effective and expeditious way to achieve the purposes of the Act. DHS believes that this approach balances the strong national security objective of improving the reliability of identification documents presented for official purposes, including the boarding of commercial aircraft, with the needs of the States to spread out their compliance costs over a greater period of time and to obtain the