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VIA Federal eRulemaking Portal:

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Docket Management Facility (M-30)
U.S. Department of Homeland Security
1200 New Jersey Avenue SE
West Building Ground Floor
Room W12-140
Washington, DC 20590-0001

RE: 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

Proposed Rule by the Transportation Security Administration *and* the U.S. Department of Homeland Security, posted on September 12, 2024

Dear Mr. David P. Pekoske, TSA Administrator:

Citizens' Council for Health Freedom (cchfreedom.org) is taking this opportunity to comment on the above- referenced Notice of Proposed Rulemaking (NPRM) filed in the Federal Register [2024-20616 (89 FR 74137)] on Thursday, September 12, 2024.

CCHF POSITION: TSA and DHS must withdraw the proposed rule. It is unconstitutional.

As a freedom-focused health policy organization with a mission to protect patient and doctor freedom, we write to oppose continued implementation of the unconstitutional REAL ID, the plan to inflict "progressive enforcement," and the proposed two-year phased approach of "progressive consequences," aimed at coercing citizens to submit to a federal National ID system that violates individual and states' rights under the Constitution of the United States of America. In 2005, U.S. Senator Lamar Alexander rightly called REAL ID a **National ID** during the Senate debate.

After REAL ID became law in the dark of the night, and after many state legislatures figured out Congress's plan to usurp states' rights, the plan to deceive the American people about the REAL ID and the REAL ID system ran deep, directed by the little-known 5-member REAL ID Program Office deep inside the U.S. Department of Homeland Security. As noted by Magdalena Krajewska at Wingate University in an article titled "*Implementing the REAL ID Act: Intergovernmental Conflict and Cooperation in Homeland Security Policy*," the REAL ID Program Office at the DHS

"was renamed the Office of State-Issued ID Support (OSIIS). . . . As one interviewee explained, the Public Affairs Office at the DHS 'insisted on changing the name to the Office of State-Issued ID Support. This was the one thing they insisted on. It speaks volume to what they wanted to get away from. They really wanted to move from [the perception of] national [identification documents] to state-issued [identification documents]."

REAL ID is Unconstitutional

The Constitution of the United States limits federal government reach and power. A National ID is not permitted under the Constitution, yet DHS has awarded **\$263 million in grant funds to states**, which the proposed rule states “yielded significant progress towards full REAL ID implementation.” Neither Congress nor federal agencies have the legal authority to impose or fund the REAL ID program. Nor are they authorized to use enforcement to secure citizen submission to the REAL ID card, system, law, or regulations at any level. As legislators from Pennsylvania wrote in a January 24, 2017 letter to President Trump: **“By ‘federalizing’ driver licensing the REAL ID Act usurps this power which has been reserved to the states.”** The federal overreach in this proposal is also a usurpation – violation – of individual rights, most obviously under the Fourth Amendment and the Tenth Amendment.

As evidence of its unconstitutional nature, as soon as the first proposed REAL ID regulation emerged in January 2008, many states refused to implement it, citing states’ rights under the Tenth Amendment. Some states, such as Missouri, passed laws to prohibit conformity. However, DHS, state DMV agencies, and the American Association of Motor Vehicle Administrators (AAMVA) **colluded to bypass these objections and statutory prohibitions** enacted by elected officials who took an oath to protect the rights of the American people. Per Magdalena Krajewska:

“One interviewee said that although some governors prohibited their states from becoming compliant with REAL ID, those states still implemented perhaps 95 percent of the Act’s requirements. State DMVs would use the language of being “consistent” with the Act’s requirements, rather than “compliant,” thereby avoiding embarrassing their governors, while at the same time making the licenses more secure.

“Still, both the DMV chiefs and the federal REAL ID Office had to be careful, not least because some governors not only barred state participation in the program, but also directed their Departments of Justice and DMVs to report to the governor any attempts by DHS to secure REAL ID implementation. Some DMVs were quite specific about how much they wanted to share with their governor’s office, as one interviewee explained.

“When governors knew only some of what was happening at the operational level, they could still ‘say whatever they wanted to say [about their opposition to REAL ID], and we could [still make driver’s licenses more secure].’”¹ [Emphasis added.]

This account of ongoing administrative collusion shows how state and federal bureaucrats worked on their own outside the law to build the REAL ID system. Thus, the entire REAL ID program, surreptitiously imposed by bureaucrats, is a multi-level violation against the American people.

The “You Can’t Fly” Lie

During the high-intensity 2016 election, the Obama administration suddenly declared that people would not be able to board an airplane if they did not have a REAL ID. This was never true.

¹ “Implementing the REAL ID Act: Intergovernmental Conflict and Cooperation in Homeland Security Policy,” Magdalena Krajewska, Wingate University, Publius, May 7, 2020: <https://academic.oup.com/publius/article/50/3/398/5831550>

DHS regulations officially declared that people without a REAL ID could still fly. Various other identification documents, including passports, listed at the TSA website, could be used to fly. However, that was not the message from the Obama administration or the news media. It took several more years until words referencing “or other acceptable ID” were added to government-approved public advertisements in airports and elsewhere — often in much smaller print.

In the meantime, after being sufficiently convinced by the “you can’t fly” lie told to Americans (disinformation at the highest level) or the calls from fearful constituent coming into their offices, state legislators caved to the unconstitutional demands of the federal government. As a result, according to the proposed rule, approximately 56% of driver’s licenses and ID cards in the pockets and purses of Americans are REAL ID-compliant — and every one of them unconstitutional.

Federal Crackdown Proposed

Now, after issuing a plethora of deadlines and extensions since 2008, TSA and DHS are preparing to crack down on individual Americans who have refused REAL ID—those who know they have a right to not submit to a federal government determined to violate their personal and constitutional rights; those who haven’t wanted to face, or have been offended by, the hassle of gathering all their primary identification documents to recertify as an American citizen; and those who have no idea REAL ID exists. For the record, the following are key dates and the “state-based” and “card-based” deadlines issued by the federal government since 2005 as TSA and DHS “cooked the frog slowly”:

- REAL ID Act Enacted in 2005 (Public Law 109-13, 119 Stat. 231,302 (May 11, 2005) codified at 49 U.S.C. 30301 note)²
- REAL ID rule released in 2008
- May 11, 2008, deadline for states, but could request extension to December 31, 2009
- May 11, 2011, deadline for second state compliance extension
- On March 7, 2011, extended deadline for states to be compliant to January 15, 2013
- On December 29, 2014, extended state deadline for documents to October 1, 2020
- 2014-2015 (the deadline for state compliance for accessing federal facilities)
- 2018 deadline for states to become compliant for boarding flights
- On April 27, 2020, extended individual/card-based deadline from Oct.1, 2020 to October 1, 2021
- On May 31, 2021, extended individual/card-based compliance deadline to May 3, 2023
- On December 5, 2022, extended individual/card-based deadline to May 7, 2025

Initially focused on state compliance and having given several extensions for individual (card-based) compliance during the COVID pandemic, DHS and TSA are now planning to aggressively target Americans with consequences for the next two years, starting on May 7, 2025.

Progressive Consequences & Enforcement

DHS and TSA appear to want individuals deemed to be “non-compliant” to **suffer until they submit**. The proposed regulation does not shy away from detailing its plans to make Americans submit to the unconstitutional REAL ID program or experience escalating discomfort:

“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

² <https://www.govinfo.gov/content/pkg/USCODE-2023-title49/pdf/USCODE-2023-title49-subtitleVI-partA-chap303-sec30301.pdf>

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. [Emphasis added.]

“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. [Emphasis added.]

Three Strikes, You’re Out?

DHS offers several “compliance models” to convince citizens to submit to REAL ID without immediately losing access to the freedoms they already have today. The proposed rule states:

“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.”

One example is the **Informed Compliance Model** (non-compliant individual would be informed but allowed access) or the **Informed Compliance with Limits** model, where agencies would

“limit the number of times an individual may present a noncompliant DL/ID for an official purpose. If 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...if they have no other acceptable form of identification.” [Emphasis added.]

This model would include gathering personal information and tracking the number of times a person presents a non-REAL ID-acceptable identification card. This model would also presumably include allowing people to miss flights they’ve already paid for (financial consequence of non-compliance). The TSA and Homeland Security have no authority to take these actions.

Federal Agencies Cannot Withhold God-Given Freedoms

Americans begin their lives with a very long list of God-given rights the federal government is not authorized to circumscribe. TSA states that access we have today, such as to the public areas of the Smithsonian and the National Park Service are “presently granted without the need for an individual to present a form of identification for entry.” The term “presently granted” assumes

freedoms we have today are only ours because the government has granted them to us. But as members of the Missouri Senate wrote to Attorney General Josh Hawley:

“We believe the REAL ID Act of 2005 sets a dangerous precedent to empower a bureaucracy to unilaterally promulgate rules that prohibit our citizens from enjoying rights guaranteed by the United States Constitution.” (letter, February 14, 2017)

Expanded Purposes and Expanded Restrictions?

Although the proposed rule claims a REAL ID would only be needed for access to non-public areas at the Smithsonian and National Park Service (for example), how long might it be before REAL ID is required for access to public areas as well – there and elsewhere, ostensibly for security purposes?

Under the REAL ID law, one person, the **Secretary of the U.S. Department of Homeland Security—an unelected bureaucrat—has unilateral authority** to extend REAL ID requirements to anything he or she deems to be an “official purpose.” For example, could DHS someday require REAL ID to access services freely accessible today, such as medical care (nearly 50% of care is publicly funded), registering at a hotel, opening a bank account, buying a gun, renting a car, and more? The words “any other purposes” in the REAL ID Act are broad in scope and undefined:

“OFFICIAL PURPOSE - The term ‘official purpose’ includes **but is not limited** to accessing Federal facilities, boarding federally regulated commercial aircraft, entering nuclear power plants, and **any other purposes** that the Secretary shall determine.” [Emphasis added.]

Who is to say, let alone promise, that a future or current Secretary of DHS would not, given such authority over the entire nation, continue to curtail constitutional rights? These could include the right to privacy, freedom of movement, and travel (Fourth Amendment); State’s rights (Tenth Amendment); and a plethora of additional legal rights under other amendments, such as the Sixth and Seventh Amendments if access to federal courts were to be prohibited without a REAL ID.

REAL ID Will Not Make Us Freer or Safer

REAL ID impermissibly puts Americans under the thumb of a federal government that has for far too long exceeded its constitutional limits.

TSA and DHS now offer us “freedom” if we submit to the antithesis of freedom: a National ID.

AAMVA (as noted on page 2) was a champion of REAL ID, working to push it into existence despite opposition from governors and state legislators. On December 5, 2023, AAMVA testified to Congress of a digital future where the federal REAL ID credential is embedded in smart phones as a mobile driver’s license (mDL), remotely accessible by government agencies. In their presentation called *“Identity Management Innovation: Looking Beyond REAL ID:”* AAMVA told Congress:

“The mDL is the future of licensing and proof of identity. An mDL is a driver’s license that is provisioned to a mobile device with the capability to be updated in real time.”³

³ https://docs.house.gov/meetings/HM/HM07/20231205/116640/HHRG-118-HM07-Wstate-GrossmanI-20231205.pdf?utm_source=ActiveCampaign&utm_medium=email&utm_content=Refuse+the+REAL+ID+in+2024&utm_campaign=December+13%2C+2023+CCHF+eNews

Of course, this kind of government control of personal phones and remote access to citizen identification credentials would also allow officials to shut down a mobile driver's license in real time. This is not freedom. REAL ID as a mDL or mID would open the door to tracking, profiling, government control, and the advancement of what could easily become an all-seeing, all-controlling "social credit system" — as seen in China. Every move, every purchase, every view on the Internet available to powerful outside eyes that, with one click, can shut down a person's movement, purchases, and Internet access by simply turning off the REAL ID credential.

Freedom has its risks, but there is nothing safer than being free. Federal control, federal enumeration, federal regulations, federal enforcement, federal consequences, and federal tracking (as well as state compliance with unconstitutional federal control systems) are not freedom. They are tools of tyranny.

A **National ID** cannot keep us safe or secure. And it certainly cannot keep us free. The unconstitutional REAL ID (and plans for a government-imposed digital ID and DL) will instead advance government surveillance capabilities and federal control. It will eliminate the security that we as Americans have today solely because we are free.

The REAL ID is a violation of the inalienable, God-given, and Constitution-protected right of Americans to be free from federal encroachment, overreach, and unconstitutional controls.

CCHF Position on Proposed Rule:

1. **WITHDRAWAL:** TSA and DHS must immediately withdraw the unconstitutional proposed rule: *"Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Phased Approach for Card-Based Enforcement."*
2. **PREVIOUS RULES:** CCHF also calls on TSA and DHS to withdraw all previous REAL ID rules.
3. **END ENFORCEMENT AND COERCION:** DHS and TSA must cease all attempts to enforce REAL ID, coerce states into any kind of enforcement role, or coerce citizens into submitting to a REAL ID or the REAL ID system.
4. **PUBLISH RIGHTS:** As taxpayer-funded agencies under constitutional constraints, DHS and TSA must instead publicly inform all Americans (including at the airport) that they have a constitutional right to refuse a REAL ID and to choose a standard state driver's license or ID; that they will face no consequences for refusing the REAL ID or a REAL ID-compliant ID—and that they will still be able to fly.

Ultimately, the unconstitutional federal REAL ID Act must be repealed. States must repeal all state laws that conform to the REAL ID system as well as state laws that condone or coordinate with federal REAL ID directives and control. Americans have no obligation to submit to a federal National ID system — REAL ID or otherwise—and should never do so.

Sincerely,



Twila Brase, RN, PHN
Co-founder and President