

DHS ANNOUNCEMENT OF TIMETABLE FOR REAL ID ENFORCEMENT FOR BOARDING AIRCRAFT

Overview

This paper responds to requests for additional information regarding the timetable for enforcement of the REAL ID Act at U.S. airports.

DHS seeks to publicly announce the timetable for the final phase of enforcement of the REAL ID Act, which will apply to boarding commercial aircraft. This timetable, approved by Secretary Johnson, will entail (a) **“initial enforcement” at airports beginning January 2018** with travelers holding licenses from noncompliant states without extensions required to show another form of acceptable ID to board an aircraft; and (b) **“full enforcement” at airports beginning October 2020** with all travelers required to show either a compliant license or another form of acceptable ID to board an aircraft. DHS will undertake extensive outreach throughout this period to educate the traveling public and to encourage states to achieve compliance.

DHS believes it is important to announce this airport enforcement schedule as soon as possible, and preferably by the end of 2015 – particularly in light of public commitments that we would do so and lingering confusion among the media and public about the timing and implications of enforcement. Substantively, DHS believes the announcement of enforcement dates is necessary to spur action by uncommitted states (currently 19, of which 6 currently do not have extensions) to come into compliance with the REAL ID Act. DHS has designed this timetable to provide ample time (~24 months) for states to take necessary actions, and for the traveling public to be educated about and obtain alternative acceptable forms of identification if their state remains noncompliant and without an extension. While the number of travelers potentially affected by initial enforcement in January 2018 will depend on the progress noncompliant states have made by then, the timetable allows DHS to retain flexibility to address operational impacts through the ability to grant extensions to states or, if circumstances at the time warrant, extend the initial enforcement date. Additionally, throughout the period leading to initial enforcement, DHS will continue to study and determine lessons learned from the prior phases of enforcement at federal buildings, which will inform the ongoing and extensive outreach to states and the traveling public.

Background

The REAL ID Act of 2005 establishes standards for the secure issuance and production of state-issued driver's licenses and identification cards. The Act prohibits Federal agencies from accepting for official purposes – which includes accessing federal facilities, entering nuclear power plants, and boarding commercial aircraft – driver's licenses and identification cards issued by states that do not meet the Act's minimum security standards. Enforcement is being implemented pursuant to the phased enforcement schedule announced December 2013, under which full enforcement for all official purposes is to occur by October 1, 2020 (a date established in regulation and an extension from the Act's original requirement of May 11, 2008.) Enforcement for accessing most Federal facilities and entering nuclear power plants began in phases from April 2014 to October 2015 (Phases 1-3). White House enforcement is scheduled to begin August 2016. Consistent with the intent of the original December 2013 phased enforcement timetable, DHS has indicated publicly that it will announce the timetable for enforcement at airports (Phase 4) by the end of 2015.

Airport Enforcement Timetable (Phase 4)

Phase 4 – the final phase of enforcement of the REAL ID Act – focuses on enforcement for purposes of boarding federally-regulated commercial aircraft for domestic travel. After much consideration and analysis, DHS has determined the following enforcement schedule, which has been approved by Secretary Johnson:

Initial enforcement (January 22, 2018): Starting January 22, 2018, under initial enforcement (Phase 4a), TSA will only accept driver’s licenses and identification cards issued by compliant states or states granted an extension by DHS. Passengers with licenses issued by noncompliant states that have not been granted an extension will not be able to use their state-issued license for identification purposes and must present another form of acceptable identification (see Attachment B). Passengers without acceptable identification will not be allowed to pass through security to enter the sterile area of the airport and board the aircraft.

Full Enforcement (October 1, 2020): Pursuant to a date already set by regulation, starting October 1, 2020, under full enforcement (Phase 4b), TSA will only accept a compliant license from a compliant state or other form of acceptable identification. Passengers with noncompliant licenses (whether from compliant states or noncompliant states) who do not have another form of acceptable identification will not be allowed to enter the sterile area of the airport and board the aircraft.

	Noncompliant States		Compliant States			All States
	Without an Extension	With an Extension	Noncompliant (Legacy)	Noncompliant (Marked)	Compliant	Enhanced Driver’s License
Phase 4a-- Initial Enforcement	No	Yes	Yes	Yes	Yes	Yes
Phase 4b-- Full Enforcement	No	N/A	No	No	Yes	Yes

Several factors went into developing this enforcement schedule.

- *Spurring state compliance.* The credible prospect of TSA enforcement is necessary to bring the remaining states into compliance. The most desirable outcome is that, by 2017, all noncompliant states take the steps necessary to commit to compliance and maintain that posture until Phase 4b, resulting in every state either having a compliance determination or an extension prior to the initial enforcement start date. Given that the 56 states have implemented or committed to implement 93% of the standards, quantitatively this outcome is feasible. However, much of what remains require some states to pass legislation. Governors from Minnesota, New Mexico, Washington, and other states have told DHS that the absence of a timetable for TSA enforcement has prevented their legislatures from seeing the need to take action. Notwithstanding the statutory requirement of the REAL ID Act, many state legislators doubt DHS will enforce REAL ID for boarding aircraft. A firm timetable for TSA enforcement is critical to ensure further progress towards compliance.

- *Providing ample time for preparation:* Beginning initial enforcement in January 2018, and announcing this schedule in the coming week(s), will: 1) give states two more full years to meet or undertake plans to meet outstanding requirements with the full knowledge of when airport enforcement will begin; 2) ensure the public has ample notice to include the new TSA requirements in their travel plans, which may include obtaining an alternate acceptable ID; 3) distribute the demand for passports (the most commonly available alternative ID) so that the State Department is not overwhelmed by REAL ID-related applications;¹ 4) allow TSA and the DHS Office for Civil Rights and Civil Liberties (CRCL) time to work with vulnerable populations to understand and consider other possible solutions for the challenges that these populations may face and to find ways to assist them getting appropriate identification; and 5) give the next Administration sufficient time to review and, should circumstances at the time warrant, consider modifications to the enforcement plan before it goes into effect, both initially in 2018 and with full enforcement in 2020.
- *Compliance with law:* The REAL ID Act does not provide the Secretary of Homeland Security with the authority to waive the prohibition against Federal agencies accepting licenses from noncompliant states for purposes of boarding aircraft. Through use of extensions, DHS has provided states with additional time to become compliant, but use of this authority has been predicated on the expectation that it is not indefinite. Extensions are expected to be discontinued by the October 2020 full deadline established in regulation. Overall, DHS's phased enforcement schedule will have given states an additional 6-12 years from the May 2008 enforcement date specified in the REAL ID Act. While this additional time was appropriate given the nature of the action being asked of the states and the effects of the intervening economic recession on state budgets, further delays in enforcement at airports would be difficult to justify, consistent with the law.

State Progress

At present, states have collectively met or plan to meet 93% of REAL ID standards. Currently, 23 states are compliant, 14 noncompliant states have committed to becoming compliant, and 19 noncompliant states remain uncommitted to compliance (see Attachments C and D). As described above, only noncompliant states without an extension are subject to enforcement during the initial TSA enforcement phase beginning in 2018. Of the 19 uncommitted noncompliant states, six did not receive extensions from DHS for 2016 and are subject to enforcement at federal facilities beginning on January 10, 2016: Illinois, Minnesota, Missouri, New Mexico, Washington, and American Samoa (see Attachment E for further information about compliance status of these states). DHS continues to work with these states and is prepared to issue extensions during 2016 as soon as warranted. The Governors of Minnesota, New Mexico, and Washington have indicated that their legislatures are unlikely to authorize compliance unless and until DHS announces plans to enforce REAL ID for boarding commercial aircraft.

Excluding American Samoa, which has not provided DHS with information on its progress, the uncommitted noncompliant states, on average, meet or plan to meet 86% of the standards (as

¹ U.S. citizens are the segment of the population most likely to be impacted by REAL ID. Lawful Permanent Residents and nonimmigrant aliens are likely to have alternate acceptable identity documents, such as passports.

opposed to 93% for all states). Excluding two process-related standards, the most common standards not being met relate to marking compliant cards (18 states); marking noncompliant cards (12 states); and reverification of social security numbers upon renewal (8 states). The rest of the unmet standards are only outstanding for one to five states; and are primarily linked to re-credentialing legacy driver's licenses, storage of documents, and lawful status checks of applicants.

Alternate Identity Documents

The TSA list of alternate documents (Attachment B) includes all secure forms of identity documents that DHS has been able to identify. The list largely consists of government-issued identification cards and was validated by other agencies participating in the development of the Interagency Security Committee (ISC) enforcement guidance. TSA was unable to identify any identity documents secure enough to be used as a secondary ID in conjunction with a license from a noncompliant state (as originally envisioned in earlier interagency discussions) that was not already accepted without the license.

DHS estimates that at least 45% of the U.S. population currently possess at least one form of alternate identification accepted by TSA. 38% of the U.S. population are U.S. citizens possessing a passport book or card (according to the State Department) and 7% are noncitizens, who should have foreign passports and/or immigration documents. DHS has also identified the following relevant populations but is unable to distinguish to what extent they overlap. a) 25% of the population is under 18 and do not need identification for domestic air travel (although they constitute only 5% of the traveling public); b) 7% are veterans eligible for retired military ID; c) 1% have state-issued Enhanced Driver's Licenses (EDL);² d) 1% are active military or reserves with a Common Access Card; e) 1% are military/reserve spouses and dependent children eligible for military family cards; f) 1% are Federal employees presumed to have PIV cards; and g) almost 1% are maritime workers with a Transportation Workers Identification Credential (TWIC). TSA is exploring the possibility of offering cards to Precheck enrollees.

Impact and Mitigation

The enforcement approach is designed to minimize operational impacts on TSA and on the traveling public, while maintaining flexibility to adjust prior to January 2018 should circumstances at the time warrant. TSA has considered other enforcement approaches, such as requiring enhanced checkpoint screening, but has determined that would be operationally unfeasible and create security risks for the checkpoint screening mission.³

² Among the noncompliant states without extensions, Minnesota and Washington offer EDLs. While Minnesota's EDL program is new and has issued less than 10,000 EDLs, more than 500,000 residents of Washington have EDLs.

³ TSA also considered requiring additional checkpoint screening for persons with a license from a noncompliant state, but rejected this option because of the cost associated with placing thousands of additional screeners at airport checkpoints nationwide and negative effects on the checkpoint screening mission. TSA explored but rejected coupling the additional screening regime with a random selection process to limit the volume of additional screening required. TSA believed that the selection process would place an undue burden on the screeners to explain why one person got enhanced screening over another, which would be difficult to defend as being fair, rational, and security-oriented and might distract TSA screeners from other security responsibilities. Lastly, TSA analyzed leveraging the knowledge-based authentication capabilities of its Identity Verification Call Center (currently used when a traveler has no ID), but the extraordinary cost of staffing the center to meet potential demand made this option infeasible.

As described above, the number of travelers potentially affected by initial enforcement in January 2018 will ultimately depend on the progress noncompliant states have made by then, and on the extent which residents of noncompliant states without extensions have obtained alternate forms of identification. TSA estimates that, based on current state compliance efforts and possession of alternate forms of identification, between approximately 40,000 to 350,000 passengers per day – out of the average total daily travel population of 1.9 million passengers screened by TSA – could be denied boarding when initial enforcement takes effect in January 2018. The high-end estimate assumes 25% of passengers utilize alternate IDs (i.e., approximately half of those who currently possess such IDs and the current use rate based on TSA estimates) and all 19 currently uncommitted states completely cease to make progress and therefore are not granted extensions. The lower-end estimate assumes 50% use of alternate IDs (based on estimates of the portion of the population currently possessing such identification) and states that have been most responsive to DHS outreach commit to compliance, resulting in four states without extensions in 2018. These numbers could be further mitigated as described below.

State progress on compliance: The most effective way to mitigate this impact is to encourage the remaining noncompliant states to commit to compliance. DHS has achieved success over the past two years through aggressive outreach combined with state concerns over the impact of enforcement. The number of states compliant or committed to compliance has almost tripled since 2012, increasing from 13 to 37 jurisdictions and the percentage of standards implemented or committed to has risen from 64% to 93%. DHS assesses that with the announcement of final plans for enforcement, Illinois, Louisiana, New Hampshire, New Mexico, and Washington are particularly prime candidates for progress. If the re-credentialing issue were addressed (which would likely require Congressional action), California, Pennsylvania, South Carolina, and Virginia would also likely commit. In addition to continued outreach, DHS is exploring ways to leverage local travel and hospitality industry stakeholders to promote the benefits of compliance.

Alternative forms of identification: The number of travelers impacted by initial enforcement will also depend on the extent travelers in noncompliant states without extensions obtain acceptable alternative forms of identification. As part of its outreach in the lead-up to initial enforcement, DHS will work to ensure that the traveling public in potentially affected states are aware of the alternative acceptable forms of identification and how they can be obtained. DHS will also continue to work with vulnerable populations to understand and consider other possible solutions for the challenges that these populations may face and to find ways to assist them getting appropriate identification.

Possible Congressional intervention: With the prospect of airport enforcement on the horizon, Congress may also choose to enact legislation to change the requirements imposed by the REAL ID Act for states to achieve compliance or alter the Act's enforcement provisions. Through our dialogue with states, DHS has identified potential changes in the REAL ID standards that could facilitate compliance by reducing costs or giving the states more flexibility. However, DHS does not have the authority under the REAL ID Act to implement most of these changes, and such

changes would need to be enacted through legislation.⁴ It is also possible that Congress could choose to deny appropriations for further enforcement of the law.

Extensions and enforcement timing flexibility: DHS strongly believes that setting out clear dates for enforcement of the law will be the best means of spurring state compliance and educating the traveling public, thereby minimizing impacts when enforcement takes effect. At the same time, this approach allows DHS to retain flexibility – in the form of discretion to grant extensions, and the possibility of delaying the effective date of enforcement -- to further mitigate impacts should circumstances warrant as the January 2018 initial enforcement date approaches.

Enforcement Lessons Learned

Implementation of REAL ID Act enforcement at airports will be informed by ongoing lessons learned from prior stages of implementation. In 2013, DHS committed to “review the effects of enforcement and the progress of states” to inform the nature and timing of subsequent phases. The Department has been using the results of each enforcement phase to plan for subsequent phases. Phase 1 (enforcement at DHS HQ) resulted in DHS developing procedures and communication tools that it disseminated to other agencies. Following Phases 2 (enforcement at restricted areas of Federal facilities) and 3a (enforcement at publicly accessible areas of Federal facilities), DHS documented best practices for enforcement (such as a list of acceptable IDs) that the Interagency Security Committee (ISC) adopted as guidance for dissemination to other agencies.⁵ Phase 2 also revealed the training challenges associated with enforcement at Federal facilities and led to a decision to provide additional time in Phase 3 for larger, multi-tenant facilities to prepare for implementation.

In December 2014, DHS wrote to the leadership of every department and agency, requesting they submit monthly reports to DHS on Phase 3 enforcement. Sixteen departments and agencies have provided data in 2015, indicating 24,394 encounters with DL/IDs from noncompliant states in 2015. An encounter means the visitor needed to show alternative acceptable identification or follow an alternative access control process; it does not mean a person was turned away. Data from Phase 3a enforcement is limited because not all agencies reported and many reporting entities only submitted partial data for the year. Notably, the volume of encounters declined sharply in October 2015 because New York and Louisiana received extensions, the effect of which more than offset the commencement of Phase 3a enforcement for the remaining states (Minnesota and American Samoa) without extensions. For example, the National Institutes of Health, which was one of the most consistent reporting agencies, went from 1,121 encounters in September to 101 encounters in October. Data from Phase 3b enforcement, which began in October 2015, is largely not yet available as states with expiring extensions were given a grace period on enforcement until January 2015. Overall, there have been no anecdotal reports of the systematic denial of access by any agency, although we do get the occasional report of a person being denied access.

⁴ Most notably, many states – especially the medium and larger states – would like DHS to reduce the costs stemming from the requirement for persons renewing pre-REAL ID licenses to present proof of identity and lawful status to obtain a REAL ID document to the same extent as first-time applicants. DHS believes this cost issue is one of the greatest obstacles to all states becoming compliant.

⁵ http://www.dhs.gov/sites/default/files/publications/isc-real-id-guide-august-2015-508_0.pdf

DHS will continue to study the implementation of prior enforcement phases and will incorporate ongoing lessons learned into outreach to states and the traveling public in the lead-up to the January 2018 initial enforcement at airports.

Conclusion

DHS believes that announcement of the timetable for REAL ID Act enforcement at airports is needed and should occur as soon as possible, ideally prior to the end of 2015. The absence of a timetable for airport enforcement has invited speculation by the media that travelers from noncompliant states will need a passport for domestic travel as early as January 2016. Although DHS is making every effort to calm fears and ensure accurate information, misinformation will continue to spread to fill the void of a public timetable. DHS also believes that an announcement is necessary to spur action by states to achieve compliance with the law, and to provide ample time for those states to take necessary actions and for residents of those states who may be affected to obtain alternate forms of ID. DHS' enforcement approach will retain a degree of flexibility leading to the initial enforcement date of January 2018, while also fulfilling the Department's obligation to implement requirements imposed by Congress. For these reasons, as well as to meet commitments implicit in the previously announced phased enforcement schedule and re-affirmed by DHS's public statements and communications with states and members of Congress, DHS strongly recommends announcing the timetable by the end of December 2015.

**Attachment A
Remaining Milestones for REAL ID Enforcement**

Timetable [bracketed dates are previously established milestones]:

- **December 2015:** DHS issues statement announcing the timetable for enforcement at airports. This announcement would be consistent a commitment implicit in the December 2013 phased enforcement announcement to set the timetable for airport enforcement by the end of 2015.
- **[January 31, 2016:** Notification period begins for REAL ID enforcement for the White House.]
- **July 15, 2016:** DHS, in coordination with airlines, airports, and other stakeholders, launches web-based advisories to prepare public for the 2018 changes.
- **[August 1, 2016:** Enforcement begins at the White House. This milestone represents the final phase for REAL ID enforcement at federal facilities.]
- **December 15, 2016:** TSA begins distributing flyers at airports notifying public about 2018 changes.
- **January 22, 2018:** Initial enforcement (Phase 4a) commences nationwide.
- **October 1, 2020:** Full enforcement (Phase 4b) commences nationwide. This deadline is set already in regulation.

Attachment B
TSA List of Acceptable Identification Documents

Adult passengers 18 and over must show valid identification at the airport checkpoint in order to travel.

- Driver's licenses or other state photo identity cards issued by Department of Motor Vehicles (or equivalent)
- U.S. passport or passport card
- DHS trusted traveler cards (Global Entry, NEXUS, SENTRI, FAST)
- U.S. military ID (active duty or retired military and their dependents, and DoD civilians)
- Permanent resident card
- Border crossing card
- DHS-designated enhanced driver's license
- Airline or airport-issued ID (if issued under a TSA-approved security plan)
- Federally recognized, tribal-issued photo ID
- HSPD-12 PIV card
- Foreign government-issued passport
- Canadian provincial driver's license or Indian and Northern Affairs Canada card
- Transportation worker identification credential

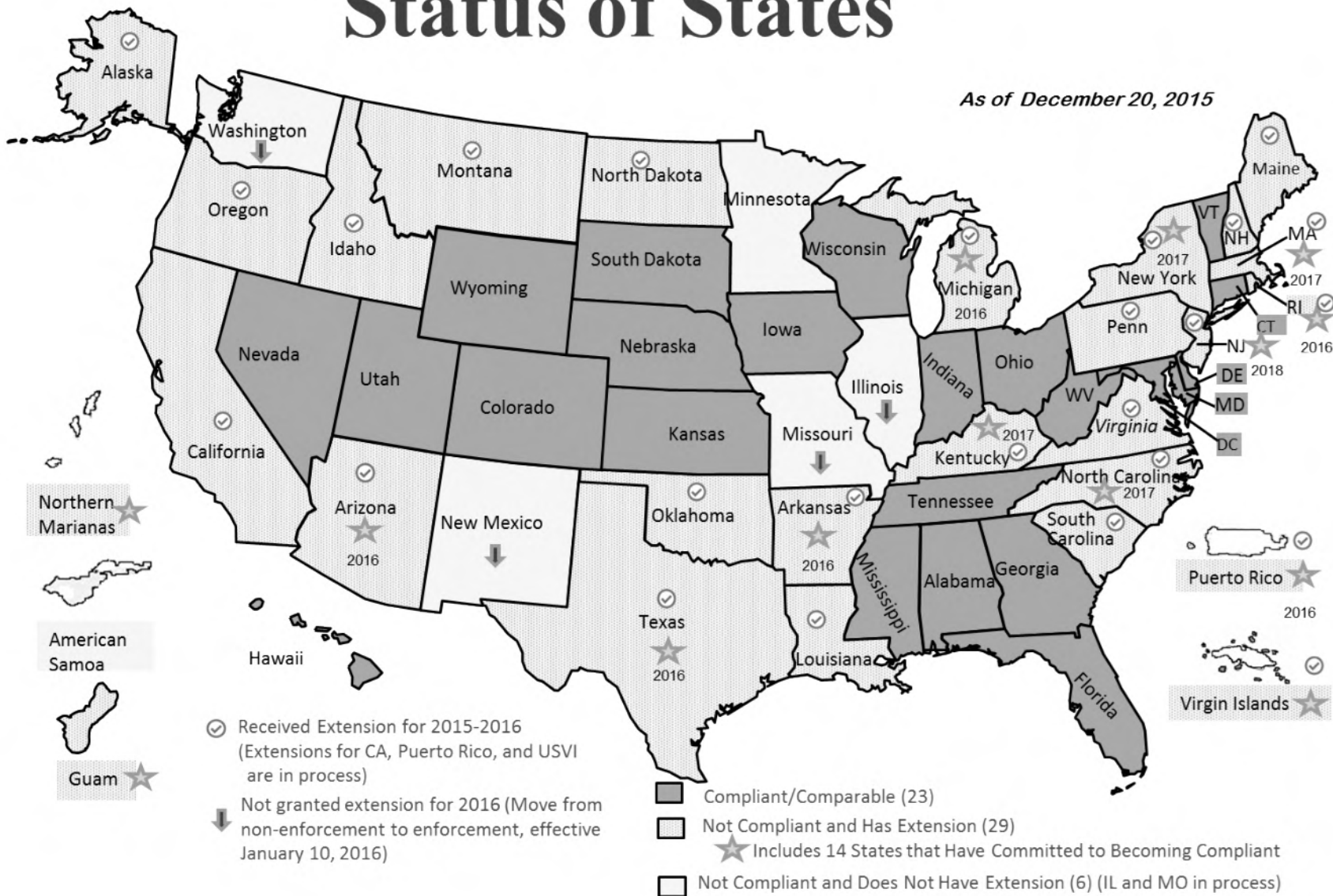
A weapon permit is not an acceptable form of identification.

TSA does not require children under 18 to provide identification when traveling with a companion within the United States.

Attachment C

Status of States

As of December 20, 2015



Attachment D
STATUS OF STATES - December 15, 2015

COMPLIANT (23)	NONCOMPLIANT (33)		
	Plans to Comply (14)	Does Not Plan to Comply (19)	
	Extension (27) <i>Not Subject to Enforcement</i>		No Extension (6) <i>Subject to Enforcement</i>
Alabama	Arizona	Alaska	Illinois
Colorado	Arkansas	California	Minnesota
Connecticut	Kentucky	Idaho	Missouri
Delaware	Massachusetts	Louisiana	New Mexico
District of Columbia	Michigan	Maine	Washington
Florida	New Jersey	Montana	American Samoa
Georgia	New York	New Hampshire	
Hawaii	North Carolina	North Dakota	
Indiana	Rhode Island	Oklahoma	
Iowa	Texas	Oregon	
Kansas	Guam	Pennsylvania	
Maryland	Northern Marianas	South Carolina	
Mississippi	Puerto Rico	Virginia	
Nebraska	U.S. Virgin Islands		
Nevada			
Ohio			
South Dakota			
Tennessee			
Utah			
Vermont			
West Virginia			
Wisconsin			
Wyoming			
32%	31%	26%	11%
<i>Percentage of U.S. Population</i>			

Attachment E Overview of Noncompliant States without Extensions

The REAL ID Act authorizes the Secretary of Homeland Security to provide states with extensions of time to satisfy the REAL ID requirements where the state provides adequate justification for noncompliance. Federal agencies can continue to accept for official purposes driver's licenses and identification cards issued by noncompliant states that have received an extension. In other words, enforcement is only taken against noncompliant states without extensions. Extensions are intended to provide additional time for states to meet outstanding requirements but are not an alternative to compliance.

To receive an extension, DHS asks states to provide annual updates on progress towards meeting any outstanding requirements; the reasons for not meeting the outstanding requirements; and a timetable for when the state expects to seek a determination of compliance from the Department. For purposes of determining whether granting an extension is warranted, DHS will consider the requirements that a state has implemented as well as its plans to meet outstanding requirements.

By policy, DHS currently limits extensions to a maximum of one year, with the extensions expiring October 10 each year. These extensions are renewable if a state provides adequate justification for continued noncompliance and demonstrates sufficient progress towards full compliance. The minimum threshold number of requirements a state must satisfy in order to receive an extension increases each year to ensure states continue to make progress towards full compliance.

DHS has notified **Illinois**, **Missouri**, **New Mexico**, and **Washington** that the Department has not renewed their extensions (which would move them from non-enforcement to enforcement status) and notified **Minnesota** and **American Samoa** that the Department had not granted them a first-time extension (maintaining the status quo) for the period ending October 10, 2016. Prior extensions for Illinois, Missouri, New Mexico, and Washington expired on October 10, 2015, but DHS provided a grace period exempting them from enforcement until January 10, 2016.

- **Illinois.** In 2014, DHS granted Illinois an extension through October 10, 2015, based, in part, on the state's plan to enact legislation that the state identified as necessary to implement the remaining REAL ID requirements. However, Illinois failed to pass the legislation in 2015, reportedly due to the budget impasse that still exists between the legislature and the Governor. DHS has had extensive discussions with the Illinois Office of the Secretary of State (an independently elected office that has responsibility for driver's license issuance), and has kept the Governor's Homeland Security Advisor well informed. There is an interest in the state to re-visit the legislation once the budget impasse is resolved.
- **Minnesota.** Minnesota has never had an extension. The state has one of the strictest anti-REAL ID laws in the country, prohibiting agencies from even doing planning related to REAL ID. In 2015, the private sector (e.g., travel and tourism industry, Mayo Clinic) began encouraging the state government to re-consider its position. In the fall, DHS held a half-day meeting in St. Paul with the Governor's representatives and key state

legislators to answer questions about the REAL ID requirements and dispel the inaccurate belief prevalent in the legislature that REAL ID involved the creation of a national database of driver's data. Although the Governor has committed to seeking a reversal of the anti-REAL ID law and authorization to bring the state into compliance in 2015, state officials do not expect to receive an extension until they are able to demonstrate progress.

- **Missouri.** Missouri has not provided DHS with an update on its progress in meeting the REAL ID requirements since 2013. At that time, state legislators became concerned that REAL ID could cause the state to transmit gun ownership information to the Federal Government since Missouri law allows individuals to apply for gun permits and driver license services at the same time. Although the concern was unfounded, the uproar effectively ended Missouri's willingness to communicate with DHS about the substance of its driver's license program. In an October 23, 2015 letter to DHS, Missouri confirmed that it was unable seek an extension and did not provide any update that could enable DHS to make an extension determination notwithstanding the absence of a request from the state.
- **New Mexico.** New Mexico has a state law prohibiting checks for lawful status for driver's license applicants. Although the REAL ID Act allows compliant jurisdictions to issue appropriately marked noncompliant driver's licenses to applicants that cannot present evidence of lawful status, New Mexico law prevents the state from meeting this and other related requirements. DHS had previously granted New Mexico an extension based on its plans to seek changes to its law; however, this legislation has failed over multiple legislative sessions due to disagreements between the Governor and State Senate. All parties have agreed to take up the issue again in the 2016 session but it is not clear that they will be able to come to an agreement.
- **Washington.** Like New Mexico, Washington prohibits checks for lawful status for driver's license applicants. However, Washington has been less active in seeking a solution. Although the Governor has supported legislation allowing the state to become compliant, the legislature has not acted on it, instead taking a "wait and see" approach. State officials have informed DHS that they do not expect further progress unless and until DHS announces plans to enforce REAL ID for boarding commercial aircraft.
- **American Samoa.** American Samoa has never provided an update nor sought an extension despite repeated DHS outreach. It is the only jurisdiction for which DHS has no information.