



NATIONAL CONFERENCE
of STATE LEGISLATURES
The Forum for America's Ideas



American Association of
Motor Vehicle Administrators

May 8, 2007

Department of Homeland Security
Attn: NAC 1-12307
Washington, D.C. 20528

Re.: DHS-2006-0030 – Minimum Standards for Driver’s Licenses and Identification Cards Acceptable by Federal Agencies for Office Purposes

To whom it may concern:

In response to the Notice of Proposed Rulemaking (NPRM), the National Governors Association (NGA) National Conference of State Legislatures (NCSL) and the American Association of Motor Vehicle Administrators (AAMVA) respectfully submit the following comments and recommendations.

Governors, state legislators and motor vehicle administrators share the goal of improving the security and integrity of state issued driver’s licenses and identification cards. They believe that state innovation in this vein, both before and immediately after 2001, is noteworthy and will remain the foundation for secure identification documents while maintaining customer service standards and meeting the needs of the traveling public. During this regulatory process and the implementation phases to follow, close cooperation between the Department of Homeland Security (DHS) and state officials—especially state policymakers and state driver’s license administrators—will be crucial to ensuring that the processes and the products envisioned for Real ID create the desired, secure identification document without unduly burdening states or citizens.

Governors, state legislators and motor vehicle administrators acknowledge that the draft regulations released in early March by DHS reflect a number of recommendations for implementation made in the attached September 2006 Report—*The Real ID Act: National Impact Analysis*—issued by our state groups. For example, the draft regulations provide states important flexibility through the self-certification process. They allow states to develop waiver and exceptions processes, define which categories of department of motor vehicle (DMV) employees are subject to background checks, and potentially determine the physical security requirements of the DMV facilities. We encourage DHS to maintain these flexibilities in the final regulation.

The draft regulations, however, do not address several major state recommendations designed to ensure successful and cost-effective implementation of the act. For example, we called on DHS to extend Real ID’s compliance deadlines and implement a ten year reenrollment period for all citizens. The proposed May 11, 2008 start date and 2013 completion date do not provide sufficient time for states to prepare for implementation or to reenroll their populations. Failure to follow state developed recommendations, all of which are designed to improve systems, increase security and manage taxpayer resources in a

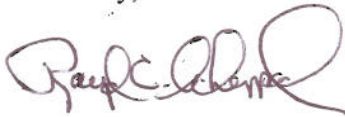
responsible manner, will only serve to undermine state efforts to conform with the requirements of Real ID. Specifically, NGA, NCSL and AAMVA reiterate the following recommendations:

- Provide a workable extension of the compliance deadline;
- Provide funds necessary for states to comply with the Real ID;
- Allow states to implement a 10-year, progressive reenrollment period;
- Allow reciprocity for persons already vetted by the federal government;
- Provide the federal electronic systems necessary to comply with the law;
- Require states to employ electronic verification systems only as they become available;
- Adopt uniform naming conventions to facilitate electronic verification between files; and
- Establish card security criteria based on performance, not technology.

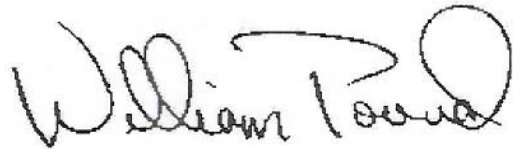
Many of these recommendations apply directly to provisions outlined in the NPRM and should be included in the final rule to better facilitate state implementation of Real ID. (Detailed recommendations are attached, *see* Appendix A.) The American Association of Motor Vehicle Administrators submitted additional comments reflecting a number of these recommendations and made additional recommendations on behalf of their membership.

Governors, state legislators and motor vehicle administrators remain committed to secure driver's licenses and identification cards. The changes we are recommending for the proposed rule will help ensure that states, if they choose to do so, are able to implement the Real ID program in a cost-effective, customer-friendly, and logical manner. We look forward to working with Congress on issues beyond the scope of DHS rulemaking authority. However, we believe that all of our recommendations in response to the NPRM are within DHS' authority to adopt and will advance the goals of Real ID. We look forward to working with DHS toward implementation of our recommendations.

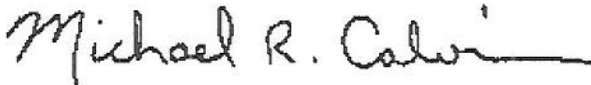
Sincerely,



Raymond C. Scheppach
Executive Director
National Governors Association



William T. Pound
Executive Director
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Michael R. Calvin
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American Association of Motor Vehicle
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Attachments: *The Real ID Act: National Impact Analysis*

Appendix A

Section 37.3 - Definitions

- Ensure the final regulations maintain the department's narrow definition of "official purpose"—accessing federal facilities, boarding federally regulated commercial aircraft and entering nuclear power plants.
- Establish an official process, to include state policymakers and administrators, for future application/expansion of the definition of "official purpose."

Section 37.5 - Deadlines and Validity Periods for Real ID Driver's Licenses and Identification Cards

- Extend from May 11, 2013 to May 11, 2018, the date by which states will need to reenroll all existing driver's licenses and identification card holders. For states receiving an extension to December 31, 2009, allow the reenrollment period to begin on January 1, 2010. All states must be provided the ability to have up to 10 years to reenroll existing driver's licenses and identification cards.
- Allow states to waive the verification process for individuals already vetted by the federal government. The final regulations should allow individuals with, for example, military identification cards, federal employee credentials, U.S. Passports and/or Transportation Worker Identification Credentials to be considered pre-qualified for a Real ID compliant driver's license or identification card.
- Exempt from the Real ID process certain segments of applicants. We recommend this be based on certain requirements related to applicable risk such as year of birth or duration of continuous relationship with the state of licensure.

The draft regulations pose the question whether individuals born before 1935 who have established histories with a state should be wholly exempt from the birth certificate verification requirements of this regulation, or whether, as proposed, such cases should be handled under each state's exceptions process.

- Governors, legislators and motor vehicle administrators support the exemption of this population, and those with a long-standing relationship with the state from the requirements of the Real ID.

Section 37.11 – Application and Documents the Applicant Must Provide

- Provide states the flexibility to engineer their system and business processes to allow for a facial image to be captured prior to a credential being denied. Do not limit a state by requiring the picture to be taken upon "application."
- Eliminate the requirement that states provide DHS with quarterly reports analyzing the use of the exceptions process and any trends that indicate potential vulnerabilities. DHS can review these as part of their audit process or states can submit this as part of the annual self-certification process.

Section 37.13 – Document Verification Requirements

- Ensure the final regulations explicitly exempt states from employing the electronic verification systems until a date in the future when they are operational at a national level.
- Prohibit federal agencies from charging the states transaction fees for use of the required electronic verification of federal information.

Section 37.15 – Physical Security of Features for the Driver’s License or Identification Card

- Establish card security requirements based on performance and not technology. While not explicitly stated, it is implied that states will need to use polycarbonate card stock. The final regulations must provide states more flexibility in the choice of card stock.

Section 37.17 – Requirements for the Face of the Driver’s License or Identification Card

DHS posed the following question in the draft regulations: How can DHS tailor the address of principal residence requirement to provide for the security of classes of individuals such as federal judges and law enforcement officers?

- Allow states to continue to use current practices for masking address of principal residence for those individuals in protected classes.

Section 37.19 – Machine Readable Technology on the Driver’s License or Identification Card

- Ensure the final regulations do not require states to encrypt the information contained in the machine readable zone of the card.
- Allow state laws to govern the use and protection of this information.

Section 37.21 – Temporary Driver’s License and Identification Card

- Replace the requirement that temporary driver’s licenses and identification cards must clearly state on the face of the card, in bold lettering, that it is temporary and instead allow states to use a restriction code on the front with clarifying language on the back, as is standard for other license restrictions. P.L. 109-13 only requires that the card clearly indicate it is temporary.

Section 37.23 – Renewed and Reissued Driver’s Licenses and Identification Cards

- Eliminate the requirement in Section 37.23 (b)(1)(ii), as it relates to address changes.
- Allow states to propose interim methods of tracking address changes between renewal cycles without the requirement for the full issuance of a replacement credential.

Section 37.31 – Source Document Retention

- Exempt from this requirement documents presented by an applicant to prove principal address.

Section 37.33 – Database Connectivity with Other States

- Consider the Commercial Driver’s License Information System (CDLIS) as a possible model on which to base a “pointer system” to establish connectivity between state DMV databases.

Section 37.43 – Physical Security of DMV Facilities

- Do not require state DMVs to adopt the American National Standards Institute/North American Security Products Organization’s “Security Assurance Standards for the Document and Product Security Industries,” ANSI/NASPO-SA-v3.OP-2005, Level II, as the preferred performance-based standard for physical security of DMV facilities.
- Either require states to address this requirement as part of their self-certification process or establish a working group of state policymakers and administrators to develop appropriate standards.

Section 37.45 – Background Checks for Covered Employees

- Make the requirement of a financial history check of employees a state option instead of a mandate. P.L. 109-13 only requires “appropriate security clearance requirements.”
- Prohibit the Federal Bureau of Investigation from charging states a fee for accessing their systems.

DHS specifically requested comments on the federalism aspects of the background check requirements proposed under this rule.

- Ensure the final regulations continue to provide states maximum flexibility to determine which employees are subject to the requirements of this section.

Section 37.55 – Initial State Certification

- Eliminate the requirement that states submit a copy of all statutes, regulations, and administrative procedures and practices that demonstrate the state’s implementation program for this part. This is unnecessary and overly burdensome.

Section 47.57 – Annual State Certification and Section 37.59 – DHS Reviews of State Compliance

- Establish timeframes, similar to those imposed on the states (30 days) in both of these sections in which DHS must respond/reply to states.

Section 37.63 – Extension of Deadline

- Provide states that are granted an extension with the full reenrollment period, provided for in the final regulations. Governors, legislators and motor vehicle administrators recommend a 10-year reenrollment period.

Section 37.67 – Non-Real ID Driver’s Licenses and Identification Cards

- Allow states to meet this requirement by placing a restriction code on the front of the license, with clarifying language on the back.