



THE STATE
of **ALASKA**
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Department of Administration

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The Honorable Jonathan Kreiss-Tomkins, Chair
House State Affairs Committee
Alaska Capitol Building, Room 120
Juneau, Alaska 99801

Dear Representative Kreiss-Tomkins,

We received the following list of questions from Representative Tuck regarding our presentation of HB 74 to the State Affairs Committee. The following are our responses (numbering added for clarity):

1. *At least some of the compliance deadlines or extensions associated with the REAL ID Act, including some that according to the 2008 Federal Final Rule were impossible for the states to meet, are at the discretion of the Secretary of Homeland Security.*

Given that much of the communication you have cited is from a previous Secretary of Homeland Security under a previous Presidential Administration, has there been any indication or confirmation that the new leadership intends to implement the decisions of the previous Secretary?

Response: Department of Administration (DOA) has had multiple conversations with our Department of Homeland Security (DHS) contact since the presidential election. DHS has received no new or additional guidance from the new Administration regarding the federal REAL ID Act, nor is DHS aware of any legislative intent to change or repeal the Act. DOA has reached out to the Alaska Congressional delegation as well as other US legislators to discuss the Act; none have indicated intent to change or repeal the Act. The Governor's Washington, DC office staff have had similar conversations with similar results.

The federal REAL ID Act is already being implemented. Some federal secure facilities and military bases across the nation including Alaska are already enforcing REAL ID requirements. Neither the Trump Administration nor the current legislative bodies have indicated any intention other than continued implementation of the REAL ID Act. The next phase of enforcement will apply to access to air travel, beginning in January of 2018.

2. *The REAL ID Act requires that REAL ID noncompliant IDs have unique design and color indicator to alert Federal agencies and other law enforcement personnel that it may not be accepted for any official purpose.*

Can you confirm that if HB 74 passes, there will no longer be a "regular" Alaska identification card, and that all Alaskans who cannot, or will not obtain a REAL ID will have to accept an ID of different color and markings than our current ID?

Response: If the DMV uses the current vendor to produce IDs and licenses, the only anticipated change to the current, non-compliant cards is the addition of the statement, “Not for federal, official use”/ “Not for federal purposes.”

3. *IF HB 74 does not pass, do you intend to comply with the federal mandate that all Alaska licenses be of a different color and markings than our current IDs?*

Response: If HB 74 does not pass, DMV will not add any markings to licenses or ID cards. Alaska will be deemed a non-compliant state, thus all Alaska IDs/DLs will be unacceptable for federal purposes such as access to some federal facilities or boarding federally regulated aircraft. States aren’t mandated to mark non-compliant cards unless they become a compliant state and issue both compliant and non-compliant cards.

4. *You have stated that the average wait time at the DMV is now under ten minutes. But Alaskans have repeatedly expressed concerns that it can take over a month to receive a new ID in the mail from Indiana. What would the average wait time be if this delay were factored into the average?*

Response: The average wait time at DMV includes customers seeking to register vehicles, sign up for knowledge and road tests, apply for CDL instruction, and other services in addition to those applying for or renewing IDs/DLs. The average time for delivery of permanent IDs/DLs is 7 to 10 days. DMV makes temporary copies available immediately.

5. *The REAL ID Act requires that the states must subject all persons authorized to manufacture or produce licenses and identification cards to “appropriate security clearance requirements.” Is this a factor in the decision to have Alaska IDs manufactured out of state by the Gemalto Corporation in Indiana?*

Response: No Alaska company responded to DMV’s RFP to centrally issue Alaska’s licenses and IDs. DMV is not aware of any Alaska companies who meet the national best practice security standards set forth by the motor vehicle industry and North American Security Products Organization (NASPO).

6. *Have any state resources been expended in outsourcing the manufacture of Alaskan IDs to Indiana?*

Response: Prior to 2012, DMV produced IDs and DLs in-house. As a business, DMV offices struggled with equipment management and maintenance, causing many issues with delivery of the cards. DMV made the decision in 2012 to outsource the production of the cards to reduce cost, upgrade technology, and improve customer service.

DMV received two grants from the federal government to cover the cost of the new cameras and IT development necessary to move to central issuance:

- \$684,804 FEMA grant: programming, supplies, shredders, backdrops, and computers
- \$1.5 million FMCSA: software development, camera stations, paper, other production costs

No Alaska companies bid on the production of the cards and the contract was awarded to Marquis Consulting Services, whose production facility is located in Ft. Wayne, Indiana. Marquis was later purchased by Gemalto, Inc., in November 2014.

Per federal regulations, customer data may not leave the US or be provided to or accessed by non-US citizens. No information concerning a DMV's customers or operations may be shared or disclosed outside the US.

7. *If Alaska were to return to producing its own licenses, would AK DMV employees meet REAL ID standards?*

Response: No. All processes involved in the production, transport, storage and issuance of secure cards are strictly regulated by federal law and security standards and policies. Alaska does not currently have facilities that meet the security requirements.

The Gemalto facilities in Indiana used to produce Alaska's IDs/DLs are NASPO II certified secure facilities and meet the requirements of the federal REAL ID Act: <https://naspo.info/about-us/faq/>

8. *If HB 74 passes, the DMV will be required to take applicants' photographs at the beginning of the application process rather than at the conclusion, as is the current practice. If an applicant decides not to complete the process, and requests their photograph be deleted, how does the Department intend to respond?*

Response: If a person applies for and receives a compliant ID/DL, DMV will be required to keep the photo for 2 years after the 8-year expiration date, so 10 years. If the person applies for but does not receive a compliant ID/DL, DMV will be required to keep the photo for 5 years. If a person applies for but does not receive a non-compliant card, DMV will not take the photo at the front of the application process and would have nothing to delete.

9. *Given the strong privacy provisions of the Alaska Constitution, do you anticipate any legal challenges if the DMV does not intend to delete an applicant's photograph at their request?*

Response: Alaskans will not be required to get a REAL ID document. Because DMV will notify and obtain the consent of all individuals seeking a Real ID compliant ID about the photo storage requirement before their photo is taken, it is the Department of Law's opinion that there is no constitutional violation of an individual's privacy rights.

10. *The REAL ID ACT mandates that States must ensure the physical security of locations where licenses and ID cards are produced. Given that when we enter Federal buildings now we see armed guards and federal police, has the DMV taken, or does it plan to take additional steps to comply with this mandate?*

Response: DMV uses a NASPO II certified secure facilities located outside the state to produce cards. DMV offices are not required to use guards. DMV is already required to background check DMV

employees, contractors and business partners per commercial driver licensing regulations in 49 CFR 383 and 384.

11. If so, does the fiscal note account for these requirements?

Response: N/A

12. Your staff has reported that, based on information from other states, only about 50 percent of Alaskans would choose the REAL ID. Please provide the source of this information.

Response: DOA reported that Homeland Security had advised the average number of people in other states who sought REAL IDs was about 50%. This information was provided anecdotally.

13. What percentage would likely choose the noncompliant ID because they were unable to provide the necessary documentation to receive a REAL ID?

Response: The documents required to apply for a REAL ID will not change from the current required documents: two primary documents (ie birth certificate, passport) or one primary and one secondary document (ie voter registration card), proof of residency (ie utility bill), and proof of social security number (ie social security card or document displaying number, such as tax form).

14. You have discussed a "REAL ID working group," which came up with the concept of HB 74. Who are the members of this working group?

Response: DOA did not have a formal "working group." DOA began hearing from legislators, businesses, labor groups and the Anchorage and Fairbanks School Districts last fall, when Alaska military bases began issuing notifications of the impending REAL ID enforcement due to begin in early October.

15. Is there any model legislation this bill is based upon?

Response: No.

16. Please provide copies of all correspondence between the State of Alaska and the Department of Homeland Security, AAMVA, and other relevant entities relating to the decision to introduce HB 74.

Response: Copies of Alaska's request for and approval of the Homeland Security waiver are attached. Correspondence between DOA and the Department of Law legal drafters is confidential and deliberative.

17. *As a follow up to recent meetings of the House and Senate State Affairs Committees, please provide the following information:*

Please report any progress in contacting authorities in the five fully noncompliant states to see how things are working out.

Response: DMV has reached out to Washington State. They confirmed the report that 300+ people a week are being turned away at Joint Base Lewis McCord because they don't have a REAL ID compliant document.

18. *Please provide any new developments in DMVA efforts to obtain quantitative information relating to REAL ID and military bases.*

Response: DOA is unable to answer this question. DMVA was invited testimony and not part of DOA's presentation.

19. *Please report any progress on the request for written clarification about whether CDLIS, PPDS, SSOLV, and AAMVA are private, federal, or commercial entities.*

Response: Information on AAMVA and the verification systems listed above was provided to the committee during the February 2nd hearing and in a follow-up letter on February 22. Please refer to the attached PDF labeled "HB 74 REAL ID verification systems" for additional information.

20. *According to the 2008 Federal Rule, states are allowed to create exceptions to accommodate victims of violence or other categories of persons who may need to keep their addresses confidential. Does the Department have any plans to seek such an exemption?*

Response: DMV supports this exception. DMV currently allows for different mailing and physical addresses and will look into the exceptions process.

21. *The Department of Homeland Security has reported that the "State DMV may choose to establish a written, defined exceptions process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity or date of birth."*

Considering the difficulty of many Alaskans, including rural Native Elders, to produce such documentation, has the Administration established any such process?

Response: Alaska Vital Statistics offers a "delayed birth certificate" to Alaskans born at home, in remote communities, etc. AS 18.50.180 allows the registrar to make exceptions to reduce the number of documents required for delayed filings by Alaska Natives. Delayed birth registration certificates are currently accepted the same as traditional state birth certificates issued by a state vital statistics office or the equivalent agency.

DMV's understanding is birth certificates of any type issued by a vital statistics agency can be verified in the EVVE system as required by REAL ID.

DMV supports the exceptions concept and will follow up with Homeland Security on this option.

22. *You have asserted that Alaskans' data will not be entered into any outside database. However, the AAMVA newsletter reported this month that Alaska had joined AAMVA's S2S verification service. It has been reported that use of S2S requires that states upload licensing data to a database known as SPEXS, which is reportedly maintained by a corporation known as Claris Solutions in Indiana.*

Response: DMV currently utilizes AAMVA's SPEXS/CDLIS verification system to comply with federal and state law requiring DMV to protect against issuing duplicate or fraudulent licenses or IDs. This system has been in place for decades. S2S is the updated version of this verification system.

S2S was developed under a grant from the US Department of Homeland Security (DHS) given to the Mississippi Department of Public Safety (MSDPS). MSDPS formed the DL/ID Verification Systems (DIVS) organization with a dozen other states to provide input and guidance to Mississippi for the development and operation of the S2S Pilot, among other things. Mississippi contracted with Clerus Solutions to help create the S2S system. The pilot program ended on 3/1/2017 and the operation of the system was turned over to AAMVA and the states that Govern AAMVA, including Alaska.

- S2S was developed by the states for the states
- States own all data that is verified through S2S
- States did not have to collect any new data from citizens to participate in S2S
- The states own and operate S2S, through their association AAMVA (since March 1, 2017)
- No federal agency has access to S2S

23. *If this information is correct, what data has Alaska uploaded into the SPEXS system?*

Response: S2S uses the minimum amount of personally identifiable information (PII) to determine if an individual applying for a license or ID card may already have one from another state. PII fields are: full legal name, DOB, and partial social security number.

24. *Are there any limits to what information might be added to the SPEXS system in the future? Who controls what might be required to be included in SPEXS records in the future?*

Response: The S2S system is managed by the Governance Board formed by the member states of AAMVA, an organization of state DMV jurisdictions. Alaska's DMV is on the Governance Board. DMV is committed to bringing Alaska's privacy concerns to the Governance Board.

25. *Do AAMVA or its contractor have any procedures through which an individual can find out what information about them is included in the SPEXS database?*

Response: The only information included in S2S is the PII data outlined above. Individuals may contact their home state DMV for information about their DMV record.

26. Is there any procedure in the SPEXS system for an Alaskan to correct an error made by AAMVA or its contractors?

Response: S2S/SPEXS queries and processes are performed by state driver licensing staff and/or contractors, depending on the DMV structure of that state. AAMVA does not perform these actions on behalf of a state. If a known error has occurred between SPEXS states during the state card issuance process, the states involved would communicate directly with each other to resolve the error. States have a means to correct their pointer data on the AAMVA central site which is essentially a pass-through hub facilitating communication between states. AAMVA records “point” to the person record.

27. Has any state money been expended by Alaska by joining the S2S system?

Response: No.

28. Is it an accurate to say that all Alaskans will be required to go physically to the DMV and prove their identity if they wish to have a REAL ID compliant ID, regardless of whether their current ID is up to date or not?

Response: Yes, to get a REAL ID for the first time, Alaskans will be required to visit the DMV to provide their source documents for verification. Alaskans can get one renewal online or at the DMV without needing to present documents.

29. Given that physical presence at the DMV is required to get a Real ID, including for license renewal, does the state have plans for assisting rural communities without a local DMV?

Response: If HB 74 or SB 34 passes the Legislature and is signed into law, DMV will develop an implementation plan to help all Alaskans obtain a compliant license or ID if they choose.

30. Are travelers currently allowed to fly without ID?

Response: According to the TSA website:

“In the event you arrive at the airport without valid identification, because it is lost or at home, you may still be allowed to fly. The TSA officer may ask you to complete a form to include your name and current address, and may ask additional questions to confirm your identity. If your identity is confirmed, you will be allowed to enter the screening checkpoint. You may be subject to additional screening.

You will not be allowed to fly if your identity cannot be confirmed, you chose to not provide proper identification or you decline to cooperate with the identity verification process.

TSA recommends you to arrive at least two hours in advance of your flight time to allow ample time for security screening and boarding the aircraft.”

Please note this language refers to existing TSA policy. DHS has stated that TSA will not allow passengers through secure checkpoints without a REAL ID compliant card or other federal identification, beginning in January 2018 unless a state has a waiver.

31. Is there any law or regulation that requires any ID to fly?

Response: 49 U.S. Code § 44901 - Screening passengers and property (a) In General.

The Under Secretary of Transportation for Security shall provide for the screening of all passengers and property, including United States mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. In the case of flights and flight segments originating in the United States, the screening shall take place before boarding and shall be carried out by a Federal Government employee (as defined in [section 2105 of title 5](#), United States Code), except as otherwise provided in section 44919 or 44920 and except for identifying passengers and baggage for screening under the CAPPS and known shipper programs and conducting positive bag-match programs.

49 USC section 30301 note section 202(a)(1) states: "...a Federal agency may not accept, for any official purpose, a driver's license or identification card issued by a State to any person unless the State is meeting the requirements of this section." Official purpose is defined by 49 USC 30301 note section 201(3) as "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."

In addition to the statute, 6 CFR 37.3 states: "Federally-regulated commercial aircraft means a commercial aircraft regulated by the Transportation Security Administration (TSA)."

32. Would the state of Alaska have standing to challenge any Federal proposal for an ID requirement for air travel, as a violation of Alaskan residents' Constitutional rights?

Response: According to the Department of Law, under the U.S. Constitution, the federal government can regulate interstate and foreign commerce and has sole authority over national security (article I, sec. 8). Additionally, the federal government has authority to determine what is required to pass through a federal security checkpoint, whether that is on base or at an airport. In *Gilmore v. Gonzales*, 435 F.3d 1125, 1136 (2006), the court stated: "we reject Gilmore's right to travel argument because the Constitution does not guarantee the right to travel by any particular form of transportation." This case is pre-Real ID Act, but it involved a person refusing to show ID to board a plane for interstate travel post-9/11. The court went on to explicitly hold that a person does not have a right to travel by plane, and that the identification policy is not burdensome. *Id.* at 1136-37. DOL believes this analysis would continue to apply to a facial challenge to the ID requirements in the REAL ID Act.

33. Is the state government prepared to defend state residents' right to travel by air against possible Federal infringement?

Response: Although the State does not see a legal avenue to challenge the Real ID requirement, the administration is concerned about the burden these requirements are placing on the Alaskan public. The administration will continue to try and work with our federal congressional delegation and other states to balance the need to ensure the public's safety, while also protecting individuals' privacy rights.

34. Is it correct that a passport card is valid for everything a REAL ID compliant state ID card is valid for?

Response: Passport cards are federal identification and are listed as valid alternative federal documents for access to TSA security screening. Passport cards are valid for travel by road or port access between the US and Canada, Mexico, or the Caribbean. Passport cards are not valid for international air travel.

To acquire a passport or passport card for the first time, an applicant must provide a social security number and certified birth certificate to a US Post office offering passport services. Your birth certificate will be kept and later mailed back to you. Passport data is maintained in a federal database maintained by the US State Department.

The cost is \$135 (\$110 + \$25 app fee) for a passport and \$55 for a passport card. To obtain a passport card, you must surrender your existing passport, which will be mailed back to you with the passport card in 6-8 weeks. Applicants are responsible for providing passport photos at their own cost.

Both parents are required to be present to obtain passports for minors under the age of 16.

Additional information on the passport application process can be found in the attached document labeled "HB 74 Passport Process."

We appreciate the opportunity to provide additional information on this legislation. If there is anything else we can provide the committee, please do not hesitate to contact my office.

Sincerely,



Leslie Ridle, Deputy Commissioner

cc: Darwin Peterson, Legislative Director, Governor Bill Walker