

SB

2022

ALASKA STATE LEGISLATURE



SENATOR BILL WIELECHOWSKI

February 19, 2008

Senator Hollis French, Chair
Senate Judiciary Committee
State Capitol, Room 417
Juneau, Alaska 99801

Dear Senator French:

I am writing to request a hearing on SB 202, "An Act relating to expenditures in aid of or to implement the provisions of the federal Real ID Act."

People all over the state are becoming increasingly concerned that Real ID is an attack not only on our state sovereignty, but on the rights and freedoms we all hold dear. Further, if we comply with this federal mandate we will have to expend millions of dollars in state funds that could otherwise be used to improve the lives of all Alaskans. We should not be forced to bear the costs of restricting our own cherished freedoms.

I intend to request that representatives from the appropriate state agencies and from legislative legal services be present to respond to any questions that may arise. Further, I would like to allow public testimony to be taken statewide by electronic means.

Included with this letter you will find the latest version of this bill, a Sponsor Statement, and other background materials.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Wielechowski".

Senator Bill Wielechowski

SB 202 – REAL ID

Senate Judiciary Committee

French, Huggins, McGuire, Wielechowski, Therriault

1:30 PM Wednesday, February 27, 2008

Beltz 211

Next Committees of Referral: Rules

Invited to Give Testimony

Jason Dowell – Chair, Alaska Libertarian Party

Harley Brown - Vice Chair, Alaska Libertarian Party

Jim Harrison – Anchorage Attorney

Bill Scannell—Activist

Scott McMurren—Anchorage Travel Columnist

Jeffrey Mittman – Concerned citizen – (can't make it, but wrote letter)

Tim Peters – Citizens Against Real ID

Numerous Fairbanks Residents

ALASKA STATE LEGISLATURE

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Co-chair
Joint Armed Services Committee

Member
Resources Committee
Judiciary Committee
Transportation Committee

Senator Bill_Wielechowski@legis.state.ak.us

SENATOR BILL WIELECHOWSKI

Senate Bill 202

"An Act relating to expenditures in aid of or to implement the provisions of the federal Real ID Act."

Sponsor Statement

The "Real ID Act" is a federal mandate that creates America's first national ID Card. This is a cause for alarm for many Alaskans and Americans, particularly since the federal government is attempting to interfere with the states' sovereignty, and force the states to implement the program through state-issued driver's licenses. Senate Bill 202 prohibits the use of state money to implement this program.

Many people are concerned that the "common machine-readable technology" required by the Real ID Act would convert state-issued drivers licenses and identification cards into tracking devices, allowing computers to note and record people's whereabouts each time they are identified. The Federal government could essentially track citizens' every movement. This is a major step towards creating a surveillance society.

The requirement that states maintain databases of information about their citizens and residents and then share this personal information with all other states will expose every state to the information security weaknesses of every other state and threatens the privacy of every American. States and local governments that contract with private corporations also allow those private organizations to obtain this information. Moreover, through national agreements with Canada and Mexico, those governments will also have access to every Americans' identification information. Essentially, every American's identity will be at risk of substantial threat of ID theft under Real ID.

The concern has also been raised that Real ID will be used as a backdoor attempt to institute a national gun registry. That is why many NRA members oppose Real ID.

The implementation of Real ID is one of the top issues that States all across the country have been addressing. Arkansas, Colorado, Georgia, Hawaii, Idaho, Illinois, Maine, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Dakota, Oklahoma, South Carolina, Tennessee, and Washington have all passed legislation opposing Real ID. Similar bills are pending in Arizona, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Washington, D.C., West Virginia, and Wisconsin.

It is time for Alaska to join the effort to stand up for state sovereignty and oppose Real ID. I encourage you to support this legislation.

By: Council Member Hilling
Introduced: February 26, 2005 7

RESOLUTION NO. 4262

**RESOLUTION PETITIONING THE ALASKA STATE
LEGISLATURE TO PROCLAIM OPPOSITION TO, AND
PASS LEGISLATION AGAINST, THE FEDERAL "REAL
ID" ACT OF 2005**

WHEREAS, a national ID system has been proposed by the federal government pursuant to Public Law 109-13, called the "Real ID" Act of 2005; and

WHEREAS, this system by 2008 will oblige the 50 states to unify all drivers licenses under certain requirements of content, formatting, recording and reporting; and

WHEREAS, at federal and state levels, costs are projected in the several billions of dollars in the near term; and

WHEREAS, the Bill of Rights states in the Tenth Amendment, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people" and in the Fourth Amendment, "The right of the people to be secure [from federal encroachment] ... shall not be violated"; and

WHEREAS, such issues of states' rights, citizens' privacy, and limitation of federal power have prompted about a dozen states to have active legislation against "Real ID," while another dozen or so states are in process of either resolutions or legislation against its implementation; and

WHEREAS, in the U.S. Congress Sen. John Sununu of New Hampshire, along with Sen. Daniel Akaka of Hawaii, filed a bill last year to repeal the "Real ID" Act of 2005; and

WHEREAS, it behooves the City of Fairbanks and the Alaska State Legislature to participate in this groundswell of objection and opposition to incursion in our affairs by the federal government;

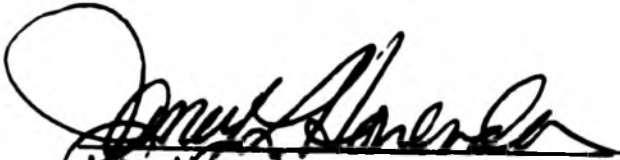
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FAIRBANKS hereby places itself in solidarity with the above-mentioned states seeking abrogation of the "Real ID" Act of 2005, and petitions the Alaska State Legislature likewise to pass resolutions and/or laws to the end of protecting our state from such unconstitutional federal interference and incursion.

PASSED AND APPROVED THIS 26TH DAY OF FEBRUARY, 2007.



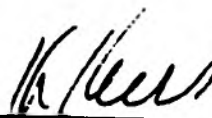
**Steve M. Thompson
City of Fairbanks**

ATTEST:



**Janey Hovenden
City Clerk**

APPROVED AS TO FORM:



**Herbert P. Kuss
City Attorney**



America's Newspapers

Opinion

Anchorage Daily News (AK) - January 18, 2008

Author: Staff

The answer is still no: REAL ID remains a bad idea

Orwellian talk to the contrary, the REAL ID Act does give the United States its first national identification card. And it will create a national database of information about more than 240 million Americans.

Last week, Michael Chertoff, secretary of Homeland Security, unveiled revised rules for the REAL ID Act, which bombed beyond the Beltway after its passage in 2005. Seventeen states passed resolutions protesting it or prohibiting compliance. So Homeland Security tried to sweeten the deal by granting delays, slashing costs by a claimed 73 percent and exempting Americans 50 and older from carrying federally approved driver's licenses until 2017.

Red flag, citizens. If you can't peddle an idea without a fire sale and years of delay, it's probably not a good idea.

REAL ID requires the states to issue driver's licenses that comply with more rigorous federal rules for checking personal data and that have three layers of technical security to make counterfeiting harder. The law also requires each state database to connect with other state databases and federal databases so that information can be shared and checked.

By 2014, states would have to issue REAL ID licenses to all drivers born after Dec. 1, 1964. States could choose from a menu of high-tech safeguards to include in the card.

Last week's sweeteners came with a warning. Mr. Chertoff said the time for discussion and debate is over. States now must seek waivers for more time to comply with the act, or their licenses won't be valid ID for boarding airplanes or entering federal buildings.

And yet he claims the states aren't being coerced.

There remain two fundamental problems with REAL ID.

* Americans have long and wisely rejected any sort of national identification card, particularly one that could be used to restrict our free passage among the states or collect information about us. REAL ID -- or any American's lack of REAL ID -- would do both.

Americans for generations have conceded the need for a reasonably functioning government to have certain information about us. Social Security requires it. Federal loans require it. So do military service and the census. Justice and security sometimes require it. We bear, sometimes with clenched teeth, the intrusion of baggage and body searches to board airplanes.

But Americans also have maintained that the ordinary commerce, relationships and comings and goings of law-abiding citizens are none of Uncle Sam's business.

With REAL ID, such could become an increasingly routine part of Uncle Sam's business.

* Critics point out that REAL ID would not make us safer. It would not have stopped Timothy McVeigh, a homegrown terrorist, nor would it guarantee the apprehension of foreign-born terrorists like those who carried out the attacks of 9/11. It might provide a limited tool against illegal immigration, and, Mr. Chertoff argues, identity theft. But tech trackers insist shared database would increase opportunities for ID theft and other information hacking -- not to mention government-sanctioned invasions of privacy.

Paranoia? No, just knowledge of current events, given the Bush administration's determination to tap Americans' communications with no court oversight and no accountability.

If the states want to tighten their rules for driver's licenses and ID verification, fine. Some of the checks required by REAL ID are being done now -- Alaska, for example, double-checks given Social Security numbers.

And few Americans would have any problem with states sharing information with one another and the feds -- given just cause for doing so.

We want law enforcement on any level to have the means to protect us and catch the bad guys before they strike. That calls for precision, not a universal net that restricts our freedoms and threatens our privacy.

REAL ID doesn't need tweaking or more time. It needs repeal.

BOTTOM LINE: Homeland Security gives ground on cost and time, but REAL ID is a bad deal at any price, at any time.

Alaska notebook

Winter biker

Meet Nick Hardigg, winter bicycle commuter.

Age: "Still in his 30s" (but not for long).

Married, no kids. His wife is also a bike commuter.

Lives in: Turnagain.

Works in: Downtown.

Route: Coastal Trail to Second Avenue, then uphill.

Bike: A Marin hybrid (not a mountain bike; not a street bike), with studded tires. "It's not heavy and it's fast. You don't need some fat balloon tire to get around."

Typical winter riding outfit: Multiple layers, rain pants, rain jacket, face mask, wool mittens.

This is his second winter in Anchorage commuting on bike. He's used to cold weather -- he did four years with the National Park Service in Denali.

Advantages: Doesn't need to belong to a health club -- commuting is his daily exercise. He and his wife get by with just one car. That saves thousands of dollars a year.

Disadvantages: When it snows so much during the day he can't pedal the bike. Riding to work through unpacked snow, he may get to the office sweating like a horse, and there is no shower there.

Moose encounters: "I see one every three weeks or so on the Coastal Trail. Generally they move out of way."

Near death experiences with Anchorage drivers: None so far. His bike has "nice, powerful blinkers" and he just added a strobe light to be seen more easily.

Take away message: "I can't believe how easy it is. It's relaxing. I hate traffic. It's just fun."

-- Matt Zencey

Caption: Photo 1: Alaska Notebook_011808.jpg

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Section: Nation World

Page: B4

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Local in brief

Fairbanks Daily News-Miner (AK) - February 28, 2007

Author: Staff Report

Opposition registered to Real ID The Fairbanks City Council has registered concern with the government's progress in creating a national identification card system, and state lawmakers could soon consider a similar resolution.

The council approved a resolution aligning itself with states where legislatures have opposed, or are considering opposing, the upcoming requirement that drivers licenses and other identification documents comply with strict rules crafted by the federal government. The upcoming changes were laid out in the 2005 Real ID Act.

The council voted 5-0 to oppose the ID card requirements, set to take effect next spring. The resolution argues issues of state rights and citizen privacy have prompted states to oppose the upcoming changes.

Interior state lawmakers are considering introducing a similar resolution to the Legislature for consideration.

"There are not a lot that states can generally do aside from logging an opinion," said Rep. Scott Kawasaki, D-Fairbanks. Nonetheless, Kawasaki is working with Rep. John Coghill, R-North Pole, on a resolution similar to the City Council's. Kawasaki said a handful of lawmakers seem to feel the identification card changes would represent federal government overstepping its bounds.

Section: News

Record Number: /fdn/raw/2007-02-28/2007/02/28/5565.html

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'Big Brother' is almost here

Juneau Empire (AK) - July 13, 2007

In his eerily farsighted book "1984," George Orwell describes a society in which privacy is unknown, slavish obedience a given, and nonconformity the ultimate enemy of the state.

In a nation crawling with domestic spies, the image of Big Brother is seemingly omnipresent. His gaze of loving authority encourages a compliant populace to maintain its herd mentality. Interestingly, while his face is everywhere, in reality, Big Brother is faceless. No one ever actually sees him. They merely assume he is in charge, that he cares for them like a familial overseer, and that his version of society is the only correct one.

It's taken us a while, but we're beginning to catch up with Orwell's vision. The Bush administration's virtually unrestricted government surveillance of Americans has expanded dramatically in the past few years. And while we still lack Winston Smith's ultra-cool spying television set in our living rooms, by this time next year we're slated to have something almost as nifty. It's called REAL ID, and when it kicks in, well, (Big) brother, we'll have all the personal security we could want. Really.

On May 11, 2005, President George W. Bush signed the REAL ID Act of 2005, as an attachment to a military spending bill. In essence, the law, which goes into effect in May of 2008 (or a year later with certain caveats), will create a federalized driver's license, with standards to be set by the Department of Homeland Security.

Well, of course it's for our own good. We'd never be able to survive as a nation without it. We haven't so far. And only kooks, right-wing conspiracy theorists and the blatantly unpatriotic would balk at:

1. Providing an incredible amount of often difficult-to-obtain documentation proving they are who they say they are.
2. Either directly paying exorbitant fees for the new identification card or paying for it through ballooning taxation.
3. Submitting to the future possibility of biometric identifiers and radio-frequency identification within the card itself.
4. Being deposited in a massive database.
5. Being forbidden to travel freely in their own country by their method of choice.
6. Surrendering a whole lot more of their privacy and individuality.

But there is rebellion in the wind.

Montana, which as a state has always had the stomach for a good scrap, flatly refuses to implement the federal plan, stating that it is "inimical to the security and well-being of the people of Montana." New Hampshire Gov. John Lynch signed into law that state's official rejection of REAL ID, indicating that the unfunded federal mandate was "repugnant" to both the state and U.S. constitutions. Other states have expressed similar legislative opposition to what is rightly perceived as an egregious intrusion into the privacy of individuals, and a dismembering of states' rights. The National Governor's Association has

also expressed opposition to the federal law.

While compliance with REAL ID is "voluntary," it is also "mandatory," since noncompliance will result in your being barred from flying on a commercial airplane, entering federal buildings, opening a bank account, and engaging in a variety of other daily activities currently taken for granted. What REAL ID amounts to is the creation of a de facto national identification card and internal passport. For Alaskans, whose dependence on commercial air transport is a fact of life, refusal to "voluntarily" participate in this program means a virtual cessation of travel to the Outside.

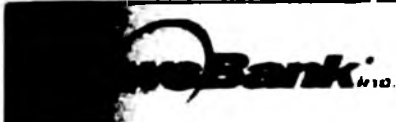
Supporters of REAL ID claim it will help weed out illegal aliens, but our government's arrogant refusal to seal our southern borders exposes that defense as nothing more than smoke and mirrors. This program is geared toward American citizens, not illegal aliens.

Alaska is embarrassingly slow in opposing REAL ID. Though not currently requiring implementation of the law, our state legislature's milquetoast stance is a far cry from vigorous and outright rejection. For a place that supposedly prizes personal freedom and independence, this reluctance to take a stand is pitiful.

The only two options at this point are equally dramatic: boot REAL ID into the legislative oblivion it so richly deserves, or roll out the welcome mat for one fearmongering British writer. His ideas have been looking for a home for a long time.

- Kevin Reeves is a freelance writer living in Haines.

Section: *Opinion*
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America's Newspapers

Opinion

Anchorage Daily News (AK) - August 31, 2007

Author: Staff

REAL ID Alaska should join list of states telling Uncle Sam no thanks

It's hard to believe Alaskans will stand for it.

By the end of 2009, the federal government says Alaska and every other state must produce drivers licenses that effectively function as a national ID card. To issue a license, states must demand to see a birth certificate and proof of residence, verify those documents, make sure the license can easily be read by federal scanners, and link all the license information to a national database. If Alaska dares reject this intrusive, burdensome federal mandate, the feds will refuse to accept Alaska's ID for "federal purposes" and Alaskans will need a passport to board any domestic flight or visit any federal building or national park.

What would we gain if we cave in to this unprecedented federal pressure?

- * More bureaucracy. States would have to vet and maintain huge volumes of personal information, and would have to do most of it on their own dime. Homeland Security Secretary Michael Chertoff has made it clear that the states will pick up most of the tab -- \$23 billion nationwide over 10 years, by Homeland Security's own estimate.
- * Less security. Mr. Chertoff complains 8,000 separate ID cards for various purposes in the United States make it hard to recognize forgeries and protect our borders from illegal immigrants or terrorists. But the Electronic Privacy Information Center, for example, argues that a single card is like having one key to many doors. In the wrong hands, that key can shatter security and privacy on a vast scale. Security experts also warn that terrorists and other criminals will find ways to forge REAL ID cards, no matter how expensive and difficult, to steal identities of honest citizens.
- * Less freedom. A passport to fly to Seattle? To visit Denali? To walk into the Social Security office in downtown Anchorage? Ridiculous.

It is an absolute lie to say that a federally dictated driver's license is not a national ID.

It is absolutely a national ID. Homeland Security just refuses to call it that.

States are on their own to solve the implementation problems and cover the costs. If states balk, well, your citizens will be second-class, automatically suspect, because the feds reject any state ID that doesn't comply with federal rules.

There's no guarantee all this sound and fury will make us any more secure.

Seventeen state legislatures have taken a stand against the REAL ID Act. In 2006, Alaska Reps. Paul Seaton and Max Gruenberg led a successful effort to delay Alaska from complying. In 2007, a bipartisan group of state House members backed a resolution opposing the act. It languished in committee. So Alaska -- a state that was in the forefront of protests against the worst of the USA Patriot Act -- is still on the bubble about REAL ID.

Time to get off. REAL ID won't make living in the United States safer, just more controlled and complicated for ordinary citizens. This isn't just an overreaction to 9/11 and the tide of illegal immigration. It's a dangerous reaction. Alaska should say no. Congress should repeal a bill that passed with no debate or public hearings, that was tucked into a 2005 spending bill to cover the Iraq and Afghanistan wars and tsunami relief.

Duane Bannock, head of the state Division of Motor Vehicles, says he is neither for nor against REAL ID, but does point out that final regulations haven't been published yet, and that Homeland Security's revised regs may answer some objections. Maybe. But the devil isn't just in the details of REAL ID. It's in the idea.

We need reason to deal with the immigration issue and we need resolution to combat terrorism. A national ID born of fear defies both.

BOTTOM LINE: REAL ID is a real mistake. Alaska should protest and support repeal.

That's our Maggie

Maggie the elephant holds a peculiar place in Alaska's imagination. A peculiarly large place, in fact.

Are Alaskans leaving billions of dollars in oil company pockets? How many ex-Alaska legislators will go to jail for corruption? Will the Alaska gas line ever get built?

Who cares? The welfare of Alaska's lone elephant more than holds her own in the scramble for public attention.

She's our own Paris Hilton, our Brad and Jen, the tragic celebrity story that just gets weirder as it goes. (My GOD! Is that BOB BARKER?) Heck, as if to top off the picture of a celebrity in distress, Maggie even has a world-class cellulite problem. (If only she would hit that treadmill harder ...)

Will it cost too much to ship Maggie someplace warmer? Here comes Hollywood money to the rescue!

But wait, how are they going to ship her out -- by jumbo jet? Will she get a PETA-approved elephant airline safety seat? If she goes by ship, is it humane to send her across the Gulf of Alaska without Dramamine? Will poor Maggie feel deprived if she is no longer the center of so much national attention?

Well, she need not slink off into obscurity. The free ride awaiting her would end at an elephant sanctuary in California. Maybe Paris Hilton will trade in her ferret for an occasional outing with a once-famous elephant.

-- Peter Dunlap-Shohl and Matt Zencey

Caption: Photo 1: 31edit pg1_ID_083107.jpg

Edition: Final

Section: Alaska

Page: B4

Record Number: 1473888008/31/07

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National ID card proposal a bad idea

Juneau Empire (AK) - September 10, 2007

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Section: Opinion

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Illegal ID 11/2/07

Print

Real ID is a real problem

IF YOU WONDER whether this nation has gone nuts, consider this: New York, under the federally mandated and widely hated Real ID program, may issue three different kinds of driver's licenses, two for New Yorkers who actually belong in New York — and a third for illegal aliens.

Imagine if you will that someone could present themselves to an official of the state of New York, announce that he or she is an illegal alien and demand a driver's license without repercussions. That he or she would not be snatched up and put on a bus or a plane home is mind-boggling.

REAL ID, passed by Congress in 2005, has its share of critics among civil libertarians who say they worry about the security of information gathered under the program. Proponents say it will make obtaining fake driver's licenses more challenging and increase the safety of the traveling public.

But some 17 states have passed . . .

(cont'd from front page) legislation defying the federal REAL ID mandate that is scheduled to be phased in by 2013. The program requires 245 million drivers to renew their licenses in person and provide various documents to prove their citizenship or legal residency.

The program's costs are staggering. The New York Times reports: "The Department of Homeland Security puts the price of the program nationally at \$23 billion over 10 years, while the National Governors Association estimates that the cost to states will exceed \$11 billion in the first five years alone."

Congress, the Times reports, came up with just \$40 million for start-up costs last year, the rest of the burden was dumped on the states.

In Alaska, officials have made no decision on Real ID pending final release of federal regulations. When they do, we can only hope it is not as nutty as New York's.

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Comments (0) 

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STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION
DIVISION OF MOTOR VEHICLES

SARAH PALIN, GOVERNOR
Annette Kreitzer, Commissioner

Whitney Brewster, Director
1300 W. Benson Blvd.
Anchorage, AK 99503
(907) 269-5559

February 29, 2008

The Honorable Hollis French, Chairman
Senate Judiciary Committee
State Capitol, Rm 417
Juneau, AK 99801

Dear Senator French:

I am writing you regarding factually inaccurate testimony provided to the Senate Judiciary Committee on the issue of REAL ID during a hearing on Senate Bill 202. It is important to have public debate regarding the direction Alaska is going to take on REAL ID, and it's imperative that we debate the facts and not rely on unsubstantiated testimony.

The Administration's position on REAL ID continues to evolve. The Division of Motor Vehicles (DMV) and the Department of Administration have been in regular contact with Governor Palin's office and have not taken action surrounding REAL ID without Governor Palin's knowledge. We are proceeding cautiously, while at the same time strengthening our current practices.

As I stated in my testimony, Alaska has sought an extension from the requirements of REAL ID, which in no way implies that we intend to comply with the federal Act. We have received notification that the extension has been granted. All states, with the exception of three, have sought and been granted extensions. This allows us to essentially "buy time" to determine whether we will comply with the Act.

I encourage members of the committee to read both the REAL ID Act and the final regulations recently published in January. I have included those documents with this correspondence for your convenience. Testimony in the committee and comments offered during the public hearing may have left a false impression with those watching who may not have access to these documents. For instance, nowhere in the Act or final regulations are biometric data, more specifically DNA, required for a driver's license or identification card. Additionally, radio frequency devices are not a requisite for complying with REAL ID. A 2-D barcode is required as it is heavily used by law enforcement. Alaska currently has a 2-D barcode on its driver's licenses and ID cards.

Security of facilities is not defined in the Act or final regulations, therefore, it is unknown at this time what the Department of Homeland Security (DHS) deems as a secure facility. The DMV looks forward to gathering that information in the near future from DHS.

The issue of how rural Alaskans living off the road system will be able to travel by airplane without a REAL ID compliant card was also discussed in the testimony. Because there is not a DMV in every community, the State of Alaska will continue to issue off road system driver's licenses and ID cards that are not REAL ID compliant. Off road system cards do not have photographs. Individuals issued these types of cards are able to travel, despite the lack of a photograph, into hubs where there are DMV offices that can issue cards with photographs. The DMV has spoken with Transportation Safety Administration and has received confirmation that Alaskans living in outlying areas will be able to fly into hubs with off road system identification.

The Administration shares your concerns with the REAL ID Act. It is of the utmost importance that the privacy and personal information of Alaskans be protected and adequate federal funds be provided to states before compliance.

Thank you for the opportunity to share this information. It is my hope that we will continue communication so that we can all make the best decision possible for Alaska and its residents. If you have any questions, please feel free to contact me.

Sincerely,



Whitney Brewster
Director

cc: Governor Sarah Palin
Department of Administration Commissioner Annette Kreitzer
Senate Judiciary Committee Vice-Chairman Charlie Huggins
Senator Lesil McGuire
Senator Bill Wielechowski
Senator Gene Therriault
John Katz, Office of Governor Sarah Palin

The Real ID Act of 2005 (*contained in P.L. 109-13*)

TITLE II--IMPROVED SECURITY FOR DRIVERS' LICENSES AND PERSONAL IDENTIFICATION CARDS

SEC. 201. DEFINITIONS.

In this title, the following definitions apply:

- (1) **DRIVER'S LICENSE-** The term `driver's license' means a motor vehicle operator's license, as defined in section 30301 of title 49, United States Code.
- (2) **IDENTIFICATION CARD-** The term `identification card' means a personal identification card, as defined in section 1028(d) of title 18, United States Code, issued by a State.
- (3) **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.
- (4) **SECRETARY-** The term `Secretary' means the Secretary of Homeland Security.
- (5) **STATE-** The term `State' means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

SEC. 202. MINIMUM DOCUMENT REQUIREMENTS AND ISSUANCE STANDARDS FOR FEDERAL RECOGNITION.

- (a) **Minimum Standards for Federal Use-**

(1) IN GENERAL- Beginning 3 years after the date of the enactment of this division, 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.

(2) STATE CERTIFICATIONS- The Secretary shall determine whether a State is meeting the requirements of this section based on certifications made by the State to the Secretary. Such certifications shall be made at such times and in such manner as the Secretary, in consultation with the Secretary of Transportation, may prescribe by regulation.

(b) Minimum Document Requirements- To meet the requirements of this section, a State shall include, at a minimum, the following information and features on each driver's license and identification card issued to a person by the State:

- (1) The person's full legal name.**
- (2) The person's date of birth.**
- (3) The person's gender.**
- (4) The person's driver's license or identification card number.**
- (5) A digital photograph of the person.**
- (6) The person's address of principle residence.**
- (7) The person's signature.**
- (8) Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes.**
- (9) A common machine-readable technology, with defined minimum data elements.**

(c) Minimum Issuance Standards-

(1) IN GENERAL- To meet the requirements of this section, a State shall require, at a minimum, presentation and verification of the following information before issuing a driver's license or identification card to a person:

(A) A photo identity document, except that a non-photo identity document is acceptable if it includes both the person's full legal name and date of birth.

(B) Documentation showing the person's date of birth.

(C) Proof of the person's social security account number or verification that the person is not eligible for a social security account number.

(D) Documentation showing the person's name and address of principal residence.

(2) SPECIAL REQUIREMENTS-

(A) IN GENERAL- To meet the requirements of this section, a State shall comply with the minimum standards of this paragraph.

(B) EVIDENCE OF LAWFUL STATUS- A State shall require, before issuing a driver's license or identification card to a person, valid documentary evidence that the person--

(i) is a citizen or national of the United States;

(ii) is an alien lawfully admitted for permanent or temporary residence in the United States;

(iii) has conditional permanent resident status in the United States;

(iv) has an approved application for asylum in the United States or has entered into the United States in refugee status;

(v) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States;

(vi) has a pending application for asylum in the United States;

(vii) has a pending or approved application for temporary protected status in the United States;

(viii) has approved deferred action status; or

(ix) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

(C) TEMPORARY DRIVERS' LICENSES AND IDENTIFICATION CARDS-

(i) **IN GENERAL-** If a person presents evidence under any of clauses (v) through (ix) of subparagraph (B), the State may only issue a temporary driver's license or temporary identification card to the person.

(ii) **EXPIRATION DATE-** A temporary driver's license or temporary identification card issued pursuant to this subparagraph shall be valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year.

(iii) **DISPLAY OF EXPIRATION DATE-** A temporary driver's license or temporary identification card issued pursuant to this subparagraph shall clearly indicate that it is temporary and shall state the date on which it expires.

(iv) **RENEWAL-** A temporary driver's license or temporary identification card issued pursuant to this subparagraph may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the temporary driver's license or temporary identification card has been extended by the Secretary of Homeland Security.

(3) VERIFICATION OF DOCUMENTS- To meet the requirements of this section, a State shall implement the following procedures:

(A) Before issuing a driver's license or identification card to a person, the State shall verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented by the person under paragraph (1) or (2).

(B) The State shall not accept any foreign document, other than an official passport, to satisfy a requirement of paragraph (1) or (2).

(C) Not later than September 11, 2005, the State shall enter into a memorandum of understanding with the Secretary of Homeland Security to routinely utilize the automated system known as Systematic Alien Verification for Entitlements, as provided for by section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009-664), to verify the legal presence status of a person, other than a United States citizen, applying for a driver's license or identification card.

(d) Other Requirements- To meet the requirements of this section, a State shall adopt the following practices in the issuance of drivers' licenses and identification cards:

(1) Employ technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferable format.

(2) Retain paper copies of source documents for a minimum of 7 years or images of source documents presented for a minimum of 10 years.

(3) Subject each person applying for a driver's license or identification card to mandatory facial image capture.

(4) Establish an effective procedure to confirm or verify a renewing applicant's information.

(5) Confirm with the Social Security Administration a social security account number presented by a person using the full social security account number. In the event that a social security account number is already registered to or associated with another person to which any State has issued a driver's license or identification card, the State shall resolve the discrepancy and take appropriate action.

(6) Refuse to issue a driver's license or identification card to a person holding a driver's license issued by another State without confirmation that the person is terminating or has terminated the driver's license.

(7) Ensure the physical security of locations where drivers' licenses and identification cards are produced and the security of document materials and papers from which drivers' licenses and identification cards are produced.

(8) Subject all persons authorized to manufacture or produce drivers' licenses and identification cards to appropriate security clearance requirements.

(9) Establish fraudulent document recognition training programs for appropriate employees engaged in the issuance of drivers' licenses and identification cards.

(10) Limit the period of validity of all driver's licenses and identification cards that are not temporary to a period that does not exceed 8 years.

(11) In any case in which the State issues a driver's license or identification card that does not satisfy the requirements of this section, ensure that such license or identification card--

(A) clearly states on its face that it may not be accepted by any Federal agency for federal identification or any other official purpose; and

(B) uses a unique design or color indicator to alert Federal agency and other law enforcement personnel that it may not be accepted for any such purpose.

(12) Provide electronic access to all other States to information contained in the motor vehicle database of the State.

(13) Maintain a State motor vehicle database that contains, at a minimum--

(A) all data fields printed on drivers' licenses and identification cards issued by the State; and

(B) motor vehicle drivers' histories, including motor vehicle violations, suspensions, and points on licenses.

SEC. 203. TRAFFICKING IN AUTHENTICATION FEATURES FOR USE IN FALSE IDENTIFICATION DOCUMENTS.

(a) Criminal Penalty- Section 1028(a)(8) of title 18, United States Code, is amended by striking 'false authentication features' and inserting 'false or actual authentication features'.

(b) Use of False Driver's License at Airports-

(1) IN GENERAL- The Secretary shall enter, into the appropriate aviation security screening database, appropriate information regarding any person convicted of using a false driver's license at an airport (as such term is defined in section 40102 of title 49, United States Code).

(2) FALSE DEFINED- In this subsection, the term 'false' has the same meaning such term has under section 1028(d) of title 18, United States Code.

SEC. 204. GRANTS TO STATES.

(a) In General- The Secretary may make grants to a State to assist the State in conforming to the minimum standards set forth in this title.

(b) Authorization of Appropriations- There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this title.

SEC. 205. AUTHORITY.

(a) Participation of Secretary of Transportation and States- All authority to issue regulations, set standards, and issue grants under this title shall be carried out by the Secretary, in consultation with the Secretary of Transportation and the States.

(b) Extensions of Deadlines- The Secretary may grant to a State an extension of time to meet the requirements of section 202(a)(1) if the State provides adequate justification for noncompliance.

SEC. 206. REPEAL.

Section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458) is repealed.

SEC. 207. LIMITATION ON STATUTORY CONSTRUCTION.

Nothing in this title shall be construed to affect the authorities or responsibilities of the Secretary of Transportation or the States under chapter 303 of title 49, United States Code.

extensive evaluation under the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq. and Council on Environmental Quality (CEQ) regulations, 40 CFR parts 1501–1508. DHS Categorical Exclusion A3 (Table 1 Management Directive 5100.1). Categorical Exclusion A3 applies to the promulgation of this rule, since it is of an administrative and procedural nature that does not force an immediate action but only lays the foundation for subsequent action. The categorical exclusion applies only to the promulgation of the REAL ID rule. Environmental impacts that may be associated with any follow-on DHS activity, such as approval of grant funding, must be reviewed if and when the subsequent program actions create the potential for environmental impact.

E. Energy Impact Analysis

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

F. Executive Order 13175 (Tribal Consultation)

DHS has analyzed this final rule under Executive Order 13175 (entitled "Consultation and Coordination with Indian Tribal Governments", issued November 6, 2000). Executive Order 13175 states that no agency shall promulgate regulations that have tribal implications, that impose substantial direct compliance costs on Indian tribal governments, or that are not required by statute unless the agency first consults with tribal officials and prepares a tribal summary impact statement.

DHS has determined that this final rule will not have a substantial direct effect on one or more Indian tribes and will not impose substantial direct compliance costs on Indian tribal governments. This rule also does not seek to preempt any tribal laws. This final rule does not satisfy the tribal implications requirement in that it is a rule of general applicability that establishes minimum standards for State-issued driver's licenses and identification cards that Federal agencies will accept for official purposes on or after May 11, 2008, a statutory mandate under the REAL ID Act of 2005. Therefore, tribal consultation and a tribal summary impact statement are not required.

List of Subjects in 6 CFR Part 37

Document security, driver's licenses, identification cards, incorporation by reference, motor vehicle administrations, physical security.

The Amendments

■ For the reasons set forth above, the Department of Homeland Security amends 6 CFR Chapter I by adding a new Part 37 as follows:

TITLE 6—HOMELAND SECURITY

CHAPTER I—DEPARTMENT OF HOMELAND SECURITY, OFFICE OF THE SECRETARY

PART 37—REAL ID DRIVER'S LICENSES AND IDENTIFICATION CARDS

Subpart A—General

Sec.

- 37.1 Applicability.
- 37.3 Definitions.
- 37.5 Validity periods and deadlines for REAL ID driver's licenses and identification cards.

Subpart B—Minimum Documentation, Verification, and Card Issuance Requirements

- 37.11 Application and documents the applicant must provide.
- 37.13 Document verification requirements.
- 37.15 Physical security features for the driver's license or identification card.
- 37.17 Requirements for the surface of the driver's license or identification card.
- 37.19 Machine readable technology on the driver's license or identification card.
- 37.21 Temporary or limited-term driver's licenses and identification cards.
- 37.23 Reissued REAL ID driver's licenses and identification cards.
- 37.25 Renewal of REAL ID driver's licenses and identification cards.
- 37.27 Driver's licenses and identification cards issued during the age-based enrollment period.
- 37.29 Prohibition against holding more than one REAL ID card or more than one driver's license.

Subpart C—Other Requirements

- 37.31 Source document retention.
- 37.33 DMV databases.

Subpart D—Security at DMVs and Driver's License and Identification Card Production Facilities

- 37.41 Security plan.
- 37.43 Physical security of DMV production facilities.
- 37.45 Background checks for covered employees.

Subpart E—Procedures for Determining State Compliance

- 37.51 Compliance—general requirements.
- 37.55 State certification documentation.

- 37.59 DHS reviews of State compliance.
- 37.61 Results of compliance determination.
- 37.63 Extension of deadline.
- 37.65 Effect of failure to comply with this Part.

Subpart F—Driver's Licenses and Identification Cards Issued Under Section 202(d)(11) of the REAL ID Act

- 37.71 Driver's licenses and identification cards issued under section 202(d)(11) of the REAL ID Act.

Authority: 49 U.S.C. 30301 note; 6 U.S.C. 111, 112.

PART 37—REAL ID DRIVER'S LICENSES AND IDENTIFICATION CARDS

Subpart A—General

§ 37.1 Applicability.

(a) Subparts A through E of this part apply to States and U.S. territories that choose to issue driver's licenses and identification cards that can be accepted by Federal agencies for official purposes.

(b) Subpart F establishes certain standards for State-issued driver's licenses and identification cards issued by States that participate in REAL ID, but that are not intended to be accepted by Federal agencies for official purpose under section 202(d)(11) of the REAL ID Act.

§ 37.3 Definitions.

For purposes of this part:

Birth certificate means the record related to a birth that is permanently stored either electronically or physically at the State Office of Vital Statistics or equivalent agency in a registrant's State of birth.

Card means either a driver's license or identification card issued by the State Department of Motor Vehicles (DMV) or equivalent State office.

Certification means an assertion by the State to the Department of Homeland Security that the State has met the requirements of this Part.

Certified copy of a birth certificate means a copy of the whole or part of a birth certificate registered with the State that the State considers to be the same as the original birth certificate on file with the State Office of Vital Statistics or equivalent agency in a registrant's State of birth.

Covered employees means Department of Motor Vehicles employees or contractors who are involved in the manufacture or production of REAL ID driver's licenses and identification cards, or who have the ability to affect the identity information that appears on the driver's license or identification card.

Data verification means checking the validity of data contained in source documents presented under this regulation.

DHS means the U.S. Department of Homeland Security.

DMV means the Department of Motor Vehicles or any State Government entity that issues driver's licenses and identification cards, or an office with equivalent function for issuing driver's licenses and identification cards.

Determination means a decision by the Department of Homeland Security that a State has or has not met the requirements of this Part and that Federal agencies may or may not accept the driver's licenses and identification cards issued by the State for official purposes.

Digital photograph means a digital image of the face of the holder of the driver's license or identification card.

Document authentication means determining that the source document presented under these regulations is genuine and has not been altered.

Domestic violence and dating violence have the meanings given the terms in section 3, Universal definitions and grant provisions, of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162, 119 Stat. 2960, 2964, Jan. 5, 2006); codified at section 40002, Definitions and grant provisions, 42 U.S.C. 13925, or State laws addressing domestic and dating violence.

Driver's license means a motor vehicle operator's license, as defined in 49 U.S.C. 30301.

Duplicate means a driver's license or identification card issued subsequent to the original document that bears the same information and expiration date as the original document and that is reissued at the request of the holder when the original is lost, stolen, or damaged and there has been no material change in information since prior issuance.

Federal agency means all executive agencies including Executive departments, a Government corporation, and an independent establishment as defined in 5 U.S.C. 105.

Federally-regulated commercial aircraft means a commercial aircraft regulated by the Transportation Security Administration (TSA).

Full compliance means that the Secretary or his designate(s) has determined that a State has met all the requirements of Subparts A through E.

Full legal name means an individual's first name, middle name(s), and last name or surname, without use of initials or nicknames.

IAFIS means the Integrated Automated Fingerprint Identification System, a national fingerprint and criminal history system maintained by the Federal Bureau of Investigation (FBI) that provides automated fingerprint search capabilities.

Identification card means a document made or issued by or under the authority of a State Department of Motor Vehicles or State office with equivalent function which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

INS means the former-Immigration and Naturalization Service of the U.S. Department of Justice.

Lawful status: A person in lawful status is a citizen or national of the United States; or an alien: lawfully admitted for permanent or temporary residence in the United States; with conditional permanent resident status in the United States; who has an approved application for asylum in the United States or has entered into the United States in refugee status; who has a valid nonimmigrant status in the United States; who has a pending application for asylum in the United States; who has a pending or approved application for temporary protected status (TPS) in the United States; who has approved deferred action status; or who has a pending application for lawful permanent residence (LPR) or conditional permanent resident status. This definition does not affect other definitions or requirements that may be contained in the Immigration and Nationality Act or other laws.

Material change means any change to the personally identifiable information of an individual as defined under this part. Notwithstanding the definition of personally identifiable information below, a change of address of principal residence does not constitute a material change.

Material compliance means a determination by DHS that a State has met the benchmarks contained in the Material Compliance Checklist.

NCIC means the National Crime Information Center, a computerized index of criminal justice information maintained by the Federal Bureau of Investigation (FBI) that is available to Federal, State, and local law enforcement and other criminal justice agencies.

Official purpose means accessing Federal facilities, boarding Federally-regulated commercial aircraft, and entering nuclear power plants.

Passport means a passport booklet or card issued by the U.S. Department of

State that can be used as a travel document to gain entry into the United States and that denotes identity and citizenship as determined by the U.S. Department of State.

Personally identifiable information means any information which can be used to distinguish or trace an individual's identity, such as their name; driver's license or identification card number; social security number; biometric record, including a digital photograph or signature; alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as a date and place of birth or address, whether it is stored in a database, on a driver's license or identification card, or in the machine readable technology on a license or identification card.

Principal residence means the location where a person currently resides (i.e., presently resides even if at a temporary address) in conformance with the residency requirements of the State issuing the driver's license or identification card, if such requirements exist.

REAL ID Driver's License or Identification Card means a driver's license or identification card that has been issued by a State that has been certified by DHS to be in compliance with the requirements of the REAL ID Act and which meets the standards of subparts A through D of this part, including temporary or limited-term driver's licenses or identification cards issued under § 37.21.

Reissued card means a card that a State DMV issues to replace a card that has been lost, stolen or damaged, or to replace a card that includes outdated information. A card may not be reissued remotely when there is a material change to the personally identifiable information as defined by the Rule.

Renewed card means a driver's license or identification card that a State DMV issues to replace a renewable driver's license or identification card.

SAVE means the DHS Systematic Alien Verification for Entitlements system, or such successor or alternate verification system at the Secretary's discretion.

Secretary means the Secretary of Homeland Security.

Sexual assault and stalking have the meanings given the terms in section 3, universal definitions and grant provisions, of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162, 119 Stat. 2960, 2964, Jan. 5, 2006); codified at section 40002, Definitions and grant provisions, 42

U.S.C. 13925, or State laws addressing sexual assault and stalking.

Source document(s) means original or certified copies (where applicable) of documents presented by an applicant as required under these regulations to the Department of Motor Vehicles to apply for a driver's license or identification card.

State means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State address confidentiality program means any State-authorized or State-administered program that—

(1) Allows victims of domestic violence, dating violence, sexual assault, stalking, or a severe form of trafficking to keep, obtain, and use alternative addresses; or

(2) Provides confidential record-keeping regarding the addresses of such victims or other categories of persons.

Temporary lawful status: A person in temporary lawful status is a person who: has a valid nonimmigrant status in the United States; has a pending application for asylum in the United States; has a pending or approved application for temporary protected status (TPS) in the United States; has approved deferred action status; or has a pending application for LPR or conditional permanent resident status.

Verify means procedures to ensure that:

(1) The source document is genuine and has not been altered (i.e., "document authentication"); and

(2) The identity data contained on the document is valid ("data verification").

§ 37.5 Validity periods and deadlines for REAL ID driver's licenses and identification cards.

(a) Driver's licenses and identification cards issued under this part, that are not temporary or limited-term driver's licenses and identification cards, are valid for a period not to exceed eight years. A card may be valid for a shorter period based on other State or Federal requirements.

(b) On or after December 1, 2014, Federal agencies shall not accept a driver's license or identification card for official purposes from individuals born after December 1, 1964, unless such license or card is a REAL ID-compliant driver's license or identification card issued by a State that has been determined by DHS to be in full compliance as defined under this subpart.

(c) On or after December 1, 2017, Federal agencies shall not accept a

driver's license or identification card for official purposes from any individual unless such license or card is a REAL ID-compliant driver's license or identification card issued by a State that has been determined by DHS to be in full compliance as defined under this subpart.

(d) Federal agencies cannot accept for official purpose driver's licenses and identification cards issued under § 37.71 of this rule.

Subpart B—Minimum Documentation, Verification, and Card Issuance Requirements

§ 37.11 Application and documents the applicant must provide.

(a) The State must subject each person applying for a REAL ID driver's license or identification card to a mandatory facial image capture, and shall maintain photographs of individuals even if no card is issued. The photographs must be stored in a format in accordance with § 37.31 as follows:

(1) If no card is issued, for a minimum period of five years.

(2) If a card is issued, for a period of at least two years beyond the expiration date of the card.

(b) *Declaration*. Each applicant must sign a declaration under penalty of perjury that the information presented on the application is true and correct, and the State must retain this declaration. An applicant must sign a new declaration when presenting new source documents to the DMV on subsequent visits.

(c) *Identity*. (1) To establish identity, the applicant must present at least one of the following source documents:

(i) Valid, unexpired U.S. passport.
(ii) Certified copy of a birth certificate filed with a State Office of Vital Statistics or equivalent agency in the individual's State of birth.

(iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545.

(iv) Valid, unexpired Permanent Resident Card (Form I-551) issued by DHS or INS.

(v) Unexpired employment authorization document (EAD) issued by DHS, Form I-766 or Form I-688B.

(vi) Unexpired foreign passport with a valid, unexpired U.S. visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States.

(vii) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570.

(viii) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS.

(ix) REAL ID driver's license or identification card issued in compliance with the standards established by this part.

(x) Such other documents as DHS may designate by notice published in the *Federal Register*.

(2) Where a State permits an applicant to establish a name other than the name that appears on a source document (for example, through marriage, adoption, court order, or other mechanism permitted by State law or regulation), the State shall require evidence of the name change through the presentation of documents issued by a court, governmental body or other entity as determined by the State. The State shall maintain copies of the documentation presented pursuant to § 37.31, and maintain a record of both the recorded name and the name on the source documents in a manner to be determined by the State and in conformity with § 37.31.

(d) *Date of birth*. To establish date of birth, an individual must present at least one document included in paragraph (c) of this section.

(e) *Social security number (SSN)*. (1) Except as provided in paragraph (e)(3) of this section, individuals presenting the identity documents listed in § 37.11(c)(1) and (2) must present his or her Social Security Administration account number card; or, if a Social Security Administration account card is not available, the person may present any of the following documents bearing the applicant's SSN:

(i) A W-2 form,
(ii) A SSA-1099 form,
(iii) A non-SSA-1099 form, or
(iv) A pay stub with the applicant's name and SSN on it.

(2) The State DMV must verify the SSN pursuant to § 37.13(b)(2) of this subpart.

(3) Individuals presenting the identity document listed in § 37.11(c)(1)(vi) must present an SSN or demonstrate non-work authorized status.

(f) *Documents demonstrating address of principal residence*. To document the address of principal residence, a person must present at least two documents of the State's choice that include the individual's name and principal residence. A street address is required except as provided in § 37.17(f) of this part.

(g) *Evidence of lawful status in the United States*. A DMV may issue a REAL ID driver's license or identification card only to a person who has presented satisfactory evidence of lawful status.

(1) If the applicant presents one of the documents listed under paragraphs

(c)(1)(i), (c)(1)(ii), (c)(1)(iii), (c)(1)(iv), (c)(1)(vii) or (c)(1)(viii) of this section, the issuing State's verification of the applicant's identity in the manner prescribed in § 37.13 will also provide satisfactory evidence of lawful status.

(2) If the applicant presents one of the identity documents listed under paragraphs (c)(1)(v) or (c)(1)(vi), or (c)(1)(ix) of this section, the issuing State's verification of the identity document(s) does not provide satisfactory evidence of lawful status. The applicant must also present a second document from § 37.11(g)(1) or documentation issued by DHS or other Federal agencies demonstrating lawful status as determined by USCIS. All documents shall be verified in the manner prescribed in § 37.13.

(h) *Exceptions Process.* A 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. Alternative documents to demonstrate lawful status will only be allowed to demonstrate U.S. citizenship.

(1) Each State establishing an exceptions process must make reasonable efforts to establish the authenticity of alternate documents each time they are presented and indicate that an exceptions process was used in the applicant's record.

(2) The State shall retain copies or images of the alternate documents accepted pursuant to § 37.31 of this part.

(3) The State shall conduct a review of the use of the exceptions process, and pursuant to subpart E of this part, prepare and submit a report with a copy of the exceptions process as part of the certification documentation detailed in § 37.55.

(i) States are not required to comply with these requirements when issuing REAL ID driver's licenses or identification cards in support of Federal, State, or local criminal justice agencies or other programs that require special licensing or identification to safeguard persons or in support of their other official duties. As directed by appropriate officials of these Federal, State, or local agencies, States should take sufficient steps to safeguard the identities of such persons. Driver's licenses and identification cards issued in support of Federal, State, or local criminal justice agencies or programs that require special licensing or identification to safeguard persons or in support of their other official duties shall not be distinguishable from other REAL ID licenses or identification cards issued by the State.

§ 37.13 Document verification requirements.

(a) States shall make reasonable efforts to ensure that the applicant does not have more than one driver's license or identification card already issued by that State under a different identity. In States where an individual is permitted to hold both a driver's license and identification card, the State shall ensure that the individual has not been issued identification documents in multiple or different names. States shall also comply with the provisions of § 37.29 before issuing a driver's license or identification card.

(b) States must verify the documents and information required under § 37.11 with the issuer of the document. States shall use systems for electronic validation of document and identity data as they become available or use alternative methods approved by DHS.

(1) States shall verify any document described in § 37.11(c) or (g) and issued by DHS (including, but not limited to, the I-94 form described in § 37.11(c)(vi)) through the Systematic Alien Verification for Entitlements (SAVE) system or alternate methods approved by DHS, except that if two DHS-issued documents are presented, a SAVE verification of one document that confirms lawful status does not need to be repeated for the second document. In the event of a non-match, the DMV must not issue a REAL ID driver's license or identification card to an applicant, and must refer the individual to U.S. Citizenship and Immigration Services for resolution.

(2) States must verify SSNs with the Social Security Administration (SSA) or through another method approved by DHS. In the event of a non-match with SSA, a State may use existing procedures to resolve non-matches. If the State is unable to resolve the non-match, and the use of an exceptions process is not warranted in the situation, the DMV must not issue a REAL ID driver's license or identification card to an applicant until the information verifies with SSA.

(3) States must verify birth certificates presented by applicants. States should use the Electronic Verification of Vital Events (EVVE) system or other electronic systems whenever the records are available. If the document does not appear authentic upon inspection or the data does not match and the use of an exceptions process is not warranted in the situation, the State must not issue a REAL ID driver's license or identification card to the applicant until the information verifies, and should refer the individual to the issuing office for resolution.

(4) States shall verify documents issued by the Department of State with the Department of State or through methods approved by DHS.

(5) States must verify REAL ID driver's licenses and identification cards with the State of issuance.

(6) Nothing in this section precludes a State from issuing an interim license or a license issued under § 37.71 that will not be accepted for official purposes to allow the individual to resolve any non-match.

§ 37.15 Physical security features for the driver's license or identification card.

(a) *General.* States must include document security features on REAL ID driver's licenses and identification cards designed to deter forgery and counterfeiting, promote an adequate level of confidence in the authenticity of cards, and facilitate detection of fraudulent cards in accordance with this section.

(1) These features must not be capable of being reproduced using technologies that are commonly used and made available to the general public.

(2) The proposed card solution must contain a well-designed, balanced set of features that are effectively combined and provide multiple layers of security. States must describe these document security features in their security plans pursuant to § 37.41.

(b) *Integrated security features.* REAL ID driver's licenses and identification cards must contain at least three levels of integrated security features that provide the maximum resistance to persons' efforts to—

(1) Counterfeit, alter, simulate, or reproduce a genuine document;

(2) Alter, delete, modify, mask, or tamper with data concerning the original or lawful card holder;

(3) Substitute or alter the original or lawful card holder's photograph and/or signature by any means; and

(4) Create a fraudulent document using components from legitimate driver's licenses or identification cards.

(c) *Security features to detect false cards.* States must employ security features to detect false cards for each of the following three levels:

(1) *Level 1.* Cursory examination, without tools or aids involving easily identifiable visual or tactile features, for rapid inspection at point of usage.

(2) *Level 2.* Examination by trained inspectors with simple equipment.

(3) *Level 3.* Inspection by forensic specialists.

(d) *Document security and integrity.* States must conduct a review of their card design and submit a report to DHS with their certification that indicates the

ability of the design to resist compromise and document fraud attempts. The report required by this paragraph is SSI and must be handled and protected in accordance with 49 CFR part 1520. Reports must be updated and submitted to DHS whenever a security feature is modified, added, or deleted. After reviewing the report, DHS may require a State to provide DHS with examination results from a recognized independent laboratory experienced with adversarial analysis of identification documents concerning one or more areas relating to the card's security.

§ 37.17 Requirements for the surface of the driver's license or identification card.

To be accepted by a Federal agency for official purposes, REAL ID driver's licenses and identification cards must include on the front of the card (unless otherwise specified below) the following information:

(a) *Full legal name.* Except as permitted in § 37.11(c)(2), the name on the face of the license or card must be the same as the name on the source document presented by the applicant to establish identity. Where the individual has only one name, that name should be entered in the last name or family name field, and the first and middle name fields should be left blank. Place holders such as NFN, NMN, and NA should not be used.

(b) *Date of birth.*

(c) *Gender,* as determined by the State.

(d) *Unique Driver's license or identification card number.* This cannot be the individual's SSN, and must be unique across driver's license or identification cards within the State.

(e) *Full facial digital photograph.* A full facial photograph must be taken pursuant to the standards set forth below:

(1) States shall follow specifically ISO/IEC 19794-5:2005(E) Information Technology—Biometric Data Interchange Formats—Part 5: Face Image Data. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these incorporated standards from <http://www.ansi.org>, or by contacting ANSI at ANSI, 25 West 43rd Street, 4th Floor, New York, New York 10036. You may inspect a copy of the incorporated standard at the Department of Homeland Security, 1621 Ken Street, 9th Floor, Rosslyn, VA (please call 703-235-0709 to make an appointment) or at the National Archives and Records Administration (NARA). For information on the availability of

material at NARA, call 202-741-6030, or go to www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

These standards include:

(i) Lighting shall be equally distributed on the face.

(ii) The face from crown to the base of the chin, and from ear-to-ear, shall be clearly visible and free of shadows.

(iii) Veils, scarves or headdresses must not obscure any facial features and not generate shadow. The person may not wear eyewear that obstructs the iris or pupil of the eyes and must not take any action to obstruct a photograph of their facial features.

(iv) Where possible, there must be no dark shadows in the eye-sockets due to the brow. The iris and pupil of the eyes shall be clearly visible.

(v) Care shall be taken to avoid "hot spots" (bright areas of light shining on the face).

(2) Photographs may be in black and white or color.

(f) *Address of principal residence.* except an alternative address may be displayed for:

(1) Individuals for whom a State law, regulation, or DMV procedure permits display of an alternative address, or

(2) Individuals who satisfy any of the following:

(i) If the individual is enrolled in a State address confidentiality program which allows victims of domestic violence, dating violence, sexual assault, stalking, or a severe form of trafficking, to keep, obtain, and use alternative addresses; and provides that the addresses of such persons must be kept confidential, or other similar program;

(ii) If the individual's address is entitled to be suppressed under State or Federal law or suppressed by a court order including an administrative order issued by a State or Federal court; or

(iii) If the individual is protected from disclosure of information pursuant to section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

(3) In areas where a number and street name has not been assigned for U.S. mail delivery, an address convention used by the U.S. Postal Service is acceptable.

(g) *Signature.* (1) The card must include the signature of the card holder. The signature must meet the requirements of the March 2005 American Association of Motor Vehicle Administrators (AAMVA) standards for the 2005 AAMVA Driver's License/Identification Card Design Specifications, Annex A, section

A.7.7.2. This standard includes requirements for size, scaling, cropping, color, borders, and resolution. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these standards from AAMVA on-line at <http://www.aamva.org>, or by contacting AAMVA at 4301 Wilson Boulevard, Suite 400, Arlington, VA 22203. You may inspect a copy of these incorporated standards at the Department of Homeland Security, 1621 Kent Street, 9th Floor, Rosslyn, VA (please call 703-235-0709 to make an appointment) or at the National Archives and Records Administration (NARA). For information on the availability of material at NARA, call 202-741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(2) The State shall establish alternative procedures for individuals unable to sign their name.

(h) *Physical security features,* pursuant to § 37.15 of this subpart.

(i) *Machine-readable technology on the back of the card,* pursuant to § 37.19 of this subpart.

(j) *Date of transaction.*

(k) *Expiration date.*

(l) *State or territory of issuance.*

(m) *Printed information.* The name, date of birth, gender, card number, issue date, expiration date, and address on the face of the card must be in Latin alphanumeric characters. The name must contain a field of no less than a total of 39 characters, and longer names shall be truncated following the standard established by International Civil Aviation Organization (ICAO) 9303, "Machine Readable Travel Documents," Volume 1, Part 1, Sixth Edition, 2006. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of ICAO 9303 from the ICAO, Document Sales Unit, 999 University Street, Montreal, Quebec, Canada H3C 5H7, e-mail: sales@icao.int. You may inspect a copy of the incorporated standard at the Department of Homeland Security, 1621 Kent Street, 9th Floor, Rosslyn, VA (please call 703-235-0709 to make an appointment) or at the National Archives and Records Administration (NARA). For information on the availability of material at NARA, call 202-741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(n) The card shall bear a DHS-approved security marking on each

driver's license or identification card that is issued reflecting the card's level of compliance as set forth in § 37.51 of this Rule.

§ 37.19 Machine readable technology on the driver's license or identification card.

For the machine readable portion of the REAL ID driver's license or identification card, States must use the ISO/IEC 15438:2006(E) Information Technology—Automatic identification and data capture techniques—PDF417 symbology specification. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these incorporated standards at <http://www.ansi.org>, or by contacting ANSI at ANSI, 25 West 43rd Street, 4th Floor, New York, New York 10036. You may inspect a copy of the incorporated standard at the Department of Homeland Security, 1621 Kent Street, 9th Floor, Rosslyn, VA (please call 703-235-0709 to make an appointment) or at the National Archives and Records Administration (NARA). For information on the availability of material at NARA, call 202-741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. The PDF417 bar code standard must have the following defined minimum data elements:

- (a) Expiration date.
- (b) Full legal name, unless the State permits an applicant to establish a name other than the name that appears on a source document, pursuant to § 37.11(c)(2).
- (c) Date of transaction.
- (d) Date of birth.
- (e) Gender.
- (f) Address as listed on the card pursuant to § 37.17(f).
- (g) Unique driver's license or identification card number.
- (h) Card design revision date, indicating the most recent change or modification to the visible format of the driver's license or identification card.
- (i) Inventory control number of the physical document.
- (j) State or territory of issuance.

§ 37.21 Temporary or limited-term driver's licenses and identification cards.

States may only issue a temporary or limited-term REAL ID driver's license or identification card to an individual who has temporary lawful status in the United States.

(a) States must require, before issuing a temporary or limited-term driver's license or identification card to a person, valid documentary evidence,

verifiable through SAVE or other DHS-approved means, that the person has lawful status in the United States.

(b) States shall not issue a temporary or limited-term driver's license or identification card pursuant to this section:

(1) For a time period longer than the expiration of the applicant's authorized stay in the United States, or, if there is no expiration date, for a period longer than one year; and

(2) For longer than the State's maximum driver's license or identification card term.

(c) States shall renew a temporary or limited-term driver's license or identification card pursuant to this section and § 37.25(b)(2), only if:

(1) the individual presents valid documentary evidence that the status by which the applicant qualified for the temporary or limited-term driver's license or identification card is still in effect, or

(2) the individual presents valid documentary evidence that he or she continues to qualify for lawful status under paragraph (a) of this section.

(d) States must verify the information presented to establish lawful status through SAVE, or another method approved by DHS.

(e) Temporary or limited-term driver's licenses and identification cards must clearly indicate on the face of the license and in the machine readable zone that the license or card is a temporary or limited-term driver's license or identification card.

§ 37.23 Reissued REAL ID driver's licenses and identification cards.

(a) *State procedure.* States must establish an effective procedure to confirm or verify an applicant's identity each time a REAL ID driver's license or identification card is reissued, to ensure that the individual receiving the reissued REAL ID driver's license or identification card is the same individual to whom the driver's license or identification card was originally issued.

(b) *Remote/Non-in-person reissuance.* Except as provided in paragraph (c) of this section a State may conduct a non-in-person (remote) reissuance if State procedures permit the reissuance to be conducted remotely. Except for the reissuance of duplicate driver's licenses and identification cards as defined in this rule, the State must reverify pursuant to § 37.13, the applicant's SSN and lawful status prior to reissuing the driver's license or identification card.

(c) *In-person reissuance.* The State may not remotely reissue a driver's license or identification card where

there has been a material change in any personally identifiable information since prior issuance. All material changes must be established through an applicant's presentation of an original source document as provided in this subpart, and must be verified as specified in § 37.13.

§ 37.25 Renewal of REAL ID driver's licenses and identification cards.

(a) *In-person renewals.* States must require holders of REAL ID driver's licenses and identification cards to renew their driver's licenses and identification cards with the State DMV in person, no less frequently than every sixteen years.

(1) The State DMV shall take an updated photograph of the applicant, no less frequently than every sixteen years.

(2) The State must reverify the renewal applicant's SSN and lawful status through SSOLV and SAVE, respectively (or other DHS-approved means) as applicable prior to renewing the driver's license or identification card. The State must also verify electronically information that it was not able to verify at a previous issuance or renewal if the systems or processes exist to do so.

(3) Holders of temporary or limited-term REAL ID driver's licenses and identification cards must present evidence of continued lawful status via SAVE or other method approved by DHS when renewing their driver's license or identification card.

(b) *Remote/Non-in-person renewal.* Except as provided in (b)(2) a State may conduct a non-in-person (remote) renewal if State procedures permit the renewal to be conducted remotely.

(1) The State must reverify the applicant's SSN and lawful status pursuant to § 37.13 prior to renewing the driver's license or identification card.

(2) The State may not remotely renew a REAL ID driver's license or identification card where there has been a material change in any personally identifiable information since prior issuance. All material changes must be established through the applicant's presentation of an original source document as provided in Subpart B, and must be verified as specified in § 37.13.

§ 37.27 Driver's licenses and identification cards issued during the age-based enrollment period.

Driver's licenses and identification cards issued to individuals prior to a DHS determination that the State is materially compliant may be renewed or reissued pursuant to current State practices, and will be accepted for

official purposes until the validity dates described in § 37.5. Effective December 1, 2014, Federal agencies will only accept REAL ID cards for official purpose from individuals under 50 as of December 1, 2014. Individuals age 50 or older on December 1, 2014, must obtain and present REAL ID cards for official purposes by December 1, 2017.

§ 37.29 Prohibition against holding more than one REAL ID card or more than one driver's license.

(a) An individual may hold only one REAL ID card. An individual cannot hold a REAL ID driver's license and a REAL ID identification card simultaneously. Nothing shall preclude an individual from holding a REAL ID card and a non-REAL ID card unless prohibited by his or her State.

(b) Prior to issuing a REAL ID driver's license,

(1) A State must check with all other States to determine if the applicant currently holds a driver's license or REAL ID identification card in another State.

(2) If the State receives confirmation that the individual holds a driver's license in another State, or possesses a REAL ID identification card in another State, the receiving State must take measures to confirm that the person has terminated or is terminating the driver's license or REAL ID identification card issued by the prior State pursuant to State law, regulation or procedure.

(c) Prior to issuing a REAL ID identification card,

(1) A State must check with all other States to determine if the applicant currently holds a REAL ID driver's license or identification card in another State.

(2) If the State receives confirmation that the individual holds a REAL ID card in another State the receiving State must take measures to confirm that the person has terminated or is terminating the REAL ID driver's license or identification card issued by the prior State pursuant to State law, regulation or procedure.

Subpart C—Other Requirements

§ 37.31 Source document retention.

(a) States must retain copies of the application, declaration and source documents presented under § 37.11 of this Part, including documents used to establish all names recorded by the DMV under § 37.11(c)(2). States shall take measures to protect any personally identifiable information collected pursuant to the REAL ID Act as described in their security plan under § 37.41(b)(2).

(1) States that choose to keep paper copies of source documents must retain the copies for a minimum of seven years.

(2) States that choose to transfer information from paper copies to microfiche must retain the microfiche for a minimum of ten years.

(3) States that choose to keep digital images of source documents must retain the images for a minimum of ten years.

(4) States are not required to retain the declaration with application and source documents, but must retain the declaration consistent with applicable State document retention requirements and retention periods.

(b) States using digital imaging to retain source documents must store the images as follows:

(1) Photo images must be stored in the Joint Photographic Experts Group (JPEG) 2000 standard for image compression, or a standard that is interoperable with the JPEG standard. Images must be stored in an open (consensus) format, without proprietary wrappers, to ensure States can effectively use the image captures of other States as needed.

(2) Document and signature images must be stored in a compressed Tagged Image Format (TIF), or a standard that is interoperable with the TIF standard.

(3) All images must be retrievable by the DMV if properly requested by law enforcement.

(c) Upon request by an applicant, a State shall record and retain the applicant's name, date of birth, certificate numbers, date filed, and issuing agency in lieu of an image or copy of the applicant's birth certificate, where such procedures are required by State law.

§ 37.33 DMV databases.

(a) States must maintain a State motor vehicle database that contains, at a minimum—

(1) All data fields printed on driver's licenses and identification cards issued by the State, individual serial numbers of the card, and SSN;

(2) A record of the full legal name and recorded name established under § 37.11(c)(2) as applicable, without truncation;

(3) All additional data fields included in the MRZ but not printed on the driver's license or identification card; and

(4) Motor vehicle driver's histories, including motor vehicle violations, suspensions, and points on driver's licenses.

(b) States must protect the security of personally identifiable information, collected pursuant to the REAL ID Act, in accordance with § 37.41(b)(2) of this part.

Subpart D—Security at DMVs and Driver's License and Identification Card Production Facilities

§ 37.41 Security plan.

(a) *In General.* States must have a security plan that addresses the provisions in paragraph (b) of this section and must submit the security plan as part of its REAL ID certification under § 37.55.

(b) Security plan contents. At a minimum, the security plan must address—

(1) Physical security for the following:

(i) Facilities used to produce driver's licenses and identification cards.

(ii) Storage areas for card stock and other materials used in card production.

(2) Security of personally identifiable information maintained at DMV locations involved in the enrollment, issuance, manufacture and/or production of cards issued under the REAL ID Act, including, but not limited to, providing the following protections:

(i) Reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the personally identifiable information collected, stored, and maintained in DMV records and information systems for purposes of complying with the REAL ID Act. These safeguards must include procedures to prevent unauthorized access, use, or dissemination of applicant information and images of source documents retained pursuant to the Act and standards and procedures for document retention and destruction.

(ii) A privacy policy regarding the personally identifiable information collected and maintained by the DMV pursuant to the REAL ID Act.

(iii) Any release or use of personal information collected and maintained by the DMV pursuant to the REAL ID Act must comply with the requirements of the Driver's Privacy Protection Act, 18 U.S.C. 2721 *et seq.* State plans may go beyond these minimum privacy requirements to provide greater protection, and such protections are not subject to review by DHS for purposes of determining compliance with this Part.

(3) Document and physical security features for the card, consistent with the requirements of § 37.15, including a description of the State's use of biometrics, and the technical standard utilized, if any;

(4) Access control, including the following:

(i) Employee identification and credentialing, including access badges.

(ii) Employee background checks, in accordance with § 37.45 of this part.

(iii) Controlled access systems.

(5) Periodic training requirements in—

(i) Fraudulent document recognition training for all covered employees handling source documents or engaged in the issuance of driver's licenses and identification cards. The fraudulent document training program approved by AAMVA or other DHS approved method satisfies the requirement of this subsection.

(ii) Security awareness training, including threat identification and handling of SSI as necessary.

(6) Emergency/incident response plan;

(7) Internal audit controls;

(8) An affirmation that the State possesses both the authority and the means to produce, revise, expunge, and protect the confidentiality of REAL ID driver's licenses or identification cards issued in support of Federal, State, or local criminal justice agencies or similar programs that require special licensing or identification to safeguard persons or support their official duties. These procedures must be designed in coordination with the key requesting authorities to ensure that the procedures are effective and to prevent conflicting or inconsistent requests. In order to safeguard the identities of individuals, these procedures should not be discussed in the plan and States should make every effort to prevent disclosure to those without a need to know about either this confidential procedure or any substantive information that may compromise the confidentiality of these operations. The appropriate law enforcement official and United States Attorney should be notified of any action seeking information that could compromise Federal law enforcement interests.

(c) *Handling of Security Plan.* The Security Plan required by this section contains Sensitive Security Information (SSI) and must be handled and protected in accordance with 49 CFR Part 1520.

§ 37.43 Physical security of DMV production facilities.

(a) States must ensure the physical security of facilities where driver's licenses and identification cards are produced, and the security of document materials and papers from which driver's licenses and identification cards are produced or manufactured.

(b) States must describe the security of DMV facilities as part of their security plan, in accordance with § 37.41.

§ 37.45 Background checks for covered employees.

(a) *Scope.* States are required to subject persons who are involved in the manufacture or production of REAL ID driver's licenses and identification cards, or who have the ability to affect the identity information that appears on the driver's license or identification card, or current employees who will be assigned to such positions ("covered employees" or "covered positions"), to a background check. The background check must include, at a minimum, the validation of references from prior employment, a name-based and fingerprint-based criminal history records check, and employment eligibility verification otherwise required by law. States shall describe their background check process as part of their security plan, in accordance with § 37.41(b)(4)(ii). This section also applies to contractors utilized in covered positions.

(b) *Background checks.* States must ensure that any covered employee under paragraph (a) of this section is provided notice that he or she must undergo a background check and the contents of that check.

(1) *Criminal history records check.* States must conduct a name-based and fingerprint-based criminal history records check (CHRC) using, at a minimum, the FBI's National Crime Information Center (NCIC) and the Integrated Automated Fingerprint Identification (IAFIS) database and State repository records on each covered employee identified in paragraph (a) of this section, and determine if the covered employee has been convicted of any of the following disqualifying crimes:

(i) *Permanent disqualifying criminal offenses.* A covered employee has a permanent disqualifying offense if convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction, of any of the felonies set forth in 49 CFR 1572.103(a).

(ii) *Interim disqualifying criminal offenses.* The criminal offenses referenced in 49 CFR 1572.103(b) are disqualifying if the covered employee was either convicted of those offenses in a civilian or military jurisdiction, or admits having committed acts which constitute the essential elements of any of those criminal offenses within the seven years preceding the date of employment in the covered position; or the covered employee was released from incarceration for the crime within the five years preceding the date of employment in the covered position.

(iii) *Under want or warrant.* A covered employee who is wanted or under

indictment in any civilian or military jurisdiction for a felony referenced in this section is disqualified until the want or warrant is released.

(iv) *Determination of arrest status.* When a fingerprint-based check discloses an arrest for a disqualifying crime referenced in this section without indicating a disposition, the State must determine the disposition of the arrest.

(v) *Waiver.* The State may establish procedures to allow for a waiver of the requirements of paragraphs (b)(1)(ii) or (b)(1)(iv) of this section under circumstances determined by the State. These procedures can cover circumstances where the covered employee has been arrested, but no final disposition of the matter has been reached.

(2) *Employment eligibility status verification.* The State shall ensure it is fully in compliance with the requirements of section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) and its implementing regulations (8 CFR part 274A) with respect to each covered employee. The State is encouraged to participate in the USCIS E-Verify program (or any successor program) for employment eligibility verification.

(3) *Reference check.* Reference checks from prior employers are not required if the individual has been employed by the DMV for at least two consecutive years since May 11, 2006.

(4) *Disqualification.* If results of the State's CHRC reveal a permanent disqualifying criminal offense under paragraph (b)(1)(i) or an interim disqualifying criminal offense under paragraph (b)(1)(ii), the covered employee may not be employed in a position described in paragraph (a) of this section. An employee whose employment eligibility has not been verified as required by section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) and its implementing regulations (8 CFR part 274A) may not be employed in any position.

(c) *Appeal.* If a State determines that the results from the CHRC do not meet the standards of such check the State must so inform the employee of the determination to allow the individual an opportunity to appeal to the State or Federal government, as applicable.

(d) Background checks substantially similar to the requirements of this section that were conducted on existing employees on or after May 11, 2006 need not be re-conducted.

Subpart E—Procedures for Determining State Compliance

§ 37.51 Compliance—general requirements.

(a) *Full compliance.* To be in full compliance with the REAL ID Act of 2005, 49 U.S.C. 30301 note, States must meet the standards of subparts A through D or have a REAL ID program that DHS has determined to be comparable to the standards of subparts A through D. States certifying compliance with the REAL ID Act must follow the certification requirements described in § 37.55. States must be fully compliant with Subparts A through D on or before May 11, 2011. States must file the documentation required under § 37.55 at least 90 days prior to the effective date of full compliance.

(b) *Material compliance.* States must be in material compliance by January 1, 2010 to receive an additional extension until no later than May 10, 2011 as described in § 37.63. Benchmarks for material compliance are detailed in the Material Compliance Checklist found in DHS' Web site at <http://www.dhs.gov>.

§ 37.55 State certification documentation.

(a) States seeking DHS's determination that its program for issuing REAL ID driver's licenses and identification cards is meeting the requirements of this part (full compliance), must provide DHS with the following documents:

(1) A certification by the highest level Executive official in the State overseeing the DMV reading as follows:

"I, [name and title (name of certifying official), (position title) of the State (Commonwealth)] of _____, do hereby certify that the State (Commonwealth) has implemented a program for issuing driver's licenses and identification cards in compliance with the requirements of the REAL ID Act of 2005, as further defined in 6 CFR part 37, and intends to remain in compliance with these regulations."

(2) A letter from the Attorney General of the State confirming that the State has the legal authority to impose requirements necessary to meet the standards established by this part.

(3) A description of the State's exceptions process under § 37.11(h), and the State's waiver processes under § 37.45(b)(1)(v).

(4) The State's Security Plan under § 37.41.

(b) After DHS's final compliance determination, States shall recertify compliance with this Part every three years on a rolling basis as determined by DHS.

§ 37.59 DHS reviews of State compliance.

State REAL ID programs will be subject to DHS review to determine whether the State meets the requirements for compliance with this part.

(a) *General inspection authority.* States must cooperate with DHS's review of the State's compliance at any time. In addition, the State must:

(1) Provide any reasonable information pertinent to determining compliance with this part as requested by DHS;

(2) Permit DHS to conduct inspections of any and all sites associated with the enrollment of applicants and the production, manufacture, personalization and issuance of driver's licenses or identification cards; and

(3) Allow DHS to conduct interviews of the State's employees and contractors who are involved in the application and verification process, or the manufacture and production of driver's licenses or identification cards. DHS shall provide written notice to the State in advance of an inspection visit.

(b) *Preliminary DHS determination.* DHS shall review forms, conduct audits of States as necessary, and make a preliminary determination on whether the State has satisfied the requirements of this part within 45 days of receipt of the Material Compliance Checklist or State certification documentation of full compliance pursuant to § 37.55.

(1) If DHS determines that the State meets the benchmarks of the Material Compliance Checklist, DHS may grant the State an additional extension until no later than May 10, 2011.

(2) If DHS determines that the State meets the full requirements of subparts A through E, the Secretary shall make a final determination that the State is in compliance with the REAL ID Act.

(c) *State reply.* The State will have up to 30 calendar days to respond to the preliminary determination. The State's reply must explain what corrective action it either has implemented, or intends to implement, to correct any deficiencies cited in the preliminary determination or, alternatively, detail why the DHS preliminary determination is incorrect. Upon request by the State, an informal conference will be scheduled during this time.

(d) *Final DHS determination.* DHS will notify States of its final determination of State compliance with this Part, within 45 days of receipt of a State reply.

(e) *State's right to judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. Chapter 7.

§ 37.61 Results of compliance determination.

(a) A State shall be deemed in compliance with this part when DHS issues a determination that the State meets the requirements of this part.

(b) The Secretary will determine that a State is not in compliance with this part when it—

(1) Fails to submit a timely certification or request an extension as prescribed in this subpart; or

(2) Does not meet one or more of the standards of this part, as established in a determination by DHS under § 37.59.

§ 37.63 Extension of deadline.

(a) A State may request an initial extension by filing a request with the Secretary no later than March 31, 2008. In the absence of extraordinary circumstances, such an extension request will be deemed justified for a period lasting until, but not beyond, December 31, 2009. DHS shall notify a State of its acceptance of the State's request for initial extension within 45 days of receipt.

(b) States granted an initial extension may file a request for an additional extension until no later than May 10, 2011, by submitting a Material Compliance Checklist demonstrating material compliance, per § 37.51(b) with certain elements of subparts A through E as defined by DHS. Such additional extension request must be filed by October 11, 2009. DHS shall notify a State whether an additional extension has been granted within 45 days of receipt of the request and documents described above.

(c) Subsequent extensions, if any, will be at the discretion of the Secretary.

§ 37.65 Effect of failure to comply with this Part.

(a) Any driver's license or identification card issued by a State that DHS determines is not in compliance with this part is not acceptable as identification by Federal agencies for official purposes.

(b) Driver's licenses and identification cards issued by a State that has obtained an extension of the compliance date from DHS per § 37.51 are acceptable for official purposes until the end of the applicable enrollment period under § 37.5; or the State subsequently is found by DHS under this Subpart to not be in compliance.

(c) Driver's licenses and identification cards issued by a State that has been determined by DHS to be in material compliance and that are marked to identify that the licenses and cards are materially compliant will continue to be accepted by Federal agencies after the

expiration of the enrollment period under § 37.5, until the expiration date on the face of the document.

Subpart F—Driver's Licenses and Identification Cards Issued Under Section 202(d)(11) of the REAL ID Act

§ 37.71 Driver's licenses and identification cards issued under section 202(d)(11) of the REAL ID Act.

(a) Except as authorized in § 37.27, States that DHS determines are compliant with the REAL ID Act that

choose to also issue driver's licenses and identification cards that are not acceptable by Federal agencies for official purposes must ensure that such driver's licenses and identification cards—

(1) Clearly state on their face and in the machine readable zone that the card is not acceptable for official purposes; and

(2) Have a unique design or color indicator that clearly distinguishes them from driver's licenses and identification

cards that meet the standards of this part.

(b) DHS reserves the right to approve such designations, as necessary, during certification of compliance.

* * * * *

Issued in Washington, DC, on January 10, 2008.

Michael Chertoff,

Secretary.

(FR Doc. 08-140 Filed 1-28-08; 8:45 am)

BILLING CODE 4410-10-P

SB 202 – REAL ID

Senate Judiciary Committee

French, Huggins, McGuire, Wielechowski, Therriault

1:30 PM Wednesday, February 27, 2008

Beltz 211

Next Committees of Referral: Rules

House Version: HB 390- Scott Kawasaki. Referred to State Affairs and Finance (no hearing scheduled)

Invited to Give Testimony

Jason Dowell – Chair, Alaska Libertarian Party

Harley Brown - Vice Chair, Alaska Libertarian Party

Jim Harrison – Anchorage Attorney

Bill Scannell—Activist

Scott McMurren—Anchorage Travel Columnist

Jeffrey Mittman – Concerned citizen – (can't make it, but wrote letter)

Tim Peters – Citizens Against Real ID

Numerous Fairbanks Residents

Available if Needed

Jerry Luckhaupt – Drafter (3867)

Opponents of Real ID: A Partial List

The following organizations, either via official position papers or commentary, express at least some sense of objection to the implementation of the Real ID Act of 2005. As such, legislators can see that this opposition is a broad spectrum of the American people, and contains groups from both the "left" and "right" of political thought, as well as crossing partisan boundaries. When such a diverse collection of people stand united for or against any subject, it is a sure bet that the constituents in any given legislative district likewise hold strong and similar views. The Real ID Act is opposed by the vast majority of Americans. Even doing a web search for "Real ID Act" shows that for every supportive article there are nearly 500 opposed.

| | |
|--|--|
| American Bar Association | Jews for Racial and Economic Justice, New York |
| American Civil Liberties Union | John Birch Society |
| American Conservative Union | Leadership Conference on Civil Rights |
| America: Freedom to Fascism | League of the South |
| American Friends Service Committee | Lutheran Social Ministries of NJ |
| American Jewish Committee, National | Liberty Coalition |
| American Policy Center | Mennonite Central Committee, Pennsylvania |
| Ancient Order of Hibernians | Mexican American Legal Defense and Educational Fund |
| Bill of Rights Defense Committee | National Association of Latino Appointed and Elected Officials |
| Catholic Charities, Hawaii | National Center on Domestic and Sexual Violence |
| Catholic Charities, West Virginia | National Coalition Against Domestic Violence |
| Catholic Charities Immigration Clinic, Mississippi | National Law Center on Homelessness & Poverty |
| Catholic Conference of Kentucky | National Organization for Women |
| Catholic Immigration Network, Massachusetts | National Taxpayers Union |
| Catholic Legal Immigration Services, Washington DC | Navaho United Methodist Center, New Mexico |
| Catholic Social Services, Alaska | Our Lady of Victory and Sacred Heart Churches, California |
| Center for American Progress | People For the American Way |
| Center for National Security Studies | Presbyterian Church (USA), Washington DC |
| Citizens Against Government Waste | Privacy Rights Clearinghouse |
| Competitive Enterprise Institute | Religious Action Center of Reform Judaism, National |
| Consumer Action | September 11 Families for Peaceful Tomorrows |
| Electronic Frontier Foundation | Sikh Coalition, NY |
| First Presbyterian Church, North Carolina | Southern Poverty Law Center |
| Florida Catholic Conference | Union for Reform Judaism, National |
| Gun Owners of America | United Methodist Children's Home, Alabama |
| Interfaith Refugee and Immigration Ministries Illinois | U.S. Bill of Rights Foundation |
| Jesuit Refugee Service | U.S. Committee for Refugees and Immigrants |
| Jewish Community Action, Minnesota | Washington Association of Churches, Washington |
| Jewish Labor Committee, National | |
| Jews for the Preservation of Firearms Ownership, Inc. (JPFO) | |



Alaskans Working For Alaska!

1577 C Street, Suite 201, Anchorage, Alaska 99501 • Phone (907)277-5200 • Fax (907)277-5206

E-mail: aseahq@afscmelocal52.org • Website: www.afscmelocal52.org

February 26, 2008

Senator Hollis French, Chair
Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99811

RE: Senate Bill 202 – No State Funding for Federal Real ID Act Implementation.

Dear Chairman French,

On behalf of the over 8,000 members of ASEA/AFSCME Local 52, I am writing to express my support for passage of Senate Bill 202. I encourage you to support this legislation both in committee and on the Senate floor. Expeditious passage of SB 202 is extremely important to protect the privacy interests of all Alaskans. Passage of SB 202 will also tell the federal government that you want to protect the employment rights of the many hard working state employees who process Division of Motor Vehicle applications at every DMV office across the State of Alaska.

If adopted, this legislation would send a message that the State of Alaska won't accept mandates from the federal government which would require the State to spend additional funds to implement and mandates which can change the employment status for many hard working State of Alaska employees.

One of the mandates contained in the Federal Real ID Act, appears to require immediate termination of employees who fail to meet particular background checks. The State currently, prior to hiring and individual, does do a background check. Based on the information contained in the background check the State may proceed to hire the individual. The Real ID Act would require that employees be immediately terminated regardless of whether the state knew about a prior history and hired the employee with that knowledge. Under the federal act the ban is absolute, no grandfathering of existing employees. ASEA/AFSCME Local 52 is concerned that - long-term hard working employees could lose their jobs if the mandates contained in the Real ID Act are adopted by the State of Alaska.

Other states have taken a stance against implementation of the mandates contained in the federal Real ID Act. There may be other solutions that could satisfy the security concerns of the federal government without invading the privacy rights of each individual and mandating employee background requirements.

I encourage you and all members of the Alaska State Legislature, to take a stand against federal intrusion into Alaskans privacy rights by enacting SB 202. These intrusion are both personal

Senate Bill 202
February 26, 2008
Page 2 of 2

to the individual and intrusions into workplace personnel. Passage of SB 202 will send that message and stop the mandate.

If you have questions or need additional information, please contact me at the number above. You may also contact the ASEA/AFSCME Local 52 Legislative Lobbyist, Mr. Fate Putman, at 463-4949.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Duncan", with a long horizontal flourish extending to the right.

Jim Duncan, Business Manager
ASEA/AFSCME Local 52, AFL-CIO

Cindy Smith

From: Doug Wooliver [dwooliver@courts.state.ak.us]
Sent: Wednesday, March 19, 2008 12:54 PM
To: 'Peeples, Dwayne B (DOC)'; Cindy Smith; anne.carpeneti@alaska.gov; 'Svobodny, Richard (LAW)'; 'Fink, Joshua P (DOA)'; Steiner, Quinlan G (DOA)
Subject: Draft CSSB 234(JUD)

The difference between the assault IV, three-strikes provision in the original version of SB 234 and the provision in the draft amendment that I have seen is that the draft amendment takes out the fear assaults as predicate offenses and adds in sexual assault in the first and second degrees and sexual abuse of a minor in the first and second degree. The court system numbers showed that the original version of the bill would have resulted in roughly 550 new felony cases a year; the draft amendment would result in approximately 600 new felony cases a year. This number, like the earlier number, is conservative in a number of respects. I have gone with a conservative number to offset those assault IV convictions that were part of a case that included felony charges. Those cases would already have been in the superior court and thus would not significantly impact the court system.

I understand that the plan is to also make the three-strikes provision prospective. As with the latest version of HB 307, our eventual fiscal note will adopt the prospective formula reflected in the calculations from the DOC. Doug

3/19/2008

2007 Montana Legislature
About Bill -- Links



HOUSE BILL NO. 287

INTRODUCED BY B. WISEMAN, COONEY, GALLIK, LANGE, PARKER, RICE, SALES, VILLA, WILLIAMS

AN ACT OPPOSING THE IMPLEMENTATION OF THE FEDERAL REAL ID ACT AND DIRECTING THE MONTANA DEPARTMENT OF JUSTICE NOT TO IMPLEMENT THE PROVISIONS OF THE FEDERAL ACT.

WHEREAS, in May 2005, the U.S. Congress enacted the REAL ID Act of 2005 (REAL ID Act) as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act (Public Law 109-13), which was signed by President Bush on May 11, 2005, and which becomes fully effective May 11, 2008; and

WHEREAS, some of the requirements of the REAL ID Act are that states shall:

(1) issue a driver's license or state identification card in a uniform format, containing uniform information, all as prescribed by the Department of Homeland Security;

(2) verify the issuance, validity, and completeness of all primary documents used to issue a driver's license, such as those showing that the bearer is a U.S. citizen or a lawful alien, a lawful refugee, or a person holding a valid visa;

(3) provide for secure storage of all primary documents that are used to issue a federally approved driver's license or state identification card;

(4) provide fraudulent document recognition training to all persons engaged in issuing driver's licenses or state identification cards; and

(5) issue a driver's license or state identification card in a prescribed format if it is a license or card that does not meet the criteria provided for a federally approved license or identification card; and

WHEREAS, use of the federal minimum standards for state driver's licenses and state-issued identification cards will be necessary for any type of federally regulated activity for which an identification card must be

displayed, including flying in a commercial airplane, making transactions with a federally licensed bank, entering a federal building, or making application for federally supported public assistance benefits, including Social Security; and

WHEREAS, some of the intended privacy requirements of the REAL ID Act, such as the use of common machine-readable technology and state maintenance of a database that can be shared with the United States and agencies of other states, may actually make it more likely that a federally required driver's license or state identification card, or the information about the bearer on which the license or card is based, will be stolen, sold, or otherwise used for purposes that were never intended or that are criminally related than if the REAL ID Act had not been enacted; and

WHEREAS, these potential breaches in privacy that could result directly from compliance with the REAL ID Act may violate the right to privacy, as secured by Article II, section 10, of the Montana Constitution, of thousands of residents of Montana; and

WHEREAS, the American Association of Motor Vehicle Administrators, the National Governors' Association, and the National Conference of State Legislatures have estimated, in an impact analysis dated September 2006, that the cost to the states to implement the REAL ID Act will be more than \$11 billion over 5 years, and the Motor Vehicle Division of the Montana Department of Justice has estimated that the implementation of the REAL ID Act will cost Montana \$2,660,000 to fully implement the Act, none of which costs are or will be paid for by the federal government; and

WHEREAS, for all of these reasons, the American Association of Motor Vehicle Administrators, the National Governors' Association, and the National Conference of State Legislatures, in a letter dated March 17, 2005, to the majority and minority leaders of the U.S. Senate, opposed the adoption of the REAL ID Act, but the opposition of those groups, and the groups' request that Congress rely on driver's license security provisions already passed by Congress in the Intelligence Reform and Terrorism Prevention Act of 2004, was largely ignored by Congress; and

WHEREAS, the regulations that are to be adopted by the U.S. Department of Homeland Security to implement the requirements of the REAL ID Act have yet to be adopted and, in reality, will probably not become effective until the spring of 2007, effectively giving the states only 1 year in which to become familiar with the implementing regulations and comply with those regulations and the requirements of the REAL ID Act; and

WHEREAS, the mandate to the states, through federal legislation that provides no funding for its requirements, to issue what is, in effect, a national identification card appears to be an attempt to "commandeer" the political machinery of the states and to require them to be agents of the federal government, in violation of the principles of federalism contained in the 10th amendment to the U.S. Constitution, as construed by the United States Supreme Court in *New York v. United States*, 488 U.S. 1041 (1992), *United States v. Lopez*, 514 U.S. 549 (1995), and

Authorized print version w/line numbers (PDF format)

[NEW SEARCH]

Prepared by Montana Legislative Services

(406) 444-3064

SUBSTITUTE SENATE BILL 5087

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

**By Senate Committee on Transportation (originally sponsored by
Senators Haugen, Swecker and Murray)**

READ FIRST TIME 01/31/07.

1 AN ACT Relating to compliance with the federal REAL ID Act of 2005;
2 adding a new section to chapter 43.41 RCW; and adding new sections to
3 chapter 46.20 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.41 RCW
6 to read as follows:

7 A state agency or program may not expend funds to implement or
8 comply with the REAL ID Act of 2005, P.L. 109-13, unless: (1) The
9 requirements of section 2 of this act are met; and (2) federal funds
10 are received by the state of Washington and are (a) allocated to fund
11 the implementation of the REAL ID Act of 2005 in the state, and (b) in
12 amounts sufficient to cover the costs of the state implementing or
13 complying with the REAL ID Act of 2005, as those costs are estimated by
14 the office of financial management. The director of the office of
15 financial management shall ensure compliance with this section.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.20 RCW
17 to read as follows:

18 Before issuing a driver's license or identicard that complies with

1 the requirements of the REAL ID Act of 2005, P.L. 109-13, and before
2 storing or including data about Washington state residents in any
3 database, records facility, or computer system for purposes of meeting
4 the requirements of the REAL ID Act of 2005, the department of
5 licensing shall certify that the driver's license, identicard,
6 database, records facility, computer system, and the department's
7 personnel screening and training procedures: (1) Include all
8 reasonable security measures to protect the privacy of Washington state
9 residents; (2) include all reasonable safeguards to protect against
10 unauthorized disclosure of data; and (3) do not place unreasonable
11 costs or recordkeeping burdens on a driver's license or identicard
12 applicant.

13 NEW SECTION. **Sec. 3.** A new section is added to chapter 46.20 RCW
14 to read as follows:

15 (1) The department of licensing and the office of financial
16 management may analyze the costs and burdens to the state of
17 Washington, and to applicants of drivers' licenses or identicards, or
18 complying with the requirements of the REAL ID Act of 2005, P.L. 109-
19 13, and any related federal regulations.

20 (2) The attorney general may, with approval of the governor,
21 challenge the legality or constitutionality of the REAL ID Act of 2005.

--- END ---

