

The Honorable Michael Chertoff
Office of the Secretary
Department of Homeland Security
Attn: NAC1-2-37
Washington, DC 20528

Re: Docket# DHS-2006-0030 Minimum Standards for Driver Licenses and Identification Cards Acceptable by Federal Agencies for Federal Purposes (“Federally Approved Driver Licenses¹”)

Dear Secretary Chertoff:

The New York State Department of Motor Vehicles (NYS DMV) is filing these formal comments to Docket# DHS-2006-0030 Minimum Standards for Driver Licenses and Identification Cards Acceptable by Federal Agencies for Federal Purposes.

Summary

Vested with the authority to regulate who may board airplanes and enter federal facilities, following the 9/11 terrorist attacks, Congress passed and the President signed the REAL ID Act. After May 11, 2013, a driver license will no longer be sufficient identification to board an airplane or to enter certain federal facilities, unless the license applicant has undergone heightened security measures spelled out by the federal government.

Unlike Congress, the NYS DMV had no opportunity to vote on the REAL ID Act, and no opportunity to review and scrutinize the security intelligence and evidence that led to it. Moreover, the NYS DMV is not made up of national security experts and thus is in no position to supplant the national security judgments of the federal government and the Department of Homeland Security. Our role in this Act is limited to either offering New Yorkers the option of a Federally Approved Driver License or not. It is our current intention to offer New Yorkers the option of obtaining a license that meets the newly established federal criteria.

However, given the serious questions raised about the Act’s practical efficacy, as well as the cost to New Yorkers, the overall inconveniences, and the privacy concerns associated with the Act’s implementation, New York State will continue to evaluate its position as more information becomes available.

Cost to New York State

We estimate that the annual cost of issuing Federally Approved Driver Licenses under the proposed regulations would be approximately \$84 million – costs that should be borne by the federal government. Approximately 50 percent of this cost is associated with staff costs, and 44

¹ The federally approved driver licenses and identification cards described in the REAL ID Act and regulations will hereon be referred to as “Federally Approved Driver Licenses.”

percent with the required changes to the document requirements, with the remainder in facilities and equipment costs.

Please note that this figure does not include the costs that cannot be determined from the required verification systems that the federal government has not yet developed. It furthermore does not include the costs for the development and operations of the verification databases required by this Act. It also does not compute a cost factor for our customers who will incur costs to secure necessary documents and incur inconvenience.

The largest component of the costs of implementing a Federally Approved Driver License system is attributable to the need to bring in all customers for a first in-person license renewal after the implementation date, and the increased time needed to process those transactions (as well as the increased transaction times for original, duplicate and change of address transactions). These requirements, coupled with the need to complete renewal of the entire licensed population (approximately 11.8 million) within a truncated time frame, will be extremely expensive because of the additional staff and facilities. The requirement to produce a polycarbonate document will similarly cost far more than current document production costs.

Additionally, the Act and subsequent regulations rely on verification systems that are not yet in place. Indeed, the future operability of many of those systems is dependent on federal agency action. The regulations attempt to circumvent this problem by placing back-ended verification requirements on states as such systems become available. The federal government's failure to have the necessary verification systems in place and supply the necessary support for state compliance with the Act will create an enormous expense to the state.

Funding to Comply with the REAL ID Act

The proposed rules provide no funding for implementing a Federally Approved Driver License system, even though New York will be required to hire additional staff, expand its Information Technology Systems, revise business practices, change operational strategies, modify document design and production processes, and renovate existing facilities or acquire new facilities. All costs associated with implementation should be funded by the federal government.

Areas where the state will be required to allocate significant resources to implement the Act include but are not limited to:

- Employee background checks;
- Verification of source document information;
- Collection and storage of data and images of source documents;
- Hiring and training of additional staff;
- Training in fraudulent document detection;
- Managing a Federally Approved Driver License system program: Certification Plan, Annual reports, Compliance Support;
- Revision of driver license and identification documents;
- Establishing new offices;
- Modifying existing offices;

- Modifying or creating databases and software; and
- Purchasing equipment to scan and store data and images.

There is a dramatic and significant increase in transaction time associated with the Real ID requirements to renew a driver license. NYS DMV estimates that the routine license renewal transaction may take up to 6 times longer than in the current process. This increase in time, multiplied by the millions of transactions, will result in a major increase in cost for staff and facilities.

The impact of a Federally Approved Driver License system on the volume of renewals, coupled with the increased processing time required for each individual transaction, will require NYS DMV to hire additional processing staff and open additional offices to serve our customers. Our current estimate, based on revised transaction times, projects at least 10 new offices, in the more populous downstate areas including New York City, Long Island, and Rockland and Westchester counties. A project of this magnitude gives rise to the need for support staff for the increased licensing activity, including trainers, auditors, investigators and call center representatives. Costs will also be incurred for office renovations in our existing offices to house authentication equipment and handle increased traffic flow.

As noted previously, New York estimates that its cost of compliance as outlined by the Act and the proposed rules will be \$84 million annually, excluding costs for verification systems, databases and other associated costs borne by customers.

Federal Purpose

DHS is seeking comments on whether federated activities, other than accessing federal facilities, nuclear power plants, and boarding commercially regulated aircraft, should be included in the scope of “official purpose” (pg. 10842).

The term “accessing Federal facilities” is vague, and needs clarification. The draft regulations state if proof of identity is not currently required for access to a federal building, it will not be required after May 11, 2008. In addition, the rules state that the Secretary to the Department of Homeland Security may expand the list under “discretionary authority.”

DHS must provide a clearly defined list of agencies/facilities where a Federally Approved Driver License will be required. A list will assist NYS DMV in planning and budgeting for the impact of customer volumes when a Federally Approved Driver License system is implemented. DHS must clearly define the process and potential reasons for changes to the ‘federal purposes’ list. DHS must articulate alternative acceptable documents for individuals who do not have a Federally Approved Driver License.

Acceptable Documents

DHS is seeking comments on “how to better integrate American Samoa and the Commonwealth of the Northern Marianas into the REAL ID Framework” (pg. 10842). NYS DMV currently accepts birth certificates from all US territories. Similarly, NYS DMV is concerned whether a

St. Regis Mohawk Tribe Photo Identification Card when accompanied with a Canadian birth certificate that is currently acceptable in NYS, will be acceptable documents to DHS. If DHS decides these documents are not secure, then these populations may encounter particular difficulty in obtaining a Federally Approved Driver License.

DHS Established History

DHS is seeking comments on “whether individuals born before 1935 who have established histories with a state, should be wholly exempt from the birth certificate verification requirements of this regulation, or whether, as proposed, such cases should be handled under each state’s exceptions process” (pg. 10831).

DMV lacks the expertise to opine on the risk of terrorism this exemption would pose.

Document Design for Federally Approved and Non-Federally Approved Driver Licenses

DHS is requesting comments about standardizing the unique design or required colors for Federally Approved and Non-Federally Approved Driver Licenses (pg 10843).

Currently, the Act requires that state driver licenses must bear an endorsement if they do not comply with federal requirements. We respectfully submit that the current law impinges on the prerogative of the states, and that a far less intrusive measure would accomplish precisely the same aim. Instead of impinging on state licenses, the law could require an affirmative declaration on federally approved licenses such as: “Meets Federal Standards.” Any driver license lacking this endorsement could not be used to board an airplane or enter certain federal facilities.

Address Verification

The proposed rules require verification of address and in-office visits for address changes. NYS estimates the annual cost of such requirement would be approximately \$1 million for additional staff, a cost the federal government should fund.

Although NYS law requires driver licenses and non-driver identity cards (“driver licenses”) holders to notify NYS DMV of address changes, we do not require an in office visit or that a new document be obtained. Requiring driver license holders to visit an office and obtain a new document each and every time an individual moves would have enormous cost and customer service impact. Eliminating phone or mail-in address changes would force approximately 400,000 additional customers into NYS DMV offices per year, dramatically increasing customer wait and processing times absent federal funding necessary to absorb this new level of work. This degradation of services will be directly attributable to the new federal rules.

Remote Renewals

DHS is seeking comments on remote renewal procedures, including suggestions on any alternative approaches for remote renewals and authentication of remote renewals (pg. 10839).

If no alternatives to in-person renewals are deemed appropriate by DHS, NYS will incur significant costs related to processing in-person transactions that would not otherwise be required. The additional costs are included in the estimated annual cost of the Acts implementation of \$84 million.

Verification Impact

The proposed rules state: “DHS believes any identification document acceptable in this regulation must be capable of being verified electronically” (pg. 10829). Under the regulations:

- States must verify issuance of birth certificates against the Electronic Verification of Vital Events System (EVVE). EVVE is only available in pilot mode.
- States must verify U.S. passports and consular reports of birth abroad with a Department of State (DOS) system. No such system currently exists.
- States must verify applicants’ lawful status through the Systematic Alien Verification System for Entitlements (SAVE). SAVE does not allow for verification by name and date of birth, and does not have a standard response exchange in place.
- States must verify the enrollment status of foreign students admitted for Duration of Stay when a connection is established to the Student and Exchange Visitor Information System (SEVIS). SEVIS is not currently available for states to access, and it has not yet been incorporated into the SAVE system for verification purposes.
- States must verify documents presented as proof of principal residence address with a system acceptable to DHS. No system exists today to verify that an individual actually lives at a provided principal residence address.
- States must exchange information to ensure that applicants do not hold Federally Approved Driver Licenses in other states. No system exists currently to facilitate such verifications.

Any state costs associated with states developing verification systems to support these additional secure forms of identification need to be borne by the federal government.

Moreover, existing verification systems use different data formats and varying responses. For example, the Federal document standard (ICAO 9303) proposed for the REAL ID Act establishes two ‘variable’ identifier fields for formatting a full legal name suggesting 125 or 175 character length, while many of the verification systems do not establish or are inconsistent with this full legal name support. SSOLV supports the 30 character name as printed on the SSN card; SAVE requires 25 character first and middle names with 40 characters as last; and the passport field in SAVE requires a 40 character name. Specific standards for motor vehicle agencies that align identification and data verification systems at both the federal and state levels need to be developed.

Finally, federal agencies have been granted allowances in implementing verification systems. Secure Federal documents have been exempted as proof of identity because of a lack of systems or a lack of will. This apparent lack of federal commitment casts doubt on how important to the anti-terrorist effort the federal government truly believes this enterprise to be.

Privacy and Information Security

DHS is seeking comments on the security of the NYS DMV databases storing personal information. At a minimum, the state's security plan must address the state's standards and procedures for safeguarding information collected, stored, or disseminated for purposes of complying with the REAL ID Act, and that states shall be required to describe standards and procedures for managing driver records and data collected, stored, modified, accessed and transmitted under the requirements of this rule (pg. 10855).

The NYS DMV is concerned that there is a need for minimum standards to ensure a secure information exchange between states. Best practice standards should be defined for data formatting, quality, and integrity of information, with an oversight entity appointed to ensure best practices are met.

The NYS DMV IT costs are estimated to be approximately \$5 million annually including maintaining a secure system for data storage, encryption and transfer.

The REAL ID Act requires jurisdictions to "refuse to issue a driver license to a person holding a driver's license issued by another state without confirmation that the person is terminating or has terminated the driver license." The Notice of Proposed Rule Making rules require that states must provide to all other states electronic access to information contained in the motor vehicle database of the state, in a manner approved by DHS pursuant to this regulation (pgs. 10824-10827).

The NYS DMV is concerned about the potential for information security breaches by requiring information exchange (AAMVA Digital Image Exchange, state-to-state information exchange, etc.) between jurisdictions. The exchange of Personal, Private, and Sensitive Information (PPSI), with unknown motor vehicle employees in other jurisdictions, increase the vulnerability of identity theft. The use of this information is beyond the scrutiny of the state of record. The privacy claim is only as strong as its weakest link among all employees in the fifty states.

With respect to DHS's request for recommendations on how to best secure personal information and also to make such information accessible to law enforcement agencies, DHS suggests encryption of personal information in the 2D barcode, but believes that access to REAL ID Act information by law enforcement is critical to a Federally Approved Driver License system. The AAMVA standard requires that all information in the 2D barcode be un-encrypted. The data elements to be included in the barcode have not been determined (pg. 10838).

NYS DMV is concerned about confidential information (i.e., name history, address history, personal identifiers, etc.) that may be included in the barcode. For example, NYS law now

protects certain categories of individuals such as domestic violent victims, undercover police officers and judges. DHS should evaluate whether the release of such information would disrupt the important balance between privacy and national security, and detail what data elements should be included in the barcode.

NYS DMV also has serious technological concerns regarding “the capture of the full name history, including full legal name and all name changes” (pg. 10854). The amount of information required in the Machine Readable Zone (MRZ) to store full legal name history could be significant and could require the size of the MRZ to be larger than the driver license itself if each full legal name is required to be 125 bytes long. The rules are not clear on the requirements for full legal name. NYS seeks clarification on the length of the full legal name and name history.

The proposed rules require states to obtain proof of principal address for applicants. DHS has acknowledged that there is “no nationally available, reliable, up-to-date, and cost-effective method for states to verify address of principal residence with the issuing source of the document” (pg. 10831). Based on the lack of an acceptable verification system, DHS is proposing that the states require each applicant to present at least two documents showing address of principal residence so they may be “cross-verified.” This proof requirement will increase New York’s costs as we will now have to process an additional 400,000 in-person address changes annually.

The cost to NYS for such in-person visits for document verification is included in our total estimated cost of \$84 million annually.

Document Security and Adversarial Lab Testing

DHS seeks comments on whether the proposed adversarial testing standards will lead to the development of a secure document solution that deters amateurs from producing deceptive counterfeits and/or alterations. DHS also seeks comments on other alternative approaches DHS could pursue on document security to achieve the same objective and how those approaches compare to a performance-based independent adversarial testing. DHS requests that states specifically comment on what contractual issues, if any, the states will face in satisfying the proposed document security requirements if the state’s existing license fails one or more of the proposed adversarial tests (pg. 10837).

The New York State license contract is valid until May 29 2009, with the option of extending the contract for an additional four (4) years.

States are facing the possibility of not only redesigning driver license documents, but also changing the materials used to produce the documents. State procurement laws dictate the process that must be followed to allow for competitive bidding and contract amendments, which will be extremely difficult in the short time allowed. In addition to the contractual issues, re-designing and obtaining the necessary design approvals will be very difficult in the time allowed.

The draft regulations require that “Some variable data must be applied via laser engraving to include tactile features (that protect the bearer portrait from substitution via thin film overlay) and variable micro-line text that is specific to the bearer.”

Because the ability to laser engrave is limited to certain materials, this requirement in essence dictates what document materials the jurisdictions must use. In addition, laser engraving is not possible in our current production process. To change the production process and replace our license substrate with one capable of being laser engraved will result in an increased cost of \$37 million annually if all licenses are converted to Federally Approved Driver Licenses.

Without fully funding the federal requirements, submission of driver license samples and adversarial testing results with the Compliance Plan 90 days prior to implementation on January 1, 2010 will be extremely technologically and logistically difficult. Similarly, without fully funding the federal requirements, submission of driver license samples and adversarial testing results by May 11, 2008 will be virtually impossible.

Background Checks

DHS is seeking comments on the proposed background check requirements, specifically, on financial history checks. States must conduct a financial history check on all covered employees and prospective employees in a manner consistent with the Fair Credit Reporting Act, and that an employee’s financial history shall be considered for informational purposes by the states and shall not be considered a Federal disqualifier (pg. 10840).

Currently, New York State does not conduct financial checks on potential NYS DMV employees. Financial checks may be costly and time consuming. NYS DMV would need the authority to obtain these reports by the prospective employee.

It should be noted that the Federal Equal Employment Opportunity Commission has determined that, unless justified by business necessity, it is unlawful to reject candidates based on poor credit ratings. Accordingly the information obtained under this proposed regulation may not be usable in the hiring process.

The regulations also require annual background check for motor vehicle personnel who are involved with the license issuance process, a more stringent standard than applies to many sworn police officers. This provision will raise significant cost, privacy, proportionality, and labor issues.

Information Collection

The information collection requirements defined in the proposed rules state they would assist DHS in its efforts to oversee security measures implemented by states issuing Federally Approved Driver Licenses. The proposed rules require an initial certification of compliance plan and comprehensive security plan. On an annual basis states must submit quarterly reports on its use of exceptions and monitoring, as well as a re-certification plan. The proposed rules state background check information will need to be submitted on an as needed basis.

Establishing a certification monitoring and reporting system would be a new process and additional burden to the state. NYS DMV currently has an established security plan; however, the current process is not based on the ANSI standard and would need to be changed to meet the proposed security plan and information collection requirement. The requirement to provide background check information to DHS as part of the information collection requirement poses privacy issues and will be of concern to employees, their union representatives, and NYS DMV personnel and labor relations offices.

Regarding the SAVE verification process (\$0.48 per verification), it has been the experience of NYS that in many cases, the information requires a secondary verification. Also, it requires a person to dedicate additional time performing data entry in a free text comment box because there is no standard response option in place. Currently, secondary requests could take up to 3 days for verification results to be returned.

Conclusion

In sum, it is DMV's current intention to offer New Yorkers the option of obtaining a Federally Approved Driver License. The proposed regulations, however, raise issues as to efficacy, privacy, cost, and even the federal government's own faith in the system as an anti-terrorist tool. Furthermore, our estimates show that costs will exceed \$84 million, costs that the federal government should bear, and will dramatically increase customer inconvenience.

We will continue to evaluate the way in which the federal government deals with these issues and look forward to DHS's response.

Respectfully submitted,

Commissioner David J. Swarts