

Testimony of
Stewart Baker
Before the
Committee on Homeland Security and Governmental Affairs:
“Identification Security: Reevaluating the Real ID Act”
United States Senate

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Chairman Lieberman, Ranking Member Collins, and distinguished members of this Committee, I am pleased to appear before you today to discuss the importance of REAL ID to our physical and economic security.

I. Dangers of Insecure Identification

In this country, the document that most people use to identify themselves is not issued by the federal government and was not originally intended as an identity document. State driver’s licenses were originally designed to verify that the holder had passed a driving test and was allowed to drive. But over the years, they have become the primary identification document for almost everyone over the age of sixteen. They are used to buy liquor and cigarettes, to enter federal buildings, to board airplanes, and to cash checks.

Our reliance on licenses issued by fifty-six jurisdictions to prove identity creates special problems. It means that there are fifty-six different standards and fifty-six different notions of how much security should be built into the document and the issuance process, based on fifty-six different state and territory budgets and policies. Given the ease with which people travel interstate, it is all too easy for criminals and terrorists to exploit security holes in the weakest state license procedures.

9/11 brought this lesson to life. At least six of the hijackers used state-issued identification cards to check in at the airport on the morning of 9/11, many of them obtained fraudulently. Among them, the hijackers possessed thirty different identification documents, and some possessed identifications from multiple states.

Timothy McVeigh also took advantage of insecure identification procedures. In 1995, he was able to create a fake South Dakota license with ease; all it took was a manual typewriter and a kitchen iron. He used the license to rent a Ryder truck in Oklahoma and destroy the Murrah Federal Building.

Terrorist attacks are not the only dangers of insecure identification. False identification documents have enabled the millions of instances of identity theft that occur every year. Identity thieves use other people’s personal information to obtain driver’s licenses and other forms of

identification. Then they use the identification to take actions, like obtain medical treatment and open bank accounts, in other people's names.

The 9/11 Commission concluded, "For terrorists, travel documents are as important as weapons."¹ The Commission emphasized the dangers that result from insecure identification: "Fraud in identification is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists."² The Commission's recommendation was equally direct: "The federal government should set standards for the issuance of birth certificates and sources of identification, such as driver's licenses."³

REAL ID puts the recommendations of the 9/11 Commission into law. By requiring protections such as allowing state Departments of Motor Vehicles (DMVs) to check the records of other state DMVs, verifying the documents like birth certificates and social security cards that people use to get licenses, and prohibiting people from using insecure identifications to board airplanes or enter federal buildings, REAL ID keeps us safe.

II. Strengths of REAL ID

A. REAL ID Protects Our Privacy

Critics claim that REAL ID is a threat to privacy. This is false.

The claim that REAL ID threatens privacy has helped to stall driver's license security. But the result of the delay is not more privacy. It is less. People whose identities have been stolen with the help of a fake or fraudulent driver's license are victims of the delay—indeed, they are victims of the "privacy" advocates who have campaigned against REAL ID.

They've suffered real losses, and a real invasion of their privacy, because people who claim to speak for privacy have been fighting to prevent good driver's license security.

Repealing or gutting the requirements of REAL ID will create hundreds of thousands more privacy victims over the next few years. A substantial number of identity thieves have used fake driver's licenses to commit their crimes, and making licenses harder to forge will make this crime harder to perpetrate. By requiring verification of documents such as birth certificates, REAL ID will make it harder for criminals to forge documents that allow them to obtain identifications. Additionally, the three kinds of security features that REAL ID requires on every card will make it harder for criminals to forge the identifications themselves.

I have yet to hear a coherent explanation of the claim that REAL ID is bad for privacy. Surely privacy is not improved by a bad identification system. The closest thing to a coherent

¹ The 9/11 Commission Report, p. 384.

² Id. at 390.

³ Id.

argument is based on the false claim that REAL ID would create a national database of individuals' personal information. Under REAL ID, state DMVs, not the federal government, will continue to control driver's license data. REAL ID simply allows state DMVs to access the databases of other state DMVs—something that law enforcement officials can do now every time they perform a traffic stop. No additional databases are created and there is no aggregation of personal data.

Moreover, thanks to REAL ID, that data will get additional protection from disclosure. State DMVs will have to meet tough new security standards for that data. Among other measures, states will have to ensure the physical security of facilities used to create identification documents and store personal information, perform background checks on employees involved in the manufacture of REAL ID identifications, and formulate emergency response plans.

REAL ID does not create a national identification card. States will continue to issue identifications, and no one is required to have one of these cards. If anything, REAL ID eliminates the need for a national identity card because individuals will have secure state-issued identification.

B. REAL ID is an Affordable Protection

The importance of secure identification cannot be overstated. Many would argue that we should spend whatever it takes to ensure that individuals in this country have secure identification. Fortunately, the cost of REAL ID measures is not that high, especially when compared to the cost of the system already in place.

The federal government has provided states with grants for REAL ID implementation and modified compliance requirements. When it announced the final REAL ID regulations in January 2008, the federal government made \$360 million available to states—\$80 million in dedicated REAL ID grants and \$280 million in general homeland security funding. It also cut the amount that states would have to spend by almost three-quarters by extending the enrollment deadline. Originally states would have to produce compliant identifications for all driver's licenses by 2013. But federal regulators included phase-in requirements in the REAL ID regulations that allowed states to first become compliant with licenses of those under fifty years old by 2014, and those over fifty years old by 2017. Since REAL ID regulations came into effect in January 2008, the federal government has made even more grant money available to states. Some of this money, such as the nearly \$50 million that former Secretary of Homeland Security Michael Chertoff released in December 2008, remains unspent.

The federal government has provided and continues to provide substantial financial assistance to states implementing these important protections. No matter the exact cost of REAL ID implementation—which DHS estimated in January 2008 to be just \$8.30 per person—it outweighs the high costs of terrorist attacks and identity theft.

III. Changes that Must be Made to PASS ID

As currently written, PASS ID gives us a false sense of security: it returns us to pre-9/11 standards for the issuance of identification documents while leading us to believe that these documents are secure and enabling us to do more with these documents. There are no easy solutions to the problem of secure identification, but if legislators are intent on replacing REAL ID with PASS ID, there are several changes that must be made. Below, I have identified PASS ID's greatest weaknesses and suggested ways to fix them.

A. PASS ID Must Require Breeder Document Checks

1. PASS ID Problems

Eighteen of the nineteen 9/11 hijackers obtained government-issued identification in the U.S. They used these documents to rent cars, lease apartments, open bank accounts, and board airplanes. The problem was not that the identifications themselves were forged. The identifications were valid, but many were based on false documents. To prevent this from happening, REAL ID requires states to verify the validity of birth certificates and other breeder documents that individuals use to obtain identifications. PASS ID does not.

There is no point in having hard-to-forge licenses if they can be obtained simply by showing other documents that are easily forged. The U.S. Government Accountability Office (GAO) released a report in March detailing how a GAO inspector was able to obtain four passports, each time using a counterfeit birth certificate.⁴ The report noted that one reason that the inspector was able to get the passports was because the Department of State could not conduct real-time verification of the birth certificates. Instead, government officials responsible for verifying the validity of the documents did so only by inspecting them. That's what state DMVs have to do now. And if the State Department cannot figure out which birth certificates are forged, how do we expect DMV clerks to do better? Social security cards are similarly insecure. Imposters can easily forge our social security cards, and, as a recent Carnegie Mellon study reports, individuals' social security numbers can be guessed with remarkable accuracy.⁵

2. Solutions

It is relatively inexpensive to perform breeder document checks, and several states are already performing them. One electronic verification system approved under REAL ID, Electronic Verification of Vital Events (EVVE), is up and running in fifteen states, and five more states will be using EVVE by the end of 2009. EVVE would allow every state DMV to electronically verify the birth certificates of applicants for driver's licenses and identifications, even those of applicants from different states. Officials enter a query into the EVVE database, and seconds later receive a response stating whether the birth certificate is valid or not. The electronic verification is secure and accurate. All confidential information is encrypted, and all

⁴ U.S. Gov't Accountability Office, Dept. of State, GAO-09-447, Undercover Tests Reveal Significant Vulnerabilities in State's Passport Issuance Process (2009).

⁵ *Researchers: Social Security Numbers can be Guessed*, Wash. Post, July 7, 2009, at A2.

personal information remains in state databases, not in a centralized database. Three state DMVs currently use EVVE to verify birth records.

EVVE is an inexpensive system to operate. A recent DHS grant of \$4 million is enough to install EVVE capability in all fifty states by May 2011, add a batch process to make the system more efficient, and perform an independent security check on the system. Digitizing state records will add to the cost, but all remaining birth records could probably be digitized for less than \$100 million. After these start-up costs, EVVE will be even less expensive. Each query will cost just pennies, and because it will take seconds, instead of the days that it takes to perform a paper query, will save uncalculated other costs.

Other government offices recognize the benefits of EVVE. The U.S. Office of Personnel Management uses EVVE to verify vital records, as do several state Medicaid offices and departments of health. All 1,500 Social Security Administration offices are using EVVE and are finding benefits even though just fifteen states have EVVE up and running. These offices recognize that EVVE can cut down on fraud in areas of regulation beyond the issuance of identifications.

There are other inexpensive and easy-to-use systems already in place that can allow for the verification of breeder documents. There is currently an agreement in place between DHS and the State Department that allows DHS to check individuals' passport records and verify the identity of the person presenting the passport. This system is used at our country's borders every day, and about 130,000 employers use it when hiring individuals to make sure that they are eligible to work in the United States. It is not an expensive or difficult process—any employer with access to the internet can perform these checks. It would not be difficult for fifty more entities to use this system.

The language of PASS ID should be changed to require breeder document checks. Suggested language is attached at "Attachment 1."

B. PASS ID Should Not Contain a "No Identification Needed" Clause

1. PASS ID Problems

The PASS ID bill states that "no person shall be denied boarding a commercial aircraft solely on the basis of failure to present a driver's license or identification card issued pursuant to [PASS ID]." This clause threatens passenger safety and will create endless legal headaches.

Currently, as a matter of policy, the Transportation Security Administration shows flexibility in deciding whether passengers may board airplanes without identification. If passengers forget their identification, do not have identification, or refuse to present identification, they will be subjected to additional screening measures, but they may still be allowed to board if TSA is satisfied that they do not present a security risk.

There is a big difference, however, between implementing this practice through TSA policy, as TSA does currently, and creating a rigid statutory right, as PASS ID proposes.

The inclusion of this clause in PASS ID will not simply ratify TSA's current policy. Instead it will encourage privacy groups and others to launch litigation designed to overturn TSA's current policy. Every word of the provision will be scrutinized, and the courts are bound to have surprises for TSA. For example, suppose TSA officials spend so long interrogating the ID-less passenger that he misses his flight. Has the passenger been "denied boarding a commercial aircraft solely" because he didn't have ID? If he'd had ID, he would have caught the flight, so that's not an implausible reading, but it would allow passengers without ID to cut off follow-up questions just by saying that their flight was leaving.

Second, what does it mean to deny boarding "solely on the basis of failure to present a driver's license?" The clause invites the courts to decide whether TSA has what the courts consider an adequate reason other than the lack of an ID. That's because judges will be urged to see denial of boarding in these situations as punishment for failure to present identification. But punishing a traveler for exercising a statutory right is not something that the courts are likely to find. To prevent TSA from denying boarding for a bad reason, courts will demand that TSA identify with specificity the reasons a passenger was denied boarding, and then the courts will decide whether those reasons are acceptable.

Let's think about what that will mean in practice. What if the TSA official questions the passenger and is still suspicious about him or her after the questioning? In August 2001, this and not much more is what kept the "twentieth hijacker" out of the country. The border official in Orlando got a "creepy" feeling from Mohammed al-Qahtani and would not let him enter the U.S. If a TSA officer offered the same reasons for not boarding an ID-less passenger, will all courts agree that a lack of ID plus a general suspicion is enough to deny boarding? Or will the courts decide to require even more specificity from TSA as a way of preventing TSA from surreptitiously punishing ID-less travelers?

If they do, and I suspect they will, then TSA will have to protect itself and its staff from judicial second-guessing, so TSA lawyers will end up drafting scripts and giving guidance about which questions and which answers form an acceptable basis for denying boarding. Judgment will go out the window, and checking boxes will be the way security is implemented. Worse, once these scripts become public, and it becomes clear what boxes are being checked, it will be easy for anyone to exploit the predictability in our security system to evade controls.

The US air security system depends on identifying the people who should not be allowed on a plane without careful scrutiny. If the system can be defeated by simply refusing to carry identification, then the system becomes much easier to beat. Why would we want to make it easy to beat the air security system by creating a statutory right to fly without ID? What problem, exactly, is this provision trying to solve?

2. Solutions

There is one problem that the provision may be intended to address. Under REAL ID, TSA arguably didn't have discretion to accept noncompliant licenses. Under that reading, states that did not adopt REAL ID standards might see all of their citizens turned away at the airport,

even if TSA were quite confident of the passengers' identity. I don't think that was a correct reading of the law, but it was not completely implausible. If this Committee wants to remove that problem, though, there is no need to create an open-ended statutory right to fly without ID.

The language of the PASS ID bill could simply be changed to give TSA discretion to determine when passengers should and should not be allowed to board. That would ensure that TSA's current discretion remains part of the security framework.

Alternatively, the provision should be amended to avoid endless litigation by making clear that it does not confer on passengers the right to bring suit but rather is intended simply to give guidance to TSA. Suggested language to this effect is attached at "Attachment 2" at the end of this statement.

C. PASS ID's Nine-Month Deadline for the Passage of Rules is Impossible to Meet

1. PASS ID Problems

PASS ID requires that rules implementing its new requirements be adopted within nine months. All other deadlines in the act are measured from the date on which the regulations take effect. It's a good thing for the authors of PASS ID that the truth in advertising laws don't apply to Congressional bills. Because the deadlines in PASS ID are all phony. We will never get driver's license security on the schedule that PASS ID purports to establish.

PASS ID gives the impression that license security will improve quickly because of the deadlines in the bill. But the bill in fact creates great new incentives and opportunities for delay. By making all security improvements wait until regulations take effect, PASS ID issues an open invitation to everyone who dislikes the bill: "Stall the regs as long as you can; because as long as they haven't been issued, you won't have to do anything at all." Even states that want to comply quickly and that can comply quickly will be slowed down.

It won't take much stalling to blow out the nine-month deadline. In fact, existing law makes it impossible to issue serious rules in nine months. Under existing executive orders, any proposed rules drafted by DHS must be submitted to the Office of Management and Budget (OMB), which may spend 90 days reviewing them. Next, the Administrative Procedure Act and executive orders call for DHS to make the proposed rules available for public comment for 60 days. Once DHS has responded to all of the comments and incorporated the appropriate ones into the final version, DHS must send them back to OMB for 90 days. Finally, DHS must submit the rules to Congress for a 60-day review period before they become final.

If you've been doing the math, you'll see that the numbers don't add up. Or rather, they add up too fast and too high. 90 days for OMB to review proposed rules, plus 60 days for public comments, plus 90 days for OMB to review final rules, plus 60 days for Congressional review—that adds up to ten months. So even if DHS could do all of its drafting in 24 hours, it cannot meet the nine-month deadline.

And there's no way DHS can do its work in anything like 24 hours. Drafting a regulation is plenty of work, but it's just the beginning of the homework that goes into any new regulation. Here's a sample of the other work that has to be completed to issue a regulation:

- Regulatory Flexibility Act (5 U.S.C. §§ 601-612): DHS must assess the impact of its regulations on "small entities" like small businesses and small governmental organizations and prepare "regulatory flexibility analyses" for both the proposed and final rules. If those small entities don't like the analysis, they can sue to stop the reg.
- Unfunded Mandates Reform Act (2 U.S.C. §§ 1501-1571): DHS must prepare several reports, including specific cost estimates for both the proposed and final versions of certain rules affecting state and local governments, plans to notify affected small governments of regulatory requirements, and processes to allow local officials to provide input into the development of regulatory proposals.
- National Environmental Policy Act (42 U.S.C. §§ 4321-4347): DHS must prepare an initial environmental assessment to determine whether the rules will cause a significant impact on the environment, and then prepare a full "environmental impact statement" if it determines that there will be a significant impact.
- Executive Order 13422: DHS must provide an estimate of the regulatory costs and benefits of the proposed rules.
- Executive Order 13132: DHS must develop a process to ensure meaningful input by state and local officials.
- Executive Order 12988: DHS must ensure that it complies with specific requirements to improve regulatory drafting.
- Executive Order 13175: DHS must not promulgate regulations not required by law that have tribal implications unless the agency provides funds or consults with tribal officials.
- DHS must give careful consideration to all of the comments on any proposed rule and explain why it does or does not agree with them. (The original proposed rule for REAL ID attracted 21,000 public comments.)

It will take months to comply with all of these substantive and procedural requirements, and several of them offer opportunities to litigate, a tactic that could force years more delay before we see implementation of the security measures that PASS ID calls for.

How long will it take? Well, it took nearly three years to promulgate rules under REAL ID, and that was with a clear signal from the Secretary that the regulations were a high priority and without litigation. It could easily take five years or more. Under the legislation, DHS would have missed the Congressional mandate by more than four years, and it would be pilloried if any terrorist act in those four years took advantage of existing driver's license security flaws. I do not believe that this Committee, of all committees, should set DHS up to fail so disastrously.

There is no need to wait that long just to get started on the security measures in PASS ID. Particularly since those requirements seem to have been written more or less by applying Microsoft's paragraph-delete function to the existing REAL ID regulations. I've attached to my testimony a chart ("Attachment 3") that shows how closely the substantive requirements of

PASS ID track existing regulations. In fact, it's fair to say that PASS ID simply adopts the first half of REAL ID compliance, originally scheduled to take effect at the end of this year, and drops the rest of REAL ID's requirements. Seventeen of the eighteen REAL ID regulatory benchmarks for this stage of REAL ID (also called material compliance) are also part of PASS ID.⁶

These requirements are not a surprise. The states have been working toward those benchmarks for years. Indeed, when the states accepted federal grant money under REAL ID, they agreed to meet the federal government's deadline for those eighteen benchmarks. That deadline was the end of this year. Are we really going to delay progress on those benchmarks for three to five years just so that a few paragraphs of the Code of Federal Regulation can be reissued?

I hope not. There are two ways to avoid this result. If Congress really wants new regulations and it really wants them issued in nine months, then Congress should waive the host of statutes and executive orders that currently slow the regulatory process.

Alternatively, Congress could simply declare that the existing regulations provide a good start and that many of them will remain in effect until revised. Instead of imposing pointless years of delay, that solution would save nine months, since the states could begin implementing them immediately (something the states have already told DHS they can do). DHS can at the same time modify the regulations as it sees fit and on a reasonable schedule.

2. Solutions

i. Waive the Requirements of the Above Laws and Executive Orders

Waiving the regulatory process laws and Executive Orders set out above would make it feasible for DHS to issue rules within nine months. Without a required comment period and without the various impact statements and OMB review, it's possible that DHS could get a large regulation out in nine months. But I frankly doubt that such a waiver would be politically feasible given the many constituencies that have invested in those procedures.

ii. Leave in Place the Regulations Found at 6 C.F.R. § 37.1 *et seq.*

The more practical and faster option would be to simply leave many of the current rules in place. Most of the rules at 6 C.F.R. § 37.1 *et seq.* are consistent with PASS ID, as shown by Attachment 3. It makes no sense to invalidate rules that have already gone through the entire process described above when PASS ID draws so heavily on those same rules. At the very least, these rules should remain in place until the adoption of new rules.

Proposed language for this option is attached at "Attachment 4."

⁶ Benchmark #10's requirement that the card contain the full legal name of the applicant is inconsistent with PASS ID. The rest of benchmark #10 is consistent with PASS ID.

D. PASS ID Should Impose Conditions on the Grants to be Given to States

1. PASS ID Problems

DHS issues hundreds of millions of dollars to states every year to spend on homeland security efforts. States normally spend this money on items that make their own residents safer, such as fusion centers or equipment for first responders. These are worthwhile expenditures.

But the money the states are spending comes from taxpayers all over the country. Surely, then, it should be spent first on measures that will help make the entire country safer.

Driver's license security is one such measure. Because state driver's licenses are accepted everywhere, weaknesses in one state's ID security put us all at risk, and we should insist that states give the highest priority to expenditures that will close those security gaps.

2. Solutions

Congress should include a provision in PASS ID that requires states to make driver's license and identification security a top priority when spending state homeland security grants. Suggested language can be found at "Attachment 5."

IV. Conclusion

The importance of secure identifications cannot be overstated. Insecure identification documents based on unverified documents themselves enable crimes from terrorism to underage drinking. This truth was highlighted in the 2007 Fort Dix terrorism plot. There, secure identification laws made it possible for federal officials to interrupt the plot. Three of the individuals plotting to attack the fort were in the U.S. illegally, and under a New Jersey law requiring proof of lawful presence to obtain identification documents, they could not obtain identification. Because the men could not buy weapons legally without identification, they were forced to buy them illegally. This provided undercover law enforcement agents with enough evidence to stop the plot, and they interrupted the terrorists' plans.

Nearly all states are implementing elements of REAL ID. About sixteen states publicly support REAL ID and are working towards achieving REAL ID regulations' "material compliance" benchmarks. Other states that did not initially support REAL ID have reversed their position. A good example is Maryland. At the time of REAL ID's passage, Maryland legislators called for a repeal of the Act. By December 2008, however, officials understood the importance of REAL ID and in April, the governor signed legislation that guaranteed REAL ID compliance. Other states have quietly indicated their support of REAL ID. For example, the governor of Oregon signed an executive order in 2007 requiring the state to abide by standards even stricter than those of REAL ID in issuing driver's licenses.

With this steadily growing support of REAL ID and the undeniable truth that secure identifications protect us, REAL ID should not be abandoned. If legislators are intent on

amending REAL ID, the recommendations I have described will help to ensure that PASS ID keeps us safe and protects our privacy.

Attachment 1

Proposed language for § 242(c)(3) of PASS ID:

SEC. 242. MINIMUM DOCUMENT REQUIREMENTS AND ISSUANCE STANDARDS FOR FEDERAL RECOGNITION.

(c) MINIMUM ISSUANCE STANDARDS

...

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

(A) Not later than two years from the date of the enactment of this Act a State shall make available to each other State a complete set of electronic birth records, and shall, before issuing a driver's license or identification card to a person, verify the birth record of each person seeking a license by means of these electronic records.

1. States shall where possible prefer U.S. passports for purposes of identification. The State shall perform an online verification of the passport that includes a verification of the person's photograph.

Attachment 2

Proposed language for § 242(a) of PASS ID:

SEC. 242. MINIMUM DOCUMENT REQUIREMENTS AND ISSUANCE STANDARDS FOR FEDERAL RECOGNITION.

(a) MINIMUM STANDARDS FOR FEDERAL USE.—

(1) IN GENERAL—Beginning 1 year after the date on which final regulations are issued to implement this subtitle, pursuant to section 5 of the PASS ID Act—

...

(B) to board a federally regulated commercial aircraft, a person must present identification that the Transportation Security Agency in its sole discretion deems sufficient in the circumstances. Nothing in this subsection shall be construed to create any legally enforceable right.

Attachment 3

PASS ID Section 242: Minimum Document Requirements and Issuance Standards for Federal Recognition	Corresponding REAL ID Regulations
(a) Minimum Standards for Federal Use	6 C.F.R. § 37.1 6 C.F.R. § 37.3 6 C.F.R. § 37.51 6 C.F.R. § 37.55 6 C.F.R. § 37.59 6 C.F.R. § 37.61 6 C.F.R. § 37.63 6 C.F.R. § 37.65
(b) Minimum Document Requirements	6 C.F.R. § 37.3 6 C.F.R. § 37.15 6 C.F.R. § 37.17(b)-(n) 6 C.F.R. § 37.19 6 C.F.R. § 37.71
(c) Minimum Issuance Standards	6 C.F.R. § 37.3 6 C.F.R. § 37.11(a)-(f) 6 C.F.R. § 37.11(i) 6 C.F.R. § 37.21 6 C.F.R. § 37.23 6 C.F.R. § 37.25 6 C.F.R. § 37.27
(d) Other Requirements	6 C.F.R. § 37.3 6 C.F.R. § 37.29(a) 6 C.F.R. § 37.31(b)-(c) 6 C.F.R. § 37.41 6 C.F.R. § 37.43 6 C.F.R. § 37.45

Attachment 4

Proposed language for § 5(a) of PASS ID:

Sec. 5. RULEMAKING

(a) IN GENERAL—Not later than 9 months after the date of the enactment of this Act, the Secretary, after providing notice and an opportunity for public comment, shall issue final regulations to implement subtitle E of title II of the Homeland Security Act of 2002, as added by section 3.

(1) Until and unless superseded by further regulations, the following regulations, except as they relate to timing deadlines, shall implement this Act.

- (A) 6 C.F.R. § 37.1
- (B) 6 C.F.R. § 37.3
- (C) 6 C.F.R. § 37.5
- (D) 6 C.F.R. § 37.11(a)-(f); 6 C.F.R. § 37.11(i)
- (E) 6 C.F.R. § 37.15
- (F) 6 C.F.R. § 37.17(b)-(n)
- (G) 6 C.F.R. § 37.19
- (H) 6 C.F.R. § 37.21
- (I) 6 C.F.R. § 37.23
- (J) 6 C.F.R. § 37.25
- (K) 6 C.F.R. § 27.27
- (L) 6 C.F.R. § 37.29(a)
- (M) 6 C.F.R. § 37.31(b)-(c)
- (N) 6 C.F.R. § 37.41
- (O) 6 C.F.R. § 37.43
- (P) 6 C.F.R. § 37.45
- (Q) 6 C.F.R. Subpart E
- (R) 6 C.F.R. § 37.71

(2) Timing deadlines in the regulations identified in paragraph (1) shall be established by the Secretary of Homeland Security by publication of a notice in the Federal Register .

Attachment 5

Proposed language for § 244 of PASS ID:

SEC. 244. GRANTS TO STATES

...

(c) OTHER GRANTS.—In awarding grants to States designated for homeland security through the Department of Homeland Security’s State Homeland Security Program, DHS shall require that improving driver’s license and identification security shall be a priority, and in particular shall be prioritized above expenditures that do not improve security on a nationwide basis.