

U.S. DEPARTMENT OF HOMELAND SECURITY
Minimum Standards for Driver's Licenses and Identification Cards
Acceptable by Federal Agencies for Official Purposes (Real ID)
Docket No. DHS-2006-0030 – RIN 1601-AA37

SUBMITTED BY:
American Trucking Associations, Inc.
2200 Mill Road
Alexandria, Virginia 22314

May 4, 2007

Primary Contact:
Robert C. Pitcher
Vice President, State Laws
703-838-7939
rpitcher@trucking.org

I. INTRODUCTION

The American Trucking Associations, Inc. (ATA) is pleased to submit the following in response to the request for comments issued by the Department of Homeland Security (DHS) concerning the DHS notice of proposed rulemaking on minimum standards for driver's licenses and identification cards acceptable by federal agencies for official purposes, pursuant to the Real ID Act of 2005 (the Act). *72 Federal Register 10819-10858* (March 9, 2007).

ATA is the national trade association of the American trucking industry. It is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the motor carrier industry. ATA's membership includes more than 2,000 trucking companies and suppliers of motor carrier equipment and services. Directly and indirectly through our affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

As the national representative of the motor carrier industry, ATA is vitally interested in matters affecting the availability and licensing of truck drivers.

II. OVERVIEW OF ATA'S COMMENTS

ATA endorses the comments of the American Association of Motor Vehicle Administrators in the observations, conclusions, and recommendations of those

comments with respect to the effects of the rule on the states. In particular, we agree that the states cannot meet the implementation deadlines imposed by the current rule for the implementation of the Real ID program, and will probably not be able to meet them at any time with the resources currently at their disposal.

Since freight transportation in the United States is primarily truck transportation, a strict adherence to the timetable in the current rule will result in most or all holders of commercial driver's licenses – that is, truck drivers – being unable to enter federal facilities. The logical result of this will be for the closure of the federal government for lack of the necessary supplies to continue its operations.

The draft rule has in fact little or nothing to say of the effect of Real ID requirements on the holders of commercial driver's licenses. DHS needs to give much more consideration to the potential economic effects of its rulemaking in this regard. The foremost problem of the American trucking industry is a shortage of drivers. The Real ID program could exacerbate this problem very considerably unless the special circumstances and requirements of truck drivers are carefully taken into account.

DHS should consider whether programs currently in effect or shortly to be developed might yield acceptable substitutes for truck drivers for the Real ID outlined in the draft rule.

The definition of “principal residence” employed in the draft rule is inappropriate, and could, if left unchanged, lead to very serious consequences for the Real ID program as a whole.

III. BACKGROUND

The economy of the United States depends heavily on freight transportation. The nation's manufacturing, wholesaling, retail, government (including defense), and service sectors all rely on timely and efficient deliveries of components, products, and supplies, and cannot function without them for more than a few days. Freight transportation in this country is accomplished largely by truck. More than 85% of the freight hauled in the United States – measured by value – is hauled by truck. ATA expects this proportion to grow rather than diminish in the coming years, and the demand for freight transportation itself is expected to increase by over 30% in terms of tonnage carried during the years 2004 through 2016.

Truck transportation, in turn, depends entirely on a supply of qualified truck drivers. Unfortunately, such a supply of drivers is by no means assured. Much of the industry has been suffering for some years with a severe driver shortage. Many of our members have reported to ATA that they have had repeatedly to park equipment and turn down tenders of freight for lack of drivers to operate those trucks. ATA estimated in 2004 that there was then a shortage of 20,000 long-haul truck drivers and that by 2014, this could, unless

there were significant market adjustments, rise to a shortage of more than 110,000 drivers. This shortage is due in part to competition for workers with other industries, notably construction. However, the fall in the market for residential construction will not be of much assistance, since the driver shortage is strongly linked to long-term national demographic trends. The shortage of drivers is the single largest problem currently for the majority of ATA's for-hire long-haul motor carrier members. Any factor that will tend further to limit the future availability of truck drivers is of the utmost concern to the industry and should be of concern to the nation as a whole.

IV. ANALYSIS

In its current form, the DHS rule has the potential for serious disruption of the operations both of the federal government and of the motor carrier industry, and thus of the Nation's security and economy as a whole. According to the comments on the rule submitted by the American Association of Motor Vehicle Administrators (AAMVA), with whose observations, recommendations, and conclusions ATA agrees, it will be impossible for most states – and almost certainly for any state – to issue driver's licenses that comply with the rule within the deadlines set. And this for three basic reasons: insufficient time, insufficient money, and insufficient DHS guidance. This is underlined by the rapidly growing number of states whose legislatures have declined even to attempt to comply with the act and the rule.

If no state can issue compliant driver's licenses by the deadline, no holder of a commercial driver's license (CDL) may any longer use such a license to enter a federal facility. Since the rule does not tell us how DHS will define "federal facility," but only indicates that the Department has not yet defined this critical term fully, let us assume a broad signification for the term.

This prohibition could effectively cut off such facilities from supplies brought by truck – and, like most facilities of any kind in the U.S., the overwhelming proportion of federal facilities are supplied entirely by motor carrier. The scope of this potential problem is enormous. All told, the annual freight bill of the federal government for trucking services supplied by the private sector is some \$23.1 billion. Of this, more than two-thirds (\$14.6 billion) is accounted for by the Department of Defense. If it were deprived of the services of the trucking industry, we can see no alternative for the federal government, including the Defense Department and DHS, but to shut down. This would seriously compromise the security of the nation as well as its economy. In this latter connection, in fact, hundreds of motor carrier businesses, large and small, that depend mostly or entirely on federal contracts, would be obliged to go out of business.

These same considerations become more troubling still if one takes into account the strong indications in the rule that DHS might for a number of reasons withdraw a state's certification to issue Real IDs on relatively short notice: as the result of a periodic audit of the state's process, following a DHS assessment that currently used processes or

materials for the physical Real ID are inadequate, or by the definition or redefinition of some of the terms in the rule that are at present undefined or inadequately defined. Such a decertification will presumably mean the licenses issued by that state in the past would now be invalid as Real IDs, and ineligible for entry into a federal facility. For this reason, each decertification of a state will have the most serious effects on the motor carrier and truck driver communities located in that state, and hardly less on the government facilities located there, and, at least in some instances, on the overall economy of the state itself.

Because ATA believes that states will be unable to implement Real ID, if at all, in anything like the time specified by the current rule, and in consideration of the very serious consequences on both the federal government and the Nation's economy when they fail to do so, we urge DHS to allow certain substitutions for Real ID for at least some truck drivers. We believe these substitutions are appropriate because the programs under which these drivers will be, or are being currently certified, are DHS programs that involve parallel requirements to those the department is proposing for Real ID.

First, due to the operational requirements of motor carriers that haul hazmats, which we noted above, holders of HMEs represent a large proportion of all CDL holders. It is important to recognize that those holding this endorsement have undergone a security threat assessment, through either a name-based or a fingerprint-based background check, as a prerequisite to receiving the endorsement (*see*, 49 CFR 1572). Since May 2005, all drivers issued a CDL with an HME have undergone a fingerprint-based background check. Such an assessment involves the checking of several immigration, criminal, and intelligence databases to ensure that the applicant for an HME is in good standing. Mandated by the PATRIOT Act (49 U.S.C. 5103a), these assessments review an applicant's record to ascertain if he qualifies to hold an HME. These checks search for specific criteria that disqualify an applicant, either permanently or for an interim period, from holding a HME.

In this same connection, it is important to note that the Transportation Security Administration (TSA) has discussed with the motor carrier industry a proposal to perform name-based background checks on all CDL holders through the Commercial Drivers License Information System (CDLIS). This expansion of the background-check requirement would ensure both an appropriate immigration status for all CDL holders and that they have all been checked through the terrorist watch list. These criteria meet the most critical goals established by the Act. It is also important to note that currently only a U.S. citizen or legal permanent resident can obtain a HME. Proof of citizenship and permanent legal residence must be provided by an applicant seeking the endorsement (*see*, 49 CFR 383.71(a)(9)).

We urge DHS to reconsider whether the CDL program, especially the requirements for an hazardous materials endorsement, already includes – or could readily be adapted to include – safeguards that might substitute for the requirement in the draft rule that all CDLs must be Real IDs, *per se*.

TSA is also developing the Transportation Worker Identification Card (TWIC). Under its original design, the TWIC is to become a security credential for all the transportation modes that will verify that transportation workers are U.S. citizens or immigrants in good standing, and that they have been checked through criminal databases and the terrorist watch list. When fully implemented, ATA believes that the TWIC also could substitute for the Real ID security and credentialing requirements set out in the draft rule. It is interesting that the reason the drafters of the rule decided not to allow the TWIC to serve as an alternative for a Real ID was the slow progress of the implementation of the TWIC program. However, this reason will not be valid if DHS extends the implementation period for Real ID to a date with which states might have some possibility of compliance. AAMVA believes an appropriate implementation period to be ten years; ATA will adopt AAMVA's conclusion in the respect as representing an authoritative estimate from a state perspective. Since the TWIC program is on a smaller scale than Real ID, is presumably already farther along in implementation, and quite evidently involves fewer uncertainties and difficulties, DHS should reconsider the TWIC – as well as the HME - as a substitute for a Real ID.

Let us suppose, however, that some states do attempt to make the enormous adjustments to their driver's license systems that will be necessary for them to issue Real IDs. What effect will this have on the trucking industry? It is difficult to say with any precision, since the rule has, as far as we can see, nothing to say specifically about commercial driver's licenses *per se*, and offers little or no guidance for the particular problems that Real ID may pose for truck drivers that rely on their CDLs to make a living. Presumably, however, a driver resident in a state that issues Real IDs, including CDLs, will be able to haul loads into federal facilities, while a driver resident in a state that does not issue such IDs will not be able to haul those loads.

The profitability of the operations of motor carriers, especially larger motor carriers, depend in the highest degree on their flexibility in matching loads, drivers, and equipment. Motor carriers find it very expensive in an operational sense, often prohibitively so, to segregate their drivers into various classes depending on the types of commodities they are qualified to haul, and many fleets have chosen not to do this. Many carriers that transport some loads of hazardous materials, for example, require all the drivers they hire to hold a CDL with a hazardous materials endorsement (HME), so that if a hazmat load needs transporting, any of their drivers may take it. If some states were to issue Real IDs and some did not, it may be presumed that residents of the latter states will by that fact become far less valuable as drivers for carriers doing any business with the federal government. By the same token, a motor carrier located in a noncompliant state may be at a serious disadvantage in finding drivers with Real ID CDLs to handle its government business. There has been some talk of permitting a CDL holder resident in a noncompliant state to apply for a Real ID CDL in a compliant state, but this would seem not only to require an amendment to the federal statute that sets the requirements for CDLs, but to contravene a major premise of the CDL program itself.

As it stands today, the rule will also make it far more difficult and expensive for current holders of a CDL that reside in a Real ID state to renew or replace their licenses. This is

of the utmost importance to a truck driver, as his livelihood depends on his holding a valid driver's license. Delays and expense in having a license renewed or reissued are particularly sensitive for this segment of the population, and may, if especially severe, force drivers to seek other employment altogether.

Truck drivers already pay far more in fees for their driver's licenses than the general public, since CDLs, on average, cost them about \$80, with a hazardous materials endorsement an additional \$100 or so. States would certainly raise those fees, perhaps substantially, in the process of converting their CDLs to Real ID CDLs. DHS should seriously consider AAMVA's observations on state costs in this respect and reevaluate its own estimates.

Other costs of a Real ID CDL would likely be much more substantial, however, for long-haul truck drivers. While any employee needing a Real ID might be expected to take time from work to stand in line at the local motor vehicle agency branch, the opportunity cost will be much greater for a driver whose job, instead of being across town, is across the country. AAMVA observes that many applicants for Real IDs will be obliged to make more than one appearance at the DMV, most often by reason of incomplete documentation upon their first application for a license. A second trip to the DMV may be especially discouraging, to put it mildly, for a long-haul driver for whom it will mean days rather than hours of lost work-time.

There is every reason to suppose that documenting an application for a Real ID may be especially difficult for the long-haul truck driver. A certain proportion of such drivers, unknown but thought to be significant, have no real place of residence, but live out of their trucks. Many others have a fixed place they can call home, but are there only infrequently, and may not have the types of documentation states will generally accept under Real ID requirements. The rule in its current form is quite vague on what a state may or must require in this respect; the potential problems in this area for truck drivers are no less real for all that.

Since long-haul truck drivers are by definition consistently away from home for long periods of time, and thus are not served by the mails as effectively as citizens who work at fixed locations, both the assembly of the original documents needed for Real ID and the issuance of Real IDs become more problematic for this segment of the driving population. The difficulties in obtaining an original birth certificate, say, by an individual who does not see his home more than once in every three weeks may be imagined.

AAMVA concludes that for practical purposes, a state that is compliant with the rule must issue Real IDs centrally, and, at least for such credentials give up programs involving over-the-counter issuance of driver's licenses. Since the rule requires the applicant for a Real ID to relinquish his prior driver's license at the time of application, this will leave a truck driver without his means of livelihood for the span of time it requires the state to transmit the documents submitted to a central location, perform the necessary verifications, resolve any discrepancies, process the issuance, and mail the Real

ID to the driver. At a hazard, this span of time appears to be on the order of two weeks – two weeks in which the truck driver cannot work.

These considerations are especially troubling in the face of DHS' insistence in the rule that each replacement or reissue of a Real ID, by reason a change of name, of address, or a lost or stolen driver's license, will require a trip to the motor vehicle agency and, apparently in many instances, redocumentation of the applicant. From what we have said, this will work a particular hardship on the nation's several million long-haul truck drivers, and serve to discourage them from continuing, and others from taking up, this occupation.

A somewhat different concern has arisen not out of the DHS rule itself but out of discussions at AAMVA's four listening sessions on the rule that were held in March 2007 and in which DHS participated. There was some indication that DHS might specify the "fast-tracking" of certain identifiable "high-risk" driver groups through the Real ID issuance process early in reenrollment. If this is in fact a possibility, ATA cautions that fast-tracking truck drivers - or such a subset of truck drivers as those with hazmat endorsements – would in fact involve substantial risk of disruption to the nation's transportation system, as these groups faced increased costs and delays in obtaining compliant licenses, and all faced them at once, presumably at a time when states had not yet worked out start-up problems with the Real ID processing systems.

Throughout this discussion, we have been assuming that a state complying with the rule will be licensing its residents – as all states do now. But under the rule as written, this assumption is mistaken. Instead, the rule has adopted a definition pertaining to the concept domicile as the definition of the term "principal residence," the location that an applicant for a Real ID must prove and the issuing state verify. Domicile, however, is a very different concept from residence, and will not serve in this connection. The idea of domicile, as the rule's discussion of the term indicates, includes a subjective aspect; one's domicile is what one regards as home, the place to which one expects return. It is by no means, therefore, the same as one's residence, the place where one actually lives.

Many millions of U.S. citizens do not reside in their states of domicile: those who have taken employment – longer term but temporary -- in another state; students away at school; Congressional staff in the Washington, DC, area until the next election; to name only three groups in a much more numerous class. All these will be licensed by their states of residence, not their state of domicile.

Under the rule, the applicant for a Real ID must prove his "principal residence," effectively defined as his domicile. Presumably too, he will need to go to his state of domicile to be licensed, even if he resides (and therefore has his prior driver's license) elsewhere. Once he appears at that state's motor vehicle agency, however, how is he to prove that he actually lives at a "principal residence" so defined, in that state? Since he doesn't, and the documentation suggested by the rule that a state may accept to prove "principal residence" actually pertains to an applicant's actual residence, as ordinarily understood. DHS apparently rejected ordinary definitions of the term "residence" as too

difficult to manage or too discrepant one from another. To be sure, residence is rather a slippery term, but state motor vehicle agencies resolve issues of residency routinely. DHS should work with AAMVA to determine a means of resolving the issue with respect to Real ID.

V. RECOMMENDATIONS & CONCLUSION

Many other observations might be made concerning the DHS rule and the feasibility of the Real ID program described in it. ATA believes we have said enough in these comments concerning the difficult – in places apparently insoluble – problems raised for truck drivers and motor carriers by the rule to indicate to DHS the necessity for the Department to rework certain aspects of the rule with a better understanding of the implications for the trucking industry, its drivers, and the facilities and economy we serve.

For the enormous – and equally difficult – problems the rule raises for the states, we urge DHS to consider very seriously the carefully thought-out comments of the American Association of Motor Vehicle Administrators, whose observations, conclusions, and recommendations on those state problems ATA endorses.

Some conclusions and recommendations are important enough to be emphasized, however:

The states must, as AAMVA asserts, be given a significantly longer time to implement the Real ID program than the draft rule allows. A ten-year implementation period may be sufficient, but DHS – in whose hands the statute has left this decision -- should maintain a certain flexibility to grant states an extension beyond that ten years.

DHS cannot anticipate that states which undertake to implement the Real ID program will be successful in doing so without significantly greater federal funding than appears now to be available for this purpose.

DHS must commit itself to working closely and over a significant period with the states, with the motor carrier industry, and with other interests that may be affected to a similar degree by the ramifications of the rule and of the Real ID program, to explore reasonable means to resolve the issues raised for those interests by the Act and the rule.

DHS should consider whether relatively minor enhancements to the current process for issuing CDLs, enhancements like those which have already been made with respect to applicants for a hazardous materials endorsement, could render a CDL an acceptable substitute for a Real ID.

DHS should reassess whether the TWIC can serve as a substitute for a Real ID for truck drivers and other transportation workers for access to federal facilities.

DHS should revise the definition of “principal residence” used in the rule, so as to leave the general rule intact that a driver is licensed by his state of residence, not his state of domicile.

In revising the rule, DHS must assess much more in depth the practical effects, in terms both of direct cost and economic disruption, which the various aspects of the rule will have on motor carriers, the holders of commercial driver’s licenses, and the federal facilities served by those groups.

DHS should not make its next issuance on the Real ID program a final rule. The current rule is both too incomplete and too problematic for so curtailed a rulemaking process to be satisfactory. A second notice of proposed rulemaking later this year, with additional opportunity for public comment, would be much more appropriate and effective.