

MAY 06 2008

*Assistant Secretary for Legislative Affairs*U.S. Department of Homeland Security
Washington, DC 20528**Homeland
Security**

The Honorable Russell D. Feingold
United States Senate
Washington, DC 20510

Dear Senator Feingold:

On behalf of Secretary Chertoff, thank you for your letter of April 8, 2008, regarding privacy issues and the REAL ID regulations.

As part of the rulemaking process, the Department of Homeland Security (DHS) carefully considered the privacy issues as provided in the preamble to the rule itself and in the privacy impact assessment. This can be accessed and viewed at the following link: http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_realidfr.pdf. In the final rule DHS outlined the comments, considerations, and responses related to the information contained on the Machine Readable Zone (MRZ) – both the needs of the law enforcement community and the concerns regarding potential uses for or misuse of the information.

Recognizing that the 2D barcode was already used by 45 jurisdictions and law enforcement officials across the country, DHS selected that technology. A different technology choice would have hampered law enforcement efforts, imposed an additional financial burden on the States, and had significant repercussions for other State and local interests where the 2D barcode was already in use or required. Concurrently, DHS acknowledged that the 2D barcode may have security vulnerabilities and technology limitations compared to other available technology. To address those considerations, DHS provided privacy best practices, information security best practices, and background resources to the States in the privacy impact assessment.

It is important to note that the REAL ID Act does not expand third-party private-sector use of driver's license information or require use of REAL ID documents outside official purposes. In addition, the Act does not authorize DHS to prohibit third-party private-sector uses of the information printed on the front of the REAL ID card or on the MRZ. This is the purview of the States. In the preamble to the final rule, DHS discusses the role States can play in limiting the use of the MRZ and cites examples from California, Nebraska, New Hampshire, and Texas. These States currently limit third-party use of the MRZ by law. The preamble encourages other States to take similar steps to protect the information stored in the MRZ from unauthorized access and collection. DHS supports efforts to find practical and effective technological means of protecting Personally

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Identifiable Information (PII) in the MRZ as well as State actions to limit the skimming of PII from both the MRZ and the face of the license. DHS is open to working with States to collectively determine alternative solutions to the issue you raise.

I appreciate your interest in the Department of Homeland Security, and I look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Legislative Affairs at (202) 447-5890.

Sincerely,



Donald H. Kent, Jr.
Assistant Secretary
Office of Legislative Affairs