



Susan Podziba & Associates

PUBLIC POLICY MEDIATION AND CONSENSUS BUILDING

Final Report

on the

**Negotiated Rulemaking to Develop
Minimum Standards for State-Issued Driver's Licenses
and Personal Identification Cards**

**as required under the
9/11 Commission Implementation Act
of the
Intelligence Reform and
Terrorism Prevention Act of 2004**

**for the
U.S. Department of Transportation, in consultation with
U.S. Department of Homeland Security**

**Submitted by
Susan L. Podziba, Public Policy Mediator
Alexis Gensberg Robert, Associate Mediator
Susan Podziba & Associates**

November 1, 2005

**Final Report on the
Negotiated Rulemaking Process to Develop Minimum Standards for
State-Issued Driver's Licenses and Personal Identification Cards
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Reform and Terrorism Prevention Act of 2004**

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**Final Report on the
Negotiated Rulemaking Process to Develop Minimum Standards for
State-Issued Driver's Licenses and Personal Identification Cards
as required under the 9/11 Commission Implementation Act of the Intelligence
Reform and Terrorism Prevention Act of 2004**

INTRODUCTION

The Minimum Standards for State-Issued Driver's Licenses and Personal Identification Cards Negotiated Rulemaking was initiated by the U.S. Department of Transportation (DOT), in consultation with the U.S. Department of Homeland Security (DHS) to assist in the development of a proposed rule establishing minimum federal standards to secure state-issued driver's licenses and personal identification cards (minimum standards) as required under the 9/11 Commission Implementation Act (9/11 Act) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law No. 108-458).

DOT formally chartered the Negotiated Rulemaking Advisory Committee on Minimum Standards for Driver's Licenses and Personal Identification Cards (DL/ID Reg Neg Committee) under the Federal Advisory Committee Act (FACA) for the purpose of negotiating a consensus on the terms of a proposed rule setting forth minimum standards.

The negotiated rulemaking process included a convening assessment to identify categories of key stakeholders that would be affected by and had interests related to the minimum standards, identify key issues and concerns of those stakeholders, and recommend members for a balanced committee of representative stakeholders, who were willing and able to participate in the negotiation process in good faith. Since the 9/11 Act mandated the use of a negotiated rulemaking process to develop the minimum standards, the convening assessment did not include a determination of feasibility for the application of a negotiated rulemaking process to the minimum standards. DOT retained Susan Podziba & Associates (SP&A) to provide convening and facilitation services for the negotiated rulemaking process.

The DL/ID Reg Neg Committee held the first of its five scheduled meetings on April 19-21, 2005, after which negotiations were suspended due to that expectation that passage and enactment of the Real ID Act of 2005 was imminent. (See Appendix A for the Federal Register Notice of Suspension, published May 6, 2005.)

On May 11, 2005 the President signed into law the Emergency Supplemental Appropriations, Defense, Global War on Terror, and Tsunami Relief, 2005, which included the Real ID Act. The Real ID Act repealed Section 7212 of the Intelligence Reform and Terrorism Protection Act of 2004. The FACA Charter of the DL/ID Reg Neg Committee included a provision to terminate the committee upon enactment of legislation repealing Section 7212. Thus, passage of the Real ID Act effectively terminated the DL/ID Reg Neg Committee Charter thereby canceling all further negotiations.

BACKGROUND

On December 17, 2004, the President signed into law the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law No. 108-458). Title VII of that Act is known as the 9/11 Commission Implementation Act of 2004 (the 9/11 Act). Subtitle B of the 9/11 Act addresses terrorist travel and effective screening and included a mandate for the issuance of minimum standards for a variety of identity documents, including driver's licenses and personal identification cards (§7212).

This provision was enacted in response to the following recommendation in the 9/11 Commission report:

Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of identification, such as driver's licenses. Fraud in identification documents 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.

In making that recommendation, the Commission noted:

All but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud. Acquisition of these forms of identification would have assisted them in boarding commercial flights, renting cars, and other necessary activities.

PROJECT DURATION AND MILESTONES

The negotiated rulemaking process to develop the minimum standards began in January 2005 and ended in May 2005. The convening assessment was initiated in January 2005 and the Final Convening Assessment Report was completed in April 2005.

On February 23, 2005, DOT published a Federal Register Notice announcing its intent to form a negotiated rulemaking advisory committee for the purpose of developing “recommendations for minimum standards to tighten security for driver’s licenses and personal identification cards issued by States, in order for these documents to qualify for use by Federal agencies for identification purposes.” (See Appendix B for Federal Register Notice of intent to form a negotiated rulemaking advisory committee, February 23, 2005.)

DOT published a Federal Register Notice announcing the dates of five meetings of the DL/ID Reg Neg Committee on March 29, 2005. (See Appendix C for Federal Register Notice of meetings of advisory committee.) The first meeting of the DL/ID Reg Neg Committee was held on April 19-21, 2005. Four additional 3½-day meetings were scheduled between May 10 and July 15, 2005. All meetings were to be held at DOT Headquarters in Washington, D. C. The schedule was prepared to enable the DL/ID Reg Neg Committee and DOT to meet the September 17, 2005 statutory deadline for submission of the DL/ID Reg Neg Committee recommendations to the Secretary of Transportation.

On May 3, 2005, the DOT Under Secretary for Policy informed the DL/ID Reg Neg Committee of the cancellation of its second meeting, which had been scheduled for May 10-12, 2005, as well as the suspension of all its activities. The committee was terminated after enactment of the Real ID Act on May 11, 2005. (See Appendix D for May 26, 2005 Federal Register Notice of termination of advisory committee.)

NEGOTIATED RULEMAKING COMMITTEE MEMBERS

The Negotiated Rulemaking Advisory Committee on Minimum Standards for Driver’s Licenses and Personal Identification Cards included DOT and DHS, representing the federal government, and 14 public members, who represented the following six categories of stakeholder groups: state offices that issue driver’s licenses or personal identification cards, elected state officials, applicants for and holders of driver’s licenses and personal identification cards such as consumers and non-citizens and immigrants, privacy and civil liberties groups, law enforcement officials, and technological and operational experts in document security. As required under FACA, DOT and DHS sought to ensure balanced representation from affected and interested stakeholder groups.

The organizational members of Negotiated Rulemaking Advisory Committee on Minimum Standards for Driver’s Licenses and Personal Identification Cards were:

- Alabama Department of Public Safety, Driver License Division
- American Association of Motor Vehicle Administrators (AAMVA)
- AAA
- American Civil Liberties Union

Center for Democracy and Technology/Markle Foundation
Florida Department of Highway Safety and Motor Vehicles
Information Technology Association of America
Industry Advisory Board to AAMVA
International Association of Chiefs of Police
National Conference of State Legislatures
National Governors Association
National Immigration Law Center
New York State Department of Motor Vehicles
Texas Department of Public Safety
U.S. Department of Homeland Security
U.S. Department of Transportation

(See Appendix E for a listing of the principal negotiators for each organizational member.)

PRODUCTS AND OUTCOMES

The expected outcome, a report or recommendations for proposed regulatory language for the minimum standards for state-issued driver's licenses and personal identification cards, was not produced because the negotiated rulemaking effort was terminated after one negotiation session.

The products developed as part of the negotiated rulemaking process include the *Final Convening Assessment Report for the Negotiated Rulemaking Process to Develop Minimum Standards for State-Issued Driver's Licenses and Personal Identification Cards as required under the 9/11 Commission Implementation Act of the Intelligence Reform and Terrorism Prevention Act of 2004*, the agenda and final meeting summary of the first meeting, the list of issues to be negotiated, the DL/ID Reg Neg Committee ground rules, and the draft agenda for the second meeting. These documents are attached as appendices, and all but the last are available from the DOT Docket Management System (DMS) website at <http://dms.dot.gov/search/searchFormSimple.cfm?CFID=8578535&CFTOKEN=43297657>. The docket number is 20434.

NEGOTIATED RULEMAKING PROCESS

The negotiated rulemaking process includes two phases: the convening assessment and the negotiations. DOT initiated the convening phase of the negotiated rulemaking process to identify key issues to be negotiated, and key stakeholder groups as well as representatives to negotiate on behalf of those stakeholder groups. Negotiations were scheduled to occur from April through July 2005, but ended after one meeting due to the passage and enactment of the Real ID Act.

Susan Podziba, Public Policy Mediator, Susan Podziba & Associates (SP&A) served as convener and facilitator for the negotiated rulemaking process. She was assisted by Alexis Gensberg, Associate Mediator, SP&A.

Convening Assessment

The convening assessment was conducted in accordance with parameters set out by the Department of Transportation including adhering to the legislative requirement that the negotiated rulemaking committee have representatives from “among state offices that issue driver’s license or personal identification card; state elected officials; Department of Homeland Security; and interested parties. The convener interviewed 57 representatives of the U.S. Department of Transportation, U.S. Department of Homeland Security, state offices that issue driver’s licenses and personal identification cards, state elected officials, organizations that represent applicants for and holders of driver’s licenses – including consumer organizations and those that represent immigrants and non-citizens, privacy and civil liberties groups, law enforcement officials, the 9/11 Commission, and organizations with technological and operational expertise in document security to identify:

- the principal categories of stakeholders that would be affected by and were interested in the minimum standards;
- key issues and concerns of stakeholders relative to the minimum standards and the interdependence of interests among stakeholders;
- organizations that could best represent the views and perspectives of each category of relevant stakeholders for the negotiated rulemaking; and
- a balanced committee of representatives of stakeholders who were willing and able to participate in the negotiation process in good faith.

Based on an evaluation of the information derived from these interviews, the Convener recommended proposed members for the advisory committee to DOT and DHS. The findings of the Convener are documented in the *Convening Assessment Report for the Negotiated Rulemaking Process to Develop Minimum Standards for State-Issued Driver’s Licenses and Personal Identification Cards as required under the 9/11 Commission Implementation Act of the Intelligence Reform and Terrorism Prevention Act of 2004 (April 15, 2005)*. This report identifies categories of stakeholders, substantive issues by stakeholder group, key issues across stakeholder groups, procedural issues, participation, process design, protocols and procedures, and recommends organizational members for the advisory committee. (See Appendix F for the Convening Assessment Report.)

In proposing organizational members for the DL/ID Reg Neg Committee, the Convener acted in accordance with parameters set out by DOT including following the 9/11 Act requirements that members be selected from “among state offices that issue driver’s license or personal identification card; state elected officials; Department of Homeland Security; and interested parties. In addition, she sought to recommend to the Department a balanced committee of relevant stakeholders which would include a combination of organizations that represent individuals who would be directly affected by the minimum standards, individuals who would interact directly with the public in implementation of the minimum standards, and those who would work on various components of implementation of the minimum standards.

Efforts were made to propose state members that represented diversity among the states with regard to size, geographic region, rural/urban character, proximity to foreign borders, and over-the-counter/centralized systems for delivering licenses.

Negotiations

The Negotiated Rulemaking Advisory Committee on Minimum Standards for Driver’s Licenses and Personal Identification Cards negotiations occurred on April 19-21. The meeting followed a formal agenda. (See Appendix G for the Meeting Agenda.)

The meeting began with procedural issues. The facilitator provided an overview of the negotiated rulemaking process (See Appendix H for slides.) and assisted the committee in developing its ground rules. (See Appendix I for committee ground rules.) The committee then reviewed and agreed upon its list of issues to be negotiated (See Appendix J for list of issues.), which was derived from the statutory language of Section 7212 of the 9/11 Act. The DL/ID Reg Neg committee discussed, in some detail, each of the 13 issues that were to be addressed in the minimum standards. In addition, expert presentations were given on the subjects of document security, privacy issues, driver’s license issuance process, Electronic Verification of Vital Events (EVVE) pilot program for verifying DL/ID applicants’ birth certificates, AAMVA Security Framework, and the Driver’s License Agreement.

As required under FACA, the meeting was open to the public and time was set aside for public comment, during which members of the public addressed the committee to offer recommendations, and comment on issues under discussion.

The facilitation team drafted the meeting summary, which was approved by the DL/ID Reg Neg Committee members by email. (See Appendix K for the meeting summary.) During the period after the first meeting and the suspension, the facilitation team maintained on-going contact with DOT, DHS, DL/ID Reg Neg Committee members, and the public.

Additional expert presentations were planned for the second meeting on the issues of machine readable technologies, documentation accepted for establishing identity for DL/ID issuance in states that do not require legal presence, domestic immigration documents used to establish identity for DL/ID issuance, and foreign documents. (See Appendix L for the draft agenda of the cancelled May 10-13 meeting.) A safety work group was also planned.

LESSONS LEARNED

The 9/11 Act provided a compressed timeframe for development of final minimum standards to secure state-issued driver's licenses and personal identifications cards for acceptance as identification at federal agencies and by federal officials. In addition, the law granted authority for the minimum standards to DOT and required that they be developed in consultation with DHS. DOT and DHS worked to meet these challenges by involving high level officials and creating mechanisms for coordination and cooperation between the two agencies. In addition, DHS and DOT committed extensive time and resources to the negotiated rulemaking effort. This commitment was mirrored by a significant commitment of time and resources to be expended by the non-federal members of the DL/ID Reg Neg Committee.

The actions taken by DOT and DHS provide useful lessons for other federal agencies contemplating negotiated rulemakings.

Commitment of Senior Executive Time

DOT established a biweekly meeting of Senior Executives to discuss issues related to the negotiated rulemaking. The meetings were called by the General Counsel and included the Assistant Secretary for Transportation Policy, the National Highway Traffic Safety Administrator, Federal Motor Carrier Safety Administrator, Deputy Assistant Secretary of the Office of the Assistant Secretary for Governmental Affairs and their staff. On occasion, a DHS executive or staff also participated. This top-level oversight enabled decisions to be made quickly and efficiently to meet the time constraints imposed by statutory deadlines.

In addition, responsibility for implementation of the negotiated rulemaking was given to Senior Executive Service (SES) staff at both DOT and DHS. They created a structure for cooperation and coordination of decision-making on implementation of the negotiated rulemaking process and to develop joint agency positions on issues related to the minimum standards.

Coordination of Federal Information and Positions

DOT and DHS created teams to address the issues to be negotiated as part of the minimum standards in order to facilitate coordination and make pre-decisional recommendations for potential federal positions. These teams included personnel from offices across DOT and DHS as well as other federal agencies. Each issue team had a leader who was responsible to the DOT and DHS lead officials, and the work of each team was accomplished on an expeditious schedule.

Commitment of Staff Time and Resources

All necessary staff and resources were made available to support the negotiated rulemaking process. In addition to the teams that coordinated potential federal positions, DOT Office of General Counsel staff were available to prepare and review FACA documents and responses to legal questions as they arose, the DOT FACA specialist provided expertise on FACA Notice requirements and requirements for appointing members to the Federal Advisory Committee, and the DOT Chief Economist was prepared to develop cost estimates of options discussed and agreed to by the DL/ID Reg Neg Committee as well as to prepare a cost benefit analysis of the proposed minimum standards as had been required under the 9/11 Act.

In addition, materials were prepared for distribution to the committee members and the public. At short notice, space was made available at DOT Headquarters.

Commitment of Time and Resources by Public DL/ID Reg Neg Committee Members

In response to the high level commitment of the federal agencies, the non-federal organizational members of the DL/ID Reg Neg Committee were represented by high level officials that included CEOs, a State Senator, a State Secretary of State, Commissioners of departments of motor vehicles, Chiefs of law enforcement agencies, and senior experts in issues of electronic privacy protection, civil rights, immigration, and technology.

Each negotiator committed to volunteer their time for 3½-day meetings, every third week for five meetings, and committee members' organizations covered all travel costs for their negotiators.

Willingness to Provide Expertise and Information by DL/ID Reg Neg Committee Members

In addition to the expertise DL/ID Reg Neg Committee members and their staff brought to the issues related to the minimum standards for state-issued driver's licenses and personal identification cards, committee members were also set to commit

organizational resources to support the negotiations. Several Committee members provided and planned to provide data and information to answer specific questions posed by negotiators. For example, a Committee member assembled and delivered a panel presentation for the third day of the April meeting to address questions raised during the first day of the meeting.

After the first meeting, papers and information that had been requested were provided by committee members and distributed in preparation for the second meeting. One committee member had committed to survey her organizational members to provide data on specific questions that had emerged from committee discussions. Committee members also provided experts for planned panel presentations for the second meeting.

CONCLUSION

As required under the 9/11 Commission Implementation Act of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law No. 108-458), Section 7212, the U.S. Department of Transportation, in consultation with the U.S. Department of Homeland Security, initiated a negotiated rulemaking process to develop minimum standards for state-issued driver's licenses and personal identification cards.

This effort was terminated with enactment of the Real ID Act of 2005, which repealed Section 7212 of the 9/11 Act.

We will never know if the DL/ID Reg Neg Committee would have succeeded in reaching consensus on minimum standards for state issued driver's licenses and personal identification cards. However, we do know that DL/ID Reg Neg Committee members, among whom were individuals with passionate and potentially antagonistically divergent opinions concerning the issues under discussion, were committed to and engaged in three days of respectful and civil deliberations to develop national standards that would meet the intended public policy goals of increased national security and limit unintended consequences of reduced privacy and restrictions of civil liberties in the United States.

For more information: Contact Susan Podziba, Public Policy Mediator, Susan Podziba & Associates, (617) 738-5320, susan@podziba.com or Linda Lawson, Director, Office of Safety, Energy and Environment, Office of the Assistant Secretary for Transportation Policy, U.S. Department of Transportation, (202) 366-4416, Linda.Lawson@dot.gov.

Appendix A

Federal Register Notice of Suspension

May 6, 2005

the Captain of the Port or his or her designated representative.

Dated: April 15, 2005.

John E. Cameron,

Commander, U.S. Coast Guard, Captain of the Port, Charleston, South Carolina.

[FR Doc. 05-9036 Filed 5-5-05; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Subtitle A

[Docket No. OST-2005-20434]

Negotiated Rulemaking Advisory Committee on Minimum Standards for Driver's Licenses and Personal Identification Cards

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Suspension of advisory committee meeting.

SUMMARY: This document suspends the meeting of the Negotiated Rulemaking Advisory Committee on Minimum Standards for Driver's Licenses and Personal Identification Cards scheduled for May 10-13, 2005. The reason for the action is impending Congressional action, in the near future, concerning the "REAL ID Act." This legislation would repeal section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004, which provides the authority for the negotiated rulemaking on this subject.

DATES: The May 10-13, 2005, meeting of the advisory committee is suspended immediately.

FOR FURTHER INFORMATION CONTACT:

Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Office of the General Counsel, at (202) 366-9310 (bob.ashby@dot.gov); Department of Transportation, 400 7th Street, SW., Washington, DC 20590, room 10424.

SUPPLEMENTARY INFORMATION: On December 17, 2004, the President signed into law the Intelligence Reform and Terrorism Prevention Act of 2004. (Pub. L. 108-458). Title VII of that Act is known as the 9/11 Commission Implementation Act of 2004 (the 9/11 Act). Subtitle B of the 9/11 Act addresses terrorist travel and effective screening. Among other things, Subtitle B, section 7212, mandated the issuance of minimum standards for State-issued driver's licenses and personal identification cards (Section 7212) that will be accepted by Federal agencies for official purposes.

Section 7212 directed the Department of Transportation to issue rules with the assistance of a negotiated rulemaking advisory committee, composed of representatives of the Departments of Transportation and Homeland Security, State agencies that issue driver's licenses, State elected officials, and other interested parties. The Department formed such an advisory committee, which met on April 19-21, 2005.

Congress has nearly completed work needed to pass the "REAL ID Act," (a part of S. 1268), which repeals section 7212. As provided in the charter for the advisory committee, the committee—and the negotiated rulemaking process of which it is a key part—will terminate upon enactment of legislation repealing section 7212. Because we anticipate that the REAL ID Act will become law in the very near future, we are reluctant to ask committee members to commit the time and effort to the advisory committee next week, so the Department in this notice announces the suspension of the meeting of the committee that had been scheduled for May 10-13, 2005. If Congress enacts the REAL ID Act, the Department will issue another **Federal Register** notice, which will formally terminate the advisory committee and the regulatory negotiation process.

Issued this 4th day of May, 2005, in Washington, DC.

Jeffrey A. Rosen,
General Counsel.

[FR Doc. 05-9200 Filed 5-4-05; 2:05 pm]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2005-20791]

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by the Fire Equipment Manufacturers Association (FEMA) to require all new light duty trucks to be equipped with fire extinguishers.

FOR FURTHER INFORMATION CONTACT: For legal issues: Mr. George Feygin, Office of the Chief Counsel, phone (202) 366-2992. For technical issues: Mr. Charles R. Hott, Office of Crashworthiness

Standards, NVS-113, phone (202) 366-0247.

You can reach both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On September 14, 2004, NHTSA received a petition from FEMA to require all new light duty trucks¹ to be equipped with fire extinguishers.² FEMA is an international group of leading fire protection manufacturers working together to educate the public about fire prevention to save lives and reduce property damage. Member companies manufacture fire protection products.

FEMA stated that the safety benefits of fire extinguishers in all new light trucks justify rulemaking to require the installation of portable fire extinguishers. FEMA also stated that fires are a common occurrence on America's highways and in automobile crashes. FEMA noted that according to the *Traffic Safety Facts 2001*, there were 14,000 automobile accidents where fire was involved, representing 0.1 percent of all vehicles involved in traffic crashes. Of those 14,000 accidents, 1,657 proved to be fatal and 5,000 involved injury. FEMA further stated that automobile crashes involving fires are more deadly. FEMA also provided data showing that crash related fires represent two percent of the total vehicle fires in the United States. FEMA enclosed a report from the National Fire Protection Association³ showing that there were 307,000 fires in all motor vehicles in 2002.

FEMA contends that requiring fire extinguishers in new light trucks can help slow down the spread of fires because all fires start small, and it is crucial to keep the fire at bay long enough to rescue any occupants in order to prevent loss of life or injury. FEMA stated that swift use of portable fire extinguishers is likely to prevent small fires from becoming more significant and dangerous, and that this will provide rescuers with additional time to save occupants. FEMA further contends that increasing the number of fire extinguishers on roads increases the chance that vehicles passing an automobile fire can help rescue occupants. FEMA stated that fire

¹ The United States Department of Transportation, *Traffic Safety Facts 2003* defines "light duty trucks" as "trucks of 10,000 pounds gross vehicle weight rating or less, including pickups, vans, truck-based station wagons, and utility vehicles."

² See Docket No. NHTSA-2004-16856-44.

³ Fire Loss in the United States During 2002, National Fire Protection Association, September 2003.

Appendix B

**Federal Register Notice of intent to form a negotiated
rulemaking advisory committee**

February 23, 2005

* * * * *

[FR Doc. 05-3451 Filed 2-22-05; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 271**

[FRL-7875-6]

Mississippi: Final Authorization of State Hazardous Waste Management Program Revisions**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: Mississippi has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Mississippi for RCRA Clusters IV through X. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by March 25, 2005.

ADDRESSES: Submit your comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- E-mail: middlebrooks.gail@epa.gov.
- Fax: (404) 562-8439 (prior to faxing, please notify the EPA contact listed below).
- Mail: Send written comments to Gail Middlebrooks at the address listed below.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>, or e-mail. The Federal [regulations.gov](http://www.regulations.gov) Web site is an

"anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comments. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit.

You can view and copy Mississippi's applications from 8 a.m. to 4:30 p.m. at the following addresses: Mississippi Department of Environmental Quality, Hazardous Waste Division, 101 W. Capital, Suite 100, Jackson, Mississippi 39201; and EPA, Region 4, Library, 9th Floor, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-3104; (404) 562-8190.

FOR FURTHER INFORMATION CONTACT: Gail Middlebrooks, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-3104; (404) 562-8494.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: February 2, 2005.

A. Stanley Meilburg,

Acting Regional Administrator, Region 4.

[FR Doc. 05-3364 Filed 2-22-05; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****49 CFR Subtitle A**

[Docket No. OST-2005-20434]

Driver's Licenses and Personal Identification Cards

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of intent to form a negotiated rulemaking advisory committee.

SUMMARY: Pursuant to the portion of the Intelligence Reform and Terrorism Prevention Act of 2004 known as the 9/11 Commission Implementation Act of 2004, the Office of the Secretary, DOT, is establishing a committee to develop, through negotiated rulemaking procedures, recommendations for minimum standards to tighten the security for driver's licenses and personal identification cards issued by

States, in order for these documents to qualify for use by Federal agencies for identification purposes. The committee will consist of persons who represent the interests affected by the proposed rule, *i.e.*, State offices that issue driver's licenses or personal identification cards, elected State officials, the Departments of Transportation and Homeland Security, and other interested parties. The purpose of this document is to invite interested parties to submit comments on the issues to be discussed and the interests and organizations to be considered for representation on the committee.

DATES: You should submit your comments or applications for membership or nominations for membership on the negotiated rulemaking committee early enough to ensure that the Department's Docket Management System (DMS) receives them not later than March 25, 2005. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You should mention the docket number of this document in your comments or application/nomination for membership and submit them in writing to: Docket Management System (DMS), Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following Web address: <http://dms.dot.gov/submit/>.

You may call the Docket at 202-366-9324, and visit it from 10 a.m. to 5 p.m., Monday through Friday. Interested persons may view docketed materials on the Internet at any time. Instructions for doing so are found at the end of this notice.

You may read the comments received by DMS at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also review all documents in the docket via the internet. To read docket materials on the internet, take the following steps:

1. Go to the DMS Web page of the Department of Transportation (<http://dms.dot.gov/>).
2. On that page, click on "search."
3. On the next page (<http://dms.dot.gov/search/>), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were OST-2005-1234," you would type "1234." After typing the docket number, click on "search."
4. On the next page, which contains docket summary information for the

docket you selected, click on the desired comments. You may download the comments. The comments are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

FOR FURTHER INFORMATION CONTACT:

Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Office of the General Counsel, at 202-366-9310 (bob.ashby@dot.gov), or Steve Wood, Assistant Chief Counsel for Vehicle Safety Standards and Harmonization, Office of the Chief Counsel, National Highway Traffic Safety Administration, 202-366-2992 (steve.wood@nhtsa.dot.gov) Their mailing addresses are at the Department of Transportation, 400 7th Street, SW., Washington, DC 20590, at rooms 10424 and 5219, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

On December 17, 2004, the President signed into law the Intelligence Reform and Terrorism Prevention Act of 2004. (Public Law No. 108-458). Title VII of that Act is known as the 9/11 Commission Implementation Act of 2004 (the 9/11 Act). Subtitle B of the 9/11 Act addresses terrorist travel and effective screening. Among other things, subtitle B mandates the issuance of minimum standards for Federal acceptance of birth certificates (section 7211), and driver's licenses and personal identification cards (section 7212). It also establishes requirements for enhancing the security of social security cards (section 7213). This notice concerns section 7212.

A bill currently under consideration in Congress (H.R. 418), if enacted and signed into law as passed by the House, would terminate the Department's negotiated rulemaking. The Administration has endorsed this bill, which would repeal section 7212 which is the basis for the Department's rulemaking. Until and unless such legislation is enacted, however, the Department is taking the steps necessary to meet the existing statutory deadline. This notice describes the procedure that we propose to use in implementing section 7212, as long as it remains in effect.

II. Statutory Mandate for Minimum Standards on Driver's Licenses and Personal Identification Cards

Section 7212 of the 9/11 Act requires the Secretary of Transportation, in consultation with the Secretary of Homeland Security, to establish, by regulation, minimum standards for driver's licenses or personal identification cards issued by a State in order to qualify for use by Federal agencies for identification purposes.

This provision was enacted in response to the following recommendation in the 9/11 Commission report:

Recommendation: Secure identification should begin in the United States. The Federal government should set standards for the issuance of birth certificates and sources of identification, such as drivers licenses. Fraud in identification documents 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.¹

In making that recommendation, the Commission noted:

All but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud. Acquisition of these forms of identification would have assisted them in boarding commercial flights, renting cars, and other necessary activities.²

A. Substance of the Standards

Section 7212(b)(2) of the 9/11 Act requires that the standards to be established by the Secretary of Transportation include—

- (A) standards for documentation required as proof of identity of an applicant for a driver's license or personal identification card;
- (B) standards for the verifiability of documents used to obtain a driver's license or personal identification card;
- (C) standards for the processing of applications for driver's licenses and personal identification cards to prevent fraud;
- (D) standards for information to be included on each driver's license or personal identification card, including—
 - (i) the person's full legal name;
 - (ii) the person's date of birth;
 - (iii) the person's gender;
 - (iv) the person's driver's license or personal identification card number;
 - (v) a digital photograph of the person;
 - (vi) the person's address of principal residence; and

(vii) the person's signature;³

(E) standards for common machine-readable identity information to be included on each driver's license or personal identification card, including defined minimum data elements;

(F) security standards to ensure that driver's licenses and personal identification cards are—

- (i) resistant to tampering, alteration, or counterfeiting; and
- (ii) capable of accommodating and ensuring the security of a digital photograph or other unique identifier; and

(G) a requirement that a State confiscate a driver's license or personal identification card if any component or security feature of the license or identification card is compromised.

Section 7212(b)(3) requires further that the standards—

(A) shall facilitate communication between the chief driver licensing official of a State, an appropriate official of a Federal agency and other relevant officials, to verify the authenticity of documents, as appropriate, issued by such Federal agency or entity and presented to prove the identity of an individual;

(B) may not infringe on a State's power to set criteria concerning what categories of individuals are eligible to obtain a driver's license or personal identification card from that State;

(C) may not require a State to comply with any such regulation that conflicts with or otherwise interferes with the full enforcement of State criteria concerning the categories of individuals that are eligible to obtain a driver's license or personal identification card from that State;

(D) may not require a single design to which driver's licenses or personal identification cards issued by all States must conform; and

(E) shall include procedures and requirements to protect the privacy rights of individuals who apply for and hold driver's licenses and personal identification cards.

B. Process for Developing Recommendations for Proposed Standards

The 9/11 Act requires that before publishing proposed minimum

³Section 7214 of the Act provides that no State or subdivision thereof may "display a social security account number issued by the Commissioner of Social Security (or any derivative of such number) on any driver's license, motor vehicle registration, or personal identification card (as defined in section 7212(a)(2) of the 9/11 Commission Implementation Act of 2004), or include, on any such license, registration, or personal identification card, a magnetic strip, bar code, or other means of communication which conveys such number (or derivative thereof)."

¹9/11 Commission Report, page 390.

²Ibid.

standards, the Secretary of Transportation must establish a negotiated rulemaking process pursuant to 5 U.S.C. 561 *et seq.*,⁴ and receive such recommendations regarding a proposed as the regulatory negotiation committee may adopt. The committee must include representatives from—

(i) among State offices that issue driver's licenses or personal identification cards;

(ii) among State elected officials;

(iii) the Department of Homeland Security; and

(iv) among interested parties.⁵

C. Schedule for Submitting Recommendations and Establishing the Standards

The recommendations of the negotiated rulemaking committee must be submitted to the Secretary of Transportation not later than 9 months after the date of enactment, *i.e.*, by September 17, 2005.⁶ The Secretary must issue a final rule establishing the standards not later than 18 months after the date of enactment, *i.e.*, by June 17, 2006.⁷

D. Implementation of the Standards

Section 7212(b)(1)(C) provides that each State must certify to the Secretary of Transportation that the State is in compliance with the requirements of this section. The certifications are to be made at such intervals and in such a manner as the Secretary of Transportation may prescribe by regulation.

Further, Section 7212(b)(1)(A) bars all Federal agencies from accepting, for any official purpose, a driver's license or personal identification card that is newly issued by a State more than 2 years after the issuance of the minimum standards (*i.e.*, by June 17, 2008) unless the driver's license or personal identification card conforms to those standards.⁸ As to all driver's licenses and personal identification cards, regardless of when they were issued, the Secretary of Transportation, in consultation with the Secretary of Homeland Security, is required by Section 7212(b)(1)(B) to set a date after which all Federal agencies are barred from accepting any driver's license or personal identification card for any

official purpose unless such driver's license or personal identification card conforms to the minimum standards.

III. Negotiated Rulemaking

As required by Section 7212 (b)(4)(C), the Office of the Secretary will conduct the mandated negotiated rulemaking in accordance with the Negotiated Rulemaking Act of 1990, Public Law 101-648 (NRA) (5 U.S.C. 561, *et seq.*). The NRA establishes a framework for the conduct of a negotiated rulemaking and encourages agencies to use negotiated rulemaking to enhance the informal rulemaking process. Pursuant to Section 7212 and the NRA, OST will form an advisory committee consisting of representatives of the affected interests for the purpose of reaching consensus, if possible, on the proposed rule.

A. The Concept of Negotiated Rulemaking

Usually, DOT develops a rulemaking proposal using its own staff and consultant resources. The concerns of affected parties are made known through means such as various informal contacts and advance notices of proposed rulemaking published in the **Federal Register**. After the notice of proposed rulemaking is published for comment, affected parties may submit arguments and data defining and supporting their positions with regard to the issues raised in the proposed rule. All comments from affected parties are directed to the Department's docket for the rulemaking. In general, there is limited communication among parties representing different interests. Many times, effective regulations have resulted from such a process.

However, as Congress noted in the NRA, such regulatory development procedures may "discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions * * *" (Sec. 2(2) of Pub. L. No. 101-648). Congress also stated "adversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It also deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties." (Sec. 2(3) of Pub. L. No. 101-648).

Using negotiated rulemaking to develop the proposed rule is fundamentally different. Negotiated rulemaking is a process in which a proposed rule is developed by a

committee composed of representatives of all those interests that will be significantly affected by the rule. Decisions are made by some form of consensus, which generally requires a measure of concurrence among the interests represented.⁹ An agency desiring to initiate the process does so by carefully identifying all interests potentially affected by the rulemaking under consideration. To help in this identification process, the agency publishes a notice, such as this one, which identifies a preliminary list of interests and requests public comment on that list. Following receipt of the comments, the agency establishes an advisory committee representing these various interests to negotiate a consensus on the terms of a proposed rule. The committee is chartered under the Federal Advisory Committee Act (FACA; 5 U.S.C. App. 2). Representation on the committee may be direct, that is, each member represents a specific interest, or may be indirect, through coalitions of parties formed for this purpose. The establishing agency has a member of the committee representing the Federal government's own set of interests.¹⁰ A facilitator or mediator can assist the negotiated rulemaking advisory committee by facilitating the negotiation process. The role of this mediator, or facilitator, is to apply proven consensus building techniques to the advisory committee setting.

Once a regulatory negotiation advisory committee reaches consensus on the provisions of a proposed rule, the agency, consistent with its legal obligations, uses this consensus as the basis of its proposed rule and publishes it in the **Federal Register**. This provides the required public notice under the Administrative Procedure Act (APA; 5 U.S.C. 551 *et seq.*) and allows for a public comment period. Under the APA, the public retains the right to comment. The Department anticipates, however, that the pre-proposal consensus agreed upon by this committee will effectively address virtually all major issues prior to publication of a proposed rulemaking.

⁹The Negotiated Rulemaking Act defines "consensus" as "unanimous concurrence among the interests represented on a negotiated rulemaking committee * * * unless such committee (A) agrees to define such term to mean a general but not unanimous concurrence; or (B) agrees upon another specified definition." 5 U.S.C. 562(2).

¹⁰In this regulatory negotiation, both the Departments of Transportation and Homeland Security are required by statute to represent the Federal government's interests.

⁴Section 7212(b)(4)(A).

⁵Section 7212(b)(4)(B).

⁶Section 7212(b)(4)(C)(i).

⁷Section 7212(b)(2). See also Section 7212(b)(4)(C)(ii).

⁸Section 7212(d) provides that the Secretary may extend this date "for up to 2 years for driver's licenses issued by a State if the Secretary determines that the State made reasonable efforts to comply with the date under * * * [section 7212(b)] * * * but was unable to do so."

B. The Department of Transportation's Commitment

In initiating this regulatory negotiation process, the Department plans to provide adequate resources to ensure timely and successful completion of the process. This includes making the process a priority activity for all representatives, components, officials, and personnel of the Department who need to be involved in the rulemaking, from the time of initiation until such time as a final rule is issued or the process is expressly terminated. The Department will provide administrative support for the process and will take steps to ensure that the negotiated rulemaking committee has the appropriate resources it requires to complete its work in a timely fashion. These include the provision or procurement of such support services as properly equipped space adequate for public meetings and caucuses; logistical support; word processing and distribution of background information; the services of a convenor/facilitator; and such additional research and other technical assistance as may be necessary.

To the extent possible, consistent with its legal obligations, the Department currently plans to use any consensus arising from the regulatory negotiation committee as the basis for the proposed minimum standards to be published for public notice and comment.¹¹

C. Negotiating Consensus

As discussed above, the negotiated rulemaking process is fundamentally different from the usual development process for developing a proposed rule. Negotiation allows interested and affected parties to discuss possible approaches to various issues rather than simply being asked in a regular notice and comment rulemaking proceeding to respond to details on a proposal developed and issued by an agency. The negotiation process involves a mutual education of the parties by each other on the practical concerns about the impact of various approaches. Each committee member participates in resolving the interests and concerns of other members, rather than leaving it up

to the agency to bridge different points of view.

A key principle of negotiated rulemaking is that agreement is by consensus. Thus, no one interest or group of interests is able to control the process. Under the NRA as noted above, "consensus" usually means the unanimous concurrence among interests represented on a negotiated rulemaking committee, though a different definition may be employed in some cases. In addition, experience has demonstrated that using a professional mediator to facilitate this process will assist all potential parties, including helping to identify their interests in the rule and enabling them to reevaluate previously stated positions on issues involved in the rulemaking effort.

D. Key Issues for Negotiation; Invitation to Comment on Issues To Be Addressed

As noted above, Section 7212 sets forth considerable detail regarding the issues to be addressed in developing and promulgating the mandated minimum standards. The Department invites comment on the issues regarding the particular aspects of the standards that the negotiating committee should address in developing its recommendations or report.

The Department is aware of the considerable work that has been and is being done at Federal and State levels and in the private sector to improve various types of identification documents, including driver's licenses. We invite comment on which of these past and ongoing efforts are most relevant to this rulemaking, and on what implications those efforts have for the recommendations and choices to be made in this rulemaking.

IV. Procedures and Guidelines for This Regulatory Negotiation

The following proposed procedures and guidelines will apply to the regulatory negotiation process, subject to appropriate changes made as a result of comments on this Notice or as determined to be necessary during the negotiating process.

A. Notice of Intent To Establish Advisory Committee and Request for Comment

In accordance with the requirements of FACA, an agency of the Federal government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a Federal advisory committee. It is the purpose of this Notice to indicate the Department's intent to create a Federal advisory

committee, to identify the issues involved in the rulemaking, to identify the interests affected by the rulemaking, to identify potential participants who will adequately represent those interests, and to ask for comment on the identification of the issues, interests, procedures, and participants.

B. Facilitator

Pursuant to the NRA (5 U.S.C. 566), a facilitator will be selected to serve as an impartial chair of the meetings; assist committee members to conduct discussions and negotiations; and manage the keeping of minutes and records as required by FACA. The facilitator will chair the negotiations, may offer alternative suggestions to committee members to help achieve the desired consensus, will help participants define and reach consensus, and will determine the feasibility of negotiating particular issues. The Department has selected Ms. Susan Podziba, an experienced mediator, as its convenor/facilitator for this regulatory negotiation.

C. Membership

The NRA provides that the agency establishing the regulatory negotiation advisory committee "shall limit membership to 25 members, unless the agency head determines that a greater number of members is necessary for the functioning of the committee or to achieve balanced membership." The purpose of the limit on membership is to promote committee efficiency in deliberating and reaching decisions on recommendations. The Department of Transportation's current inclination is to observe that limit. However, the Department notes that its experience with regulatory negotiations indicates that limiting membership to fewer than 25 members is often desirable.

D. Interests Likely To Be Affected; Representation of Those Interests

The committee will include a representative from the Department of Transportation and from the interests and organizations listed below. Each representative may also name an alternate, who will be encouraged to attend all committee meetings and will serve in place of the representative if necessary. The DOT representative is the Designated Federal Official (DFO) and will participate in the deliberations and activities of the committee with the same rights and responsibilities as other committee members. The DFO will be authorized to fully represent the Department in the discussions and negotiations of the committee.

¹¹ The Department of Transportation is obligated under Section 7212 to propose and adopt minimum standards regardless of whether the committee to be established pursuant to Section 7212 is able to achieve consensus on all required elements of those standards. Thus, if the committee were unable to reach consensus on any of the elements, the Department of Transportation would, in consultation with the Department of Homeland Security, independently develop proposals regarding those elements.

The Department has tentatively identified the following organizations or interests to participate in the negotiated rulemaking. The convenor will contact these and other organizations to determine their interests and willingness to serve on the committee.

- (1) Department of Transportation.
- (2) Department of Homeland Security.
- (3) State offices that issue driver's licenses or personal identification cards; American Association of Motor Vehicle Administrators.
- (4) Representatives of elected State officials; National Governors Association; National Conference of State Legislatures; National Association of Attorneys General.
- (5) Other interested parties.
 - (a) Groups or organizations presenting the interests of applicants for and holders of driver's licenses and personal identification cards.
 - (i) Consumer organization.
 - (ii) Organization representing non-citizens/immigrants.
 - (b) Organizations with technological and operational expertise in document security.
 - (c) Privacy and civil liberties groups.
 - (d) Law enforcement officials.

The first four interests identified above are required by the statute to participate in the negotiated rulemaking.¹² The "other interests" mentioned are those that appear to the Department to have potentially important roles in helping achieve consensus on recommendations on the issues involved. The Department seeks comment on whether there are additional interests that should be represented on the committee. The Department also seeks comments on particular organizations and individuals who would appropriately represent interests on the committee. Please identify such organizations and interests if they exist and explain why they should have separate representation on the committee.

The list of potential parties specifically named above is not presented as a complete or exclusive list from which committee members will be selected, nor does inclusion on the list of potential parties mean that a party on the list has agreed to participate as a member of the committee or as a member of a coalition, or will necessarily be invited to serve on the committee. The list merely indicates parties that DOT has tentatively identified as representing significantly affected interests in the outcome of the proposed rule. This document gives notice of this process to other potential

participants and affords them the opportunity to request representation in the negotiations. The procedure for requesting such representation is set out below. In addition, comments and suggestions on this tentative list are invited.

The Department is aware that there are many more potential participants, whether they are listed here or not, than there are membership slots on the committee. We do not believe, nor does the NRA contemplate, that each potentially affected group must participate directly in the negotiations. What is important is that each affected interest be adequately represented. To have a successful negotiation, it is important for interested parties to identify and form coalitions that adequately represent significantly affected interests. These coalitions, to provide adequate representation, must agree to support, both financially and technically, a member to the committee whom they will choose to represent their "interest." Those selected, it should be noted, represent one or more interests, not just themselves or their organizations.

It is very important to recognize that interested parties who are not selected to membership on the committee can make valuable contributions to this negotiated rulemaking effort in any of several ways:

- The person or organization could request to be placed on the committee mailing list, submitting written comments, as appropriate;
- Any member of the public could attend the committee meetings, caucus with his or her interest's member on the committee, and, as provided in FACA, speak to the committee. Time will be set aside during each meeting for this purpose, consistent with the committee's need for sufficient time to complete its deliberations; or
- The person or organization could assist in the work of a workgroup that might be established by the committee.

Informal workgroups are usually established by an advisory committee to assist the committee in "staffing" various technical matters (e.g., researching or preparing summaries of the technical literature or comments on particular matters such as economic issues) before the committee so as to facilitate committee deliberations. They also might assist in estimating costs and drafting regulatory text on issues associated with the analysis of the costs and benefits addressed, and formulating drafts of the various provisions and their justification previously developed by the committee. Given their staffing function, workgroups usually consist of

participants who have expertise or particular interest in the technical matter(s) being studied.

E. Applications for Membership

Each application for membership or nomination to the committee should include:

- (i) the name of the applicant or nominee and the interest(s) such person would represent;
- (ii) evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposes to represent; and
- (iii) a written commitment that the applicant or nominee would participate in good faith.

Please be aware that each individual or organization affected by a final rule need not have its own representative on the committee. Rather, each interest must be adequately represented, and the committee should be fairly balanced.

F. Good Faith Negotiation

Committee members should be willing to negotiate in good faith and have the authority from his or her constituency to do so. The first step is to ensure that each member has good communications with his or her constituencies. An intra-interest network of communication should be established to bring information from the support organization to the member at the table, and to take information from the table back to the support organization. Second, each organization or coalition should, therefore, designate as its representative an official with credibility and authority to insure that needed information is provided and decisions are made in a timely fashion. Negotiated rulemaking efforts can require a very significant contribution of time by the appointed members for the duration of the negotiation process. Other qualities that are very helpful are negotiating experience and skills, and sufficient technical knowledge to participate in substantive negotiations.

Certain concepts are central to negotiating in good faith. One is the willingness to bring all issues to the bargaining table in an attempt to reach a consensus, instead of keeping key issues in reserve. The second is a willingness to promote and protect the ability of the committee to conduct its negotiations. Finally, good faith includes a willingness to move away from the type of positions usually taken in a more traditional rulemaking process, and instead explore openly with other parties all ideas that may emerge from the discussions of the committee.

¹² Section 712(b)(4)(B).

G. Notice of Establishment

After evaluating comments received as a result of this Notice, the Department will issue a notice announcing the establishment and composition of the committee. After the committee is chartered, the negotiations will begin.

H. Administrative Support and Meetings

Staff support will be provided by the Department. Meetings are currently expected to take place in Washington, DC.

I. Notice of Proposed Rulemaking

The committee's objective will be to prepare a report, consisting of its consensus recommendations for the regulatory text of a draft notice of proposed rulemaking. This report may also include suggestions for the NPRM preamble, regulatory evaluation, or other supplemental documents. If the committee cannot achieve consensus on some aspects of the proposed regulatory text, it will, pursuant to the "ground rules" the committee has established, identify in its report those areas of disagreement, and provide explanations for any disagreement. The Department will use the information and recommendations from the committee report to draft a notice of proposed rulemaking and, as appropriate,

supporting documents. Committee recommendations and other documents produced by the committee will be placed in the rulemaking docket.

In the event that the Department's NPRM differs from the committee's consensus recommendations, the preamble to an NPRM addressing the issues that were the subject of the negotiations will explain the reasons for the decision to depart from the committee's recommendations.

Following the issuance of NPRM and comment period, the Department will prepare and provide to the committee a comment summary. The committee will then be asked to determine whether the committee should reconvene to discuss changes to the NPRM based on the comments.

J. Committee Procedures

Under the general guidance of the facilitator, and subject to legal requirements, the committee will establish detailed procedures for the meetings. The meetings of the committee will be open to the public. Any person attending the committee meetings may address the committee if time permits or file statements with the committee.

K. Record of Meetings

In accordance with FACA requirements, the facilitator will prepare

summaries of all committee meetings. These summaries will be placed in the public docket for this rulemaking.

L. Tentative Schedule

The Department is seeking to convene the first of the committee's meetings by the last week of March 2005. The date and exact location of that meeting will be announced in the agency's notice of establishment of the advisory committee. Meetings are expected to last approximately three and a half days each. The negotiation process will proceed according to a schedule of specific dates for subsequent meetings that the committee devises at its first meeting. We will publish a single notice of the schedule of all future meetings in the **Federal Register**, but will amend the notice through subsequent **Federal Register** notices if it becomes necessary to do so. The interval between meetings will be approximately two weeks.

The first meeting will commence with an overview of the regulatory negotiation process conducted by the facilitator.

Issued this 17th day of February, 2005, in Washington, DC.

Jeffrey A. Rosen,

General Counsel.

[FR Doc. 05-3458 Filed 2-17-05; 4:26 pm]

BILLING CODE 4910-62-P

Appendix C

**Federal Register Notice of meetings of advisory
committee**

March 29, 2005

Drug Paraphernalia**§ 102–41.210 What are some examples of drug paraphernalia?**

Some examples of drug paraphernalia are:

- (a) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (b) Water pipes;
- (c) Carburetion tubes and devices;
- (d) Smoking and carburetion masks;
- (e) Roach clips (objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand);
- (f) Miniature spoons with level capacities of one-tenth cubic centimeter or less;
- (g) Chamber pipes;
- (h) Carburetor pipes;
- (i) Electric pipes;
- (j) Air-driven pipes;
- (k) Chillums;
- (l) Bonges;
- (m) Ice pipes or chillers;
- (n) Wired cigarette papers; or
- (o) Cocaine freebase kits.

§ 102–41.215 Do we report to GSA all forfeited, voluntarily abandoned, or unclaimed drug paraphernalia not required for official use?

No, only report drug paraphernalia that has been seized and forfeited for a violation of 21 U.S.C. 863. Unless statutorily authorized to do otherwise, destroy all other forfeited, voluntarily abandoned, or unclaimed drug paraphernalia. You must ensure the destruction is performed in the presence of two witnesses (employees of your agency), and retain in your records a signed certification of destruction.

§ 102–41.220 Is drug paraphernalia forfeited under 21 U.S.C. 863 available for transfer to other Federal agencies or donation through a State agency for surplus property (SASP)?

Yes, but GSA will only transfer or donate forfeited drug paraphernalia for law enforcement or educational purposes and only for use by Federal, State, or local authorities. Federal or SASP requests for such items must be processed through the General Services Administration, Property Management Branch (3FPD), Washington, DC 20407. The recipient must certify on the transfer document that the drug paraphernalia will be used for law enforcement or educational purposes only.

§ 102–41.225 Are there special provisions to reporting and transferring drug paraphernalia forfeited under 21 U.S.C. 863?

Yes, you must ensure that such drug paraphernalia does not lose its identity as forfeited property. Reports of excess and transfer documents for such drug paraphernalia must include the annotation that the property was seized and forfeited under 21 U.S.C. 863.

§ 102–41.230 May SASPs pick up or store donated drug paraphernalia in their distribution centers?

No, you must release donated drug paraphernalia directly to the donee as designated on the transfer document.

§ 102–41.235 May we sell forfeited drug paraphernalia?

No, you must destroy any forfeited drug paraphernalia not needed for transfer or donation and document the destruction as specified in § 102–41.215.

[FR Doc. 05–6101 Filed 3–28–05; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****49 CFR Subtitle A**

[Docket No. OST–2005–20434]

Negotiated Rulemaking Advisory Committee on Minimum Standards for Driver's Licenses and Personal Identification Cards

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of meetings of advisory committee.

SUMMARY: This document sets forth the schedule for the meetings of the Negotiated Rulemaking Advisory Committee on Minimum Standards for Driver's Licenses and Personal Identification Cards. Pursuant to section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004, the Office of the Secretary, DOT, is establishing a committee to develop, through negotiated rulemaking procedures, recommendations for minimum standards to tighten the security for driver's licenses and personal identification cards issued by States, in order for these documents to be accepted for use by Federal agencies for any official purpose, including identification, a given time after the final rule goes into effect. The committee will consist of persons who represent the interests affected by the proposed rule, *i.e.*, State offices that

issue driver's licenses or personal identification cards, elected State officials, the Departments of Transportation and Homeland Security, and other interested parties.

DATES: Meetings of the committee will take place on the dates listed below under **SUPPLEMENTARY INFORMATION**. All meetings are open to the public.

ADDRESSES: The committee's meetings will take place at the locations listed below under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Office of the General Counsel, at (202) 366–9310 (bob.ashby@dot.gov), or Steve Wood, Assistant Chief Counsel for Vehicle Safety Standards and Harmonization, Office of the Chief Counsel, National Highway Traffic Safety Administration, (202) 366–2992 (steve.wood@nhtsa.dot.gov). Their mailing addresses are at the Department of Transportation, 400 7th Street, SW, Washington DC, 20590, rooms 10424 and 5219, respectively.

SUPPLEMENTARY INFORMATION: On December 17, 2004, the President signed into law the Intelligence Reform and Terrorism Prevention Act of 2004. (Public Law 108–458). Title VII of that Act is known as the 9/11 Commission Implementation Act of 2004 (the 9/11 Act). Subtitle B of the 9/11 Act addresses terrorist travel and effective screening. Among other things, Subtitle B, section 7212, mandates the issuance of minimum standards for State-issued driver's licenses and personal identification cards (Section 7212) that will be accepted by Federal agencies for official purposes.

Section 7212 directs the Department of Transportation to issue rules with the assistance of a negotiated rulemaking advisory committee, composed of representatives of the Departments of Transportation and Homeland Security, State agencies that issue driver's licenses, State elected officials, and other interested parties.

To carry out this requirement, the Department recently published a notice of intent to form this advisory committee, consistent with the standards of the Federal Advisory Committee Act (FACA) and Negotiated Rulemaking Act (NRA). See 70 FR 8756, February 23, 2005. The comment period for this notice extends through March 25, 2005. During the comment period, the Department will file a charter for the committee with the General Services Administration, and the convener will begin contacting potential participants.

After evaluating comments received as a result of the February 23 notice, the Department will issue a notice announcing the establishment and composition of the committee.

The statutory timetable for this rulemaking is short. Section 7212 of the Intelligence Reform and Terrorism Act specifies that the recommendations of the negotiated rulemaking committee must be submitted to the Secretary of Transportation no later than 9 months after the date of enactment, *i.e.*, by September 17, 2005. Section 7212 further specifies that the Secretary must issue a final rule establishing the minimum standards no later than 18 months after the date of enactment, *i.e.*, by June 17, 2006. To meet these deadlines, the Department must begin, in the very near future, a very compressed schedule of regulatory negotiation meetings. The Department has scheduled five meetings on the following dates:

Meeting 1: April 19–21, 2005.

Meeting 2: May 10–13, 2005.

Meeting 3: May 31, June 1–3, 2005.

Meeting 4: June 21–24, 2005.

Meeting 5: July 12–15, 2005.

The meetings will take place in the Department of Transportation headquarters building, 400 7th Street, SW., Washington, DC 20590, in Room 2230. Meetings are scheduled to begin at 9 a.m. and conclude at 5:30 p.m.

The meetings of the committee are open to the public (unless portions of the meeting are held in closed session, as provided under FACA). Attendance will necessarily be limited by the size of the meeting room. Members of the public wishing to attend meetings held in Department of Transportation buildings or other Federal facilities will have to enter through designated security checkpoints.

The visitor entry point for the Department of Transportation headquarters building is in the southwest corner entrance to the building (*i.e.*, the entrance nearest the corner of 7th and E Streets, SW.). Visitors must be escorted into and out of the building. Because it can take some time for large numbers of visitors to process through security, we request that visitors arrive between 8:30 and 8:45 a.m. to undergo the screening process. DOT personnel will then escort groups of visitors to the meeting room. This group escort process will also be followed for persons entering following the lunch break and for persons leaving the building for lunch and at the end of each day's meeting.

As a general matter, the committee will make one hour available for public comments on the Wednesdays of each

meeting from 2–3 p.m. Individuals wishing to address the committee should sign up on the public comment sign-in sheet before lunch and the time available will be reasonably divided among those who have signed up, but no one will have more than 15 minutes even if less than 4 people have signed up. Written comments and reports can be given to the facilitator for distribution to the committee members. Persons wanting to present written materials to the committee should make enough copies for all committee members.

The agenda topics for the meetings will include, but not necessarily be limited to, discussion of the following issues:

1. Documentation required as proof of identity of an applicant for a driver's license or personal identification card, including the scope of personal identification cards covered by the requirement.

2. Verifiability of documents used to obtain a driver's license or personal identification card.

3. Processing of applications for driver's licenses and personal identification cards to prevent fraud.

4. Information to be included on each driver's license or personal identification card.

5. Common machine-readable identity information to be included on each driver's license or personal identification card, including defined minimum data elements.

6. Security standards to ensure that driver's licenses and personal identification cards are—(i) resistant to tampering, alteration, or counterfeiting; and (ii) capable of accommodating and ensuring the security of a digital photograph or other unique identifier.

7. Requirement that a State confiscate a driver's license or personal identification card if any component or security feature of the license or identification card is compromised.

8. Requirement that rules facilitate communication between the chief driver licensing official of a State, an appropriate official of a Federal agency and other relevant officials, to verify the authenticity of documents, as appropriate, issued by such Federal agency or entity and presented to prove the identity of an individual.

9. Ensuring that standards do not infringe on a State's power to set criteria concerning what categories of individuals are eligible to obtain a driver's license or personal identification card from that State.

10. Prohibition on requiring a State to comply with any such regulation that conflicts with or otherwise interferes

with the full enforcement of State criteria concerning the categories of individuals that are eligible to obtain a driver's license or personal identification card from that State.

11. Prohibition on requiring a single design to which driver's licenses or personal identification cards issued by all States must conform.

12. Procedures and requirements to protect the privacy rights of individuals who apply for and hold driver's licenses and personal identification cards.

13. Assessment of the benefits and costs of the recommendations.

The committee may alter this schedule, including the agenda items. The agenda topics presented in this notice are necessarily very general since the direction and nature of the advisory committee discussions will shape each subsequent meeting. The Department may issue additional notices, as needed, with respect to changes in the schedule or agenda topics.

Issued this 22nd day of March, 2005, at Washington, DC.

Jeffrey A. Rosen,
General Counsel.

[FR Doc. 05–6167 Filed 3–24–05; 2:43 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 15

RIN 1018–AH89

Importation of Exotic Wild Birds Into the United States; Notice of Reopening of Comment Period on the Proposed Rule To Add Blue-Fronted Amazon Parrots From Argentina's Sustainable-Use Management Plan to the Approved List of Non-Captive-Bred Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We, the Fish and Wildlife Service (Service), give notice that we are reopening the comment period on the proposed rule to add blue-fronted amazon parrots (*Amazona aestiva*) from Argentina's sustainable-use management plan to the approved list of non-captive-bred (wild-caught) species under the Wild Bird Conservation Act of 1992 (WBCA). We are reopening the public comment period to enter into the record Dr. Jorge Rabinovich's 2004 study, "Modeling the Sustainable Use of the Blue-Fronted Parrot (*Amazona aestiva*) in the Dry Chaco Region of

**Appendix D: Federal Register Notice of termination
of advisory committee May 26, 2005**

will address the comment received in a subsequent final action based upon the proposed action also published on April 1, 2005 (70 FR 16784). EPA will not institute a second comment period on this action.

DATES: The direct final rule is withdrawn as of May 26, 2005.

FOR FURTHER INFORMATION CONTACT: LaKeshia Robertson, (215) 814-2113, robertson.lakeshia@epa.gov.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 16, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

Accordingly, the addition of the entries for Salem Tube, Inc.; Dominion Trans, Inc.; and, SGL Carbon Corporation in 40 CFR 52.2020(d)(1) published at 70 FR 16720 are withdrawn as of May 26, 2005.

[FR Doc. 05-10514 Filed 5-25-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03-OAR-2005-PA-0002; FRL-7917-3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule to approve reasonable available control technology (RACT) to limit volatile organic compound (VOC) and nitrogen oxides (NO_x) emissions from three individual sources located in Pennsylvania. In the direct final rule published on April 4, 2005 (70 FR 16955), we stated that if we received adverse comment by May 4, 2005, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment on April 16, 2005. EPA will address the comment received in a subsequent final action based upon the proposed action also published on April 4, 2005 (70 FR 17027). EPA will not institute a second comment period on this action.

DATES: The direct final rule is withdrawn as of May 26, 2005.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814-2156, or e-mail at caprio.amy@epa.gov.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 16, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

Accordingly, the addition of the entries for Waste Management Disposal Services of Pennsylvania Inc. (Pottstown Landfill); Waste Management Disposal Services of PA, Inc.; and, Armstrong World Industries, Inc. in 40 CFR 52.2020(d)(1) published at 70 FR 16957 are withdrawn as of May 26, 2005.

[FR Doc. 05-10515 Filed 5-25-05; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Subtitle A

[Docket No. OST-2005-20434]

Negotiated Rulemaking Advisory Committee on Minimum Standards for Driver's Licenses and Personal Identification Cards

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of termination of advisory committee.

SUMMARY: This document terminates the Negotiated Rulemaking Advisory Committee on Minimum Standards for Driver's Licenses and Personal Identification Cards. The reason for the termination is that the recently-enacted Real ID Act repeals section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004, which provided the authority for the negotiated rulemaking on this subject.

EFFECTIVE DATE: The advisory committee is terminated as of May 26, 2005.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Office of the General Counsel, at 202-366-9310 (bob.ashby@dot.gov); Department of Transportation, 400 7th Street, SW., Washington DC, 20590, room 10424.

SUPPLEMENTARY INFORMATION: Section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004 mandated the issuance of minimum

standards for state-issued driver's licenses and personal identification cards (Section 7212) that will be accepted by Federal agencies for official purposes. This statute directed the Department of Transportation to issue rules with the assistance of a negotiated rulemaking advisory committee, composed of representatives of the Departments of Transportation and Homeland Security, state agencies that issue driver's licenses, state elected officials, and other interested parties. The Department formed such an advisory committee, which met on April 19-21, 2005.

Recently, President Bush signed legislation enacting the "Real ID Act," section 206 of which repeals section 7212. As provided in the charter for the advisory committee, the committee and the negotiated rulemaking process of which it is a key part terminate upon enactment of legislation repealing section 7212. Consequently, the Department in this notice announces the termination of the committee and the negotiated rulemaking. As a result, meetings of the committee that had been scheduled during May-July 2005 will not take place.

Participants in the advisory committee process demonstrated a commitment of time, energy, expertise, and good will that is very much to their credit. The Department wishes to express its sincere gratitude to these public-spirited organizations and individuals.

Issued this 19th day of May, 2005, at Washington, DC.

Jeffrey A. Rosen,

General Counsel.

[FR Doc. 05-10549 Filed 5-25-05; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 224

[Docket No. FRA-1999-6689, Notice No. 5]

RIN 2130-AB41

Reflectorization of Rail Freight Rolling Stock

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; stay of effectiveness.

SUMMARY: This document stays the effectiveness 49 CFR part 224, which mandates the reflectorization of certain freight rolling stock. Part 224 was established by final rule on January 3,

**Appendix E: Principal Negotiators of the DL/ID Reg
Neg Committee Members**

**Driver's Licenses and Personal Identification Negotiated Rulemaking
Advisory Committee List (4/19/05)**

<u>Name</u>	<u>Organization</u>	<u>Address</u>	<u>Category Representing</u>
Tyler Duvall, Acting Assistant Secretary	Department of Transportation Office of the Assistant Secretary for Transportation Policy	U.S. Department of Transportation 400 7th Street, SW, Washington, DC 20590	Federal Member
Elaine Dezenski, Acting Assistant Secretary for Policy & Planning	Department of Homeland Security; Border & Transportation Security Directorate	U.S. Department of Homeland Security Washington, D.C. 20528	Federal Member
Michael Balboni, New York State Senator	National Conference of State Legislatures	New York State Senate Room 803 Legislative Office Building Albany, NY 12247	State Elected Officials
Major Robert Burroughs, Texas Highway Patrol Division	Texas Department of Public Safety	P O Box 4087 Austin, TX 78773	Law Enforcement Officials
LTC (Ret.) Billy Dickson, HSMV/TSA Liaison	Florida Department of Highway Safety and Motor Vehicles	3228 Cranleigh Drive Tallahassee, FL 32309	Law Enforcement Officials
Matthew Dunlap, Secretary of State, State of Maine	National Governors Association	Office of the Secretary, 148 State House Station, Augusta, Maine 04333	Elected State Officials
Joan Friedland, Immigration Policy Attorney	National Immigration Law Center	1101 14th Street NW, Suite 410, Washington DC	Applicants and Holders of Driver Licenses

Barry Goleman, Chair of the Board	Industry Advisory Board to AAMVA	4050 Legato Road, Fairfax, VA 22203	Technological Expertise in Document Security
Major Roscoe Howell, Chief of the Driver License Division	Alabama Department of Public Safety	P. O. Box 1471, Montgomery, AL 36102-1471	State Offices that Issue Driver Licenses
Linda Lewis-Pickett, President & CEO	American Association of Motor Vehicle Administrators	4301 Wilson Blvd, Arlington, VA 22203	State Offices that Issue Driver Licenses
Raymond P. Martinez, Commissioner	State of New York Department of Motor Vehicles	6 Empire State Plaza, Albany, NY 12228	State Offices that Issue Driver Licenses
Brendan M. Peter, Co-Chair of ID Management Subcommittee	Information Technology Association of America	Daon 12310 Pinecrest Road, Suite 304, Reston, VA 20191	Technological Expertise in Document Security
Ari Schwartz, Associate Director	Markle Foundation Center for Democracy and Technology	1634 Eye Street NW, #1100 Washington, DC 20006	Privacy and Civil Liberties Groups
Barry Steinhardt, Director, Technology and Liberty Project	American Civil Liberties Union	125 Broad Street, New York, New York, 10004	Privacy and Civil Liberties Groups
Colonel Mark Trostel, Chief, Colorado State Patrol	International Association of Chiefs of Police	700 Kipling Street, Denver, CO 80215	Law Enforcement Officials
Elizabeth Vermette, Director of State Relations	American Automobile Association	607 14th Street NW, Suite 200, WDC 20005	Applicants and Holders of Driver Licenses

Appendix F: Final Convening Assessment Report

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DEPT. OF TRANSPORTATION
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Susan Podziba & Associates

PUBLIC POLICY MEDIATION AND CONSENSUS BUILDING

OST-05-20434-43
**Final Convening Assessment Report
for the
Negotiated Rulemaking Process to Develop
Minimum Standards for State-Issued Driver's Licenses
and Personal Identification Cards**

**as required under the
9/11 Commission Implementation Act of the
Intelligence Reform and
Terrorism Prevention Act of 2004
(Public Law No. 108-458)**

**Prepared for the
U.S. Department of Transportation
in consultation with the
U.S. Department of Homeland Security**

**Submitted by
Susan L. Podziba
Alexis L. Gensberg
Susan Podziba & Associates
21 Orchard Road
Brookline, MA 02445
www.podziba.com**

April 15, 2005

Order No. OTOS59-05-F-10048

21 ORCHARD ROAD • BROOKLINE, MA 02445 • (617) 738-5320 (TEL) • (617) 738-6911 (FAX)

WWW.PODZIBA.COM

**Final Convening Assessment Report for the
Negotiated Rulemaking Process to Develop Minimum Standards for
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as required under the 9/11 Commission Implementation Act of the Intelligence
Reform and Terrorism Prevention Act of 2004
(Public Law No. 108-458).**

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**Final Convening Assessment Report for the
Negotiated Rulemaking Process to Develop Minimum Standards for
State-Issued Driver's Licenses and Personal Identification Cards
as required under the 9/11 Commission Implementation Act of the Intelligence
Reform and Terrorism Prevention Act of 2004 (Public Law No. 108-458).**

INTRODUCTION

In accordance with the 9/11 Commission Implementation Act of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law No. 108-458), the U.S. Department of Transportation, in consultation with the U.S. Department of Homeland Security, is required to promulgate Minimum Standards for State-Issued Driver's Licenses and Personal Identification Cards, and to do so through a negotiated rulemaking process. This report describes the findings and recommendations of Susan Podziba of Susan Podziba & Associates, the Convener, regarding the negotiated rulemaking process that will be undertaken to develop minimum standards for driver's licenses and personal identification cards.

Negotiated rulemaking is a process whereby a committee composed of representatives of stakeholder groups that will be significantly affected by a proposed rule is charged with the goal of reaching consensus on the text of that proposed rule. The federal agency responsible for the regulation, "to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment" (Negotiated Rulemaking Act of 1996, §563(a)(7)).

This convening assessment report is a compilation of information obtained through interviews with federal officials and representatives of potential stakeholders. It is divided into sections on background, categories of stakeholders, key issues across stakeholder groups, key issues by stakeholder group, dynamics affecting the negotiated rulemaking process, participation, process design, organizational protocols, and conclusion.

BACKGROUND

On December 17, 2004, the President signed into law the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law No. 108-458). Title VII of that Act is known as the 9/11 Commission Implementation Act of 2004 (the 9/11 Act). Subtitle B of the 9/11 Act addresses terrorist travel and effective screening and includes a

mandate for the issuance of minimum standards for a variety of identity documents, including driver's licenses and personal identification cards (§7212).

This provision was enacted in response to the following recommendation in the 9/11 Commission report:

Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of identification, such as driver's licenses. Fraud in identification documents 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.

In making that recommendation, the Commission noted:

All but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud. Acquisition of these forms of identification would have assisted them in boarding commercial flights, renting cars, and other necessary activities.

For additional legislative detail on the statutory mandate for Minimum Standards for Driver's Licenses and Personal Identification Cards as required under the Intelligence Reform and Terrorism Prevention Act of 2004, Title VII, Subtitle B, §7212, see Appendix A.

Susan Podziba (Convener) interviewed 57 representatives of the U.S. Department of Transportation, the U.S. Department of Homeland Security, state offices that issue driver's licenses and personal identification cards, state elected officials, organizations that represent applicants for and holder of driver's licenses – including consumer organizations and those that represent immigrants and non-citizens, privacy and civil liberties groups, law enforcement officials, the 9/11 Commission, and organizations with technological and operational expertise in document security. (See Appendix C: List of Interviewees). In accordance with the framework set out in the Negotiated Rulemaking Act¹, the purpose of the convening was to identify:

the principal categories of stakeholders that will be affected by and are interested in the minimum standards;

¹ The convening assessment often includes a determination of the feasibility for application of a negotiated rulemaking process to the candidate rule. Since Congress mandated the use of a negotiated rulemaking process to develop the minimum standards, the Convener did not seek to determine feasibility.

key issues and concerns of stakeholders relative to the minimum standards and the interdependence of interests among stakeholders;

organizations that can best represent the views and perspectives of each category of relevant stakeholders for the negotiated rulemaking; and

a balanced committee of representatives of stakeholders who are willing and able to participate in the negotiation process in good faith.

CATEGORIES OF STAKEHOLDERS

The 9/11 Act, §7212(b)(4)(B), identified the following federal agencies and categories of stakeholders for representation on the Negotiated Rulemaking Advisory Committee on Minimum Standards for State-Issued Driver's Licenses and Personal Identification Cards (DL/ID Reg Neg Committee): U.S. Department of Transportation (DOT), U.S. Department of Homeland Security (DHS), state² offices that issue driver's licenses or personal identification cards; state elected officials; and other interested parties.

In its February 23, 2005 Federal Register Notice of intent to form a negotiated rulemaking advisory committee concerning Driver's Licenses and Personal Identification Cards (Appendix D), and in accordance with the relevant U.S. Senate Conference Report³, DOT defined "other interested parties" as groups or organizations representing the interests of applicants for and holders of driver's licenses and personal identification cards (DL/IDs) including consumers and non-citizens/immigrants, privacy and civil liberties groups, law enforcement officials, and organizations with technological and operational expertise in document security.

Based on the convening process, the Convener confirmed the following categories of stakeholders:

Federal Government

- o Department of Transportation
- o Department of Homeland Security

State offices that issue driver's licenses or personal identification cards

Representatives of elected state officials

Groups or organizations representing the interests of applicants for and holders of driver's licenses and personal identification cards

- o Consumers
- o Non-citizens/Immigrants

² For the purposes of this report, "state" refers to the 51 jurisdictions in the U.S. which issue driver's licenses and personal identification cards.

³ U.S. Senate Committee Colloquy on Driver's License and Personal Identification Card Provisions, Conference Report on the Intelligence Reform Bill, December 8, 2004

Privacy and civil liberties groups
Law enforcement officials
Organizations with technological and operational expertise in document security.

KEY ISSUES ACROSS STAKEHOLDER GROUPS

Many key issues were identified by interviewees in multiple stakeholder categories. Below is a description of each of these issues.

Driver's License as De Facto ID: Many interviewees stated that first and foremost the driver's license is proof of ability to operate a motor vehicle. Others asserted that state driver's licenses function as de facto national identification because they serve as the "key to the kingdom," in that they are used to gain access to most commercial and government services. Most agree that the driver's license has evolved from what had in some states been simply a postcard, to a form of identification that today must be secure.

One license, one jurisdiction, one identity: For many stakeholders, a key goal of the minimum standards is to produce a system in which there is one license for one identity, linked to one jurisdiction. This would suggest an issuance process to determine the unique identity of each individual applying for or holding a DL/ID and would preclude applicants from having a DL/ID from more than one state in the nation. However, some interviewees think that it will be impossible to confirm that all applicants had rescinded their licenses in other states, and stated that a more reasonable goal might be to ensure that no individual had more than one license in a particular state.

Security requirements for the driver's license issuance programs: Interviewees identified the need to address security requirements of four distinct components of DL/ID issuance programs. They are:

- Documents accepted for proof of identity ("breeder documents") and the verifiability of those documents;
- Security of the actual driver's license document, including features that verify authenticity and resist tampering;
- Protection against corruption at processing locations; and
- Protection of materials and technology used to create the DL/ID documents.

Standardization vs. Flexibility: Some stakeholders support increased standardization and uniformity in the DL/ID issuance process and in design of the actual cards. In their view, greater adherence to best practices would produce more secure processes and credentials. Others emphasize the need for different approaches to issuance and card design. They are concerned that a uniform approach would be less secure because it

would be more susceptible to counterfeiting and limit states' ability to innovate solutions as new problems arise and technologies emerge.

Breeder Documents: A key element of determining a unique identity for each DL/ID applicant is the validity of the documents used to prove identity in the issuance process, known as "breeder documents." Many interviewees stressed that the use of driver's licenses for proving cardholders' identity will only be as valid as the breeder documents used to issue them. Some interviewees support strategies for increased verifiability of documents such as birth certificates including the ability to scan them into databases for future verification. Others seek to maintain flexibility on allowable breeder documents to maintain access to DL/IDs for people with non-traditional documentation, such as refugees or the homeless. These interviewees supported strategies to determine reliability of these documents rather than verifiability. Interviewees identified various means used to verify documents presented by applicants to prove identity and residency. Some states currently verify social security cards through the Social Security Administration's on-line database and confirm immigration status through U.S. Citizen and Immigrations Service (USCIS) Systemic Alien Verification for Entitlements (SAVE).

Centralized v. De-centralized (State-level) Databases: Although many discussed a centralized (national) database of DL/ID card data, most interviewees believe such a database is currently technically impossible. Most prefer decentralized databases both for privacy and security reasons. Interviewees suggested that a centralized database would be more vulnerable to infiltration than decentralized databases and would create a single target for hackers and identity thieves. Interviewees discussed the value in linking state databases and the need to share data across states and with federal law enforcement. Interviewees acknowledge the paradox of security goals: the more uniform the database, the easier to share information about potential security threats, but also the more vulnerable the information.

Protection of Personal Data: Interviewees identified various issues related to protecting personal information collected for DL/ID purposes. They are:

- Personal data to be collected;
- Knowledge by person that data was collected;
- Ability to correct errors in data;
- Authorized access to data;
- Protections against unauthorized access;
- Protections against unauthorized release of data;
- Protections against use of data for purposes other than the purpose for which it was collected; and
- Protections against criminal invasion of data system (and punishment for criminal activity).

Reviews of Applicants: Currently, all states participate in the National Driver Register (NDR), which by federal statute, requires states to check an applicant against the NDR before issuing or renewing a driver's license. The NDR is a database of the names of individuals with suspended licenses or outstanding tickets. Many states also participate

in the Driver's License Compact, which requires member states to determine whether new applicants are or were licensed in another member state. Additionally, some states check applicant names against the National Criminal Information Center (NCIC) database, and Terrorist Watch Lists.

Legal Presence Requirements: The 9/11 Act prohibits the minimum standards from infringing on a state's ability to set criteria concerning the categories of individuals eligible to obtain a DL/ID from that State (§7212(b)(3)(B)). The issue of legal presence is seen as an immigration issue by some and as a state's rights issue by others. Those that support legal presence to obtain a driver's license do not want to tacitly approve illegal immigration. The eleven states that do not require legal presence generally do so to increase driver safety and the number of insured drivers, as they expect that illegal immigrants will drive with or without a driver's license. In terms of security goals, some point to the difficulty of verifying foreign breeder documents, whereas others point to the value of having information about who is in the country.

Securing the Driver's License Document: There are numerous technologies available to create secure documents. Most states' DL/IDs include a layering of overt and covert security features to protect against counterfeiting. There is a sense that states must continuously upgrade their security features to stay ahead of sophisticated counterfeiters. Examples of security features include: coatings in lamination, micro-writing, 1-dimensional and 2-dimensional bar code, magnetic stripe, ultra-violet light, digital watermarking, biometric, photo, fingerprinting, digitized signature, optical variable device, hologram, and kinogram.

Standards for transliteration of names spelled with non-Roman alphabet letters: A related issue raised by multiple interviewees concerns the need to develop standardized transliteration rules for languages that have different alphabets, such as Chinese and Arabic.

KEY CONCERNS OF DOT, DHS AND STAKEHOLDER GROUPS

U.S. Department of Transportation (DOT)

Congress mandated that DOT create minimum standards for State-Issued Driver's Licenses and Personal Identification Cards under the Intelligence Reform and Terrorist Prevention Act, §7212(b)(2) (The 9/11 Act).

DOT will ensure that the rulemaking effectively carries out the language of the statute and achieves the goals that Congress intended. DOT's focus is on ensuring that the negotiated rulemaking process allows stakeholders to work with the Federal government to establish minimum standards for drivers' licenses and identification cards.

U.S. Department of Homeland Security (DHS)

Congress mandated DOT consultation with DHS in the creation of the minimum standards for State-issued DL/IDs under the 9/11 Act.

The primary interest of DHS regarding this standard is to increase the security and reliability of the documents covered by §7212. DHS seeks to ensure that the individual presenting a driver's license or personal identification card at a U.S. border, airport, or other federal facility, is who he or she claims to be and that the information on the document presented enables DHS personnel to identify terrorists.

Under the Homeland Security Act of 2002, DHS is statutorily prohibited from creating a national identification card (Title XV, Subtitle B, §1514. National Identification System Not Authorized). In addition, according to the Homeland Security Act of 2002, any federal agency creating a new database of personal information must provide to DHS a Privacy Impact Statement (§222).

DHS operates under a range of existing laws governing information sharing among local, state, tribal, and federal law authorities. DHS does not anticipate that the minimum standards will affect those laws and is not seeking to create additional authorities within the minimum standards for DL/IDs.

State Offices that Issue Driver's Licenses or Personal ID's

The key concern of state offices that issue DL/IDs is to ensure that their programs are sufficiently secure. Interviewees from these offices stated that the national security derived from secure driver's license processes is only as strong as its weakest link. No state wants to be that weak link, given evidence suggesting "forum shopping" by the 9/11 hijackers. State offices do not want a one-size fits all standard, but rather want flexibility to enable states to tailor programs to their unique needs and to sustain state innovation. On the other hand, they want programs that are easily understandable by their staff and that maintain conveniences for the driving public.

Interviewees identified a range of strategies used to develop secure programs, including specific breeder documentation requirements, document verification, security features of the DL/ID document, staff training to identify fraudulent documents, protections against staff fraud, and investigation and protection against the creation of fraudulent documents.

States accept a variety of breeder documents, and most require a combination of primary and secondary documents. Some states verify breeder documents through databases such as the Social Security Administration's on-line database or the U.S. Citizen and Immigrations Service (USCIS) Systemic Alien Verification for Entitlements (SAVE) database.

State offices that issue DL/ID's want clarity and ease in their programs to be better able to train their staff. They support a move to easily verifiable breeder and immigration documents to reduce the likelihood of employee error.

Cases involving personnel at state motor vehicles offices who illegally issued driver's licenses to individuals lacking proper documentation have led some states to employ internal management strategies to detect employee fraud. Examples include a two-stop process in which all new applicants see two clerks, random audits whereby computers freeze up and must be unlocked by a supervisor, and reviews of transactions by individual clerks. Some interviewees raised concerns about offices where transaction records are generated but not reviewed, analyzed, or acted upon.

In addition to security issues, states want to maintain conveniences for the public. Convenience is typically measured in time required to obtain or renew a DL/ID, which is affected by the need to verify documents, DL/ID validity periods, and opportunities to renew via internet. Some states provide DL/ID cards immediately, "over-the-counter," to applicants, while others prefer to use a centralized system in which the DL/ID is mailed to an applicant at the address on the document.

Validity periods for licenses range across states; the shortest validity period is four years. In Arizona, an original driver's license does not need to be replaced until the individual holding the driver's license reaches the age of 65, after which the license must be renewed every five years. Some states link the expiration dates of licenses issued to non-U.S. residents to the expiration dates of visas.

Representatives of Elected State officials

The key concerns of elected state officials are the costs of implementing the minimum standards, which they consider an unfunded mandate, and the timeframe required for compliance. In addition, states see themselves as best positioned to determine their driver's license processes and oppose a federal standard that would dictate one solution for all states.

State elected officials are concerned about the costs for developing and sustaining new DL/ID processes. They anticipate costs related to the design of a new issuance process; design and creation of secure DL/ID documents; technology needed to create, read, and upgrade the documents; technology to collect, store, and protect personal data; and technology to read covert security mechanisms such as bar codes, smart cards, or magnetic stripes.

State elected officials are also concerned about costs and time involved in verifying breeder documents. For example, interviewees pointed to the difficulties associated with verifying birth certificates, especially from small hospitals, which may not have electronic databases. Verification of immigration status also proves difficult. Interviewees suggested that on-line database checks through the SAVE program were

successful in approximately 60% of cases. False positives require time consuming mailings to DHS, which has limited resources to research paper files. Given the high number of different visas and other documents that confirm legal presence, state officials believe the federal government should create a simple process to enable states to determine the validity of immigration documents rather than require states to assume this responsibility.

In addition, the phase-in time for compliance with the minimum standards is expected to greatly impact costs. For example, state elected officials are concerned that a requirement to re-issue licenses prior to current expiration dates will create a significant cost burden for states as they would need to add administrative capabilities to process the increased number of applicants or else cause significant inconvenience to the driving public. They also fear that if states are unable to comply with required time frames because resources are not made available by either federal grants or state legislatures, DL/ID holders from those states are at risk for being denied access to air travel and other federal facilities.

Elected state officials will look closely at projected costs for proposed elements of the minimum standards. Given their constituents' great concerns regarding identity theft, they hope that strategies selected will address both national security and identity theft, which may increase state funding opportunities.

Finally, state elected officials are looking to the federal minimum standards as a means to create a baseline, or minimum threshold, to ensure security without pre-empting state policy decisions or state innovation. For example, issues of eligibility for state-issued driver's licenses have been and are being fought out in state legislatures. Some states have large pools of uninsured motorists and have legislated eligibility requirements to increase the number of licensed and insured drivers in their states. States want flexibility to maintain state innovation and opportunities to benefit from technological advances. They see a diversity of strategies across states as contributing to security.

Interviewees prefer scattered state databases and oppose a centralized national database because of concerns about privacy and civil liberties. They are concerned that a centralized database would increase possibilities of law enforcement "fishing" for individuals. They are also concerned about identity theft. As one interviewee said, "Scattered data is protected data."

Organizations Representing the Interests of Applicants for and Holders of DL/IDs

Consumer organizations

The key concerns of consumer organizations are to ensure safety on the road and, secondly, consumer convenience. They are concerned that resources spent to implement the minimum standards may reduce safety and convenience. In short,

consumer organizations view the issue of minimum standards as a question of how much security the public is willing to pay for.

Consumer organizations expressed concern about the cost burdens the minimum standards will place on state offices that issue DL/IDs. They fear additional resources will be diverted from road safety programs to improving security of the DL/ID processes and documents. In addition, they are concerned that if state legislatures do not allocate the necessary funding, some states may not implement the minimum standards, and consumers will be unable to access federal facilities and airports.

Consumer group interviewees, who have experience with state databases used to identify and remove dangerous drivers from the road, raised concerns about privacy issues of a federal database, but also are skeptical about successfully linking databases across states, given states' difficulties maintaining their own databases. Drivers convicted of operating under the influence have found ways to avoid detection through state databases. As a result, consumer groups have doubts about the success of linking databases to track individuals posing security threats.

Organization Representing Non-Citizens/Immigrants

The primary interests of organizations representing immigrants and non-citizens are to maintain access to and eligibility for DL/IDs for their constituents and to increase the security of DL/ID processes and documents. Interviewees representing immigrants are concerned about the special challenges for immigrants to prove identity and, where required, legal immigration status, in the DL/ID application process.

Immigrants and non-citizens prove identity and status using a wide array of documents, many of which are not in standard formats. Interviewees explained that in some cases, the only proof of legal immigration status might be a judge's decision or combination of documents in an applicant's file. Interviewees expressed the need for DL/ID issuance processes that account for this diversity of documentation to ensure that DL/IDs are not denied to eligible applicants.

Interviewees reject a two-tier system that provides an alternative DL/ID or "driving certificate" to applicants unable to provide certain identity or immigration documents. Their constituents with such certificates have complained of being treated with increased suspicion by law enforcement and of discrimination when they present their certificates. They have also faced higher car-insurance premiums and are fearful of the immigration consequences of having a certificate based on immigration status.

Organizations representing immigrants and non-citizens support the national security goals of the minimum standards. They support increased security in DL/ID processes and in features of the actual DL/ID cards. Interviewees favor a system in which as many immigrants as possible are included to assist the government in knowing who is in the country and to reduce the market for counterfeit documents.

Privacy and Civil Liberties Groups

Privacy and civil liberties groups are primarily concerned about what information is collected by government agencies, who has access to that information and for what purposes, and what will protect against illegal access and use. Interviewees questioned the actual security benefits arising from federal minimum standards for DL/IDs. All oppose a “national ID,” which some defined as a nationally uniform card linked to a national database and others defined as any card meeting national standards.

Interviewees want limited information to be collected and stored on the card. They oppose features with large capacities for storage of data on the DL/ID because of concerns about future usage. They support such technologies as magnetic stripes or bar codes only to determine whether the visible information on the card is accurate and only with protections against misuse of the stored information. Interviewees related stories, for example, where bars have scanned information from DL/IDs and sold the information collected.

Privacy and civil liberties groups oppose a centralized national database. They prefer individual state databases. Although they support the concept of “one license – one identity – one jurisdiction,” they point to difficulties within individual states to ensure one license per person within that state. If databases are to become linked, privacy and civil liberties representatives want established and enforceable protections against the use and sharing of data. Interviewees stated that individuals whose data is misused could be significantly harmed, despite future criminal prosecutions of those responsible for the misuse. Some interviewees expressed a preference for “1-to-1 matches” versus “1-to-many matches,” given that the former provides merely a confirmation of the validity of identity information, while the latter makes it possible for those with access to the data to “fish” for individuals’ personal data.

The worst case scenario for these groups is one in which individuals enjoy less privacy and less control over their personal data but get no significant increase in security.

Interviewees suggested ways to increase the security of DL/ID documents and issuance processes without increasing the release and sharing of individuals’ personal data. They suggested internal management controls to protect against DMV clerk corruption, citing cases in which employees had been bribed to provide credentials to individuals without the necessary breeder documents. They support securing the machines, papers, inks, and other materials used to make the documents; creating tamper-proof cards; and training DMV employees to better identify fraudulent breeder documents.

Overall, privacy and civil liberties groups are concerned about the vulnerability of personal data stored on DL/IDs and in databases. Interviewees raised concerns about “mission creep,” or the potential for data collected for one purpose to be used for another, citing the widespread use of Social Security Numbers for identification, despite its initial prohibition.

Law Enforcement Officials

The primary interest of law enforcement officials is to know and be able to verify that the person presenting a DL/ID is the person the document identifies them to be. They will look to the minimum standards to create sufficient safeguards to deter, to the greatest extent possible, individuals from tampering with or fraudulently obtaining a DL/ID, and as a means to facilitate verification by law enforcement officials.

Law enforcement officials support all means for securing the DL/ID issuance process and the document. They are dependent upon driver's licenses to identify individuals during traffic stops. If an officer has cause for reasonable suspicion, he or she may check the information on the driver's license through a state driver's license database, National Crime Information Center (NCIC) database, or Terrorist Watch Lists. Many arrests for violent crimes are made as a result of routine traffic stops in which the suspects were identified by their driver's license information. Law enforcement officials view DL/IDs as tools to identify individuals who may be suspected of criminal or terrorist activity.

Law enforcement does not expect to check a driver against a 50-state database, given the time it would take to do so. Some officers have laptop computers in their cars and/or can scan bar codes or magnetic stripes. Others need to call their central dispatchers to run checks for them. A traffic stop for a moving violation that nears 30 minutes would likely be considered an illegal detention by most courts.

Law enforcement officials support means to easily determine the integrity of DL/ID documents that are not likely to require costly equipment that must be added to their cars or on their belts. If an officer determines a DL/ID is fraudulent, officers in many states can arrest the individual for possessing the fraudulent document and can seize it as a "tool of the crime."

Organizations with Technological and Operational Expertise in Document Security

The primary interest for organizations with technological and operational expertise in document security is to ensure that the minimum standards are technically sound and functional and open to a wide variety of potential technical solutions. For example, DL/ID documents are best secured from tampering by layering different categories of overt, covert, substrate (e.g. papers and laminates), bio-metric-based, and machine-readable strategies. Combining particular features among these categories increases the security of the document.

In addition, these organizations have concerns about the proper management of databases, security of data, protections against unauthorized access, means for interoperability among different state databases, and creation of flexible infrastructures.

Finally, these organizations represent the vendors that produce and create various security products and do not want to limit innovation in security technologies, which will help government agencies keep ahead of counterfeiters.

DYNAMICS AFFECTING THE NEGOTIATED RULEMAKING PROCESS

There are six key dynamics that are expected to affect the negotiated rulemaking process to develop minimum standards for driver's licenses and personal identification cards: statutory mandate for negotiated rulemaking, statutory deadlines, schedule, technical expertise, issues to be negotiated and cost-benefit analysis, and active legislation. Each is described below.

Statutory Mandate for Negotiated Rulemaking: The Negotiated Rulemaking Process to Develop Minimum Standards for State-Issued Driver's Licenses and Personal Identification Cards is required under §7212(b)(4) of the 9/11 Commission Act. As stated in its February 23, 2005 Federal Register Notice, DOT plans to provide adequate resources and administrative support for the process and will ensure the DL/ID Reg Neg Committee has the appropriate resources it requires to complete its work in a timely fashion. To the extent possible, consistent with its legal obligations, DOT plans to use any consensus arising from the Committee as the basis for the proposed minimum standards to be published as a Notice of Proposed Rulemaking (NPRM).

Given that this is a statutorily mandated negotiated rulemaking process, the Convener did not determine feasibility, as such determinations are used by government agencies to decide whether or not to proceed to the negotiation phase of voluntary negotiated rulemaking processes. DOT's current efforts to implement the negotiated rulemaking process are consistent with the experience of the Convener with regard to implementation of previous federal negotiated rulemaking processes.

Statutory Deadlines: The 9/11 Act requires that recommendations of the DL/ID Reg Neg Committee be submitted to the Secretary of Transportation no later than 9 months after the date of enactment, that is, by September 17, 2005. The Secretary must issue a final rule establishing the standards no later than 18 months after the date of enactment, that is, by June 17, 2006.

Schedule: To meet the statutory deadlines, the negotiated rulemaking process will require a demanding schedule. The proposed schedule, as outlined in the March 29, 2005 Federal Register Notice, contemplates five meetings of three or three-and-a-half days, for a total of 17 meeting days. The first meeting is scheduled for April 19-21, 2005 and the last meeting is scheduled for July 12-15, 2005. (See Appendix E for Federal Register Meeting Notice) DOT staff will have two months to prepare supporting

documents for the Report to the Secretary based on the DL/ID Reg Neg Committee's recommendations.

Technical Expertise: The DL/ID Reg Neg Committee members have varying levels of expertise on document security features, driver's license processes, and privacy issues stemming from databases of personal information. To assist negotiators in their deliberations, panel presentations will be provided on technical subjects of interest to the committee. For example, the first meeting will include a presentation on document security and fraud to be provided by officials from the U.S. Secret Service, Forensic Services Division. Technical presentations will be assembled at the request of the DL/ID Reg Neg Committee. The presenters will be drawn from the memberships of the organizations represented on the committee as well as from the Document Security Alliance, a public-private partnership.

Issues to be Negotiated and Cost-Benefit Analysis: The DL/ID Reg Neg Committee will begin its discussions based on the issues outlined in §7212 (B) of the 9/11 Act. This list includes a cost-benefit analysis of the committee's recommendations. DOT has an internal team that will prepare this analysis on behalf of and with input and feedback from the committee.

Active Legislation: H.R. 418: Real ID Act is currently under consideration by the U.S. Senate. If enacted and signed into law as passed by the U.S. House of Representatives, it would repeal §7212 of the 9/11 Act and thus terminate the negotiated rulemaking process. DOT, in consultation with DHS, is working to implement the negotiated rulemaking in accordance with current law, and the DL/ID Reg Neg Committee has been chartered under FACA for this purpose.

PARTICIPATION

Within the six non-federal categories of stakeholders, the Convener recommends that the Department of Transportation invite fourteen organizations to participate as members of the Negotiated Rulemaking Advisory Committee on Minimum Standards for State-Issued Driver's Licenses and Personal Identification Cards. Each organizational member has identified a principal negotiator and an alternate, who will participate in the absence of the principal negotiator.

In proposing organizational members of the DL/ID Reg Neg Committee, the Convener sought to create a balanced committee of relevant stakeholders, which includes a combination of organizations that represent individuals who will be directly affected by the minimum standards, individuals who will interact directly with the public in implementation of the minimum standards, and those who will work on various components of implementation of the minimum standards.

Efforts were made to propose state members that represented diversity among the states with regard to size, geographic region, rural/urban character, proximity to foreign borders, and over-the-counter/centralized system for delivering licenses.

Many individual companies sought membership on the DL/ID Reg Neg Committee within the stakeholder category of organizations with technological and operational expertise in document security. Rather than select from among companies, the Convener proposes participation by non-profit membership organizations that include among their members, most, if not all, of the individual companies that were nominated. It is expected that these non-profit organizations will assist in accessing the expertise of their members for panel presentations as requested by committee members.

In the category of applicants or holder of driver's licenses/personal identification cards, some nominees identified interests related to highly specific elements of an issue, such as religious objections to photograph requirements or the need for flexibility for homeless people in providing breeder documents and proof of state residency requirements. For this category of stakeholders, the Convener recommended organizations with broader sets of interests, which include many of the specific elements identified by other nominees.

Based on the convening process and in accordance with §7212(B) of the 9/11 Act, the Federal Advisory Committee Act, and the Negotiated Rulemaking Act, Susan Podziba, Convener, recommends the following organizational members:

Federal Agencies⁴

U.S. Department of Transportation
U.S. Department of Homeland Security

State Offices that Issue Driver's Licenses or Personal ID's

American Association of Motor Vehicle Administrators
New York State Department of Motor Vehicles
Alabama Department of Public Safety, Driver License Division

Representatives of Elected State Officials

National Governors Association
National Conference of State Legislators

Groups or Organizations Representing the Interests of Applicants for and Holders of Driver's Licenses and Personal Identification Cards

American Automobile Association
National Immigration Law Center

⁴ Other federal agencies with interests in the minimum standards will participate in an inter-agency federal partners workgroup. DOT and DHS will represent the concerns of other federal agencies during the negotiations.

Privacy and Civil Liberties Groups

American Civil Liberties Union

Markle Foundation/ Center For Democracy and Technology

Law Enforcement Officials

International Association of Chiefs of Police

Texas Department of Public Safety

Florida Department of Highway Safety and Motor Vehicles

Organizations with Technological and Operational Expertise in Document Security⁵

Information Technology Association of America

Industry Advisory Board to AAMVA

See Appendix B for the individuals selected by these organizations to serve as their principal negotiators.

There are other means of participation for individuals and groups that identify themselves as having interests and expertise relevant to the development of the minimum standards, but who have not been appointed to the DL/ID Reg Neg Committee by the Secretary of Transportation. Individuals and organizations with specific technological and/or operational expertise may be called to serve on panels or work groups. Members of the public may address the DL/ID Reg Neg Committee during the public comment period that will be provided during each meeting as required under the Federal Advisory Committee Act. In addition, comments and written materials may be submitted to the Docket for distribution to committee members. To keep abreast of the negotiated rulemaking process, individuals may sign up for inclusion on a public e-mail list through which committee documents will be distributed.

PROCESS DESIGN

DOT has established the Negotiated Rulemaking Advisory Committee on Minimum Standards for State-Issued Driver's Licenses and Personal Identification Cards as a formal advisory committee, in accordance with the Federal Advisory Committee Act (FACA). As required under FACA, all meetings of the DL/ID Reg Neg Committee will be announced in the Federal Register and open to the public.

⁵ The Document Security Alliance is a public/private partnership of government and private organizations and academics that focuses on how best to respond to the production and distribution of counterfeit documents. It is expected that DSA will assist the DL/ID Reg Neg Committee by providing panel presentations on specific security features, as requested.

The negotiated rulemaking process will consist of a series of five negotiating sessions and communications with and among negotiators between meetings. A public policy mediator/facilitator will manage the process. If the DL/ID Reg Neg Committee decides to make use of a drafting work group to develop proposals for committee review, part of these meetings may be set aside for such drafting.

The first negotiating session will begin with discussion and decisions regarding preliminary issues including: organizational protocols or ground rules, informational needs, list of issues to be negotiated, schedule of future meetings, and overview of the negotiated rulemaking process.

The preliminary issues will be followed by discussion of the substantive issues under negotiation. Negotiators will identify their key interests relative to the minimum standards and then work toward agreements in concept for each issue. DOT will prepare draft regulatory text to reflect agreements in concept and options generated for unresolved issues. During the negotiating sessions, the DL/ID Reg Neg Committee will work through its list of issues to be negotiated, which will include all requirements of §7212 (b)(2) of the 9/11 Act. It is typical in a negotiated rulemaking for some sections of the rule to be more easily resolved than others. The Committee will determine when it has reached "tentative agreement" on a section, indicating that the draft is satisfactory pending resolution of all other sections. Tentative agreements may be reviewed when decisions concerning a particular section impact a prior tentative agreement.

As the series of negotiating sessions proceeds, the meeting agenda will consist of the remaining issues for which tentative agreements have not been reached and any tentative agreements that must be reviewed, until all is resolved. The final draft of the regulatory language will then be reviewed in total. For the five scheduled meetings, the DL/ID Reg Neg Committee will meet until agreement is reached on all regulatory language or it is determined that agreements on some issues cannot be reached.

To the maximum extent possible, consistent with its legal obligations, DOT will use the consensus of the DL/ID Reg Neg Committee as the basis for the NPRM to be published in the Federal Register for notice and comment. The DL/ID Reg Neg Committee may be reconvened to review and address the comments received on the NPRM prior to issuance of the final rule.

ORGANIZATIONAL PROTOCOLS

At its preliminary meeting, the DL/ID Reg Neg Committee will develop organizational protocols (ground rules) that will govern its discussions and negotiations. The ground rules will cover issues including:

- mission of the DL/ID Reg Neg Committee;

- participation, including composition of the committee and its ability to add members, use alternates, use workgroups to develop proposals, and hold caucuses;
- decision-making rule (definition of consensus);
- determination that agreements have been reached and meaning of those agreements;
- procedures to ensure the protection of confidential information;
- the recognition that meetings are open to the public;
- the manner in which a record of the sessions will be kept and distributed;
- roles and responsibilities of committee members; and
- roles and responsibilities of the mediators/facilitators.

CONCLUSION

As required under the 9/11 Commission Implementation Act of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law No. 108-458), the U.S. Department of Transportation, in consultation with the U.S. Department of Homeland Security, will implement a negotiated rulemaking process to develop minimum standards for state-issued driver's licenses and personal identification cards.

The negotiated rulemaking process is being implemented in accordance with the framework established under the Negotiated Rulemaking Act of 1990, the Federal Advisory Committee Act, and pursuant to §7212 of the 9/11 Act. DOT plans to provide adequate resources and administrative support for the process and will ensure the DL/ID Reg Neg Committee has the appropriate resources it requires to complete its work in a timely fashion. To the extent possible, consistent with its legal obligations, DOT plans to use any consensus arising from the negotiated rulemaking process as the basis for the proposed minimum standards to be published as a Notice of Proposed Rulemaking (NPRM).

This process will be implemented to ensure that the report and recommendations of the DL/ID Reg Neg Committee are submitted to the Secretary of Transportation in compliance with the statutory deadline of September 17, 2005.

APPENDIX A:
9/11 Commission Act of the
Intelligence Reform and Terrorism Prevention Act of 2004
Title VII, Subtitle B, §7212

Section 7212(b)(2) of the 9/11 Act requires that standards to be established by the Secretary of Transportation include:

- (A) standards for documentation required as proof of identity of an applicant for a driver's license or personal identification card;
- (B) standards for the verifiability of documents used to obtain a driver's license or personal identification card;
- (C) standards for the processing of applications for driver's licenses and personal identification cards to prevent fraud;
- (D) standards for information to be included on each driver's license or personal identification card, including—
 - (i) the person's full legal name;
 - (ii) the person's date of birth;
 - (iii) the person's gender;
 - (iv) the person's driver's license or personal identification card number;
 - (v) a digital photograph of the person;
 - (vi) the person's address of principal residence; and
 - (vii) the person's signature;⁶
- (E) standards for common machine-readable identity information to be included on each driver's license or personal identification card, including defined minimum data elements;
- (F) security standards to ensure that driver's licenses and personal identification cards are—
 - (i) resistant to tampering, alteration, or counterfeiting; and
 - (ii) capable of accommodating and ensuring the security of a digital photograph or other unique identifier; and

⁶ Section 7214 of the Act prohibits no State or subdivision thereof may "display a social security account number issued by the Commissioner of Social Security (or any derivative of such number) on any driver's license, motor vehicle registration, or personal identification card (as defined in section 7212(a)(2) of the 9/11 Commission Implementation Act of 2004), or include, on any such license, registration, or personal identification card, a magnetic stripe, bar code, or other means of communication which conveys such number (or derivative thereof)."

(G) a requirement that a State confiscate a driver's license or personal identification card if any component or security feature of the license or identification card is compromised.

Section 7212(b)(3) requires further that the standards--

(A) shall facilitate communication between the chief driver licensing official of a State, an appropriate official of a Federal agency and other relevant officials, to verify the authenticity of documents, as appropriate, issued by such Federal agency or entity and presented to prove the identity of an individual;

(B) may not infringe on a State's power to set criteria concerning what categories of individuals are eligible to obtain a driver's license or personal identification card from that State;

(C) may not require a State to comply with any such regulation that conflicts with or otherwise interferes with the full enforcement of State criteria concerning the categories of individuals that are eligible to obtain a driver's license or personal identification card from that State;

(D) may not require a single design to which driver's licenses or personal identification cards issued by all States must conform; and

(E) shall include procedures and requirements to protect the privacy rights of individuals who apply for and hold driver's licenses and personal identification cards.

APPENDIX B:

Recommended Organizational Members of the Negotiated Rulemaking Advisory Committee on Minimum Standards for State-Issued Driver's Licenses and Personal Identification Cards (DL/ID Reg Neg Committee)

PRINCIPAL NEGOTIATORS

State offices that issue driver's licenses or personal ID's

American Association of Motor Vehicle Administrators
Linda Lewis-Pickett, President and CEO

New York State Department of Motor Vehicles
Raymond Martinez, Commissioner

Alabama Department of Public Safety, Driver License Division
Major Roscoe Howell, Division Chief

Representatives of elected State officials

National Governors Association
Matthew Dunlap, Secretary of State, State of Maine

National Conference of State Legislators
Michael Balboni, Senator, New York State Senate *Alternate:*

Groups or organizations representing the interests of applicants for and holders of driver's licenses and personal identification cards

Consumer organization

American Automobile Association
Elizabeth Vermette, Director, State Government Relations

Organization representing non-citizens/immigrants

National Immigration Law Center
Joan Friedland, Immigration Policy Attorney

Privacy and civil liberties groups

American Civil Liberties Union
Barry Steinhardt, Director, Technology and Liberty Project

Markle Foundation and Center For Democracy and Technology
Ari Schwartz, Associate Director, Center for Democracy and Technology

Law enforcement officials

International Association of Chiefs of Police

Colonel Mark V. Trostel, Chief, Colorado State Patrol

Texas Department of Public Safety

Major Robert Burroughs, Texas Highway Patrol Division

Florida Department of Highway Safety and Motor Vehicles

Lt. Colonel (Ret.) Billy Dickson

Organizations with technological and operational expertise in document security

Information Technology Association of America

Brendan M. Peter, Co-Chair, ID Management Subcommittee of the Homeland Security Committee

Industry Advisory Board to AAMVA

Barry Goleman, Chair of the Board

Federal Government

U.S. Department of Transportation

Tyler Duvall, Acting Assistant Secretary for Transportation Policy

U.S. Department of Homeland Security

Elaine Dezenski, Acting Assistant Secretary for Policy & Planning, Border & Transportation Security

**APPENDIX C:
LIST OF INTERVIEWEES**

Shirley André
Director
Motor Vehicle Division
Iowa Department of Transportation
800 Lincoln Way
Ames, IA 50010

Robert Ashby
Deputy Assistant General Counsel for
Regulation and Enforcement
Office of the General Counsel
U.S. Department of Transportation
400 7th Street, SW
Washington, DC 20590

Richard Ashton
Grant/Technical Management Manager
International Association of Chiefs of
Police
515 North Washington Street
Alexandria, VA 22314

Michael Balboni
Senator, New York State Senate
Room 803 Legislative Office Building
Albany, NY 12247

Michael Bates
Office for Civil Rights and Civil
Liberties
U.S. Department of Homeland Security
Washington, DC 20258

Matthew Bettenhausen
Director, State and Territorial
Coordination
Office of the Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Major Robert Burroughs
Texas Highway Patrol Division
Texas Department of Public Safety
P O Box 4087
Austin, Texas 78773-0001

Mike Calvin
Senior Vice President
American Association of Motor Vehicle
Administrators
4301 Wilson Blvd, Suite 400
Arlington, VA 22203

Cheye Calvo
Committee Director, Transportation
Standing Committee
National Conference of State
Legislatures
444 North Capitol Street, NW, Suite 515
Washington, DC 20001

James Dempsey
Executive Director
Center for Democracy and Technology
1634 Eye Street NW, Suite 1100
Washington, DC 20006
Also representing: Markle Foundation

Lt. Colonel (Ret.) Billy Dickson
Florida Department of Highway Safety
and Motor Vehicles
3228 Cranleigh Drive
Tallahassee, FL 32309

Diane Duff
Director, Economic Development and
Commerce Committee
National Governors Association
444 North Capitol Street, Suite 267
Washington, DC 20001

Mathew Dunlap
Secretary of State
State of Maine
Office of the Secretary
148 State House Station
Augusta, Maine 04333

Tyler Duvall
Acting Assistant Secretary
Office of the Assistant Secretary for
Transportation Policy
U.S. Department of Transportation
400 7th Street, SW
Washington, DC 20590

Maria Foscarinis
Executive Director
National Law Center on Homelessness
& Poverty
1411 K Street, NW, Suite 1400
Washington, DC 20005

Emil Frankel
Former Assistant Secretary
Office of the Assistant Secretary for
Transportation Policy
U.S. Department of Transportation
400 7th Street, SW
Washington, DC 20590

Jonathan Frenkel
Senior Policy Advisor
Border & Transportation Security
Directorate
U.S. Department of Homeland Security
Washington, DC 20528

Joan Friedland
Immigration Policy Attorney
National Immigration Law Center
1101 14th Street NW, Suite 410
Washington, DC 20005

Barry Goleman
Chair of the Board
Industry Advisory Board to AAMVA
1057 47th Street
Sacramento, CA 95819

Jim Harper
Director of Information Policy Studies
Cato Institute
1000 Massachusetts Avenue, NW
Washington D.C. 20001-5403

John Hilliard
Deputy Commissioner of Operations
State of New York Department of Motor
Vehicles
6 Empire State Plaza
Albany, NY 12228

Major Roscoe Howell
Division Chief
Driver License Division
Alabama Department of Public Safety
P.O. Box 1471
Montgomery, AL 36102-1471

Kim Johnson
Liaison to Border and Transportation
Security
Office of the Secretary
U.S. Department of Homeland Security
Washington, DC 20258

Nolan Jones
Deputy Director, Office of Federal
Relations
National Governors Association
444 North Capitol Street, Suite 267
Washington, DC 20001

David Kelly
Deputy Assistant Secretary
Office of the Assistant Secretary for
Governmental Affairs
U.S. Department of Transportation
400 7th Street, SW
Washington, DC 20590

Janice Kephart
9/11 Public Discourse Project
One DuPont Circle, NW
Suite 700
Washington, DC 20036

Christopher Kojm
President
9/11 Public Discourse Project
One DuPont Circle, NW
Suite 700
Washington, DC 20036

Kathleen Kraninger
Advisor to the Secretary for Policy
Office of the Chief of Staff
U.S. Department of Homeland Security
Washington, D.C. 20528

Linda Lawson
Director
Office of Safety, Energy and
Environment
Office of the Assistant Secretary for
Transportation Policy
U.S. Department of Transportation
400 7th Street, SW
Washington, DC 20590

Linda Lewis-Pickett
President and CEO
American Association of Motor Vehicle
Administrators
4301 Wilson Blvd, Suite 400
Arlington, VA 22203

Steve Lilienthal
Director, Center for Technology Policy
Free Congress Foundation
717 Second Street, NE
Washington, DC 20002

Joseph Maher
Attorney
Office for Civil Rights and Civil
Liberties
U.S. Department of Homeland Security
Washington, D.C. 20528

Raymond Martinez
Commissioner
State of New York Department of Motor
Vehicles
6 Empire State Plaza
Albany, NY 12228

Kathleen Marvaso
Managing Director, Government
Relations/Traffic Safety Policy
American Automobile Association
607 14th Street NW, Suite 200
Washington, DC 20005

Brian McLaughlin
Senior Associate Administrator, Traffic
Injury Control
National Highway Traffic Safety
Administration
U.S. Department of Transportation
400 7th Street, SW
Washington, DC 20590

John Mercer
Document Security Alliance
Senior Associate
Kelly, Anderson & Associates
424 North Washington Street
Alexandria, VA 22314

Mary Moore
Office for Civil Rights and Civil
Liberties
U.S. Department of Homeland Security
Washington, DC 20258

Kevin O'Brien
Director of Motor Carrier and Driver
Safety Services
State of New York Department of Motor
Vehicles
6 Empire State Plaza
Albany, NY 12228

Richard Outland
Assistant Chief, Forensic Services
Division
U.S. Secret Service
245 Murray Drive, Building 410
Washington, DC 20223

William Paden
Associate Administrator
Federal Motor Carrier Safety
Administration
U.S. Department of Transportation
400 7th Street, SW
Washington, DC 20590

Brendan Peter
Co-Chair, ID Management
Subcommittee
Information Technology Association of
America
1401 Wilson Boulevard
Suite 1100
Arlington, VA 22209

Jeff Rosen
General Counsel
Office of the General Counsel
U.S. Department of Transportation
400 7th Street, SW
Washington, DC 20590

Jeff Runge
Administrator
National Highway Traffic Safety
Administration
U.S. Department of Transportation
400 7th Street, SW
Washington, DC 20590

Annette Sandberg
Administrator
Federal Motor Carrier Safety
Administration
U.S. Department of Transportation
400 7th Street, SW
Washington, DC 20590

Ari Schwartz
Associate Director
Center for Democracy and Technology
1634 Eye Street NW, Suite 1100
Washington, DC 20006

Tim Sparapani
Legislative Counsel for Privacy Rights
American Civil Liberties Union
915 15th Street, NW, 6th Floor
Washington DC 20005

Helen Sramek
Director, Federal Relations
American Automobile Association
607 14th Street NW, Suite 200
Washington, DC 20005

Reed Stager
Document Security Alliance
Vice President for Public Policy
Digimarc
9405 SW Gemini Drive
Beaverton, OR 97008

Barry Steinhardt
Director, Technology and Liberty
Project
American Civil Liberties Union
125 Broad Street
New York, NY 10004

Daniel Sutherland
Officer for Civil Rights and Civil
Liberties
Office for Civil Rights and Civil
Liberties
U.S. Department of Homeland Security
Washington, DC 20258

Elizabeth Vermette
Director, State Government Relations
American Automobile Association
607 14th Street NW, Suite 200
Washington, DC 20005

Gene Voegtlin
Legislative Counsel
International Association of Chiefs of
Police
515 North Washington Street
Alexandria, VA 22314

Jeff Vining
Homeland Security and Law
Enforcement Analyst
Gartner
8405 Greensboro Drive, 6th Floor
McLean, VA 22102

Laurel Weir
Policy Director
National Law Center on Homelessness
& Poverty
1411 K Street, NW, Suite 1400
Washington, DC 20005

John V. Wells
Chief Economist
U.S. Department of Transportation
400 7th Street, SW
Washington, DC 20590

Elizabeth Withnell
Chief Counsel
Privacy Office
Department of Homeland Security
Washington, DC 20528

Steve Wood
Assistant Chief Counsel for Vehicle
Safety Standards and Harmonization
Office of the Chief Counsel
National Highway Traffic Safety
Administration
U.S. Department of Transportation
400 7th Street, SW
Washington, DC 20590

Declined to be interviewed
Electronic Privacy Information Center
National Immigration Forum

**Unable to arrange interview within
available timeframe**
National Association of Attorneys
General
Tohono O'odham Nation Police
Department

**Declined to be considered for
membership on DL/ID Reg Neg
Committee**
Cato Institute
Free Congress Foundation
9/11 Public Discourse Project

**APPENDIX D:
FEDERAL REGISTER NOTICE OF INTENT TO
ESTABLISH A NEGOTIATE RULEMAKING ADVISORY COMMITTEE**

Negotiated Rulemaking on
Minimum Standards for Driver's Licenses and Personal Identification Cards
Final Convening Assessment Report
Susan Podziba & Associates
April 15, 2005

* * * * *

[FR Doc. 05-3451 Filed 2-22-05; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 271**

[FRL-7875-6]

Mississippi: Final Authorization of State Hazardous Waste Management Program Revisions**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: Mississippi has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Mississippi for RCRA Clusters IV through X. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by March 25, 2005.

ADDRESSES: Submit your comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- E-mail: middlebrooks.gail@epa.gov.
- Fax: (404) 562-8439 (prior to faxing, please notify the EPA contact listed below).
- Mail: Send written comments to Gail Middlebrooks at the address listed below.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>, or e-mail. The Federal *regulations.gov* Web site is an

"anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comments. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit.

You can view and copy Mississippi's applications from 8 a.m. to 4:30 p.m. at the following addresses: Mississippi Department of Environmental Quality, Hazardous Waste Division, 101 W. Capital, Suite 100, Jackson, Mississippi 39201; and EPA, Region 4, Library, 9th Floor, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-3104; (404) 562-8190.

FOR FURTHER INFORMATION CONTACT: Gail Middlebrooks, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-3104; (404) 562-8494.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: February 2, 2005.

A. Stanley Meilburg,

Acting Regional Administrator, Region 4.

[FR Doc. 05-3364 Filed 2-22-05; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****49 CFR Subtitle A**

[Docket No. OST-2005-20434]

Driver's Licenses and Personal Identification Cards

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of intent to form a negotiated rulemaking advisory committee.

SUMMARY: Pursuant to the portion of the Intelligence Reform and Terrorism Prevention Act of 2004 known as the 9/11 Commission Implementation Act of 2004, the Office of the Secretary, DOT, is establishing a committee to develop, through negotiated rulemaking procedures, recommendations for minimum standards to tighten the security for driver's licenses and personal identification cards issued by

States, in order for these documents to qualify for use by Federal agencies for identification purposes. The committee will consist of persons who represent the interests affected by the proposed rule, *i.e.*, State offices that issue driver's licenses or personal identification cards, elected State officials, the Departments of Transportation and Homeland Security, and other interested parties. The purpose of this document is to invite interested parties to submit comments on the issues to be discussed and the interests and organizations to be considered for representation on the committee.

DATES: You should submit your comments or applications for membership or nominations for membership on the negotiated rulemaking committee early enough to ensure that the Department's Docket Management System (DMS) receives them not later than March 25, 2005. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You should mention the docket number of this document in your comments or application/nomination for membership and submit them in writing to: Docket Management System (DMS), Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following Web address: <http://dms.dot.gov/submit/>.

You may call the Docket at 202-366-9324, and visit it from 10 a.m. to 5 p.m., Monday through Friday. Interested persons may view docketed materials on the Internet at any time. Instructions for doing so are found at the end of this notice.

You may read the comments received by DMS at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also review all documents in the docket via the internet. To read docket materials on the internet, take the following steps:

1. Go to the DMS Web page of the Department of Transportation (<http://dms.dot.gov/>).
2. On that page, click on "search."
3. On the next page (<http://dms.dot.gov/search/>), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were OST-2005-1234," you would type "1234." After typing the docket number, click on "search."
4. On the next page, which contains docket summary information for the

docket you selected, click on the desired comments. You may download the comments. The comments are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

FOR FURTHER INFORMATION CONTACT:

Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Office of the General Counsel, at 202-366-9310 (bob.ashby@dot.gov), or Steve Wood, Assistant Chief Counsel for Vehicle Safety Standards and Harmonization, Office of the Chief Counsel, National Highway Traffic Safety Administration, 202-366-2992 (steve.wood@nhtsa.dot.gov). Their mailing addresses are at the Department of Transportation, 400 7th Street, SW., Washington, DC 20590, at rooms 10424 and 5219, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

On December 17, 2004, the President signed into law the Intelligence Reform and Terrorism Prevention Act of 2004. (Public Law No. 108-458). Title VII of that Act is known as the 9/11 Commission Implementation Act of 2004 (the 9/11 Act). Subtitle B of the 9/11 Act addresses terrorist travel and effective screening. Among other things, subtitle B mandates the issuance of minimum standards for Federal acceptance of birth certificates (section 7211), and driver's licenses and personal identification cards (section 7212). It also establishes requirements for enhancing the security of social security cards (section 7213). This notice concerns section 7212.

A bill currently under consideration in Congress (H.R. 418), if enacted and signed into law as passed by the House, would terminate the Department's negotiated rulemaking. The Administration has endorsed this bill, which would repeal section 7212 which is the basis for the Department's rulemaking. Until and unless such legislation is enacted, however, the Department is taking the steps necessary to meet the existing statutory deadline. This notice describes the procedure that we propose to use in implementing section 7212, as long as it remains in effect.

II. Statutory Mandate for Minimum Standards on Driver's Licenses and Personal Identification Cards

Section 7212 of the 9/11 Act requires the Secretary of Transportation, in consultation with the Secretary of Homeland Security, to establish, by regulation, minimum standards for driver's licenses or personal identification cards issued by a State in order to qualify for use by Federal agencies for identification purposes.

This provision was enacted in response to the following recommendation in the 9/11 Commission report:

Recommendation: Secure identification should begin in the United States. The Federal government should set standards for the issuance of birth certificates and sources of identification, such as drivers licenses. Fraud in identification documents 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.¹

In making that recommendation, the Commission noted:

All but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud. Acquisition of these forms of identification would have assisted them in boarding commercial flights, renting cars, and other necessary activities.²

A. Substance of the Standards

Section 7212(b)(2) of the 9/11 Act requires that the standards to be established by the Secretary of Transportation include—

- (A) standards for documentation required as proof of identity of an applicant for a driver's license or personal identification card;
- (B) standards for the verifiability of documents used to obtain a driver's license or personal identification card;
- (C) standards for the processing of applications for driver's licenses and personal identification cards to prevent fraud;
- (D) standards for information to be included on each driver's license or personal identification card, including—
 - (i) the person's full legal name;
 - (ii) the person's date of birth;
 - (iii) the person's gender;
 - (iv) the person's driver's license or personal identification card number;
 - (v) a digital photograph of the person;
 - (vi) the person's address of principal residence; and

¹ 9/11 Commission Report, page 390.

² *Ibid.*

- (vii) the person's signature;³
- (E) standards for common machine-readable identity information to be included on each driver's license or personal identification card, including defined minimum data elements;

- (F) security standards to ensure that driver's licenses and personal identification cards are—

- (i) resistant to tampering, alteration, or counterfeiting; and
- (ii) capable of accommodating and ensuring the security of a digital photograph or other unique identifier; and

- (C) a requirement that a State confiscate a driver's license or personal identification card if any component or security feature of the license or identification card is compromised.

Section 7212(b)(3) requires further that the standards—

- (A) shall facilitate communication between the chief driver licensing official of a State, an appropriate official of a Federal agency and other relevant officials, to verify the authenticity of documents, as appropriate, issued by such Federal agency or entity and presented to prove the identity of an individual;

- (B) may not infringe on a State's power to set criteria concerning what categories of individuals are eligible to obtain a driver's license or personal identification card from that State;

- (C) may not require a State to comply with any such regulation that conflicts with or otherwise interferes with the full enforcement of State criteria concerning the categories of individuals that are eligible to obtain a driver's license or personal identification card from that State;

- (D) may not require a single design to which driver's licenses or personal identification cards issued by all States must conform; and

- (E) shall include procedures and requirements to protect the privacy rights of individuals who apply for and hold driver's licenses and personal identification cards.

B. Process for Developing Recommendations for Proposed Standards

The 9/11 Act requires that before publishing proposed minimum

³ Section 7214 of the Act provides that no State or subdivision thereof may "display a social security account number issued by the Commissioner of Social Security (or any derivative of such number) on any driver's license, motor vehicle registration, or personal identification card (as defined in section 7212(a)(2) of the 9/11 Commission Implementation Act of 2004), or include, on any such license, registration, or personal identification card, a magnetic strip, bar code, or other means of communication which conveys such number (or derivative thereof)."

standards, the Secretary of Transportation must establish a negotiated rulemaking process pursuant to 5 U.S.C. 561 *et seq.*,⁴ and receive such recommendations regarding a proposed as the regulatory negotiation committee may adopt. The committee must include representatives from—

- (i) among State offices that issue driver's licenses or personal identification cards;
- (ii) among State elected officials;
- (iii) the Department of Homeland Security; and
- (iv) among interested parties.⁵

C. Schedule for Submitting Recommendations and Establishing the Standards

The recommendations of the negotiated rulemaking committee must be submitted to the Secretary of Transportation not later than 9 months after the date of enactment, *i.e.*, by September 17, 2005.⁶ The Secretary must issue a final rule establishing the standards not later than 18 months after the date of enactment, *i.e.*, by June 17, 2006.⁷

D. Implementation of the Standards

Section 7212(b)(1)(C) provides that each State must certify to the Secretary of Transportation that the State is in compliance with the requirements of this section. The certifications are to be made at such intervals and in such a manner as the Secretary of Transportation may prescribe by regulation.

Further, Section 7212(b)(1)(A) bars all Federal agencies from accepting, for any official purpose, a driver's license or personal identification card that is newly issued by a State more than 2 years after the issuance of the minimum standards (*i.e.*, by June 17, 2008) unless the driver's license or personal identification card conforms to those standards.⁸ As to all driver's licenses and personal identification cards, regardless of when they were issued, the Secretary of Transportation, in consultation with the Secretary of Homeland Security, is required by Section 7212(b)(1)(B) to set a date after which all Federal agencies are barred from accepting any driver's license or personal identification card for any

official purpose unless such driver's license or personal identification card conforms to the minimum standards.

III. Negotiated Rulemaking

As required by Section 7212 (b)(4)(C), the Office of the Secretary will conduct the mandated negotiated rulemaking in accordance with the Negotiated Rulemaking Act of 1990, Public Law 101-648 (NRA) (5 U.S.C. 561, *et seq.*). The NRA establishes a framework for the conduct of a negotiated rulemaking and encourages agencies to use negotiated rulemaking to enhance the informal rulemaking process. Pursuant to Section 7212 and the NRA, OST will form an advisory committee consisting of representatives of the affected interests for the purpose of reaching consensus, if possible, on the proposed rule.

A. The Concept of Negotiated Rulemaking

Usually, DOT develops a rulemaking proposal using its own staff and consultant resources. The concerns of affected parties are made known through means such as various informal contacts and advance notices of proposed rulemaking published in the **Federal Register**. After the notice of proposed rulemaking is published for comment, affected parties may submit arguments and data defining and supporting their positions with regard to the issues raised in the proposed rule. All comments from affected parties are directed to the Department's docket for the rulemaking. In general, there is limited communication among parties representing different interests. Many times, effective regulations have resulted from such a process.

However, as Congress noted in the NRA, such regulatory development procedures may "discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions * * *" (Sec. 2(2) of Pub. L. No. 101-648). Congress also stated "adversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It also deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties." (Sec. 2(3) of Pub. L. No. 101-648).

Using negotiated rulemaking to develop the proposed rule is fundamentally different. Negotiated rulemaking is a process in which a proposed rule is developed by a

committee composed of representatives of all those interests that will be significantly affected by the rule. Decisions are made by some form of consensus, which generally requires a measure of concurrence among the interests represented.⁹ An agency desiring to initiate the process does so by carefully identifying all interests potentially affected by the rulemaking under consideration. To help in this identification process, the agency publishes a notice, such as this one, which identifies a preliminary list of interests and requests public comment on that list. Following receipt of the comments, the agency establishes an advisory committee representing these various interests to negotiate a consensus on the terms of a proposed rule. The committee is chartered under the Federal Advisory Committee Act (FACA; 5 U.S.C. App. 2). Representation on the committee may be direct, that is, each member represents a specific interest, or may be indirect, through coalitions of parties formed for this purpose. The establishing agency has a member of the committee representing the Federal government's own set of interests.¹⁰ A facilitator or mediator can assist the negotiated rulemaking advisory committee by facilitating the negotiation process. The role of this mediator, or facilitator, is to apply proven consensus building techniques to the advisory committee setting.

Once a regulatory negotiation advisory committee reaches consensus on the provisions of a proposed rule, the agency, consistent with its legal obligations, uses this consensus as the basis of its proposed rule and publishes it in the **Federal Register**. This provides the required public notice under the Administrative Procedure Act (APA; 5 U.S.C. 551 *et seq.*) and allows for a public comment period. Under the APA, the public retains the right to comment. The Department anticipates, however, that the pre-proposal consensus agreed upon by this committee will effectively address virtually all major issues prior to publication of a proposed rulemaking.

⁹The Negotiated Rulemaking Act defines "consensus" as "unanimous concurrence among the interests represented on a negotiated rulemaking committee * * * unless such committee (A) agrees to define such term to mean a general but not unanimous concurrence; or (B) agrees upon another specified definition." 5 U.S.C. 562(2).

¹⁰In this regulatory negotiation, both the Departments of Transportation and Homeland Security are required by statute to represent the Federal government's interests.

⁴Section 7212(b)(4)(A).

⁵Section 7212(b)(4)(B).

⁶Section 7212(b)(4)(C)(i).

⁷Section 7212(b)(2). See also Section 7212(b)(4)(C)(ii).

⁸Section 7212(d) provides that the Secretary may extend this date "for up to 2 years for driver's licenses issued by a State if the Secretary determines that the State made reasonable efforts to comply with the date under * * * [section 7212(b)] * * * but was unable to do so."

B. The Department of Transportation's Commitment

In initiating this regulatory negotiation process, the Department plans to provide adequate resources to ensure timely and successful completion of the process. This includes making the process a priority activity for all representatives, components, officials, and personnel of the Department who need to be involved in the rulemaking, from the time of initiation until such time as a final rule is issued or the process is expressly terminated. The Department will provide administrative support for the process and will take steps to ensure that the negotiated rulemaking committee has the appropriate resources it requires to complete its work in a timely fashion. These include the provision or procurement of such support services as properly equipped space adequate for public meetings and caucuses; logistical support; word processing and distribution of background information; the services of a convenor/facilitator; and such additional research and other technical assistance as may be necessary.

To the extent possible, consistent with its legal obligations, the Department currently plans to use any consensus arising from the regulatory negotiation committee as the basis for the proposed minimum standards to be published for public notice and comment.¹¹

C. Negotiating Consensus

As discussed above, the negotiated rulemaking process is fundamentally different from the usual development process for developing a proposed rule. Negotiation allows interested and affected parties to discuss possible approaches to various issues rather than simply being asked in a regular notice and comment rulemaking proceeding to respond to details on a proposal developed and issued by an agency. The negotiation process involves a mutual education of the parties by each other on the practical concerns about the impact of various approaches. Each committee member participates in resolving the interests and concerns of other members, rather than leaving it up

to the agency to bridge different points of view.

A key principle of negotiated rulemaking is that agreement is by consensus. Thus, no one interest or group of interests is able to control the process. Under the NRA as noted above, "consensus" usually means the unanimous concurrence among interests represented on a negotiated rulemaking committee, though a different definition may be employed in some cases. In addition, experience has demonstrated that using a professional mediator to facilitate this process will assist all potential parties, including helping to identify their interests in the rule and enabling them to reevaluate previously stated positions on issues involved in the rulemaking effort.

D. Key Issues for Negotiation; Invitation to Comment on Issues To Be Addressed

As noted above, Section 7212 sets forth considerable detail regarding the issues to be addressed in developing and promulgating the mandated minimum standards. The Department invites comment on the issues regarding the particular aspects of the standards that the negotiating committee should address in developing its recommendations or report.

The Department is aware of the considerable work that has been and is being done at Federal and State levels and in the private sector to improve various types of identification documents, including driver's licenses. We invite comment on which of these past and ongoing efforts are most relevant to this rulemaking, and on what implications those efforts have for the recommendations and choices to be made in this rulemaking.

IV. Procedures and Guidelines for This Regulatory Negotiation

The following proposed procedures and guidelines will apply to the regulatory negotiation process, subject to appropriate changes made as a result of comments on this Notice or as determined to be necessary during the negotiating process.

A. Notice of Intent To Establish Advisory Committee and Request for Comment

In accordance with the requirements of FACA, an agency of the Federal government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a Federal advisory committee. It is the purpose of this Notice to indicate the Department's intent to create a Federal advisory

committee, to identify the issues involved in the rulemaking, to identify the interests affected by the rulemaking, to identify potential participants who will adequately represent those interests, and to ask for comment on the identification of the issues, interests, procedures, and participants.

B. Facilitator

Pursuant to the NRA (5 U.S.C. 566), a facilitator will be selected to serve as an impartial chair of the meetings; assist committee members to conduct discussions and negotiations; and manage the keeping of minutes and records as required by FACA. The facilitator will chair the negotiations, may offer alternative suggestions to committee members to help achieve the desired consensus, will help participants define and reach consensus, and will determine the feasibility of negotiating particular issues. The Department has selected Ms. Susan Podziba, an experienced mediator, as its convenor/facilitator for this regulatory negotiation.

C. Membership

The NRA provides that the agency establishing the regulatory negotiation advisory committee "shall limit membership to 25 members, unless the agency head determines that a greater number of members is necessary for the functioning of the committee or to achieve balanced membership." The purpose of the limit on membership is to promote committee efficiency in deliberating and reaching decisions on recommendations. The Department of Transportation's current inclination is to observe that limit. However, the Department notes that its experience with regulatory negotiations indicates that limiting membership to fewer than 25 members is often desirable.

D. Interests Likely To Be Affected; Representation of Those Interests

The committee will include a representative from the Department of Transportation and from the interests and organizations listed below. Each representative may also name an alternate, who will be encouraged to attend all committee meetings and will serve in place of the representative if necessary. The DOT representative is the Designated Federal Official (DFO) and will participate in the deliberations and activities of the committee with the same rights and responsibilities as other committee members. The DFO will be authorized to fully represent the Department in the discussions and negotiations of the committee.

¹¹ The Department of Transportation is obligated under Section 7212 to propose and adopt minimum standards regardless of whether the committee to be established pursuant to Section 7212 is able to achieve consensus on all required elements of those standards. Thus, if the committee were unable to reach consensus on any of the elements, the Department of Transportation would, in consultation with the Department of Homeland Security, independently develop proposals regarding those elements.

The Department has tentatively identified the following organizations or interests to participate in the negotiated rulemaking. The convenor will contact these and other organizations to determine their interests and willingness to serve on the committee.

- (1) Department of Transportation.
- (2) Department of Homeland Security.
- (3) State offices that issue driver's licenses or personal identification cards; American Association of Motor Vehicle Administrators.
- (4) Representatives of elected State officials; National Governors Association; National Conference of State Legislatures; National Association of Attorneys General.
- (5) Other interested parties.
 - (a) Groups or organizations presenting the interests of applicants for and holders of driver's licenses and personal identification cards.
 - (i) Consumer organization.
 - (ii) Organization representing non-citizens/immigrants.
 - (b) Organizations with technological and operational expertise in document security.
 - (c) Privacy and civil liberties groups.
 - (d) Law enforcement officials.

The first four interests identified above are required by the statute to participate in the negotiated rulemaking.¹² The "other interests" mentioned are those that appear to the Department to have potentially important roles in helping achieve consensus on recommendations on the issues involved. The Department seeks comment on whether there are additional interests that should be represented on the committee. The Department also seeks comments on particular organizations and individuals who would appropriately represent interests on the committee. Please identify such organizations and interests if they exist and explain why they should have separate representation on the committee.

The list of potential parties specifically named above is not presented as a complete or exclusive list from which committee members will be selected, nor does inclusion on the list of potential parties mean that a party on the list has agreed to participate as a member of the committee or as a member of a coalition, or will necessarily be invited to serve on the committee. The list merely indicates parties that DOT has tentatively identified as representing significantly affected interests in the outcome of the proposed rule. This document gives notice of this process to other potential

participants and affords them the opportunity to request representation in the negotiations. The procedure for requesting such representation is set out below. In addition, comments and suggestions on this tentative list are invited.

The Department is aware that there are many more potential participants, whether they are listed here or not, than there are membership slots on the committee. We do not believe, nor does the NRA contemplate, that each potentially affected group must participate directly in the negotiations. What is important is that each affected interest be adequately represented. To have a successful negotiation, it is important for interested parties to identify and form coalitions that adequately represent significantly affected interests. These coalitions, to provide adequate representation, must agree to support, both financially and technically, a member to the committee whom they will choose to represent their "interest." Those selected, it should be noted, represent one or more interests, not just themselves or their organizations.

It is very important to recognize that interested parties who are not selected to membership on the committee can make valuable contributions to this negotiated rulemaking effort in any of several ways:

- The person or organization could request to be placed on the committee mailing list, submitting written comments, as appropriate;
- Any member of the public could attend the committee meetings, caucus with his or her interest's member on the committee, and, as provided in FACA, speak to the committee. Time will be set aside during each meeting for this purpose, consistent with the committee's need for sufficient time to complete its deliberations; or
- The person or organization could assist in the work of a workgroup that might be established by the committee.

Informal workgroups are usually established by an advisory committee to assist the committee in "staffing" various technical matters (e.g., researching or preparing summaries of the technical literature or comments on particular matters such as economic issues) before the committee so as to facilitate committee deliberations. They also might assist in estimating costs and drafting regulatory text on issues associated with the analysis of the costs and benefits addressed, and formulating drafts of the various provisions and their justification previously developed by the committee. Given their staffing function, workgroups usually consist of

participants who have expertise or particular interest in the technical matter(s) being studied.

E. Applications for Membership

Each application for membership or nomination to the committee should include:

- (i) the name of the applicant or nominee and the interest(s) such person would represent;
- (ii) evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposes to represent; and
- (iii) a written commitment that the applicant or nominee would participate in good faith.

Please be aware that each individual or organization affected by a final rule need not have its own representative on the committee. Rather, each interest must be adequately represented, and the committee should be fairly balanced.

F. Good Faith Negotiation

Committee members should be willing to negotiate in good faith and have the authority from his or her constituency to do so. The first step is to ensure that each member has good communications with his or her constituencies. An intra-interest network of communication should be established to bring information from the support organization to the member at the table, and to take information from the table back to the support organization. Second, each organization or coalition should, therefore, designate as its representative an official with credibility and authority to insure that needed information is provided and decisions are made in a timely fashion. Negotiated rulemaking efforts can require a very significant contribution of time by the appointed members for the duration of the negotiation process. Other qualities that are very helpful are negotiating experience and skills, and sufficient technical knowledge to participate in substantive negotiations.

Certain concepts are central to negotiating in good faith. One is the willingness to bring all issues to the bargaining table in an attempt to reach a consensus, instead of keeping key issues in reserve. The second is a willingness to promote and protect the ability of the committee to conduct its negotiations. Finally, good faith includes a willingness to move away from the type of positions usually taken in a more traditional rulemaking process, and instead explore openly with other parties all ideas that may emerge from the discussions of the committee.

¹² Section 7212(b)(4)(B).

G. Notice of Establishment

After evaluating comments received as a result of this Notice, the Department will issue a notice announcing the establishment and composition of the committee. After the committee is chartered, the negotiations will begin.

H. Administrative Support and Meetings

Staff support will be provided by the Department. Meetings are currently expected to take place in Washington, DC.

I. Notice of Proposed Rulemaking

The committee's objective will be to prepare a report, consisting of its consensus recommendations for the regulatory text of a draft notice of proposed rulemaking. This report may also include suggestions for the NPRM preamble, regulatory evaluation, or other supplemental documents. If the committee cannot achieve consensus on some aspects of the proposed regulatory text, it will, pursuant to the "ground rules" the committee has established, identify in its report those areas of disagreement, and provide explanations for any disagreement. The Department will use the information and recommendations from the committee report to draft a notice of proposed rulemaking and, as appropriate,

supporting documents. Committee recommendations and other documents produced by the committee will be placed in the rulemaking docket.

In the event that the Department's NPRM differs from the committee's consensus recommendations, the preamble to an NPRM addressing the issues that were the subject of the negotiations will explain the reasons for the decision to depart from the committee's recommendations.

Following the issuance of NPRM and comment period, the Department will prepare and provide to the committee a comment summary. The committee will then be asked to determine whether the committee should reconvene to discuss changes to the NPRM based on the comments.

J. Committee Procedures

Under the general guidance of the facilitator, and subject to legal requirements, the committee will establish detailed procedures for the meetings. The meetings of the committee will be open to the public. Any person attending the committee meetings may address the committee if time permits or file statements with the committee.

K. Record of Meetings

In accordance with FACA requirements, the facilitator will prepare

summaries of all committee meetings. These summaries will be placed in the public docket for this rulemaking.

L. Tentative Schedule

The Department is seeking to convene the first of the committee's meetings by the last week of March 2005. The date and exact location of that meeting will be announced in the agency's notice of establishment of the advisory committee. Meetings are expected to last approximately three and a half days each. The negotiation process will proceed according to a schedule of specific dates for subsequent meetings that the committee devises at its first meeting. We will publish a single notice of the schedule of all future meetings in the **Federal Register**, but will amend the notice through subsequent **Federal Register** notices if it becomes necessary to do so. The interval between meetings will be approximately two weeks.

The first meeting will commence with an overview of the regulatory negotiation process conducted by the facilitator.

Issued this 17th day of February, 2005, in Washington, DC.

Jeffrey A. Rosen,

General Counsel.

[FR Doc. 05-3458 Filed 2-17-05; 4:26 pm]

BILLING CODE 4910-62-P

**APPENDIX E:
FEDERAL REGISTER NOTICE OF MEETING SCHEDULE**

Negotiated Rulemaking on
Minimum Standards for Driver's Licenses and Personal Identification Cards
Final Convening Assessment Report
Susan Podziba & Associates
April 15, 2005

Drug Paraphernalia**§ 102-41.210 What are some examples of drug paraphernalia?**

Some examples of drug paraphernalia are:

- (e) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (b) Water pipes;
- (c) Carburetion tubes and devices;
- (d) Smoking and carburetion masks;
- (e) Roach clips (objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand);
- (f) Miniature spoons with level capacities of one-tenth cubic centimeter or less;
- (g) Chamber pipes;
- (h) Carburetor pipes;
- (i) Electric pipes;
- (j) Air-driven pipes;
- (k) Chillums;
- (l) Bongs;
- (m) Ice pipes or chillers;
- (n) Wired cigarette papers; or
- (o) Cocaine freebase kits.

§ 102-41.215 Do we report to GSA all forfeited, voluntarily abandoned, or unclaimed drug paraphernalia not required for official use?

No, only report drug paraphernalia that has been seized and forfeited for a violation of 21 U.S.C. 863. Unless statutorily authorized to do otherwise, destroy all other forfeited, voluntarily abandoned, or unclaimed drug paraphernalia. You must ensure the destruction is performed in the presence of two witnesses (employees of your agency), and retain in your records a signed certification of destruction.

§ 102-41.220 Is drug paraphernalia forfeited under 21 U.S.C. 863 available for transfer to other Federal agencies or donation through a State agency for surplus property (SASP)?

Yes, but GSA will only transfer or donate forfeited drug paraphernalia for law enforcement or educational purposes and only for use by Federal, State, or local authorities. Federal or SASP requests for such items must be processed through the General Services Administration, Property Management Branch (3FPD), Washington, DC 20407. The recipient must certify on the transfer document that the drug paraphernalia will be used for law enforcement or educational purposes only.

§ 102-41.225 Are there special provisions to reporting and transferring drug paraphernalia forfeited under 21 U.S.C. 863?

Yes, you must ensure that such drug paraphernalia does not lose its identity as forfeited property. Reports of excess and transfer documents for such drug paraphernalia must include the annotation that the property was seized and forfeited under 21 U.S.C. 863.

§ 102-41.230 May SASPs pick up or store donated drug paraphernalia in their distribution centers?

No, you must release donated drug paraphernalia directly to the donee as designated on the transfer document.

§ 102-41.235 May we sell forfeited drug paraphernalia?

No, you must destroy any forfeited drug paraphernalia not needed for transfer or donation and document the destruction as specified in § 102-41.215.

[FR Doc. 05-6101 Filed 3-28-05; 8:45 am]

BILLING CODE 6820-14-S

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****49 CFR Subtitle A**

[Docket No. OST-2005-20434]

Negotiated Rulemaking Advisory Committee on Minimum Standards for Driver's Licenses and Personal Identification Cards

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of meetings of advisory committee.

SUMMARY: This document sets forth the schedule for the meetings of the Negotiated Rulemaking Advisory Committee on Minimum Standards for Driver's Licenses and Personal Identification Cards. Pursuant to section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004, the Office of the Secretary, DOT, is establishing a committee to develop, through negotiated rulemaking procedures, recommendations for minimum standards to tighten the security for driver's licenses and personal identification cards issued by States, in order for these documents to be accepted for use by Federal agencies for any official purpose, including identification, a given time after the final rule goes into effect. The committee will consist of persons who represent the interests affected by the proposed rule, i.e., State offices that

issue driver's licenses or personal identification cards, elected State officials, the Departments of Transportation and Homeland Security, and other interested parties.

DATES: Meetings of the committee will take place on the dates listed below under **SUPPLEMENTARY INFORMATION**. All meetings are open to the public.

ADDRESSES: The committee's meetings will take place at the locations listed below under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Office of the General Counsel, at (202) 366-9310 (bob.ashby@dot.gov), or Steve Wood, Assistant Chief Counsel for Vehicle Safety Standards and Harmonization, Office of the Chief Counsel, National Highway Traffic Safety Administration, (202) 366-2992 (steve.wood@nhtsa.dot.gov). Their mailing addresses are at the Department of Transportation, 400 7th Street, SW, Washington DC, 20590, rooms 10424 and 5219, respectively.

SUPPLEMENTARY INFORMATION: On December 17, 2004, the President signed into law the Intelligence Reform and Terrorism Prevention Act of 2004. (Public Law 108-458). Title VII of that Act is known as the 9/11 Commission Implementation Act of 2004 (the 9/11 Act). Subtitle B of the 9/11 Act addresses terrorist travel and effective screening. Among other things, Subtitle B, section 7212, mandates the issuance of minimum standards for State-issued driver's licenses and personal identification cards (Section 7212) that will be accepted by Federal agencies for official purposes.

Section 7212 directs the Department of Transportation to issue rules with the assistance of a negotiated rulemaking advisory committee, composed of representatives of the Departments of Transportation and Homeland Security, State agencies that issue driver's licenses, State elected officials, and other interested parties.

To carry out this requirement, the Department recently published a notice of intent to form this advisory committee, consistent with the standards of the Federal Advisory Committee Act (FACA) and Negotiated Rulemaking Act (NRA). See 70 FR 8756, February 23, 2005. The comment period for this notice extends through March 25, 2005. During the comment period, the Department will file a charter for the committee with the General Services Administration, and the convener will begin contacting potential participants.

After evaluating comments received as a result of the February 23 notice, the Department will issue a notice announcing the establishment and composition of the committee.

The statutory timetable for this rulemaking is short. Section 7212 of the Intelligence Reform and Terrorism Act specifies that the recommendations of the negotiated rulemaking committee must be submitted to the Secretary of Transportation no later than 9 months after the date of enactment, *i.e.*, by September 17, 2005. Section 7212 further specifies that the Secretary must issue a final rule establishing the minimum standards no later than 18 months after the date of enactment, *i.e.*, by June 17, 2006. To meet these deadlines, the Department must begin, in the very near future, a very compressed schedule of regulatory negotiation meetings. The Department has scheduled five meetings on the following dates:

Meeting 1: April 19–21, 2005.

Meeting 2: May 10–13, 2005.

Meeting 3: May 31, June 1–3, 2005.

Meeting 4: June 21–24, 2005.

Meeting 5: July 12–15, 2005.

The meetings will take place in the Department of Transportation headquarters building, 400 7th Street, SW., Washington, DC 20590, in Room 2230. Meetings are scheduled to begin at 9 a.m. and conclude at 5:30 p.m.

The meetings of the committee are open to the public (unless portions of the meeting are held in closed session, as provided under FACA). Attendance will necessarily be limited by the size of the meeting room. Members of the public wishing to attend meetings held in Department of Transportation buildings or other Federal facilities will have to enter through designated security checkpoints.

The visitor entry point for the Department of Transportation headquarters building is in the southwest corner entrance to the building (*i.e.*, the entrance nearest the corner of 7th and E Streets, SW.). Visitors must be escorted into and out of the building. Because it can take some time for large numbers of visitors to process through security, we request that visitors arrive between 8:30 and 8:45 a.m. to undergo the screening process. DOT personnel will then escort groups of visitors to the meeting room. This group escort process will also be followed for persons entering following the lunch break and for persons leaving the building for lunch and at the end of each day's meeting.

As a general matter, the committee will make one hour available for public comments on the Wednesdays of each

meeting from 2–3 p.m. Individuals wishing to address the committee should sign up on the public comment sign-in sheet before lunch and the time available will be reasonably divided among those who have signed up, but no one will have more than 15 minutes even if less than 4 people have signed up. Written comments and reports can be given to the facilitator for distribution to the committee members. Persons wanting to present written materials to the committee should make enough copies for all committee members.

The agenda topics for the meetings will include, but not necessarily be limited to, discussion of the following issues:

1. Documentation required as proof of identity of an applicant for a driver's license or personal identification card, including the scope of personal identification cards covered by the requirement.

2. Verifiability of documents used to obtain a driver's license or personal identification card.

3. Processing of applications for driver's licenses and personal identification cards to prevent fraud.

4. Information to be included on each driver's license or personal identification card.

5. Common machine-readable identity information to be included on each driver's license or personal identification card, including defined minimum data elements.

6. Security standards to ensure that driver's licenses and personal identification cards are—(i) resistant to tampering, alteration, or counterfeiting; and (ii) capable of accommodating and ensuring the security of a digital photograph or other unique identifier.

7. Requirement that a State confiscate a driver's license or personal identification card if any component or security feature of the license or identification card is compromised.

8. Requirement that rules facilitate communication between the chief driver licensing official of a State, an appropriate official of a Federal agency and other relevant officials, to verify the authenticity of documents, as appropriate, issued by such Federal agency or entity and presented to prove the identity of an individual.

9. Ensuring that standards do not infringe on a State's power to set criteria concerning what categories of individuals are eligible to obtain a driver's license or personal identification card from that State.

10. Prohibition on requiring a State to comply with any such regulation that conflicts with or otherwise interferes

with the full enforcement of State criteria concerning the categories of individuals that are eligible to obtain a driver's license or personal identification card from that State.

11. Prohibition on requiring a single design to which driver's licenses or personal identification cards issued by all States must conform.

12. Procedures and requirements to protect the privacy rights of individuals who apply for and hold driver's licenses and personal identification cards.

13. Assessment of the benefits and costs of the recommendations.

The committee may alter this schedule, including the agenda items. The agenda topics presented in this notice are necessarily very general since the direction and nature of the advisory committee discussions will shape each subsequent meeting. The Department may issue additional notices, as needed, with respect to changes in the schedule or agenda topics.

Issued this 22nd day of March, 2005, at Washington, DC.

Jeffrey A. Rosen,
General Counsel.

[FR Doc. 05–6167 Filed 3–24–05; 2:43 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 15

RIN 1018–AH89

Importation of Exotic Wild Birds Into the United States; Notice of Reopening of Comment Period on the Proposed Rule To Add Blue-Fronted Amazon Parrots From Argentina's Sustainable-Use Management Plan to the Approved List of Non-Captive-Bred Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We, the Fish and Wildlife Service (Service), give notice that we are reopening the comment period on the proposed rule to add blue-fronted amazon parrots (*Amazona aestiva*) from Argentina's sustainable-use management plan to the approved list of non-captive-bred (wild-caught) species under the Wild Bird Conservation Act of 1992 (WBCA). We are reopening the public comment period to enter into the record Dr. Jorge Rabinovich's 2004 study, "Modeling the Sustainable Use of the Blue-Fronted Parrot (*Amazona aestiva*) in the Dry Chaco Region of

**Appendix G: Agenda of the April 19-21, 2005
Meeting**

U.S. Department of Transportation, in consultation with
U.S. Department of Homeland Security

Negotiated Rulemaking Advisory Committee on Minimum Standards for
State-Issued Driver's Licenses and Personal Identification Cards
(DL/ID Reg Neg Committee)

Preliminary Meeting
U.S. Department of Transportation Headquarters
400 7th Street, SW
Washington, DC
April 19-21, 2005
9:00 AM – 5:30 PM

Agenda

DAY 1: Tuesday, April 19, 2005

- 9:00 Welcome and Opening Remarks – U.S. Department of Transportation**
Tyler Duvall, Acting Assistant Secretary for Transportation Policy
- 9:15 Opening Remarks – U.S. Department of Homeland Security**
Elaine Dezenski, Acting Assistant Secretary for Policy & Planning, Border & Transportation Security
- 9:30 DL/ID Reg Neg Committee Introductions**
Name, Affiliation
Goals and key concerns regarding Minimum Standards for State-Issued Driver's Licenses and Personal Identification Cards
- 10:00 Introductory Remarks -- National Commission on Terrorist Attacks Upon the United States (The 9/11 Commission)**
Lee Hamilton, Vice Chair, 9/11 Commission and President and Director, Woodrow Wilson International Center for Scholars
- 10:15 U.S. Department of Transportation Team Leaders – Introductions and Roles of by Acting Assistant Secretary Tyler Duval:**
Legal Team: Robert Ashby, Deputy Assistant, General Counsel for Regulation and Enforcement, Office of the General Counsel, U.S. Department of Transportation

Regulatory Evaluation Team: John V. Wells, Chief Economist, U.S. Department of Transportation

Privacy Impact Team: Margaret Alston, Privacy Consultant for Chief Information Officer, Office of the Secretary of Transportation, and

Elizabeth Withnell, Chief Counsel, Privacy Office, U.S. Department of Homeland Security

10:30 §7212(b)(2) of the 9/11 Act: Statutory Framework for Negotiated Rulemaking
Robert C. Ashby, Deputy Assistant, General Counsel for Regulation and Enforcement, Office of the General Counsel, U.S. Department of Transportation

11:00 Break

11:15 Overview of the Negotiated Rulemaking Process
Susan Podziba, Public Policy Mediator, Susan Podziba & Associates

11:30 Ground Rules
Develop ground rules to govern activities of the DL/ID Reg Neg Committee

12:30 Lunch

1:45 Ground Rules (cont'd.)

4:00 List of Issues
Review the list of issues that must be addressed to develop minimum standards for State-Issued Driver's Licenses and Personal Identification Cards
Identify the issues embedded within each statutory requirement to determine the scope of the negotiations

5:30 Conclude Day 1

DAY 2: Wednesday, April 20, 2005

9:00 Overview of Document Security
Presentation by Mr. Greg Dalzell and Jeffrey Payne, Forensic Document Analysts, U.S. Secret Service, Department of Homeland Security

10:00 Overview of Privacy Issues
Presentation by Nuala O'Connor Kelly, Chief Privacy Officer, U.S. Department of Homeland Security

10:30 Driver's License Issuance Process of the State of Colorado
Debora Jerome, Systems Administrator and Project Coordinator for Driver Licensing, State of Colorado

11:00 Break

11:15 Discussion of Issues

12:45 Lunch

2:00 Public Comment

3:00 Discussion of Issues (cont'd.)

5:30 Conclude Day 2

Day 3: Thursday, April 21, 2005

9:00 Logistics

Confirm schedule of future meetings – dates and location

E-mailing documents

Identify additional information needs

Requests for Expert Presentations

As additional needs arise

9:30 Discussion of Issues (cont'd.)

12:30 Lunch

1:45 Discussion of Issues (cont'd.)

5:00 Next Steps

Draft meeting summary

Revised Ground Rules

Draft text, if applicable

Other

5:30 Conclude Meeting

**Appendix H: Slides for Overview of Negotiated
Rulemaking**

**Negotiated Rulemaking Advisory Committee
on Minimum Standards for State-Issued Driver's
Licenses and Personal Identification Cards
(DL / ID Reg Neg Committee)**

Overview of the Negotiated Rulemaking Process

Preliminary Meeting
U.S. Department of Transportation in consultation with
U.S. Department of Homeland Security
Washington, DC
April 19, 2005

Susan L. Podziba
Public Policy Mediator
Brookline, MA 02445
www.podziba.com

Goal, Approach, & Outcome of Reg Neg

Goal: Develop regulations that achieve intended public policy goals while limiting unintended negative consequences and costs

Approach: Convene balanced group of stakeholders with relevant expertise and / or experience to deliberate on issues, interests, and concerns relative to regulation

Outcome: Consensus Regulatory Text for Notice of Proposed Rulemaking (NPRM)

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4/19/05

Negotiations

- **Preliminary Issues:**
 - ground rules, agenda of issues, schedule
- **Series of Substantive Meetings:**
 - focused agenda of issues with facilitated communications
 - identify interests, generate options, decisions
 - written agreement is final product
- **Between meeting activities**

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4/19/05

Consensus Decision Rule

- **Principles of Consensus**
 - General agreement or accord
 - Consent versus support
 - Enlightened self interest
- **Responsibilities of Team Members**
 - Articulate opinions and concerns
 - Assist in developing solutions to satisfy your objectives
 - Consent to livable proposals
 - Block consensus for serious objections
 - Maintain ongoing contact with constituents / superiors

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4/19/05

Negotiations: Substantive Meetings

- DL / ID Reg Neg Committee develops agreements in concept
- DOT drafts language to reflect agreements in concept
- Committee reviews and revises draft language, as necessary to achieve consensus

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4/1905

Negotiations: Substantive Meetings

- Tentative agreements reached on easy issues; discuss and table others
- Discuss unresolved issues; reach tentative agreements on moderate issues; identify difficult issues
- Focus on difficult issues; begin to trade off across issues valued differently
- Discuss final outstanding issues; develop final packages for closure

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Easy, Moderate, Difficult Issues

- Conflicts of confusion
- Conflicts of interests
- Conflicts of values

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Between Meetings

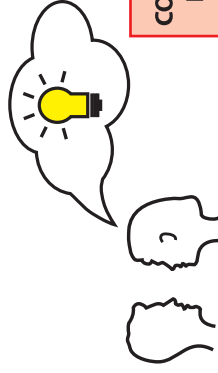
- Work Groups to develop proposals
- Ongoing communications among negotiators
- Two-way feedback between negotiators and constituents
- Federal internal decision making process

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4/1905

NEGOTIATED RULEMAKING ON MINIMUM STANDARDS FOR STATE-ISSUED DRIVER'S LICENSES & PERSONAL IDENTIFICATION CARDS (SECTION 7212 OF THE 9/11 ACT)

U.S. Department of Transportation in consultation with U.S. Department of Homeland Security

CONVENING ASSESSMENT

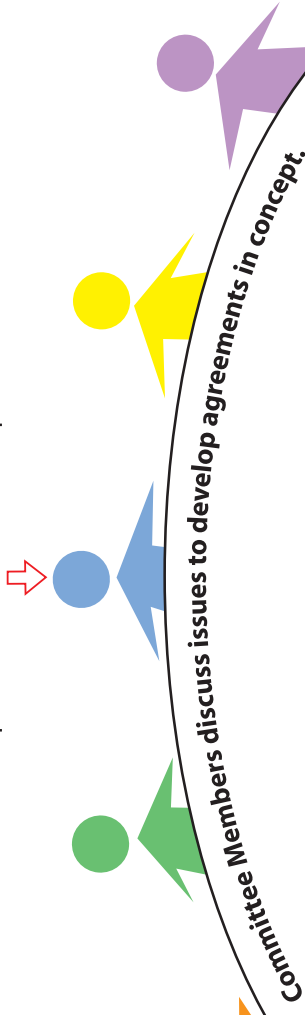
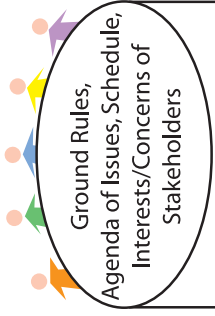


Interviews with Representatives of Stakeholder Groups

CONVENING REPORT

NEGOTIATIONS: SERIES OF MEETINGS

PRELIMINARY MEETING



If successful,
CONSENSUS ON NOTICE OF PROPOSED RULEMAKING

FEDERAL PARTNERS MEET, FEDERAL NEGOTIATING TEAM MEETS

NEGOTIATORS CHECK IN WITH CONSTITUENTS/SUPERIORS

WORK GROUPS TO DEVELOP PROPOSALS

CAUCUSES

ON-GOING COMMUNICATIONS BETWEEN FACILITATORS/NEGOTIATORS AND AMONG NEGOTIATORS



**Appendix I: Ground Rules of DL/ID Reg Neg
Committee**

**U.S. Department of Transportation, in consultation with
U.S. Department of Homeland Security**

**Negotiated Rulemaking Advisory Committee on Minimum Standards for
State-Issued Driver's Licenses and Personal Identification Cards
(DL/ID Reg Neg Committee)**

Ground Rules

I. Mission Statement

The U.S. Department of Transportation (DOT), in consultation with the U.S. Department of Homeland Security (DHS), has established the Negotiated Rulemaking Advisory Committee on Minimum Standards for State-Issued Driver's Licenses and Personal Identification Cards (DL/ID Reg Neg Committee) to develop a proposed rule to establish minimum standards for driver's licenses and personal identification cards as required under §7212 of the 9/11 Commission Implementation Act of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law No. 108-458).

The DL/ID Reg Neg Committee will complete its proposed regulatory language by July 15, 2005.

II. Participation

- A. The DL/ID Reg Neg Committee consists of the following members:
- Alabama Department of Public Safety, Driver License Division
 - American Association of Motor Vehicle Administrators
 - AAA
 - American Civil Liberties Union
 - Center For Democracy and Technology
 - Florida Department of Highway Safety and Motor Vehicles
 - Information Technology Association of America
 - Industry Advisory Board to AAMVA
 - International Association of Chiefs of Police
 - National Conference of State Legislatures
 - National Governors Association
 - National Immigration Law Center
 - New York State Department of Motor Vehicles
 - Texas Department of Public Safety
 - U.S. Department of Homeland Security
 - U.S. Department of Transportation

- B. Each DL/ID Reg Neg Committee member shall identify a principal negotiator and an alternate, if necessary. Negotiators will represent the member for purposes of determining consensus. Alternates will serve as negotiators in the absence of the principal negotiator. Alternates are expected to be fully knowledgeable of organizational interests related to issues under discussion.
- C. The DL/ID Reg Neg Committee may, by consensus, recommend that the Secretary of Transportation add members if it determines that there are unrepresented interests relative to the issues to be addressed in the proposed rule. If so, the Secretary or his designee will consider the recommendation of the committee. No new members will be recommended after April 21, 2005.
- D. The DL/ID Reg Neg Committee may, by consensus, invite experts to address the committee.

III. Decision Making

- A. The DL/ID Reg Neg Committee will make every effort to reach unanimity on all issues related to the proposed regulatory text, meaning that there is no dissent by any member. However, if additional discussions are not likely to lead to unanimous consent, the DL/ID Reg Neg Committee will consider consensus to have been reached when there is no dissent by more than one non-federal DL/ID Reg Neg Committee member. If there is dissent by DOT or DHS, the DL/ID Reg Neg Committee will not consider consensus to have been reached. Absence or abstention will be equivalent to not dissenting. Upon the request of a dissenter to an agreement, DOT will include the dissenter's reasons for dissenting in the preamble of the proposed rule.
- B. Work groups may be designated by the DL/ID Reg Neg Committee, by consensus, to address specific issues or to develop proposals. Work groups are not authorized to make decisions for the full DL/ID Reg Neg Committee. Work groups may include and/or access experts, who are not members of the DL/ID Reg Neg Committee, as needed.

IV. Agreement

- A. All consensus agreements reached during the negotiations will be assumed to be tentative until members of the DL/ID Reg Neg Committee reach final consensus on regulatory language. Once final consensus is achieved, DL/ID Reg Neg Committee members may not thereafter withdraw from the consensus.
- B. If the DL/ID Reg Neg Committee reaches a final consensus agreement on rule text for all issues, DOT will use this consensus-based language as the rule text

proposed by the agency for notice and comment and DL/ID Reg Neg Committee members will refrain from providing formal written negative comments on the consensus-based regulatory language published in the Federal Register, except as provided in paragraph IV D.

- C. If the DL/ID Reg Neg Committee reaches a final consensus agreement on some but not all issues, DOT will include the consensus-based language in its proposed standard, and the DL/ID Reg Neg Committee members agree to refrain from providing formal written negative comments on the consensus-based language published in the Federal Register, except as provided in paragraph IV D.
- D. DOT will not alter the DL/ID Reg Neg Committee's final consensus regulatory language in its proposed standard unless DOT reopens the negotiated rulemaking process or provides to the DL/ID Reg Neg Committee members a detailed statement of the reasons for altering the consensus-based language. This written explanation will be provided to the DL/ID Reg Neg Committee members sufficiently in advance of publication of the proposed standard so as to provide the DL/ID Reg Neg Committee members with an opportunity to express their concerns to DOT. If DOT alters consensus-based language, it will identify such changes in the preamble to the proposed standard, and the DL/ID Reg Neg Committee members may provide formal written negative or positive comments on those changes and on other parts of the proposed standard to which that issue was "linked," or, if significantly altering the intent of the regulation, the entire regulation.

V. Committee Meetings

- A. The facilitation team will draft meeting summaries to maintain a clear and reliable record of tentative and final agreements reached during the negotiation process. After review and approval by the DL/ID Reg Neg Committee, meeting summaries will be certified by the designated federal official and made available to the public.
- B. To the extent practicable, DOT will distribute documents to the DL/ID Reg Neg Committee at least 5 days in advance of the meetings.
- C. DL/ID Reg Neg Committee members will communicate their interests and concerns to each other. They will present proposals and counter proposals in an effort to address those interests and concerns.
- D. A DL/ID Reg Neg Committee member may request a caucus (a private meeting of a subset of the Committee) for consultation at any time.

- E. The facilitation team will be responsible for preparing the agenda for each meeting in consultation with the DL/ID Reg Neg Committee members.
- F. All DL/ID Reg Neg Committee meetings, but not caucuses or working groups, will be open to the public.

VI. Safeguards for Members

- A. Any member may withdraw from the negotiations at any time by notifying DOT in writing.
- B. All members shall act in good faith in all aspects of these negotiations, including comments to the media on agreed-upon regulatory text.
- C. Members will maintain contact with constituencies throughout the negotiations to obtain feedback on proposals and to provide information on proposals and tentative agreements reached.
- D. Contact with the media should generally be limited to discussion of the overall objectives and progress of the negotiations. If an article appears that categorically misquotes or inaccurately represents a member's position, that member should so inform DL/ID Reg Neg Committee.

VII. Meeting Facilitation

- A. Facilitation services will be provided by Susan Podziba & Associates. The facilitation team will support the deliberative process of the DL/ID Reg Neg Committee and will be responsible for helping to manage the negotiated rulemaking process, developing meeting agendas, preparing and distributing meeting summaries, which will provide a record of agreements, and helping the parties resolve their differences and achieve consensus on the issues to be addressed.
- B. The facilitation team will be available to facilitate all meetings of the full DL/ID Reg Neg Committee and will facilitate caucuses and work groups, as necessary.
- C. The facilitation team is obligated to keep verbal communications confidential if requested by a DL/ID Reg Neg Committee member to do so.

Appendix J: List of Issues to be Negotiated

**U.S. Department of Transportation, in consultation with
U.S. Department of Homeland Security**

**Negotiated Rulemaking Advisory Committee on Minimum Standards for
State-Issued Driver's Licenses and Personal Identification Card
(DL/ID Reg Neg Committee)**

Preliminary List of Issues (per §7212(b)(2) of the 9/11 Act)

1. Documentation required as proof of identity of an applicant for a driver's license or personal identification card
2. Verifiability of documents used to obtain a driver's license or personal identification card
3. Processing of applications for driver's licenses and personal identification cards to prevent fraud
4. Information to be included on each driver's license or personal identification card
5. Common machine-readable identity information to be included on each driver's license or personal identification card, including defined minimum data elements
6. Security standards to ensure that driver's licenses and personal identification cards are — (i) resistant to tampering, alteration, or counterfeiting; and (ii) capable of accommodating and ensuring the security of a digital photograph or other unique identifier
7. Requirement that a State confiscate a driver's license or personal identification card if any component or security feature of the license or identification card is compromised
8. Requirement that rules facilitate communication between the chief driver licensing official of a State, an appropriate official of a Federal agency and other relevant officials, to verify the authenticity of documents, as appropriate, issued by such Federal agency or entity and presented to prove the identity of an individual
9. Ensuring that standards do not infringe on a State's power to set criteria concerning what categories of individuals are eligible to obtain a driver's license or personal identification card from that State
10. Prohibition on requiring a State to comply with any such regulation that conflicts with or otherwise interferes with the full enforcement of State criteria concerning

the categories of individuals that are eligible to obtain a driver's license or personal identification card from that State

11. Prohibition on requiring a single design to which driver's licenses or personal identification cards issued by all States must conform
12. Procedures and requirements to protect the privacy rights of individuals who apply for and hold driver's licenses and personal identification cards
13. Assessment of the benefits and costs of the recommendations.

**Appendix K: Meeting summary of the April 19-21,
2005 Meeting**

**U.S. Department of Transportation, in consultation with
U.S. Department of Homeland Security**

**Negotiated Rulemaking Advisory Committee on Minimum Standards for
State-Issued Driver's Licenses and Personal Identification Cards**

Meeting Summary – April 19-21, 2005

Welcome and Opening Remarks – U.S. Department of Transportation (DOT)

Tyler Duvall, Acting Assistant Secretary for Transportation Policy, DOT, welcomed the members of the Negotiated Rulemaking Advisory Committee on Minimum Standards for State-Issued Driver's Licenses and Personal Identification Cards (DL/ID Reg Neg Committee) and thanked them for agreeing to assist in the development of standards to increase the security of driver's licenses and personal identification cards (DL/IDs).

Opening Remarks – U.S. Department of Homeland Security (DHS)

Elaine Dezenski, Acting Assistant Secretary for Policy & Planning, Border & Transportation Security, DHS, emphasized the importance of increasing security without limiting the legitimate movement of people and commerce within the U.S. Ms. Dezenski said that this could be accomplished by limiting the number and types of documents that individuals can use to establish their identity and by requiring the verification of those documents in the minimum standards. She stated that DHS is statutorily prohibited from creating a national ID and is not looking to create a centralized national database of DL/ID records. Ms. Dezenski also stated that the requirements for obtaining DL/IDs should not be made easier for those without legal presence in the U.S. than for U.S. citizens.

DL/ID Reg Neg Committee Introductions

All members of the DL/ID Reg Neg Committee who were present introduced themselves and identified their key concerns and interests relative to the minimum standards.

Introductory Remarks -- National Commission on Terrorist Attacks Upon the United States (The 9/11 Commission)

Congressman Lee Hamilton, Former Vice Chair of the 9/11 Commission and currently President and Director of the Woodrow Wilson International Center for Scholars, described the security implications of the 9/11 Commission recommendation for minimum standards for DL/IDs. He stated that the nation is counting on the members of the DL/ID Reg Neg Committee to work to improve national security by securing DL/IDs, and he challenged them to reach consensus recommendations, as did the 9/11 Commission, despite strong differences of opinion.

U.S. Department of Transportation Team Leader Introductions

Acting Assistant Secretary Tyler Duvall introduced the leaders of the DOT Legal, Regulatory Evaluation, and Privacy Impact Teams that will support the Committee's deliberations.

Statutory Framework for Negotiated Rulemaking

Robert Ashby, Deputy Assistant, General Counsel for Regulation and Enforcement, Office of the General Counsel, DOT, discussed §7212(b)(2) of the 9/11 Act and highlighted some of the sub-issues embedded in the statutory language, which outlines the issues the minimum standards must address.

Overview of the Negotiated Rulemaking Process

Susan Podziba, Public Policy Mediator, Susan Podziba & Associates, provided an overview of the negotiated rulemaking process. She explained that DL/ID Reg Neg Committee discussions will focus on seeking agreements in concept and, ultimately, consensus regulatory language for all issues of the minimum standards.

Overview of Document Security

Greg Dalzell and Jeffrey Payne, Forensic Document Analysts, U.S. Secret Service, Department of Homeland Security, presented on the technologies and methods used to secure DL/IDs. They described the need for three levels of DL/ID security features: those that can be detected without the aid of equipment, features that can be scrutinized with relatively simple and widely available equipment, and others that can only be detected forensically. Though they do not expect to completely eliminate counterfeit documents by employing such security features, they view these features as a means for limiting counterfeiting to only those who are well-funded and sophisticated, and who would then become the focus of law enforcement investigations.

Overview of Privacy Issues

Nuala O'Connor Kelly, Chief Privacy Officer, U.S. Department of Homeland Security, described the responsibilities of the DHS Privacy Office and emphasized the right of the public to be free from government intrusions into its privacy except when there is a clear and justifiable public policy goal to do otherwise. In such cases, as with regards to the minimum standards, the public must be informed of the personal data to be collected, stored, used, and the means for protecting against unauthorized release.

Driver's License Issuance Process of the State of Colorado

Debora Jerome, Division of Motor Vehicles, State of Colorado Department of Revenue, presented on Colorado's driver's license and personal identification issuance process, including training, confiscation, card security, and other measures taken to increase the security of the issuance process and the DL/ID document.

Ground Rules

DL/ID Reg Neg Committee members reviewed, revised, and reached consensus on ground rules that will govern the activities of the DL/ID Reg Neg Committee throughout the negotiated rulemaking process. The ground rules are a set of voluntary agreements among the members of the DL/ID Reg Neg Committee. The ground rule issues discussed most intensively included the deadline for completing work, decision rule, adding new members, and good faith negotiations.

Deadline: The DL/ID Reg Neg Committee committed to complete its work by July 15, 2005, the last day of the last scheduled meeting, given the statutory deadline of September 17, 2005 for delivery of its report to the Secretary containing its recommendations on minimum standards for DL/IDs and associated support documents, including a cost benefit analysis.

Decision Rule: The DL/ID Reg Neg Committee agreed to consider that consensus is achieved when there is no dissent by more than one non-federal negotiator, or in other words, there is consent by DOT, DHS, and all but one DL/ID Reg Neg Committee member among those present. This decision resulted from concerns that a unanimous decision rule could lead to a one-person veto of a proposal supported by all other members, the recognition that federal agencies cannot be expected to promulgate a rule they do not support, and that given the small size of the committee (16 members), dissent by more than one member would allow whole categories of stakeholders to be outside the agreement.

Adding Members: DL/ID Reg Neg Committee members decided that it will not recommend new committee members to the Secretary after April 21, 2005 (the last day of its first meeting) given its deadline for completing its work. However, experts will be invited, by consensus, to provide information to the members and to serve on work groups to develop proposals for the Committee to consider. Such experts will not be members of the Committee.

A DL/ID Reg Neg Committee member proposed the addition of a member from a state that does not have explicit or implicit legal presence requirements for issuing DL/IDs. There was no consensus to add such a member, but there was consensus to invite a person from such a state to provide a presentation on that state's issuance process, documentation requirements, and means for ensuring the validity of foundation documents. In addition, during discussions of adding a new member from this category of stakeholders, members stated that they were committed to hearing all opinions on issues related to the minimum standards and did not intend to use the minimum standards to "back-in" to a legal presence requirement for states, given that §7212(b)(2) of the 9/11 Act specifically states that the minimum standards cannot infringe on state eligibility requirements.

Good Faith: The Committee discussed the need for all members to commit to negotiate in good faith, meaning that they will all act to support the creation of consensus minimum standards. Good faith negotiations were discussed in the context of interactions with the media, such that members will not attempt to negotiate through the media, but rather through genuine interactions with members at and between meetings.

Electronic Verification of Vital Events Presentation

Jim Wright of NHTSA, presented on the Electronic Verification of Vital Events (EVVE) pilot program for verifying DL/ID applicants' birth certificates. This program, currently operating in eight states, utilizes a National Association for Public Health Statistics and

Information Systems (NAPHSIS) hub to process queries of electronic state birth certificate records.

Overview of the AAMVA Security Framework and the Driver's License Agreement

Linda Lewis-Pickett, Michael Calvin, Jay Maxwell, and Rich Carter, all of the American Association of Motor Vehicle Administrators (AAMVA), presented on the AAMVA Security Framework. States that voluntarily comply with the Security Framework work to meet a set of requirements and are encouraged to follow a set of recommendations regarding DL/ID card security and issuance processes, including rules for protecting privacy. Kevin O'Brien, Director of Motor Carrier and Driver Safety Services, New York State Department of Motor Vehicles, and Chair of the Compact Executive Board presented on the Driver's License Agreement (DLA), which combines the purposes of the Driver's License Compact (DLC) and the Non-Resident Violators Compact (NRVC). A key goal of the DLA is to create a system whereby there is one license for one identity in one jurisdiction.

Review and Discussion of Issues

DL/ID Committee members discussed all the statutory issues identified in §7212(b)(2) of the 9/11 Act related to the minimum standards. The key discussion points concerning each issue are summarized below.

Issue #1: Documentation required as proof of identity of an applicant for a driver's license or personal identification card and

Issue #2: Verifiability of documents used to obtain a driver's license or personal identification card: Discussions of these two issues were linked after the DL/ID Reg Neg Committee found that the acceptability of foundation documents is dependent on their verifiability. The central question discussed was how to take an individual through the process of establishing identity for the purposes of obtaining a DL/ID. First, an individual claims an identity, DL/ID issuing agencies then verify that identity through the documentation provided, and tie the individual to that identity. The overall sense of the DL/ID Reg Neg Committee is that the current system must be improved to significantly reduce opportunities for fraud and error as related to acceptance of counterfeit foundation documents, prevent the acceptance of legitimate documents from individuals who are not the person identified by the documents, and deny opportunities for individuals to establish multiple identities in different jurisdictions.

Documentation: The DL/ID Reg Neg Committee discussed various approaches to establishing documentation requirements for foundation documents, including the development of a list of specific acceptable documents, creating a universe of acceptable documents, some number of which an applicant would need to provide, or more generally, requiring that foundation documents meet certain standards related to verifiability to be acceptable for establishing identity. There was also discussion about what to include in the minimum standards and what to leave to the states. For example, the minimum standards will include requirements for verifiable documentation to establish identity, but may not address document requirements for

establishing state residence. In addition, members discussed the number of documents required to establish identity.

Immigration: There was an understanding that the current complexity of immigration documents will create challenges for the development of minimum standards and that the statutory prohibition against limiting states' eligibility criteria, which is linked to the issue of establishing legal presence, presents an even greater challenge to the committee.

Changes to identity data: Committee members pointed to the reality that names change, and even gender can change, thus creating another set of challenges for using particular foundation documents to establish identity.

Next Steps: The Committee decided to review existing lists of documents that are currently accepted by states throughout the country. In addition, Committee members requested panel presentations on documentation requirements of a state that does not require legal presence of DL/ID applicants, domestic immigration documents, and foreign documents for establishing identity in the DL/ID issuance process. Committee members also requested information about which documents are most difficult to verify.

Verification: According to DL/ID Reg Neg Committee discussions, verification is multi-faceted in that it is linked to determining the authenticity of documents presented, including verification of the authenticity of the document and that it was issued by the appropriate issuing authority; verification of documented identity; training required for state departments of motor vehicles (DMV) employees to confirm the validity of the documents presented and to identify counterfeit documents; and the privacy and civil liberties issues raised by possible options, such as creating interoperability among a range of state and federal databases. The minimum standards are expected to address all of these elements. Finally, verification requirements may have an impact on waiting times at motor vehicle offices or, for states where DL/IDs are centrally issued, the wait time between applying for and receiving the document.

Authenticity of Documents Presented: The discussion of the authenticity of the documents presented led to a realization that many foundation documents are not yet secured. For example, birth certificates are issued by thousands of hospitals across the country, many of which do not have electronic records. Congress has required the creation of standards for securing birth certificates, and a pilot program (EVVE) exists to provide electronic verification of birth certificates, but the Committee will have to grapple with a system that does not currently provide total verification of currently accepted foundation documents. It will have to work to identify means for determining that a document has not been tampered.

Verification of True Origin: The Committee discussed possible ways to determine if a document was legitimately issued by an official issuing agency to the individual presenting it. For example, a check of the Social Security On-Line Verification

(SSOLV) database can confirm whether or not the Social Security Administration (SSA) issued a certain social security number to a particular individual. The goal of such verification is independent identification of the document by the document's source. Verification of true origin poses many of the same challenges as verification of document authenticity, given the current status of on-line databases. Some members stated that the use of on-line databases to check immigration status presents serious challenges.

Verification of Documented Identity: The DL/ID Reg Neg Committee discussed the need to be able to confirm that the person in possession of legitimate documents is the person identified by those documents. This may be linked to "tying" a set of scanned documents to an individual such that once that identity is established and "tied down" through a documentation trail, it cannot be assumed by any other individual. The question of biometrics, including some states' fingerprint requirements, was also raised during this discussion.

Training: The DL/ID Reg Neg Committee members agreed that training for DMV employees is a key component of verifying foundation documents for the issuance of DL/IDs, given that DMV employees are the ones who must ascertain the validity of the documents they look at and touch. According to AAMVA studies, a majority of states currently provide training in fraudulent document recognition to their staff. Such training programs range from one to forty hours.

Privacy and civil liberties issues: According to DL/ID Reg Neg Committee members, many of the means available to verify documentation and identity involve databases and technological interoperability, which lead to privacy questions such as what data is collected and retained, for what stated purposes, who has access to it, and what protections are in place against unauthorized access and misuse of the information. In addition, Committee members suggested that the potential scale of the data collected and retained introduces the potential for consequential error. Some members asserted that the possibility of such error would require due process rules and procedures to address errors and avoid denial of DL/IDs to eligible applicants.

Issue #3: Processing of applications for driver's licenses and personal identification cards to prevent fraud: The Committee discussed the following four elements of the issuance process that need to be addressed to prevent fraud in the processing of DL/ID applications: employees of issuing agencies, security of the system, privacy and security of handling foundation documents, and redundancy.

Employees of issuing agencies: To protect against fraud in the issuance process, Committee members discussed creating minimum requirements for DMV employee hiring processes, for example, some states conduct background criminal checks of potential employees; minimum training requirements, for example, for identifying fraudulent documents as described in Issue #2 above; monitoring of employees, for example, through audits and reviews; and a system of rewards such as for

identifying fraud in an applicant's documentation, and sanctions, including prosecution for criminal activity such as misuse of data and providing a DL/ID to a non-eligible applicant.

Security of the system for issuing the DL/ID document: The Committee discussed ways of securing the systems that create the DL/ID document including the materials such as paper and laminates as well as the computers and technology. There have been many incidents of theft of materials both by employees and by identity theft rings, some of whom have driven trucks through the outside walls of DMV buildings to steal the means for creating seemingly legitimate DL/IDs. One option discussed was to register or control source materials so that they can be tracked if stolen, and it can be made known to law enforcement and DMVs that DL/IDs made from those materials are illegitimate. In addition, the Committee discussed differences in the security of central issue versus over-the-counter systems and suggested that the minimum standards should include different requirements for each system.

Privacy and security of handling foundation documents: The Committee discussed the paper trail of foundation documents. One issue discussed centered around whether or not to retain scanned images of such documents, and if so, the period of retention; allowable uses, for example, additional law enforcement purposes; protections against unauthorized use or release of the information; and means for informing applicants of the retention procedures.

Redundancy: As with requirements for documentation and verification of documents, the DL/ID Reg Neg Committee discussed the need for multiple layers of protection in the issuance process to ensure that there does not exist one point of failure, which can be identified and targeted.

Issue #4: Information to be included on each driver's license or personal

identification card: The Committee discussed statutory requirements and additional information to be included on the DL/ID. The discussion of statutory requirements led to questions about photos and addresses. The additional items included height, weight, common identifiable feature, and other features.

Photo: The Committee discussed the need for a specific requirement to have the photo visible on the DL/ID, not only as machine-readable data. There was some discussion regarding religious prohibitions against photographs or publicly revealing one's face.

Address: Committee members discussed possible exceptions to the address requirement such as for law enforcement officials, judges, and domestic violence victims, and considered the possibility of including the primary address, in such instances, only as machine-readable data. A Committee member agreed to compile existing state statutes and procedures concerning such exceptions for distribution to

Committee members. The DOT legal team will determine if such exceptions are allowable under the statute.

Height and weight: Committee members discussed inclusion of a licensee's height and weight on the DL/ID as additional means for determining that the person presenting a DL/ID for identification is the person to whom the license was issued. Given the potential variability of weight, the Committee requested information regarding current state practices of inclusion of height, weight, and eye and hair color on DL/IDs.

Common identifiable feature: The DL/ID Reg Neg Committee discussed a requirement for including a common identifiable feature for all licenses to enable law enforcement to determine if a license presented is legitimate. It was stated that such a common feature should not be dependent upon personal data. Some members raised the concern that such a feature would attract a great deal of attention from counterfeiters.

Other features: The Committee discussed including requirements for additional elements such as license class, restrictions (such as corrective lenses) license issue date, revision date (the version of the license issued by the state), expiration date, and inventory control number in order to identify fraudulently issued or created DL/IDs.

An additional feature discussed was the inclusion of the individual's fingerprints on the DL/ID, as is currently required by a small number of states. The discussion focused on the use of templates, rather than actual images of fingerprints, given that templates cannot be used to recreate the actual image; proprietary issues related to algorithms; interoperability issues; and privacy concerns. Some members stated that currently the infrastructure and technology needed to handle useable databases of fingerprints does not exist. Members also raised concerns about the vulnerability of fingerprints to ID theft, use by law enforcement, and actual useability during traffic stops.

Issue #5: Common machine-readable identity information to be included on each driver's license or personal identification card, including defined minimum data elements: The inclusion of machine-readable identity information is a means to minimize opportunities for counterfeiting DL/IDs and to increase the possibility of identifying counterfeit documents. During its discussions, the Committee discussed the information to be stored, method of storage, access to stored information, and associated costs for machine-readable technologies.

Information to be stored: DL/ID Reg Neg Committee members generally agreed that the machine-readable information to be stored should include the information that is visible on the DL/ID and additionally, stock numbers and inventory control numbers for tracing stolen or compromised DL/ID materials. Some members also

suggested including primary addresses for persons using human-readable secondary addresses for safety reasons.

Method of storage: The Committee discussed a number of technical options including the 2-D bar code, magnetic stripe, optical stripe, smart card, and RFID chip, and decided to organize a technical expert panel on machine-readable technologies for its next meeting. The Committee discussed specifying functions rather than a particular technology, but then realized that all jurisdictions will need to use a common technology to ensure readability across state lines.

Access to stored information: The Committee generally agreed that DMVs and law enforcement should have access to stored information on DL/IDs, but some members raised concerns about retailer access and ability to retain and sell such information. The issue was discussed in terms of whether or not access and retention by third parties violates the Drivers Privacy Act or if, by showing the face of the DL/ID, the DL/ID holder consents to a third party's reading, retaining and possibly, selling that information. Committee members discussed possibilities of encryption and limiting access to only particular data fields.

Associated costs for machine-readable technologies: Some members reminded the DL/ID Reg Neg Committee of the limited state resources for implementation of the minimum standards. Some members wanted to discuss the best available technologies without regard to cost and then identify resources for implementation; others suggest that the Committee limit its discussion to low cost technologies.

Issue #6: Security standards to ensure that driver's licenses and personal identification cards are — (i) resistant to tampering, alteration, or counterfeiting; and (ii) capable of accommodating and ensuring the security of a digital photograph or other unique identifier. The Committee discussed the need for security standards that protect against alterations to legitimate DL/IDs such as changing the year of the birth date; substitutions of data fields such as photos or signatures; counterfeiting of documents by amateurs; and counterfeiting by professionals. After a presentation on the AAMVA Security Framework, members considered adopting AAMVA's recommendation of six security features including one forensic, one common visible feature, and some combination of an additional four overt and covert features. Committee members will review the AAMVA Security Framework's supporting documents to gain an increased understanding of this recommendation.

Issue #7: Requirement that a State confiscate a driver's license or personal identification card if any component or security feature of the license or identification card is compromised. The Committee discussed the confiscation of compromised DL/IDs in terms of the definition of "compromised," authority to confiscate DL/IDs, and procedures for drivers of confiscated DL/IDs. Members recognized that states have different regulations regarding DL/ID confiscation, and a member agreed to provide information concerning state confiscation procedures.

Definition of “compromised” DL/ID: The DL/ID Reg Neg Committee discussed four different instances in which a DL/ID card may be considered compromised: physical damage, for example, parts of the card are not visually or machine-readable; incorrect information, for example, the person presenting the card does not match the data listed on the card; tampering such that elements of the card, for example the photo or signature, have been changed; and counterfeiting whereby the document appears legitimate, but was created illegally. Some members reminded the Committee that issuing agencies and law enforcement personnel often must make quick determinations of whether a DL/ID has been compromised.

Authority to confiscate: It was the general sense of the DL/ID Reg Neg Committee that law enforcement has the authority to confiscate compromised documents and return them to the issuing authority. Committee members discussed whether the statute requires and/or allows state issuing agencies and other state agencies, such as state bureaus of alcohol, to confiscate compromised DL/IDs.

Committee members also discussed challenges related to confiscating out-of-state DL/IDs, including knowledge of the security features and signs of tampering specific to a particular state’s card, and the need for procedures to notify the home state issuing agency of the confiscation.

Procedures for drivers of confiscated DL/IDs: According to DL/ID Reg Neg Committee members, states impose a variety of constraints on drivers when confiscating DL/IDs, for example, drivers may be issued a temporary 48-hour license, or if fraud is identified, in some states, the driver may be arrested for possessing a tool of crime. In addition, some states confiscate the “right to drive” without physically confiscating the document. Some members raised concerns about providing notification and recourse for individuals whose licenses are invalidated.

Issue #8: Requirement that rules facilitate communication between the chief driver licensing official of a State, an appropriate official of a Federal agency and other relevant officials, to verify the authenticity of documents, as appropriate, issued by such Federal agency or entity and presented to prove the identity of an individual:

DL/ID Reg Neg Committee members discussed the statutory requirements for state-federal communication and for communication among states. Although some members understood this requirement to primarily concern state-federal relations, Committee members generally viewed the clarification of requirements for data sharing among states as a critical component of document verification and determination of one record for one individual for one jurisdiction. The DL/ID Reg Neg Committee discussed interstate data queries, privacy and data misuse, error and redress, and feasibility.

Interstate data queries: DL/ID Reg Neg Committee members discussed a system that would enable states to query an index of other states’ DL/ID databases to verify an existing state license presented or to check if another state license exists for an applicant. Based on a limited set of data fields (such as applicant name and date of birth), queries would “point” to records in any other state that matched the

applicant's data fields. The issuing state would then need to request the applicant's records from states indicating matches; the data could not be accessed automatically, and states would retain control over their data.

Privacy and data misuse: A number of concerns were raised regarding a query system, including authorized access to records, data to be searched, data to be provided based on a query, and authorized purposes for data queries. Some members support a query system to prevent individuals from holding multiple records; others expressed concern about "function creep."

Error and redress: A system in which applicants could be denied a DL/ID based on a database search raised due process concerns for some Committee members. The Committee discussed the consequences for multiple matches for common names, clerical error, and identity theft as well as a need to provide a means for individuals to view and challenge their data records.

Feasibility: Committee members identified a number of potential obstacles to establishing a state-linked query system, including cost of implementation, availability of technological capacity for an index pointing to almost 300 million DL/ID records, and potential time demands during the issuing process. Some Committee members emphasized the security benefit of maintaining separate, state-level databases rather than aggregating the data in a national format, which would create a target of great value to terrorists and identity thieves.

Issue #9: Ensuring that standards do not infringe on a State's power to set criteria concerning what categories of individuals are eligible to obtain a driver's license or personal identification card from that State: DL/ID Reg Neg Committee members discussed and understood this issue as a prohibition against setting minimum standards that would result in the exclusion of any category of individuals that a state determines to be eligible for its DL/ID. Some Committee members noted that "categories of individuals" is not limited to the issue of legal presence, but referred to all categories of applicants considered eligible by states. It is expected that this issue will be primarily addressed by Issues #1 and #2 concerning acceptable foundation documents and their verifiability.

Issue #10: Prohibition on requiring a State to comply with any such regulation that conflicts with or otherwise interferes with the full enforcement of State criteria concerning the categories of individuals that are eligible to obtain a driver's license or personal identification card from that State: It is expected that this issue will be addressed by restating the statutory text in the regulatory text.

Issue #11: Prohibition on requiring a single design to which driver's licenses or personal identification cards issued by all States must conform: Committee members discussed whether the definition of "single design" included a single set of design specifications or the concept of uniform zones on the card. The general sense among members was that the minimum standards cannot specify a single DL/ID format to be

required by all states. It is also the understanding of the DL/ID Reg Neg Committee that this issue will likely require regulatory text that mirrors the statutory text.

Issue #12: Procedures and requirements to protect the privacy rights of individuals who apply for and hold driver's licenses and personal identification cards: DL/ID

Reg Neg Committee members discussed their intention to apply this statutory requirement to each issue under the minimum standards, including to provisions governing the use and sharing of personal data. Some Committee members identified the AAMVA framework guidelines as a starting point for discussions on privacy provisions.

Issue #13: Assessment of the benefits and costs of the recommendations: The DL/ID Reg Neg Committee members expect to consider costs and benefits of proposed recommendations throughout their deliberations. The regulatory evaluation team will develop cost estimates for the Committee as requested, and will incorporate Committee input into the cost benefit analysis for the minimum standards. Some Committee members will look to the cost benefit analysis as a tool for seeking Congressional funding for implementation of the minimum standards.

Public Comment

Joe Sanders, Director of Motor Vehicle Business Development, Digimarc, offered the assistance of Digimarc and the Document Security Alliance in providing technical expertise to the DL/ID Reg Neg Committee.

Logistics

The Committee discussed the logistical issues of schedule of meetings, sending and receiving documents, background readings and documents, and informational panels.

Schedule of Meetings: The DL/ID Reg Neg Committee will meet on the following dates in 2005: May 10-13, May 31 and June 1-3, June 21- 24, and July 12-15. Each meeting day will begin at 9:00 AM (EDT) and end at 5:00 PM, except on Fridays, meetings will end at 1:00 PM.

Sending and receiving documents: Documents will be provided electronically prior to meetings to Committee members and alternates. Documents available to the public will be placed in the Department of Transportation docket and may be downloaded at <http://dms.dot.gov/search/searchFormSimple.cfm>. The Docket Number is 20434.

Background Information: DL/ID Reg Neg Committee members requested the following background information:

- State exceptions to the requirement of displaying primary addresses on DL/ID cards (to be provided by CDT);
- Use of height, weight, eye color, and hair color by states as identifiers on DL/IDs (to be provided by AAMVA);
- Confiscation procedures of states (to be provided by AAMVA);

- State security clearance procedures and requirements for DMV employees (to be provided by AAMVA);
- AAMVA Security Framework Appendices (to be provided by AAMVA);
- Driver's License Agreement (to be provided by AAMVA);
- Definitions of terms related to identity management (to be provided by ITAA); and
- Document Security Alliance report on card security features (to be provided by Industry Board to AAMVA).

Informational Panels: DL/ID Reg Neg Committee members requested informational panels on:

- U.S. immigration documents used as foundation documents in the DL/ID issuance process;
- foreign documents for use in the DL/ID issuance process;
- issuance processes and documentation requirements of states without a legal presence requirement; and
- machine-readable technologies.

Committee members were asked to assist in identifying experts for each of these panels.

Traffic Safety Caucus: A caucus will be held by conference call for members of the DL/ID Reg Neg Committee who have specific safety questions and concerns relative to the minimum standards. The purpose of the call will be to identify safety implications and opportunities provided by the minimum standards.

Next Steps

Documents: The facilitators will distribute revised ground rules, a draft meeting summary, and a draft agenda prior to the May 10-13 meeting. Either the facilitators or the organization providing the information will distribute the requested background documents.

List of Documents Provided to the DL/ID Reg Neg Committee

Meeting Agenda
 Committee Meeting Dates
 List of Advisory Committee Members and Alternates
 Committee Charter
 Committee Ground Rules
 List of Issues to be Negotiated
 Negotiated Rulemaking Overview Slides
 Federal Register Meeting Notice
 Federal Register Notice of Intent to Negotiate
 Section 7212 of the 9/11 Act
 Selected Intelligence Reform Bill Sections (7211, 7213, 7214)
 Negotiated Rulemaking Act of 1996 as amended
 Federal Advisory Committee Act Amendments
 Driver's License Fact Sheet

Overview of Driver's License Agreement
Overview of AAMVA DL/ID Security Framework
Table-Information on Driver's Licenses
Table-Document Required to Prove Identity, AAMVA
Reliable Identification for Homeland Protection and Collateral Gains, Executive Summary, Markle Foundation
List of U.S. Resources used as breeder documents to provide various data elements for driver's licenses or personal identification, AAMVA
DL/ID Security Framework, AAMVA
DL/ID Security Framework Executive Summary, Survey of the States on Implementation of Driver's License and Identification Card Reform, AAMVA
Minimum Security standards for the Handling and Issuance of Machine Readable (and other) Passports (Recommended Standard Practices for the World's Governments), G-8 Lyon/Roma Group
Paper on Electronic Verification of Vital Events (EVVE), National Association for Public Health Statistics and Information Systems

Attendance[□]

Members

Michael Balboni, New York State Senator, National Conference of State Legislatures
Major Robert Burroughs, Texas Highway Patrol Division, Texas Department of Public Safety
Elaine Dezenski, Acting Assistant Secretary for Policy & Planning, Border & Transportation Security Directorate Department of Homeland Security
LTC (Ret.) Billy Dickson, HSMV/TSA Liaison, Florida Department of Highway Safety and Motor Vehicles
Matthew Dunlap, Secretary of State, State of Maine, National Governors Association
Tyler Duvall, Acting Assistant Secretary, Office of the Assistant Secretary for Transportation Policy, Department of Transportation
Joan Friedland, Immigration Policy Attorney, National Immigration Law Center
Barry Goleman, Chair of the Board, Industry Advisory Board to AAMVA
Linda Lewis-Pickett, President & CEO, American Association of Motor Vehicle Administrators
Raymond P. Martinez, Commissioner, State of New York Department of Motor Vehicles
Brendan M. Peter, Co-Chair of ID Management Subcommittee, Information Technology Association of America
Ari Schwartz, Associate Director, Center for Democracy and Technology
Barry Steinhardt, Director, Technology and Liberty Project, American Civil Liberties Union
Colonel Mark Trostel, Chief, Colorado State Patrol, International Association of Chiefs of Police
Elizabeth Vermette, Director of State Relations, AAA

[□] A list of the members of the public attending the meeting is on file with DOT.

Facilitators

Susan Podziba, Public Policy Mediator, Susan Podziba & Associates
Alexis Gensberg, Associate Mediator, Susan Podziba & Associates

Alternates

Judy Brown, Chief, Driver License Division, Texas Department of Public Safety
Michael Calvin, Senior Vice President, Programs Division, American Association of
Motor Vehicle Administrators
Cheye Calvo, Committee Director, Transportation Standing Committee National
Conference of State Legislatures
Jonathan Frenkel, Director, Law Enforcement Policy, Border & Transportation Security
Directorate Department of Homeland Security
John Hilliard, Deputy Commissioner of Operations, State of New York Department of
Motor Vehicles
Warren Hoemann, Deputy Administrator, Federal Motor Carrier Safety Administration,
Department of Transportation
Nolan Jones, Deputy Director, Office of Federal Relations, National Governors
Association
Jennifer Kerber, Director, Enterprise Solutions Division Information Technology
Association of America
Paul Luxion, VP, Sales & Marketing, OpSec ID Technologies, Industry Advisory Board
to AAMVA
Curt Terling, Information Technology Manager, Driver License Division, Alabama
Department of Public Safety
Patrice Vincent, Manager, Regulatory Affairs, AAA

Not present

Major Roscoe Howell, Chief, Driver License Division, Alabama Department of Public
Safety

**Appendix L: Draft Agenda for May 10-13, 2005
Meeting**

U.S. Department of Transportation, in consultation with
U.S. Department of Homeland Security

Negotiated Rulemaking Advisory Committee on Minimum Standards for
State-Issued Driver's Licenses and Personal Identification Cards
(DL/ID Reg Neg Committee)

Meeting Two
U.S. Department of Transportation Headquarters
400 7th Street, SW
Washington, DC
May 10-13, 2005
9:00 AM

DRAFT Agenda[□]

DAY 1: Tuesday, May 10, 2005

9:00 **Agenda Review**

9:10 **Document Review**

Final Review of Ground Rules
Review and Approve April 19-21 Meeting Summary

9:45 **Discussion of Issues**

Issue #3: Processing of applications for driver's licenses and personal identification cards to prevent fraud

Issue #4: Information to be included on each driver's license or personal identification card

Issue #5: Common machine-readable identity information to be included on each driver's license or personal identification card, including defined minimum data elements (*to be discussed immediately after related technical panel*)

Issue #6: Security standards to ensure that driver's licenses and personal identification cards are — (i) resistant to tampering, alteration, or counterfeiting; and (ii) capable of accommodating and ensuring the security of a digital photograph or other unique identifier

Issue #7: Requirement that a State confiscate a driver's license or personal identification card if any component or security feature of the license or identification card is compromised

[□] PLEASE NOTE THAT TIMES OF PANELS ARE SUBJECT TO CHANGE WHERE DETERMINATION OR CONFIRMATION OF PANELELISTS IS INDICATED,

Issue #8: Requirement that rules facilitate communication between the chief driver licensing official of a State, an appropriate official of a Federal agency and other relevant officials, to verify the authenticity of documents, as appropriate, issued by such Federal agency or entity and presented to prove the identity of an individual

Issue #9: Ensuring that standards do not infringe on a State's power to set criteria concerning what categories of individuals are eligible to obtain a driver's license or personal identification card from that State

Issue #10: Prohibition on requiring a State to comply with any such regulation that conflicts with or otherwise interferes with the full enforcement of State criteria concerning the categories of individuals that are eligible to obtain a driver's license or personal identification card from that State

Issue #11: Prohibition on requiring a single design to which driver's licenses or personal identification cards issued by all States must conform

Issue #12: Procedures and requirements to protect the privacy rights of individuals who apply for and hold driver's licenses and personal identification cards

Issue #13: Assessment of the benefits and costs of the recommendations

12:15 Lunch

1:30 Panel on Machine Readable Technologies

Jeremy Grant, Vice President, Maximus

Nick Tsougas or Anna Slomovic, Principal, SRA International

Robert Durst, Senior Vice President, Digimarc

Geoffrey Slagle, Intellicheck, and Chairman, ISO WG10

Panelists to be confirmed

3:00 Discussion of Issues (cont'd.)

5:00 Conclude Day

DAY 2: Wednesday, May 11, 2005

9:00 Discussion of Issues (cont'd.)

12:45 Lunch

2:00 Public Comment

3:00 Discussion of Issues (cont'd.)

5:00 Conclude Day 2

Day 3: Thursday, May 12, 2005

9:00 Discussion of Issues

Issue #1: Documentation required as proof of identity of an applicant for a driver's license or personal identification card and

Issue #2: Verifiability of documents used to obtain a driver's license or personal identification card

Committee Discussion of Documentation Framework: List of acceptable documents, universe of acceptable documents, and/or criteria for acceptability based on verifiability

10:15 **Presentation on documentation accepted for establishing identity for DL/ID issuance in states that do not require legal presence**

Presenter to be determined

11:00 Break

11:15 **Panel on Domestic Immigration Documents used to establish identity for DL/ID issuance**

Jim Hesse, Immigration and Customs Enforcement Forensic Document Laboratory (ICE FDL)

Renee Schaming, US Citizenship and Immigration Services (USCIS)

Margaret D. Stock, Associate Professor of Law in the Department of Law, United States Military Academy, West Point, New York and Lieutenant Colonel in the Military Police Corps, United States Army Reserve

Panelists to be confirmed

12:30 Lunch

2:00 Discussion of Issues #1 and #2 continued

3:45 **Presentation on Foreign Documents**

Presenter(s) to be determined

4:15 Discussion of Issues #1 and #2 continued

5:00 Conclude Day 3

Day 4: Friday, May 13, 2005

9:00 Logistics

Identify additional information needs
Requests for Expert Presentations
Other

9:30 Discussion of Issues (cont'd.)

12:30 Next Steps

Draft meeting summary
Revised Ground Rules
Draft text, if applicable
Other

1:00 Conclude Meeting