

# Big Brother: Homeland Security blinks on Real ID: No hassles on May 11

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In the long-running Real ID staring match, the U.S. Department of Homeland Security ended up being the first to blink.

Homeland Security announced Wednesday that all 50 states and the District of Columbia will be technically Real ID-compliant by the May 11, 2008 deadline- even though many states actually have rejected the concept and have zero plans to embrace a national ID card.

This means Americans will face no new hassles when using their drivers licenses to enter federal buildings or fly on airplanes starting on May 11. That's a good thing.

But the way this turned out is so odd it's worth repeating. States including New Hampshire, Maine, South Carolina, Oklahoma, Washington, and Montana have enacted laws saying "hell no we'll never comply with Real ID." And Homeland Security officials carefully ignored those public votes of condemnation, instead pretending that those states really intend to acquiesce by the next major deadline of December 31, 2009. (See our special report on Real ID from earlier this year.)

"Now they've got 18 months to actually finish the process of being able to issue the cards that will meet the requirements," Homeland Security Secretary Michael Chertoff told a small group of reporters and bloggers here on Wednesday. "We will have to watch this because the one thing that will be important is for a state not to be dilatory in completing the process."

That may have been a more serious threat a few years ago, when Chertoff was beginning his defense of the Real ID Act, which became law as part of a must- pass tsunami relief and Iraq emergency appropriations bill in 2005.

Now, however, state officials realize that Homeland Security is more likely to back down than not. The first sign of this came when the agency decided to treat a request for an extension past May 11 as a formal agreement to comply with all Real ID rules. The second came when Homeland Security retreated to its fallback position: even a symbolic gesture on the part of a governor amounted to full compliance.

A good example of this dynamic is what happened in the last few days involving Maine, a state that has rejected Real ID in no uncertain terms, and was the only will-have-trouble-at-

airports state as of this morning. Its legislation approved last year says that it “refuses to implement the Real ID Act and thereby protest the treatment by Congress and the president of the states as agents of the federal government.”

Maine nevertheless asked the feds not to penalize its travelers. Stewart Baker, Homeland Security assistant secretary for policy, replied in a letter that if Maine “is prepared to commit” to embracing Real ID by 5 p.m. on April 2, “we will grant an extension conditioned upon performance of these commitments.” (The commitments Baker requested include using a Homeland Security identity verification system, using facial recognition technology so someone can’t get two licenses, and so on.)

In response, Gov. John Baldacci, a Democrat, wrote back to Baker saying in part:

I will seek legislation to halt Maine’s current practice of issuing licenses to those not present lawfully in the United States.

I will submit legislation, which includes a funding source and appropriations, that will adopt three changes in Maine’s licensing processes:

Maine will enter into an agreement with USCIS and utilize the Systematic Alien Verification for Entitlements Program to verify DHS documents presented by non-citizens.

Maine will begin capturing and maintaining photographs of each individual applying for a license or state identification card, even if no license is issued.

It worked. Maine got a green check mark, and its licenses will continue to be valid for federal purposes after May 11—even though Baldacci was, for the most part, merely promising to introduce legislation. And the Maine legislators, who soundly rebuked the Bush administration by nearly unanimous votes last year, will be the ones to vote on it.

Last month, Montana took a similar approach. Its governor, Brian Schweitzer, a Democrat, has repeatedly denounced Real ID and even called on his counterparts (PDF) in other states to oppose it. But Homeland Security dutifully accepted a relatively hostile letter from Schweitzer—saying he will never “authorize implementation of the Real ID Act”—as good enough.

Now that the May 11 deadline has become effectively meaningless, the next major deadline is December 31, 2009, at which point Homeland Security currently says it will require “certification that the state has achieved the benchmarks set forth in the Material Compliance Checklist.”

In political terms, that’s a long time—and a new presidential administration—away. Some opponents of Real ID are already predicting that no state will actually comply with the deadline, or, alternatively, the next administration will find a way to quietly dispose of Real ID without much fanfare.

“DHS is not in power here,” said Jim Harper, the director of information policy studies at the free-market Cato Institute. “The states are in power. DHS has done all it could, but from a position of weakness...DHS put the best face it could on its capitulation to states with backbone. A lot more states will recognize that they own this issue, they control this debate.”

News.com's Anne Broache contributed to this report from Washington, D.C

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