

United States Senate

WASHINGTON, DC 20510-4502

December 18, 2006

Office of Passport Policy
Planning and Advisory Services
Bureau of Consular Affairs
U.S. Department of State
2100 Pennsylvania Avenue, Northwest, Suite 300
Washington, D.C. 20037

RE: Comments of Senator Patrick Leahy to the Department of State Federal Register Notice, "Card Format Passport; Changes to Passport Fee Schedule," 22 CFR Parts 22 and 51, RIN 1400-AC22, Public Notice 5558

Docket ID: DOS-2006-0329
Agency: Department of State

To Whom It May Concern:

I am pleased to submit my comments on the Department of State's proposed rule concerning the Western Hemisphere Travel Initiative's ("WHTI") proposed passport alternative or PASS Card, as authorized in Public Law (P.L.) 108-458, the Intelligence Reform and Terrorism Prevention Act of 2004 ("IRTPA"), and as amended on October 4, 2006, by the Department of Homeland Security Appropriations Act, 2007 (P.L. 109-295).

I am deeply concerned that the Notice of Proposed Rule Making ("NPRM") published on October 17, 2006, does not acknowledge the amendment to the WHTI contained in P.L. 109-295. The Departments of Homeland Security and State have failed to incorporate into this proposed rule the statutory changes made to WHTI in P.L. 108-295, including a number of certifications that must be met before the WHTI may be fully implemented.

The statutory deadline for implementation of the WHTI is June 1, 2009. The Departments of State and Homeland Security may begin requiring a PASS Card prior to the June 1, 2009, date only after the Secretaries of these respective agencies make the required certifications as mandated in P.L. 109-295.

For example, one important certification in Section 546 of P.L. 109-295 requires that the National Institute of Standards and Technology ("NIST") certify, prior to implementation, "that the Departments of Homeland Security and State have selected a card architecture that meets or exceeds International Organization for Standardization (ISO) security standards and meets or

exceeds best available practices for protection of personal identification documents.” However, there is no mention of the requirement concerning certification by NIST in the proposed rule. I am concerned that the State Department has prematurely endorsed one card technology over another without securing the required NIST certification on a card architecture.

I strongly recommend that the Department of State withhold any endorsement or pre-judgment of a particular card technology until the NIST has provided its conclusions on the two competing technologies considered in the Proposed Rule.

The Proposed Rule fails to address another requirement that any technology ultimately agreed upon be shared with the governments of Canada and Mexico. In my view, apart from being required by law, this requirement will ensure as smooth an implementation as possible and will promote the inter-country cooperation and reciprocity necessary for the program’s success. I would welcome the State Department’s plans as to how this outreach will be accomplished and what it will entail.

I am also concerned that the NPRM does not address the requirement that the Departments develop alternative procedures for groups of chaperoned children crossing a land border. This requirement was intended to facilitate the secure and efficient cross-border travel of sports or school groups. This is of particular concern to Northern Border States, given the frequency with which scholastic athletic teams and other groups cross the Canadian border on field trips or other educational or civic-oriented activities. For many families and school districts, the requirement that PASS Cards be obtained for every child prior to a visit across the border will be unduly burdensome.

I recommend that the State Department develop a plan by which either the PASS Card fee, or the PASS Card requirement is waived for certain qualifying groups of chaperoned children who may be making a day-long trip across a land border. I am confident that the Departments of State and Homeland Security, working together, can ensure the secure cross-border travel of groups of these types using alternative procedures or existing documentation.

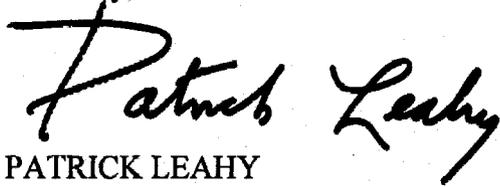
The proposed rule reduces the fee for a PASS card below the cost of a passport book. In addition, I recommend that the Departments develop a procedure by which low-income citizens may have the PASS Card fee waived. Although the cost of the PASS Card will be considerably lower than a passport, for many lower-income citizens whose livelihoods depend on regular travel across the land borders of the United States, this fee will be a significant burden.

I also ask for clarification on the PASS Card execution fee: If a Card holder renews a PASS Card after the ten-year period of validity expires, do the agencies intend to require a second execution fee upon renewal?

I look forward to reviewing the Departments of Homeland Security and State plans to move forward with a PASS card program that meets the requirements set forth in amendments to WHTI as provided in Section 546 of P.L. 109-295.

So that all parties involved may review the final changes that became law, I have included a copy of that section for publication in the public comment record.

Sincerely,

A handwritten signature in black ink that reads "Patrick Leahy". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

PATRICK LEAHY
U.S. Senator

Enclosure

* * *

Public Law 109-295

SEC. 546. Section 7209(b)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458; 8 U.S.C. 1185 note) is amended by striking from ‘(1) DEVELOPMENT OF PLAN- The Secretary’ through ‘7208(k).’ and inserting the following:

‘(1) DEVELOPMENT OF PLAN AND IMPLEMENTATION-

‘(A) The Secretary of Homeland Security, in consultation with the Secretary of State, shall develop and implement a plan as expeditiously as possible to require a passport or other document, or combination of documents, deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship, for all travel into the United States by United States citizens and by categories of individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(4)(B)). This plan shall be implemented not later than three months after the Secretary of State and the Secretary of Homeland Security make the certifications required in subsection (B), or June 1, 2009, whichever is earlier. The plan shall seek to expedite the travel of frequent travelers, including those who reside in border communities, and in doing so, shall make readily available a registered traveler program (as described in section 7208(k)).

‘(B) The Secretary of Homeland Security and the Secretary of State shall jointly certify to the Committees on Appropriations of the Senate and the House of Representatives that the following criteria have been met prior to implementation of section 7209(b)(1)(A)--

‘(i) the National Institute of Standards and Technology certifies that the Departments of Homeland Security and State have selected a card architecture that meets or exceeds International Organization for Standardization (ISO) security standards and meets or exceeds best available practices for protection of personal identification documents: Provided, That the National Institute of Standards and Technology shall also assist the Departments of Homeland Security and State to incorporate into the architecture of the card the best available practices to prevent the unauthorized use of information on the card: Provided further, That to facilitate efficient cross-border travel, the Departments of Homeland Security and State shall, to the maximum extent possible, develop an architecture that is compatible with information technology systems and infrastructure used by United States Customs and Border Protection;

‘(ii) the technology to be used by the United States for the passport card, and any subsequent change to that technology, has been shared with the governments of Canada and Mexico;

‘(iii) an agreement has been reached with the United States Postal Service on the fee to be charged individuals for the passport card, and a detailed justification has been submitted to the Committees on Appropriations of the Senate and the House of Representatives;

‘(iv) an alternative procedure has been developed for groups of children traveling across an international border under adult supervision with parental consent;

'(v) the necessary technological infrastructure to process the passport cards has been installed, and all employees at ports of entry have been properly trained in the use of the new technology;

'(vi) the passport card has been made available for the purpose of international travel by United States citizens through land and sea ports of entry between the United States and Canada, Mexico, the Caribbean and Bermuda; and

'(vii) a single implementation date for sea and land borders has been established.'