



STATE OF WASHINGTON
DEPARTMENT OF LICENSING
PO Box 9020 Olympia, Washington 98507-9020

CONCISE EXPLANATORY STATEMENT

WAC 308-104-0140 Marking of all nonenhanced drivers' licenses or identicards.

Public Hearings: May 8, 9, 10, 11, 22, & 23, 2018

Effective: July 1, 2018

Purpose of Rulemaking

This rulemaking is related to the marking of non-enhanced document issuances required by ESB 5008 enacted during the 2017 legislative session. It is in accordance with federal law that requires states meet federal REAL ID standards (6 C.F.R. Sec. 37.71).

Background:

In 2005, the U.S. Congress passed the REAL ID Act implementing recommendations from the 9/11 Commission Report. The REAL ID Act established standards for documents to be accepted by certain federal agencies and mandated states to meet the standards in order for the state-issued documents to be recognized for certain federal purposes. Lastly, the act allows states to issue non-compliant documents but they must have a distinct marking limiting its federal usage.

Washington State is using its current enhanced driver license and enhanced identification card as our REAL ID compliant document, therefore we are marking non-enhanced documents with a REAL ID compliant marking indicating its limited federal usage. This rulemaking establishes that compliant marking as "Federal Limits Apply."

Comment Period

The public comment period for this rulemaking began April 4, 2018 and ended May 24, 2018.

Summary of Comments Received on the Proposed Rules and Department Response

The department has analyzed all the comments received on the proposed rules and responses to these comments by category are listed below with the corresponding, paraphrased comment/question.

Changes to proposed language

The department did not make changes to the proposed language for the adoption because “Federal Limits Apply” was generally agreed upon by stakeholders; other suggestions either did not meet the intent of the Federal law or did not fit within the physical space limitations for text of Washington drivers’ licenses and identification cards.

Summary of all public comments received on this rule proposal and the agency’s response to those comments:

Comments	
Paraphrased Comment	Department response
<i>Related to “Federal Limits Apply” Marking</i>	
<ol style="list-style-type: none"> 1. “Federal Limits Apply” communicates nothing; suggests “Not valid Fed. ID”. <i>(No position – comments only)</i> Wording should be “Federal Restrictions Apply.” <i>(No position – comments only)</i> 2. “Federal Limits Apply” is preferable to a negatively phrased or broad marking; concerns with anti-immigrant rhetoric and policies at national level – recommends that DOL stop referring to standard documents as “non-enhanced” in order to prevent the presumption that standard documents are inferior; although the legislation includes that the marking cannot be used to infer citizenship it only applies at the state level so the federal 	<p>Thank you for the suggestions. The Department considered several options including, “Not valid for federal identification” but ultimately chose “Federal Limits Apply” for a few reasons. First, the available space on current Washington driver licenses and identification cards is limited. Second, while it is the case that standard documents will not be REAL ID compliant, there are instances where federal agencies/services will still be available for standard document holders. For example, you will still be able to use them at federal facilities that do not require a person to present identification to enter such as a U.S. post office or Social Security Administration building. You will still be able to use a standard ID card or driver license to apply for or</p>

agencies can continue – asks DOL to “carefully craft state regulations to limit or contain the possibility of de facto discrimination faced by residents who are members of a protected class.” *(No position – comments only)*

3. Supports above position, these cards should not be referred to as “non-enhanced” and there should be no discriminatory impact due to these changes. Washington agencies and law enforcement should not use standard documents for discrimination. *(No position – comments only)*

receive federal benefits, and others. The full list can be found on the Department of Homeland Security (DHS) website: <https://www.dhs.gov/real-id-public-faqs>.

Third, DHS must approve the marking on non-compliant documents and they have already approved “Federal Limits Apply” in other states, such as California.

To help Washington residents understand the meaning of “Federal Limits Apply,” we will be launching a public awareness campaign that focuses on educating the public about what those limits are (domestic air travel, access to secure Federal facilities, etc.) and the alternative options available for REAL ID compliance, such as a U.S. passport or passport card. Look for the campaign this summer, follow our social media accounts, and visit our website for up-to-date information.

Regarding reference to “non-enhanced” documents, the department will keep the WAC as it is written because it refers to all non-enhanced driver licenses and identification cards such as commercial driver licenses, restricted licenses, etc. However, we will continue to call the standard issued driver license and the standard identification card as such.

The department was provided authority to do rulemaking related to the marking of documents, but does not have oversight of agencies following the non-discriminatory clause of the legislation. However, DOL will continue to work with the Governor’s Office and impacted stakeholders as the State moves towards compliance and enforcement to ensure clear communication. During REAL ID presentations we include the

	non-discriminatory language from the legislation, we will continue to do so and clarify that it is applicable to the state.
<i>Comments related to REAL ID compliance</i>	
<ol style="list-style-type: none"> 1. Why is WA not complying with TSA/Homeland Security rules? Plastic ID is no more than a piece of paper to drive; has a WA driver license, US passport and passport card, and TSA pre-check so has done background check; wants everyone else traveling to have same checks/meet same requirements. <i>(Opposed)</i> 2. This is ridiculous; who's idea was it to issue driver's licenses not valid? Why not just comply with federal regulations so they can be legal identification. If a law change needs to happen then change the law. Change how driver's licenses are issued instead of adding disclaimer. <i>(Opposed)</i> 3. Why did Washington plan to make the enhanced documents, which are only available to U.S. citizens, the REAL ID option? DHS regulations allow lawful aliens to obtain a REAL ID document but Washington does not have this option so all Washington residents who are not citizens cannot get a state document to travel. Although legislation restricts state law enforcement from discriminating it doesn't do anything at federal level. Non-citizens who are still here legally will now be marked as non-citizens to the federal agencies. <i>(No position – comment only)</i> 	<p>This rulemaking is related to the marking of non-enhanced document issuances required by ESB 5008 enacted during the 2017 legislative session. It is in accordance with federal law that requires states meet federal REAL ID standards. Washington State plans to seek full compliance with the REAL ID Act in fall 2018. Washington's approach to compliance is to make the current enhanced documents REAL ID compliant and begin issuing standard documents with the marking. This approach to compliance was authorized by the Washington State Legislature. If you have a U.S. passport/passport card, TSA pre-check, or other federally acceptable document then you will be ready to travel after REAL ID enforcement begins in October 2020. For full information on documents TSA accepts please visit: https://www.tsa.gov/travel/security-screening/identification.</p>

Comments related to the cost of enhanced documents (out of scope)	
<ol style="list-style-type: none"> 1. Opposed to marking, all cards should be compliant with federal requirements – why should those wanting to be compliant have to pay more to fly; maybe make those non-compliant pay more – can't afford extras state passes onto them. <i>(No position – comments only)</i> 2. Generally agree with marking; should not have to pay more for an enhanced document. Charging more for federally compliant documents is backwards. <i>(In favor with concerns)</i> 3. Citizens should not have to pay more for an ID meeting federal minimum standards; enhanced cards should cost the same as standard. <i>(In favor with concerns)</i> 4. Issue is cost of enhanced documents; need to lower price so lower income families can comply. <i>(No position – comments only)</i> 5. Has been a resident for 52 years, always held a valid WA driver license which always served as valid identification; if next driver license is marked but is expected to pay more for an enhanced document to be valid will take State to small claims court to reimburse for costs because do not want to pay for the state to cater to illegal undocumented immigrants; taxes and prices on disabled low income are bad enough. <i>(Opposed)</i> 6. Make all Washington driver's licenses and identification cards comply with federal law and TSA. Makes no sense to charge citizens and residents extra for cards that do comply. <i>(Opposed)</i> 	<p>The enhanced documents can be used to cross international borders by land or sea and beginning October 2020 will be the state issued document accepted for domestic air travel. The enhanced documents and the REAL ID Act require verification of citizenship and identification documents that the standard documents do not. Additionally, they have longer retention periods for the source documents. The extra validation steps and retention periods cause an increase in staff time and access to verification systems.</p> <p>In the 2017 REAL ID legislation, the Washington State Legislature reduced the cost for enhanced documents with the intent of decreasing the financial burden on those wanting to travel but not wanting a U.S. passport/passport card or other federally accepted document.</p>

<p><i>Comments related to voting and accessing state programs (out of scope)</i></p>	
<ol style="list-style-type: none"> 1. Regarding voting, only WA residents should vote having established residency for at least 24 months. No one should collect food stamps or public assistance without being a resident - should have to go through screening process and testing to determine pay back. <i>(Opposed)</i> 2. WA driver licenses need to identify who is a legal voter; others should be described as temporary, non-citizen, etc.; too many vote who don't have a right to do so; People register to vote in many states but should only vote in state they live. <i>(In favor with concerns)</i> 	<p>When enrolling individuals in the motor voter program, the Department of Licensing follows Washington State voter registration legal requirements. These requirements are:</p> <ul style="list-style-type: none"> • A citizen of the United States; • A legal resident of Washington State and have lived at address for at least 30 days before election; • At least 18 years of age to vote; • Not under Department of Corrections supervision for a Washington felony conviction; and • Not disqualified from voting due to a court order. <p>You can find resources about voting from the Secretary of State's Office at https://www.sos.wa.gov/elections/.</p> <p>For more information about the Department of Social and Health Service's benefit programs please visit https://www.dshs.wa.gov/.</p>
<p><i>Comments related to driver license requirements and card design (out of scope)</i></p>	
<ol style="list-style-type: none"> 1. Generally agree, cards should be clearly identifiable as either REAL ID compliant or not; Washington should consider redesigning cards to include stars similar to other states; residents should be allowed to hold two forms of ID – one compliant the other not; marking should not imply immigration status. <i>(In favor with concerns)</i> 	<p>Washington recently redesigned State issued identification documents to improve security and make them more difficult to fraudulently duplicate. Additionally, the Department of Licensing follows state laws when registering individuals in the motor voter program. Beyond the REAL ID compliant marking, we are not considering redesigning the cards at this time to incorporate any changes, such as voter eligibility status.</p>

<ol style="list-style-type: none"> 2. Licenses should be clearly marked citizen or non-citizen; licenses for non-citizens should expire on same day as visa – if no visa then no license. <i>(No position – comments only)</i> 3. Proving citizenship with CDL endorsement should exempt from federal limitations stamp. <i>(No position – comments only)</i> 4. The issue is issuing drivers licenses to illegal who should not be offered a license for security reasons. Any driver license from any state should be legitimate form of ID at airport. Different licenses for identification, drivers licenses, CDL and enhanced is waste of money. Licenses should just have two sizes – under 18 or 21 and everyone else – with different ID on front and back. <i>(Opposed)</i> 5. This still allows illegals to get licenses; all DOL requires is pieces of addressed mail to prove an address and residency to obtain a license; Washington should not give licenses to illegals and fix the entire ID system. <i>(Opposed)</i> 6. Most citizens show proof of official records when applying for driver’s license; stop allowing non-citizens to get driver’s license. <i>(In favor)</i> 7. No driver license should be given to non-citizens. <i>(In favor with concerns)</i> 8. All for drivers licenses for citizens not illegal aliens. <i>(No position – comments only)</i> 9. Discriminates against legal American citizens. <i>(Opposed)</i> 10. This rule is not good for anyone from a community prospective, it hurts whole state and its liberty. <i>(Opposed)</i> 	<p>It is true the commercial driver’s license (CDL) endorsements require proof of legal permanent residence. Washington State’s approach to REAL ID, per the authorizing legislation, is to have the enhanced documents be the state’s REAL ID compliant document.</p> <p>This rulemaking is related to the marking of standard driver’s licenses or identification cards. The qualifications to receive driver’s licenses are not under consideration; those requirements are set in statute.</p>
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<p><i>Comments related to public hearing schedule</i></p>	
<ol style="list-style-type: none"> 1. Why were there no public hearings south of Thurston County? <i>(No position – comments only)</i> 2. Public hearings were not held in southwest Washington; all hearings held in Seattle/Olympia and Eastern Washington guaranteeing a biased audience. <i>(In favor with concerns)</i> 	<p>The Department of Licensing follows the rulemaking process set forth by the Administrative Procedures Act and the Office of the Code Reviser. Public hearings are conducted to ensure the public has an opportunity to participate in the government processes that impact them. We additionally accepted written comment from Washingtonians statewide between April 4 and May 24; this Concise Explanatory Statement is a result of all comments received.</p> <p>The rulemaking public hearing schedule decision was not easy; we are aware there were locations we did not visit. However, we are committed to communicating with everyone in the state regardless of geography. We will be launching a public awareness campaign this summer, as well as traveling within the state to provide education and updates. Look for the campaign this summer, follow our social media accounts, and visit our website for up-to-date information.</p>
<p><i>Generalized comments and questions</i></p>	
<ol style="list-style-type: none"> 1. Will standard driver licenses with expiration date of 2023 be given credit or refund when obtaining enhanced? <i>(In favor with concerns)</i> 2. For those with extended licenses currently, if it expires in July 2018 will they have to get a new license with a restriction until expiration in 7 years or will it get updated in September 2018? <i>(In favor with concerns)</i> 3. This is good new policy. <i>(In favor)</i> 4. Please consider adding more information to presentations related to REAL ID compliance such as: 	<ol style="list-style-type: none"> 1. No, the Department will not be issuing refunds. However, if you trade in a standard document for the enhanced version, you will only be charged the difference between the standard and enhanced documents for the remainder of time before the document expires. For example, if this year you replaced your standard driver license with the enhanced version, you will pay \$4 per year until it expires 2023, \$4/year x 5 years = \$20.

clarify that although the legislation prevents discrimination based on the marking at the state level it can still happen at the federal level; DOL should not provide misleading information and not put people at risk of detention, arrest, and potential deportation; DOL should uphold Governor's commitment per Executive Order 17-02; provided suggested talking points related to immigration for DOL to use in public presentations. *(No position – comments only)*

5. Law is unjust and will divide families; licenses are used to drive and passports used to fly, oppose because work really hard in agriculture and medicine – they are good and educated, this will hurt families. Constitution says there is justice for all so what will happen with this division. Federal government should take this into account. *(No position – comments only)*
6. Has lived in Washington for over 40 years, son is a 1st Sergeant but was deported by ICE when he was a child and now he is a federal employee. There are a lot of undocumented people who have kids serving the nation and we are working in the fields and this does not include those people. They are getting small pay and little gratitude. Instead of gratitude they are now called criminals and not treated fairly. They should be treated well and not discriminated against. Please be conscious of this. *(No position – comments only)*

2. If you have an enhanced document, you will not need to get a new document. On standard documents, you will see the REAL ID compliant marking on new issuances and renewals beginning July 1, 2018, but you do not need to request a new card – if your expiration is after this date you will get the new marking upon your next renewal.
3. Thank you for your comment.
4. Thank you for the feedback, the insight, and the talking points. We will continue to work with our stakeholders.
5. Thank you for your comment.
6. Thank you for your comment.