



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

**CONCISE EXPLANATORY STATEMENT**

**WAC 308-104-0150 Changing sex designation on a driver's license, instruction permit, or identification card**

Public Hearings: August 12-15, 2019

Effective: November 12, 2019

**Purpose of Rulemaking**

This rulemaking creates WAC 308-104-0150 to add "X" as a third gender designation option on state-issued driver licenses, instruction permits, and identification cards. The "X" option will allow driver licenses and identification cards to more accurately reflect the gender identity of Washington residents, who identify as non-binary.

**Background:**

In November 2018 the Department of Licensing (DOL) received a rulemaking petition to allow for a nonbinary gender designation on driver licenses, instruction permits, and identification cards. In December 2018, DOL filed a proposal statement of inquiry with the Office of the Code Reviser to explore an "X" designation. In June 2019, DOL held listening sessions in Seattle and Spokane to gather community feedback. On July 2, 2019 DOL filed a CR-102 form with proposed rule language, and held public hearings in August in Olympia, Seattle, and Spokane. Washington will be the 17<sup>th</sup> state to offer a gender "X" designation on driver licenses and identification cards.

**Public Comment**

The public comment period for this rulemaking began July 2, 2019 through August 15, 2019.

A summary of the type of comments received is in the table below:

Type	In Favor	Oppose
Hearings	125	5
Online	236	14
Written	29	1
Total:	398	20
<b>Sum Total:</b>	<b>418</b>	

**Changes to Proposed Language**

The Department did not make changes to the proposed language.

**Summary of Comments Received on the Proposed Rules and Department Response**

<b>Comments</b>	
<b>Paraphrased Comment</b>	<b>Department Response</b>
<i>Related to the Department's use of gender</i>	
<ol style="list-style-type: none"> <li>1. Despite identity, there are only two genders. You are the gender you are at birth.</li> <li>2. X is not a gender. Even if you are transsexual you're male or female.</li> <li>3. Sex and gender are not the same thing. If you are allowing intersex people to have a sex designation that reads "X", that makes sense. If you are allowing people to change their gender designation to "X", it should not be listed as "sex" on a license and should instead read "gender".</li> </ol>	<p>Thank you for your comments related to the Department's use of gender.</p> <p>This rulemaking proposes to allow individuals to select a designation recognized by the Washington State Department of Health and currently available on birth certificates issued by the State. The X designation is for those individuals who do not identify exclusively as either male or female.</p> <p>Sex and gender are used interchangeably in federal and state law. CFR 6 § 37.17 (c) requires states to collect gender, as determined by the state, on state issued driver license or identification cards. RCW 46.20.091 requires the Department to collect the sex designation on applications for a driver license or identification card.</p>
<i>Related to the public safety</i>	
<ol style="list-style-type: none"> <li>4. Degrades law enforcement's ability to effectively identify suspects.</li> <li>5. In cases of a missing person, limits the effectiveness of the search.</li> <li>6. It is dangerous to have a person with an unidentified gender using an ID card that gives them permission to access both gender specific facilities.</li> <li>7. There could be issues identifying, detaining, transporting, and confining gender "X" individuals.</li> <li>8. How will identification transfer from state to state? Are other states aware of this, understand it, and prepared for it?</li> <li>9. If a driver's license does not identify someone as female or male, one could represent their gender to steal someone's identity and their license would support whatever gender is presented at the time.</li> <li>10. If you make one field on a driver's license, ID card or permit optional, why not the other information as well?</li> </ol>	<p>Thank you for your comments related to public safety.</p> <p>The gender X designation will allow driver licenses and identification cards to more accurately reflect the gender identity of Washington residents. This may benefit public safety by providing more accurate gender information about an individual.</p> <p>Currently, 16 other states offer a gender X designation. The Department is working with partner organizations to ensure that they are prepared for the changes to Washington driver licenses and identification cards, including law enforcement organizations. The Department has confirmed with the Department of Homeland Security (DHS) that the "X" designation is REAL ID compliant.</p> <p>The integrity of Washington residents' data is of the utmost importance to the Department. The Department has a number of security measures and protocols to ensure that individuals only have one identity.</p>

	<p>RCW 46.20.091 requires the Department to collect an individual's sex designation on applications for a driver license or identification card.</p>
<p><i>Related to implementation of this rule</i></p>	
<ol style="list-style-type: none"> <li>1. Allow for self-attestation of gender identity and allow for as few barriers (such as significant expense, medical verification, additional documentation) as possible to accessing a gender designation change. Requiring certification from a third party is an unnecessary obstacle for individuals when changing their gender designation or when choosing it for the first time. Multiple states and the District of Columbia have added a third gender marker on driver's licenses without requiring any third party certification.</li> <li>2. Allow for additional gender designations such as X and a blank field.</li> <li>3. The state should refund the money of any trans person who paid to have their gender marker changed, including the fees to get a letter from a person with a PhD.</li> <li>4. How much will it cost to change my gender designation on my driver's license, ID card or permit?</li> <li>5. People should not be required to appear in person to change their gender designation. Requiring individuals to go to a physical office could put individuals in danger and would disregard privacy concerns about the process in general.</li> <li>6. What Departments will have access to this data?</li> <li>7. How will this data be used by our governments?</li> <li>8. Will data around the Gender X designation be open source?</li> </ol>	<p>Thank you for your comments related to the implementation of this rule.</p> <p>With the adoption of this rule all persons submitting an application for a new driver's license, instruction permit, and/or ID card, or seeking a gender designation change to any of the aforementioned documents, will be allowed to self-attest to their gender.</p> <p>The Department will be allowing for three gender designations at this time: M, F, or X. This is consistent with the Washington State Department of Health's designations for birth certificates and the 16 states who allow gender designations of M, F or X. The decision whether or not to charge a fee is still under consideration.</p> <p>Individuals will not be required to appear in person to change their gender designation. They may mail the Change of Gender Designation Request (CGDR) form and a copy of their valid DOL issued document (WA Driver license, ID card, EDL/EID or Instruction permit) to the address listed on the CGDR form.</p> <p>Individual's personally identifying information (PII) is protected from public disclosure by various state laws and the federal Driver Privacy Protection Act (DPPA). State law allows limited driver information to be shared with law enforcement, other state agencies, local government, insurance underwriters, employers, and others for specific purposes outlined in RCW 42.56.130, RCW 46.52.120, and other statutes.</p> <p>State and federal law prohibit the unauthorized disclosure of PII.</p>
<p><i>Related to proposed changes to the rule language</i></p>	
<ol style="list-style-type: none"> <li>9. Why not remove all information regarding gender/sex from driver's licenses, ID cards, and permits?</li> <li>10. The categories that a person can choose when applying to change their gender designation should recognize the spectrum of gender. We suggest the rule be changed as follows:</li> </ol>	<p>Thank you for your comments regarding changes to the rule language.</p> <p>RCW 46.20.091 requires the Department to collect an individual's sex designation on applications for a driver license or identification card.</p>

<p>(2) For the purposes of this section, “X” means a sex that is not exclusively male or female, including but not limited to intersex, agender, amalgagender, androgynous, bigender, demigender, female-to-male, genderfluid, genderqueer, male-to-female, neutrois, nonbinary, pangender, third sex, transgender, transsexual, Two Spirit, and unspecified.</p> <p>11. Safety and privacy should be protected. The rule should expressly state that applications for a change of gender designation are exempt from public disclosure. Under Washington law, information required to apply for a driver’s license or identification card is exempt from public inspection. Therefore, any change or application for gender designation should similarly be exempt from public inspection or disclosure.</p>	<p>The Department will be allowing three gender designations: M, F, or X. This is consistent with the Washington State Department of Health’s designations for birth certificates and the 16 states who allow gender designations of M, F, or X.</p> <p>The Department chose to define “X” without examples of gender identities in acknowledgement of the diverse transgender and non-binary communities of Washington, and to avoid limiting the X designation to a predetermined group of identities. As language evolves, it is the Department’s goal that the rule remain relevant for all individuals who do not identify as exclusively male or female.</p> <p>Individual’s personally identifying information (PII) is protected from public disclosure by various state laws and the federal Driver Privacy Protection Act (DPPA). State law allows limited driver information to be shared with law enforcement, other state agencies, local government, insurance underwriters, employers, and others for specific purposes outlined in RCW 42.56.130, RCW 46.52.120, and other statutes.</p> <p>State and federal law prohibit the unauthorized disclosure of PII.</p>
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*Related to rule implementation by agencies other than DOL*

<p>12. Institute additional gender designations on US Passports <i>and</i> Will my license or ID card match my passport?</p> <p>13. Pass antidiscrimination legislation requiring states to modify birth certificates and identity documents according to attested gender</p> <p>14. What am I supposed to do if my identification documents don’t match (example: birth certificate from Idaho and US Passport say M and State ID says X)?</p> <p>15. DOL must work cooperatively with other state agencies, the Human Rights Commission, OSPI, shelters, non-profits, and advocacy agencies to communicate and educate the State of Washington regarding this change.</p> <p>16. The X designation on driver’s license, ID cards, and permits must be included, by HRC and other agencies, in all public-</p>	<p>Thank you for your comments related to rule implementation by agencies other than DOL.</p> <p>The Department does not have discretion over documents issued by the federal government or other states, but we will allow individuals to change their gender designation based on self-attestation. For example, an individual will not need a birth certificate or passport to have an “X” in order to request that their driver license has this gender designation.</p> <p>The Department has and will continue working with our federal, state, and local governments and community partners to communicate this upcoming change.</p>
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facing training materials for employers, landlords, etc.	
<i>Miscellaneous</i>	
<ol style="list-style-type: none"> <li>1. There is no valid or legitimate reason for the State of Washington to adopt this rule.</li> <li>2. Why not add a box to check if you are a legal resident?</li> <li>3. If you need to go to the hospital and have an X on your ID, seconds count. Proceedings could be delayed while trying to identify biological sex.</li> </ol>	<p>Thank you for your comments regarding the various provisions required to be featured on an identity card.</p> <p>This rulemaking proposes to allow individuals to select an option that more accurately reflects their identity, and matches other documents issued by the State such as a birth certificate.</p> <p>RCW 46.20.091 requires the Department to collect an individual’s sex designation on applications for a driver license or identification card.</p> <p>An X designation has been vetted and approved by the Department of Health and is supported by the American Medical Association.</p>

**Closing**

The Department would like to thank the people of Washington for collaborating with us throughout this process. If you still have questions related to the rulemaking you can email [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov) or call 360-902-3846.

Sincerely,

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