



Frequently Asked Questions

What is the overall effect of this announcement?

By giving New Yorkers the voluntary option of three secure licenses, New York State will have the most secure and most comprehensive license system in the country – one that will offer New Yorkers maximum choice for drivers licenses, uphold the strictest security standards and ensure the economic vitality of Upstate New York.

What are the components of the agreement?

The agreement stipulates that:

- New York State will continue to move forward with its plan to license undocumented immigrants, but will now implement that policy in tandem with the implementation of modified REAL ID regulations. When combined with the anti-fraud security measures DMV has already announced, according to DHS Secretary Chertoff, “These techniques will make New York licenses among the most secure in the country.”
- The Department of Homeland Security will allow New York State’s DMV to begin offering an “Enhanced Drivers License” that will allow Western and Northern New Yorkers to cross the New York-Canadian border without a passport. This is critical because next year the federal government has mandated that New Yorkers will no longer be able to cross the New York-Canadian border without a passport. This agreement will ensure that the Upstate Economy does not suffer from this new federal mandate.
- New York State will take steps to offer a REAL ID-compliant license as soon as operationally possible after the Department of Homeland Security publishes its final REAL ID regulations, which we have been advised by DHS will address the Administration’s main concerns regarding the original draft regulations and, as a result, New York’s licensing system will be in near compliance with the anticipated final regulations as DHS has laid out. This accommodation will allow us to implement REAL ID far sooner than expected. The final regulations, which are due out in the next month or two, will be far less expensive to implement, and will address convenience and privacy concerns.

As a result of this comprehensive license agreement, New York will offer three separate and secure licenses all used for different purposes – an “Enhanced Drivers License” for crossing the NY-Canadian border, a federally-approved license to fly on planes and a New York State license for driving and identification purposes.

What is the Western Hemisphere Travel Initiative and Enhanced Driver’s License?

This agreement will ensure that the Upstate Economy does not suffer from this new federal mandate.

WHTI (“wittie”), as it’s commonly known, is a federal law passed in 2004 (as part of the The Intelligence Reform and Prevention Act) that requires as early June 2008 that all New Yorkers traveling across the New York-Canadian border must use a passport, or other federally-acceptable ID, to cross the border lawfully. They can no longer simply use their driver’s license.

What New York has gotten DHS to agree to is to allow State DMV to issue an “Enhanced Driver’s License” (EDL) that will be acceptable as an alternative to a passport for re-entry from Canada.

Only US citizens are eligible for a WHTI license.

What is REAL ID?

By implementing REAL ID, New York will not force their residents to get a passport just so they can board a plane.

REAL ID is a federal law passed in 2005 that will, by as early as May 11, 2008, preclude federal agents from accepting a state license for “official purposes,” like boarding an airplane or entering federal facilities like VA Hospitals and courthouses.

DHS is responsible for promulgating regulations interpreting the REAL ID Act, and their original proposed rule raised many cost and operational issues involved in a state opting to issue a real ID document. We have learned that these proposed regulations will be significantly modified in a way that permits NY to comply with the

Only U.S. citizens and lawfully present non-citizens are eligible for the REAL ID document.

Is this a “two-tier system”?

No. A two-tier system is what people think of when they look at Utah's system, which uses as a "dividing line" a person's "lawful status." Thus, they have one license only for illegal immigrants and one license for legal residents.

In contrast, our system's "dividing line" will be "what the federal government requires," which does not effect who can get a regular state license, only who can get a federally-approved license.

Thus, we will not be a "two-tier" or "three-tier" system in that one is superior to another. We will have three separate and secure licenses all used for different purposes – one to cross the New York-Canadian border, one to fly on planes domestically and one for everything else like driving and identity purposes. This is what the federal government has mandated. Critically, New York State's current license that will eventually, according to federal requirements, be marked "not for U.S. government purposes," will be both for undocumented immigrants *and* lawful residents who choose not to get either of the federally-approved licenses either because they already have a passport (35% of New Yorkers already do), don't want to pay an extra fee for one of these federal licenses, or don't want to jump through the extra requirements necessary to get them.

There will not be a license given only to undocumented immigrants, which would be the true "two-tier system" that Utah has or Tennessee had. The state-approved license will simply say "not for U.S. government purposes," but will definitely not say "illegal immigrant" because, of course, the state-approved license will continue to be issued to lawful residents as well.

And remember, we always said we would implement REAL ID if the federal government made it more practical for states to opt-in. Go back to the comments we made to the draft regulations where we expressed our intent [see attached]. The reason this was able to come together was the DHS explicitly told us that their final regulations would address our concerns so much so that New York would be one of several states that was in near compliance upon issuing the final regulations. Plus, we were able to enter into an agreement to offer an "Enhanced Drivers License" as an alternative to a passport. This is critical because next year the federal government has mandated that New Yorkers will no longer be able to cross the border without a passport. This agreement will ensure that the Upstate Economy does not suffer from this new federal mandate.

Who's eligible for what?

We will have three separate licenses all used for different purposes – one to cross the border, one to fly on planes and one for everything else (driving, identity, etc).

1. State License: Both lawful residents and undocumented immigrants (most inclusive)

2. WHTI/EDL: Only U.S. Citizens (i.e. not lawful residents who are non-citizens and not undocumented immigrants)
3. REAL ID: Only lawful residents (i.e. U.S citizens, lawful residents who are non-citizens, but not undocumented immigrants)

All licenses will be used for driving and identity purposes, but the two federal licenses can be used for certain federal purposes designated by federal law. DHS expects that the WHTI license will also align with REAL ID requirements and can be used for such federal purposes.

Will this mean we go forward with the recently-announced policy change to securely license undocumented immigrants?

We will still move forward with that policy change so undocumented immigrants will soon have access to New York's driver's license.

The main difference is that, because we are now implementing REAL ID, we will implement the two programs together, which will likely be late 2008.

(Thus, Phase 1 and Phase 2 of the immigrant policy will be folded into one phase late next year when DMV implements REAL ID.)

Taken together, these steps, according to Secretary Chertoff represent "a major step forward for security, both for New York and for the country."

What changed?

DHS advised us that they are accepting many of our comments to their proposed Real ID rulemaking to allow New York to more easily provide a Real ID compliant document. DHS also agreed to accept a WHTI document issued by New York for the purposes of land travel to and from Canada. These elements, along with the added security offered by the Real ID and WHTI protocols led us to the natural conclusion to begin the process of offering a Real ID and WHTI license, as well as a State license without regard to immigration status.

How has DHS been so responsive to your REAL ID concerns?

In May of 2007, the DMV issued comments to DHS's draft regulations for REAL ID. As we noted then: "It is our current intention to offer New Yorkers the option of obtaining a license that meets the newly established federal criteria...However, given the serious questions raised about the Act's practical efficacy, as well as the cost to New Yorkers, the overall inconveniences, and the privacy concerns associated with the Act's implementation, New York State will continue to evaluate its position as more information becomes available."

Since then, more information has become available and DHS has notified us that they have been significantly responsive to our comments and those of other states.

As a result, and because of the anti-fraud security features the Governor recently announced, along with the many other security measures already built into New York State's license and licensing process, DHS has informed us that we will be one of many states that will be "materially compliant" when the final REAL ID regulations come out in a month or so as long as we make three changes to our licensing system:

1. Residency requirement, which DMV was already implementing as a result of the recent policy change.
2. Link the expiration date of the license to the expiration date of a person's lawful status – something known as "co-terminus."
3. Mark the non-REAL ID compliant license "not for U.S. government purposes."

How much will this cost to implement?

DMV is still working this out.

Will there be a cost difference between cards?

Potentially. Because of new federal requirements, DMV may have to charge more for the licenses that are for federal purposes.

When will this happen?

Subject to change should the federal requirements and regulations

WHTI/EDL – by next summer

REAL ID – by the end of next year

Licensing undocumented immigrants – by the end of next year

Chertoff says explicitly that he does not "endorse" giving licenses to undocumented immigrants. Doesn't that mean he still thinks that part of the system is not secure?

While Secretary Chertoff and the Governor may have philosophical differences on immigration policy, both agree that our licenses are secure and in fact are "among the most secure in the country," according to Secretary Chertoff.

As the Governor has said: "We are not talking about bringing more people into this country; We are talking about being practical about the ones who are already here."

Why didn't you simply announce this deal all at once instead of the immigrant policy a month ago?

Had we known that DHS was going to be so responsive to our REAL ID comments and that New York State would basically already be in compliance, we would have. Plus, the way this agreement came together allowed DMV to also offer New Yorkers an "Enhanced Drivers License" for cross-border travel, which is critical to protecting the Upstate economy from the pending federal travel restrictions.

Why didn't you go to the Legislature before doing both REAL ID and WHTI?

The changes to comply with these laws do not require Legislative approval, but can be accomplished using DMV's authority to define how licenses are issued, pursuant to existing statute. DMV is simply offering new licenses according to federal law.