

FINAL STATEMENT OF REASONS

1) The Update to the Initial Statement of Reasons

There department modified the proposed regulatory text to adopt the information that will be required when an applicant applies to the department to change the gender category noted on their driver's license or identification card.

In the modified text, the department adopted subsection (b) to require an applicant to provide their true full name, date of birth, the current California driver's license or identification card number, mailing address, an indication of the requested gender, and a signature certifying under penalty of perjury that the gender category requested is for the purposes of ensuring the driver's license or identification card accurately reflects the applicant's gender identity and is not for any fraudulent or other unlawful purpose and to further certify the information provided during the application process is true and correct.

The information will ensure the department captures information sufficient to verify the actual license or card holder is the person making the request to change the gender category.

2) Imposition of Mandate on Local Agencies or School Districts

The department's regulatory action amending Section 20.05 in Article 2.0, Chapter 1, Division 1, of Title 13, does not impose any mandate on local agencies or school districts and imposes (1) no cost or savings to any state agency, (2) no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, (3) no other discretionary cost or savings to local agencies, and (4) no cost or savings in federal funding to the state. No studies or data were relied upon to make this determination.

3) Summary of Comments Received During the 45-day Comment Period and Department Response

The proposal was noticed on December 8, 2023, and made available to the public from December 8, 2023 through January 22, 2024. The department received three comments during the 45-day comment period.

- Carmen-Nicole Cox, Director of Government Affairs
ACLU California Action
- Imani Rupert-Gordon, Executive Director
National Center for Lesbian Rights
- Kendra J. Mueller
Disability Rights California
- The three comments received by the department were all similar in that they expressed support for the intent of the proposed regulation but also suggested the proposed rule

retain existing language in Section 20.05 that specifies the department “shall issue a California driver’s license or identification card...” All three comments explained that the proposed adoption that states that an applicant “may request” a gender category change appears to create a situation where the department’s issuance of a driver’s license or identification card would be discretionary rather than mandatory.

Department’s Response: The department agrees with the commenters and the department changed the text back to “shall issue...”. The change from “may” to “shall” demonstrates that issuance of a driver’s license with the requested gender category will be mandatory rather than discretionary by the department.

4) Summary of Comments Received During the 15-day Comment Period and Department Response

The department’s modified text was noticed on April 3, 2024 and made available to the public from April 3, 2024 through April 18, 2024. The department received two comments during the 15-day comment period.

- Carmen-Nicole Cox, Director of Government Affairs
ACLU California Action
- Ming Wong, Attorney
National Center for Lesbian Rights

Both commenters provided feedback related to clarity, the elimination of in-person transactions, and lack of accessibility.

- The modified terms may cause confusion and/or limit the ability of individuals who prefer or need to complete their DMV transaction in person to obtain identification consistent with their gender identity. Specifically, both commenters determined that Section 20.05(b) does not specify that an applicant may also provide the required information to DMV staff in person, even though the Addendum to the Initial Statement of Reasons suggests that this was the department’s intent.

Department’s Response: The department rejects the assertion that the terms are confusing. The Addendum explains that the provisions of subsection (b) identify the information requirements an applicant will be required to provide when applying for their gender category change. There is no indication in the Addendum that an applicant will be able to provide the information in subsection (b) to a department representative at a field office. The proposed text indicates that all customers are required to provide the required information through the department’s portal when changing the gender marker on a driver’s license or identification card. Applicants holding a REAL ID-compliant driver’s license or identification card will be required to provide their information through the portal but will also be required to visit a field office to complete the transaction.

Beginning June 3, 2024, the department began processing simple driver's license and identification card transactions, such as a gender category change, only through out-of-office options such as through the online portal or through business partners. REAL ID-related transactions, including transactions that change a gender marker on a REAL ID driver's license or identification card, will require an in-office visit to comply with the federal REAL ID requirements. REAL ID requirements prohibit a card from being issued remotely when there is a material change. The department has touch screen terminals available at its field offices for applicants who want to visit a field office, however, the transactions will not be completed by a department employee, unless the applicant is a REAL ID license or ID holder.

- While it is recognized that online processing is efficient, a shift to online-only gender change requests could adversely impact the transgender community who disproportionately live in poverty and are more likely to lack consistent and reliable internet service, making online-only processes a barrier to accessing services.

Department's Response: The department has determined that additional modifications are not necessary. The department recognizes that accessibility could be a barrier to some Californians, however, the department has several business partners who can also provide driver's license services, including processing gender category changes, to those residents who want to complete their transaction in person. The department's portal can also be accessed with mobile devices and through any computer with an internet connection, such as those that can be used at a public library. Furthermore, the department has self-service touchscreen terminals at its field offices for customers who may lack internet availability.

- Section 20.05(a)(1) of the Modified Terms indicates that an applicant "shall make the request specified in subdivision (a) of this section in person." However, we are concerned that members of the public and/or Department staff will also read section (b) as applicable to such transactions, meaning that individuals seeking to change their gender marker on a REAL ID could need to make an in-person visit to a DMV facility to make the request, and then also need to submit documentation online in a subsequent separate transaction to complete the request.

Department's Response: This is correct and the department has determined that additional modifications are unnecessary. An applicant who has been issued a REAL ID-compliant driver's license or identification card will be required to update their information through the department's portal and then will be required to finalize the transaction by making an in-person visit to a department field office. This process will allow for the gender change process to be streamlined while also ensuring compliance with federal rules that require an applicant who is making a material change to a REAL ID-compliant driver's license or identification card, appear in person to complete the transaction.

- Provided suggestions related to additional modifications that would improve clarity by modifying subsection (b) to make clear that an applicant may submit the documentation required for a change of gender marker either online or in-person at a DMV office.

Department's Response: The department has determined that additional changes are not necessary. There is no additional documentation required for a gender change that is completed through the department's internet portal. The applicant is required to provide the information required in subsection (b). Furthermore, the department no longer processes simple driver's license or identification card transactions in its field offices. The only in-person transactions that will be permitted for driver's license and identification card transactions will be for renewals and for those applicants holding a REAL ID-compliant driver's license or identification card. Those applicants will be required to provide their information online and then appear in-person at the department to complete the transaction.

- Provided suggestions related to additional modifications that would improve clarity by shifting the language currently in subsection (a)(1) to a new subsection (c).

Department's Response: The department has determined that additional modifications are not necessary. Subsection (a) requires an applicant to self-certify their gender change and subsection (a)(1) establishes that a REAL ID-compliant driver's license or identification card holder will also have to make an in-person visit to complete their transaction.

- Provided suggestions related to additional modifications that would improve clarity by stating explicitly that an applicant can pursue initial issuance of a Real ID and a gender marker change through the same in-person interaction with DMV staff upon presentation of all appropriate documentation.

Department's Response: The department has determined that additional modifications are not necessary. Section 20.05 does not pertain to initial or original REAL ID applicants. Section 20.05 addresses the gender change process for individuals who have already been issued a driver's license or identification card and want to change the gender category that is displayed on the current driver's license or identification card. Applicants who are applying for an original REAL ID-compliant driver's license or identification card will select their gender category during the original application process.

5) Determination of Alternatives

The department is moving several transactions to an online environment to allow its customers a convenient method by which it can interact with the department. The process established in this regulation represents a balance between the customer's convenience and the department's ability to ensure it can verify the applicant information when accepting an application to change the gender identified on the identification card or driver's license.

The department has determined that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.