

## **FINAL STATEMENT OF REASONS**

### **1) The Update to the Initial Statement of Reasons**

The initial statement of reasons incorrectly identified the Gender Category Request, form DL 329S, as being one page, however, the form consists of two pages. The first page is the portion required to be completed by the applicant and the second page contains the privacy notice that identified applicable privacy statutes and provides the applicant with information related to obtaining more information on the department's privacy policies. Interested parties who requested copies of the form received the copy containing two pages.

The originally proposed regulatory text identified a revision date of 2/2018 on the Gender Category Request, form DL 329S, however, the correct revision date is 1/2019. The department received two requests for the form and both requesters, in addition to the form, received an explanation that the proposed regulatory text incorrectly identified the form revision date as 2/2018. The initial statement of reasons identified the correct version of the form.

The department also made to amendments upon an initial review conducted by the Office of Administrative Law (OAL). First, in the adopted regulatory text, the department removed the word 'may' and replaced with the word 'shall' as the department is required to issue a California driver's license or identification card reflecting the applicant's chosen gender category. Second, the department made a clarifying amendment to ensure the applicant is aware that they must meet all other requirements for obtaining a driver's license or identification card. In doing so, the department amended the form DL 329S to ensure the form clearly states that the form DL 329S is not a name change document. The form DL 329S was also amended to cite CCR Section 15.06, as it defines True Full Name. Lastly, page two of the DL 329S form is amended to make clear that the name provided by the applicant on page one *must* be the applicant's true full name.

### **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 and Department Response**

The proposal was noticed on July 6, 2018, and made available to the public from July 6, 2018 through August 20, 2018. The department received letters from the National Center for Transgender Equality and the American Civil Liberties Union of California prior to the close of the comment period. On August 21, 2018, the department received comment from the Transgender Law Center. The letter submitted by the Transgender Law Center contained comments that were consistent with those provided by the American Civil Liberties Union.

➤ **Arl Christian**  
**National Center for Transgender Equality (NCTE)**

*NCTE Comment #1:* The department should define the “X” gender designation as “nonbinary/unspecified/other” rather than just “nonbinary.” This recommendation will stand the test of time and be inclusive rather than exclusive. This definition comports with the definitions utilized by many other states that have introduced the “X” gender designation.

*NCTE Comment #2:* Expanding the definition of “X” to “nonbinary/unspecified/other” is important because language that describes gender is constantly evolving and defining “X” as only available to people who use the term “nonbinary” limits the applicability of the marker.

Commenter references Appendix C citing the Washington Administrative Code (WAC 246-490-075) as it relates to changing sex designation on a birth certificate, which defines “X” as a gender 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.

*NCTE Comment #3:* The “X” designation is more comprehensive when there is an option for all people, including those who may not want to reflect male, female, or nonbinary. For individuals who prefer not to disclose their gender, “nonbinary/unspecified/other” affords the desired privacy. The expanded definition helps clarify that gender is not determined by the government and individuals are free to choose the designation that feels safest and most appropriate for them.

- *Department’s Response to NCTE Comments 1, 2 and 3:* In choosing the term ‘nonbinary’, the department opted to be consistent with Vehicle Code section 12800(a)(2), which provides in part that applications for an original or a renewal of a driver’s license shall contain a section for the applicant to choose their gender category of female, male, or nonbinary. Additionally, one of the findings and declarations in SB 179 states, nonbinary is an umbrella term for people with gender identities that fall somewhere outside of the traditional conceptions of strictly either female or male.

*NCTE Comment #4:* Throughout all relevant documents, “Gender Category” should be changed to “Gender Designation.” The term “designation” is more commonly used and understood as referring to the marker on ID documents. Additionally, updating the language from “gender category” to “gender designation” supports the goal that California’s gender marker options be relevant to all people and not limited to those who identify in a particular gender category.

- *Department’s Response to NCTE Comment #4:* In choosing the term ‘gender category’, the department opted to be consistent with Vehicle Code section 12800(a)(2), which provides in part that applications for an original or a renewal of a driver’s license shall contain a section for the applicant to choose their gender category of female, male, or nonbinary.

➤ **Amanda Goad**  
**American Civil Liberties Union (ACLU), California**

*ACLU Comment #1:* The ACLU of California is concerned that the phrasing of the proposed regulation (13 CCR § 20.05) erroneously gives the impression that DMV personnel have discretion as to whether to honor an applicant’s self-attestation of gender.

To reduce the risk that the regulation is misconstrued as affording staff of the DMV discretion to decide whether to grant a request for a gender designation different from that shown on an applicant’s identity or legal presence documents, we suggest the following revision:

*The department shall issue a California driver’s license or identification card to an otherwise eligible applicant requests a gender category that differs from the sex or gender on a document used to establish identity or legal presence...[emphasis added]*

*ACLU Comment #2:* Although this wording may have been intended to track California Vehicle Code Section 13000, which states that the DMV “may issue” an identification document to individuals meeting specified criteria, there is an important distinction between the agency’s inherent discretion to set procedures for eligibility (as reflected in Vehicle Code Section 13000) and circumstances where, as here, the Legislature has made clear that an applicant who completes an otherwise valid application for a driver’s license or identification card with a particular gender designation has a right to obtain the requested designation on their license or card.

- *Department’s Response to ACLU Comments 1 and 2:* The department thanks the ACLU for its comment and has amended Section 20.05 to specify that the department ‘shall’ issue a driver’s license or identification card.

*ACLU Comment #3:* We suggest a few adjustments to the text of Form 329S to reduce the risk of confusion and frustration among community members using the form to update their identification documents. The top line of the proposed Form 329S currently reads:

*If applying for a name change, complete this form using the name specified on the name change document.*

This phrasing is ambiguous. At a minimum, we propose adding “new” before “name specified” to clarify the instruction. In addition, since the DMV website uses the term “true full name” rather than “name change document” to indicate the set of documents the DMV considers acceptable proof of a legal name change, we suggest using consistent terminology here.

Some community members erroneously believe they can request a gender-related change of name by submitting a request to DMV without going to court, when in actuality DMV will honor a gender designation change request from someone who has not obtained a court order of gender change, but will not honor a common law name change without proof that the individual has obtained a court order of name change. Thus, we suggest revising the introductory sentence to be more precise. A clearer rendition of this initial instruction might read:

*If you are also **requesting a change of the name on your driver's license or identification card**, complete this form using the **new name specified on the court order or other "true full name" document you are presenting**. [emphasis added]*

- *Department's Response to ACLU Comment #3:* The department thanks the ACLU for its comment and agrees that additional clarification is needed. The department has changed the language at the top of the form DL 329S to clearly state that the form is not a name change document. The department has amended the informational portion of the form DL 329S on page 2 to specify that the name provided on the form must be the applicant's true full name and identify documents that are acceptable to verify the name change if the name on the form differs from the name listed on the applicant's identity documents or driver's license or identification card. The referenced documents include birth certificates, passports, certificates of naturalization, and court orders or judgements indicating a name change. These documents are consistent with the documents an applicant would submit when applying for a name change and are consistent with those documents identified in Section 20.04(d), related to information required for a name change on a driver's license or identification card. Also consistent with Section 20.04 is the requirement that the name change documents be original or certified copies. Page 2 is amended to remove CCR citations that are already referenced in the proposed rule and could cause confusion for the applicant. The department has determined that the amendment made to the informational page of the form clearly explains the departments process related to name change documents better than the repealed form. The provisions under the privacy section are unchanged and only provide information related to the department's privacy policy.

*ACLU Comment #4:* We encourage the DMV to undertake a systematic review of its public communications, including but not limited to forms and instructions on its website, to ensure that these communications are clearly conveying the information Californians need to exercise their right to self-attestation of gender on a driver's license or identification card and honoring the spirit of the Gender Recognition Act.

- *Department's Response to ACLU Comment #4:* The department is currently in the process of updating its website to reflect the X option in addition to the M and F options. Those changes will be effective on January 1, 2019 to coincide with the effective date of SB 179. Additionally, the department will update handbooks and forms with gender-neutral terms upon the next scheduled revision.

### **3) Modified Regulatory Text and 15-Day Comment Period**

The department submitted its proposed adoption to the OAL for review on October 30, 2018. Upon its review, the OAL determined that the proposed language should be amended to make clear that the department will issue a license reflecting the requested gender when the applicant meets all requirements for being issued a driver's license or identification card. As a result, the department proposed amending Section 20.05 to remove the word 'may' and replace with the word 'shall'.

The OAL also suggested clarifying language be added to the form DL 329S to ensure the form clearly states that the form is not a name change document. That change is added to the top portion of the form DL 329S. Second, the form DL 329S is also amended to cite CCR Section 15.06, as it defines

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True Full Name. The second page of the form DL 329S is also amended to make clear that the name provided on page one of the form *must* be the applicant's true full name.

The department published the Notice of Modification of Proposed Regulation, amended regulatory language, an addendum to the initial statement of reasons, and amended form DL 329S, on its website on December 14, 2018. All entities that provided comment during the initial 45-day comment period was provided with all the modification documents by email on December 14, 2018. The 15-day comment period commenced on December 14, 2018 and ended on December 31, 2018 with the department having received no comments.

**4) Form Incorporated by Reference**

This action incorporates by reference the Gender Category Request, form DL 329S (New 1/2019). The form DL 329S will not be published in the California Code of Regulations because it would be impractical and cumbersome to do so.

During the comment period, the form DL 329S was made available by calling the department representative that was identified in the Notice of Proposed Action. The department received two requests for the form and both requesters were provided the form via email.

**5) Determination of Alternatives**

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.