

OFFICE OF THE DIRECTOR  
DEPARTMENT OF MOTOR VEHICLES  
P.O. BOX 932328  
SACRAMENTO, CA 94232-3280



## TITLE 13: DEPARTMENT OF MOTOR VEHICLES

### NOTICE IS HEREBY GIVEN

The Department of Motor Vehicles (department) proposes to amend Section 20.05 in Article 2.0, Chapter 1, Division 1, Title 13 of the California Code of Regulations, related to gender categories for driver licenses and identification cards.

### PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or their duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 p.m., fifteen (15) days prior to the close of the written comment period.

### DEADLINE FOR WRITTEN COMMENTS

Any interested party or their duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 p.m., **August 20, 2018**, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulation.

### AUTHORITY AND REFERENCE

The department proposes to adopt these regulations under the authority granted by Vehicle Code section 1651, in order to implement, interpret, or make specific Vehicle Code sections 12800, 12811, 13000, and 13005.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Vehicle Code section 12800 identifies the contents required to appear on a driver's license and includes the applicant's true full name, age, gender, and mailing address. Vehicle Code section 13005 requires an identification card to resemble in appearance, so far as is practicable, a driver's license.

Senate Bill (SB) 179 (Atkins, Chapter 853, Statutes of 2017), effective January 1, 2019, requires a driver's license or identification card applicant to choose their preferred gender category option of female, male, or nonbinary. Additionally, SB 179 prohibits the department from requiring documentation for an original driver's license or identification card applicant's initial selection, or an existing cardholder's request for an amendment to a gender category, with the exception of the applicant's self-certification of their chosen gender category.

Currently, an individual applying for a driver's license or identification card may request a designation of male or female. If the selected designation is different from the gender indicated on the applicant's identity document (original applicant) or driver's license or identification card (existing applicant), they must visit a departmental field office and complete a *Driver License & ID*

*Card Application* (DL 44) form and provide a *Medical Certification and Authorization* (DL 329) form. The DL 329 requires a physician or psychologist to certify to an applicant's gender identification or demeanor, but only a physician can certify that gender identification is complete. The department is proposing to obsolete the form DL 329 and adopt a new *Gender Category Request*, (DL 329S) form in this proposed action. Original applicants and existing cardholders will be required to visit a departmental field office to complete a DL 44 and present a DL 329S if they request a gender category which differs from the gender category on their documents used to establish identity or their driver's license or identification card. An in-person field office visit ensures the applicant is the individual requesting the change to their driver's license or identification card via photograph verification, therefore reducing the opportunity for fraud. Similarly, the department's name change process requires applicants to visit a departmental field office to present their name change documents.

Applicants will be required to choose their gender category of female, male, or nonbinary on the DL 44 and DL 329S. The DL 329S requires an applicant to certify that the gender category they are requesting is "not for any fraudulent purpose". This certification language is consistent with other provisions within SB 179 and other states' gender designation change forms. An applicant who selects nonbinary will receive a driver's license or identification card reflecting gender code "X". This is consistent with the gender code used by the state of Oregon, which is the only known state to permit a nonbinary gender option. Additionally, the gender code "X" has become the standard for a nonbinary gender option and is currently used on official documents issued by foreign countries, including Australia, New Zealand, and Canada.

#### **CONSISTENCY AND COMPATIBILITY WITH STATE REGULATIONS**

The department conducted an analysis of other state regulations and determined that the regulations adopted in Article 2.0 of Title 13 are neither inconsistent nor incompatible with other state regulations.

#### **COMPARABLE FEDERAL STATUTES OR REGULATIONS**

The department conducted a review of comparable federal regulations and statutes and has determined that no other regulations address gender categories on driver's licenses or identification cards.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

The following documents are incorporated by reference:

- *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; however, the document is readily available to interested parties by contacting the department representative identified below.

## **ECONOMIC AND FISCAL IMPACT DETERMINATIONS**

DMV has made the following initial determinations concerning the proposed regulatory action:

- *Cost or Savings to Any State Agency:* None.
- *Other Non-Discretionary Cost or Savings to Local Agencies:* None.
- *Costs or Savings in Federal Funding to the State:* None.
- *Effects on Housing Costs:* None.
- *Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code section 17500 et seq.:* None.
- *Cost Impact on Representative Private Persons or Businesses:* The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. No additional fees will be charged other than what is already required as a part of the application process.
- *Small Business Impact:* This proposed action is unlikely to have an impact on small businesses. This action identifies the form that an applicant must complete to change their gender category. None of the provisions in this action have any impact on small businesses.
- *Local Agency/School District Mandate:* The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- *Significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states:* This proposed action provides the process by which an applicant can change the gender category on their driver's license or identification card. There is no significant economic impact associated with this proposal as none of the provisions apply to businesses, therefore, this action is unlikely to have an adverse impact on businesses, including the ability to compete.

## **RESULTS OF THE ECONOMIC IMPACT STATEMENT**

The department has made the following determinations when assessing the economic impact associated with this proposed regulation:

The department has determined that this action will not impact 1) the creation or elimination of jobs within the State of California, 2) the creation or elimination of existing businesses within the State of California, or 3) the expansion of businesses currently doing business within the State of California.

This action will benefit the welfare of California residents by eliminating a burdensome process that was once required in order for an applicant to change the gender category on their driver's license or

identification card. Once this action is adopted, affected applicants will complete a form containing a self-certification. This action is not likely to have a significant impact on worker safety or the state's environment.

### **PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS**

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot easily be reviewed during the comment period.

### **ALTERNATIVES CONSIDERED**

The department must determine 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.

### **CONTACT PERSON**

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Randi Calkins, Regulations Analyst  
Department of Motor Vehicles  
Legal Affairs Division  
PO Box 932382, MS C-244  
Sacramento, CA 94232-3820

Any inquiries or comments concerning the proposed rulemaking action requiring more immediate response may use:

Telephone: (916) 657-8898  
Facsimile: (916) 657-6243  
E-Mail: [LADRegulations@dmv.ca.gov](mailto:LADRegulations@dmv.ca.gov)

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

Shelly Johnson Marker, Chief of Staff  
Department of Motor Vehicles  
Telephone: (916) 657-6469

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The department has prepared an Initial Statement of Reasons for the proposed regulatory action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the Express Terms of the proposed regulatory action using underline or italics to indicate additions to, and strikeout to indicate deletions from the California Code of Regulations.

The contact person identified in this notice shall also make available to the public, upon request, the Final Statement of Reasons and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (the Notice of Proposed Regulatory Action, the Initial Statement of Reasons, and Express Terms) may be accessed at <http://www.dmv.ca.gov/portal/dmv/detail/about/lad/regactions>.

## **AVAILABILITY OF MODIFIED TEXT**

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the fully modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Requests for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.