

Initial Statement of Reasons

Title 13, Division 1, Chapter 1

Article 2.0. Driver Licenses and Identification Cards

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.

Vehicle Code section 12800 identifies the contents required to appear on a driver's license, including 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 & Identification 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 DL 329 and adopt a new *Gender Category Request* (DL 329S) form in this regulatory package. 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, DMV'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

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the standard for a nonbinary gender option and is currently used on official documents issued by foreign countries, including Australia, New Zealand, and Canada.

Consideration of Alternatives

The department must determine that no reasonable alternative considered, 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 this action is proposed, would be as effective and less burdensome to affected private persons that the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

§ 20.05. Gender Categories.

The title of Section 20.05 is amended from Gender Change to Gender Categories to ensure consistency with the provisions of SB 179.

Subsections (a) and (b) are repealed as the requirements adopted in those sections are no longer valid due to the passage of SB 179.

Section 20.05 is amended to allow for issuance of a driver's license or identification card to an applicant that requests a gender category different from the gender on the document used to establish identity or legal presence that differs from the gender specified on an existing driver's license or identification card. This section requires an applicant to complete a *Gender Category Request* (DL 329S) form (New 1/2019) and submit that form to the department in-person to facilitate the gender category selection.

Gender Category Request, form DL 329S

The DL 329S is a one page departmental form used when an applicant is requesting a gender category which differs from the gender category on their documents used to establish identity or changing the gender designation on their driver's license or identification card.

The form consists of two sections. Section one requires the applicant to identify their true full name, birthdate, current driver's license or identification card number, mailing address, and the requested gender category, consisting of Male (M), Female (F), or Nonbinary (X). Section two requires the applicant to certify that the gender designation request is for the purpose of ensuring the applicant's driver's license or identification card accurately reflects the gender identity and is not for any fraudulent or other unlawful purpose. This certification is authorized by Vehicle Code section 12800(a)(3)(A), which requires the applicant's self-certification of their chosen gender category.

DEPARTMENTAL DETERMINATIONS

- *Technical, Theoretical and/or Empirical Studies, Reports or Documents:* None
- *Reasonable Alternatives That Would Lessen Any Adverse Impact on Small Business:* No alternatives were considered or presented that would lessen any adverse impact on small business.
- *Evidence Supporting Determination of No Significant Adverse Economic Impact on Business, Including the Ability to Compete:* 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 business, therefore, this action is unlikely to have an adverse impact on business, including the ability to compete.

ECONOMIC AND FISCAL IMPACT DETERMINATIONS

- *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.
- *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.
- *Effect on Housing Costs:* None.
- *Local Agency/School District Mandates:* 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.
- *Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:* None.
- *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.
- *Potential Significant Statewide Adverse Economic Impact on Business:* This action is unlikely to have any significant statewide adverse economic impact on businesses. 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 statewide adverse economic impact associated with this proposal as none of the provisions apply to businesses.

ECONOMIC IMPACT ASSESSMENT

(Government Code section 11346.3)

The department has made the following determinations related to this proposed regulatory action:

- *Creation or Elimination of Jobs Within the State of California*

This proposed action provides the process by which an applicant can change the gender category on their driver's license or identification card. There are no provisions related to jobs, only to driver's license or identification card applicants. The department has determined that this action will not impact the creation or elimination of jobs within California.

- *Creation or Elimination of Existing Businesses Within the State of California*

This proposed action provides the process by which an applicant can change the gender category on their driver's license or identification card. There are no provisions related to businesses, only to driver's license or identification card applicants. The department does not anticipate that this proposed action will create or eliminate existing businesses within California.

- *Expansion of Business Currently Doing Business Within the State of California*

This proposed action provides the process by which an applicant can change the gender category on their driver's license or identification card. There are no provisions related to businesses, only to driver's license or identification card applicants. The department does not anticipate that this proposed action will create or eliminate existing businesses within California.

- *Benefits of Regulation to the Health and Welfare of California Residents, Worker Safety and the State's Environment*

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