

STATE OF COLORADO

DEPARTMENT OF REVENUE
State Capitol Annex
1375 Sherman Street, Room 409
Denver, Colorado 80261
Phone (303) 866-5610
Fax (303) 866-2400



Jared Polis
Governor

Colorado Department of Revenue Motor Vehicles Division Emergency Rules

New Rule, Division of Motor Vehicles – Driver's License Section, 1 CCR 204-32, Rule Numbers:

Rule 1 – Rule defining the term sex for purposes of a driver's license, identification card, or identification document

Rule 2 – Rule for changing the sex designation on a driver's license, identification card, or identification document

Statement of Emergency Justification and Adoption

Pursuant to sections 24-4-103(6), 24-4-104, 42-1-201, 42-1-204, 42-2-107, 42-2-108, 42-2-302, 42-2-303, 42-2-403, 42-2-505, C.R.S., I, Heidi Humphreys, Interim Executive Director of the Colorado Department of Revenue, hereby adopt as emergency rules, Rules 1 and 2 attached hereto.

Section 24-4-103(6), C.R.S., authorizes the executive director to adopt an emergency rule if the executive director finds that the immediate adoption of the rule is imperatively necessary to comply with a state law or federal law or for the preservation of public health, safety, or welfare, and that compliance with the requirements of section 24-4-103, C.R.S. would be contrary to the public interest.

I find that the immediate adoption of Rules 1 and 2 is imperatively necessary to comply with the statutory mandates of Article 2 of Title 42 of the Colorado Revised Statutes and section 24-4-104, C.R.S., and that immediate adoption of these rules is necessary for the preservation of public health, safety, and welfare. Finally, I find that compliance with the requirements of section 24-4-103, C.R.S. would be contrary to the public interest.

The Department is adopting Rule 1 on an emergency basis to give the public immediate notice of the Department's non-binary definition of "sex" for purposes of a driver's license, identification card, or identification document issued by the Motor Vehicles Division. The Department is adopting Rule 2 on an emergency basis to provide the public immediate notice of how to change the sex designation on an existing driver's license, identification card, or identification document.

Rules 1 and 2 are necessary to ensure the Motor Vehicles Division accurately records and represents over time an individual's sex on their driver's license, identification card, or identification document. Rules 1 and 2 are also necessary to ensure Coloradans can obtain driver's licenses, identification cards, and

identification documents that designate their correct sex, as determined by them and their licensed treating medical or behavioral healthcare provider.

Additionally, while the Department previously adopted both Rules 1 and 2 as emergency rules, they will expire on March 8, which would leave a gap in the applicability of the rules until permanent rules are adopted, leaving applicants for license and ID cards without clear guidance on sex designation. Further, the Colorado Department of Public Health and Environment (CDPHE) has proposed rule amendments regarding the sex designation on Colorado birth certificates that have or will allow for intersex sex designations and enable individuals to amend their birth certificates to designate their correct sex, as determined by them and their licensed treating medical provider. Thus, adopting Rules 1 and 2 will ensure consistency with CDPHE practices and documents, which documents are a vital source of information for the Motor Vehicles Division.

Statutory Authority

The statutory authorities for Rules 1 and 2 are cited above.

Purpose

The purpose of Rules 1 and 2 is to ensure the accuracy of the sex designation on driver's licenses, identification cards, and identification documents issued by the Motor Vehicles Division. Rules 1 and 2 allow individuals to obtain a correct sex designation on their license, identification card, or identification document. Rules 1 and 2 also ensure that the Motor Vehicles Division collects and maintains accurate sex designation data.

Pursuant to Rule 1, an applicant may choose from one of three sex designations, including female, male, and intersex. Under Rule 2, the holder of an existing license, identification card, or identification document may amend their sex designation using a form created by the Department, which form requires confirmation from a licensed treating medical or behavioral healthcare provider that the individual has received appropriate clinical treatment for their correct sex. The rule does not require that an individual undergo any specific surgery, treatment, clinical care, or behavioral healthcare. The rule also does not require that the treating medical or behavioral healthcare provider be licensed by the State of Colorado, and may instead be licensed in another jurisdiction.

Rules 1 and 2 are consistent with a recent Colorado federal district court decision ordering the U.S. Department of State to issue a passport with an intersex sex designation to a Colorado citizen. *See Zzyym v. Pompeo*, Case No. 15-CV-2362-RBJ, 2018 WL 4491434 (D. Colo. Sept. 19, 2018). Adopting Rules 1 and 2 will also make the Motor Vehicle Division's practices consistent with American Association of Motor Vehicle Administrators (AAMVA) Standards as well as the practices of four other states and the District of Columbia.

The Department will comply with permanent rulemaking procedures, and afford interested persons an opportunity to submit written data, views, or arguments, or present the same orally, for the Department to consider prior to adopting permanent rules, all in accordance with rule-making procedures found in section 24-4-103, C.R.S.

Adoption

For the reasons set forth above, I hereby adopt emergency rules 1 CCR 204-32, Rule 1 and Rule 2, which are attached hereto and which shall be effective on 3/8/19, 2019. These emergency rules shall be in force and effect until the earlier of the date on which they are replaced by permanent rules, or for a period of one hundred and twenty days from the date of adoption.

Adopted this 19th day of February, 2019.



Heidi Humphreys
Interim Executive Director
Colorado Department of Revenue

