

## **Motor Vehicle Division Policy Memo # 17-04**

### ***Religious Head Coverings in Driver's License and Non-Operator's Identification Card Photos***

**DATE:** June 30, 2017

**FROM:** Melissa Spiegel, Interim Director, MVD

**TO:** All Driver's Services staff, Iowa County Treasurers and County Treasurers' staff that issue driver's licenses and non-operator identification cards.

#### **SUBJECT**

This policy memo explains our policy regarding when someone can wear a head covering that is worn for religious reasons in driver's license and non-operator's identification card photos.

#### **EXPLANATION**

To explain this policy, it's best to start with our general policy regarding head coverings in driver's license and ID card photos.

**General policy regarding head coverings.** Our general policy is that customers may not wear head coverings (hats, caps, scarves, etc.) for driver's license or ID card photos. The reason for that policy goes to the purpose of the photo – there are two key purposes for the photo and the image conveyed in the photo:

1. To convey a clear and accurate image of the person that will allow law enforcement officers and other persons using the driver's license or ID card as a means of identification to recognize and clearly identify the customer as the person shown on the card; and,
2. To protect against identity theft and fraud by obtaining an image that can be effectively used in our facial recognition system.<sup>1</sup>

In both instances, head coverings can obscure, shadow or otherwise interfere with the customer's key facial features (as well as create a point of distraction for visual inspections of the image) that defeats or impairs fulfillment of those purposes, and for that reason we generally don't allow customers to wear head coverings in driver's license or ID card photos.

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<sup>1</sup> Our facial recognition system is a software system called ABIS – Automated Biometric Information System, In general ABIS takes the photo image of the customer and templates the position and relationship between the "landmarks" or key features of a customer's face and then completes two comparisons – a "one to one" comparison between that template and the template of any other image we have on file for the customer to make sure the customer is the same person of record, and is not someone trying to appropriate another customer's identity; and a "one to many" comparison of that template against all other customer templates we have on file to make sure the customer is not trying to establish multiple identities. We use what's called a "gated" issuance system to hold production of driver's license and ID cards until the photo image has passed these checks. Matches are not conclusive but initiate an investigation to determine whether the match reveals identity theft or fraud that should be further investigated or prosecuted, or the match is merely a similarity that doesn't require investigation.

**Exception for religious head coverings.** There is, however, an exception to this general policy for religious head coverings. Customers will be allowed to wear a head covering in their driver's license or ID card photo if:

- a) They consistently wear the head covering publicly for religious purposes; and
- b) The head covering does not obscure a full view of the customer's face and does not cast shadows on the customer's face.

If the head covering obscures a full view of the customer's face or casts shadows on it, we must either respectfully ask the customer to adjust the head covering to allow a full view of the customer's face and to eliminate shadows, or to remove the head covering if that cannot reasonably be accomplished. Scarves, burkas, or other garments that cover (partially or fully) the customer's face are not permitted.

This exception is similar to policy followed by the U.S. Department of State in regard to religious head coverings worn in U.S. passport photos, and is consistent with guidelines for driver's license and ID card photos issued by the American Association of Motor Vehicle Administrators (AAMVA).<sup>2</sup>

**Why do we make this exception?** Religious head coverings are an intersection between public interest and personal First Amendments rights – the public has an interest in secure and accurate determination and communication of identity that creates a compelling state interest in obtaining a clear and unobstructed photo image of the customer's face, but at the same time, customers have a First Amendment right to freedom of religion and religious expression, and we (as the state) can only interfere with that right when we have a compelling interest to do so, and then only by means that are narrowly drawn to effect that compelling interest. In the case of religious head coverings, cases from other jurisdictions indicate that the person's First Amendment right to freedom of religion and religious expression requires that we allow customers to wear religious head coverings in their driver's license and ID card photos, as long as the head covering does not cover or obscure the person's face and does not cast shadows on the person's face. At that point the state's compelling interest in obtaining a clear and unobstructed image of the person's face (which is not calculated to promote or obstruct any particular religion, faith, or belief, and is therefore "religion neutral") supersedes the customer's First Amendment interest in wearing the head covering, and permits us to require the customer to adjust or remove the head covering as needed to obtain a full and clear view of the customer's face.

#### **HELPFUL QUESTIONS AND ANSWERS**

The following questions and answers provide additional information that will be helpful to you and to customers.

##### **WHAT DO WE MEAN BY A FULL VIEW OF THE CUSTOMER'S FACE? WHAT AREA DO WE NEED TO SEE?**

Again our facial recognition software templates key facial features, and those same facial features are also important for law enforcement and other people that are making a visual inspection of the image to identify the person. Those key features include the customer's eyes and eyebrows, nose, cheekbones, mouth/lips and chin. Accordingly, we need to make sure we can clearly see the person's face from about a half inch above their eyebrows down to their chin, and across the width of their face. The example below shows the area that should be clearly visible in any customer photo.

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<sup>2</sup> The AAMVA guidelines provide that the photo "may only show the cardholder with headgear, if the cardholder is a member of a religion requiring the wearing thereof and provided that the headgear does not present as an obstruction or present a shadow and render the portrait inadequate for the identification of the cardholder."



### **WHAT CONSTITUTES AN ACCEPTABLE AMOUNT OF SHADOW?**

Every photo we take includes some amount of contrast, and of course shadow to some extent defines features and makes them recognizable. The key question is whether the head covering casts a shadow, when worn in the normal lighting we use to take photos and the usual flash used to take the photo, which obscures the area shown in the figure above, and makes it difficult to see or discern the key features of the face. In that event, the head covering should be adjusted or removed. If the head covering merely causes shadow in the forehead or ears that does not intrude into that area, that is not a problem and not a reason to adjust or remove the head covering.

### **HOW DO I KNOW WHETHER THE RELIGION THE CUSTOMER CLAIMS IS LEGITIMATE?**

This is an important question, and we should give the customer a great deal of leeway in this area. In the past you may have encountered guidance that suggested we would only allow a religious head covering if the religion was “real” and that we would require a letter from the customer’s minister or other religious leader to prove the customer was practicing the religion and required to wear the head covering as a tenet of the customer’s faith before we would grant the exception. We are no longer following that guidance.

The freedom of religion is a very broad right, and under it individuals have enormous discretion and autonomy to choose what they believe or worship – there is no litmus test for what constitutes a “real” religion and no definitive list of “real” religions, and it’s beyond our authority or expertise as a credentialing authority to define religions or set standards to measure individual commitment to a faith. (As an example, consider cases in other states in which adherents to the Church of the Flying Spaghetti Monster (known as “pastafarians”) have been allowed to wear colanders in their driver’s license or ID

card photo). An example of such a photo is included below:



Accordingly, if a customer in good faith claims a religious faith and adherence to that faith, we will accept that without challenge and will focus on whether the head covering the customer wishes to wear meets our requirements for an adequate photo image.

#### **HOW DO I KNOW WHETHER THE RELIGION THE CUSTOMER CLAIMS REQUIRES A HEAD COVERING (OR THAT PARTICULAR HEAD COVERING)?**

Again, under the freedom of religion individuals have enormous discretion and autonomy to choose and define their faith and the manner in which they observe that faith. If you are uncertain, you may respectfully and discreetly ask the customer if the head covering is required to be worn regularly for religious purposes, in other words, is the head covering consistently part of their public appearance. If a customer in good faith claims adherence to their professed faith requires them to daily wear a head covering, we will accept that assertion and again focus on whether the head covering the customer wishes to wear meets our requirements for an adequate photo image. If you still have a lingering concern, please consult your supervisor for assistance, but keep in mind that this can be a sensitive subject for customers so we should always handle this type of situation with care and do our best not to make the customer feel uncomfortable, regardless of any personal doubt or belief you may carry.

#### **WHY DOES THE CUSTOMER HAVE TO CONSISTENTLY WEAR THE HEAD COVERING PUBLICLY TO CLAIM THE EXCEPTION?**

The exception is intended for customers that make the head covering a consistent part of their public appearance. The act of sharing or displaying the photo image that appears on a driver's license or card is in essence a public appearance, and the purpose of the exception is to allow customers to maintain their religious observance in their public appearance as expressed through the photo image. Customers that only wear the head covering occasionally or for specific or special occasions, and not consistently as part of the customer's public appearance do not have the same interest in maintaining their religious observance through the photo image, and therefore cannot claim the exception.

**WHAT DOES THE CUSTOMER HAVE TO PROVIDE TO SHOW THAT THE CUSTOMER WEARS THE HEAD COVERING CONSISTENTLY AND PUBLICLY?**

As with the claim of adherence to the religion and the requirement to wear the head covering, we will give the customer a great deal of leeway in this, and will accept the customer's good faith assertion that they consistently wear the head covering publicly for religious purposes. The fact that the customer arrived wearing the head covering, and did not put it on just for the purpose of the photo, is a good indication the customer consistently wears the head covering publicly.

**HOW DO I ASK A CUSTOMER TO ADJUST OR REMOVE A HEAD COVERING THAT DOESN'T MEET OUR REQUIREMENTS FOR AN ACCEPTABLE PHOTO?**

In all instances, be polite and respectful and avoid comments that could be perceived as questioning or denigrating the customer's religion. Explain that for identification purposes we are required to obtain a photo that shows a full and unobscured view of their face, and ask the customer to adjust or move the head covering as necessary to allow that. (Please never adjust or touch the head covering yourself, unless the customer specifically asks for your help.)

If the customer has any concern about being seen by others in your office without the head covering (which may be a particular concern for women who wear face coverings), work with the customer to arrange for an option that allows the customer to have his or her photo taken privately. This may involve taking the photo in a separate room or location or taking the photo outside of regular hours (whether early or late). Ask your supervisor to help if you need assistance with any necessary accommodations. Remember your role is to help the customer, and we don't want to give the customer the impression that they are a bother or inconvenience.