

Motor Vehicle Division Policy Memo # 21-09

REAL ID Issuance – Establishing Sex if Not Listed on Birth Certificate

ISSUE DATE: December 21, 2021

FROM: MVD Policy & Compliance Team

TO: All Motor Vehicle Division staff, Iowa County Treasurers and County Treasurer's staff that issue driver's licenses and nonoperator's identification cards.

SUBJECT

This policy memo establishes guidelines for issuing a REAL ID when a customer's birth certificate does not list their sex, but the customer has an established Iowa record or other court document that establishes their sex, and the customer is not asserting a sex change.

SUMMARY

Federal and state REAL ID regulations establish certain documents an applicant must provide to prove their identity (name) and date of birth to be issued a REAL ID, including: U.S. passport, certified birth certificate, Consular Report of Birth Abroad (CBRA), permanent resident card, employment authorization document (EAD), foreign passport with I-94, certificate of naturalization, or certificate of citizenship. Except for a certified birth certificate, all of these documents are issued by the U.S. federal government (or a foreign federal government) and consistently list the holder's sex. However, there are instances where a certified birth certificate issued by a state or local government does not list sex.

In these circumstances, it will be the MVD's policy to accept a birth certificate that doesn't list a sex for the applicant, if:

- The applicant has an established Iowa record, marriage certificate, or unexpired out-of-state REAL ID listing their sex as M (male) or F (female); and
- The applicant is not asserting that they have undergone a sex change.

As background, the federal regulations require that an applicant's gender (in this case, construed to mean their sex) be listed on a REAL ID, but allow states to determine what, if any, specific documents can be used to establish sex. Iowa law requires an applicant to disclose their sex during DL/ID application and requires us to include sex on the printed card, but also does not prescribe specific forms or proof. Finally, Iowa administrative rules provide a mechanism for changing one's sex designation from the one listed on their identity document, but do not dictate that sex is a required component of an identity document.

With the release of this memo, MVD policy memo #19-02 (wallet-sized or short-form birth certificates) is also being revised to incorporate this guidance.

LINK TO REGULATIONS:

- Federal REAL ID regulation 6 CFR 37.11: <https://www.ecfr.gov/current/title-6/chapter-I/part-37/subpart-B/section-37.11>
- Iowa administrative rule 761-601.5: <https://www.legis.iowa.gov/docs/iac/rule/11-08-2017.761.601.5.pdf>

CURRENT POLICY

There is no formal policy outlining our procedure for issuing a REAL ID to a customer when their birth certificate doesn't list their sex, but standard practice has been to require the person to present another identity document, which sometimes includes requesting a longer-form birth certificate.

NEW POLICY

To issue a REAL ID, we will now accept a birth certificate that doesn't list a sex for the applicant, if:

- The applicant has an established Iowa record, marriage certificate, or an unexpired out-of-state REAL ID listing their sex as M (male) or F (female); and
- The applicant is not asserting that they have undergone a sex change.

If the applicant does not have an established Iowa record, a marriage certificate, or unexpired out-of-state REAL ID listing their sex as M (male) or F (female), they will need to request a longer-form birth certificate from their state of birth or present an alternate identity document to establish their sex.

QUESTIONS AND ANSWERS

The following questions and answers provide additional information to you and to customers.

Why can a customer whose birth certificate is missing a designated sex or gender use an established Iowa record, marriage certificate, or unexpired out-of-state REAL ID, but not another type of document to establish their sex?

As noted above, federal and state regulations allow states to set their own specific document requirements to establish sex. Because of this, Iowa's policy will be to allow only an Iowa record, marriage certificate, or out-of-state REAL ID to establish an applicant's sex if their identity document does not list one. This is because we are already required to record sex on all license or ID card applications even if issuing a non-REAL ID as required by Iowa Code sections 321.182 and 321.190, because certified marriage certificates are vital records that bear legal weight, and because out-of-state REAL IDs are specifically acceptable to establish identity under REAL ID regulations (though they require another identity document to establish lawful status).

What if an applicant's birth certificate and marriage certificate both do not list a sex or gender, and the applicant does not have an established Iowa record or an out-of-state REAL ID?

In this case, the applicant will need to request a long form birth certificate from the vital record office in the state where they were born. If their state of birth does not produce birth certificates listing sex or gender, please confer with your supervisor or the ACE team, who will confer with the Policy & Compliance team to determine if a REAL ID exception (waiver) is warranted.

Does this change the process for an applicant to change their sex designation on their license or ID?

No, this process does not affect the requirements for customers who have undergone a sex change. These customers are still required to adhere to the sex designation change requirements as outlined in rule 761-601.5(7) and explained in section B of the ARTS examiner's manual.

Does this guidance apply to any other identity document that doesn't list the applicant's sex?

For the most part, this policy is only intended to apply to applicants whose identity document is a birth certificate. This is because the other forms of acceptable REAL ID identity documentation

are issued by the federal government and consistently list sex on the document, whereas birth certificates are issued on a state-by-state basis and don't necessarily have consistent standards.

However, there is another scenario where an applicant may present an identity document that doesn't list sex, namely, if that applicant is a refugee, asylee, or parolee who has only an I-94 and qualifies for a REAL ID exception under Iowa administrative rule 601.5(8), effective January 5, 2022. As part of the exception process, these applicants may use any U.S. government-issued document to establish their sex, because sex is not typically listed on an electronic or paper I-94, and because it is beyond their control to obtain another document type that lists their sex.

What if a customer provides an identity document with a different sex designation than what is listed on their Iowa record or marriage certificate ?

If the person presents an identity document (or has an existing Iowa record) that establishes their sex, but is now asserting that they identify as another sex, they must submit either a new or amended identity document (which can include a certified birth certificate) or a notarized physician affidavit demonstrating that change, in accordance with Iowa administrative rule 761-601.5(7), as explained in section B of the examiner's manual. Ultimately, we must defer to the sex that is listed on the applicant's identity document, regardless of what the existing Iowa record states, unless the applicant can prove a sex change under the process outlined in the administrative rules.