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Passports are intended to verify the identity and nationality of the holder. Per the code of federal regulations (22 CFR 51.23) an applicant has the burden of establishing their identity. However, in the sections that dictate passports, there is no indication that sex or gender should be necessary for the purpose of establishing identity. Collection of this information is not necessary for the function of the Department.

E.O. 14168 defines sex as “an individual's immutable biological classification as either male or female.” It further defines female as “a person belonging, at conception, to the sex that produces the large reproductive cell” and male as “a person belonging, at conception, to the sex that produces the small reproductive cell.” This ignores decades of medical, sociological, psychological, and other research and standards of care. See <https://www.ama-assn.org/press-center/press-releases/ama-states-stop-interfering-health-care-transgender-children>, <https://policysearch.ama-assn.org/policyfinder/detail/gender?uri=%2FAMADoc%2FHOD.xml-H-65.962.xml>, <https://policysearch.ama-assn.org/policyfinder/detail/gender?uri=%2FAMADoc%2FHOD.xml-0-5096.xml>). Aside from this, there are a number of conditions that can leave a person unable to produce reproductive cells, some of which may be present from birth. Until an individual produces reproductive cells, only an assumption about what cells they will produce can be made. Further, it is possible for intersex individuals to produce both eggs and sperm.

Additionally, the policy of requiring individuals to disclose their birth sex regardless of it's alignment with gender increasing the chances for ALL individuals to face discrimination and/or violence. A transgender man with facial hair who undergoes HRT and has had a mastectomy and phalloplasty will have all appearances of being a cisgender man. If his sex marker is listed as “F” this may cause confusion, accusations of fraud, and humiliating requirements to “prove” the sex listed is accurate. This also opens up cisgender people to possible violence for not appearing feminine or masculine enough. Many states allow individuals to change their gender marker on vital records such as their drivers license, social security, and birth certificate. If an individual has completed even some of these changes, the mismatch between the passport and other documentation could cause serious issues and require excessive resources on the part of the state and nation to resolve. This change provides no meaningful value to establishing the identity of applicants or eligibility of individuals to travel abroad. In *Zzyym v. Blinkin*, the court rejected the State Department's arguments as to security, complexity and cost related to providing a passport with an appropriate gender marker of X. Based on this precedent, there is no defensible reason that individuals should be limited to only M or F based on their birth certificate.