

CALIFORNIA DEPARTMENT OF JUSTICE

**TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 19. RACIAL AND IDENTITY PROFILING ACT OF 2015**

Notice published March 10, 2023

NOTICE OF PROPOSED RULEMAKING ACTION

Notice is hereby given that the California Department of Justice (Department) proposes to amend sections §§ 999.224-999.229 of Title 11, Division 1, Chapter 19, of the California Code of Regulations (CCR) concerning California's Racial and Identity Profiling Act of 2015 (Act or AB 953).

PUBLIC HEARING

The Department will hold a public hearing via videoconferencing to provide all interested persons with an opportunity to present statements or comments, either orally or in writing, with respect to the proposed regulations, as follows:

Date: Thursday, April 27, 2023

Time: 12:00 p.m. – 1:00 p.m.

To join the hearing via videoconferencing, please use the following link, meeting ID and passcode:

Link:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_YmZmNjFiYTctODE4OS00YjkyLWI1NWYtNWNiMjQ2NTRjNjk4%40thread.v2/0?context=%7b%22Tid%22%3a%22883dc3c0-8ba7-4fe1-b5cd-c26645ef1d4a%22%2c%22Oid%22%3a%223c4ee43e-7325-4779-97dc-e3f4349a1882%22%7d

Meeting ID: 245 792 127 664

Passcode: mTxCJB

To dial in to the hearing, please use the following phone number and conference ID:

Phone: 1-916-382-0506

Conference ID: 159580567#

At the hearings, any person may present statements or comments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that persons who make oral statements or comments at the hearing also submit a written copy of the comments made at the hearing.

A person may make a request for a reasonable accommodation, pursuant to the Americans with Disabilities Act, to the Contact Person listed below.

WRITTEN COMMENT PERIOD

Any interested party, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action to the contact persons listed below. Comments may also be submitted by facsimile (FAX) at (213) 897-7605 or by e-mail to Tanya.Koshy@doj.ca.gov. The written comment period closes on April 25, 2023. The Department will consider only comments received by that time. Please address comments to:

Tanya Koshy
Deputy Attorney General
Civil Rights Enforcement Section
California Office of the Attorney General
1515 Clay Street
Oakland, CA 94612
Phone: (510) 897-1983
Email: Tanya.Koshy@doj.ca.gov

NOTE: Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Government Code section 12525.5, subdivision (e) authorizes the Department to adopt these regulations which implement, interpret, and make specific the provisions of Government Code section 12525.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

California's Racial and Identity Profiling Act of 2015 (AB 953) took effect on January 1, 2016.

AB 953 enacted multiple provisions to uncover and address the unlawful practice of racial and identity profiling. Among other things, AB 953 enacted Government Code section 12525.5, which requires state and local law enforcement agencies (LEAs), as specified, to collect detailed data regarding stops of individuals, including perceived demographic information on the person stopped. Government Code section 12525.5, subdivision (g)(2) defines "stops" to mean "any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person's body or property in the person's possession or control."

Government Code section 12525.5, subdivision (b) provides a non-exclusive list of the information that must be reported for each stop:

The reporting shall include, at a minimum, the following information for each stop:

- (1) The time, date, and location of the stop.

- (2) The reason for the stop.
- (3) The result of the stop, such as, no action, warning, citation, property seizure, or arrest.
- (4) If a warning or citation was issued, the warning provided or violation cited.
- (5) If an arrest was made, the offense charged.
- (6) The perceived race or ethnicity, gender, and approximate age of the person stopped, provided that the identification of these characteristics shall be based on the observation and perception of the peace officer making the stop, and the information shall not be requested from the person stopped. For motor vehicle stops, this paragraph only applies to the driver, unless any actions specified under paragraph (7) apply in relation to a passenger, in which case the characteristics specified in this paragraph shall also be reported for him or her.
- (7) Actions taken by the peace officer during the stop, including, but not limited to, the following:
 - (A) Whether the peace officer asked for consent to search the person, and, if so, whether consent was provided.
 - (B) Whether the peace officer searched the person or any property, and, if so, the basis for the search and the type of contraband or evidence discovered, if any.

Finally, Government Code section 12525.5, subdivision (e) requires LEAs to report this data to the California Attorney General, whose duty is to issue regulations regarding this data collection and submission.

On November 7, 2017, the Attorney General issued regulations, which set forth the data elements and data values required to be reported by officers, definitions of terms used in the regulations, and specific guidance regarding the reporting required under Government Code section 12525.5, subdivision (b).

In August 2022, the Attorney General amended the 2017 regulations to add new and improve existing data elements and data values; to allow reporting agencies to disclose their stop data, on a confidential basis, to advance public policy and/or scientific study; and to ease administrative burdens on the Department.

Also in 2022, the Governor signed into law Assembly Bill 2773, which requires that law enforcement agencies collect a new data element. Beginning January 1, 2024, all law enforcement agencies must report to the DOJ “[t]he reason given to the person stopped at the time of the stop.” (Gov. Code, § 12525.5, subd. (b)(3).)

Effect of the Proposed Rulemaking

This proposed action includes a proposal to add a new data element, to fulfill the statutory obligation under Assembly Bill 2773.

This proposed action also includes explanatory language which makes existing reporting obligations clearer and the striking of language to align the regulations with existing reporting practices.

Finally, this proposed action includes language regarding the release of stop data consistent with statutory language making such data publicly available notwithstanding any other law.

Anticipated Benefits of Proposed Regulations

The benefit of this regulatory action is that it would enable agencies to fulfill the new statutory obligation to report the reason for the stop given to the stopped person. By adding the new requirement and aligning existing requirements with current practice, this regulation proposal will help officers understand what they should report for each data element and ensure more uniform, accurate data. Uniform and accurate data allows the Racial and Identity Profiling Advisory (RIPA) Board to better serve its function specified by law, including: “analyz[ing] the data[,]” producing “detailed findings on the past and current status of racial and identity profiling” in California, “mak[ing] policy recommendations for eliminating” profiling, and working with “state and local law enforcement agencies to review and analyze racial and identity profiling policies and practices across geographic areas in California.” (Pen. Code, § 13519.4, subd. (j) (3).)

Comparable Federal Regulations

There are no existing federal regulations or statutes comparable to the proposed regulations.

Determination of Inconsistency/Incompatibility with Existing State Regulations

Government Code section 11346.5(a)(3)(D) requires the Department to evaluate whether the proposed regulations are inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this subject matter, the Department has determined these proposed regulations are not inconsistent or incompatible with existing state regulations implementing the Act.

Other Statutory Requirements

Section 12525.5 requires the Attorney General to consult with a variety of stakeholders in drafting regulations implementing the Racial and Identity Profiling Act of 2015. These stakeholders include the Board, “federal, state, and local law enforcement agencies and community, professional, academic, research, and civil and human rights organizations.” (Gov. Code, § 12525.5, subd. (e).) Consistent with the Attorney General’s obligations, the Attorney General’s office solicited feedback from the Board’s Stop Data Analysis Subcommittee during a meeting held on January 26, 2023.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies or school districts:

None. The regulations implement recent amendments to Government Code section 12525.5, which were originally enacted by AB 953. AB 953 requires the Department to draft and issue regulations to implement the stop data reporting requirements of Government Code section 12525.5. The Legislative Counsel’s Digest of AB 953 notes that costs incurred by local agencies because of this state-mandated program are reimbursable:

By imposing a higher level of service on local entities that employ peace officers, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

(Legis. Counsel's Dig., Assem. Bill No. 953, Stats. 2015, ch. 466, pp. 4153-4154.) Further, Section 5 of AB 953 provides: "If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code." (Stats. 2015, ch. 466, § 5, p. 4159.)

Accordingly, the costs incurred as a result of the proposed amendments to existing regulations are mandated by statute, and not created as a result of them.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:

None.

Costs or savings to any state agency:

None or negligible. State agencies that are subject to reporting requirements (the Department of Justice, the California Highway Patrol, the University of California, the California State University, and California Community Colleges) and are already reporting stop data would incur negligible costs, if any, to modify existing stop data reporting systems. For any state agencies that are still developing their stop data collection systems, there would no costs to incorporating these amendments.

Other nondiscretionary costs of savings imposed on local agencies:

None or negligible. Local agencies that are subject to reporting requirements and are already reporting stop data would incur negligible costs, if any, to modify existing stop data reporting systems. For agencies that are still developing their stop data collection systems, there would no costs to incorporating these amendments.

Cost or savings in federal funding to the state:

None.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete:

The Department has made an initial determination that this proposed action will not have a significant, statewide adverse impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost impacts on representative private person 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.

Small businesses determination:

The Department has determined that these proposed amendments may have a positive impact on some small businesses in the information technology sector.

Significant effect on housing costs:

None.

Business reporting requirement:

None. The reporting requirements in the proposed amendments do not apply to businesses. Rather, only law enforcement agencies, as specified in Government Code section 12525.5 and the existing regulations, will be required to collect and report stop data to the Department.

Results of Economic Impact Analysis

The Department concludes that it is unlikely the proposed amendments will (1) create or eliminate jobs in California, (2) create new businesses or eliminate existing businesses in California, or (3) result in the expansion of businesses currently doing business in California. The proposed amendments will not adversely impact the health and welfare of California residents, worker safety, nor the State's environment.

Benefits of the proposed action: (1) The proposed amendments benefit the health and welfare of California residents by enabling agencies to fulfill the new statutory obligation to report the reason for the stop given to the stopped person, which in turn will help California understand and work towards eliminating racial and identity profiling by (1) enabling officers to carry out a new statutory reporting obligation; (2) clarify existing reporting obligations; and (3) make the regulations consistent the statutory requirement that stop data be publically available.

(2) These proposals would not benefit worker safety because it does not regulate workers or working conditions.

(3) These proposals may have a slight benefit on the state's environment because the use of the electronic reporting may reduce paper consumption and waste.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The proposed amendments to the existing regulations impose no costs or requirements on private persons. As a result, there are no less burdensome or more cost-effective alternatives to these proposed amendments with respect to their impact on private persons, because these regulations will impose no costs on private persons.

The Department has determined that there are no reasonable alternatives to the proposed amendments that would be more effective in carrying out the intent of AB 953. Government Code section 12525.5 requires the Department to issue regulations for the collection and reporting of stop data, which must be reported to the Department and analyzed by the Board. In order to ensure accurate and uniform reporting, the information collected must be uniform both in its categories of information collected and in the responses to these categories, in order for this information to be submitted electronically and for the data to be accessible to law enforcement

agencies, the Board, researchers and the public, and so that meaningful review and analysis of this data is possible.

CONTACT PERSON

Inquiries concerning the proposed administrative action, including general or substantive comments concerning this proposed rulemaking, including requests for copies of documents associated with this action such as the text of the proposed amendments, initial statement of reasons, may be directed to:

Tanya Koshy
Deputy Attorney General
Civil Rights Enforcement Section
California Office of the Attorney General
1515 Clay Street
Oakland, CA 94612
Phone: (510) 897-1983
Email: Tanya.Koshy@doj.ca.gov

The backup contact person for these inquiries is:

Nancy Beninati
Supervising Deputy Attorney General
Civil Rights Enforcement Section
California Office of the Attorney General
1515 Clay Street
Oakland, CA 94612
Phone: (510) 897-0010
Email: Nancy.Beninati@doj.ca.gov

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Tanya Koshy or Nancy Beninati at above address.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, PROPOSED TEXT, AND RULEMAKING FILE

The Department will make copies of the following documents available on the Department’s website at www.oag.ca.gov/AB953: this notice, the text of the proposed modified regulations, the initial statement of reasons, the economic and fiscal impact statement (STD 399) and addendum, and the notice of publication/regulations submission (STD 400). The entire rulemaking file is available for inspection and copying throughout the rulemaking process during business hours at the following locations:

California Office of the Attorney General
1515 Clay Street
Oakland, CA 94612

Copies of these documents are also available upon request by contacting Tanya Koshy, Deputy Attorney General, at the contact information above (Contact Person).

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the Department considers all timely and relevant comments received during the 45-day public comment period, the Department will either adopt these regulations substantially as described in this notice or make modifications based on the comments. If the Department makes modifications which are sufficiently related to the originally-proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations, as revised. Copies of any modified text will be available on the Department's website at www.oag.ca.gov/AB953. Please send requests for copies of any modified regulations to Tanya Koshy, Deputy Attorney General, at the contact information above (Contact Person). The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the final statement of reasons may be obtained by contacting Tanya Koshy, Deputy Attorney General, at the contact information above (Contact Person), or by visiting the Department's website at www.oag.ca.gov/AB953.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this notice, the initial statement of reasons, and the text of the proposed modified regulations will be posted and available for downloading on the Department's website at: www.oag.ca.gov/AB953.