



1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CALIFORNIA 94612-0550

Public: (510) 879-1300
Telephone: (510) 879-0272
Facsimile: (510) 622-2270
E-Mail: Kathleen.Radez@doj.ca.gov

September 22, 2017

Debra M. Cornez, Director
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814-4339

RE: Proposed Racial and Identity Profiling Act Regulations
Title 11, Division 1, Chapter 19, Proposed Sections 999.224 through 999.229
Good Cause Request for Early Effective Date (Govt. Code § 11343.4, subd. (b)(3))

Dear Director Cornez:

Pursuant to Government Code section 11343.4, subdivision (b)(3), the Department of Justice (DOJ) requests that the Office of Administrative Law (OAL) prescribe that the proposed regulations regarding the Racial and Identity Profiling Act of 2015 (AB 953) be made effective upon filing with the Secretary of State. The DOJ believes there is good cause for OAL to approve this request, as set forth below.

Good Cause for an Early Effective Date

Government Code section 12525.5, subdivision (e) requires the Attorney General to issue regulations for the collection and reporting of stop data. Such regulations must “specify all data to be reported, and provide standards, definitions, and technical specifications to ensure uniform reporting practices across all reporting agencies.” Subdivision (e) further requires the Attorney General to promulgate such regulations “in consultation with stakeholders, including the Racial and Identity Profiling Advisory Board (RIPA) established pursuant to paragraph (1) of subdivision (j) of Section 13519.4 of the Penal Code, federal, state, and local law enforcement agencies and community, professional, academic, research, and civil and human rights organizations.”

According to the reporting schedule set forth in subdivision (a) of section 12525.5, the largest law enforcement agencies in California—those employing 1,000 or more peace officers—will be required to start collecting stop data according to the proposed regulations adopted today by the DOJ no later than January 1, 2018. These regulations provide necessary guidance to those agencies about the data collection and reporting requirements, and agencies need time to implement these regulations before data collection begins on January 1, 2018. The Legislature

has recognized that law enforcement agencies need time to implement these regulations, and has enrolled a bill to delay the start of any collection for the first round of data until July 1, 2018. (See Assem. Bill No. 1518 (2017-2018 Reg. Sess.) § 1, enrolled Sept. 8, 2017.) Assembly Bill No. 1518 is awaiting the Governor's signature; yet, even if the bill is signed into law it will be challenging for the first reporting agencies to develop their systems within the short timeframe provided. Based upon the experience of the DOJ's California Justice Information Services (CJIS) division, law enforcement agencies typically require one year to develop a new system or modify an existing system from the date regulations and subsequent system requirements are finalized. An early effective date will help to ameliorate these challenges.

The regulations will also govern preparations by CJIS itself to develop (1) the DOJ-hosted web application, which will be made available at no cost to all reporting agencies for data collection; and (2) the data reporting system, which must be prepared to accept stop data collection reports from law enforcement agencies as soon as data collection commences. CJIS will not be able to finalize the business and system requirements for the implementation of the regulation to provide to law enforcement agencies until the regulations are effective. This leaves a considerably short window to plan, develop, test, and implement with the first group of reporting agencies.

The DOJ has consulted throughout this process with the stakeholders enumerated in Government Code section 12525.5, subdivision (e). The DOJ has held numerous stakeholder meetings since the legislation was enacted, held three public hearings on the proposed regulations in venues across the state, and received more than 240 public comments during the rulemaking process. Law enforcement agencies, in particular, have been active participants in the rulemaking process, and we know from these meetings and comments that these law enforcement agencies and other stakeholders are eager for the regulations to be made effective so that final preparations can begin in advance of data collection. The DOJ has received repeated inquiries from law enforcement agencies and their vendors requesting any available information on the final regulations, as they are worried about making the mandated date.

Moreover, it is the statutory duty of the Racial and Identity Profiling Advisory (RIPA) Board to provide important guidance to the Commission on Peace Officers Standards and Training (POST) on training issues involving the proposed stop data regulations and law enforcement's implementation of AB 953 itself and these regulations. (Penal Code, § 13519.4.) Having a legally operative set of regulations will greatly assist the RIPA Board in its role as advisor to POST on these issues, especially as the RIPA Board's first report is due on January 1, 2018.

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An earlier effective date will provide clarity and necessary guidance both to the reporting agencies and CJIS before data collection commences. Doing so will help all the stakeholders involved to begin the important work of examining racial and identity profiling in California. For that reason, the DOJ believes there is good cause for OAL to approve this request that the regulations be made effective upon filing with the Secretary of State.

Sincerely,

/s/ Kathleen Vermazen Radez
Kathleen Vermazen Radez

For XAVIER BECERRA
Attorney General

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