

TITLE 11. DEPARTMENT OF JUSTICE

NOTICE OF PROPOSED AMENDMENTS TO THE DEPARTMENT OF JUSTICE REGULATIONS PERTAINING TO THE FINGERPRINT ROLLING CERTIFICATION PROGRAM

NOTICE IS HEREBY GIVEN that the Department of Justice (DOJ), organized and operating pursuant to section 11102.1 of the Penal Code (PC) proposes to amend Title 11, Division 1, Chapter 13.6, Articles 1-4, Sections 994.2, 994.4, 994.5, 994.6, 994.9, 994.10, 994.11, 994.12, 994.13, 994.14, 994.15, and 994.16 of the California Code of Regulations.

INFORMATIVE DIGEST

Existing Law

Existing law (PC section 11102.1) requires the DOJ to establish, implement, and maintain a certification program to process fingerprint-based criminal background clearances on individuals who roll fingerprint impressions, manually or electronically, for non-law enforcement purposes. Except as provided in paragraph (2), no person shall roll fingerprints for non-law enforcement purposes unless certified. Existing law also provides that the DOJ may adopt regulations as necessary to implement the provisions of this section.

Proposed Amendments to Regulations

The DOJ seeks to amend regulation sections 994.2, 994.4, 994.5, 994.6, 994.9, 994.10, 994.11, 994.12, 994.13, 994.14, 994.15, and 994.16 to provide clearer guidelines to individuals who roll fingerprint impressions who are not exempt under PC 11102.1(2)(A)(B). Those individuals who take fingerprint impressions for criminal offender record information (CORI) clearances for employment, licensing, and certification purposes, must be certified.

The following items outline the proposed amendments.

Section 994.2 is amended as follows:

- In subsection (b), the phrase: “and the subsequent automated background check and response” is removed for clarification purposes.
- In subsection (b), a “period [.]” is added for clarification purposes and to properly complete a sentence.
- In subsection (g), the phrase: “Chief Information Officer” is removed for clarification purposes.
- In subsection (i), the word and phrase: “or” and “the Department” is removed and replaced with the acronym “DOJ” for consistency purposes.

Section 994.4 is amended as follows:

- In the first paragraph, the phrase: “should contact the DOJ and request form” is removed for clarification purposes.
- In the first paragraph, the phrase: “can access the” is added for clarification purposes.
- In the first paragraph, the phrase: “(rev. 09/03)” is removed for clarification purposes.
- In the first paragraph, the phrase: “on the Attorney General’s website, located under the Fingerprint Submissions heading. Also on the Attorney General’s website are pre-certification materials that each applicant may review prior to submitting the application” is added for clarification and consistency purposes.
- In the first paragraph, the phrase: “The application form and a package of pre-certification materials will be forwarded” is removed for clarification purposes.
- Subsection (f) is removed to be consistent with recently passed legislation (SB 174), removing the requirement to have the application for certification of non-exempt individuals to take fingerprint impressions notarized. The application form BCIA 8372 will be modified and incorporated herein as reference.
- Subsection (g) is realphabetized to subsection (f) for consistency purposes.

Section 994.5 is amended as follows:

- In subsection (a), the phrase: “and notarized” is removed for consistency purposes.
- In subsection (b), the phrases: “two sets of fingerprints,” “either,” “applicant live scan,” “or manually,” and “the fingerprints must be taken by” are removed for clarification purposes.
- Subsections (b)(1), (b)(2), and (b)(3) are removed for clarification purposes.
- In subsection (b), the phrases: “his/her fingerprint impressions” and “electronic (live scan) capture” are added for clarification purposes.
- In subsection (b), a “period [.]” is added for clarification purposes and to properly complete a sentence.
- Subsection (c) is removed in its entirety.
- Subsection (d) is realphabetized to subsection (c) for consistency purposes. In subsection (c), the phrase: “The applicant shall also submit with his or her notarized application, a check or money order in the amount of \$81.00 made payable to the California Department of Justice for the certification processing fee” is removed for clarification purposes.
- In subsection (c), the phrase: “All fees for the certification must be paid directly to the agency providing the live scan services. An additional fingerprint rolling fee will be collected” is added for clarification purposes.

Section 994.6 is amended as follows:

- In subsection (a), the phrases: “a letter will be sent to the applicant stating the application has been accepted and the applicant is certified,” “The letter will include a certification number,” and the word “letter” are removed for clarification purposes.

- In subsection (a), the phrases: “The applicant will be notified that the application has been accepted and certified” and “notice, which will include the” are added for clarification purposes.
- In subsection (b), the phrase: “whether submitted manually or electronically” is removed for clarification purposes.
- In subsection (b), a “period [.]” is added for clarification purposes and to properly complete a sentence.

Section 994.9 is amended as follows:

- This section is removed in its entirety.

~~Section 994.10~~ Section 994.9 is amended as follows:

- The section number has been renumbered to section 994.9 for consistency purposes.
- In subsection (a), the word: “Department” is removed and replaced with the acronym “DOJ” for consistency purposes.
- In subsection (b), the word: “Department” is removed and replaced with the acronym “DOJ” for consistency purposes.
- In subsection (b), the word: “letter” is removed and replaced with the word “notice” for consistency purposes.
- In subsection (b), a comma was added for clarification and consistency purposes.

~~Section 994.11~~ Section 994.10 is amended as follows:

- The section number has been renumbered to section 994.10 for consistency purposes.
- In subsection (a), the word: “Department” is removed and replaced with the acronym “DOJ” for consistency purposes.
- In subsection (b), the word: “Department” is removed and replaced with the acronym “DOJ” for consistency purposes.
- In subsection (c), the word: “Department” is removed and replaced with the acronym “DOJ” for consistency purposes.
- In subsection (c), the phrase: “Attorney General” is removed and replaced with the word “Director” for clarification purposes.
- In subsection (d), the phrase: “Attorney General” is removed and replaced with the word “Director” for consistency purposes.
- In subsection (d), the word: “Department” is removed and replaced with the acronym “DOJ” for consistency purposes.
- In subsection (e), the word: “Department” is removed and replaced with the acronym “DOJ” for consistency purposes.
- In subsection (e), the word: “letters” is removed and replaced with the word “notices” for consistency purposes.

~~Section 994.12~~ Section 994.11 is amended as follows:

- The section number has been renumbered to 994.11 for consistency purposes.
- In subsection (a), the word: “Department” is removed and replaced with the acronym “DOJ” for consistency purposes.
- In subsection (b), the word: “Department” is removed and replaced with the acronym “DOJ” for consistency purposes.
- In subsection (c), the word: “Department” is removed and replaced with the acronym “DOJ” for consistency purposes.

~~Section 994.13~~ Section 994.12 is amended as follows:

- The section number has been renumbered to 994.12 for consistency purposes.
- In subsection (a), the word: “Department” is removed and replaced with the acronym “DOJ” for consistency purposes.
- In subsection (c), the word “Department” is removed and replaced with the acronym “DOJ” for consistency purposes.

~~Section 994.14~~ Section 994.13 is amended as follows:

- The section number has been renumbered to 994.13 for consistency purposes.
- In the first paragraph, the word: “Department” is removed and replaced with the acronym “DOJ” for consistency purposes.

~~Section 994.15~~ Section 994.14 is amended as follows:

- The section number has been renumbered to 994.14 for consistency purposes.

~~Section 994.16~~ Section 994.15 is amended as follows:

- This section number has been renumbered to 994.15 for consistency purposes.

PUBLIC HEARING DATES, TIME AND PLACE:

No public hearing has been scheduled for the proposed regulatory action; however any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the 45-day written comment period, a public hearing pursuant to the Administrative Procedures Act (APA), Government Code section 11346.8.

WRITTEN COMMENT PERIOD:

Any interested persons, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the contact person(s) listed below. The written comment period closes on May 31, 2010 at 5 p.m. Only written comments received by that time shall be considered.

CONTACT PERSON(S):

Jenny Reich, Assistant Bureau Chief
California Department of Justice
Division of California Justice Information Services
Applicant Record and Certification Branch
Fingerprint Rolling Certification
P.O. Box 903387
Sacramento, CA 94203-3870
Telephone: (916) 227-2372

OR

Tina Lewis, Staff Service Analyst
California Department of Justice
Division of California Justice Information Services
Applicant Record and Certification Branch
Fingerprint Rolling Certification
P.O. Box 903387
Sacramento, CA 94203-3870
Telephone: (916) 227-5050

IMPACT STATEMENTS:

Cost Impact on Local Agencies and School Districts: The proposed amendments to existing regulations will not create a local mandate, will not have a significant impact on local agencies and school districts, which must be reimbursable in accordance with California Government Code, Part 7, commencing with section 17500 of Division 4. Certification of non-exempted individuals who take fingerprint impressions are already required by PC 11102.1 to follow the procedures covered by the proposed amendments.

Non-Discretionary Costs or Savings: The proposed amendments to existing regulations will not create any non-discretionary costs and will not generate any savings.

Cost or Savings to State Agencies and Federal Funding to the State: No additional costs or savings will be incurred by the Fingerprint Rolling Certification Program because these proposed regulations make only technical, non-substantive or clarifying changes to current regulations. No other state agencies will be impacted and there will not be any impact on any federal funding programs to the state. It will however, allow for more programmatic processing resulting in faster turnarounds.

Business Impact: The proposed amendments to existing regulations will have no significant, statewide adverse economic impact directly affecting businesses in California, including the ability of California businesses to compete with businesses in other states.

Impact on Small Businesses, Private Persons, and Housing Costs: The proposed amendments to existing regulations will have a minimal impact upon private persons who are authorized and certified to administer fingerprint impressions. Individuals seeking to be certified as fingerprint rollers will no longer be subject to the additional \$10 to \$20 cost of having their application notarized. Additional economic benefits may result from increased public access to fingerprint rolling services. The DOJ is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment of Job/Business Creation, Elimination or Expansion: The adoption of the proposed amendments to existing regulations will not create or eliminate jobs in the State of California nor will it result in the elimination of existing businesses, create, or expand businesses in the state.

CONSIDERATION OF ALTERNATIVES:

In accordance with Government Code section 11346.5, subdivision (a)(13), the DOJ 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.

The DOJ invites interested persons to present statements or arguments with respect to alternatives to the proposed amendments to existing regulations during the 45-day written public comment period.

AUTHORITY:

PC section 11102.1(i) specifies that the DOJ may adopt regulations as necessary to implement the provisions of this section.

REFERENCE:

The regulatory action implements, interprets, and makes specific the mandate in California Penal Code section 11102.1.

AVAILABILITY OF STATEMENT OF REASONS, PROPOSED REGULATIONS AND OTHER INFORMATION:

The DOJ has prepared an initial statement of reasons for the proposed amendments to existing regulations and a listing of the exact regulations being proposed.

Copies of the exact language of the initial statement of reasons and of the text of proposed amendments to existing regulations and any other information may be obtained from the DOJ contact person(s) shown in this notice. Copies of the exact language of the initial statement of reasons and of the text of proposed amendments to existing regulations may also be obtained through the Attorney General's website at http://ag.ca.gov/fingerprints/finger_cert_regs.php.

With the exception of any non-substantive, technical or grammatical changes, the full text of any amended proposal will be available for an additional 15-day public comment period, prior to its adoption to all persons who submit written comments during the 45-day public comment period, and all persons who request notification.

AVAILABILITY OF CHANGED OR AMENDED TEXT:

After the DOJ analyzes all timely and relevant comments received during the 45-day public comment period, the DOJ will either adopt the amendments to the existing regulations as described in this notice, or make modifications based on the comments. If the DOJ makes modifications which are sufficiently related to the original text of the proposed amendments to existing regulations, the amended text, with the changes clearly indicated, will be made available for an additional 15-day public comment period, before the DOJ adopts the revised amendments to the existing regulations. The DOJ will accept written comments on the modifications to the amended regulations during the 15-day public comment period.

AVAILABILITY OF FINAL STATEMENT OF REASONS:

Once the final statement of reasons has been prepared, it will be made available through the contact person(s) shown in this notice.