

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

**CHAPTER 13.5. DEPARTMENT OF JUSTICE REGULATIONS FOR THE
CHECK CASHER PERMIT PROGRAM**

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

On December 2, 2022, the Department of Justice (Department) published an Initial Statement of Reasons to explain modifications to these regulations as originally proposed and the reasons for those modifications. These regulations were modified as follows:

The title of chapter 13.5 was amended from “Department of Justice Regulations for the Check Cashers Permit Program,” to “Department of Justice Regulations for the Check Casher Permit Program.” This change was necessary to align the regulations title with the current name of the program.

Article 1. Title, Scope, and Definitions

§ 990.2. Definitions of Key Terms.

Subdivision (d) (formerly subdivision (g)) was non-substantively amended to include “specific” before “fixed location,” within the definition of “Permit.” This amendment is necessary because permits are issued to a single specific, fixed location, and cannot be used for multiple locations

Article 2. Application for Permits and Renewals

§ 991.1. Initial Application.

The Department repealed and adopted forms that are incorporated by reference in this section. The forms had some changes compared to when they were originally noticed.

BCIA 4130.

BCIA 4130: Part A requires information related to the applicant, and each additional partner, officer, and shareholder with 10% or more ownership. Information regarding the type of applicant is necessary to understand the business structure of the applicant and to compare it with the Statement of Information filed with the Secretary of State, to ensure the applicant meets the requirements for a permit. The personal identifying information for the applicant and each additional partner, officer, and shareholder with 10% or more ownership is necessary to use this information to compare the background check results and ensure that the individual in the application is the same individual. Because of space limitations, it was necessary to give instructions that additional partners, officers, and shareholders be declared on additional sheets.

The box indicating if another sheet was used was necessary for the Department to know if another sheet had been submitted, in order to allow the application to be processed.

BCIA 4130: Part B requires further business information, such as the business name, type of business, address, mailing address, phone number, and banking information. This information is necessary because the Department must ensure that the business is a valid business, the permit is issued to a specific address, and that the business has a bank account to run the check cashing permit business. Because each application relates to a specific permit, language was added to let applicants know that additional locations must submit their own application. This was necessary for recordkeeping purposes because each application ties to a single permit and address, even if operating under the same business name. Further, the Department made revisions to the version originally noticed. The form originally required an applicant to provide a “Business Start Date,” and the Department proposed a revision to instead collect “Date of Ownership.” However, the final revision deleted the date collection field because it was an unnecessary data element not required by the Department to process the application.

BCIA 4130: Former Part C was revised to remove the section requesting additional information from an applicant owning any other check cashing businesses in California for which a permit has not been obtained. Instead, the end of current Part B now directs the applicant to submit a new application for each additional location. This is necessary to ensure that locations are permitted separately, that a fee is collected for each location, and the cancellation/closure of one location does not impact the permit of others. Additionally, Former Part C had requested information related to the bank information, but those were added to Part B. This change was necessary because revisions to the form were made to include certain information in different sections.

Current proposed Part C was revised to solely seek information regarding the partnership/corporate information where they do business as another name. The partnership/corporate name and contact information is necessary to ensure that the check cashing business is operating under the laws of California and can have a permit. It also helps the Department in having accurate information to ensure efficient review and approval of the applications.

BCIA 4130: Part D was revised for the reasons stated in the Initial Statement of Reasons.

BCIA 4130: Part E was revised to specify who would be signing and making the certification. The Certification is necessary, including being made under the penalty of perjury, so that applicants understand the importance of providing accurate information in the application and the consequences and severity for failing to do so.

BCIA 4130: Information and Instructions to Applicant was removed. The removal of this section is necessary because the instructions and advisements regarding statute are duplicative, and the program-specific information contained within is now outdated. The Department maintains a Check Cashier Permit Program public website informing applicants of their statutory mandate and providing them program background information. The note regarding disclosure of social

security numbers has been replaced by the more robust Privacy Notice pursuant to Civil Code section 1789.17. Additionally, the proposed regulations would codify some of the instructions.

BCIA 4130: Privacy Notice was revised for the reasons stated in the Initial Statement of Reasons and to include the title of “Program Analyst” as the contact. This amendment is necessary to comply with the requirements of Civil Code section 1798.17.

BCIA 4000.

This form was revised since it was originally noticed to collect the “Applicant Name” and “Business Name (Doing Business As).” This is necessary to align with the information collected on the BCIA 4130. The “Applicant Name” and “Business Name (Doing Business As)” fields are required to collect the name of the entity that will be conducting the check casher services and with whom the applicant is affiliated. This is included on the permit issued by the Department. Additionally, the Department sought the relevant car information for the mobile check cashing business. The Department no longer needed to collect driver’s license information as it originally did, since that did not relate to the mobile check cashing business and permit. Additionally, instead of manufacturer of the car, the Department decided to use “make” which is a more common phrase and easily understood by the applicants.

BCIA 4000: Privacy Notice was revised for the reasons stated in the Initial Statement of Reasons and to include the title of “Program Analyst” as the contact. This amendment is necessary to comply with the requirements of Civil Code section 1798.17.

§ 991.2. Fingerprints Required.

Subdivision (a) was amended to include that electronic fingerprint images must accompany every initial or first-time application for a permit. This amendment is necessary to reflect the current process of collecting electronic fingerprint images with the Request for Live Scan Service (BCIA 8016CCPP). This process replaced the ten-print fingerprint card process adopted under the original regulations in 1996.

BCIA 8016CCPP.

This form was revised to specify that the “Misc. Number” field is applicable in the absence of a Driver's License Number. This amendment is necessary to instruct the applicants and Live Scan Service Providers about when the information is required in this field and what information must be submitted. Allowing an alternative identification number is necessary because not all applicants may provide or have a Driver’s License Number.

BCIA 8016CCPP: Privacy Notice was revised to include the title of “Program Analyst” as the contact. This amendment is necessary to comply with the requirements of Civil Code section 1798.17.

Subdivision (b) was non-substantively amended to include form number 1110-0046 in the Applicant Fingerprint Form title, and to include the day in the form publication date. These

amendments are necessary so that an applicant clearly knows what form to use when required in this section.

§ 991.3. Fees; Nonrefundability.

Subdivision (b) was non-substantively amended to include a comma. This amendment is necessary to be grammatically correct.

§ 991.4. Renewal of Permit.

New subdivision (e) was added to specify surrendered or revoked permits cannot be renewed. This amendment is necessary to convey that a surrendered or revoked permit is no longer valid and a new application, rather than renewal, is needed if an owner wishes to resume business.

BCIA 4132.

BCIA 4132: Part A also includes information besides that noted in the Initial Statement of Reasons. This information includes permit and business information related to a Renewal Application of a Check Cashier Permit, such as the permit number and owner, dba, address, expiration date, and whether the applicant will be renewing. This information is necessary for processing the renewal application or surrender of a permit. Part A also gives notice of the amount due by a certain date, so that applicants know how much they owe and when.

BCIA 4132: Part B seeks whether certain information related to the business and permit holder's name, address, contact information, and bank had changed since the previous permit issuance. This information is critical for issuance of a permit and allows the Department to evaluate whether the applicant may still hold a permit and should be granted a renewal. The Department also included its contact information if applicant's had questions about their renewal status. This helps promote transparency and alleviate any confusion or concern that an applicant may have, thus, benefitting Californians who are permittees.

BCIA 4132: Part C was revised since the originally noticed version to update the instructions describing the permit status from "inactive," to "revoked." This revision is necessary to align with the correct terminology in the regulations. Part C was also revised as stated in the Initial Statement of Reasons. Part C also included the payment amounts when paid timely or paid late, and instructions on submission. This was necessary to give notice to the applicants of how much they owed and how to submit the form and fee, as well as make it convenient for them by having all relevant information on one form.

BCIA 4132: Part D was included to specify who would be signing and making the certification. The Certification is necessary, including being made under the penalty of perjury, so that applicants understand the importance of providing accurate information in the renewal and the consequences and severity for failing to do so.

BCIA 4132: Privacy Notice was revised for the reasons stated in the Initial Statement of Reasons and to include the title of “Program Analyst” as the contact. This amendment is necessary to comply with the requirements of Civil Code section 1798.17.

BCIA 4001.

BCIA 4001: Part A was revised since it was originally noticed to update the explanation offered if “no” was selected. With this amendment, instead of the permit being placed on inactive status, the permit will be considered “surrendered.” This revision is necessary to align with the correct terminology in the regulations. In addition to the reasons stated in the Initial Statement of Reasons, Part A also included permit and business information related to a Renewal Application of a Mobile Check Cashier Permit, such as the permit number and owner, dba, address, expiration date, and whether the applicant will be renewing. This information is necessary for processing the renewal application or surrender of a permit. Part A also gives notice of the amount due by a certain date, so that applicants know how much they owe and when.

BCIA 4001: Part B seeks whether certain information related to the business and permit holder’s name, address, contact information, and bank had changed since the previous permit issuance. This information is critical for issuance of a permit and allows the Department to evaluate whether the applicant may still hold a permit and should be granted a renewal. The Department also included its contact information if applicant’s had questions about their renewal status. This helps promote transparency and alleviate any confusion or concern that an applicant may have, thus, benefitting Californians who are permittees.

BCIA 4001: Part C was revised since it was originally noticed to update the instructions describing the permit status from “inactive,” to “revoked.” This revision is necessary to align with the correct terminology in the regulations. Part C was also revised as stated in the Initial Statement of Reasons. Part C also included the payment amounts when paid timely or paid late, and instructions on submission. This was necessary to give notice to the applicants of how much they owed and how to submit the form and fee, as well as make it convenient for them by having all relevant information on one form.

BCIA 4001: Part D was included to specify who would be signing and making the certification. The Certification is necessary, including being made under the penalty of perjury, so that applicants understand the importance of providing accurate information in the renewal and the consequences and severity for failing to do so.

BCIA 4001: Privacy Notice was revised for the reasons stated in the Initial Statement of Reasons and to include the title of “Program Analyst” as the contact. This amendment is necessary to comply with the requirements of Civil Code section 1798.17.

Article 3. Permits

§ 992. Information Stated on Permit.

Subdivision (a) was non-substantively amended to include “specific” before “fixed location.” This amendment is necessary for consistency with section 990.2, subdivision (d) and because permits are issued to a single specific, fixed location, and cannot be used for multiple locations.

§ 992.1. Posting or Safekeeping of Permit

Subdivision (a) was non-substantively amended to include “specific” before “fixed location,” and to remove “business.” These amendments are necessary for consistency with section 990.2, subdivision (d) and section 992 and because permits are issued to a single specific, fixed location, and cannot be used for multiple locations.

§ 992.4. Transaction of Business Under Name, Location, or Mobile Unit Not Named in Permit.

This section was amended to add “other” to “any other place of business.” This amendment is necessary for consistency within the sentence.

§ 992.6. Change of Business Location or Mobile Unit; Notice to Department.

This section was non-substantively amended to include “from” in front of “a mobile unit,” but has been corrected to remove the underline since it was indicated as a change, but is already included in the regulatory text published in the California Code of Regulations.

§ 992.7. Notice of Termination.

This section was non-substantively amended to include “specific” before “fixed location.” This amendment is necessary for consistency with section 990.2, subdivision (d), section 992, section 992.1, and because permits are issued to a single specific, fixed location, and cannot be used for multiple locations.

§ 992.8. Surrender of Permit.

This section was amended to divide the section into subdivisions (a) and (b). This amendment is necessary to address the introduction of the new second paragraph.

Subdivision (a) (formerly the first section paragraph) was amended to preface the paragraph with “While the permit is still in effect.” This amendment is necessary to clarify that the process to surrender is only applicable for an active permit. This subdivision was also amended to replace “any permittee” with “a permittee.” This amendment is necessary to be grammatically correct. This subdivision was further amended to replace “any permit” with “their permit.” This amendment is necessary to clarify that a permittee cannot surrender any permit, but rather can only surrender their own permit.

New subdivision (b) was added to specify the procedure for surrendering a permit after the current effective period. This amendment is necessary to instruct a permittee how to surrender

their permit by selecting “No” in Part A of the BCIA 4132 and/or the BCIA 4001. This is the only way to surrender a permit after the current effective period.

The changes also were necessary to explain to the permittee how they can voluntarily choose to give up their permit by surrendering it.

Article 4. Denial, Revocation, and Appeal Process

§ 993. Denial of Application; Failure to Respond; Opportunity to be Heard.

Subdivision (a)(2) was amended to clarify that “regulations” refer to “these regulations in Chapter 13.5 of Division 1.” This is a non-substantive change because the preceding phrase, “Check Cashier,” is defined in Section 990.2 as “Title 1.6F of the Civil Code.” Title 1.6F contains six statutes: Civil Code sections 1789.30, 1789.31, 1789.32, 1789.35, 1789.37, and 1789.38. Of these six statutes, only one is cited as an Authority or Reference in the CCR: Civil Code section 1789.37. The only regulations citing that statute as an Authority or Reference are located in Chapter 13.5 of Division 1. As such, the only conclusion to draw is that the word “regulations” refers to regulations contained in Chapter 13.5 of Division 1.

Subdivision (a)(2) was also non-substantively amended to include “these” in front of “regulations.” This amendment is necessary to be grammatically correct.

Subdivision (c) was non-substantively amended to include “on” in front of “which.” This amendment is necessary to be grammatically correct.

Subdivision (d) was non-substantively amended to replace “is” with “are.” This amendment is necessary to be grammatically correct.

§ 993.1. Revocation of Permit; Reasons.

Subdivision (a) was amended to remove “suspend or” in front of “revoke.” This amendment is necessary to remove reference to suspension from a section related to revocations only. This subdivision was also non-substantively amended to properly show the replacement of “division” with “chapter,” which was mistakenly not underlined in the originally noticed Text of Proposed Regulations. Lastly, this subdivision was amended to include “a” before “permit.” This amendment is necessary to be grammatically correct.

New subdivision (a)(4) was added to include failure to comply with the renewal requirements specified in section 991.4, subdivision (a), as cause for revocation of a permit. This amendment is necessary to make section 991.4, subdivision (a), enforceable and authorize the Department to revoke a permit for failure to comply with the prescribed renewal process.

§ 993.2. Notice of Revocation or Notice of Denial of Renewal.

Subdivision (a) was non-substantively amended to add a space between “application,” and “the.”

§ 993.4. Administrative Hearing.

Former subdivision (c), being repealed by this regulation, was amended to replace the stricken “himself or herself” (reflected in the originally noticed Text of Proposed Regulations) with the stricken “themselves.” This amendment is necessary to correctly reflect the existing language being repealed.

§ 993.6. Administrative Hearing.

Former subdivision (b), being repealed by this regulation, was amended to replace the stricken “him or her” (reflected in the originally noticed Text of Proposed Regulations) with the stricken “the witness.” This former subdivision was also amended to replace the stricken “him or her” (reflected in the originally noticed Text of Proposed Regulations) with the stricken “the party.” These amendments are necessary to correctly reflect the existing language being repealed.

SUMMARY OF COMMENTS AND DEPARTMENT RESPONSES

The Department received zero comments in both its initial 45-day comment period that occurred from December 2, 2022, through January 17, 2023, and 15-day comment period from August 7, 2023, through August 23, 2023.

LOCAL MANDATE DETERMINATION

The proposed regulation does not impose any mandate on local agencies or school districts.

ALTERNATIVES DETERMINATIONS

In accordance with Government Code section 11346.9, subdivision (a)(4), the Department has determined that no alternative it considered, or that it otherwise identified, or was brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, 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.

This determination is based on the fact that the authorizing statute requires an application, and the Department minimized the information and the forms that it prescribed to be used when applying for a check casher permit as required by statute.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

The Department determines that these proposed regulations will not have any adverse impact on small businesses. The proposed regulation amendments do not place any new burdens, obligations, or expenses on existing check cashing businesses that are small businesses.

DOCUMENTS INCORPORATED BY REFERENCE

1. Supplemental Application for Mobile Check Cashing Unit, BCIA 4000, rev. 04/2022 (see subdivision (b) of section 991.1)
2. Renewal Application for Mobile Check Cashier Permit, BCIA 4001, rev. 04/2022 (see subdivision (a) of section 991.4)
3. Application for Check Cashier Permit, BCIA 4130, rev. 04/2022 (see subdivision (a) of section 991.1)
4. Renewal Application for Check Cashier Permit, BCIA 4132, rev. 04/2022 (see subdivision (a) of section 991.4)
5. Request for Live Scan Service, BCIA 8016CCPP, orig. 09/2022 (see subdivision (a) of section 991.2)
6. Applicant Fingerprint Form, FD-258, 1110-0046, rev. 11-1-20 (see subdivision (b) of section 991.2)

The above forms are incorporated by reference because it would be cumbersome, unduly expensive, or otherwise impractical to publish the forms in the California Code of Regulations. During the rulemaking proceeding, the forms were made available upon request, and were available for viewing on the Department's website.

NON-DUPLICATION

Some of the regulations may repeat or rephrase, in whole or in part, a state or federal statute or regulation. This was necessary to satisfy the clarity standard set forth in Government Code section 11349.1, subdivision (a)(3).