

TITLE 11. CALIFORNIA DEPARTMENT OF JUSTICE

NOTICE OF PROPOSED RULEMAKING ACTION

(Notice to be Published on May 12, 2017)

Notice is hereby given that the Department of Justice (DOJ) proposes to adopt sections 999.500 through 999.512 of Title 11, Division 1, Chapter 19, of the California Code of Regulations (CCR) concerning the confirmation of non-exempted individuals acting in the capacity of Custodian of Records (COR) pursuant to the authority in Penal Code (PC) section 11102.2(b).

PUBLIC HEARING

The DOJ has not scheduled a public hearing on this proposed action. However, the DOJ will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her duly authorized representative, no later than 15 days before the close of the written comment period. The request must be in writing and must comply with the requirements of Government Code (GC) section 11346.8(a). If a public hearing is requested, a notice of the time, date, and place of the hearing will be provided by separate notice.

WRITTEN COMMENT PERIOD

The public comment period for this regulatory action will begin on May 12, 2017. Any interested party, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action. Written comments on this regulatory proposal must be received no later than June 26, 2017 at 5:00 p.m., and addressed to the following:

Amber Lozano, DOJ Administrator II
California Department of Justice
California Justice Information Services Division
P.O. Box 903387
Sacramento, CA 94203-3870
Telephone: (916) 210-4067

Or

Yvonne Wright, Criminal Identification and Intelligence Supervisor
California Department of Justice
4949 Broadway, Room H-119
Sacramento, CA 95820
Telephone: (916) 210-4064

Please note that under the California Public Records Act (GC, § 6250 et seq.), 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

The DOJ proposes to adopt Sections 999.500 – 999.512, Articles 1 - 4, Chapter 19, of Division 1 Title 11, of the CCR, pursuant to the authority vested in it by PC section 11102.2. The proposed regulatory action will implement, interpret, and make specific the provisions of PC section 11102.2.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Background and Effect of the Proposed Rulemaking:

A COR is an individual designated by an agency as responsible for the security, storage, dissemination, and destruction of the criminal offender record information (CORI) furnished to the agency and who serves as the primary contact for the DOJ for any related issue. Currently, section 703, Chapter 7, Division 1, Title 11 of the CCR requires record checks be conducted on all personnel with access to CORI.

The proposed regulatory action will accomplish the following functions:

- Make specific the methods for implementation and regulation for the COR Confirmation Program.
- Clarify the requirements for obtaining a COR confirmation through the DOJ.
- Specify the process for denial of an application and the revocation or suspension of an existing COR confirmation.

Comparable Federal Regulations:

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

Objectives and Benefits of the Proposed Rulemaking:

The objective of the proposed rulemaking action is to clarify the requirements for individuals acting in the capacity of COR who are responsible for the security, storage, dissemination, and destruction of CORI, thus protecting the privacy of the citizens of California. The proposed action will ensure that only individuals who have undergone confirmation by the DOJ are able to obtain and view confidential information regarding criminal history records.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The DOJ has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the DOJ has concluded that these are the only regulations that concern the confirmation of non-exempt individuals designated by a public or private agency as a COR in California.

Documents Incorporated by Reference:

The following documents would be incorporated in the regulation by reference as specified by section:

1. Custodian of Records Application for Confirmation, Form BCIA 8374, April 2017, section 999.504 and section 999.507.

2. No Longer Interested (NLI) Notification, Form BCIA 8302, February 2017, section 999.506.

MANDATED BY FEDERAL LAW OR REGULATIONS

The proposed regulations are not mandated by federal law or regulations.

OTHER STATUTORY REQUIREMENTS

None.

DISCLOSURES REGARDING THE PROPOSED REGULATION

The DOJ has made the following initial determinations:

Fiscal Impact / Local Mandate:

The DOJ has determined that the proposed regulatory action would not create costs or savings to any State agency or in federal funding to the State, costs or mandates to any local agency or school district, whether or not reimbursable by the State pursuant to GC, Title 2, Division 4, Part 7 (commencing with section 17500), or other nondiscretionary costs or savings to State or local agencies.

Housing Costs:

The DOJ has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including Ability to Compete:

The DOJ has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

Results of the Economic Impact Analysis/Assessment Prepared Pursuant to Government Code Sec. 11346.3(b):

Effect on Jobs/Businesses:

The DOJ has determined that the proposed regulatory action would not affect the creation or elimination of jobs or businesses within the State of California or the expansion of businesses currently doing business within the State of California. This determination is based on the fact

that this proposed action will not impose any significant cost or other adverse economic impact on public or private agencies who designate an individual as a COR, as COR applicants are already statutorily mandated to submit fingerprints to the DOJ. Furthermore, this proposed action would have no impact on any other businesses or jobs.

Benefits of the Proposed Regulation:

The regulations proposed in this rulemaking action would standardize the procedures and processes for obtaining a COR confirmation through the DOJ and set forth procedures for the denial, suspension, or revocation of an application. The proposed regulatory action will positively impact the safety of California residents.

Cost Impacts on Representative Private Persons or Business:

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.

Business Report:

These regulations do not require a report that applies to businesses.

Small Business Determination:

The DOJ has also determined, pursuant to California Code of Regulations, Title 1, Section 4, that the proposed regulatory action would not affect small business, because current procedures for the COR confirmation process would not change for those entities defined as a small business in Government Code section 11342.610(a).

ALTERNATIVES

Before taking final action on the amendments, 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, or would be more cost-effective to affected persons and equally effective in implementing the statutory policy or other provision of law.

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

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulatory action may be directed to the designated agency contact person: Amber Lozano, DOJ Administrator II, California Department of Justice, California Justice Information Services Division, at (916) 210-4067. The back-up contact for these inquiries is Yvonne Wright, Criminal Identification and Intelligence Supervisor, California Department of Justice, California Justice Information Services Division, at (916) 210-4064.

AVAILABILITY OF DOCUMENTS

The DOJ has prepared an Initial Statement of Reasons (ISOR) for the proposed rulemaking action and a listing of the exact regulations proposed.

Copies of the ISOR and the full text of the proposed regulatory language, or other information upon which the rulemaking is based, may be obtained from the DOJ contact persons in this notice, or may be accessed through the Attorney General's website below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

This regulatory proceeding will be conducted in accordance with the California Administrative Procedure Act, GC, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340).

After the DOJ analyzes all timely and relevant comments received during the 45-day public comment period, the DOJ will either adopt the 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 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 regulations. The DOJ will accept written comments on the modifications to the regulations during the 15-day public comment period.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the Attorney General's website listed below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

This notice, the ISOR, and all subsequent regulatory documents for this rulemaking are available on the Attorney General's website at <http://oag.ca.gov/meetings/public-participation>.