

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

CHAPTER 23. CONFIRMATION OF INDIVIDUALS DESIGNATED BY A PUBLIC OR PRIVATE AGENCY AS A CUSTODIAN OF RECORDS

NOTICE OF PROPOSED RULEMAKING

Notice published September 8, 2023

The Department of Justice (Department) proposes to adopt sections 999.600 through 999.607 of title 11, division 1, chapter 23 of the California Code of Regulations concerning the Confirmation of Individuals Designated by a Public or Private Agency as a Custodian of Records.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed regulatory action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or their authorized representative may submit written comments relevant to the proposed regulatory action. The written comment period closes on October 24, 2023. Only written comments received by that time will be considered. Please submit written comments to:

Department of Justice
Authorization & Certification Program
Attn: Nancy Munoz
P.O. Box 160608
Sacramento, CA 95816-0608
(916) 210-3434
nancy.munoz@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

Authority: Sections 11102.2, Penal Code.

Reference: Sections 11102.2, Penal Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

Various California laws authorize public and private agencies access to criminal history information for adoption, certification, employment, licensing, and permitting purposes.

Pursuant to Penal Code section 11102.2, every public and private agency that receives criminal history information from the Department is required to designate at least one Custodian of Records to assume responsibility for the security, storage, dissemination, and destruction of criminal history information that is furnished to the agency by the Department.

As mandated, the Department maintains a confirmation program to process fingerprint-based background clearances and applications for individuals designated by agencies as Custodian of Records. Prior to confirming a designated individual, the Department is required to determine whether the designated individual possesses the required honesty, credibility, truthfulness, and integrity to fulfil the responsibilities of the position in accordance with subdivisions (f) and (g) of Penal Code section 11102.2.

Effect of the Proposed Rulemaking:

The proposed regulations specify the application process for the Department's Custodian of Records confirmation program, including appeal procedures related to denied or revoked confirmations.

Anticipated Benefits of the Proposed Regulations:

This rulemaking action will benefit individuals designated as Custodian of Records by satisfying due process and public policy requirements in a manner that is impartial and transparent.

Comparable Federal Regulations:

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

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that these proposed regulations are not inconsistent or incompatible with existing State regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern confirmation of individuals designated by a public or private agency as a Custodian of Records.

Forms Incorporated by Reference:

1. Custodian of Records Application for Confirmation, BCIA 8374, orig. 05/2023 (see subdivision (a) of section 999.601)

2. Request for Live Scan Service, BCIA 8016CUS, orig. 05/2023 (see subdivision (b) of section 999.601)
3. Applicant Fingerprint Form, FD-258 (Rev. 11-1-20) 1110-0046 (see subdivision (b) of section 999.601)

Other Statutory Requirements:

None.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department's Initial Determinations:

Mandate on local agencies or school districts: None. The mandate on local agencies or school districts to designate a Custodian of Records is set by statute (Penal Code section 11102.2). These regulations only specify the application process for the Department's Custodian of Records confirmation program, including appeal procedures related to denied or revoked confirmations.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary costs or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on representative person or business: 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. However, Penal Code section 11102.2 does set a fee of thirty dollars (\$30) to cover the costs of the Department's confirmation program.

Significant effect on housing costs: None.

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

Results of the Economic Impact Assessment (EIA):

The Department concludes that the proposal will not (1) create or eliminate jobs within the state, (2) create new businesses or eliminate existing businesses within the state, (3) result in the expansion of businesses currently doing business within the state.

The Department also concludes that:

- (1) The proposal will not have a discernable impact on the health and welfare of California residents.
- (2) The proposal will not have a discernable impact on worker safety.
- (3) The proposal will not have a discernable impact on the state's environment.

Benefits of the proposed action: This rulemaking action will benefit individuals designated as Custodian of Records by satisfying due process and public policy requirements in a manner that is impartial and transparent.

Business report requirement: None.

Small business determination: The Department has determined that this proposed action does not affect small businesses because the mandate on small businesses to designate a Custodian of Records is set by statute (Penal Code section 11102.2). These regulations only specify the application process for the Department's Custodian of Records confirmation program, including appeal procedures related to denied or revoked confirmations.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department 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 Department has determined that the proposed regulations are the most effective way to specify the application process for the Department's Custodian of Records confirmation program, including appeal procedures related to denied or revoked confirmations.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Department of Justice
Authorization & Certification Program
Attn: Nancy Munoz
P.O. Box 160608
Sacramento, CA 95816-0608
(916) 210-3434
nancy.munoz@doj.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Department of Justice
Authorization & Certification Program
Attn: Douglas Wormald
P.O. Box 160608
Sacramento, CA 95816-0608
(916) 210-4070
douglas.wormald@doj.ca.gov

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

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice of Proposed Rulemaking (Notice) is published in the Notice Register, the rulemaking file consists of this Notice, the Text of Proposed Regulations (the “express terms” of the regulations), the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based. The text of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department’s website at <https://oag.ca.gov/bcia/regulations>. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the Department analyzes 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. Please send requests for copies of any modified regulations to the attention of the name and address indicated above. 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, a copy of the Final Statement of Reasons will be available on the Department’s website at <https://oag.ca.gov/bcia/regulations>. Please refer to the contact information included above to obtain a written copy of the Final Statement of Reasons.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department's website at <https://oag.ca.gov/bcia/regulations>.