

INITIAL STATEMENT OF REASONS

PROPOSED ADOPTION OF REGULATIONS PERTAINING TO THE CONFIRMATION OF NON-EXEMPT INDIVIDUALS DESIGNATED BY A PUBLIC OR PRIVATE AGENCY AS CUSTODIAN OF RECORDS

I. PROBLEM INTENDED TO ADDRESS

Penal Code (PC) section 11102.2(b) mandates the Department of Justice (DOJ) to establish, implement, and maintain a confirmation program for Custodians of Records (COR). Individuals acting within the capacity of COR are required to receive confirmation from the DOJ prior to performing COR duties. There are currently no regulations in place to make specific the requirements outlined in PC section 11102.2.

II. BENEFITS

Adopting sections 999.500 through 999.512 to the California Code of Regulations (CCR), Title 11, Division 1, Chapter 19 would provide clarification and procedures for confirmation of individuals who, while performing their required job duties, act within the scope of a COR. Doing so would give current business policies and procedures the force of law.

III. PURPOSE

Section 999.500: To establish a title for the regulations.

Section 999.501: To establish the scope of the regulations.

Section 999.502: To define key terms used throughout the regulations.

Section 999.503: To define the qualifications for confirmation.

Section 999.504: To make specific the form to be used when applying for confirmation as a COR.

Section 999.505: To make specific the information to be submitted to the DOJ by an applicant for confirmation and to make clear the next step taken by the DOJ upon applicant confirmation or denial.

Section 999.506: To specify the duration of the COR confirmation.

Section 999.507: To specify that the COR confirmation is non-transferable.

Section 999.508: To explain the causes for denial of an application and the suspension or revocation of an existing confirmation.

Section 999.509: To explain the procedures for an Administrative Hearing.

Section 999.510: To explain the notification process for an Administrative Hearing.

Section 999.511: To explain the evidence rules which prevail whenever an Administrative Hearing is conducted at the request of an applicant or confirmed Custodian of Records.

Section 999.512: To explain the process for the Proposed Decision after an Administrative Hearing is conducted.

IV. NECESSITY

Section 999.500: This section is necessary to clearly establish the purpose of the regulations for all persons affected.

Section 999.501: A COR is an individual designated by an agency as responsible for the security, storage, dissemination, and destruction of criminal offender record information (CORI) furnished to the agency and who serves as the primary contact for the DOJ for any related matter. There are currently no regulations in place that clarify the requirements for individuals acting in the capacity of COR. PC section 11102.2, which became effective on January 1, 2011, requires individuals acting within the capacity of COR to receive confirmation from the DOJ prior to performing COR duties. Criminal justice agency personnel who have undergone both a state and federal CORI background investigation are exempted from the requirement. This section is necessary to explain that the DOJ is mandated to confirm individuals who are designated as a COR under specific cited provisions of the PC. This section is also necessary to specify which individuals are exempt from the requirements of these regulations and the procedures that will be established.

Section 999.502: The key terms defined in this section are used in the regulations and in the explanations of the regulations. These terms are not defined in statute. As such, this section is necessary to provide a clear understanding of these terms so that these proposed regulations may be readily understood by the impacted parties.

Section 999.503: This section is necessary to explain the qualifications required for confirmation of all applicants, as delineated in the cited PC provisions. These qualities have been deemed necessary for persons holding this position of responsibility.

Section 999.504: This section is necessary to specify the form that must be used when applying for COR confirmation. The Custodian of Records Application for Confirmation Form (BCIA 8374) contains all of the information required by the DOJ in order to make a determination of whether to approve or deny COR confirmation. PC section 11102.2 (d) requires that every individual confirmed as a COR be at least 18 years of age and have completed and submitted a written application prescribed by the DOJ. PC sections 11102.2 (e), (f), and (g) further authorize the DOJ to refuse to confirm an applicant, or to revoke or suspend a confirmation, if an individual has been convicted of a felony offense, or any other offense that involves moral turpitude, dishonesty, or fraud, or that impacts the applicant's ability to perform the duties or responsibilities of a custodian of records. The statute also specifies that commission of any act

involving dishonesty, fraud, or deceit may be grounds for denial, revocation, or suspension. Using its discretion to create a way to make such determinations, the DOJ developed the BCIA 8374. The Applicant Information section of the form was developed to collect the demographic information deemed necessary by the DOJ to determine who an agency is requesting to be their designated COR and whether that individual is at least 18 years of age, pursuant to PC sections 11102.2 (c) and (d). The Agency/Organization Information section of the form collects the information necessary to verify that the agency requesting an individual to be a COR is an authorized agency and is statutorily authorized to request a fingerprint-based background check that contains criminal offender record information. The seven background questions on the form were developed in order for the DOJ to determine whether a COR applicant possesses the required honesty, credibility, truthfulness, and integrity to fulfill the responsibilities of the position pursuant to PC section 11102.2(e). The BCIA 8374 also contains a statement explaining the consequences of misrepresentation and a certification under penalty of perjury to the truth of the information being submitted. This is necessary to confirm that an applicant acknowledges the ramifications if the COR application does not contain information that is true or accurate, pursuant to PC section 11102.2(g)(1), and to ensure that the DOJ is receiving accurate information that can be used to make the necessary determinations.

This section is also necessary to set forth criteria for which an individual will be disqualified from being confirmed as a COR, as well as the criteria for which a previously confirmed COR's status will be revoked or suspended. This section is necessary to explain the process to initiate a COR confirmation request, as well as the components that must be included with the application, and iterate the authority of the DOJ to charge a processing fee for a COR application.

Section 999.505: Existing law does not specify how COR applicants will be notified of their confirmation or denial. This section is necessary to specify the responsibility of the DOJ to notify an agency when responding to a COR application.

Section 999.506: This section is necessary to specify the responsibility of each agency to notify the DOJ once an individual is no longer serving as a COR, through the submission of the required No Longer Interested (NLI) Notification Form (BCIA 8302). PC section 11105.2(d) states, in part, that any agency which submits the fingerprints of applicants for employment or approval to the DOJ for the purpose of establishing a record of the applicant to receive notification of subsequent arrests, shall immediately notify the department when employment is terminated or the applicant is not hired. The DOJ developed the BCIA 8302 and determined that the applicant information and agency information collected on the form is required to accurately identify the correct applicant and agency. As with other individuals who submit fingerprints as part of an employment application process, the DOJ must be notified in the same manner when an individual is no longer serving in the capacity of COR, in order to prevent the dissemination of subsequent arrest or disposition information.

Section 999.507: This section clearly establishes that the COR confirmation is not assignable to any individual or agency other than those listed on the COR application. It is necessary to establish confirmation on an individual basis due to the qualification determination stemming from a candidate's individual criminal history record.

Section 999.508: This section specifies the reasons for which the DOJ shall deny an application for COR confirmation, as established in the cited PC provision. This section also clarifies the responsibility of the DOJ to notify an individual whose confirmation has been denied, revoked, or suspended, and explains the appeal parameters of said individuals. These parameters are necessary to establish in the proposed regulations as they are not specified in existing statute.

Section 999.509: This section is necessary to make specific the process by which the DOJ will hold an Administrative Hearing, if requested by an applicant or confirmed COR. This section specifies that an individual whose application has been denied or whose existing confirmation has been suspended or revoked shall be given the opportunity to be heard and represented.

Section 999.510: This section is necessary to establish the DOJ responsibility of notification of an Administrative Hearing and to identify the procedures of the DOJ if the individual requestor does not appear at the Administrative Hearing. These are DOJ procedures for Administrative Hearings in other programs, and it is the role of the DOJ in the administrative process to ensure an individual is aware of the process and their own obligations. It is necessary to establish a process for a COR hearing that is consistent with other DOJ programs.

Section 999.511: This section is necessary to make specific the rules for the taking of evidence during an Administrative hearing and to establish the rights of each party. These are DOJ evidence rules that apply to Administrative Hearings in other programs. It is necessary to establish a process for a COR hearing that is consistent with other DOJ programs.

Section 999.512: This section is necessary to clearly establish the process to inform an applicant or confirmed COR of any decision rendered after an Administrative Hearing.

V. DOCUMENTS RELIED UPON

The DOJ did not identify any technical, theoretical or empirical study, report, or similar document in the preparation of these regulations.

VI. ECONOMIC IMPACT ASSESSMENT (EIA)

Creation/Elimination of California Jobs:

The DOJ has determined that the amendments will not create or eliminate jobs in California. The amendments affect only non-exempt individuals already employed with and designated by a public or private agency as a COR.

Creation/Elimination/Expansion of California Businesses:

The DOJ has determined that the amendments are not expected to create, eliminate, or expand business with the State of California. The regulations are required to establish, implement, and maintain a confirmation program for COR, as confirmation from the DOJ must be determined prior to an individual performing COR duties.

Benefits to the Public:

The DOJ has determined that the regulations will facilitate the protection of public safety. The regulations will ensure that only individuals who have undergone confirmation by the DOJ are able to obtain and view confidential information regarding the criminal history record of potential employees and applicants. They would also specify the appeal process for those individuals whose confirmation is denied, suspended, or revoked.

VII. REASONABLE ALTERNATIVES CONSIDERED BY THE DOJ

No reasonable alternatives to the regulations were proposed or identified. The DOJ is required to establish regulations to implement and maintain a confirmation program for COR. No reasonable alternative to the regulatory proposal would be less burdensome and equally effective in achieving the purposes of the regulations in a manner that ensures full compliance with PC section 11102.2(b). The DOJ determined the proposed regulations will not have a statewide adverse impact on small business, and therefore no alternatives that would lessen the impact were considered.

VIII. EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The proposed regulatory action will not have a significant adverse economic impact on businesses because the proposed changes establish standards which ensure the confirmation of individuals who, while performing their required job duties, act within the scope of a COR and obtain and view confidential information regarding criminal history. These standards apply to a select number of individuals, who are already statutorily mandated to be confirmed by the DOJ, and serve to provide consolidated and centralized guidelines to the process. There are no new requirements in this proposed regulatory action that would be imposed on a business, thus there would be no adverse economic impact directly affecting business.

IX. MANDATES

The proposed regulatory action does not mandate the use of specific technologies or equipment, or prescribe specific actions or procedures.

X. MANDATED BY FEDERAL LAW OR REGULATIONS

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