

**TEXT OF THE PROPOSED REGULATIONS
FOR THE CONFIRMATION OF NON-EXEMPT INDIVIDUALS DESIGNATED
BY A PUBLIC OR PRIVATE AGENCY AS A CUSTODIAN OF RECORDS
TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 19
SECTIONS 999.500 TO 999.513**

ARTICLE 1. General

§ 999.500: Title

This chapter shall be known as the “Department of Justice Regulations for the Confirmation of Non-Exempt Individuals Designated by a Public or Private Agency as a Custodian of Records,” may be cited as such and will be referred to herein as, “these regulations.”

NOTE: Authority cited: Penal Code Section 11102.2(b). Reference: Penal Code Section 11102.2(b).

§ 999.501: Scope

The provisions of these regulations implement, interpret, and make specific the mandate in California Penal Code section 11102.2(b), which requires the Department of Justice to confirm non-exempt individual(s) who are designated by an agency as a Custodian of Records. Pursuant to Penal Code section 11102.2(c) every agency must designate at least one Custodian of Records. The Custodian of Records individual(s) is/are responsible for the security, storage, dissemination, and destruction of the criminal offender record information furnished to the agency by the Department. These regulations also establish procedures for the application and issuance of the required confirmation, and set forth procedures if the application is denied, suspended or revoked.

NOTE: Authority cited: Penal Code section 11102.2(b). Reference: Penal Code sections 11102.2(b) and 11102.2(c).

§ 999.502: Definition of Key Terms

(a) “Administrative Hearing Officer” means an individual designated by the Director to conduct any hearing required under these regulations.

(b) “Agency” means any public or private entity that receives criminal offender record information from the Department of Justice.

(c) “Applicant” means the individual applying to be a Custodian of Records.

(d) “Applicant Live Scan” means a system for the electronic submission of applicant fingerprints.

(e) “Attorney General” means the Attorney General of the State of California.

(f) “Criminal offender record information” means the California master record of information compiled and maintained by the DOJ pertaining to the identification and criminal history of any person which may include name(s), state identification number or criminal identification and index number, date of birth, physical description, biometric data, photographs, date(s) of arrest(s), arresting agency or agencies, booking number(s), charge(s), disposition(s), sentencing, incarceration, rehabilitation, release, and similar data.

(g) “Custodian of Records” means the individual(s) designated by an agency as responsible for the security, storage, dissemination, and destruction of the criminal offender record information furnished to the agency and who serves as the contact for the Department of Justice for any related matters.

(h) “Director” means the Director of the California Justice Information Services Division, Department of Justice, State of California.

(i) “Department” means the California Department of Justice.

(j) “Non-Exempt Individuals” means those individuals not exempt from the confirmation requirements of these regulations, as specified in Penal Code section 11102.2(b).

NOTE: Authority cited: Penal Code section 11102.2(b). Reference: Penal Code sections 11102.2(a), 11102.2(b) and 13102.

ARTICLE 2. Qualifications and Application for Confirmation

§ 999.503: Qualifications for Confirmation

Every applicant for confirmation pursuant to these regulations shall meet the qualifications criteria as specified in Penal Code sections 11102.2(d) and 11102.2(e).

NOTE: Authority cited: Penal Code section 11102.2(b). Reference: Penal Code sections 11102.2(d) and 11102.2(e).

§ 999.504: Application for Confirmation

(a) An individual designated as a Custodian of Records for an agency is mandated under these regulations to apply for confirmation by submitting to the Department a Custodian of Records Application for Confirmation Form, BCIA 8374 (Rev 04/2017), which can be found on the Attorney General’s website and is incorporated herein by reference.

(b) The applicant shall submit fingerprint images to the Department along with the completed application.

(c) The Custodian of Records applicant shall be charged a fee according to Penal Code section 11102.2(b).

(d) Misrepresentation of or failure to disclose requested information on the application for confirmation is cause for denial or revocation of confirmation.

NOTE: Authority cited: Penal Code section 11102.2(b). Reference: Penal Code sections 11102.2(d), 11102.2(e), 11102.2(f), and 11102.2(g).

ARTICLE 3. Confirmation Letter

§ 999.505: Confirmation by the Department

Upon submission of the fingerprint based criminal offender record information background check, the Department will notify the applicant agency when the applicant's Custodian of Records application has been confirmed or denied.

NOTE: Authority cited: Penal Code section 11102.2(b). Reference: Penal Code sections 11102.2(b) and 11102.2(c).

§ 999.506: Duration of Confirmation

(a) The confirmation notice issued pursuant to these regulations remains in effect for the duration that the individual is designated as a Custodian of Records by the agency listed on the application or until the confirmation is surrendered, revoked, or suspended for cause.

(b) All agencies shall immediately notify the Department by utilizing the No Longer Interested (NLI) Notification Form, BCIA 8302 (Rev 02/2017) available on the Attorney General's website and incorporated herein by reference, when an individual designated as a Custodian of Records no longer serves in that capacity.

NOTE: Authority cited: Penal Code section 11102.2(b). Reference: Penal Code sections 11102.2(b) and 11102.2(h).

§ 999.507: Non-Transferability of Confirmation

The Custodian of Records confirmation is issued to an individual and is not transferable or assignable to any other individual. The Custodian of Records confirmation shall only be used by the confirmed individual(s) for the agency listed on the Custodian of Records Application for Confirmation Form BCIA 8374 (Rev 04/2017) previously submitted to the Department.

NOTE: Authority cited: Penal Code section 11102.2(b). Reference: Penal Code section 11102.2(b).

ARTICLE 4. Procedures for Denial of an Application, and Suspension or Revocation of an Existing Custodian of Records Confirmation

§ 999.508: Denial, Suspension, or Revocation of a Custodian of Records Application

(a) When a Custodian of Records application is denied, or an existing confirmation is suspended or revoked, for any offense specified in Penal Code sections 11102.2(f) and 11102.2(g), the Department shall provide the applicant with a written notice which will specify all grounds on which the denial, suspension, or revocation is based. Pursuant to Penal Code section 11105(t), the written notice shall include a copy of the criminal history information that is the basis for the adverse confirmation decision.

(b) When a Custodian of Records application is denied, or when an existing confirmation is suspended or revoked, the applicant may file a written request for reconsideration by an Administrative Hearing Officer within 30 days of the date of the written notification of the denial, suspension, or revocation. Such requests may include any and all evidence and legal arguments which the applicant contends are relevant to a reconsideration of the application, suspension, or revocation. The Department shall provide the applicant with a written notice of its final decision within 60 days of the date the request for reconsideration is received.

NOTE: Authority cited: Penal Code section 11102.2(b) and Government Code section 11400.20(a). Reference: Penal Code sections 11102.2(d), 11102.2(e), 11102.2(f), 11102.2(g), and 11105(t), and Government Code sections 11445.10-11445.60.

§ 999.509: Administrative Hearing

(a) If an Administrative Hearing is requested by an applicant or an existing confirmed Custodian of Records, a hearing shall be held within 30 days of the date of the request for an Administrative Hearing, unless a later date is requested by the individual requesting the hearing. The hearing shall be conducted by an Administrative Hearing Officer appointed by the Department. The Administrative Hearing Officer shall not have participated in the decision for which reconsideration is being sought.

(b) The individual whose Custodian of Records application has been denied or whose existing confirmation has been suspended or revoked shall be given the opportunity to be heard and to be represented by counsel during any hearing proceedings.

(c) An Administrative Hearing Officer shall disqualify himself or herself and withdraw from any case in which he or she cannot accord a fair and impartial hearing or decision. Any party may request the disqualification of the Administrative Hearing Officer by filing an affidavit stating with particularity the grounds on which it is claimed that a fair and impartial hearing or decision

cannot be accorded prior to the taking of evidence at a hearing. The issue shall be determined by another Administrative Hearing Officer appointed by the Department.

(d) The proceedings at the hearing shall be recorded by a confirmed shorthand reporter, except that upon the consent of all parties, the proceedings may be recorded electronically.

NOTE: Authority cited: Penal Code section 11102.2(b). Reference: Penal Code section 11102.2(b) and Government Code sections 11400.20(a) and 11445.10-11445.60.

§ 999.510: Time and Place of Administrative Hearing

(a) The Department shall notify the person requesting the hearing of the time and place of the hearing. Failure of the individual requesting the hearing to appear at the hearing shall be deemed a withdrawal of the request for the hearing and the action of the Department shall be final.

NOTE: Authority cited: Penal Code section 11102.2(b). Reference: Penal Code section 11102.2(b) and Government Code sections 11400.20(a) and 11445.10-11445.60.

§ 999.511: Evidence Rules

(a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If the person requesting the hearing does not testify on his or her own behalf, he or she may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible individuals are accustomed to relying in conducting serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

NOTE: Authority cited: Penal Code section 11102.2(b). Reference: Penal Code section 11102.2(b) and Government Code sections 11400.20(a) and 11445.10-11445.60.

§ 999.512: Proposed Decision

The Administrative Hearing Officer shall prepare a Proposed Decision in such a form that it may be adopted as the decision in the case. A copy of the Proposed Decision shall be furnished to the individual requesting the hearing and the Director no later than 30 days after the hearing. The

Director may adopt the decision in its entirety or may decide the case on the record with or without taking additional evidence. The individual requesting the hearing shall be notified of the Director's decision within 100 days of the Administrative Hearing Officer's decision or within 100 days of the taking of additional evidence, whichever is later.

NOTE: Authority cited: Penal Code section 11102.2(b). Reference: Penal Code section 11102.2(b) and Government Code sections 11400.20(a) and 11445.10-11445.60.