

TITLE 11. CALIFORNIA DEPARTMENT OF JUSTICE

**NOTICE OF PROPOSED AMENDMENTS TO THE DEPARTMENT OF JUSTICE
REGULATIONS PERTAINING TO THE PROCESS FOR THE SECURING OF
CRIMINAL OFFENDER RECORD INFORMATION**

The Department of Justice (DOJ) proposes to amend California Code of Regulations (CCR), Title 11, Chapter 7, Article 1, Section 700; repeal and adopt Sections 701, 702, 703, 707, and 708; and adopt Sections 704, 705, and 706. The proposed regulations below would outline processes and procedures for the accessing, handling, storage, dissemination and destruction of criminal offender record information (CORI) furnished to authorized agencies.

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, if requested, will be provided by separate notice.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

The public comment period for this regulatory action will begin on September 19, 2014. Written comments on this regulatory proposal must be received no later than November 03, 2014 at 5:00 p.m., and addressed to the following:

Dolores Haste, DOJA I
California Department of Justice
Bureau of Criminal Information and Analysis
4949 Broadway
Sacramento, CA 95820

Or

Steve Reed, Staff Services Analyst
California Department of Justice
Bureau of Criminal Information and Analysis
4949 Broadway
Sacramento, CA 95820

Please note that under the California Public Records Act (GC, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Penal Code (PC) section 11077 authorizes the Attorney General to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific sections 11075-11081, 11102.2, 11105, and 13202 of the PC and section 15165 of the GC.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW PURSUANT TO GC SECTION 11346.5(a)(3)

Background and Effect of the Proposed Rulemaking:

PC section 11077 requires the Attorney General to adopt regulations to assure the security of CORI. Many of the sections and subdivisions within the CCR, Title 11, Chapter 7, Article 1, Sections 700 through 710, regarding the mandatory securing of CORI, have been repealed by the Office of Administrative Law or no longer specify the proper procedures and processes for accessing, handling, storage, dissemination, and destruction of CORI.

This rulemaking action makes specific the restrictions on authorized agencies for accessing, storing, handling, disseminating, and destroying CORI responses furnished by the DOJ.

Objectives and Benefits of the Proposed Regulation:

The objective of the proposed rulemaking action is to assist authorized agencies within California with the proper procedures for accessing, storage, handling, dissemination, and destruction of CORI, thus protecting the privacy of the citizens of 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 Number BCIA 8374, January 2014, section 702.
2. Annual Custodian of Records Notification, Form Number BCIA 8375, June 2013, section 702.
3. California Law Enforcement Telecommunications System Subscriber Agreement, Form Number HDC 0001, March 2010, section 703.
4. National Institute of Standards and Technology (NIST) Special Publication 800-88, "Guidelines for Media Sanitization," September 2006, section 708.

COMPARABLE FEDERAL REGULATIONS

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

MANDATED BY FEDERAL LAW OR REGULATIONS

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

OTHER STATUTORY REQUIREMENTS

None.

DETERMINATION OF INCONSISTENCY AND 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 security of CORI in California.

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 mandate to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

Significant Statewide Adverse Economic Impact Directly Affecting Business, 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.

Cost Impacts on Representative Private Persons or Businesses

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.

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 authorized agencies. 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 the accessing, handling, storage, dissemination, and destruction of CORI, as well as penalties for non-compliance across the state. The new regulations would also consolidate information from various documents regarding CORI into a central location, and give those processes and procedures the force of law, thus protecting the privacy of the citizens of California.

Effect on Small Business

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 accessing, handling, storing, dissemination, and destruction of CORI allowed through the licensing, certification, and permitting process now existing would not change for those entities defined as a small business in Government Code section 11342.610(a).

Housing Costs

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

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.

AGENCY CONTACT PERSONS

Inquiries concerning the substance of the proposed regulatory action may be directed to the designated agency contact persons: Ms. Dolores Haste, Department of Justice Administrator I, Bureau of Criminal Information and Analysis, at (916) 227-3861. The back-up contact for these inquiries is Mr. Steve Reed, Staff Services Analyst, Bureau of Criminal Information and Analysis, at (916) 227-4251.

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, Government Code, 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 FINAL STATEMENT OF REASONS

Upon its completion, 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>.