

CALIFORNIA DEPARTMENT OF JUSTICE
NOTICE OF PROPOSED RULEMAKING ACTION

TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL

(Notice to be Published on May 10, 2019)

Notice is hereby given that the Department of Justice (Department) proposes to adopt sections 750 through 757 of Title 11, Division 1, Chapter 7.5, of the California Code of Regulations (CCR), concerning the Fair and Accurate Governance of the CalGang Database, pursuant to the authority provided in Penal Code section 186.36.

PUBLIC HEARING

The Department will hold two public hearings to receive public comments on the proposed regulatory action, as follows:

Date: June 26, 2019
Time: 9:00 a.m. – 1:00 p.m.
Location: Office of the Attorney General
300 South Spring Street
Los Angeles, CA 90013

This auditorium is wheelchair accessible. There is no designated parking lot. Parking will need to be found nearby.

Date: June 27, 2019
Time: 9:00 a.m. – 12:00 p.m.
Location: Ziggurat Building
707 3rd Street
West Sacramento, CA 95605

This auditorium is wheelchair accessible. Parking will be available for a fee in the structure next to the building.

At either of these hearings, any person may present oral or written comments regarding the proposed regulatory action. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

The public comment period for this regulatory action will begin on May 10, 2019. Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on June 25, 2019. Only comments received by the Department by that time will be considered. Written comments shall be submitted to:

Shayna Rivera, CalGang Unit Manager
Bureau of Criminal Identification and Investigative Services
California Justice Information Services Division
4949 Broadway
Sacramento, CA 95820
Email: gangdatabaseGDTAC@doj.ca.gov

Or

Thomas Bierfreund, Associate Governmental Program Analyst
Bureau of Criminal Identification and Investigative Services
California Justice Information Services Division
4949 Broadway
Sacramento, CA 95820
Email: gangdatabaseGDTAC@doj.ca.gov

Please note that under the California Public Records Act (Gov. Code, § 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

Subdivisions (l), (k), (n), and (o) of Penal Code section 186.36 authorize the Department to adopt proposed regulations sections 750 to 757. The proposed regulatory action will implement, interpret, and make specific the provisions of Penal Code sections 186.34, 186.35, and 186.36 as they relate to the CalGang database.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Background:

The CalGang database, a shared gang intelligence database, is designed to enhance officer safety and improve the efficiency of criminal investigations by providing an electronically-generated base of statewide gang-related intelligence information. Since the inception of the CalGang database in 1996, local law enforcement has entered intelligence data into the system for the purpose of cross-jurisdictional information sharing.

In 2016, the California State Auditor's Office (State Auditor) determined that the CalGang database needed a different oversight structure to ensure that the information within the database was reliable and all users adhered to requirements that protected a person's rights. The State Auditor recommended that the California Legislature adopt state law assigning the Department responsibility for oversight of the CalGang database and defining the requirements under which the CalGang database shall operate, such as periodic record reviews. At the time the State Auditor performed the audit, maintenance of the database was funded by the Department but the database was governed by uncodified policies and procedures and two informal committees made up of representatives from law enforcement agencies that functioned independently from the state.

Upon release of the State Auditor's report, the Department began working with the law enforcement users of the database to resolve the issues brought to light. This resulted in many positive and critical changes, including the following:

- Enactment of technical mechanisms to prevent children under the age of 10 from being entered into the database and ensure that records are automatically purged at the end of the five-year retention period.
- Posting of information on the Attorney General's website in an effort to provide more transparency.
- Implementation of new user policies, such as requiring new user agreements every two years, password resets on a regular basis, and account deactivation after 180 days of non-use and upon a change in employment status; mandatory online recertification training every two years; and mandatory standardized training.
- Improvement of auditing protocol and review of records by the appropriate supervisory classification.

As a result of the State Auditor's report, the California Legislature introduced Assembly Bill (AB) 90 (Stats. 2017, Ch. 695), which chaptered in October 2017. AB 90 requires the Department to promulgate regulations governing the use, operation, and oversight of any shared gang database, including, among other things, establishing the requirements for entering and reviewing gang designations, the retention period for listed gangs, and the criteria for identifying gang members. Moreover, AB 90 requires the Department to establish the Gang Database Technical Advisory Committee (GDTAC) with specified members to advise the Department in promulgating regulations for the specific purposes of: governing the use, operation, and oversight of shared gang databases. For the CalGang database specifically, AB 90 requires the Department to develop and implement standardized periodic training for all persons with access to the CalGang database, and by January 1, 2020, to promulgate regulations to provide for periodic audits by law enforcement agencies and Department staff to ensure the accuracy, reliability, and proper use of the CalGang database, and to report the results of those audits to the public.

In response to AB 90, the Department has drafted two chapters of proposed regulations—one pertains to the governance of the CalGang database, whereas the other, proposed in a separate rulemaking file, governs any other shared gang database in California. Presently, the Department has determined that the CalGang database is the only shared gang database to exist in the state of California. Hence, the Department wrote two chapters so that it could clearly distinguish the regulations for the only existing shared gang database, the CalGang database, from those that will govern any other shared gang databases that may arise in the future.

The Department is statutorily mandated to promulgate regulations no later than January 1, 2020, for periodic audits of each CalGang node and user agency to ensure the accuracy, reliability, and proper use of the CalGang database (Pen. Code, § 186.36, subd. (n)). Instead of only promulgating regulations for periodic audits, the Department chose to promulgate regulations for a majority of the topics required by AB 90 because: (1) it wanted to ensure that a complete set of regulations are in place to govern the CalGang database so that CalGang database users are implementing the required changes as soon as possible to address the concerns brought up by the State Auditor, and (2) the Department wanted to actively implement the advice that it sought

from the GDTAC for the text of the regulations during the five public meetings that were held in 2018.

The Department is committed to continuously working to improve the effectiveness of the database, balancing the need of law enforcement users, and at the same time protecting individual's rights. Even after the regulations are adopted, the Department will continue collecting data and conducting empirical research to evaluate the effectiveness of the database. The Department will engage in a separate rulemaking process upon the conclusion of the empirical research to further bolster the oversight of the CalGang database and to enhance the quality and integrity of the data.

Effect of the Proposed Rulemaking:

The proposed regulations codify and update existing policies and procedures governing the CalGang database and provide significant changes to previous guidelines for entry of data into the CalGang database. Specifically, the regulations increase the minimum age for entry into the database, make the criteria for designating an individual as a gang member or associate more robust, and limit the circumstances when a tattoo may be used as a way to designate an individual as a gang member or associate. In addition, they expand training requirements to address best practices for gathering criminal intelligence, how to mitigate the entry and release of inaccurate data, implicit bias, and the negative impact of releasing data for unauthorized purposes. They implement the requirement that an individual be notified of his or her inclusion in the database. They increase the number of required audits of records in the database both for individuals and gangs and implement an audit requirement in relation to proxy queries. Enhanced record keeping of source documents. Lastly, these regulations require node and user agencies to include additional justification when utilizing specific criteria for entry into the database and maintain source documentation and other pertinent information for specified periods of time.

Proposed California Code of Regulations, Title 11, Division 1, Chapter 7.5, interprets and details the specifics of these laws as follows:

Article 1 specifies the title and scope of the new chapter, which is to govern the policies and procedures of the CalGang database.

Article 2 specifies the purpose of the CalGang database, which is to provide law enforcement agencies with an accurate, timely, and electronic statewide database of gang-related intelligence information, and direct the user to the user agency who supplied the information. It also defines the terms used throughout the new chapter.

Article 3 specifies who may have access to the CalGang database and the process and requirements for gaining access. It specifies the responsibilities of the Department in handling requests from an out-of-state or federal agency for access to CalGang records, and specifies the purpose for which CalGang records may be used by an out-of-state or federal agency. It specifies the responsibilities of a node agency and Node Administrator, considerations taken by the Department in approving a request to become a node agency, and the process by which an agency is designated a node agency. It specifies the responsibilities of a user agency's point of contact and the parameters and process for suspending, revoking, and deactivating user accounts.

It also permits node and user agencies to establish more restrictive policies and procedures than those outlined in the regulations. Finally, it specifies the process by which a non-user may request a proxy query for information contained within the CalGang database. It also specifies when information from the CalGang database may be disseminated to non-users.

Article 4 relates to user training. It requires users to take a certification exam prior to utilizing the CalGang database and a recertification exam once every two years. It also specifies the requirements for becoming an approved CalGang database instructor.

Article 5 specifies the standard and criteria for entry into the CalGang database as a gang member or gang associate, including the minimum age of entry.

Article 6 requires supervisory review of data entered into the CalGang database and establishes a process for deleting records from the database. It also specifies that the node or user agency must engage with other node or user agencies that have entered additional information related to the record to be deleted prior to deleting it.

Article 7 specifies the means by which a person may be notified of his or her inclusion in the CalGang database, the components that must and may be included in the notification, guidance for determining when the notification requirement has been met, and requirements for documenting that the notice has been sent.

Article 8 relates to information requests. It establishes that agencies may develop a form for the purpose of verifying the identity of an individual who wants to request information regarding his or her designation in the CalGang database. It establishes the requirements for responding to a request for information regarding an individual's designation in the CalGang database, as well as the components that must be included in an agency's response. It also specifies that an agency must respond to a request from an individual seeking removal from the CalGang database.

Article 9 establishes the length of time that records in the CalGang database must be retained, including when the retention period may be reset. It establishes the length of time that notifications sent to individuals prior to their inclusion in the CalGang database must be retained. It establishes the length of time that requests for information regarding an individual's designation in the CalGang database and the associated responses must be retained. It also specifies who is responsible for maintaining source documents related to information entered into the CalGang database and requirements for removing criteria for which supporting source documents are missing or incomplete.

Article 10 establishes requirements for peer audits of CalGang records, including frequency and substance of the audits. It specifies that the Department must include a summary of the peer audits in its annual report. It establishes requirements for auditing criminal street gangs designated in the CalGang database, including who is responsible for conducting them and frequency and substance of the audits. It establishes the Department's authority to conduct audits of records in the CalGang database. It also specifies that agencies who audit their own records must report the results to the Department.

Article 11 specifies restrictions for the sharing of information contained in the CalGang database. It specifies conditions under which information from the CalGang database may be printed or

duplicated. It specifies data components that must be reported to the Department by each user agency annually and the date by which it must be reported.

Article 12 relates to system security. It specifies the requirements for storing equipment that transmits or receives CalGang database information and any associated printouts. It specifies that the Department must be granted access to any such equipment to ensure compliance with the storage requirements. It establishes notification requirements for any missing equipment that could compromise the confidentiality and security of the CalGang database. It specifies the requirements for investigating and reporting any potential misuse of the CalGang database or the information contained therein. It also specifies that the Department must approve new user accounts with the same level of access as that of Node Administrators.

Article 13 specifies the actions that may be taken by the Department against a User who violates any statute or regulation governing the CalGang database.

Comparable Federal Regulations:

Penal Code section 186.36, subdivision (m) requires that the CalGang database operate in compliance with Code of Federal Regulations, Title 28, Part 23 governing criminal intelligence systems operating policies. This regulation is consistent with those federal regulations.

Anticipated Benefits of the Proposed Regulations:

The objective of the proposed rulemaking action is to clarify the requirements of the Fair and Accurate Gang Database Act of 2017 (Act), as outlined in Penal Code sections 186.34 through 186.36, inclusive. The Act, and these regulations by extension, are meant to ensure that information contained in the CalGang database is controlled, substantiated, and safeguarded.

The Department anticipates that these regulations will benefit the health and welfare of California residents because they will protect the integrity of the CalGang database and the information contained therein. By detailing the requirements for access and use, these regulations will ensure that the information in the CalGang database is only used to direct users to the law enforcement agency who entered it, and not in court proceedings or for housing, employment, or immigration purposes. They will also provide as much transparency as possible to the public, implement safeguards against entry of unsupported records into the database, and provide a system of checks and balances in the form of increased auditing by both peers and the Department.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

Pursuant to Government Code section 11346.5, subdivision (a)(3)(D), the Department shall evaluate whether the proposed regulations are inconsistent or incompatible with existing state regulations. Pursuant to this evaluation, the Department has reviewed existing regulations in the California Code of Regulations and has determined that no other regulations address criminal intelligence information or shared gang databases in California. Hence, these proposed regulations are not inconsistent or incompatible with existing state regulations. This determination is based on the fact that the proposed regulations specify new legislation that was enacted recently and are unconnected to any previous regulations.

Documents Incorporated by Reference:

Documents will be incorporated in the regulation by reference as specified by the following sections:

1. CalGang User Agreement, February 2019, subdivision (d) of section 750.6.
2. CalGang Proxy Query Agreement, March 2019, section 751.6.

Mandated by Federal Law or Regulations:

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

Other Statutory Requirements:

Penal Code section 186.36 requires the Department to obtain the advice of GDTAC when promulgating regulations governing the CalGang database (Pen. Code, § 186.36, subs. (k), (n) and (o).) The Department worked closely with GDTAC in drafting these regulations. In 2018, GDTAC held five public meetings throughout the state to consider, discuss and receive public input on the regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on Local Agencies and School Districts: None.

Cost or Savings to Any State Agency: These regulations could result in additional costs to State government, specifically the Department, of approximately \$2,431,000. The Department received an ongoing appropriation and position authority for 11.0 new positions, beginning in the Fiscal Year 2017-2018, in relation to an audit conducted by the California State Audit regarding the CalGang database and Assembly Bill 90 (2017), which requires the CalGang regulations. This appropriation, based on input from the Department, was designed to enable the Department to address the following areas of responsibility:

- Drafting regulations to establish parameters for usage, data governance, etc.
- Providing administrative support to the technical advisory committee.
- Overseeing the review of the approximately 200,000 individual records currently in the system.
- Developing marketing materials such as Information Bulletins to increase both agency usage and knowledge and understanding of regulations.
- Developing, implementing, and maintaining training and audits.
- Conducting system user outreach to discuss enhancements and additional features to better meet agency needs.
- Creating and publishing quarterly and annual reports.
- Ensuring implementation of audit recommendations and legislative mandates.

- Building safeguards to protect against entry of incomplete and unverified records, as well as those for which criteria for entry has not been met.
- Ensuring that individuals are notified prior to being designated in the CalGang system.
- Generating relevant CalGang statistics.
- Facilitating coordination between the California Gang Node Advisory Committee, technical advisory committee, and technical and administrative teams within the Department, as well as all associated meeting.

In developing the regulations, the Department has determined that it will need one Associate Governmental Program Analyst (AGPA) in addition to the resources already appropriated. The AGPA is needed to address the expanded audit and training responsibilities of the Department, as outlined in these regulations. There are currently three positions dedicated to performing the administrative functions outlined above; however, the demand for training has exceeded their capabilities, as has the need to conduct back-end audits of new and existing data within the CalGang database.

The Department is not currently pursuing a Budget Change Proposal for the necessary position, but may do so in the future. The estimate provided above is based on the salary and benefits of one AGPA position.

Cost to Any Local Agency or School District Which Must Be Reimbursed in Accordance with Government Code Sections 17500 through 17630: The Department has determined that the proposed regulatory action could result in additional approximate costs to local agencies ranging from \$548,000 to \$1,813,000 in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and sections 17500 et seq. of the Government Code because this regulation.

These regulations could result in additional costs to local government to the extent that California law enforcement agencies choose to participate in the CalGang database. However, it is difficult to approximate the potential fiscal effect these proposed changes may have, due to the fact that participation in the CalGang database is voluntary. The Department has determined that most of the California law enforcement agencies that currently participate in the CalGang database already meet most of the proposed standards and would experience little to no fiscal impact.

California Law Enforcement Agencies that Currently Participate in the CalGang Database

The Department of Justice identified two main areas that could potentially result in costs to California law enforcement agencies that choose to participate in the CalGang database (hereafter referred to as user agencies): updating and reprinting field interview cards, training persons who will have direct access to the CalGang database. These regulations increase the documentation that must be created and maintained by user agencies. While it is not a requirement set forth in these regulations, some user agencies may choose to update their field interview cards that are used, for the purposes of the CalGang database, to document interactions with suspected gang members or gang associates. After conferring with existing user agencies, the Department determined that updating and reprinting field interview cards would cost a user agency approximately \$13 per booklet.

There are more than 800 law enforcement agencies in California, 187 (or approximately 23%) of which were CalGang user agencies as of April 4, 2019. According to the 2017 Crime in California report published by the Department, there were 78,715 sworn law enforcement personnel in California in 2017. If the agencies of approximately 25% of those sworn law enforcement personnel update and reprint field interview cards as a result of these regulations, the Department estimates that local agencies could incur a cost of approximately \$266,000.

In addition, user agencies may incur an unknown cost as a result of the list of components that must be included in user training, as outlined in section 751.8 of these regulations. Currently, individuals who require direct access to the CalGang database must undergo training prior to being granted access. The existing training is standardized; however, these regulations add new components that must be incorporated into all training. Expanding the training requirements could result in user agencies needing to dedicate more work hours to participating in and/or teaching the training if it is conducted by users of the CalGang database. As the manner in which individuals satisfy the training requirements will differ across user agencies, it is difficult to estimate the potential cost that expanding the training requirements would pose to each user agency or the user agency community as a whole.

As of April 4, 2019, there were approximately 3,000 active CalGang users, all of whom would need to adhere to the new training requirements. The Department estimates that these requirements could result in as few as two and as many as eight additional hours of training being required of existing active users. Many of the existing users are employed at the Detective classification, so the Department is using that as the basis for estimating the cost of additional staff hours. According to the California Employment Development Department, the median salary for a Detective in California was approximately \$98,000 annually, or \$47 hourly, in 2018 (Retrieved April 26, 2019, from <https://www.labormarketinfo.edd.ca.gov/OccGuides/Detail.aspx?Soccode=333021&Geography=0604000073>). Using this data, the Department estimates that local agencies could incur an approximate cost ranging from \$282,000 to \$1,128,000.

It should be noted that Penal Code section 186.36 requires specified data elements to be included in the annual report published by the Department. The information specified in the regulation is not currently captured in the CalGang database; thus, it was requested from user agencies in 2017 and 2018. While all user agencies provided the information, there was no mandate in place for them to do so. As all were able to do so, this requirement of the regulation should not result in additional costs to existing user agencies.

Existing user agencies that choose to withdraw from the CalGang database as a result of these regulations would incur non-fiscal impact in the form of decreased access to cross-jurisdictional gang-related intelligence information. The CalGang database is a statewide, low cost, securely networked intelligence database that houses data on suspected members and associates of criminal street gangs, descriptions, tattoos, vehicles, and field interviews. Withdrawing from the CalGang database would eliminate the easy accessibility of the information housed therein, and require an agency to reach out to each jurisdiction in order to obtain the data.

In summary, the Department estimates that existing user agencies could incur costs ranging from \$548,000 to \$1,394,000 in order to fully comply with these regulations.

California Law Enforcement Agencies that Do Not Currently Participate in the CalGang Database

It is unknown how many, if any, California law enforcement agencies who do not currently participate would choose to participate in the CalGang database after these proposed regulations are adopted. The Department is assuming that it will receive requests from 10 agencies annually for the purposes of estimating the cost of these regulations.

Such agencies could incur costs as a result of some of the requirements outlined in these regulations, most of which would be related to staff time. For example, agencies that want to begin participating in the CalGang database would be required to designate a point of contact. This individual would be responsible for facilitating training, retrieving source documents, and updating CalGang records, as necessary. The extent of the staff time that would need to be dedicated to this role would depend on the number of individuals who will require direct access to the CalGang database and the records therein, the level of suspected gang activity in the area, and the level of participation in the database, among other factors. The Department estimates that these activities would occupy no more than 10% of the designated individual's time. Assuming the responsibility would be assigned to a Detective, the Department estimates that a new user agency could incur a cost of approximately \$9,800 annually for the performance of the point-of-contact duties. This would result in local agencies incurring a cost of \$98,000 annually.

Pursuant to Penal Code section 186.36, any individual with access to the CalGang database or the records contained therein are required to undergo the comprehensive training. The Department estimates that required training hours could range from four to 16, depending on the method of instruction and length of each component instituted by the Node Administrator. Based on the number of existing user agencies (187) and active users (3,000), the Department estimates that approximate 16 individuals per new user agency would need to participate in training. The Department estimates that local agencies could incur approximate costs ranging from \$30,000 to \$120,000 in staff time as a result of attending training.

As noted above, the training is typically provided by node or user agencies; however, the agencies could also choose to work with an outside vendor to provide some specific components of the required training, such as database security or implicit bias. The costs resulting from contracted training would depend on the components being taught, the number of participants, and the length of the class(es), and would vary widely. As such, the Department cannot estimate the potential cost to local agencies.

Pursuant to Penal Code sections 186.34, user agencies are required to notify an individual prior to designating him/her as a gang member or gang associate in the CalGang database. It also authorizes an individual to request information from a law enforcement agency as to whether s/he is designated in the CalGang database, requires the agency receiving the request to respond, except as specified, and outlines a process by which an individual can contest his/her designation in the database. While the specific information that must be contained in the designation notifications and information request responses are delineated in Sections 753.6, 754, and 754.2 of the regulation, the statute implements the requirements on local agencies. As such, the associated costs are not a result of the regulations. In an effort to alleviate impact to user agencies, the Department has made every attempt to enact performance standards rather than prescribing actions, as often as possible.

In summary, the Department estimates that local agencies could incur approximate costs ranging from \$128,000 to \$218,000 annually as a result of new user agencies being added after enactment of these regulations.

Agencies seeking to become node agencies would incur more costs than those that simply want to participate as user agencies. Section 751 of these regulations stipulates the requirements to become a node agency, including the ability to provide technical support and pay costs associated with training of users, designation of staff to manage the node, and travel expenses for participation in meetings that occur three times per year. Also included in a node agency's responsibilities are account management for the user agencies it services and coordination of any requests for CalGang statistics from external entities.

The Department funds a contract with the vendor responsible for maintenance of the CalGang database, including any systematic changes. As such, technical support services required of node agencies is limited to assisting users in navigation of the database and communicating needs to the Department, the costs of which would be staff time.

Travel expenses for participation in meetings would vary, depending on meeting location. The triannual meetings last three days each, occur in different locations throughout the state, and are attended by Node Administrators or their designees. Taking into account potential airfare, hotel, and per diem costs, the Department estimates that travel costs would average \$2,000-\$2,500 annually for any new node agency.

The Department estimates that each node agency could potentially need one-half to one position dedicated to the Node Administrator duties, depending on the size of the node for which the node agency would have oversight responsibilities and the number of user agencies therein. That individual would be responsible for the technical support, user training, and account management duties identified above. The individual would also be responsible for conducting peer audits as required by these regulations, at each triannual meeting noted above. As there are currently no node agencies located in Northern California, the Department estimates that there could be a need for approximately two more node agencies. If two new node agencies were established and each new node agency appointed one Node Administrator at the Detective classification, then the state could incur additional costs of approximately \$196,000 annually.

In summary, the Department estimates that local agencies could incur costs totaling approximately \$201,000 annually if two new node agencies were established after enactment of these regulations.

Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

Cost or Savings in Federal Funding to the State: None.

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 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 Section 11346.3, Subdivision (b):

Effect on Jobs/Businesses:

The Department 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 only applies to law enforcement agencies who choose to voluntarily participate in the CalGang database. Furthermore, this proposed action would have no impact on any other businesses or jobs. The Department does not require businesses to participate in the use of the CalGang database in any way, and training is typically provided by personnel within the node or user agencies. It is possible that existing or new user agencies could choose to contract with a private business to conduct the training; however, it is not possible for the Department to anticipate how many user agencies may do so or what the scope of the training would be.

Benefits of the Proposed Regulation:

The regulations proposed in this rulemaking action would standardize the procedures and processes for obtaining access to the CalGang database and the information therein. They would eliminate ambiguity and confusion surrounding use of the CalGang database, as well as create as much transparency as possible into its workings.

In addition, the proposed regulatory action will positively impact the privacy of California residents by establishing policies and responsibilities for those engaged with the CalGang database. This will enable the Department to be more closely involved in the business of the CalGang database and its users, as well as ensure that all user and node agencies are adhering to policies and procedures necessary to protect the information contained in the CalGang database.

Cost Impacts on Representative Private Persons 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.

Business Report:

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

Small Business Determination:

The Department has determined, pursuant to CCR, Title 1, Section 4, that the proposed regulatory action would not affect small business, because it pertains only to California law enforcement agencies that voluntarily participate in the CalGang database, not the general public.

CONSIDERATION OF ALTERNATIVES

Before taking final action on the amendments, the Department 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 Department 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 proposed regulatory action may be directed to:

Shayna Rivera, CalGang Unit Manager
Bureau of Criminal Identification and Investigative Services
California Justice Information Services Division
4949 Broadway
Sacramento, CA 95820
(916) 210-4296

The backup contact person for these inquiries is:

Thomas Bierfreund, Associate Governmental Program Analyst
Bureau of Criminal Identification and Investigative Services
California Justice Information Services Division
4949 Broadway
Sacramento, CA 95820
(916) 210-3451

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. The text of the proposed regulation (the “express terms”), the Initial Statement of Reasons, and the information upon which the proposed rulemaking is based are available at the Department’s website at <http://oag.ca.gov/>. Copies may also be obtained by contacting:

Shayna Rivera, CalGang Unit Manager
Bureau of Criminal Identification and Investigative Services
California Justice Information Services Division
4949 Broadway
Sacramento, CA 95820
(916) 210-4296

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 Department analyzes all timely and relevant comments received during the 45-day public comment period, the Department will either adopt the regulations as described in this notice, or make modifications based on the comments. If the Department 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 Department adopts the regulations. The Department will accept written comments on the modifications to the regulations during the 15-day public comment period.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon completion, the Final Statement of Reasons will be available on the Department's website at <http://oag.ca.gov/>. You may also obtain a written copy of the final statement of reasons by contacting:

Shayna Rivera, CalGang Unit Manager
Bureau of Criminal Identification and Investigative Services
California Justice Information Services Division
4949 Broadway
Sacramento, CA 95820
(916) 210-4296

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout format, as well as the Final Statement of Reasons once completed, are available on the Department's website at <http://oag.ca.gov/>.