

CALIFORNIA DEPARTMENT OF JUSTICE
TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 7.5. DEPARTMENT OF JUSTICE REGULATIONS FOR
THE FAIR AND ACCURATE GOVERNANCE OF THE CALGANG DATABASE
NOTICE OF PROPOSED RULEMAKING

Notice published March 11, 2022

The Department of Justice (Department) proposes to amend sections 755.8, 756.1, and 756.6 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 (CalGang), pursuant to the authority Penal Code section 186.36.

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 April 26, 2022 at 11:59 p.m. Only written comments received by that time will be considered. Please submit written comments to:

Shayna Rivera
Department of Justice
4949 Broadway
Sacramento, CA 95820
gangdatabaseGDTAC@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: Section 186.36, Penal Code.

Reference: Sections 186.34, 186.35 and 186.36, Penal Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

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. On October 22, 2020 the Department promulgated regulations required by Assembly Bill (AB) 90 (Stats. 2017, Ch. 695) that governed 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. For the CalGang database specifically, the Department developed and implemented standardized periodic training for all persons with access to the CalGang database, and requirements and procedures for periodic audits by law enforcement agencies and Department staff to ensure the accuracy, reliability, and proper use of the CalGang database.

Before October 15 of each year for the period covering the preceding year, CalGang Node Agencies and User Agencies must report to the Department each time they did not attempt to provide notice pursuant to subdivision (c)(1) of Penal Code section 186.34 and article 7; did not provide notification to a juvenile, or parent or guardian of a juvenile, pursuant to subdivision (c)(1) of Penal Code section 186.34 and article 7; received an information request pursuant to subdivision (d)(1) of Penal Code section 186.34; received a request for removal of a record pursuant to subdivision (e) of Penal Code section 186.34; granted a request for removal of a record pursuant to Penal Code section 186.34; received service of a petition under Penal Code section 186.35 and the disposition of the petition; and the number of proxy queries conducted by a Node Agency or User Agency, and the name of each agency requesting the proxy query. (Cal. Code Regs., tit. 11, § 756.6, subd. (a).)

In addition to the reporting requirement above, CalGang Node Agencies and User Agencies must also submit a written attestation to the Department that its entries in the CalGang database comply with Department regulations. (Cal. Code Regs., tit. 11, § 756.1, subd. (b).) Currently, this annual attestation is due by October 15 of each year. The purpose of the annual attestation is to ensure Node Agency and User Agency accountability and accuracy of entries in the CalGang database.

The CalGang regulations also require that an audit be completed at each Node Agency and User Agency of all criminal street gangs they have entered in the CalGang database at least once every three years. This purpose of the audit is to ensure that each designated gang is still active and that the entry complies with CalGang regulations. Node Agencies and User Agencies must document and submit the results of the audit to the Department on the CalGang Gang Audit form, California Justice Information Services (CJIS) 9005.

Effect of the Proposed Rulemaking:

This rulemaking would change the annual attestation due date from October 15 to January 1. The proposed regulations would balance the workload of the Department's CalGang Unit, as well as the workload of Node Agencies and User Agencies, since Node Agencies and User Agencies

currently have a significant amount of data to report to the Department by October 15, as described above. The reporting period for the annual attestation would continue to be October 1 thru September 30, but the January 1 due date will give agencies reasonable time to review their entries and to route the attestation through their chain of command.

Additionally, the proposed regulations would update the form CJIS 9005 to capture additional data pertinent to gangs that are in more than one Node. The proposed regulations would also update the CalGang Misuse Investigation Reporting form, CJIS 9008 to remove the hyphen in the word “email” to make it consistent with the Department’s other forms, along with other non-substantive changes.

Anticipated Benefits of the Proposed Regulations:

The Department anticipates that these regulations would balance the workload of the Department’s CalGang Unit, Node Agencies, and User Agencies by changing the due date of the annual attestation from October 15 to January 1 since Node Agencies and User Agencies currently have a significant amount of data to report to the Department by October 15. The annual attestation requirement will continue to benefit the health and welfare of the public by ensuring Node Agency and User Agency accountability and accuracy of entries in the CalGang database.

The regulations would also ensure that Node Agencies and User Agencies conduct effective audits to determine whether gangs are appropriately designated in the CalGang database.

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 criminal intelligence information or shared gang databases in California.

Forms Incorporated by Reference:

1. CalGang Gang Audit Form, CJIS 9005, rev. 01/2022 (see subdivision (a) of section 755.8)
2. CalGang Misuse Investigation Reporting form, CJIS 9008, rev. 01/2022 (see subdivision (c) of section 756.6)

Other Statutory Requirements:

None.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department's Initial Determinations:

Mandate on local agencies or school districts: None.

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.

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 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 it is (1) unlikely that the proposal will create or eliminate jobs within the state, (2) unlikely that the proposal will create new businesses or eliminate existing businesses within the state, (3) unlikely that the proposal will result in the expansion of businesses currently doing business within the state.

The Department also concludes that:

(1) The proposal would benefit the health and welfare of California residents by continuing to ensure Node Agency and User Agency accountability and accuracy of entries in the CalGang database.

(2) The proposal would not benefit worker safety.

(3) The proposal would not benefit the state's environment.

Business report requirement: None.

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 Users of the CalGang database, not private businesses.

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 ease the workload of the Department, User Agencies, and Node Agencies, by no longer having the same due date for both the required reports and annual attestation.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Shayna Rivera
Department of Justice
4949 Broadway
Sacramento, CA 95820
gangdatabaseGDTAC@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:

Thomas Bierfreund
Department of Justice
4949 Broadway
Sacramento, CA 95820
gangdatabaseGDTAC@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/jdis/regs>. 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/jdis/regs>. 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/jdis/regs>.