

# Appendix A.2

## Final Regulation Order

### Section 100 Changes Title 17

### Update Public Records Act Citations

[Note: This version of the proposed amendments to Title 17 California Code of Regulations (CCR) complies with Government Code section 11346.2, subdivision (a)(3). The existing, original regulatory language currently adopted into the CCR is shown in “normal type.” The proposed amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions from the existing regulatory text. Subsections for which no changes are proposed are indicated with “\* \* \* \*.” Vertical lines in the left margins are to flag where changes are proposed for ease of reference and are not part of the proposed amendments. The proposed amendments are being presented in two versions. For ease of readability, and to review the proposed amendments in an Accessible format that can toggle between amendments in strikeout/underline and a “clean” version with amendments incorporated into the regulatory text, please refer to the Word version of this Regulation Order.]

## Title 17. Public Health

### Division 3 – Air Resources Board

Section 60007. Record of Proceedings.

Section 60055.9. Records of the State Board.

Section 60065.9. Records of the State Board.

Section 60075.7. Records of the State Board.

Section 91000. Scope and Purpose.

Section 91001. Disclosure Policy.

Section 91010. Request Procedure.

Section 91011. Submissions of Confidential Data.

Section 91022. Disclosure of Confidential Data.

Section 93300.5. Incorporation by Reference.

Section 93406. Confidentiality.

Section 95106. Confidentiality.

Section 95378. Variance.

## Regulation Order

Title 17, California Code of Regulations

Amend Sections 60007, 60055.9, 60065.9, 60075.7, 91000, 91001, 91010, 91011, 91022, 93300.5, 93406, 95106 and 95378 of title 17, California Code of Regulations, to read as follows:

### **§ 60007. Record of Proceedings.**

\* \* \* \*

Note: Authority cited: Section 39601, Health and Safety Code. Reference: Section 39600, Health and Safety Code; and Sections ~~6250~~7920.000, et seq. and 11347.3, Government Code.

### **§ 60055.9. Records of the State Board.**

\* \* \* \*

Note: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: *Mathews v. Eldridge*, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; Sections ~~6250~~7920.000, et seq., Government Code; and Sections 91000, et seq., title 17, California Code of Regulations.

### **§ 60065.9. Records of the State Board.**

\* \* \* \*

Note: Authority cited: Sections 39600, 39601, 42410, 43023, 43028 and 43031(a), Health and Safety Code. Reference: *Mathews v. Eldridge*, 424 U.S. 319 (1976); Sections 42410, 43023, 43028 and 43031(a), Health and Safety Code; Sections ~~6250~~7920.000, et seq., Government Code; and Sections 91000, et seq., title 17, California Code of Regulations.

### **§ 60075.7. Records of the State Board.**

\* \* \* \*

Note: Authority cited: Sections 39600, 39601, 42410, 43023, 43028, 43031(a) and 44011.6(m), Health and Safety Code. Reference: *Mathews v. Eldridge*, 424 U.S. 319 (1976); Sections 42410, 43023, 43028, 43031(a) and 44011.6, Health and Safety Code; Section ~~6250~~7920.000, et seq., Government Code; and Sections 91000, et seq., Title 17, California Code of Regulations.

## **§ 91000. Scope and Purpose.**

This subchapter shall apply to all requests to the state board under the California Public Records Act (Government Code Sections ~~6250~~7920.000, et seq.) for the disclosure of public records or for maintaining the confidentiality of data received by the state board. Written guidelines shall govern the internal review of such requests.

Note: Authority cited: Sections 39600 and 39601(a), Health and Safety Code.

Reference: California Public Records Act, ~~Chapter 3.5~~ (Title 1, Division 10, commencing with Section ~~6250~~), ~~Division 7~~7920.000, Government Code.

## **§ 91001. Disclosure Policy.**

\* \* \* \*

Note: Authority cited: Sections 39600 and 39601(a), Health and Safety Code.

Reference: Section ~~6253~~7922.500, 7922.505, 7922.525, 7922.530, 7922.535, 7922.540(b), and 7922.545, Government Code; and *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645.

## **§ 91010. Request Procedure.**

\* \* \* \*

Note: Authority cited: Sections 39600, 39601 and 39602, Health and Safety Code.

Reference: Sections 39701, 41510, 41511, 41512 and 42705, Health and Safety Code; and ~~Section 6253~~Sections 7922.500, 7922.505, 7922.525, 7922.530, 7922.535, 7922.540(b), and 7922.545, Government Code.

## **§ 91011. Submissions of Confidential Data.**

Any person submitting to the state board any records containing data claimed to be “trade secret” or otherwise exempt from disclosure under Government Code ~~Section 6254 or 6254.7~~Sections 7921.500, 7923.600, 7923.605, 7923.610, 7923.615, 7923.620, 7923.625, 7923.700, 7924.505, 7924.510, 7924.700, 7927.000, 7927.200, 7927.300, 7927.500, 7927.700, 7927.705, 7928.000, 7928.405, 7928.410, 7928.705, or 7929.605 or under other applicable provisions of law shall, at the time of submission, identify in writing the portions of the records containing such data as “confidential” and shall provide the name, address and telephone number of the individual to be contacted if the state board receives a request for disclosure of or seeks to disclose the data claimed to be confidential. Emission data shall not be identified as confidential. The state board shall not disclose data identified as confidential, except in accordance with the requirements of this subchapter or Section 39660(e) of the Health and Safety Code.

Note: Authority cited: Sections 39600 and 39601, ~~Heath~~Health and Safety Code. Reference: Sections 39660, 39701, 41500, 41511, 41512 and 42705, Health and Safety Code; Sections ~~6253, 6254 and 6254.7~~7921.500, 7922.500, 7922.505, 7922.525, 7922.530, 7922.535, 7922.540(b), 7922.545, 7923.600, 7923.605, 7923.610, 7923.615, 7923.620, 7923.625, 7923.700, 7924.505, 7924.510, 7924.700, 7927.000, 7927.200, 7927.300, 7927.500, 7927.700, 7927.705, 7928.000, 7928.405, 7928.410, 7928.705, and 7929.605, Government Code; *Natural Resources Defense Council v. EPA*, 489 F.2d 390 (5th Cir. 1974) (6 ERC 1248); *Northern California Police Practices Project v. Craig* (1979) 90 Cal.App.3d 116; and *Uribe v. Howie* (1971) 19 Cal.App.3d 194.

## § 91022. Disclosure of Confidential Data.

\* \* \* \*

(e) The state board shall, within ten (10) days of the date it sought to disclose the data or received the request for disclosure, or within 20 days of that date if the state board determines that there are unusual circumstances as defined in Government Code ~~Section 6253~~Sections 7922.500, 7922.505, 7922.525, 7922.530, 7922.535, 7922.540(b), and 7922.545, review the request, if any, and supporting documentation, if received within the time limits specified in subsection (b) above, including any extension granted, and determine whether the data is entitled to confidential treatment pursuant to Government Code ~~Section 6254, 6255 or 6254.7~~Sections 7921.500, 7922.000, 7922.540(a), 7923.600, 7923.605, 7923.610, 7923.615, 7923.620, 7923.625, 7923.700, 7924.505, 7924.510, 7924.700, 7927.000, 7927.200, 7927.300, 7927.500, 7927.700, 7927.705, 7928.000, 7928.405, 7928.410, 7928.705, and 7929.605 or other applicable provisions of law and shall either:

(1) decline to disclose the data and, if a request was received, provide to the person making the request and to the person claiming the data is confidential a justification for the determination pursuant to Government Code ~~Section 6255~~Sections 7922.000 and 7922.540(a); or

\* \* \* \*

Note: Authority cited: Section 39601, Health and Safety Code. Reference: Sections ~~6253, 6254, 6254.7, 6255, 6258 and 6259~~7921.500, 7922.000, 7922.500, 7922.505, 7922.525, 7922.530, 7922.535, 7922.540(a), 7922.540(b), 7922.545, 7923.000, 7923.005, 7923.100, 7923.105, 7923.110, 7923.115, 7923.500, 7923.600, 7923.605, 7923.610, 7923.615, 7923.620, 7923.625, 7923.700, 7924.505, 7924.510, 7924.700, 7927.000, 7927.200, 7927.300, 7927.500, 7927.700, 7927.705, 7928.000, 7928.405, 7928.410, 7928.705, and 7929.605, Government Code.

### **§ 93300.5. Incorporation by Reference.**

\* \* \* \*

Note: Authority cited: Sections 39600, 39601 and 44342, Health and Safety Code. Reference: Sections 41805.5, 44320, 44321, 44322, 44323, 44324, 44325, 44340, 44341, 44342, 44343, 44344, 44344.4, 44344.5, 44344.7, 44346, 44360, 44362, 44365 and 44391, Health and Safety Code; and ~~Section 6254.7~~Sections 7924.510 and 7924.700, Government Code.

### **§ 93406. Confidentiality.**

\* \* \* \*

- (b) Any entity submitting information to the Executive Officer or local districts pursuant to this article may claim such information as “confidential” by clearly identifying such information as “confidential.” Any claim of confidentiality by an entity submitting information must be based on the entity's belief that the information identified as confidential is either trade secret or otherwise exempt from public disclosure under the California Public Records Act (Government Code section ~~6250~~7920.000, et seq.). The designated representative must attest that the claim of confidentiality is true, correct, and complete. All such requests for confidentiality must be handled in accordance with the procedures specified in CCR, title 17 sections 91000 to 91022.

Note: Authority cited: Sections 39600, 39601, 39602, 39605, 39606, 39607, 39607.1, 39607.3, 39701, 40913, 41500, 41511, 42700, 42705, 42705.5, 42705.6 and 44391.2, Health and Safety Code. Reference: Sections 39003, 39500, 39606, 39607.1, 42705.5, 44301 and 44391.2, Health and Safety Code.

### **§ 95106. Confidentiality.**

\* \* \* \*

- (b) Any entity submitting information to the Executive Officer pursuant to this article may claim such information as “confidential” by clearly identifying such information as “confidential.” Any claim of confidentiality by an entity submitting information must be based on the entity's belief that the information marked as confidential is either trade secret or otherwise exempt from public disclosure under the California Public Records Act (Government Code section ~~6250~~7920.000, et seq.). All such requests for confidentiality shall be handled in

accordance with the procedures specified in title 17, California Code of Regulations, sections 91000 to 91022.

Note: Authority cited: Sections 38510, 38530, 39600, 39601, 39607, 39607.4 and 41511, Health and Safety Code. Reference: Sections 38530, 39600 and 41511, Health and Safety Code.

**§ 95378. Variance.**

\* \* \* \*

- (c) *Application for Variance.* To apply for a variance the Applicant shall submit an Application in accordance with the following requirements:

\* \* \* \*

- (5) Any Applicant submitting information to the Executive Officer pursuant to this section may claim that information to be “confidential” by clearly identifying the information as “confidential.” Any claim of confidentiality by an Applicant submitting information must be based on the Applicant’s belief that the information marked as confidential is either trade secret or otherwise exempt from public disclosure under the California Public Records Act (Government Code, section ~~62507920.000~~, et seq.). All requests for confidentiality shall be handled in accordance with the procedures specified in California Code of Regulations, title 17, sections 91000 to 91022.

\* \* \* \*

Note: Authority cited: Sections 38560, 38562, 39600, 39601, 39734 and 41511, Health and Safety Code. Reference: Sections 38510, 38560, 38562, 38566, 38580, 39601, 39605, 39730, 39730.5, 39734 and 41511, Health and Safety Code.