

State of California
Office of Energy Infrastructure Safety

**Second Update to the Initial
Statement of Reasons**

TITLE 14. NATURAL RESOURCES
DIVISION 17. OFFICE OF ENERGY INFRASTRUCTURE SAFETY
CHAPTER 1. RULES OF PRACTICE AND PROCEDURE

ARTICLE 2. PROCEEDINGS
SECTIONS 29100, 29101

ARTICLE 3. DATA COLLECTION, DATA ACCESS AND
CONFIDENTIALITY
SECTION 29200

E-FILING, FORMATTING REQUIREMENTS, SUBMISSION OF
CONFIDENTIAL INFORMATION

Second Update to the Initial Statement of Reasons

The Office of Energy Infrastructure Safety ("Energy Safety") provides the following update to the Initial Statement of Reasons.

Energy Safety made the proposed regulations available for public review and comment from April 29, 2022 through June 13, 2022, and conducted a public hearing on June 6, 2022. Following the close of the 45-day public comment period, Energy Safety made changes to the text of the proposed regulation in response to comments received and in response to suggestions by the Office of Administrative Law. Energy Safety made those amended proposed regulations available for public review and comment from July 1, 2022 through July 15, 2022.

Following the close of that comment period, Energy Safety made changes to the text of the proposed regulations in response to comments received and in response to suggestions by the Office of Administrative Law. Energy Safety is providing notice of a 15-day public comment period for modifications to the text of regulations. The changes being made are as follows:

Modifications to Text of the Proposed Regulations:

The following sections have been modified: Sections 29100, 29101, and 29200, in the introductory paragraph and in subdivisions (a), (b)(1) and (2), (b)(3)(A)-(D), (c), (c)(3), (d), (e), and (f).

Section 29100

Energy Safety has opted not to proceed with the adoption of proposed section 29100 (Submission of Documents for Filing) at this time and has removed section 29100 from this rulemaking action.

In removing this section, Energy Safety has also removed the user guide which was proposed to be incorporated into the regulation.

Section 29101

Energy Safety has opted not to proceed with the adoption of proposed section 29100 (Format, Content, and Other Required Characteristics of Filed Documents) at this time and has removed section 29100 from this rulemaking action.

Section 29200

From: The introductory paragraph in the text originally proposed stated a policy priority: "Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in California. All documents submitted to the office are public records."

To: Energy Safety has removed the introductory paragraph from the regulation.

Necessity: The statement of policy priority was not regulatory in nature. For that reason, it was not a necessary part of the regulation and Energy Safety removed it.

Section 29200(a)

From: Former subdivision (d) explained the meaning of the term "confidential designation." That explanation stated the basis for granting the designation this way: "A "confidential designation" means that the applicant has made a facially reasonable claim that the Office may withhold the information from public disclosure. Consequently, the information will not be published."

To: The term is now explained in subdivision (a), and the basis for granting the designation is now explained this way: "Information submitted to the Office may be granted a "confidential designation" if the submitter makes a reasonable claim that the Office is authorized to and should withhold the information from public disclosure."

Necessity: Moving the term, and explanation of the term, to the beginning of the regulation clarifies the purpose and meaning of both the term and of the regulation.

Changes to the explanation of the term make clear that the submitter of information must provide the basis for the claim that Energy Safety should not disclose the information.

Section 29200(b)(1), (2)

From: Former subdivision (a) stated the requirements that a submitter of confidential information must identify and mark confidential information, segregate the confidential information where possible, and provide a redacted copy when possible.

To: The proposed text is now in subdivision (b) and does not include the requirement that the submitter segregate the confidential information.

Necessity: The change clarifies the way a submitter of information may request confidential handling. And further, clarifies requirement that one requesting confidential handling must provide an unredacted copy of the document, and when possible, also provide a redacted copy of the document.

The change deletes the requirement that confidential information also be segregated when possible because that requirement appeared to be inapplicable to certain document formats and information types.

Section 29200(b)(3)(A) – (D)

From: Former subdivisions (a)(4) through (a)(8) stated requirements with which a submitter of information must comply to request confidential handling of information by Energy Safety.

Those requirements were phrased to apply to the submitter of information. For example: (a) "Any person who submits ... must, at the time of submission: (4) Identify the statutory basis"

To: The substance of the requirements has not been changed. The requirements have been reorganized and re-numbered as follows:

(a)(4) is now (b)(3)(A)

(a)(5) is now (b)(3)(B)

(a)(6) is now (b)(3)(C)

(a)(7) and (a)(8) have been combined and renumbered as (b)(3)(D)

Non-substantive changes have been made to indicate that the requirements must be fulfilled by a statement from the person submitting the information. For example: (b) "...may request a confidential designation ... by including the following at the time of submission: (3) A statement that: (A) Identifies the statutory basis"

Further, the requirements formerly stated in (a)(7) and (a)(8) have been combined and included together in the new (b)(3)(D).

Necessity: Reorganizing and renumbering the requirements allowed Energy Safety to more clearly state its intent that the requirements be satisfied by a statement provided by a submitter of confidential information.

Further, in separating these requirements from the requirements now contained in subdivision (a), the regulation makes clear that these requirements are independent of, and unrelated to, requirements that pertain to redaction.

Combining the requirements in former subdivisions (a)(7) and (a)(8) into the current subdivision (b)(3)(D) more concisely and more clearly states the requirement that the certification of truthfulness be made by a person authorized to speak for the company making the submission.

Section 29200(c)

From: Former subdivision (b) has been renumbered to (c). The text of former subdivision (b) was:

"Where a person or entity submits information to the office, and asserts that the information should not be disclosed to the public because the information contains trade secrets or because disclosure would cause the loss of a competitive advantage, then the person must, at the time of submission comply with all the requirements in subsection (a) and also:"

The list of requirements at subdivisions (b)(1) through (b)(3) are not being changed.

To: The text of the requirement, at subdivision (c), is now:

“If an exemption from public disclosure is being claimed because the information contains trade secrets or because disclosure would cause the loss of a competitive advantage, then the required statement described in subsection (b)(3) and also must also:”

Necessity: The changes do not change the substance or nature of the requirement. Non-substantive changes more concisely and more clearly state the conditions upon which requirement to provide the specified information apply.

Section 29200(c)(3)

From: “Describe the ease or difficulty with which others could legitimately acquire or duplicate the information.”

To: The change removed the term “legitimately”: “Describe the ease or difficulty with which others could acquire or duplicate the information.”

Necessity: This change removes the term “legitimately” from the regulation. The change is made to avoid uncertainty which could arise from the meanings that one could potentially impute to the term, “legitimately.”

Section 29200(d)

From: Former subdivision (c) has been renumbered to (d), changed in one substantive way, and also changed in several non-substantive ways. The text of former subdivision (c) was:

If a confidential designation request is incomplete or the submitting person has failed to make any reasonable claim that the California Public Records Act or other provision of law authorizes the Office to keep the information confidential, the Office shall provide to the submitting person or entity a statement of its defects and a request for additional information. If the

missing additional information, or a request for an extension of time to respond, is not submitted to the Office within fourteen days of receipt of the request, the originally submitted information shall not receive a confidential designation.

To: The text of subdivision (d) is now:

If a confidential designation request is incomplete or the submitting person or entity has failed to make a reasonable claim that the California Public Records Act or other provision of law authorizes the Office to keep the information confidential, the Office shall provide to the submitting person or entity a statement identifying the defects and a request for additional information. If additional information is not submitted to the Office within fourteen days of receipt of the request, the originally submitted information shall not receive a confidential designation.

Necessity: Energy Safety made one substantive change: it removes the option to request additional time to respond. The regulation as proposed gives submitters of information fourteen days to respond to Energy Safety inquiries. Energy Safety determined that fourteen days is a reasonable time for a submitter of information to respond. And further, in receiving requests for confidential handling pursuant to the prior similar regulations, Energy Safety has not received a request for additional time.

Regarding non-substantive changes, Energy Safety added “or entity” to the two references to “person” to make clear that the regulation applies to requests from both individual persons as well as business or government entities.

Energy Safety replaced “any” with “a” in the phrase “to make a reasonable claim” to more clearly refer to the specific claim made by the submitter of information.

Energy Safety replaced the phrase “of its” with “identifying the” in the phrase “a statement identifying the defects” to improve clarity because of the possibility that “its” could potentially have been read to refer to the person submitting information rather than the request for confidential handling.

Energy Safety replaced the phrase “the missing” with “additional” in the phrase “If additional information is not

submitted to the Office...” to more clearly and more specifically refer to the information Energy Safety is requesting.

Energy Safety added “to the Office” to the phrase “is not submitted to the Office within fourteen” to more clearly state the requirement that the requested information must be submitted to Energy Safety.

Energy Safety added “originally submitted information” to the phrase “the originally submitted information shall not receive a confidential designation” to more clearly specify the subject of the requested confidential designation.

Section 29200(e)

From: Former subdivision (d) has been renumbered to the current subdivision (e).

Former subdivision (d) explained the meaning of the term “confidential designation.” That explanation has been moved to subdivision (a), and that change is discussed above with regard to subdivision (a).

Two edits make non-substantial changes to former subdivision (d), which stated:

“By granting a confidential designation ...”

“...is not making a final determination that the information will be...”

To: The two non-substantial amendments now state:

“In granting a confidential designation...”

“...is not making a final determination or guarantee that the information will be ...”

Necessity: Moving the explanation of “confidential designation” to the current subdivision (a) places that explanation at the beginning

of the regulation, which clarifies the purpose and meaning of both the term and of the regulation.

Changing the term “by” to “in” in the phrase “In granting a confidential designation” makes clarifies the sentence and improves the readability.

Energy Safety added the phrase “or guarantee” to the phrase “the Office is not making a final determination or guarantee that the information will be withheld” to address two related points in the same subdivision to improve clarity. In the original versions of subdivisions (d) and (e), the regulation made two statements about the effect of the designation: One, in former (d), that in granting the designation, Energy Safety was not making a final determination about applicability of the claimed exemption. Two, in (e), that the designation was not a guarantee that Energy Safety would not be compelled to disclose the information in the future. Addressing both topics in the same subdivision improves the readability and clarity of the regulation.

Section 29200(f)

From: In the event of a request for confidentially designated information, the Office will attempt to notify the submitter of the information before disclosure unless notification is prohibited by law.

To: In the event of a request for disclosure of confidentially designated information, the Office will attempt to notify the submitter of the information prior to disclosure unless notification is prohibited by law.

Necessity: Energy Safety made two non-substantive changes to improve the clarity of the subdivision. Adding “disclosure of” makes specific the condition on which Energy Safety will attempt to notify the submitter of the information. Substituting “prior to” for “before” makes more clear the time in which Energy Safety will attempt to notify the submitter of information.