

State of California
Office of Energy Infrastructure Safety

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

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 regarding the proposed regulation. 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: In section 29200, subdivisions (a); (a)(3); (b)(2), (b)(3), and (b)(4); (c); (d) and (e).

Section 29200(a)

From: Any person who submits information to the office, and who requests that Energy maintain asserts that the information is exempt from disclosure to the public must, at the time of submission:

To: Any person who submits information to the Office, and who asserts that the information is exempt from disclosure to the public must, at the time of submission:

Necessity: This change corrects two typographical errors. One, "Office" was not capitalized in the original text. Two, the original text contained the phrase "requests that Energy maintain."

Section 29200(a)(3)

From: Provide both redacted and unredacted versions of documents claimed to be exempt from disclosure;

To: When the information can be reasonably segregated, submit to Energy Safety a public version with the information that is claimed to be exempt redacted.

Necessity: This change is made in response to comments indicating that (1) some types of documents cannot readily or reasonably be redacted, and (2) the requirement should apply only to the extent that redaction is reasonably possible. This change clarifies Energy Safety's intent that the requirement applies only to documents that can be redacted with a reasonable amount of effort and resources.

Section 29200(b)(2), (b)(3), (b)(4)

From: (2) State how the advantage would be lost through disclosure;

(3) State the value of the information to the applicant; and

(4) Describe the ease or difficulty with which others could legitimately acquire or duplicate the information.

To: (2) State how the advantage would be lost through disclosure; and

(3) Describe the ease or difficulty with which others could legitimately acquire or duplicate the information.

Necessity: This change strikes the requirement in the original subdivision (3) and renumbers the original number (4) as the new number (3). Energy Safety made the change in response to comments asserting that the requirement of stating the value of the information was vague because some types of that information haven't been valued by the submitter. The change is made to reduce the burden on submitters of confidential information and to remove the source of uncertainty in the original text.

Section 29200(c)

From: If the missing information, or a request for an extension of time to respond, is not submitted within seven days fourteen days of receipt of the request ...

To: If the missing information, or a request for an extension of time to respond, is not submitted within fourteen days fourteen days of receipt of the request ...

Necessity: The original proposal required submitters of confidential information to respond to Energy Safety inquiries within seven days. Energy Safety made the change in response to a comment stating that seven days was not enough time to allow for delays receiving Energy Safety's inquiry. The change extends the time for submitters to respond to 14 days to better ensure that submitters can provide complete responses to Energy Safety.

Section 29200(d), (e)

From: (d) A confidential designation granted by the Office is not a guarantee that the Office will withhold the submission where it is subject to a lawful subpoena, Public Records Act request, or where disclosure is otherwise required by law. In the event of a receipt of such a request for designated confidential materials, before the disclosure, the Office will make an attempt to notify the submitter of the information before the mandated disclosure, unless notification is prohibited by law.

To: (d) 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. By granting a confidential designation, the Office is not making a final determination that the information will be withheld from disclosure pursuant to the California Public Records Act or other provisions of law.

(e) In the event of a request for confidentially designated information, the Office will make an attempt to notify the submitter of the information before the disclosure, unless notification is prohibited by law.

Necessity: Energy Safety made the change in response to comments indicating that the original subdivision (d) was vague and unnecessary. This text is part of a regulation that provides a process whereby a submitter of information may ask Energy Safety to handle the information in confidence rather than publishing the information on Energy Safety’s website.

The change clarifies Energy Safety’s intent to make information submitters aware that Energy Safety’s agreement to initially maintain the information in confidence is not an agreement to withhold information if the information is requested pursuant to the California Public Records Act or by a subpoena. The purpose of section 29200 process is to determine whether or not certain information should be published on the website. Energy Safety is not determining whether a privilege or Public Records Act exemption applies to the information. Energy Safety remains committed to compliance with laws requiring transparency and public disclosure.