

GOVERNMENT CODE

TITLE 1. GENERAL

DIVISION 7. Miscellaneous

CHAPTER 3.5. Inspection of Public Records

Cal Gov Code @ 6254.2 (1994)

@ 6254.2. Disclosure of pesticide safety and efficacy information; Trade secrets; Affirmation of requester; Action for wrongful disclosure; Effect of invalidation of federal law

(a) Nothing in this chapter exempts from public disclosure the same categories of pesticide safety and efficacy information that are disclosable under paragraph (1) of subsection (d) of Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136h(d)(1)), if the individual requesting the information is not an employee or agent specified in subdivision (h) and signs the affirmation specified in subdivision (h).

(b) The Director of Food and Agriculture, upon his or her initiative, or upon receipt of a request pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) for the release of data submitted and designated as a trade secret by a registrant or applicant, shall determine whether any or all of the data so submitted is a properly designated trade secret. In order to assure that the interested public has an opportunity to obtain and review pesticide safety and efficacy data and to comment prior to the expiration of the public comment period on a proposed pesticide registration, the director shall provide notice to interested persons when an application for registration enters the registration evaluation process.

(c) If the director determines that the data is not a trade secret, the director shall notify the registrant or applicant by certified mail.

(d) The registrant or applicant shall have 30 days after receipt of this notification to provide the director with a complete justification and statement of the grounds on which the trade secret privilege is claimed. This justification and statement shall be submitted by certified mail.

(e) The director shall determine whether the data is protected as a trade secret within 15 days after receipt of the justification and statement or, if no justification and statement is filed, within 45 days of the original notice. The director shall notify the registrant or applicant and any party who has requested the data pursuant to the California Public Records Act of that determination by certified mail. If the

director determines that the data is not protected as a trade secret, the final notice shall also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the data shall be available to any person requesting information pursuant to subdivision (a).

(f) "Trade secret" means data that is nondisclosable under paragraph (1) of subsection (d) of Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act.

(g) This section shall be operative only so long as, and to the extent that, enforcement of paragraph (1) of subsection (d) of Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act has not been enjoined by federal court order, and shall become inoperative if an unappealable federal court judgment or decision becomes final that holds that paragraph invalid, to the extent of the invalidity.

(h) The Director of Food and Agriculture shall not knowingly disclose information submitted by an applicant or registrant pursuant to Article 4 (commencing with Section 12811) of Chapter 2 of Division 7 of the Food and Agricultural Code to any employee or agent of any business or other entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or in other countries in addition to the United States, or to any other person who intends to deliver this information to any foreign or multi-national business or entity, unless the applicant or registrant consents to this disclosure. To implement this subdivision, the director shall require the following affirmation to be signed by the person who requests information pursuant to this section:

#### AFFIRMATION OF STATUS

This affirmation is required by Section 6254.2 of the Government Code.

I have requested access to information submitted by an applicant or registrant under the California Food and Agricultural Code. I hereby affirm all of the following:

(1) I do not seek access to the information for purposes of delivering it or offering it for sale to any business or other entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or in other countries in addition to the United States, or to the agents or employees of such a business or entity.

(2) I will not purposefully deliver or negligently cause the data to be delivered to such a business or entity or its agents or employees.

I am aware that I may be subject to criminal penalties under Section 118 of the Penal Code if I make any statement of material

facts knowing that the statement is false or if I willfully conceal any material fact.

Name \_\_\_\_\_

Organization \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Request No. \_\_\_\_\_

Address \_\_\_\_\_

Client, if your are requesting access on behalf of someone other than the organization or affiliation listed above.

(i) Notwithstanding any other provision of this section, the Director of Food and Agriculture may disclose information submitted by an applicant or registrant to any person in connection with a public proceeding conducted under law or regulation, if the director determines that the information is needed to determine whether a pesticide, or any ingredient of any pesticide, causes unreasonable adverse effects on health or the environment.

(j) The director shall maintain records of the names of persons to whom data is disclosed pursuant to this section and the persons or organizations they represent and shall inform the applicant or registrant of the names and the affiliation of these persons.

(k) Section 118 of the Penal Code applies to any affirmation made pursuant to this section.

(l) Any officer or employee of the state or former officer or employee of the state who, because of this employment or official position, obtains possession of, or has access to, material which is prohibited from disclosure by this section, and who, knowing that disclosure of this material is prohibited by this section, willfully discloses the material in any manner to any person not entitled to receive it, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$ 10,000), or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment.

For purposes of this subdivision, any contractor with the state who is furnished information pursuant to this section, or any employee of any contractor, shall be considered an employee of the state.

(m) This section does not prohibit any person from maintaining a civil action for wrongful disclosure of trade secrets.

(n) The director may limit an individual to one request per month pursuant to this section if the director determines that a person has made a frivolous request within the past 12-month period.