

2004 Intrastate Locomotive Survey
CONFIDENTIAL INFORMATION SUBMITTAL FORM

If you wish to designate any information contained in your survey data as **CONFIDENTIAL INFORMATION**, please provide the information requested below and return it with your completed Survey form.

In accordance with Title 17, California Code of Regulations (CCR), Sections 91000 to 91022, and the California Public Records Act (Government Code Section 6250 et seq.), the information that a company provides to the Air Resources Board (ARB) may be released (1) to the public upon request, except trade secrets which are not emissions data or other information which is exempt from disclosure or the disclosure of which is prohibited by law, (2) to the federal Environmental Protection Agency, which protects trade secrets as provided in Section 114(c) of the Clean Air Act and amendments thereto (42 USC 7401 et seq.) and in federal regulation, and (3) to other public agencies provided that those agencies preserve the protections afforded information which is identified as a trade secret, or otherwise exempt from disclosure by law (Section 39660(e)).

Trade Secrets as defined in Government Code 6254.7 are not public records and therefore will not be released to the public. However, the California Public Records Act provides that air pollution emission data are always public records, even if the data comes within the definition of trade secrets. On the other hand, the information used to calculate information is trade secret.

If any company believes that any of the information it may provide is a trade secret or otherwise exempt from disclosure under any provision of law, **it must identify the confidential information as such at the time of submission to the ARB and must provide the name, address, and telephone number of the individual to be consulted.** If ARB receives a request for disclosure or seeks to disclose the data claimed to be confidential, ARB may ask the company to provide documentation of its claim of trade secret or exemption at a later date. Data identified as confidential will not be disclosed unless ARB determines, in accordance with the above referenced regulations that the data does not qualify for a legal exemption from disclosure. The regulations establish substantial safeguards before any such disclosure.

In accordance with the provisions of Title 17, California Code of Regulations, Sections 91000 to 91022, and the California Public Records Act (Government Code Sections 6250 et seq.)

Company Name: _____ declares that all the information submitted in response to the California Air Resources Board's information request on the Survey is confidential "trade secret" information, and requests that it be protected as such from public disclosure. All inquiries pertaining to the confidentiality of this information should be directed to the following person:

Date:	_____	Mailing Address:	_____
	(Signature)		_____
	(Printed Name)		_____
	(Title)		_____
	(Telephone Number)		_____

**TITLE 17, CALIFORNIA CODE OF REGULATIONS,
SECTIONS 91000 TO 91100**

Subchapter 4. Disclosure of Public Records

Article 1. General

§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 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 (commencing with Section 6250), Division 7, Government Code.

§91001. Disclosure Policy.

It is the policy of the state board that all records not exempted from disclosure by state law shall be open for public inspection with the least possible delay and expense to the requesting party.

NOTE: Authority cited: Sections 39600 and 39601(a), Health and Safety Code.
Reference: Section 6253, Government Code; Black Panther Party v. Kehoe (1974) 42 Cal.App.3d 645.

Article 2. Board's Requests for Information

§91010. Request Procedure.

The state board shall give notice to any person from whom it requests information that the information provided may be released (1) to the public upon request, except trade secrets which are not emission data or other information which is exempt from disclosure or the disclosure of which is prohibited by law, and (2) to the federal Environmental Protection Agency, which protects trade secrets as provided in Section 114(c) of the Clean Air Act and amendments thereto (42 USC 7401 et seq.) and in federal regulations.

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, Government Code.

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§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 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, Health and Safety Code. Reference: Sections 39660, 39701, 41500, 41511, 41512 and 42705, Health and Safety Code; Sections 6253, 6254 and 6254.7, 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; Uribe v. Howie (1971) 19 Cal.App.3d 194.

Article 3. Inspection of Public Records

§91020. Disclosure Policy.

§91021. Disclosure Procedure.

NOTE: Authority cited: Section 39601, Health and Safety Code. Reference: Sections 6253-6257, Government Code.

§91022. Disclosure of Confidential Data.

- (a) This section shall apply to all data in the custody of the state board
- (1) designated "trade secret" prior to the adoption of this subchapter,
 - (2) considered by the state board or identified by the person who submitted the data as confidential pursuant to this subchapter, or
 - (3) received from a federal, state or local agency, including an air pollution control district, with a confidential designation, subject to the following exceptions:

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(A) Except for the time limits specifically provided in subsection (b), only subsections (c) and (d) of this section shall apply to information submitted pursuant to Health and Safety Code section 39660(e).

(B) Appropriate portions of an application for approval, accreditation, or certification of a motor vehicle emission control device or system shall be kept confidential until such time as the approval, accreditation, or certification is granted, at which time the application (except for trade secret data) shall become a public record, except that estimates of sales volume of new model vehicles contained in an application shall be kept confidential for the model year, and then shall become public records. If an application is denied, it shall continue to be confidential but shall be subject to the provisions of this section.

(C) If disclosure of data obtained after August 9, 1984 from a state or local agency subject to the provisions of the Public Records Act is sought, the state board shall request that the agency which provided the data determine whether it is confidential. The state board shall request that it be notified of the agency's determination within ten days. The state board shall not release the data if the agency determines that it is confidential and so notifies the state board; provided, however, that the data may be released with the consent of the person who submitted it to the agency from which it was obtained by the state board.

(b) Upon receipt of a request from a member of the public that the state board disclose data claimed to be confidential or if the state board itself seeks to disclose such data, the state board shall inform the individual designated pursuant to Section 91011 by telephone and by mail that disclosure of the data is sought. The person claiming confidentiality shall file with the state board documentation in support of the claim of confidentiality. The documentation must be received within five (5) days from the date of the telephone contact or of receipt of the mailed notice, whichever first occurs. In the case of information submitted pursuant to Health and Safety Code section 39660(e), the documentation must be received within 30 days of the date notice was mailed pursuant to that section. The deadlines for filing the documentation may be extended by the state board upon a showing of good cause made within the deadline specified for receipt of the documentation.

(c) The documentation submitted in support of the claim of confidentiality shall include the following information:

(1) the statutory provision(s) under which the claim of confidentiality is asserted;

(2) a specific description of the data claimed to be entitled to confidential treatment;

(3) the period of time for which confidential treatment is requested;

(4) the extent to which the data has been disclosed to others and whether its confidentiality has been maintained or its release restricted;

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(5) confidentiality determinations, if any, made by other public agencies as to all or part of the data and a copy of any such determinations, if available; and

(6) whether it is asserted that the data is used to fabricate, produce, or compound an article of trade or to provide a service and that the disclosure of the data would result in harmful effects on the person's competitive position, and, if so, the nature and extent of such anticipated harmful effects.

(d) Documentation, as specified in subsection (c), in support of a claim of confidentiality may be submitted to the state board prior to the time disclosure is sought.

(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 6256.1, 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 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; or

(2) provide written notice to the person claiming the data is confidential and, if a request was received, to the person requesting the data that it has determined that the data is subject to disclosure, that it proposes to disclose the data, and that the data shall be released 21 days after receipt of the notice by the person claiming confidentiality, unless the state board is restrained from so doing by a court of competent jurisdiction. The state board shall release the data in accordance with the terms of the notice unless so restrained.

(f) Should judicial review be sought of a determination issued in accordance with subsection (e), either the person requesting data or the person claiming confidentiality, as appropriate, may be made a party to the litigation to justify the determination.

NOTE: Authority cited: Section 39601, Health and Safety Code.

Reference: Sections 6253, 6254, 6254.7, 6255, 6256, 6256.1, 6258 and 6259, Government Code.

If the Survey information is claimed as confidential, how will it be treated?

ARB has adopted regulations to protect the confidentiality of trade secrets (Title 17, CCR, sections 91000 to 91022). A summary of ARB's confidentiality regulations can be found attached to this survey on the "Confidential Information Submittal Form." You should fill out the form if you wish to designate any Survey information as confidential.

When do I need to return the Survey, and where do I send it?

Please return the Survey by **June 28, 2004** to:

California Air Resources Board
Attention: Harold Holmes
Stationary Source Division
P.O. Box 2815
Sacramento, California 95812-2815
CONFIDENTIAL MATERIALS ENCLOSED (if that's the case)

Who can I call if I have questions about the Survey?

If you have any questions, please contact:

Harold Holmes (916) 327-5607 hholmes@arb.ca.gov