

Regulatory Alignment Concept Paper

APPENDIX B

Selected Key Regulations Related to Data and Information Sharing

Appendix B: Selected Key Regulations Related to Data and Information Sharing

Appendix B offers a review of selected key regulations, at both the state and federal level, that may influence the feasibility of sharing agricultural data and information. **Exhibit 1** presents examples of selected key regulations that relate to PSP, ILRP, CAF Program, and SWO data and information sharing. Crowe recognizes the need for further evaluation of these regulations and others for implementing the RPs outlined in *Sections 3 through 6*.

Exhibit 1

Selected Key State and Federal Regulations Which May Restrict or Facilitate Information Sharing*

Regulation	Description
May Restrict Information Sharing	
California Food and Agricultural Code (FAC § 42653)	All proprietary information obtained for the purposes of the Produce Safety Program is confidential and shall not be disclosed except when required by court order in a judicial proceeding.
California Information Practices Act (CIV § 1798 et seq.)	State agencies shall not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed in a manner consistent with § 1798.24.
Code of Federal Regulations (21 CFR § 20.88)	Investigatory records compiled by officials who perform counterpart functions to the FDA at the State and local level, which are voluntarily disclosed to the FDA as part of cooperative law enforcement and regulatory efforts, shall be exempt from public disclosure, except that investigatory records shall be exempt from disclosure for a longer period of time if the State or local government officials so require as a condition of their furnishing the information to the FDA.
United States Code (42 USC § 241[d])	Identifiable, sensitive information collected or used in biomedical, behavioral, clinical, or other research funded wholly or in part by the Federal Government shall be protected by a certificate of confidentiality. Except as provided in § 241(d)(1)(C), the issuance of this certificate prohibits the disclosure or sharing to any other person not connected with the research of the name of an individual or any information, document, or biospecimen that contains identifiable, sensitive information about such an individual and that was created or compiled for purposes of the research.
Exemptions in the California Public Records Act (GOV § 6254)	The following items are exempt from the California Public Records Act: <ul style="list-style-type: none"> • Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person. • Records of complaints to, or investigations conducted by... or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. • Records that are trade secrets pursuant to Section 6276.44, or Article 11 of Chapter 4 of Division 8 of the evidence code.

Regulation	Description
Porter-Cologne Act, California Water Code (WAT § 16263.3 & 13267.2)	<p>The State Water Boards, Regional Water Boards, and POTWs shall make the pollution prevention plans available for public review, except to the extent that information is classified as confidential because it is a trade secret. Trade secret information shall be set forth in an appendix that is not available to the public.</p> <p>When requested by the person furnishing a report, the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies. However, these portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report.</p>
Clean Water Act (33 USC § 1251 et seq.)	Any records, reports, or information obtained under this section shall be available to the public, except... if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information thereof confidential in accordance with purposes of section 1905 of title 18.
United States Code (18 USC § 1905)	Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association... shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.
May Facilitate Information Sharing	
California Public Records Act (GOV § 7920 et seq.)	State and local government records shall be disclosed to the public, upon request, unless they are exempt from disclosure by law (see above).
Open and Transparent Data Act (Assembly Bill 1755)	The California Department of Water Resources (DWR), in consultation with the California Water Quality Monitoring Council, the SWRCB, and the California Department of Fish and Wildlife, shall create, operate, and maintain a statewide integrated water data platform and develop protocols for data sharing, documentation, quality control, public access, and promotion of open-source platforms and decision support tools related to water data.
Freedom of Information Act (5 USC § 552)	Federal government records shall be disclosed to the public, upon request, unless they are exempt from disclosure by law.

*Not an exhaustive list.