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November 14, 2025

Via Email

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**Applications for Confidential Designation for Data in Acceptance Test Technician Certification Provider Program TN # 265847, 265846, 266869, and 266862
Docket No. 13-ATTCP-01**

Dear Mr. Winstead:

The California Energy Commission (CEC) has received National Energy Management Institute's (applicant or NEMI) Applications for Confidentiality docketed September 2, 2025 (TN #265847 & TN #265846), October 27, 2025 (TN #266862 & TN # 266869), covering the following data:

- Mechanical Acceptance Test Technician (MATT) Training and Testing Materials (including quizzes, internal compliance documentation, audit summaries, technician certification data, and membership reports) associated with the Acceptance Test Technician Certification Provider (ATTCP)
- Mechanical Acceptance Test Employer (MATE) Training and Testing Materials (including quizzes, internal compliance documentation, audit summaries, technician certification data, and membership reports) associated with the ATTCP.

The applicant requests that the entirety of the submission be designated confidential for ten years, as the material contains proprietary training content, internal compliance mechanisms, and sensitive technician-level data that are unsuitable for partial release or redaction.

Discussion

A properly filed Application for Confidentiality shall be granted under California Code of Regulations, title 20, section 2505(a)(3)(A), "if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the California Energy Commission to keep the record confidential."

The applicant seeks confidential designation for internal training and testing materials associated with the ATTCP Program. The request is based on California Code of Regulations, title 20, section 2505; Government Code section 7927.705 (formerly section 6254(k)); Evidence Code section 1060; and Government Code section 7922.000 (formerly section 6254(c)), which protect trade secrets and personnel-related information from public disclosure.

Legal Authority for Confidential Designation

Under section 2505(a)(1)(D), an applicant may claim confidentiality where disclosure “would otherwise cause loss of a competitive advantage,” provided the application addresses:

(1) the specific nature of the advantage; (2) how the advantage would be lost; (3) the value of the information to the applicant; and (4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The applicant asserts that its training modules, examination materials, and audit documentation collectively embody its proprietary methodology for testing, evaluating, and certifying Acceptance Test Technicians under the Building Energy Efficiency Standards. These materials were developed over several years of regulatory participation and instructional refinement. They contain not only substantive course content but also exam questions, grading rubrics, and evaluation criteria that form the foundation of the applicant’s certification process.

Government Code section 7927.705 and Evidence Code section 1060 explicitly authorize public agencies to withhold records that qualify as trade secrets under Civil Code section 3426.1(d). That section defines a trade secret as information that (1) derives independent economic value from not being generally known and (2) is subject to reasonable efforts to maintain its secrecy. Consistent with that definition, NEMI’s proprietary training content and certification methodology are the product of specialized technical development. The applicant maintains confidentiality through internal access controls, restricted distribution, and nondisclosure agreements with instructors and evaluators.

Government Code section 7922.000, a catch-all provision of the Public Records Act, further provides that an agency may withhold information when the public interest served by nondisclosure clearly outweighs the public interest served by disclosure. Here, nondisclosure protects the integrity of a regulated certification system and prevents the public dissemination of examination materials that, if released, would undermine the validity of technician testing. The public interest in disclosure is minimal because the CEC’s oversight function ensures that ATTCPs maintain program compliance and competency standards without requiring public access to test content or audit results.

Analysis Under Section 2505(a)(1)(D)

The applicant addresses the four-part test as follows:

- 1) **The specific nature of the advantage:** The materials include technical criteria, pass-fail benchmarks, and proprietary testing protocols that distinguish the applicant’s certification methodology from other providers. The content reflects years of iterative development and alignment with successive code updates. This proprietary structure provides a competitive advantage by enabling the applicant to deliver an accredited, compliant, and efficient training program unmatched in market scope or accuracy.

- 2) **How the advantage would be lost:** Public disclosure would allow competing certification providers to replicate or modify these materials without incurring the investment necessary to develop equivalent content. Release of audit triggers or scoring frameworks would also expose internal oversight mechanisms that ensure compliance integrity, thereby allowing competitors to reverse-engineer those systems and circumvent the applicant's quality assurance process.
- 3) **The value of the information to the applicant:** The training and certification materials constitute core intellectual property, representing a substantial investment of time, capital, and subject matter expertise. They also embody regulatory goodwill earned through consistent CEC compliance and participant success rates. The ability to maintain exclusive control over these materials directly correlates to the applicant's continued viability as a CEC-recognized certification provider.
- 4) **The ease or difficulty with which the information could be legitimately acquired or duplicated by others:** The applicant has implemented strict access protocols, including limited electronic storage, credentialed staff access, and secure transfer methods for exam content. The information is not publicly distributed, and equivalent data could not be reconstructed without significant independent research, curriculum design, and regulatory review.

Collectively, these factors demonstrate that the information meets the statutory definition of a trade secret under Civil Code section 3426.1(d) and qualifies for protection under the Public Records Act and section 2505(a)(3)(A).

Duration and Scope of Confidentiality

The applicant requests a ten-year confidentiality term. This duration is appropriate given that the materials align with the building standards cycle and are typically revised every three years following the adoption of new Title 24 updates. Maintaining confidentiality for the duration of the material's useful life preserves the integrity of active training content and ensures that outdated versions may later be disclosed without jeopardizing current examinations.

Partial release or redaction is not feasible. The interdependence of question banks, audit summaries, and training modules means that even limited disclosure would reveal key elements of the testing framework. Aggregation, which the Commission occasionally uses for data confidentiality, cannot apply here because the records are qualitative instructional documents rather than quantitative data sets.

Balancing of Public Interests

The CEC's responsibility to promote transparency must be balanced against the statutory duty to protect proprietary and security-sensitive information. In this instance, nondisclosure promotes the integrity of the statewide ATTCP program by preventing compromise of standardized certification testing. Disclosure would not enhance public understanding of the ATTCP program's operation but would instead risk undermining it

by enabling circumvention of testing procedures. Accordingly, the public interest favors nondisclosure.

The CEC therefore finds that the applicant has made a reasonable and well-supported claim that the Public Records Act and related laws authorize the Commission to maintain the confidentiality of the submitted materials under section 2505(a)(3)(A).

Executive Director's Determination

Therefore, the CEC designates the above-described information as confidential for ten years, until August 30, 2035. The information may be disclosed if aggregated with other program data in a manner that prevents identification of the applicant or its members.

Be advised that under California Code of Regulations, title 20, section 2506, one may petition to inspect or copy records that the CEC has designated as confidential. A decision on a petition to inspect or copy records is issued by the CEC's chief counsel. Under California Code of Regulations, title 20, section 2507, the executive director may disclose, or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in California Code of Regulations, title 20, sections 2506–2508.

If you have questions, please email confidentialityapplication@energy.ca.gov.

Sincerely,



Drew Bohan
Executive Director