

DOCKETED	
Docket Number:	20-TIRE-01
Project Title:	Tire Efficiency Order Instituting Information Proceeding
TN #:	252427
Document Title:	USTMA Application 05-18-2023 and CEC Response 06-30-2023
Description:	This pdf contains the USTMA application for confidential determination submitted to CEC on 05-18-2023 and the CEC response granting confidential treatment dated 06-30-2023.
Filer:	Tracey Norberg
Organization:	U.S.Tire Manufacturers Association
Submitter Role:	Applicant
Submission Date:	9/27/2023 6:08:32 PM
Docketed Date:	9/28/2023



APPLICATION FOR CONFIDENTIAL DESIGNATION
(Title 20 Cal. Code. Regs., § 2505 et seq.)

CEC-13 (Revised 11/2021)

CALIFORNIA ENERGY COMMISSION

All confidential filings: Individual documents may not exceed 30 MB¹ or be password protected.² The application must be a separate document from the confidential materials. The application itself is not confidential and is a public record. The application will be reviewed and acted upon by the Executive Director in consultation with the Chief Counsel of the Energy Commission. (§ 2505, subd. (a))

If you have questions, contact the Docket Unit at (916) 654-5076 or email: docket@energy.ca.gov.

Existing proceedings: Applications for confidentiality and the confidential documents must be uploaded directly to the Docket Unit through the e-filing system. Paper copies or CDs do not need to be submitted. Links to the e-filing system are provided on most proceeding webpages labeled “**Submit e-filing.**” Alternatively, go to: https://efiling.energy.ca.gov/Login.aspx?perms_1&returnurl=http%3A//efiling.energy.ca.gov/EFiling/EfileSelect/Proceeding.aspx. Registration is necessary the first time documents are uploaded. Once registration is complete, to submit a confidential filing click on **Quick Actions** from the **DASHBOARD** and select **Submit Confidential e-filing** from the dropdown list. The application must be uploaded first followed by one or more confidential files.

Filings not associated with any proceeding: Applications for confidentiality and the confidential materials must be submitted directly to the **Docket Unit** in paper form or on a CD, but not by email. Two copies must be submitted, on separate media if electronic, each marked with a descriptive title and “Confidential.” (§ 1208.1)

TO: Energy Commission Docket Unit

Applicant: U.S. Tire Manufacturers Association

Address: 1400 K Street, NW #900

Phone and E-mail: 202-682-4839

Proceeding or Project Name: Replacement Tire Efficiency Program Proceeding

Docket Number: 20-TIRE-01

- 1(a). Title, date, and description (including number of pages) of the information or data for which you request confidential designation. **Information or data seeking a designation of confidentiality must be included with this application.**

See attached.

- 1(b). Specify the part(s) of the information or data for which you request confidential designation.

See attached.

¹ Contact the Docket Unit if you cannot reduce the size of your file.

² If you wish to protect the files while in transit, you may combine them in a password-protected .zip file..



APPLICATION FOR CONFIDENTIAL DESIGNATION
(Title 20 Cal. Code. Regs., § 2505 et seq.)

CEC-13 (Revised 03/17)

CALIFORNIA ENERGY COMMISSION

2. State and justify the length of time the Energy Commission should keep the information or data confidential.

See attached.

3(a). State the provision(s) of the Public Records Act (Gov. Code, § 6250 et seq.) or other law that allows the Energy Commission to keep the information or data confidential, and explain why the provision(s) apply to that material.

See attached.

3(b). Discuss the public interest in nondisclosure of the material submitted for a confidential designation. If the material contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please state how it would be lost, the value of the information to the applicant and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

See attached.

4. State whether the information or data can be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the applicant). State the degree of aggregation or masking required. If the data cannot be disclosed even if aggregated or masked, explain why.

See attached.

5. State how the material is kept confidential by the applicant and whether it has even been disclosed to a person other than an employee of the applicant. If it has, explain the circumstances under which disclosure occurred.

See attached.

I certify under penalty of perjury under the laws of the State of California that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge and that I am authorized to make the application and certification on behalf of the applicant.

Dated: May 18, 2023

Signed: *Tracy J. ...*



APPLICATION FOR CONFIDENTIAL DESIGNATION
(Title 20 Cal. Code. Regs., § 2505 et seq.)

CEC-13 (Revised 03/17)

CALIFORNIA ENERGY COMMISSION

Name (print or type): Tracey J. Norberg

Title: (print or type) Senior Vice President & General Counsel

Representing: U.S. Tire Manufacturers Association

Include additional signature blocks if there are multiple partners in the project with shared responsibilities for making the request.



**USTMA Application for Confidential Designation
Submitted to California Energy Commission**

Answers to Application Questions

May 18, 2023

Question 1(a).

USTMA requests a confidential designation for the Excel file named “USTMA_TRAC_RRC_Dataset_05-12-2023.xlsx.” The file contains 7,579 rows of data. When printed, the file contains 127 pages if formatted with all columns on a page and the first row repeated on each page as a header. The file contains the following columns:

- OE / Replacement
- Prefix
- Section Width
- Aspect Ratio
- Construction
- Rim Diameter
- Suffix
- Load Category (LL, SL, etc.)
- Load Index
- Load Range
- Speed Symbol
- Tire_Group (passenger, CUV/SUV, light truck, etc.)
- Tread_Type (summer, all-season)
- Segment_Type (touring, performance, etc.)
- Speed_Group (T&below, H&V, WYZ)
- European Network Aligned Value Rolling Resistance Coefficient (RRC) (kg/T)

Question 1(b).

We request a confidential designation for the entire Excel file described above.

Question 2:

USTMA requests that the file remain confidential for the duration of this proceeding and then the original and all copies either be returned to USTMA or be deleted from the Energy Commission's records. If the Energy Commission cannot return and/or delete the file, then USTMA requests that the file remain confidential permanently.

Question 3(a):

As of January 1, 2023, the CA Legislature recodified the California Public Records Act to California Government Code § 7920 *et seq.* This dataset is protected from disclosure under California Government Code section 7927.705, which exempts documents from disclosure that are protected under federal or state law, including provisions of the Evidence Code relating to privilege. The file is protected by the following state and federal laws:

- Cal. Civ. Code § 3426 *et seq.* – Uniform Trade Secrets Act: California's Uniform Trade Secrets Act protects trade secrets, defined as "information, including a formula, pattern, compilation, program, device, method, technique, or process that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Cal. Civ. Code § 3426.1(d). This file is a trade secret because it includes a compilation of data about tire efficiency that is not generally known to the public and companies that manufacture tires can use this information to obtain economic value. Companies could learn manufacturing information from competitors based on this data, particularly for tire sizes that are less common where there are fewer companies that manufacture those products. This file is maintained by USTMA. Neither the raw data nor the blinded dataset are shared. USTMA takes steps to protect the confidentiality of this data before sharing it with regulators. For example, USTMA executed a confidentiality agreement with the Canadian government before sharing this data.

- 18 U.S.C. § 1836 *et seq.* - The Defend Trade Secrets Act: This federal Act defends trade secrets and applies for the same reasons as explained above.
- Cal. Evid. Code § 1040 – “Official Information.” California’s Evidence Code protects “official information” from disclosure when it is “acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made” and “[d]isclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice.” As explained above, this file is not shared with the general public or USTMA member companies. This file is being shared with the Energy Commission pursuant to its request. There is value in maintaining the confidentiality of this file because companies could learn competitively value information if this file is disclosed.

Question 3(b).

Motor vehicle tires perform a critical passenger safety function. Indeed, they are the only component of a motor vehicle that makes contact with a roadway, and tires allow vehicles to accelerate, stop, and turn in a variety of weather conditions at a range of speeds. This dataset contains data that represents individual tests of tires for tire efficiency, which is rolling resistance. Companies in direct competition with one another are members of USTMA, and USTMA does not share confidential member-specific performance information with other members or the general public.

Allowing USTMA member companies to share performance data in an anonymous and confidential way—with assurance that the data will stay anonymous and confidential—is critical to enhancing robust and open analysis about tire performance and identifying avenues to improve performance and safety. However, if competitors have access to this data, then companies could obtain economic value by knowing performance information of competitors’ products.

Question 4.

USTMA has submitted a dataset that has been aggregated and blinded. This dataset still cannot be disclosed because members of USTMA are competitors—they all manufacture tires. These companies could obtain economic value by knowing the efficiency of other passenger tires on the road manufactured by other companies.

Question 5.

USTMA member companies have submitted individual rows of data to USTMA. USTMA has blinded the identities of the submitting companies, including all references to information identifying the brands and models of all tires tested. USTMA staff maintain control of the entire dataset, including both blinded and non-blinded versions. USTMA has conducted extensive analyses of this dataset. USTMA has shared those analyses with USTMA members and interested government agencies and included analytical summaries in public comments and meetings. Importantly, USTMA has not and does not intend to share the underlying data publicly.



June 30, 2023

Via Email

Tracey Norberg
U.S. Tire Manufacturers Association
1400 K Street Northwest, Suite 900
Washington, DC 20005
tnorberg@ustires.org

**Application for Confidential Designation
Replacement Tire Efficiency Proceeding
Docket No. 20-TIRE-01**

Dear Tracey Norberg:

The California Energy Commission (CEC) has received the U.S. Tire Manufacturers Association's (applicant) application for confidentiality, filed June 1, 2023 (TN 250430) covering the following information:

- An Excel file containing 7,579 rows of the following 16 columns of tire data: OE/Replacement; Prefix; Section Width; Aspect Ratio; Construction; Rim Diameter; Suffix; Load Category (LL, SL, etc.); Load Index; Load Range; Speed Symbol; Tire_Group (passenger, CUV/SUV, light truck, etc.); Tread_Type (summer, all-season); Segment_Type (touring, performance, etc.); Speed_Group (T&below, H&V, WYZ); and European Network Aligned Value Rolling Resistance Coefficient (RRC) (kg/T). The data is 127 pages when printed with all columns on a page and the first row repeated on each page as a header.

The applicant states that the Excel file comprises proprietary business trade secrets that are exempt from disclosure under Government Code section 7927.705, Civil Code section 3426 et seq., Evidence Code 1040, and United States Code, title 18, section 1836. The applicant requests that the Excel file in its entirety be kept confidential indefinitely.

An application for confidential designation shall be granted under the 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 executive director's determination made in response to an application for confidential designation is subject to a reasonableness standard. The applicant must make a reasonable claim for confidentiality based on the California Public Records Act and other applicable laws.

The California Public Records Act allows for the non-disclosure of trade secrets including, among others, those records exempt from disclosure under the Uniform Trade Secrets Act. (Gov. Code, §§ 7927.705(k), 7930.005, 7930.205; Civ. Code, § 3426.1; Evid. Code, § 1060.)

Civil Code section 3426.1(d) defines "trade secret" as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(Civ. Code, § 3426.1(d); See also Gov. Code, §§ 7927.705, 7930.005, 7930.205; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

California Code of Regulations, title 20, section 2505(a)(1)(D), states that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, the application shall state: (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.

Here, the applicant is an association of tire manufacturing companies that are in direct competition with one another. The applicant states that its members share data with the applicant to improve tire performance and safety to enhance robust and open analysis, but they do so only on assurance that the applicant will keep the data confidential. The applicant asserts that the tire data is not generally known, and it is not shared with the applicant's own member companies or the public. The applicant states it has shared the information with regulatory agencies only when the agency agrees to maintain confidentiality. The applicant is under no obligation to provide the tire data to the CEC and has stated its intent to do so only if this application for confidential designation is granted. The applicant contends that competitors would gain an unfair economic advantage by gaining access to the manufacturing and performance data about competitors' products.

The applicant has made a reasonable claim that the tire data is exempt as trade secrets. The applicant addresses the four elements identified in California Code of Regulations, title 20, section 2505(a)(1)(D), in summary form, stating that its members may be harmed by the loss of confidentiality because competitors can use this data to derive economic value by gaining access to the manufacturing and performance data about competitors' products.

Executive Director's Determination

For these reasons, the applicant's application for confidential designation is approved. Confidentiality is granted for the entirety of the Excel file of tire data indefinitely.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, 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 the California Code of Regulations, title 20, sections 2506 through 2508.

Any related subsequent submittals can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a long horizontal stroke extending to the right.

Drew Bohan
Executive Director