

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
OFFICE OF NUCLEAR REACTOR REGULATION  
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS  
WASHINGTON, D.C. 20555-0001

June 29, 2004

**NRC REGULATORY ISSUE SUMMARY 2004-11:  
SUPPORTING INFORMATION ASSOCIATED WITH REQUESTS FOR  
WITHHOLDING PROPRIETARY INFORMATION**

**ADDRESSEES**

All submitters of proprietary information to the Nuclear Regulatory Commission.

**INTENT**

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to inform addressees that some submittals continue to not sufficiently support the basis for claims of competitive harm under 10 CFR §2.390(b). This RIS requires no action or written response on the part of an addressee.

**BACKGROUND INFORMATION**

On April 17, 2003, the NRC published revised regulations, then found in 10 CFR §2.790, pertaining to the submission of proprietary information to the NRC and requests for withholding such information from public disclosure. Effective February 13, 2004, the NRC renumbered 10 CFR §2.790 as 10 CFR §2.390.

The regulations in 10 CFR 2.390(b) specify procedures that must be followed by anyone (licensees, owners groups, vendors, and other submitters) to demonstrate that the information submitted to the NRC is properly designated as proprietary and can be withheld from public disclosure. The regulations further emphasize that the submitter is responsible for specifically marking each portion of the documents sought to be withheld. However, the responsibility for determining whether the requirements of 10 CFR 2.390 have been met for each submittal lies with the NRC. NRC reviews each submittal in detail to ensure that there is a legitimate basis for withholding particular information from the public and that the document has been properly marked. NRC staff will review submittals to ensure that regulatory requirements are satisfied and that sufficient basis for claims of competitive harm has been submitted.

**ML041180231**

Information concerning a licensee's physical protection, classified matter protection, or material control and accounting program for special nuclear material not otherwise designated as Safeguards Information or classified as National Security Information or Restricted Data may also be treated as trade secrets and commercial or financial information (i.e. as proprietary information) and withheld from public disclosure in accordance with 10 CFR 2.390(d)(1). The use of the withholding provisions of 10 CFR 2.390(d)(1) and additional information regarding the control of other sensitive unclassified information is not being addressed in this Regulatory Information Summary.

## **SUMMARY OF ISSUE**

To ensure future submittals comply with the requirements in 10 CFR 2.390, the NRC staff wishes to emphasize the following:

- (1) An affidavit is suggested for each submittal to be executed by an officer or upper-level management official who has been specifically delegated the function of reviewing the information sought to be withheld.
- (2) Along with adequate supporting details, the affidavit must identify the reasons for withholding the document (or portions of the document). Examples of such reasons are the following:
  - (a) The information requested to be withheld reveals the distinguishing aspects of a process (or component, structure, tool, method, etc.) whose use by any of the submitter's competitors, without a license from the submitter, would constitute a competitive economic disadvantage to the submitter.
  - (b) The information requested to be withheld consists of supporting data, including test data, relative to a process (or component, structure, tool, method, etc.), and the application of the data secures a competitive economic advantage, as described more fully in the affidavit.
  - (c) Use by a competitor of the information requested to be withheld would reduce the competitor's expenditure of resources, or improve its competitive position, in the design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product.
  - (d) The information requested to be withheld reveals cost or price information, production capacities, budget levels, or commercial strategies of the submitter or customers or suppliers.
  - (e) The information requested to be withheld reveals aspects of privately funded development plans or programs of commercial value to the submitter or owner of the information.
  - (f) The information requested to be withheld consists of patentable ideas.

It is not sufficient for the affidavit to claim, without further support, that the above statements pertain to the information requested to be withheld. The specific basis for a claim of competitive harm applicable to the particular document, or affected portions, must be described in the affidavit or in the marked-up version of the submittal. This should include a detailed explanation of any reasons the information requested to be withheld constitutes proprietary information.

If the information is not the property of the submitter but must be treated as proprietary according to agreements with the owner of the information, an affidavit must be executed by the owner of the information.

The document must be marked to identify each portion of the submittal that fall under the claim of proprietary information. The top of the first page of the document and the top of each page containing such information must be clearly marked to indicate that the page contains proprietary information. Additionally, each document, or page, as appropriate, to be withheld from public disclosure should contain adjacent markings, which clearly indicate which portions are to be withheld.

The specific reasons for the withholding needs to be set in the affidavit and in the marked-up document, or page, as appropriate.

The NRC encourages submitters to provide a nonproprietary version of their proprietary submittals, suitable for public disclosure. This would allow the NRC to efficiently and effectively respond to requests, such as those submitted under the Freedom of Information Act.

### **BACKFIT DISCUSSION**

This RIS requires no action or written response and is, therefore, not a backfit under 10 CFR 50.109, 10 CFR 70.76, 10 CFR 72.62, and 10 CFR 76.76. Consequently, the staff did not perform a backfit analysis.

### **FEDERAL REGISTER NOTIFICATION**

A notice of opportunity for public comment on this RIS was not published in the *Federal Register* because it is informational and pertains to a staff position that does not represent a departure from current regulatory requirements and practice.

### **SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT of 1996**

The NRC has determined that this action is not subject to the Small Business Regulatory Enforcement Fairness Act of 1996.

## **PAPERWORK REDUCTION ACT STATEMENT**

This RIS does not request any information collection and therefore is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

This RIS requires no specific action nor written response.

## **CONTACT**

Please direct any questions about this matter to the technical contact(s) or to the appropriate Office of Nuclear Regulation (NRR) project manager.

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Attachment: List of Recently Issued Regulatory Issue Summaries

LIST OF RECENTLY ISSUED  
NRC REGULATORY ISSUE SUMMARIES

| Regulatory Issue Summary No. | Subject   | Date of Issuance | Issued to  |
|------------------------------|---|------------------|--|
| 2004-10                      | Preparation And Scheduling of Operator Licensing Examinations   | 06/14/2004       | All holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel. |
| 2004-09                      | Status on Deferral of Active Regulation of Ground-water Protection At In Situ Leach Uranium Extraction Facilities | 06/07/2004       | All holders of materials licenses for uranium and thorium recovery facilities.   |
| 2004-08                      | Results of the License Termination Rule Analysis  | 05/28/2004       | All holders of operating licenses for nuclear power reactors, research and test reactors, as well as decommissioning sites.  |
| 2004-07                      | Release of Final Review Standard (RS)-002, "Processing Applications for Early Site Permits"                       | 05/19/2004       | All holders of operating licenses for nuclear power reactors, all applicants for early site permits (ESPs), and all prospective vendors of nuclear power plants in the United States.                |
| 2004-06                      | Independent Survey of Power Reactor Licensees   | 04/16/2004       | All holders of operating licenses for nuclear power reactors except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.  |

**Note:** NRC generic communications may be received in electronic format shortly after they are issued by subscribing to the NRC listserver as follows:

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