

August 4, 2000

To: Distributors of Generally Licensed Devices

This letter, originally sent to you on December 9, 1999, is being reissued. It is being reissued because we have not received a response from either you, or your organization. If we do not receive a response, containing the affidavit, within 30 days of the date of this letter, we will assume that you do not wish to request generic withholding of any of the potentially proprietary information that may be included in your transfer reports. This means that each report, when submitted to NRC, must contain a specific request for withholding, including adequate justification, in accordance with 10 CFR 2.790 (copy enclosed), or the full reports including any potentially proprietary information will be made available to the public,.

What follows is a reprint of the December 9, 1999 letter:

This letter is in reference to the reports your company submits to the U.S. Nuclear Regulatory Commission in accordance with Title 10, Code of Federal Regulations (CFR), Section 32.52, or Agreement State equivalent. The reports include a list of all transfers of devices to persons for use under the general license in 10 CFR 31.5. Many distributors have indicated that these reports contain privileged or confidential commercial or financial information and, therefore, should be withheld from public disclosure. These distributors have submitted applications and affidavits, in accordance with 10 CFR 2.790, requesting this information be withheld from public disclosure.

To relieve the burden of submitting an affidavit with each report submitted to the NRC, we have determined that it is adequate for distributors to submit a request for withholding from public disclosure at intervals not to exceed 5 years. While reviewing our records, we determined that you have not yet been informed about the 10 CFR 2.790 provisions. It is the intent of this letter is to inform you that, if you wish NRC to withhold the information provided in your reports, you must submit a request for withholding and provide specific information, as described below. This requirement begins with any reports received by the NRC after December 31, 1999.

Your request and affidavit (example enclosed) must be submitted in accordance with 10 CFR 2.790(b)(1). For the Commission to determine whether the information should be withheld from public disclosure, please answer the following questions in sufficient explanatory detail in addition to the other requirements of 10 CFR 2.790:

1. Is the information submitted to, and received by, the NRC in confidence? Please give details.
2. To the best of your knowledge, is the information currently available in public sources?
3. Does your company customarily treat this information, or this type of information, as confidential? Please explain why.
4. Would public disclosure of the information be likely to cause substantial harm to the competitive position of your company? If so, explain why in detail.

A copy of an affidavit whose format and content on this subject is enclosed. Distributors are strongly encouraged that if the affidavit meets your needs, to utilize the format provided. Utilization of a standardized format both reduces the burden upon staff, and ensures that the requirements of 10 CFR 2.790 are met.

Since you submit copies, or portions, of the reports to the appropriate NRC Regional Office, your application for withholding must specify that the reports sent to each NRC Regional Office are copies, or portions, of the reports sent to the Director of Nuclear Material Safety and Safeguards, and your application must specifically request that the reports sent to the NRC Regional Offices be withheld from disclosure. Your application must also clearly indicate that the request covers the information contained in reports submitted between January 1, 2000 and December 31, 2004.

In addition to the affidavit on file, reports sent to the NRC should be clearly marked "PROPRIETARY INFORMATION" or "CONFIDENTIAL", in order to assure the information will be handled appropriately during NRC's new document processing procedures.

Please provide your response within thirty (30) days of this letter. Please direct any questions you may have to Mr. Michael Raddatz of my staff at (301) 415-6334.

Sincerely,

/RA/

John W. N. Hickey, Chief
Materials Safety
and Inspection Branch
Division of Industrial
and Medical Nuclear Safety
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Copy of 10 CFR 2.790
2. Example Affidavit

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John W. N. Hickey, Chief
Materials Safety
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Office of Nuclear Material Safety
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2. Example Affidavit

Distribution:

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DOCUMENT NAME: C:\affidavialldistributors.wpd ML00373_____

OFFICE	MSIB		MSIB		MSIB		MSIB			
NAME	B M Raddatz		B Tharakan		F Sturz		J Hickey			
DATE	8/4/00		8/4/00		8/4/00		8/4/00			

OFFICIAL RECORD COPY

(Insert Company Name)

AFFIDAVIT

I, (Insert Name of Responsible Individual), being duly sworn, depose and state as follows:

1. I am the (Insert Responsible Individual TITLE), (Insert Company Name) and have been delegated the function of reviewing the information described in paragraph (2) which is sought to be withheld, and have been authorized to apply for its withholding.
2. Our Company is required by Title 10 CFR 32.52(a) to submit a report to the Commission every calendar quarter, listing the names and addresses of each client to whom a general license distribution of a device was made. Additional information about the device, such as isotope, quantity and model number is also required. Five copies of this report are distributed; one to each Regional Office of the Commission and one to the Director, Nuclear Materials Safety and Safeguards in Washington, DC.
3. Our Company is the sole owner of the information provided in the reports described in paragraph 2, above.
4. In making this application for withholding of proprietary information of which it is the owner, (Insert Company Name) relies upon the exemption from disclosure set forth in the Freedom of Information Act ("FOIA") 5 USC Sec. 552(b)(4), and the Trade Secrets Act, 19 USC Sec. 1905, and NRC regulations 10 CFR 9.17(a)(4), 2.790(a)(4), and 10 CFR 2.790(d)(1) for "trade secrets and commercial or financial information obtained from a person and privileged or confidential, " (Exemption 4). The material for which exemption from disclosure is here sought is all 'confidential commercial information', and some portions also qualify under the narrower definition of 'trade secret', within the meanings to those terms for purposes of FOIA Exemption 4 in, respectively, Critical MM Energy Project v. Nuclear Regulatory Commission, 975F2d871 (DC Cir. 1992), and Public Citizen Health Research group v. FDA, 704F2d1280 (DC Cir. 1983).
5. To the best of our knowledge, the information, as presented, is not currently available in public sources.
6. Our Company customarily treats this type of information as confidential. We have a formal information security classification and disclosure policy, and under this policy lists of active customers and information relevant to their measurement geometries is considered Company Proprietary.
7. Some examples of categories of information which fit into the definition of proprietary information are:
 1. Information that discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by (Insert Company Name) competitors without license from (Insert Company Name) constitutes a competitive economic advantage over other companies;
 2. Information which, if used by a competitor, would reduce his expenditure of resources or his Competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product or of attracting (Insert Company Name) customers;
 3. developing our customer database required extensive expenditure of resources

by our company. Release of the data would give our competitors an economic advantage allowing them the information without those requisite costs.

4. Information which reveals aspects of past, present, or future (Insert Company Name) customer-funded development plans and program, of potential commercial value to (Insert Company Name) ;
8. Public disclosure of the information would be likely to cause substantial harm to our competitive position. It takes considerable resources to develop a market and determine the optimum measurement geometry, other companies wishing to compete with us would be able to gain a list of potential customers who are already known to be users of the product they wish to sell. Furthermore, they would be able to make certain inferences about the optimum measurement geometry from the isotope and quantity information and about the system configuration from the number and types of gauges. This would permit a company to quote competitively without expending the same resources, placing them at a distinct and unfair advantage in pricing their offering. Furthermore, a significant part of our income is derived from continuing services. A number of independent organizations are now entering this field. Publishing our quarterly reports or summary lists of all quarterly reports provides them with a convenient and cheap customer list from which to assail our market. It is not easy to assess the cost of developing this information. It would include, at least, the overhead man hours of the sales and application engineers as they make calls on hundreds of facilities throughout the United States to determine whether they are candidates for our devices, and, if so, which specific devices in which configurations would best serve their processes and products. We do not know how else this detailed information could be acquired except from our detailed distribution lists.
9. In view of the above we respectfully request that the General License Distribution Reports that we quarterly distribute to the License Management Branch and the Regional Offices of the U.S. Nuclear Regulatory Commission continue to be withheld from public disclosure.

Dated _____, 2000 _____
(Insert Name of Responsible Individual)

ACKNOWLEDGMENT

State of _____)
County of _____) ss:

The foregoing affidavit was acknowledged as true and correct before me
this _____, 2000 by (Insert Name of Responsible Individual) who was duly
sworn.

Notary Public