



October 7, 1992

RULEMAKING ISSUE

(Notation Vote)

SECY-92-341

For: The Commissioners

From: James M. Taylor
Executive Director for Operations

William C. Parler
General Counsel

Subject: AMENDMENT TO RULE GOVERNING PROPRIETARY AND
COPYRIGHT SUBMISSIONS

Purpose: To obtain the Commission's approval to
publish a proposed rule that would amend 10
CFR 2.790 regarding proprietary and
copyrighted information submitted to the
Commission.

Summary: An amendment is proposed to conform the NRC's
regulations regarding availability of
official records to current caselaw and
existing agency practice with respect to
three issues.

The amendment would add three new
restrictions on the qualified right of
submitters of information to have information
returned upon request. Present regulations
acknowledge only one exception to the policy
which permits return upon request: when the
information is submitted in a rulemaking
proceeding which subsequently forms the basis
for a final rule. The amendment advises the
public of three additional circumstances
under which information will not be
returned: (1) when submitted to an advisory
committee; (2) when captured by a Freedom of
Information Act request; and (3) when

Contact:
Catherine M. Holzle, OGC NOTE: TO BE MADE PUBLICLY AVAILABLE
504-1560 WHEN THE FINAL SRM IS MADE
AVAILABLE

107-92

considered by the Commission in an open Commission meeting under the Government in Sunshine Act.

The proposed amendment would clarify regulations for identifying information sought to be withheld from public disclosure on the basis of proprietary content, by adding specific marking criteria, intended to reduce the administrative burden associated with proprietary determinations and expedite processing of proprietary claims.

The amendment would provide a cautionary notice to the public regarding submission of copyrighted works. The current regulation is silent on treatment of copyrighted information and the amendment would address NRC procedures for handling copyrighted documents. The proposed amendment would adopt an expansive interpretation of the "fair use" doctrine, to permit the NRC broad authority to copy documents in connection with regulatory and public information responsibilities.

Background:

The amendments in this proposed rule involve three principal issues:

ISSUE 1 - Document Return NRC regulations on availability of official records are out of date and require revision to comport with existing case law and agency practice. With one exception, the current regulations provide an unqualified right for a submitter to reclaim those of its documents that the agency does not agree to protect from public disclosure. Under the existing regulations, the only time a submitter may not retrieve information is when it is submitted in a rulemaking proceeding which subsequently forms the basis for a final rule (10 CFR 2.790(c)). As a result of changes in the law, it is necessary to amend the regulations to expand the circumstances under which submitted documents may not be returned.

Contact:
Catherine M. Holzle, OGC
504-1560

These expanded circumstances include documents submitted to a Federal Advisory Committee governed by the Federal Advisory Committee Act (FACA), documents "captured" by a Freedom of Information Act (FOIA) request subject to that statute, and documents considered by the Commission in an open Commission meeting under the Government in the Sunshine Act.

ISSUE 2 - Proprietary Marking The NRC would benefit from clarification of regulations for identifying information sought to be withheld from public disclosure. Present regulations are vague with respect to marking procedures and impose an unnecessary burden on the NRC in determining which portions are covered by the withholding application. This results in substantial delays in processing and distribution of releasable material. Addition of specific marking criteria in the regulations would result in economies in the review and decision-making process.

ISSUE 3 - Copyrighted Documents Current NRC regulations do not explicitly permit NRC to copy documents protected by the copyright laws; nor do the regulations otherwise discuss the submission of the copyrighted information to NRC. In connection with some recent licensing and design reviews, NRC has received a number of documents containing a copyright notice. Further, recent changes in the copyright law no longer require that documents contain a notice or registration to be accorded copyright protection. While much of the NRC's copying may fall within "fair use" copying permitted under the copyright laws, a clear statement of Commission policy, set forth in its regulations, would provide valuable clarification of this matter.

Discussion:

ISSUE 1 - Document Return

It has been the NRC's long-standing practice to provide parties who submit documents to the NRC an opportunity to identify commercial or financial information considered privileged or confidential and to apply for withholding of this information from public disclosure. This type of information is

commonly referred to as "proprietary," in the vernacular of FOIA case law, which permits withholding of such information under statutory exemption 4. 10 CFR 2.790 provides that, if the Commission denies the request for withholding proprietary information, the submitter may request return of the document (10 CFR 2.790(c)). Documents may also be returned if they are deemed irrelevant or unnecessary to performance of the Commission's functions (10 CFR 2.790(b)(5)).

The regulations do not permit return of documents submitted in a rulemaking proceeding which subsequently form the basis for the final rule (10 CFR 2.790(c)). There are additional circumstances not now reflected in 10 CFR 2.790 in which submitters are not entitled to return of their documents. Thus, the Commission's regulations must be revised to comply with current law in this area.

The first exception to the return policy relates to documents submitted to an advisory committee. Subject to the FOIA, Section 10(b) of the FACA requires the NRC to make all documents provided to, or prepared by or for, an advisory committee available for public inspection and copying. These documents must be retained for the life of the committee and consequently, not only may not be returned to the submitter, but must be disclosed to the extent required by applicable law. NRC regulations do not yet reflect this exception to the "return policy." However, there is no question that the agency is bound legally to conform to the mandatory provisions of FOIA and FACA and that NRC regulations must be modified accordingly. In this connection, it is important to note that a copy of many of the documents submitted to NRC is provided routinely to the Commission's Advisory Committee on Reactor Safeguards (ACRS) and the Commission's Advisory Committee on Nuclear Waste (ACNW).

A second exception relates to the return policy when a FOIA request is involved. Receipt of a FOIA request operates to "capture" any agency record as of the moment

the request is received and obligates the agency to render a determination about whether the document may be released. Regardless of the release determination, the agency may not return the record sought to be protected.

A determination to protect any information subject to a FOIA request would result in a denial of the request, in part or in whole. The agency then would be obligated to retain the record for at least six years due to the statute of limitations on the requester's appeal rights, in accordance with applicable law, Spannaus v. Department of Justice, 824 F. 2d 52 (D.C. Cir. (1987)), and records retention schedules approved by the National Archives and Records Administration.

A determination to disclose a requested document entails a determination that the document is not entitled to protection under FOIA. Yet the current language of 10 CFR 2.790(c) indicates that upon notice of the agency's intent to deny the applicant's request for withholding, the applicant may request withdrawal of the document and the document will be returned to the applicant. This is at odds with the agency's obligations under FOIA. NRC argued in General Electric v. NRC, 750 F. 2d 1394 (7th Cir. 1984) that this provision does not apply once a FOIA request is filed. NRC's position was upheld. Id. at 1399. However, the language of 10 CFR 2.790(c) has remained unchanged and has led to some misunderstandings on the part of certain submitters.

A third exception relates to documents considered in connection with an open Commission meeting held in accordance with the Commission's Sunshine Act regulations (10 CFR Part 9, Subpart C). Information considered in connection with any action taken at a Sunshine Act meeting is generally subject to the same openness requirements as the meetings themselves. To the extent that proprietary information may be involved in matters considered by the Commission, 10 CFR 9.104 provides that the meeting may be closed. However, if the Commission determines that information provided to it does not

qualify for non-disclosure and this information is considered in connection with an open Commission meeting, there is no reason to permit its return to the submitter.

ISSUE 2 - Proprietary Marking

The greatest problem any Federal agency has with review of documents for withholding under exemption 4 is that the proprietary analysis is extremely time-consuming in application to particular documents. Under current FOIA law, this requires a tedious examination of the material to determine what may be protected and what must be released, since the agency is justified in withholding only the limited material which meets the legal standard. This is an onerous task, made more burdensome by the failure of most submitters to distinguish proprietary portions of documents from the remainder.

In responding to FOIA requests, the staff has often identified documents that appeared to contain confidential commercial or financial information (proprietary information) which were not stamped or labeled as such. In some cases, the information was accompanied by an affidavit justifying the proprietary claim. In other cases, the cover letter may have indicated that the information was proprietary but no affidavit was provided. In other cases, an affidavit may have been filed at one time for a similar document, but documents subsequently submitted were not identified as being proprietary. In some cases, those who have become aware of FOIA requests have tried to make a claim that information was proprietary even though no claim had been made when the document was submitted. To address the problems posed by submitters' failure to specifically identify all pages containing proprietary information, the proposed amendment to 10 CFR 2.790(b)(1)(i) would require that the submitter mark the first page of the document and any other page containing proprietary information. All pages not marked would be handled routinely and made available to the public.

In initially submitting a request for

withholding, submitters have an opportunity to advance their own cause by assisting the agency to render its proprietary determination by highlighting areas they claim merit protection under exemption 4. However, NRC's regulations do not require that submitters make this identification. Some submitters do identify the portions they claim to be proprietary. Others, in essence, attempt to pass the burden to the NRC staff by requiring the NRC staff to raise questions about whether all portions of the document are in fact proprietary.

When an FOIA request is filed for a document of this type, the burden of supporting proprietary information claims is passed back to the submitter by providing the submitter an "opportunity" to support the claim, in accordance with procedures outlined in the NRC Manual Chapter 3201. Both the submitter and agency work under increased pressure due to the mandatory time frame for responding to a FOIA request imposed by the statute. In such cases, and for those requests to withhold from public disclosure which do not arise in the context of a FOIA request, a thorough, conscientious effort on the part of the submitter to mark purportedly proprietary portions of a document would assist the agency immeasurably in processing both FOIA requests and applications for withholding from public disclosure. Amendment of the regulations to add specific marking criteria would result in great economies of time and effort for the agency in the review and decision-making process.

ISSUE 3 - Copyrighted Documents

Recently, a number of vendors have begun placing copyright notices on documents submitted to NRC in connection with licensing actions. Similarly, the Electric Power Research Institute (EPRI) has placed a copyright notice on its requirements document submitted to NRC. The copyright law restricts copying of documents protected

under the copyright law.¹ The staff has met with EPRI and some of the vendors to discuss the restriction and has been informed that the purpose of the notice is not to restrict copying for internal NRC uses but to restrict NRC's distribution of the documents to persons outside the agency even when the vendor or EPRI makes no claim of right to protection as "proprietary information."

NRC's current Freedom of Information Act (FOIA) regulations exclude "publicly available books, periodicals or other publications that are owned or copyrighted by non-Federal sources" from the definition of "agency records" (10 CFR 9.13). On this basis, some industry representatives have suggested that NRC should not make copyrighted materials available to the public. Actually, except for those copyrighted materials which are also proprietary, the industry representatives with whom the staff has discussed the matter would not oppose the NRC providing access to the materials in the NRC's Public Document Rooms; however, they would object to reproduction, without their consent, by NRC for distribution to the public.

Many other government agencies provide public access to materials in agency libraries and Public Document Rooms and make self-operated copying machines available for public use

¹ Under the copyright law, copyright protection extends to various items, including, "literary works," a term defined to include "works ... expressed in words, numbers or other verbal or numerical symbols ... regardless of the ... material objects ... in which they are embodied" (17 USC 101). Among other rights, the copyright holder has the exclusive right to copy the work and the exclusive right to display the work (17 USC 106). However, the owner of a lawful copy has the right to display the work to persons present where the copy is located (17 USC 109). There are a number of other protections afforded to copyright holders and a large number of other specific grants of authority to holders of copies of the material, including, most notably, the "fair use" exception, probably the most litigated aspect of the copyright law (17 USC 107).

(generally posting a copyright notice). NRC's PDR provides a greater degree of public availability than most other agencies, providing copying services of any materials in inventory upon request². This copying service is performed by a contractor, or by PDR users themselves in self-service copying machines, which are installed and managed by the NRC contractor. Changing the NRC PDR service to "examination only" type access would involve substantial changes in the operation of the PDR.

These developments led the staff to examine the need for NRC to copy copyrighted material submitted to NRC and the need to clarify NRC policy regarding copyrighted materials submitted to NRC. This review brought to the staff's attention the recent important changes in the copyright law which no longer require a copyright notice for copyright protection.³ Since one can no longer readily identify materials protected by the copyright law by relying on the notice, it becomes even more important for the Commission to clarify its policy regarding copyrighted material submitted to NRC.⁴

There are three basic areas of NRC activities involving NRC dissemination of materials submitted to NRC: obligations to provide records in response to requests under the FOIA; obligations in connection with NRC regulatory activities; and public information

² Pending resolution by the Commission of the copyright issues discussed in this paper, the EPRI ALWR Requirements Document, which is copyrighted, is available in the NRC PDR for viewing only.

³ Materials created after March 1, 1989, the effective date of the Berne Convention Implementation Act of 1988, P.L. 100-568, are not required to carry a copyright notice to be protected by the copyright law. A copyright notice continues to have valuable evidentiary significance but is not required to establish infringement.

⁴ NRC's policy to respect the copyright on materials such as magazines and newsletters purchased by NRC is clearly articulated to the staff in Employee Announcements (Yellow announcements) and in notices placed at copying machines. This is not an issue in this paper.

responsibilities.

FOIA Obligations for Disclosure of
Copyrighted Material

In this area, the law is not well settled. Moreover, the few cases on this issue involve matters that predate the Berne Implementation Act. FOIA requires Federal agencies to make agency records available to persons requesting such records.⁵ Justice Department guidance issued in 1983 indicated that the fact that material is copyrighted does not exempt it from treatment as "agency records" under FOIA (USDOJ, Office of Information and Privacy, "FOIA Update", Fall 1983). However, the fact that a copyright may have commercial value to the copyright holder is one element to consider in determining whether the material is information which may be withheld from disclosure under FOIA exemption 4.⁶

In Weisberg v. U.S. Dept. of Justice, 631 F.2d 824 (D.C. Cir. 1980), where access to a copyrighted photograph had been provided but the requester sought to obtain a copy of the photo, the court recognized that it faced competing demands of FOIA and the copyright law. It nevertheless held that the fact that photo was copyrighted did not exclude it from being an "agency record" covered by FOIA. The court did not resolve the question of whether FOIA required a copy to be provided

⁵ FOIA obligations go beyond making agency records available on request. Greatly simplified, it requires federal agencies: (1) to publish in the Federal Register descriptions of its organization, rules or procedures and substantive rules of general applicability; (2) to provide for public inspection and copying, in accordance with published rules, of final opinions and orders in adjudicated matters, policy statements and interpretations not published in the Federal Register, administrative staff manuals and staff instructions that affect a member of the public; and, (3) for any records not made available under (1) or (2), on request which reasonably describes the records sought, and in accordance with published rules regarding time, place, procedures and fees, make the records promptly available.

⁶ For purposes of this discussion, we are not addressing documents whose content may qualify for other FOIA exemptions.

to the requester. The Government had argued that FOIA only required access to be provided. The court explicitly stated that it did not reach that issue. Since there was a procedural defect, the Court did not deal with "the proper relationship between FOIA and the copyright laws." The case was settled before the procedural defect was cured.

After this case, DOJ has advised that, unless a document is exempt under FOIA, FOIA requires not only access to the document but requires agencies to provide copies (on payment of copying fees) (USDOJ, Office of Information and Privacy, "FOIA Update", Fall 1983 and Spring 1991).

In another case involving fair use of copyrighted material, New Era Publications Int'l v. Henry Holt & Co., 873 F.2d 576 (2d Cir. 1989), cert. denied 493 U.S. 1094 (1990), a footnote to a concurring opinion by Chief Judge Oakes relates to whether extracts from letters sent to government agencies had been published. Judge Oakes noted that placing a "work" in a public file is not publication since the work has not been distributed, but then went on to say:

Nonetheless, although case law on this is nonexistent, I think that letters or applications sent to government agencies seeking or promoting action by the agencies are not "works of authorship" in the copyright sense of 17 U.S.C. §102. Cf. id. § 2.03[A], at 2-24 (Congress did not use its full constitutional powers over "writings" in the Act).

The staff inquired of the FOIA offices in other regulatory agencies about their treatment of copyrighted material submitted as part of or in connection with an application for agency license or permit. The results were quite mixed; some agencies refusing to disclose these documents, some agencies making them available for public inspection in an area where copy machines were available. None of the agencies contacted seemed to give any special

consideration to the changes resulting from the Berne Implementation Act.

Agency Licensing and Regulatory Needs and Obligations

Internal Use - NRC has an important need to make copies of materials submitted to it in connection with its licensing and regulatory activities for internal agency use. The agency's review process entails review and evaluation of portions of submitted materials by a large number of specialists reviewing different aspects of materials submitted by licensees and applicants.

Public Availability of License Applications - The Commission's licenses are public documents which are required to be based on requisite statutory findings by the Commission. The principal document on which these findings are based is the application submitted to the NRC and NRC's review of the application. There is an opportunity for persons whose interests may be affected to request a public hearing in connection with all NRC licensing actions (not necessarily a formal hearing). An inherent element of the opportunity to request a hearing on an application for an NRC license is an opportunity to inspect the application to determine whether one's interests are affected. Thus, inherent in the Atomic Energy Act (AEA) is reasonable public access to license applications submitted to NRC.⁷

NRC has traditionally provided access to license applications, not only in its Washington Public Document Room and in local Public Document Rooms, but has provided copying services for a fee to persons who request copies.

If copies were not available upon request (and payment of copying fees), providing

⁷ While portions of a license application may be withheld from the general public as "proprietary information" pursuant to 10 CFR 9.17(a)(4) and 2.790(a)(4), persons whose interest may be affected (e.g. parties) may be provided access under an appropriate protective order or protective agreement (10 CFR 2.740(c)).

access without copying through the NRC Headquarters Public Document Room and the local Public Document Room system would likely be sufficient, in most cases, to satisfy any obligation NRC might have to provide sufficient information to enable a person affected to determine whether to request a hearing. However, in special circumstances unless copies were available on request (and payment of copying fees), NRC might have additional administrative burdens to assure the adequacy of the service available in local Public Document Rooms and to assure availability of access to interested persons in special cases where the availability of the local Public Document Room was not sufficient to provide reasonable access to a license application.

Hearings - In connection with applications which are adjudicated in NRC, copies of documents used in evidence, including the application, any supporting or referenced materials used in evidence, the staff safety evaluation, etc., must be provided to other parties and to the Licensing Board.

Open Commission Meetings - As noted above, information considered in connection with open Commission meetings held under the NRC's Sunshine Act regulations is generally subject to the same openness requirements as the meeting themselves. The Commission's general practice has been to make copies of documents considered at the meetings available to the public at the time of the meeting (or shortly thereafter). This information may include not only NRC staff submissions but a wide range of materials attached to staff papers as well as materials submitted by Commission licensees and other interested persons, including members of the general public.

Rulemaking - In connection with "notice and comment" rulemaking, the public must be given notice of and an opportunity to comment on the basis for the rule. While upholding (although criticizing) the sufficiency of information available to commenters in connection with 10 CFR 50.48, the D.C. Circuit Court of Appeals indicated,

[a]n agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow meaningful commentary. Connecticut Light and Power v. Nuclear Regulatory Commission, 673 F. 2d. 525, 531 (D.C. Cir. 1982).

In formal rulemaking or in rulemaking using an adjudicatory form, copies of materials submitted to the presiding officer would be made available to parties to the proceeding. For example, for design certification rulemaking hearings, 10 CFR 52.51 provides that the decision "will be based only on information on which all parties have had the opportunity to comment..."

Lastly, the rule itself is a public document published in the Federal Register.

NRC Public Information Responsibilities

Public Document Rooms - The NRC, and the AEC before it, have had a long-standing policy of openness with respect to agency documents and materials submitted to the agency in connection with licensing and regulatory activities. The AEC established its Headquarters Public Document Room (PDR) in February 1956, as a place "where records relating to the licensing program administered by the Commission's Division of Civilian Application [the predecessor to the AEC's regulatory staff] may be examined." By 1972 the AEC had already established a number of local Public Document Rooms in the vicinity of regulated nuclear power facilities. In August 1972 a Management Directive was issued establishing procedures for assuring that AEC licensing records were made available for inspection and copying at the Headquarters PDR and local Public Documents Rooms. This policy was continued when NRC was established and NRC made efforts to improve the access and copying services available through the Public Document Room. The policy was reviewed and clarified in 1980. It provided for a wide range of documents to be made routinely available in the Public Document Room, covering not only

those required to be disclosed under FOIA, the Government in the Sunshine Act and Commission regulations but also including:

- records relating to public health and safety, or to safeguards, of nuclear facilities and materials;
- records relating to NRC management and policy in which the public has evidenced an interest;
- other records relating to regulatory procedures and policies which NRC officials deemed to be of public interest. (SECY-79-276, and SRM dated February 21, 1980).

This remains the principle underlying NRC's current practice of placing documents in the Headquarters and the local PDRs.

Public Affairs - NRC also has a long-standing policy of an active public information program carried out through the Office of Public Affairs. The Office of Public Affairs has served to assure that public media and interested members of the public are provided access, or assisted in obtaining access, to information relating to the Commission's regulatory activities.

NTIS - For a number of years, NRC has made copies of its documents and some documents submitted to it available to the public through the National Technical Information Service of the Department of Commerce. This is believed by the staff to be a very valuable tool for wide dissemination of technical information concerning nuclear technology and radiological health information.

Congressional Affairs - Over the years, NRC and AEC have provided extensive information to Congressional Committees and to interested members of Congress concerning the NRC's activities.

OPTIONS FOR ISSUES 1 and 2

Option 1 - Make No Change in Current Regulations

Option 2 - Change 10 CFR 2.790(b) and (c) as Proposed

OPTIONS FOR ISSUE 3

Options for ISSUE 3 may be broadly characterized as:

Option 1- Make No Changes in Current Regulations

Option 2- Change Regulations to Provide Narrow Authority to Copy

Option 3 - Change Regulations to Address Only Materials Bearing a Copyright Notice

Option 4- Change Regulations to Provide Broad Authority to Copy

Option 5- Change Regulations to Provide Broad Authority to Copy With Various Restrictions

Coordination:

This paper has been prepared by the staff of the Office of Administration and the Office of the General Counsel. The paper has also been coordinated with the Office of the Secretary, the Office of Congressional Affairs, the Office of Public Affairs, and the Office of Information Resources Management, all of whom concur in the recommendation.

Recommendations:

That the Commission:

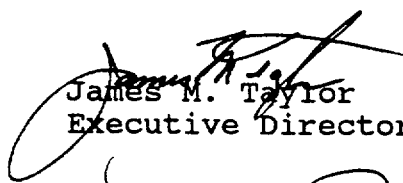
1. Approve Option 2 for ISSUES 1 and 2 and Option 4 for ISSUE 3 and Approve publication of the proposed rule in the Federal Register.
2. Certify that this rule, if adopted , would not have a significant economic impact on a substantial number of small entities in order to satisfy the requirements of the Regulatory Flexibility Act (5 U.S.C. 605(b)).

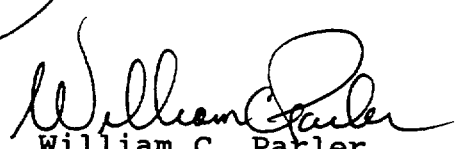
3. Note:

- (a) That a regulatory analysis for this rulemaking action is set forth in the notice of proposed rulemaking.
- (b) That neither an environmental

impact statement nor a finding of no significant environmental impact has been prepared for this proposed rule because it meets the criteria for a categorical exclusion under 10 CFR 51.22(c)(1).

- (c) That the Subcommittee on Nuclear Regulation of the Senate Committee on the Environment and Public Works and the Subcommittee on Energy and Power of the House Committee on Energy and Commerce and the House Committee on Interior and Insular Affairs will be informed of this rulemaking action (Enclosure B).
- (d) That the proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act.
- (e) That the Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it as required by the Regulatory Flexibility Act.
- (f) That a public announcement will be issued (Enclosure C).


James M. Taylor
Executive Director for Operations


William C. Parler
General Counsel

Enclosures:

- A. Proposed Rule
- B. Letters to Congress
- C. Public Announcement

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Friday, October 23, 1992.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Friday, October 16, 1992, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

DISTRIBUTION:

Commissioners

OGC

OCAA

OIG

LSS

IP

OCA

OPA

OPP

REGIONAL OFFICES

EDO

ACRS

ACNW

ASLBP

SECY

ENCLOSURE A

[7590-01]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AC07

Availability of Official Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations pertaining to the availability of official records to conform the regulations to existing case law and agency practice. The proposed amendments would have three aspects: (1) it would inform the public of three additional exceptions to a submitter's right to withdraw submitted information; (2) it would provide more specific guidance for marking proprietary information; and (3) it would inform the public of agency practice regarding reproduction and distribution of submitted copyrighted material.

DATES: The comment period expires . Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for those comments received on or before this date.

ADDRESSES: Comments may be mailed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Services Branch. Comments may be hand-delivered to Docketing and Services Branch, One White Flint North, 11555 Rockville Pike, Rockville, MD between 7:45 am and 4:15 pm Federal workdays. Copies of comments received may be

examined at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Catherine M. Holzle, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-1560.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission is proposing to amend 10 CFR 2.790 to conform its regulations pertaining to the availability of official records to existing case law and agency practice.

Document Withdrawal

10 CFR 2.790(c) currently provides that if the Commission (or an NRC official with delegated authority) denies a request to withhold information from public disclosure which an applicant seeks to have withheld under 10 CFR 2.790(a)(4), the applicant has a right to withdraw the information unless the information has been submitted in a rulemaking proceeding and subsequently forms the basis for a final rule. In this case, the information will not be withheld from public disclosure and will not be returned to the applicant. The NRC is proposing to amend 10 CFR 2.790(c) to add three additional circumstances where information submitted to the NRC will not be returned to the applicant.

The first exception would provide that a document submitted to NRC will not be returned nor may it be withdrawn if it has been made available to or prepared for a Federal Advisory Committee. Section 10 (b) of the Federal Advisory Committee Act (FACA) requires that, subject to the FOIA, these records be available for public inspection and copying until the Committee is abolished. Although the Federal Advisory Committee Act permits the closing of Federal Advisory Committee meetings (FACA, sec.10(d)), all reports received by the committee must be contained in the minutes of the meeting to which they

pertain (FACA, sec. 10(c)). The FACA has no provision for withdrawal of a document that has been provided to an advisory committee. In this connection it is important to note that a copy of many of the documents submitted to NRC is provided routinely to the Commission's Advisory Committee on Reactor Safeguards (ACRS) and the Commission's Advisory Committee on Nuclear Waste (ACNW).

The second exception would provide that when information contained in a record submitted to the NRC has been requested pursuant to the Freedom of Information Act (5 U.S.C. 552(b)), the record will not be returned to the submitter. When the NRC receives a FOIA request for a record, that record is "captured" as an agency record. The NRC is then obligated under the FOIA to determine whether to disclose the record or to withhold it, in part or in its entirety, under one of nine exemptions specified in the Act. If the agency discloses the information in a record which a submitter seeks to have withheld from public disclosure, the return of the submitted document provides no protection. Therefore, there generally is no reason for its return. If the record is withheld from public disclosure in response to a FOIA request, the agency is obligated to retain the record for six years under the record retention provisions of its Records Retention and Disposal Schedule, which has been approved by the National Archives and Records Administration. This schedule reflects a decision of the District of Columbia Circuit Court that the statute of limitations for appealing the denial of information requested under the FOIA is six years and ten days from the agency's receipt of the request. (Spannaus v. Department of Justice, 824 F. 2d 52 (D.C. Cir. 1987)).

The third exception would relate to documents considered in connection with an open Commission meeting held in accordance with the Commission's Sunshine Act regulations, 10 CFR Part 9, Subpart C. Information discussed at a Sunshine Act meeting is generally subject to the same openness requirements as the meetings themselves. To the extent that proprietary information may be involved in matters discussed by the Commission, 10 CFR 9.104 provides that the meeting may be closed. However, after balancing the interests, if the

Commission determines to release the information, there is no reason to provide for its return to the submitter, except for any material that may have been extraneous to the submittal officially before the Commission and that may easily be segregated from the remainder.

Document Marking

The Commission is proposing to amend 10 CFR 2.790(b)(1)(i) to require that any document that contains information which a submitter seeks to have withheld from public disclosure because it contains "Trade secrets and commercial or financial information obtained from a person and privileged or confidential" (10 CFR 2.790(a)(4)), be clearly marked, on the first page and on every other page that contains this information, to indicate that this type of information is contained within the document. The Commission has a centralized operation for receiving incoming mail relating to its licensing activities. When mail is opened, a determination is made as to whether the information is to be made public. To ensure that information which a submitter seeks to be withheld from public disclosure under 10 CFR 2.790(a)(4) is not placed in the NRC Public Document Room, any document containing this type of information must be clearly marked to indicate that it contains information that the submitter considers company confidential (proprietary) information. The Commission will not be accountable for the public release of a document that is not marked in accordance with the Commission's regulations. Further, to avoid unnecessary delay and wasted effort, if withholding from public disclosure is not intended, any markings that could be misinterpreted as indicating a desire for withholding from public disclosure must be removed before submitting the document to NRC.

Material Subject to Copyright Protection

The rule proposes to redesignate the current 10 CFR 2.790(e) as 10 CFR 2.790(f). The rule proposes a new 10 CFR 2.790(e) that would provide notice to persons submitting copyrighted information to the NRC, that by submitting

the material, the submitter authorizes NRC to reproduce sufficient copies of the copyrighted information to carry out its regulatory and public information responsibilities under the Atomic Energy Act of 1954, as amended, and other applicable Federal laws, including the Freedom of Information Act. This authorization includes NRC's reproduction contractor acting within the scope of the reproduction contract with NRC.

Current Commission regulations do not specify how copyrighted material submitted to the NRC in connection with licensing or regulatory activities is handled. Recent submissions of material bearing copyright notices led the Commission's staff to consider this issue. This in turn led to a recognition of the recent changes in U.S. copyright law (Title 17 United States Code), which no longer require a copyright notice on a document in order for that document to be subject to copyright protection. Thus, a much larger quantity of documents may be affected and identifying documents entitled to protection against copying is no longer a matter that the NRC can determine simply by looking for a copyright notice. Because the NRC regularly reproduces and distributes copies of material submitted to the NRC in connection with its licensing and regulatory activities, it has become important to describe explicitly how the Commission will handle material submitted to it that may be subject to protection against copying under the copyright law. Although NRC's copying activities may well be encompassed by the "fair use" provisions of the copyright law, the Commission believes it is preferable to state clearly in its regulations the Commission's policy with respect to copying and distributing documents submitted to the agency.

Specifically, the proposed regulation provides notice that the submission of a document to the NRC in connection with NRC licensing and regulatory activities authorizes NRC to reproduce and distribute copies required for its regulatory and public information responsibilities. Another provision of the proposed rule provides that the submission of a document to the NRC in connection with its licensing or regulatory activities is deemed to be a representation to the NRC by the submitter that the submitter has the

authority to submit the document and to authorize the NRC to make copies of the document, whether or not the document bears a copyright notice.

The proposed regulation is designed to assure that copyright restrictions do not limit public access to information submitted to the NRC in connection with its licensing and regulatory activities. The Commission's practice has been to provide broad public access to this information and thus meet its responsibility to keep the public informed of its activities relating to licensing and regulation of nuclear facilities and materials. The Commission believes that making these documents available to the public is essential to satisfy its regulatory and public information responsibilities.

The proposed regulation authorizes only the NRC to copy and distribute the document and does not extend these rights to other persons receiving copies from NRC. The proposed rule provides that if the document bears a copyright notice or is accompanied by an explicit statement that the document is protected under the copyright law, a notice would be placed on the document indicating that the NRC has the authority to copy the document; however, all copyright markings contained on the submitted document would be retained.

The proposed rule states that the NRC would not accept documents submitted in connection with NRC licensing or regulatory activities which bear or are accompanied by a statement that purports to restrict the copying of these documents by the NRC or that indicates that the submitter lacks the authority to permit the NRC to copy and distribute the document. These documents would not be considered by the Commission and would be returned to the submitter unless the Commission has granted a waiver of the regulation. However, with respect to distribution of documents to the general public, only one copy per request will be made of documents bearing a copyright notice or documents accompanied by an explicit statement indicating that the document is protected under the copyright law. In the absence of such an explicit statement, the Commission will continue its customary reproduction practices.

In addition to the provisions included in this proposed rule, the NRC intends to post near each copying machine on NRC premises a copyright notice.

This notice will inform users and persons obtaining copies from the NRC that, although NRC has been authorized to copy the material pursuant to 10 CFR 2.790(e), this authorization does not extend to persons obtaining copies or access to documents from NRC and that these persons are responsible for any copyright infringement that may result from their activities.

Submitters of copyrighted information are on notice that, in order to meet its routine regulatory and public information responsibilities under the Atomic Energy Act of 1954, as amended, NRC reproduces sufficient paper and microfiche copies to meet its staff and contract needs, the needs of users of its headquarters Public Document Room (PDR) and Local Public Document Rooms (LPDRs), and to service subscribers of microfiche copies by the Department of Commerce National Technical Information Service (NTIS). As part of its normal practice, the NRC reproduces an average of 35 additional paper copies of written submittals made to the Commission. The copies are dispatched to the NRC staff; one copy is placed in the NRC Public Document Room, and, on occasion, a copy may be provided to an NRC contractor or an organization having an information exchange agreement with the NRC. In many instances, a copy of a document submitted to NRC is also routinely provided to the Advisory Committee on Reactor Safeguards (ACRS) and the Advisory Committee on Nuclear Waste (ACNW). The NRC films each record on 48X, (360-framed, packed) microfiche and currently duplicates 167 microfiche copies, which are made available to the staff, contractors and public users, if any, of the NRC's Nuclear Documents System (NUDOCS). Of these 167 microfiche copies, 71 copies are provided for agency staff use at locations in NRC headquarters and regional offices. Four microfiche copies are placed in the PDR, and one in each of the NRC's 76 power-reactor LPDRs, which are maintained in facilities accessible to the public, such as local and university libraries. An additional microfiche copy is provided to the NTIS, which provides microfiche copies to 20 subscribers in the United States and various foreign countries. Three copies are provided to NRC contractors. One copy is provided to the Institute for Nuclear Power Operations. Ten microfiche copies are maintained

for archival reserve and replacement purposes.

The Commission also contracts with a private reproduction company to reproduce copies of records in the PDR collection in response to requests by individuals and organizations, including the processing of standing orders for copies of certain types of public records. Reproduction fees for the contractor service and use of the onsite copying machines are published at 10 CFR 9.35. Billing is handled directly between the contractor and the person or organization ordering the copy and payment is made directly to the contractor. Reference librarians assist users in this interface as needed. In addition, the PDR maintains an electronic on-line system, the Bibliographic Retrieval System (BRS) which permits both retrieval of document citations and subject data and the ordering of desired copies. NRC also maintains an electronic document control system entitled NUDOCS which, for certain documents, has full-text search and retrieval capability. Written submittals to NRC, other than proprietary information, are accessible to the public through the NUDOCS system.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

The current regulations in §2.790 provide submitters of information the right to have the information returned to them upon their request. The

amendment proposed in this rule would conform NRC's regulations concerning the availability of official records to existing case law and current agency practice. The proposed amendments would inform the public of three additional exceptions to an applicant's right to withdraw submitted information and of current agency practice concerning the reproduction and distribution of submitted copyright material.

The proposed amendments reflect current agency administrative and procedural practice and would have only minor impact on the benefits or costs associated with the Commission's regulations. Some submitters currently mark documents as specified in the proposed amendments. For others, the proposed amendments shift some responsibility to the submitter for ensuring that privileged material is protected. While actual benefits would accrue to the Commission, they are largely intangible and difficult to quantify. The foregoing constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule clarifies the right of the submitter of information to have that information returned on request and informs the public of the additional exceptions to the right of withdrawal and of agency practice concerning the reproduction and distribution of copyrighted material. The proposed rule does not impose any obligation or have any financial impact on entities including any regulated entities that may be "small entities" as defined by the Regulatory Flexibility Act (5 U.S.C. 601(3)) or under the size standards adopted by the NRC (50 FR 50241; December 9, 1985).

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, a backfit analysis is not required

for the proposed rule because these amendments do not impose any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 2.

Part 2 - Rules of Practices for Domestic Licensing Proceedings

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)), sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections

2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. In §2.790, paragraph (e) is redesignated as paragraph (f); the introductory text of paragraph (b)(1) and paragraph (c) are revised; and a new paragraph (e) is added to read as follows:

§2.790 Public inspections, exemptions, requests for withholding.

* * * * *

(b)(1) A person who proposes that a document or a part of a document be withheld in whole or part from public disclosure on the ground that it contains trade secrets, privileged or confidential commercial or financial information shall mark the first page of the document and every other page containing this information "Confidential Information Submitted Under 10 CFR 2.790" or "Proprietary Information Submitted under 10 CFR 2.790", to indicate that it contains information the submitter seeks to have withheld. The person shall also submit an application for withholding accompanied by an affidavit which:

* * * * *

(c)(1) If a request for withholding information under paragraph (b) of this section is denied, the Commission shall notify the applicant of the denial and state the reasons for the denial. The notice of denial will specify a time, not less than 30 days after the date of the notice, when the document will be placed in the Public Document Room. If the applicant requests withdrawal of the document within the time specified in the notice, the document will not be placed in the Public Document Room and will be returned to the applicant unless the information --

(i) Was submitted in a rulemaking proceeding and subsequently forms the basis for a final rule;

(ii) Is contained in a document that was made available to or prepared for an NRC advisory committee;

(iii) Was discussed at an open Commission meeting held in accordance with 10 CFR Part 9, Subpart C; or

(iv) Is subject to a request submitted pursuant to the Freedom of Information Act.

(2) If a request for withholding information under paragraph (b) of this section is granted, the Commission shall notify the applicant of this determination.

* * * * *

(e) (1) Any person submitting information to NRC to be considered in connection with NRC licensing or regulatory activities, whether or not such information bears a copyright notice, shall be deemed to authorize the NRC, including NRC's reproduction contractor acting within the scope of the reproduction contract with NRC, to reproduce and to distribute sufficient copies to carry out the Commission's regulatory and public information responsibilities. Any person submitting such information to

NRC shall be deemed to represent to the NRC that such person has the authority to submit such document and the authority to authorize NRC to reproduce and distribute such document and shall hold the Commission harmless from damages that result from the Commission's reproduction or distribution of such documents.

(2) The Commission shall return to the submitter a document bearing or accompanied by a statement purporting to restrict the NRC from copying the document in accordance with this regulation or a document which bears or is accompanied by a statement representing that the submitter lacks the authority to permit NRC to copy and distribute the document. These documents will not be considered by the Commission in the absence of a waiver of this regulation. The Commission may waive the requirements of this paragraph when requested, or by its own initiative, in circumstances the Commission deems appropriate.

* * * * *

Dated at Rockville, MD, this day of 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

ENCLOSURE B

The Honorable Philip R. Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed for the information of the Subcommittee is a copy of a proposed rule to amend 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings," that will be published in the Federal Register.

The Nuclear Regulatory Commission proposes to make three specific changes to 10 CFR 2.790 concerning documents submitted to NRC. The first change would modify §2.790(c) to add three additional exceptions to a submitter's right to withdraw a document submitted to NRC when NRC denies a request to withhold information from public disclosure. The second change would modify §2.790(b) to require that a document submitted to NRC, which the submitter wishes to have withheld from public disclosure because it contains trade secrets or other confidential information, be clearly marked on the first page and every other page containing such information. The third change would add a new subsection to §2.790 providing that a person submitting material to NRC in connection with NRC licensing or regulatory activities shall be considered to authorize NRC to reproduce and distribute sufficient copies to carry out the Commission's regulatory and public information responsibilities, whether or not such information bears a copyright notice or is covered by copyright protection.

The first change would more clearly reflect current law. The second change would avoid unnecessary delay and wasted effort and would avoid confusion concerning such documents. The third change would clearly articulate in Commission regulations, NRC practices concerning handling and reproducing documents submitted to NRC and the effect of copyright on these practices.

Sincerely,

Dennis Rathbun, Director
Office of Congressional Affairs

Enclosures: Public Announcement
Federal Register Notice

cc: Representative Carlos J. Moorhead

The Honorable Bob Graham, Chairman
Subcommittee on Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed for the information of the Subcommittee is a copy of a proposed rule to amend 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings," that will be published in the Federal Register.

The Nuclear Regulatory Commission proposes to make three specific changes to 10 CFR 2.790 concerning documents submitted to NRC. The first change would modify §2.790(c) to add three additional exceptions to a submitter's right to withdraw a document submitted to NRC when NRC denies a request to withhold information from public disclosure. The second change would modify §2.790(b) to require that a document submitted to NRC, which the submitter wishes to have withheld from public disclosure because it contains trade secrets or other confidential information, be clearly marked on the first page and every other page containing such information. The third change would add a new subsection to §2.790 providing that a person submitting material to NRC in connection with NRC licensing or regulatory activities shall be considered to authorize NRC to reproduce and distribute sufficient copies to carry out the Commission's regulatory and public information responsibilities, whether or not such information bears a copyright notice or is covered by copyright protection.

The first change would more clearly reflect current law. The second change would avoid unnecessary delay and wasted effort and would avoid confusion concerning such documents. The third change would clearly articulate in Commission regulations, NRC practices concerning handling and reproducing documents submitted to NRC and the effect of copyright on these practices.

Sincerely,

Dennis Rathbun, Director
Office of Congressional Affairs

Enclosures: Public Announcement
Federal Register Notice

cc: Senator Alan K. Simpson

The Honorable Peter Kostmayer, Chairman
Subcommittee on Energy and the Environment
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed for the information of the Subcommittee is a copy of a proposed rule to amend 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings," that will be published in the Federal Register.

The Nuclear Regulatory Commission proposes to make three specific changes to 10 CFR 2.790 concerning documents submitted to NRC. The first change would modify §2.790(c) to add three additional exceptions to a submitter's right to withdraw a document submitted to NRC when NRC denies a request to withhold information from public disclosure. The second change would modify §2.790(b) to require that a document submitted to NRC, which the submitter wishes to have withheld from public disclosure because it contains trade secrets or other confidential information, be clearly marked on the first page and every other page containing such information. The third change would add a new subsection to §2.790 providing that a person submitting material to NRC in connection with NRC licensing or regulatory activities shall be considered to authorize NRC to reproduce and distribute sufficient copies to carry out the Commission's regulatory and public information responsibilities, whether or not such information bears a copyright notice or is covered by copyright protection.

The first change would more clearly reflect current law. The second change would avoid unnecessary delay and wasted effort and would avoid confusion concerning such documents. The third change would clearly articulate in Commission regulations, NRC practices concerning handling and reproducing documents submitted to NRC and the effect of copyright on these practices.

Sincerely,

Dennis Rathbun, Director
Office of Congressional Affairs

Enclosures: Public Announcement
Federal Register Notice

cc: Representative John J. Rhodes

ENCLOSURE C

NRC PROPOSES AMENDMENTS TO REGULATIONS
ON AVAILABILITY OF OFFICIAL DOCUMENTS

The Nuclear Regulatory is proposing to amend its regulations which govern the availability of official documents. As proposed, the amendments would inform the public of three additional exceptions to a submitter's right to withdraw submitted information, provide more specific guidance for marking proprietary information and inform the public of agency practice regarding the reproduction and distribution of submitted copyrighted material.

Specifically, the proposed amendments would:

-- Require that information which is to be withheld from the public because it contains proprietary (trade secrets and commercial or financial information that is privileged or confidential) information be clearly marked on the first and every other page containing such information. The Commission would not be responsible for the public release of documents not so marked. Further, submitters, if withholding is not intended, would be responsible for removing any markings that could be misinterpreted as indicating a desire for withholding from public disclosure.

-- Make clear that a document will not be returned nor can it be withdrawn if it has been made available to a Federal Advisory Committee, if it is subject to a request made under the provisions of the Freedom of Information Act or it is made available in connection with open Commission meetings conducted in accordance with the Commission's Sunshine Act regulations.

-- Make clear that any persons submitting information to the NRC to be considered in connection with its licensing or regulatory activities automatically authorize the NRC to make as many copies of the information as are necessary to carry out the agency's regulatory and public information responsibilities--even if the information bears a copyright notice. Material purporting to restrict the NRC from copying a document or that represents the submitter as lacking the authority to permit the NRC to copy the document would be returned to the submitter and would not be considered by the NRC.

However, the NRC's copying rights would not extend to other persons receiving copies of a copyrighted document from the NRC. The NRC would make only one copy per request for a copyrighted document and it would be accompanied by an explicit statement indicating that it is protected under the copyright law.

Written comments on the proposed amendments to Part 2 of the Commission's regulations should be received by (date). They should be addressed to the Secretary of the Commission, Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.