

10 CFR 2.390, “Public inspections, exemptions, requests for withholding”

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10 CFR 2.390 - Overview

- Licensees or applicants submitting a document to NRC may request that the document, or a portion of it, be withheld from public disclosure because it contains certain information (10 CFR 2.390(b))
- For example: “Trade secrets and commercial or financial information obtained from a person and privileged or confidential” (i.e., “proprietary information”) (2.390(a)(4)) can be withheld from disclosure

10 CFR 2.390 – Requirements for Withholding Requests

Requirements for withholding requests are in 2.390(b):

- Make request at the time document is submitted (2.390(b)(1))
- Mark documents (2.390(b)(1)(i)(A-B))
 - Language such as “proprietary information withheld from public disclosure under 10 CFR 2.390” at top of each page
 - Should generally also provide redacted version (without marking)
 - No requirement to mark transmittal documents if no sensitive information

10 CFR 2.390 – Requirements for Withholding Requests

Requirements for withholding requests (continued):

- Provide affidavit (2.390(b)(1)(ii-iii))
 - Identifies document to be withheld, and the locations of sensitive information in the document
 - Identifies official position of person making affidavit
 - Includes harm statement
 - Declares basis for withholding (i.e., which part of 2.390(a))
 - For proprietary information to be withheld under 2.390(a)(4), executed by **owner** of information, and addresses with specificity **each** of the considerations listed in 2.390(b)(4)(i-v)

10 CFR 2.390 – Criteria for NRC Determination

In accordance with 10 CFR 2.390(b)(4)(i-v), when determining whether information is “proprietary information” that should be withheld from disclosure, the NRC will consider:

- Whether information has been held in confidence by owner
- Whether information is of a type customarily held in confidence by owner
- Whether information is transmitted to and received by NRC in confidence
- Whether information is available in public sources
- Whether disclosure of information is likely to cause substantial harm to owner’s competitive position

10 CFR 2.390 – Process

- Withholding request review is separate from a licensing action acceptance review
- NRC will generally respond with letter accepting request, or explaining deficiencies
- Generally, submitter may request withdrawal of information if a withholding request is not granted

10 CFR 2.390 – A Few Other Points

- Security-related information: 10 CFR 2.390(d)
- Personal privacy information: 10 CFR 2.390(a)(6)
- Public meetings
- When in doubt... ask your PM

Useful References

- Title 10 of the *Code of Federal Regulations* 2.390
- LIC-204, “Handling Requests to Withhold Proprietary Information from Public Disclosure,” ADAMS Accession No. ML20049A139
- Regulatory Information Statement (RIS) 2005-31, Rev. 1, “Control of Security-Related Sensitive Unclassified Nonsafeguards Information Handled by Individuals, Firms, and Entities Subject to NRC Regulation of the Use of Source, Byproduct, and Special Nuclear Material,” ADAMS Accession No. 16196A237

Thank you for your attention, any
questions?

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