

November 25, 1992

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

William C. Parler
General Counsel

FROM: John C. Hoyle, Acting Secretary /s/

SUBJECT: SECY-92-341 - AMENDMENT TO RULE GOVERNING
PROPRIETARY AND COPYRIGHT SUBMISSIONS

The Commission (with all Commissioners agreeing) has approved Option 2, change 10 CFR 2.790(b) and (c) as recommended by the staff, for resolution of Issues 1 and 2.

The Commission (with the Chairman and Commissioners Rogers, Curtiss and de Planque agreeing) has approved Option 4, change regulations to provide broad authority to copy as recommended by the staff, for resolution of Issue 3. Commissioner Remick, although approving issuance of the draft Federal Register notice, has not yet expressed a preference between Option 4 and Option 5, Suboption a for resolving Issue 3.

The staff should forward the proposed rule to the Secretary for signature and publication in the Federal Register.
(EDO/OGC) (SECY Suspense: 12/18/92)

With respect to Issue 1, Commissioner Curtiss expressed concern that a delay by the NRC in making a timely determination regarding the proprietary claim of the party submitting the document, or a delay in returning a document that we decline to treat as proprietary, may lead to a situation where the document ends up being released while it is in NRC possession, undergoing what may turn out to be a lengthy review process. To address this potential problem, the Commission would propose that the staff revise its internal procedures to ensure that NRC --

- (1) expeditiously determines whether documents for which the submitter requests proprietary treatment should be withheld from public disclosure; and

SECY NOTE: THIS SRM, SECY-92-341, AND THE VOTE SHEETS OF ALL COMMISSIONERS WILL BE MADE PUBLICLY AVAILABLE 10

WORKING DAYS FROM THE DATE OF THIS SRM

- (2) promptly ascertain whether the submitter would like its document returned in those cases where the NRC denies the submitter's request for proprietary treatment and/or withholding.

As an additional safeguard, the Commission believes that the NRC internal procedures should provide for return of the document to the submitter where -- (a) NRC denies the submitter's request for proprietary treatment, (b) the submitter requests that the document be returned, (c) the NRC does not need to retain the document to carry out its health and safety and/or regulatory responsibilities, and (d) the document is not "captured" by any pending FOIA request. These procedures would provide for return of the document before the agency relies on the document as the basis for a final rule, the staff submits the document to an advisory committee, or the document is considered by the Commission in an open Commission meeting under the Sunshine Act.

cc: The Chairman
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
Commissioner de Planque
OGC
OIG
Office Directors, Regions (via E-Mail)
OP, SDBU/CR, ASLBP (via FAX)