



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

April 29, 1983

MEMORANDUM FOR: All NRR Employees

FROM: Jesse L. Funches, Director
Planning and Program Analysis Staff
Office of Nuclear Reactor Regulation

SUBJECT: NRR OFFICE LETTER NO. 42, REVISION 1, PROCEDURES
FOR PROCESSING REQUESTS TO WITHHOLD PROPRIETARY
DATA FROM PUBLIC DISCLOSURE

This Revision contains guidance on how to handle proprietary material which is provided to the staff at meetings with utilities and vendors.

Please make the following additions/deletions to Office Letter No. 42 dated March 2, 1983.

1. Replace the Table of Contents with the enclosed new one
2. Add new Page 6
3. Add new Enclosure 6

A handwritten signature in cursive script, appearing to read "Jesse L. Funches".

Jesse L. Funches, Director
Planning and Program Analysis Staff
Office of Nuclear Reactor Regulation

Enclosures:
As stated

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NRR Procedures for Processing Requests to Withhold Proprietary Data from Public Disclosure

- I. Application for Withholding Proprietary Data
- II. Criteria for 2.790 Determination
- III. Responsibility for Making 2.790 Determinations
- IV. Required Documentation
- V. Transmittal of Proprietary Documents to Consultants/Contractors

- Enclosure 1 Copy of 2.790
- Enclosure 2 Sample Approval Letter
- Enclosure 3 Sample Rejection Letter
- Enclosure 4 Sample Letter Requesting Additional Information in
Order to Make 2.790 Determination
- Enclosure 5 Sample Letter to Consultant/Contractor Transmitting
Proprietary Data
- Enclosure 6 Sample Proprietary Receipt Letter

VI. Receipt of Informal Proprietary Material

Occasionally utilities and vendors may hand out proprietary material which contains new methodologies, etc., while meeting with the staff, and may request that it be withheld from public disclosure. The material may not be intended for use in any official action or will not be formally submitted, but is provided for information only. If such material is in the staff's possession at the time of receipt of a Freedom of Information Act request, it may be subject to such request. 10 CFR 9.4 states that "any identifiable record, whether in the possession of the NRC, its contractors, its subcontractors, or others, shall be made available for inspection and copying pursuant to the provisions of this Part, upon request of any member of the public". Thus, such information will be treated as proprietary within the provision of 10 CFR 9.4, with some exceptions.

It is recommended that upon receipt of proprietary material in the manner described above, the recipient prepare a letter (see Enclosure 6) and send it to the submitter of the material. If the provisions of the letter are not acceptable, the submitter may request that the material be returned.

PROPRIETARY RECEIPT LETTER

Submitter's Address

Dear _____:

SUBJECT: INFORMAL PROPRIETARY MATERIAL PROVIDED AT MEETING ON (DATE) .

The material provided to the NRC (describe circumstances, dates, etc.) contained information that you requested be withheld from public disclosure in accordance with Commission regulations regarding the handling of proprietary information. Since the material was for the general information of the staff and is not intended to be used as a basis for any official actions by the NRC, we will treat this material as proprietary information within the provision of NRC Manual Chapter 9.5(4) "Freedom of Information Act Regulations," with the following exceptions:

- (1) Information which is found to be generally available to the public will not be treated as proprietary.
- (2) Information which is available to the government or becomes available on an unrestricted basis will thereafter be treated as nonproprietary.
- (3) Documentary material requested under the Freedom of Information Act (5 U.S.C. 552) will be reviewed at the time the request is received and a determination made whether such information may be withheld from public disclosure. This determination will be made on the basis of additional information which will be required to be furnished to the NRC in support of the (submitter's) proprietary position.
- (4) The NRC, under a nondisclosure agreement, may disclose this information to licensees and applicants if such disclosure is necessary to assure that the public health and safety is adequately protected.

If there is a need to consider the public disclosure of the (Submitter's) proprietary material identified in this letter, it is our intention that (Submitter) would be notified prior to making a disclosure determination

and that such a determination would be made in accordance with the procedures and conditions of 10 CFR 9, Subpart A. Should (Submitter) employ these data as part of any license application or any other action identified in 10 CFR 2.790(a), such data shall be separately submitted and such submittal shall include an application for withholding accompanied by an affidavit meeting the requirements of 10 CFR 2.790(b).

We hope that the provisions set forth in this letter for control of this information are acceptable to you.

Sincerely,

Branch Chief

Concurrence: Originator, ELD (E. Shomaker), BC

Distribution: Central Files, PDR w/o enclosure, Branch File, AD,
Originator, E. Shomaker