

# 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

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# 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

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# 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)

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# 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

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# 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

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# 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

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# 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



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Thank you for your attention, any  
questions?

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