

March 28, 2003

MEMORANDUM FOR: Karen D. Cyr
General Counsel

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 9:55 A.M., THURSDAY, MARCH 27, 2003,
COMMISSIONERS' CONFERENCE ROOM, ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND (OPEN TO
PUBLIC ATTENDANCE)

I. SECY-03-0019 - Final Rule: Part 2, Subpart G, Rules of General Applicability, "Availability of Official Records"

The Commission approved a final rule amending 10 CFR Part 2, Subpart G on availability of official records in three areas, subject to the attached changes. The amendments: (1) require those who submit documents claimed to contain proprietary or other confidential information to specifically mark those portions of the document containing such information to decrease the chances of inadvertent public release of the information by the NRC; (2) codify NRC's practices and delineate the circumstances under which the agency will not return confidential documents that have been submitted to the NRC; and (3) codify NRC's practices of making as many copies of copyrighted material submitted to the agency as it needs to perform its regulatory and licensing functions.

Following incorporation of these changes, the *Federal Register* notice should be reviewed by the Rules Review and Directives Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO)

(SECY Suspense: 4/25/03)

Attachment: [Changes to the Federal Register Notice in SECY-03-0019](#)

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
EDO
CFO
OCA
OIG
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR

Attachment

Changes to the Federal Register Notice in SECY-03-0019

1. On page 3, last line, replace "modify" with "modify".
2. On page 5, 1st paragraph, revise lines 8 and 9 to read '...apply to the functions of the Office of Investigations function. ...'
3. On page 5, last paragraph, revise lines 4, 5, and 6 to read '... proprietary information. Nonetheless, as this Although the Commission does not proposed changes in its current document disclosure policy or practice, this issue warrants a response as it represented a fairly widespread concern among the comments received. ...'
4. On page 6, line 2, insert a comma after (5).
5. On page 6, line 5, replace "(FOIA)¹." with "(FOIA).¹"

6. On page 6, 1st full paragraph, line 2, replace "law²," with "law,²"

7. On page 6, 1st full paragraph, revise lines 4 and 5 to read '...the submitter

~~and~~

This authority has not been enhanced by the proposed changes ~~and~~there is nothing...'

8. On page 6, footnote 2, replace "U.S. Nuclear Regulatory Commission" with "NRC"

9. On page 7, revise line 6 to read '... of the public. Id.,

Public Citizen, ...'

10. On page 7, revise line 10 to read '... proprietary information,~~and~~

~~There is no need ...'~~

11. On page 8, last line, insert a comma after "denied".

12. On page 9, revise lines 1 and 2 to read '... the procedures ~~outlined~~ for supplementing information pursuant to a potential denial of proprietary treatment and

~~for the negotiation process therein~~
on the matter.'

13. On page 9, 1st full paragraph, revise line 2 to read '... agency record. ~~In the Commission's view,~~

The scheme ...'

14. On page 10, 1st paragraph, line 4, replace "Food and Drug Administration," with "FDA,"...

15. On page 14, 2nd full paragraph, revise lines 3, 4, and 5 to read '... potential for confusi

~~on ng it with the way~~

~~because the same term is used in dealing with the context of classified national security information, and~~
The commenter suggested an alternative to the term to distinguish it from that usage.'

16. On page 14, 3rd full paragraph, revise line 1 to read '... Also,~~t~~

The Commission's proposed rule
also would ...'

17. On page 15, revise lines 1, 2, and 3 to read '... the public and

would provide direction on how this is to be done

~~by requiring that documents submitted clearly indicate the contents of proprietary information and identify which portions of the document warrant such treatment. The ...'~~

18. On page 15, 1st full paragraph, revise lines 4 and 5 to read '... for this section, ~~and also~~

as well as the judicial case law, utilize that term. Thus, there is value in employing it according to its historical use by the NRC. Changing ~~it~~
the term now might ...'

19. On page 16, revise line 3 to read '... interpret

the term consistently with that usage and not as ~~referring~~
a referenc to classified national security...'

20. On page 16, 1st full paragraph, insert a comma after "(e.g., proprietary information) ..."

21. On page 17, 1st paragraph, revise line 3 to read ' ... Therefore,~~that would not seem to imply~~

The reference does not encompass a "cover letter," unless the cover letter itself ...'

22. On page 19, 1st paragraph, revise lines 7, 8, and 9 to read '... ample opportunity to ~~cooperatively~~ resolve situations

cooperatively where the submitter inadvertently neglects to mark confidential information and subsequently seeks to have it so designated. There ~~would not seem to be a~~ is no need to codify such a ...'

23. On page 22, revise lines 8 to 11 to read '... responsibilities.

Thus, upon further reflection, ~~since~~ because the fair use doctrine permits the copying necessary to carry out its official duties, the Commission has concluded that the proposed provision is unnecessary. ~~Therefore, i~~t has been deleted from the final rule.'

24. On page 25, 2nd paragraph, revise line 8 to read '... documents consistently with the requirements in this rule. For others, ~~this~~

the rule will shift ...'