

New Rule Shows NRC Willing To Move Fast To Reform Regs

By **Brooke Poole Clark, Timothy Matthews and Alex Polonsky** (December 16, 2025, 4:07 PM EST)

On Nov. 26, under the auspices of Section 5 of the May executive order mandating the reform of the U.S. Nuclear Regulatory Commission, the NRC published an immediately effective final rule, "Streamlining Select Rules of Practice and Procedure." In doing so, the NRC rescinded a number of its previously rules of practice as "either inconsistent with statutory requirements or duplicative of statutory requirements and other binding regulations."

Taken together, these initial revisions signal the agency's broader intent to accelerate regulatory reform efforts in the wake of the executive order and to take a fresh look at long-standing procedural requirements.

As reflected in the agency's decision to bypass public comment and make the rule effective immediately, this first action demonstrates a willingness to revisit regulations quickly, and an intention to balance efficiency with transparency as additional reforms take shape.

The rescissions are in three areas: adjudicatory rules of practice, rules governing the Federal Tort Claims Act, or FTCA, and rules governing the treatment of confidential information submitted to the NRC.

Withholding of Confidential Information

First, the NRC removed a provision in Title 10 of the Code of Federal Regulations, Section 2.390, that relates to the withholding of confidential information. Section 2.390 applies to licensee or applicant requests to the NRC to withhold information, or portions thereof, from public disclosure.

When an applicant or licensee makes such a request, Subsection 2.390(b)(1) prescribes factors the submitter must address to help the NRC determine whether to grant the submitter's request. Where the submitter's request involves trade secrets, commercial information or financial information, Section 2.390(b)(4) lists factors the NRC will consider when reaching its withholding determination.

With the rule change, the NRC has removed one of these factors, found at Section 2.390(b)(4)(v), which required the NRC to consider the following:



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Whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information, taking into account the value of the information to the owner; the amount of effort or money, if any, expended by the owner in developing the information; and the ease or difficulty with which the information could be properly acquired or duplicated by others.

In the final rule, the NRC provided a brief basis for the change, stating:

The considerations provided in clause (v) constitute the "substantial competitive harm" test. The Freedom of Information Act, however, includes no such test, and the [U.S. Supreme Court] has rejected the test, finding the substantial competitive harm requirement "inconsistent with the terms of the statute." *Food Marketing Institute v. Argus Leader Media*, 588 U.S. 427, 430 (2019). Thus the NRC is removing 10 CFR [2.390(b)(4)(v)].

The upshot of this revision is that, because Section 2.390(b)(4)(v) no longer requires the NRC to consider substantial competitive harm in its withholding determination, a submitter may choose not to address this factor in its withholding request.

At the same time, the NRC's rulemaking did not change Section 2.390(b)(1)(ii)(D), which requires a submitter to include a "specific statement of the harm that would result if the information sought to be withheld is disclosed to the public."

Nor did the rulemaking change Section 2.390(b)(5), which requires that, even if the NRC determines that a submission contains confidential business information, the agency must "then determine whether the right of the public to be fully apprised as to the bases for and effects of the proposed action outweighs the demonstrated concern for protection of a competitive position."

In other words, notwithstanding the rule change, the question of whether disclosing confidential business information might cause harm is still a factor the submitter needs to address with its submission, and the issue of competitive harm is still relevant to the agency's decision on whether to grant the withholding request.

Accordingly, a licensee or applicant seeking withholding of information under Section 2.390(b)(4) may still wish to address competitive harm in its submission to the NRC, particularly where the harm from disclosure of the information is not readily apparent, or where describing the harm would not be resource intensive.

Duplicative Provisions

Second, the NRC rescinded as duplicative a handful of provisions in its adjudicatory rules of practice. These were:

- Section 2.301 and the reference to it in Section 2.1000, because they duplicate the Administrative Procedure Act. Section 2.301 provided that, consistent with Section 554(a)(4) of the Administrative Procedure Act, the NRC could provide alternative adjudicatory procedures to the extent that the conduct of military or foreign affairs functions were involved.
- Subsections 2.711(e) to (j), which established requirements for admissibility, objections, offers of proof, exhibits, the official record and official notice in formal evidentiary proceedings conducted under Title 10 of the Code of Federal Regulations, Part 2, Subpart G. The NRC found

that these subsections unnecessarily duplicated provisions in Subpart C of Part 2, which contains rules of practice that apply to all NRC adjudicatory proceedings.

NRC Rules Governing the Federal Tort Claims Act

Third, the NRC rescinded most of Title 10 of the Code of Federal Regulations, Part 14, which contains the NRC's regulations for addressing administrative claims filed under the FTCA. The FTCA allows individuals to file claims against the federal government for certain types of wrongdoing.

The NRC observed that many of its Part 14 regulations duplicate the U.S. Department of Justice regulations at Title 28 of the Code of Federal Regulations, Parts 14 and 15, that already bind the NRC. The NRC did, however, retain certain regulations in Part 14 that, in its view, provide agency-specific information that augments the DOJ's regulations.

According to the NRC, the changes to Part 14 will have no effect on the agency's procedures for administrative tort claims.

Conclusion

Overall, this first foray into rulemaking following the issuance of Executive Order No. 14300 demonstrates that the NRC is committed to taking a fresh look at long-standing regulations.

Also noteworthy is that, even though the revision to Section 2.390 in particular would appear to affect the public interest to some degree, the NRC bypassed public comment and issued a final rule under Title 5 of the U.S. Code, Section 553(b)(A), signaling the agency's intent to expedite rulemakings where possible.^[1]

We will continue to monitor the agency's regulatory reform efforts.

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[1] See Title 10 of the Code of Federal Regulations, Section 2.390(b)(2) (stating that "it is the policy of the Commission to achieve an effective balance between legitimate concerns for protection of competitive positions and the right of the public to be fully apprised as to the basis for and effects of licensing or rulemaking actions").