

Comment from Special Counsel Jeffrey S. Lubbers
December 11, 2020

Protected Materials in Public Rulemaking Dockets

Line 147, replace “speak” with “consult”

I also have three comments on this recommendation:

First, I was surprised not to see a reference to Executive Order 12,600 which addresses similar matters concerning submitting confidential commercial information and its protection from FOIA requests. That Order was issued to implement ACUS Recommendation 82-1, which is also relevant to this recommendation.

Second, paragraphs 5 and 6 describe what should happen if the agency determines the material should be protected from public disclosure, but they don't say what should happen if the determination is that the material should not be protected. I assume that under section 555(a) & (e) the agency should promptly give notice of the denial with a brief statement of reasons.

Third, there are places in this one where the Rules on Rulemaking recommendation could be referenced, e.g., paragraph 2(d), paragraph 12.