[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150-AH12

Public Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to reflect changes regarding officials who initially deny access to records or deny access to records whose initial denial has been appealed, and to reflect a change of an appellate official due to a reorganization. This amendment would have the Executive Assistant to the Secretary of the Commission, rather than the Assistant Secretary, make the initial determination to deny NRC records in whole or in part under the Commission's regulations. An appeal of a denial of request for waiver or reduction of fees, or denial of a request for expedited processing would be appealed to the Executive Director for Operations, rather than the Secretary of the Commission. The proposed rule would establish NRC procedures to give predisclosure notification to submitters of confidential business or commercial information, and would make a number of additional clarifying and conforming amendments.

DATES: Submit comments by **(insert date 75 days after publication in the *Federal Register*)**. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to ensure consideration of comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number [RIN 3150-AH12] in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at http://ruleforum.llnl.gov. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; e-mail at CAG@nrc.gov. Comments may also be submitted via the Federal Rulemaking Portal at http://www.regulations.gov.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The proposed rule and supporting documents, including comments, can be viewed and downloaded electronically via the NRC's rulemaking Web site at http://ruleforum.llnl.gov.

Also, publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at http://www.nrc.gov/NRC/reading-rm/adams.html. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to PDR@nrc.gov.

FOR FURTHER INFORMATION, CONTACT: Carol Ann Reed, Freedom of Information Act and Privacy Act Officer, Information and Records Services Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; Telephone: (301) 415-7169; Internet: FOIA@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Freedom of Information Act (FOIA) grants individuals the right to seek access to agency records and the right to appeal an initial agency denial of access to the requested records. The Privacy Act (PA) allows an individual to request records filed under his or her name or personal identifier. In January 2001, the Commission announced a reorganization that directed the Chief Information Officer (CIO) to report to the Executive Director for Operations (EDO). To conform with this reporting relationship, the appellate authority previously delegated

to the Secretary of the Commission to serve as the appellate official for denials of Freedom of Information Act (FOIA) requests for fee waivers and requests for expedited processing of FOIA requests has been reassigned to the EDO or a Deputy EDO. Also, the initial denying official for records located in the Office of the Commissioners, Office of the Secretary, and with Advisory Committees has been designated as the Executive Assistant to the Secretary of the Commission because the Assistant Secretary position was abolished. Prior to the abolishment of the Assistant Secretary position, the incumbent of that position was also the Advisory Committee Management Officer. To avoid having two denying officials in the Office of the Secretary, even though the Executive Assistant to the Secretary of the Commission does not currently serve as the Advisory Committee Management Officer, that position has been designated as the denying official for Advisory Committee records in order to have a single denying official in the Office of the Secretary. This proposed rule would also establish agency procedures for predisclosure notification to submitters of confidential financial and commercial information.

The proposed amendments would update provisions relating to the location of publicly available NRC records, and make several clarifications: where requests and appeals are to be sent; when a request or an appeal is deemed received; how to establish an account with the PDR reproduction contractor; how to obtain access to copyrighted information; applicability of the independent determination made by the FOIA/PA Officer; and that failure of a requester to pay FOIA fees billed by another Federal agency may be a basis for not processing a request. The proposed amendment would make several changes in the PA regulations. Reference to a specific Executive Order number that establishes criteria for classifying information has been

deleted. A uniform approach for referral of PA records under the control of another Federal agency has been established. This proposed rule would also remove the fee waiver provision since it is not needed. Readers are referred to the NRC Web site to find the particular exemptions applicable to a specific PA System of Records.

Discussion of Amendments

The NRC would amend 10 CFR Part 9, Subpart A, Freedom of Information Act Regulations and Subpart B, Privacy Act Regulations.

Section 9.8 would be amended to include a new §9.28 in the list of sections that contain an information collection requirement that appears in paragraph (b).

Section 9.21(c)(5) would be changed to reflect that an index to records made public in response to a FOIA request that are likely to become the subject of subsequent FOIA requests, are publicly available at the NRC Web site. Section 552(a)(2)(E) of the FOIA requires that NRC make public an index to records made public in response to FOIA requests that are likely to become the subject of subsequent FOIA requests for substantially the same records.

Section 9.21(c)(6) would be revised to address the requirement that the agency publish a statement in the *Federal Register* determining that publication of an index quarterly or more frequently is unnecessary. This section would state that it is unnecessary to continue publishing the monthly index because members of the public may create their own indexes to records, including those in the categories required to be made public by 5 U.S.C. 552(a)(2), by using the search features in ADAMS. Section 5 U.S.C. 552(a)(2)(E) requires that the agency maintain and make available for public inspection and copying current indexes for records that Sections 552(a)(2)(A),(B),(C), and (D) require be made public and publish that index quarterly

or more frequently, unless determined by order published in the *Federal Register*, that the publication would be unnecessary or impracticable. To meet this requirement, prior to making ADAMS publicly accessible, the NRC published "Documents Made Publicly Available" (NUREG-0540) on a monthly basis. With the public's ability to create their own indexes using ADAMS, the NRC determined that publication of the monthly index is no longer necessary.

Section 9.23 would be revised to clarify how a person may open an account with the NRC PDR reproduction contractor and to state that payment is made directly to the PDR reproduction contractor. Also, §9.23 would clarify that a request is not considered received under the FOIA until the date it is actually received by the Freedom of Information Act and Privacy Act Officer (FOIA/PA Officer).

Section 9.25(g) would be renumbered and reorganized so that the responsibility of each denying official is described in separate paragraphs. Section 9.25(g)(2) would be changed to reflect that the Executive Assistant to the Secretary of the Commission would make the initial determination to deny agency records in whole or in part under §9.17(a) instead of the Assistant Secretary of the Commission. In addition, the Executive Assistant to the Secretary of the Commission has been designated as the denying official for records for which an Advisory Committee has responsibility. Section 9.25(h) would be revised to clarify that the independent determination by the FOIA/PA Officer would apply to records other than those records for which the initial disclosure determination is made by the Executive Assistant to the Secretary of the Commission, the General Counsel, or the Assistant Inspector General for Investigations.

Section 9.27(a) would be revised to indicate that non-sensitive records disclosed in response to FOIA requests are made publicly available through ADAMS.

Section 9.28 would be added to establish procedures for predisclosure notification to submitters of confidential business and financial information. This would implement the requirement of Executive Order 12600, that directs agencies to establish these procedures by regulation.

Section 9.29 has been renumbered and reorganized so that each type of appeal or appellate official's responsibility is described in separate paragraphs. As a result of a reorganization, §9.29(c) would be revised to reflect that an appeal of a denial of a request for a waiver or reduction of fees, or denial of a request for expedited processing, would be appealed to the EDO rather than to the Secretary of the Commission. Section 9.29(c) also would be revised to reflect that the Executive Assistant to the Secretary of the Commission would make the initial determination to deny agency records in whole or in part under §9.17(a) instead of the Assistant Secretary of the Commission. Also, an appeal would continue to be directed to the appropriate appellate official but would be sent to the FOIA/PA Officer rather than to the appellate official to ensure that appeals directed to the EDO, Secretary of the Commission, and Inspector General are uniformly tracked.

Section 9.35(d) would be revised to state that if a copyrighted publication is responsive to a FOIA request, the requester will be informed of the citation to the copyrighted publication and advised to contact the NRC's PDR to arrange to view the publication. This change would emphasize the responsibility of the requester to make arrangements with the PDR staff to view a copyrighted publication.

Section 9.40(f) would be revised to include failure to pay applicable fees billed by another agency for a previous FOIA request as a basis for not processing a new request

received from the same requester. This would conform NRC regulations to past NRC and government-wide practice.

As a result of a reorganization, §9.43(d) would be revised to reflect that an appeal of a denial of a request for a waiver or reduction of fees, or denial of a request for expedited processing, would be appealed to the EDO rather than to the Secretary of the Commission.

Section 9.53(b) would clarify that a request is not considered received under the PA until the date it is actually received by the FOIA/PA Officer.

In §9.54(a)(1) the term “photocopy” would be changed to “copy” to ensure that copies made by any type of technology will be acceptable documentation.

Section 9.61(c)(1) would be revised to eliminate the reference to a specific Executive Order number and to state that the exempted information is information classified under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy. This is consistent with the statutory language that does not refer to a specific Executive Order number. Also, the reference to §9.95 would be deleted because proposed changes to that section would delete references to specific exemptions.

Section 9.62 would be revised to establish a uniform approach for dealing with requests for PA records under control of another Government agency by indicating the requester will be provided the name of the controlling agency, if known.

Sections 9.65 and 9.67 would be revised to clarify that appeals of denials of access and Statements of Disagreement under the PA would continue to be directed to the appropriate appellate official but are to be sent to the FOIA/PA Officer rather than to the appellate official to ensure that appeals directed to the EDO and to the Inspector General are uniformly tracked. Also §§9.65, 9.66, and 9.67 would be revised to state that a PA appeal is not deemed received

until it is actually received by the FOIA/PA Officer. Sections 9.65, 9.66, and 9.67 would be revised to state that calendar days are used to calculate the time within which an appeal of denial of access to a record in a PA System of Records must be made and within which a Statement of Disagreement must be submitted.

The NRC would amend §9.85 to remove the fee waiver provision because it is not needed and the agency's practice is to provide a free copy of the information to the requester. It also would note that fees may be charged where the information is disclosed from PA Systems of Records under the FOIA. This normally occurs because an entire system of records containing criminal law enforcement records is exempt from being accessed under the PA exemption (j)(2). Thus, a request for records from such a system will be processed under the FOIA and the FOIA fee standards apply.

Section 9.95 would be revised to indicate that specific exemptions applicable to each PA System of Record are found in the PA notice published biannually in the *Federal Register* and that a current version is available at the NRC Web site, http://www.nrc.gov.

Plain Language

The Presidential memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading, ADDRESSES, above.

National Technology Transfer and Advancement Act

The National Technology and Transfer Act of 1995 (Act), Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with the applicable law or otherwise impractical. This rule would reflect changes in officials who initially deny access to records or deny access to records whose initial denial has been appealed, and to make a change in an appellate official due to a reorganization. The proposed rule would establish NRC procedures to give predisclosure notification to submitters of confidential business or commercial information, and would make a number of additional clarifying and conforming amendments. For these reasons, the Commission concludes that the Act does not apply to this rule.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule contains information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The burden to the public for these information collections is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T-5-F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to INFOCOLLECTS@NRC.GOV; and to the Desk Officer, Office of Information

and Regulatory Affairs, NEOB-10202, (3150-0043), Office of Management and Budget, Washington, DC 20503. Comments to OMB on the information collections or on the above issues should be submitted by (insert date 30 days after publication in the *Federal Register*). Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this proposed rule because this rule is administrative in that it amends the regulations to reflect the current NRC organization and current responsibilities of NRC officials for denying access to requests for information and other requests made under the FOIA or PA. They are considered minor, non-substantive amendments and will not have an economic impact on NRC licensees or the public.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect those who make requests for access to

information under the provisions of the FOIA and PA. These are considered minor, non-substantive amendments and will not have an economic impact on NRC licensees or the public.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this proposed rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

List of Subjects in 10 CFR Part 9

Criminal penalties, Freedom of Information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the Freedom of Information Act as amended; the Privacy Act as amended, the NRC is proposing to adopt the following amendments to 10 CFR Part 9.

PART 9 - PUBLIC RECORDS

1. The authority citation for Part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A is also issued under 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99-570. Subpart B is also issued under 5 U.S.C. 552a. Subpart C is also issued under 5 U.S.C. 552b.

2. In §9.8, paragraph (b) is revised to read as follows:

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§9.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§9.23, 9.28, 9.29, 9.40, 9.41, 9.53, 9.54, 9.55, 9.65, 9.66, and 9.67.

3. In §9.21, paragraphs (c)(5) and (6) are revised to read as follows:

§9.21 Publicly available records.

* * * * *

(c)***

(5) Copies of records that have been released to a person under the FOIA that, because of the nature of their subject matter, the NRC determines have become or are likely to become the subject of subsequent requests for substantially the same records and a general index to those records.

(6) Individual indexes to publicly available records, including those records specified in paragraph (c) of this section, may be created by using the search features of the Agencywide Documents Access and Management System (ADAMS), located at the NRC Web site, http://www.nrc.gov. This capability made it unnecessary for the NRC to continue publishing its monthly publication, *Documents Made Publicly Available* (NUREG-0540) after March 1999.

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4. In §9.23, paragraph (a)(1)(ii) and the introductory text of paragraph (b) are revised to read as follows:

§9.23 Requests for records.

(a) ***

(1) ***

(ii) To obtain copies of records expeditiously, a person may open an account with the NRC Public Document Room reproduction contractor. Payment for reproduction services will be made directly to the contractor.

* * * * *

(b) A person may request agency records by submitting a request authorized by 5 U.S.C. 552(a)(3) to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in §9.6 of this chapter. The request must be in writing and clearly state on the

envelope and in the letter that it is a "Freedom of Information Act request." The NRC does not consider a request as received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer.

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5. In §9.25, paragraphs (g) and (h) are revised to read as follows:

§9.25 Initial disclosure determination.

* * * * *

(g)(1) Initial disclosure determination on requests for records originated by, or located in the files of the Office of the Inspector General. If, as a result of the review specified in paragraph (f) of this section, the Assistant Inspector General for Investigations finds that agency records that are originated by or located in the Office of the Inspector General are exempt from disclosure and should be denied in whole or in part, and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the Assistant Inspector General for Investigations will submit that finding to the Freedom of Information Act and Privacy Act Officer who will notify the requester of the determination in the manner provided in §9.27.

(2) Initial disclosure determinations on requests for records originated by or transmitted to the Commission, or a Commissioner, or records originated by, or for which the Office of the

Secretary or an Advisory Committee has primary responsibility. If, as a result of the review specified in paragraph (f) of this section, the Executive Assistant to the Secretary of the Commission finds that agency records originated by or transmitted to the Commission or a Commissioner, or records originated by, or for which the Office of the Secretary or an Advisory Committee has primary responsibility, are exempt from disclosure and should be denied in whole or in part, and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the Executive Assistant to the Secretary of the Commission will submit that finding to the Freedom of Information Act and Privacy Act Officer who will notify the requester of the determination in the manner provided in §9.27.

(3) Initial disclosure determination for records originated by, or for which the Office of the General Counsel has principal responsibility. If, as a result of the review specified in paragraph (f) of this section, the General Counsel finds that agency records that are originated by, or for which the Office of the General Counsel has primary responsibility, are exempt from disclosure and should be denied in whole or in part, and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the General Counsel will submit that finding to the Freedom of Information Act and Privacy Act Officer who will notify the requester of the determination in the manner provided in §9.27.

(h) Initial disclosure determinations on requests for records other than those for which the initial disclosure determination is made by the Assistant Inspector General for Investigations, the Executive Assistant to the Secretary of the Commission, or the General Counsel. If, as a result of the review specified in paragraph (f) of this section, the head of the responsible office finds that agency records other than those described in paragraph (g) of this section, that are originated by, or for which the office has primary responsibility, should be

denied in whole or in part, the head of the office will submit that finding to the Freedom of Information Act and Privacy Act Officer, who will, in consultation with the Office of the General Counsel, make an independent determination whether the agency records should be denied in whole or in part. If the Freedom of Information Act and Privacy Act Officer determines that the agency records sought are exempt from disclosure and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the Freedom of Information Act and Privacy Act Officer will notify the requester of the determination in the manner provided in §9.27.

* * * * *

6. In §9.27, paragraph (a) is revised to read as follows:

§9.27 Form and content of responses.

(a) When the NRC has located a requested agency record and has determined to disclose the agency record, the Freedom of Information Act and Privacy Act Officer will promptly furnish the agency record or notify the requester where and when the agency record will be available for inspection and copying. The NRC will also advise the requester of any applicable fees under §§9.35 and 9.37. The NRC will routinely make copies of non-sensitive records disclosed in response to Freedom of Information Act requests publicly available through the Agencywide Documents Access and Management System (ADAMS) located in the NRC's Electronic Reading Room that can be accessed via the NRC Web site at

http://www.nrc.gov/NRC/reading-rm/adams.html. Records that contain information personal to the requester, involve matters that are not likely to be of public interest to anyone other than the requester, or contain privileged or confidential information that should only be disclosed to the requester will not be made publicly available on the NRC Web site.

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7. A new §9.28 is added to read as follows:

§9.28 Predisclosure notification procedures for information containing trade secrets or confidential commercial or financial information.

(a) Notice of opportunity to object to NRC's initial disclosure determination. Whenever NRC makes an initial determination that information should be disclosed in response to a Freedom of Information Act request or a Freedom of Information Act appeal which has been designated by the submitter as trade secrets or confidential commercial or financial information, or the NRC believes the information contains such trade secrets or confidential commercial or financial information, the NRC will give the submitter of the information written notice of NRC's initial determination and an opportunity to object. The notice must describe the business information requested or include copies of the requested records or record portions containing the information.

(b) Submitter objection to disclosure. The submitter will be allowed 15 days from date of the notice described in paragraph (a) of this section to object to disclosure. If a submitter has any objection to disclosure, the submitter must provide a detailed written statement. The

statement must specify all grounds that support why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified in the notice, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received until after the date specified for response will not be considered unless that date is extended by the Freedom of Information Act and Privacy Act Officer upon request by the submitter.

(c) Notice of final decision to disclose. The NRC shall consider a submitter's written statement and specific grounds for nondisclosure. If the NRC agrees to withhold the information from public disclosure, the NRC will inform the requester in the manner described in §9.27 of the agency decision to deny access to the requested information. Whenever the NRC denies the submitter's request for nondisclosure and decides to disclose the information, the NRC shall give the submitter written notice, which must include:

(1) A statement of the reason(s) for the determination;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which must be a reasonable time subsequent to the notice, after which the information will be made available to the public.

(d) Corresponding notice to requesters. When the NRC provides a submitter with notice and opportunity to object to disclosure under paragraph (b) of this section, the NRC shall also notify the requester(s). Whenever the NRC notifies a submitter of its final decision to disclose the requested information under paragraph (c) of this section, the NRC shall also notify the requester(s). When a submitter files a lawsuit seeking to prevent the disclosure of trade

secrets or confidential commercial or financial information, the NRC shall notify the requester(s).

(e) Notice to submitter of Freedom of Information Act lawsuit. Whenever a requester files a lawsuit seeking to compel disclosure of trade secrets or confidential commercial or financial information, the NRC shall promptly notify the submitter.

8. Section 9.29 is revised to read as follows:

§9.29 Appeal from initial determination.

(a) A requester may appeal a notice of denial of a Freedom of Information Act request for access to agency records, denial of a request for waiver or reduction of fees, or denial of a request for expedited processing under this subpart within 30 calendar days of the date of the NRC's denial.

(b) For agency records to which access is denied by the Assistant Inspector General for Investigations, the appeal must be in writing directed to the Inspector General and sent to the Freedom of Information Act and Privacy Act Officer, Office of the Chief Information Officer, by an appropriate method listed in §9.6. The appeal should clearly state on the envelope and in the letter that it is an "Appeal from Initial Freedom of Information Act Decision." The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. The Inspector General will make the NRC determination on the appeal within 20 working days after the receipt of the appeal. If the Inspector General denies an

appeal of access to records, in whole or in part, the Inspector General will notify the requester of the denial, explaining the exemptions relied upon and how the exemptions apply to the agency records withheld. The notice will inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(c) For agency records to which access is denied by the Executive Assistant to the Secretary of the Commission, the General Counsel, or an office director reporting to the Commission, the appeal must be in writing directed to the Secretary of the Commission and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in §9.6. The appeal should clearly state on the envelope and in the letter that it is an "Appeal from Initial Freedom of Information Act Decision." The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. The Secretary of the Commission will make the NRC determination on the appeal within 20 working days after the receipt of the appeal. If the Secretary of the Commission denies an appeal of access to records, in whole or in part, the Secretary of the Commission will notify the requester of the denial, explaining the exemptions relied upon and how the exemptions apply to the agency records withheld. The notice will inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(d) For agency records to which access is denied by agency officials other than the Assistant Inspector General for Investigations, the Executive Assistant to the Secretary of the

Commission, the General Counsel, or other office director reporting to the Commission, the appeal must be in writing directed to the Executive Director for Operations and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in §9.6. The appeal should clearly state on the envelope and in the letter that it is an "Appeal from Initial FOIA Decision." The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. The Executive Director for Operations or a Deputy Executive Director will make the NRC determination on the appeal within 20 working days after the receipt of the appeal. If the Executive Director for Operations or a Deputy Executive Director denies an appeal of access to records, in whole or in part, the Executive Director for Operations or a Deputy Executive Director, will notify the requester of the denial, explaining the exemptions relied upon and how the exemptions apply to the agency records withheld. The notice will inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(e) For the denial of a request for expedited processing the appeal must be in writing directed to the Executive Director for Operations and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in §9.6. The appeal should clearly state on the envelope and in the letter that it is an "Appeal from Initial FOIA Decision." The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. The NRC will make a determination on the appeal within 10 working days after the receipt of the appeal. If the Executive Director for Operations or a Deputy Executive Director denies an appeal for expedited processing, the Executive Director

for Operations or a Deputy Executive Director, will notify the person making the request of the decision to sustain the denial, including a statement explaining why the request does not meet the requirements of §9.25(e)(1) and (2). The notice will inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(f) For denial of a waiver or reduction of fees for locating and reproducing agency records, the appeal must be in writing directed to the Executive Director for Operations and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in §9.6. The appeal should clearly state on the envelope and in the letter that it is an "Appeal from Initial FOIA Decision." The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. The NRC will make a determination on the appeal within 20 working days after the receipt of the appeal. If the Executive Director for Operations or a Deputy Executive Director denies an appeal of a waiver or reduction of fees for locating and reproducing agency records, the Executive Director for Operations or a Deputy Executive Director, will notify the person making the request of the decision to sustain the denial, including a statement explaining why the request does not meet the requirements of §9.41. The notice will inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(g) The Executive Director for Operations, a Deputy Executive Director, the Secretary of the Commission, or the Inspector General will furnish copies of all appeals and written determinations on appeals to the Freedom of Information Act and Privacy Act Officer.

9. In §9.35, paragraph (d) is revised to read as follows:

§9.35 Duplication fees.

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(d) Copyrighted material may not be reproduced in violation of the copyright laws. As such, requesters will be given the citation to any copyrighted publication and advised to contact the NRC Public Document Room to arrange to view the publication.

10. In §9.40, paragraph (f) is revised to read as follows:

§9.40 Assessment of fees.

* * * * *

(f) If the NRC receives a new request and determines that the requester has previously failed to pay a properly charged fee under the Freedom of Information Act to the NRC or other Federal agency within 30 calendar days of receipt of the bill on a previous request, the NRC may

refuse to accept the new request for processing until payment is made of the full amount owed on the prior request, plus any applicable interest assessed as provided in §9.34.

* * * * *

11. In §9.43, paragraph (d) is revised to read as follows:

§9.43 Processing requests for a waiver or reduction of fees.

* * * * *

(d) As provided in §9.29, a requester may appeal a denial of a request to waive or reduce fees to the Executive Director for Operations. The appeal must be submitted within 30 calendar days from the date of the notice.

12. In §9.53, paragraph (b) is revised to read as follows:

§9.53 Requests; how and where presented.

* * * * *

(b) All written requests shall be made to the Freedom of Information Act and Privacy Act Officer, U.S. Nuclear Regulatory Commission, and sent by an appropriate method listed in §9.6,

and should clearly state on the envelope and in the letter, as appropriate: "Privacy Act Request," "Privacy Act Disclosure Accounting Request," "Privacy Act Correction Request." The NRC does not consider a request received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer.

* * * * *

13. In §9.54 paragraph (a)(1) is revised as follows:

§9.54 Verification of identity of individuals making requests.

(a)***

(1) Written requests. An individual making a written request respecting a record about himself may establish his identity by a signature, address, date of birth, employee identification number, if any, and one other item of identification such as a copy of a driver's license or other document.

* * * * *

14. In §9.61 the introductory text of paragraph (c), the introductory text of paragraph (c)(1), and paragraph (c)(1)(i) are revised to read as follows:

§9.61 Procedures for processing requests for records exempt in whole or in part.

* * * * *

(c) Specific exemptions pursuant to 5 U.S.C. 552a(k). Individual requests for access to records which have been exempted from access pursuant to the provisions of 5 U.S.C. 552a(k) shall be processed as follows:

(1) Information classified pursuant to criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and exempted pursuant to 5 U.S.C. 552a(k)(1).

(i) Requested information classified by NRC will be reviewed by the responsible official of the NRC to determine whether it continues to warrant classification under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy.

* * * * *

15. Section 9.62 is revised to read as follows:

§9.62 Records under control of another Government agency.

Requests received by NRC pertaining to records under the control of another Government agency will be returned to the requester with the name of the controlling Government agency, if known, within ten working days after receipt by the NRC.

16. In §9.65, paragraph (b) is revised to read as follows:

§9.65 Access determinations; appeals.

* * * * *

(b) Appeals from denials of access. If an individual has been denied access to a record the individual may request a final review and determination of that individual's request by the Inspector General or the Executive Director for Operations, as appropriate. A request for final review of an initial determination must be filed within 60 calendar days of the receipt of the initial determination. For agency records denied by the Assistant Inspector General for Investigations, the appeal must be in writing directed to the Inspector General and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in §9.6. For agency records denied by the Freedom of Information Act and Privacy Act Officer, the appeal must be in writing directed to the Executive Director for Operations and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in §9.6. The appeal should clearly state on the envelope and in the letter "Privacy Act Appeal-Denial of Access." The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer.

* * * * *

17. In §9.66, paragraph (b) is revised to read as follows:

§9.66 Determinations authorizing or denying correction of records; appeals.

* * * * *

(b) Appeals from initial adverse determinations. If an individual's request to amend or correct a record has been denied, in whole or in part, the individual may appeal that action and request a final review and determination of that individual's request by the Inspector General or the Executive Director for Operations, as appropriate. An appeal of an initial determination must be filed within 60 calendar days of the receipt of the initial determination. For agency records denied by the Assistant Inspector General for Investigations, the appeal must be in writing directed to the Inspector General and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in §9.6. For agency records denied by the Freedom of Information Act and Privacy Act Officer the appeal must be in writing directed to the Executive Director for Operations and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in §9.6. The appeal should clearly state on the envelope and in the letter "Privacy Act Correction Appeal." The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. Requests for final review must set forth the specific item of information sought to be corrected or amended and should include, where appropriate, records supporting the correction or amendment.

* * * * *

18. In §9.67, paragraph (a) is revised to read as follows:

§9.67 Statements of disagreement.

(a) Written "Statements of Disagreement" may be furnished by the individual within 30 calendar days of the date of receipt of the final adverse determination of the Inspector General or the Executive Director for Operations. "Statements of Disagreement" directed to the Executive Director for Operations must be sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in §9.6, and should be clearly marked on the statement and on the envelope, "Privacy Act Statement of Disagreement." "Statements of Disagreement" directed to the Inspector General must be sent to the Freedom of Information Act and Privacy Officer by an appropriate method listed in §9.6, and should be clearly marked on the statement and on the envelope "Privacy Act Statement of Disagreement."

* * * * *

19. Section 9.85 is revised to read as follows:

§9.85 Fees.

Fees shall not be charged for search or review of records requested under this subpart or for making copies or extracts of records in order to make them available for review, although fees may be charged for additional copies. Fees established under 31 U.S.C. 483c and 5 U.S.C. 552a(f)(5) shall be charged according to the schedule contained in §9.35 of this part for

actual copies of records disclosed under the Freedom of Information Act from Privacy Act Systems of Records.

20. Section 9.95 is revised to read as follows:

§9.95 Specific exemptions.

Exemptions applicable to Privacy Act Systems of Records are stated in each Privacy Act System of Records Notice which is published in the *Federal Register* and is available at the NRC Web site, http://www.nrc.gov.

Dated at Rockville, Maryland, this 21st day of April 2004.

For the Nuclear Regulatory Commission.

_____***/RA/***_____
Annette L. Vietti-Cook,
Secretary of the Commission.