

**RULEMAKING ISSUE**  
(Affirmation)

April 12, 2005

SECY-05-0061

FOR: The Commissioners

FROM: Luis A. Reyes  
Executive Director for Operations /RA/

SUBJECT: FINAL RULE TO AMEND 10 CFR PART 9, SUBPART A, "FREEDOM OF INFORMATION ACT REGULATIONS," AND SUBPART B, "PRIVACY ACT REGULATIONS"

PURPOSE:

The purpose of this paper is to obtain the Commission's approval to issue a final rule amending 10 CFR Part 9, Subpart A, "Freedom of Information Act (FOIA) Regulations," and Subpart B, "Privacy Act (PA) Regulations."

BACKGROUND:

The 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 PA allows an individual to request records filed under his or her name, or personal identifier, and to appeal a denial of access to the records. In a February 20, 2004, memorandum to the Commission (SECY-04-0026), the staff submitted a proposed rule to amend 10 CFR Part 9, Subparts A and B for Commission approval. In a staff requirements memorandum dated March 24, 2004, the Commission authorized the publication of the proposed rule. On April 27, 2004 (69 FR 22737), a notice of proposed rulemaking was published with a request for public comment by July 12, 2004.

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DISCUSSION:

The final rule amends several provisions. 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 requests for FOIA fee waivers and requests for expedited processing of FOIA requests, has been reassigned to the EDO or a Deputy EDO. Also, the Executive Assistant to the Secretary of the Commission has been designated the initial denying official for records located in the Office of the Commissioners, Office of the Secretary, and with Advisory Committees because the Assistant Secretary position was abolished.

This final rule establishes agency procedures for predisclosure notification to submitters of confidential financial and commercial information. The final rule also updates provisions relating to the location of publicly available NRC records, deletes the reference to the Chief Information Officer designating the FOIA/PA Officer, and makes several clarifications: where to send requests and appeals; 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 final rule makes 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. The final rule also removes the PA fee waiver provision because it is not needed, and readers are referred to the NRC Web site to find the particular exemptions applicable to a specific PA System of Records.

RECOMMENDATIONS:

That the Commission:

1. Approve for publication in the *Federal Register*, the final amendments to 10 CFR Part 9 (Attachment).
2. Note:
  - a. That the Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it, as required by the Regulatory Flexibility Act, 5 U.S.C. 605(b).
  - b. That an Environmental Assessment and Regulatory Analysis will not be prepared for this rulemaking.
  - c. That appropriate Congressional committees will be informed of this action.

The Commissioners

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COORDINATION:

The Office of the General Counsel has no legal objection to this paper.

**/RA Ellis W. Merschoff Acting for/  
Luis A. Reyes  
Executive Director  
for Operations**

Attachment: Federal Register Notice

COORDINATION:

The Office of the General Counsel has no legal objection to this paper.

**/RA Ellis W. Merschoff Acting for/**  
 Luis A. Reyes  
 Executive Director  
 for Operations

Attachment: Federal Register Notice

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 SECY Paper (ML050260515),  
 Attachment Federal Register Notice (ML050390350)

ADAMS DOCUMENT TITLE: 200400077 - FINAL RULE TO AMEND 10 CFR PART 9, SUBPART A,  
 "FREEDOM OF INFORMATION ACT REGULATIONS," AND SUBPART B,  
 "PRIVACY ACT REGULATIONS"

\*See previous concurrence

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