



NRC PUBLIC DOCUMENT ROOM

VETERANS ADMINISTRATION
HOSPITAL
SALT LAKE CITY, UTAH 84113

May 14, 1979

18

IN REPLY REFER TO: 660/115

DOCKET NUMBER
PROPOSED RULE PR-9 (44FR 22746)



Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Dear Sir:

The enclosed suggestions are in response to an "Advance Notice of Proposed Rulemaking" from J. M. Felton, Director, Division of Rules and Records, Office of Administration, dated April 23, 1979.

The proposed rules might be more clear to the public if the letters and numbers in the tabulations were in engineering and business format:

- I., II., III.,
- A., B., C.,
- 1., 2., 3.,
- a., b., c.,
- (1), (2), (3),
- (a), (b), (c),
- (i), (ii), (iii),....

Your proposed changes begin with the Arabic number 9. I have changed the tabulation numbering and lettering sequence to fit as closely as possible the more familiar system. However, if a change is not possible, it would be most helpful if your tabulations were in vertical order, e.g., placing (1), (2), (3) in tabulated line, and indenting again for (a), (b), (c), etc. I realize this would take up more space, but it would certainly be helpful to the public.

The first time E.O., FOIA and NRC are mentioned, they should be spelled out; subsequently, initials might be sufficient.

Attached are suggested changes, retyped. I hope these will be helpful to you.

Sincerely,

William Jubiz
William Jubiz, M.D.
Associate Professor of Medicine
University of Utah College of Medicine
Chief, Endocrinology, Metabolism and
Nuclear Medicine
Veterans Administration Medical Center

Acknowledged by card... 6/7 *df*

Mrs. Kathryn Y. Rees
and Mrs. Kathryn Y. Rees

424 122

WJ:k Show veteran's full name, VA file number, and social security number on all correspondence.
encl

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Subpart A - Scope; Definitions; Nuclear Regulatory Commission

Public Document Rooms

9. Information routinely available to the public at NRC Public Document Rooms

9.A. Definitions of terms

(1) The NRC was established by the Energy Reorganization Act of 1974.

(2) "NRC personnel" means employees, consultants, and members of advisory boards, committees and panels of the NRC; members of boards designated by the Commission to pass judgment at proceedings; and officers or employees of government agencies, including military personnel, assigned to duty at the NRC.

(3) "Commission" means the five NRC Commissioners or a quorum thereof, sitting as a body, as provided in section 201 of the Energy Reorganization Act of 1974.

(4) "Office", unless otherwise specified, means all organizational units reporting to or through the Executive Director for Operations, NRC.

(5) "Government agency" means any executive department, military department, government corporation, government-controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President), or any independent regulatory agency.

(6) "Record" means any paper, correspondence, report, computer tape, film, map, photograph, or other documentary material which the NRC, in connection with its official functions, has prepared, has in its possession, or has until its control. It does not include publicly available books, periodicals, or other publications owned or copyrighted by others. "Records" do not include objects or articles which cannot be reproduced.

(7) "Working days" means Monday through Friday, except legal holidays.

9.B. Records available in NRC Public Document Rooms:

(1) The NRC maintains a Public Document Room (PDR) located at 1717 H Street, N.W., Washington, D.C. The PDR is open 8:30 a.m. to 5:00 p.m. Monday through Friday, except legal holidays. The records listed below are available at the PDR for inspection and copying. The NRC has a contract with a private firm which is located at the PDR to make copies of records. The cost of making copies of records is set out in Appendix A. The records available at the PDR include final opinions and orders of the NRC regarding:

(a) Statements of policy and interpretations which have been adopted by the NRC and have not been published in the Federal Register,

(b) The NRC Manual, and instructions which affect the public,

(c) NRC rules and regulations (Chapter 1, Title 10, Code of Federal Regulations),

(d) Correspondence to and from the NRC regarding applications, licenses, permits, orders, and rule-making proceedings,

(e) Transcripts of NRC proceedings,

(f) Reports of NRC studies and research activities,

(g) Reports of NRC contractors,

(h) NRC Regulatory Guides,

(i) NRC news releases,

(j) Records made available in response to FOIA requests, and

(k) NRC's Annual report to Congress on the Administration of the FOIA.

(2) In addition to the PDR in Washington, D.C., the NRC maintains over 130 Local Public Document Rooms throughout the country. An NRC Local Public Document Room is located near the site of each proposed or operating nuclear power plant, and near other facilities such as fuel fabrication plants and waste repositories, which are regulated by the NRC. These document collections are usually housed in a public library or other public building and contain the same documents pertaining to the facility which are available in the PDR in Washington, D.C.

A listing of the Local Public Document Rooms and their hours of operation may be obtained by calling or writing the Division of Rules and Records, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555 (telephone 301-492-7536).

9.C. Rules for making a formal request for records. Types of records available under the FOIA.

(1) The NRC will make available any identifiable record, except that some records are exempt from disclosure under the FOIA. Disclosure of some records may be demonstrably harmful or contrary to the public interest.

Under the provisions of the act, the NRC may withhold from public disclosure the following types of records:

- (a) Those records which are to be kept secret by Executive Order 12065 in the interest of national defense or foreign policy.
- (b) Records which are related solely to the internal personnel rules and practices of the NRC (with the exception of those concerning work hours, leave, and working conditions). These include records which, if disclosed, would provide information which -
 - (i) Could result in circumvention of agency regulations, or
 - (ii) Could permit law violators to avoid detection.
- (c) Records which are specifically exempt from disclosure by a statute other than the FOIA. To provide authorization under this provision, the other statute must establish specific criteria for withholding.
- (d) Trade secrets and commercial or financial information which are obtained from a person or organization which are privileged or confidential. Included under this exemption are:
 - (i) An unpatented secret, commercially valuable plan, formula, or process, which is used for making, preparing, treating or processing of articles which are trade commodities,

(ii) Commercial or financial information which, if disclosed, is likely to impair the government's ability to obtain necessary information in the future, or to cause substantial harm to the competitive position of the person or organization from whom the information was obtained.

(e) Inter-agency or intra-agency memoranda or letters which would not be available by law to any party other than a party in litigation with the NRC. This exemption applies only to written documents between NRC personnel or between the NRC and another federal agency, and which are also of a type normally privileged from disclosure in civil litigation. Among the documents protected from public disclosure under this exemption are the following:

(i) Communications between NRC and its attorneys, in an attorney-client relationship;

(ii) The work product of NRC attorneys; and

(iii) Records which are part of the decision making processes of the NRC.

(f) Those portions of files which, if disclosed, would constitute an unwarranted invasion of personal privacy. However, unless prohibited, portions of the files may be disclosed to the named individual or to the individual's designated legal representative, or to others with the individual's written consent.

(g) Investigatory records compiled for law enforcement purposes, but only that information which, if disclosed, would...

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of the right to a fair trial or impartial judgment,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source,

(v) Disclose investigative procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel.

(h) Information related to the regulation of financial institutions.

(i) Geological and geophysical information and data (including maps) concerning wells.

(2) If a requested record contains information exempt from disclosure under the FOIA, NRC will provide the requester with any nonexempt portions of that record which can be reasonably extracted.

(3) If a requested record is received from another government agency or deals with a matter for which a government agency other than the NRC has exclusive or primary responsibility, then that document will be promptly referred by NRC to that other agency for direct response to the requester, or for guidance for an NRC direct response.

(4) The exemptions listed in 9.C.(1) will not be used as authority to withhold information from Congress.

9.D. How NRC records can be requested under the FOIA:

(1) Requests for records must be made in writing. Address the request to the Director, Division of Rules and Records, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Write both on the envelope and in the letter that it is a "Freedom of Information Act Request." Information concerning availability of the NRC records under the FOIA may be obtained by writing or telephoning the FOIA/Privacy Branch, Division of Rules and Records.

(2) Any request for records either at the Public Document Room or under the FOIA should describe them in enough detail that the NRC will know what is wanted. If possible, include identifying information such as title, docket or contract number, and date or time period of the records. If these are not known, describe as specifically as possible the particular subject matter. If a request under the FOIA is not clear enough so that a member of the staff familiar with the subject can readily locate what is being sought, NRC will, within 10 days after receipt of the request, ask the requester to submit additional information or to meet with the NRC staff to clarify the request.

9.D. Charges for records requested under the FOIA:

The FOIA permits the NRC to charge fees for searching for records and for reproducing copies of them. Under certain conditions, the fees are waived. A requester is always notified before any fees are imposed, unless the request specifically includes a statement of willingness to pay. Details about fees, and waivers, are in Appendix A.

9.E. Response to a FOIA request: (time period)

(1) The FOIA requires the NRC to respond within 10 working days after receiving a request.

(2) The 10-day period begins when the request is received by the Division of Rules and Records. If there will be a charge for the records, the 10-day period will not begin until the requester pays, or agrees to pay, the estimated costs, or the NRC agrees to waive the fees.

(3) The NRC may notify the requester in writing that it needs additional time (not more than 10 working days) to reply to the request for records because:

(a) The NRC must look for and collect the requested records from NRC offices which are physically located apart from the office handling the request,

(b) The request for records will require the NRC to search a voluminous amount of separate records, or

(c) The NRC must consult another federal agency before releasing the records sought; or two or more separate components of the NRC need to consult.

(4) In exceptional circumstances where it does not appear possible to complete action on the request within the time set out in the FOIA, the NRC may ask the requester to agree to a further extension of time.

(5) If the NRC does not respond to a request within 10 working days, or within the extended period provided in the FOIA or agreed to with the requester, the requester may immediately appeal in accordance with the procedures described in 9.G. or may file suit in a United States District Court.

9.F. Response to a FOIA request (method):

(1) If a request does not adequately describe the records sought, the NRC will ask for clarification (See 9.D.(2)).

(2) If a request does adequately describe the records sought, the NRC will take one of the following actions:

(a) Send copies of the records to the requester,

(b) Notify the requester when and where the records will be made available. Generally, this will be at the NRC's PDR located at 1717 H Street, N.W., Washington, D.C., or for docket-related material, at one of the NRC's Local PDRs (See 9.B.(2)).

(c) Notify the requester that there are fees for searching and reproducing records. The requester will have 10 working days to:

(i) Submit a deposit equal to the estimated costs,

(ii) Agree in writing to pay the costs, or

(iii) Submit a request for waiver or reduction of the fees.

Until the requester takes one of the above actions, the NRC cannot process the request (See 9.E.(2)).

(d) Notify the requester that a requested record was:

(i) Received from another government agency, or

(ii) Deals with subject matter for which a government agency other than the NRC has exclusive or primary responsibility, and that the request will be promptly referred by the NRC to that agency for direct response to the requester, or for guidance concerning the NRC's response.

(e) Notify the requester in writing that the records sought, or portions of them, will not be provided because they are exempt from disclosure under the FOIA (See 9.C. for types of records which are exempt from disclosure). NRC's response will include:

(i) The reason for its denial,

(ii) The specific exemption under the FOIA and the Commission's regulations which authorize the NRC to withhold

the records.

(iii) The name and title or position of each person responsible for withholding the records,

(iv) A statement that an appeal may be submitted within 30 days to the Executive Director for Operations or, in some cases, to the Secretary of the Commission.

(f) Notify the requester that the record sought does not exist. The FOIA does not require the NRC to create a record in response to an FOIA request, nor to promise future delivery of a record not yet in existence.

(3) If a requester seeks a waiver or reduction of fees and the waiver or reduction is denied, the NRC's response will explain why (See Appendix A).

9.G. Appeals (denials)

A requester may appeal a denial of a request for records or a denial for the waiver or reduction of fees. A requester may also appeal if the NRC does not respond within the time limits set out in 9.E.

9.H. Appeals (where)

(1) Appeals shall be in writing and addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, unless the NRC's letter of denial specifies that the appeal should be made to the Commission. In that case, the appeal is addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555. Both the appeal letter and the envelope should be marked "Appeal from Initial FOIA Decision."

(2) It is suggested that the letter of appeal state the reasons why the initial denial should be reversed. Where possible, a discussion of any relevant court decision should be included.

9.I. NRC response to an appeal (time limits)

When an appeal letter is received by the Executive Director for Operations or the Secretary of the Commission, the NRC will have 20 working days to respond. The NRC may, in writing, extend the period for response by no more than 10 additional working days. The extension is limited to the unused portion of the 10-day extension authorized by 9.E.(4).

9.J. NRC response to an appeal (method)

(1) If the appeal is for access to records, the Commission or the Executive Director for Operations may....

(a) Grant the appeal by furnishing the records to the requester, or make them available at the Public Document Room or a Local Public Document Room, or

(b) Deny the appeal in whole or in part, notifying the requester as to which exemption in the FOIA gives the NRC the authority for the denial, how the exemption applies, and the reasons for the denial. If the appeal is only partially denied, the remaining requested records will be made available. When an appeal is denied, the NRC shall inform the requester that the denial is a final agency action, and that the requester may obtain judicial review of that action in a United States District Court.

(2) If the appeal is for waiver or reduction of fees, the Commission or the Executive Director for Operations may take either of the following actions:

(a) Reverse the denial, thereby granting the request for waiver or reduction of fees. In that case, the NRC will immediately begin its search for the requested records, and the provisions of 9.D will apply.

(b) Uphold the denial, notifying the requester as to why the request does not meet the requirements of Appendix A.

9.K. NRC response to FOIA requests directed to boards, panels, offices, or committees reporting to the Commission:

(1) For boards, panels and offices reporting directly to the Commission, and the Office of the Executive Legal Director, the initial determination on a request for records or a request for waiver or reduction of fees will be made by the head of such board, panel, or office; and an appeal of an adverse determination shall be made to the Commission.

(2) For the Advisory Committee on Reactor Safeguards and advisory committees established pursuant to Part 7 of this chapter the Advisory Committee Management Officer will make the initial determination on a request for records or a request for waiver or reduction of fees, and an appeal of an adverse determination shall be made to the Commission. (a.7?)

9.L. NRC information to Congress regarding FOIA

On or before March 1 of each calendar year, the Director, Office of Administration, submits to the Speaker of the House of Representatives and the President of the Senate, for referral to the appropriate committee of the Congress, a report covering the preceding calendar year. A copy of each report is placed in the NRC public Document Room.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

April 23, 1979

NRC PROPOSES "PLAIN ENGLISH" REVISION
OF FREEDOM OF INFORMATION ACT RULE

Enclosed is a copy of an Advance Notice of Proposed Rulemaking regarding the Commission's regulation, 10 CFR Part 9, which the Commission published in the Federal Register on April 17, 1979. The proposed amendments would revise the Commission's regulation "Public Records", implementing the Freedom of Information Act. The proposed amendments have been prepared in accordance with an Executive Order which provides that regulations should be written in "plain English" understandable to those who must comply with them, and that there be early public participation in the rule making process.

The revised rule was prepared by the NRC staff on an experimental basis and is published for illustrative purposes--to determine if, in its revised form, it is more valuable and useful to members of the public who submit requests to the NRC under the Freedom of Information Act. Based on the comments received, the NRC will decide if further revision to Part 9 is necessary. The NRC also intends that all new amendments to its regulations be written as simply and clearly as possible.

The NRC is seeking the following specific comments on the proposed revision:

- (1) Is it written in a way which can be readily understood by the general public?
- (2) Does the organization and format make it possible for the public to determine how to make a Freedom of Information Act request and what the procedures are for an NRC response?
- (3) Are there specific changes in style, organization, format or substance which would make the revised rule, as proposed, easier to understand?
- (4) Are there other sections or parts of NRC's regulations which appear particularly difficult to understand or ambiguous? if so, please identify the specific sections or parts, and indicate how they could be clarified.

A handwritten signature in dark ink, appearing to read "J. M. Felton".

J. M. Felton, Director
Division of Rules and Records
Office of Administration

Enclosures:

1. Federal Register Notice
2. Public Announcement



UNITED STATES NUCLEAR REGULATORY COMMISSION

OFFICE OF PUBLIC AFFAIRS
WASHINGTON, D.C. 20555

No.
Contact: Frank L. Ingram
Tel. 301/492-7715

FOR IMMEDIATE RELEASE

NRC PROPOSES "PLAIN ENGLISH" REVISION OF FREEDOM OF INFORMATION ACT RULE

The Nuclear Regulatory Commission is proposing to amend its regulation ~~implementing~~ ^{concerning} the Freedom of Information Act.

The proposed amendment would revise Part 9 of the Commission's regulations to comply with an Executive Order requiring that regulations be written in "Plain English" which is understandable to those who must comply with them. In addition, the Executive Order provides for early public participation in the rulemaking process.

The revised rule has been rewritten by the NRC staff on an experimental basis and is being published for illustrative purposes--to determine if, in its revised form, it is more valuable and useful to members of the public who submit requests to the NRC under the Freedom of Information Act. Based on the comments received, the NRC will decide if further revisions are required to make the regulation more understandable. Further, the NRC intends that all new amendments to its regulations be written as simply and clearly as possible.

Accordingly, the NRC is seeking specific comments on the proposed revision to Part 9:

(1) Is it written in a way which can be readily understood by the general public?

(2) Does the organization and format make it possible for the public to determine how to make a Freedom of Information Act request and what the procedures are for an NRC response?

(3) Are there specific changes in style, organization, format or substance which would make the revised rule, as proposed, easier to understand?

(4) Does the revised rule, as proposed, represent a significant enough increase in clarity, when compared to the present rule, to warrant a further expenditure of public funds to clarify other NRC regulations?

(5) Are there other sections or parts of the Commission's regulations which are particularly difficult to understand or ambiguous?

If so, what are they and how should they be clarified?

Written comments and suggestions on the proposed revision should be addressed to the Secretary of the Commission, Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

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(2) (b) "NRC personnel" means employees, consultants, and members of advisory boards, committees and panels of the NRC; members of boards designated by the Commission to pass preside at adjudicatory proceedings; and officers or employees of Government agencies, including military personnel, assigned to duty at the NRC.

(3) (c) "Commission" means the collegial body of five NRC Commissioners, or a quorum thereof sitting as a body, as provided by section 201 of the Energy Reorganization Act of 1974.

(4) (d) "Office" means, unless otherwise specified, all organizational units reporting to or through the Executive Director for Operations.

(5) (e) "Government agency" means any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

(6) (f) "Record" means any paper, correspondence, report, computer tape, film, map, photograph, or other documentary material which the NRC, in connection with its official functions, has prepared, has in its possession, or has under its control. It does not include publicly available books, periodicals, or other publications owned or copyrighted by profit-making or non-profit organizations. "Records" do not include objects or articles which cannot be reproduced.

(7) (g) "Working days" means Monday through Friday, except legal holidays.

§ 9.3 What records are available in NRC Public Document Rooms?

(1) (a) The NRC maintains a Public Document Room (PDR) located at 1717 H Street, NW., Washington, D.C. The PDR is open 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. The records listed below are available at the PDR for inspection and copying. The NRC has a contract with a private firm which is located at the PDR to reproduce copies of records. The cost of reproducing records is set out in Appendix A. The records available at the PDR include—

(1) Final opinions and orders made in the adjudication of cases; regarding

(2) Statements of policy and interpretations which have been adopted by the NRC and have not been published in the Federal Register;

(3) The NRC Manual, and instructions to staff that affect members of the public;

(4) NRC rules and regulations (Chapter 1, Title 10, Code of Federal Regulations);

(8) Correspondence to and from the NRC regarding applications, licenses, permits, orders, and rulemaking proceedings;

(9) Transcripts of NRC adjudicatory proceedings;

(7) Reports of NRC studies and research activities (NUREG reports);

(8) Reports of NRC contractors;

(9) NRC Regulatory Guides;

(10) NRC news releases;

(11) Records made available in response to FOIA requests;

(12) NRC's Annual report to Congress on the Administration of the FOIA.

(2) (b) In addition to the Public Document Room in Washington, D.C., the NRC maintains over 130 Local Public Document Rooms throughout the country. An NRC Local Public Document Room is located near the site of each proposed or operating nuclear power plant, and near other facilities such as fuel fabrication plants and waste repositories, which are regulated by the

NRC. These document collections are usually housed in a public library or other public building, and contain the same documents pertaining to the facility that are available in the PDR in Washington, D.C. A listing of the Local Public Document Rooms and their hours of operation may be obtained by calling or writing the Division of Rules and Records, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (telephone 301-492-7536).

Subpart B—Freedom of Information Act Regulations *Rules for making a formal request for records.*

§ 9.4 What is in this subpart?

This subpart tells how to get NRC records by making a request under the Freedom of Information Act (5 U.S.C. 552).

§ 9.5 What NRC records are available to the public under the Freedom of Information Act?

(a) The NRC will seek to make available any identifiable record, except that although certain types of records are exempt from disclosure under the FOIA Freedom of Information Act, the NRC will still make a record available upon request unless disclosure of the record is demonstrably harmful or contrary to the public interest. Under the provisions of the act, the NRC may withhold from public disclosure the following types of records:

(1) Records that are to be kept secret in the interest of national defense or foreign policy. These records must meet specific criteria established by Executive Order 12065, and must be properly classified under that Executive Order.

(2) Records (with the exception of those concerning work hours, leave, and working conditions) that are related solely to the internal personnel rules and practices of the NRC. These include records that, if disclosed, would provide information which—

(i) Could result in circumvention of agency regulations, or

(ii) Could permit law violators to avoid detection.

(3) Records that are specifically exempt from disclosure by a statute other than the FOIA. To provide authorization under this provision, the other statute must establish specific criteria for withholding, refer to particular types of matters to be withheld, or leave no discretion about material to be withheld.

(4) Trade secrets and commercial or financial information that are obtained from a person or organization and are privileged or confidential. Included under this exemption are:

(i) An unpatented, secret, commercially valuable plan, formula, or process, which is used for the making, preparing, compounding, treating, or processing of articles that are trade commodities.

(ii) Commercial or financial information which, if disclosed, is likely to impair the Government's ability to obtain necessary information in the future, or to cause substantial harm to the competitive position of the person or organization from whom the information was obtained.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to any party other than a party in litigation with the NRC. This exemption applies only to written documents which have been transmitted between NRC personnel or between the NRC and another Federal agency, and which are also of a type normally privileged from disclosure in civil litigation. Among the documents protected from public disclosure under this exemption are the following:

(i) Communications between NRC and its attorneys, in an attorney-client relationship;

(ii) The work product of NRC attorneys; and

(iii) Records which contain advice, recommendations, opinions, of the staff, or draft documents which are part of the deliberative, consultative, or decisionmaking processes of the NRC.

(6) Those portions of personnel, medical, and similar files, which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy. This exemption is intended to protect the confidentiality of information

POOR ORIGINAL

or portions of records which contain intimate personal details identifiable to particular individuals. All other information is not exempt from disclosure even though it may be stored in the NRC's personnel files. However, unless prohibited by other provisions of this section, portions of the files exempt from disclosure to others may be disclosed to the named individual or to the individual's designated legal representative, or to others with the individual's written consent.

(7) Investigatory records compiled for law enforcement purposes, but only that information which, if disclosed, would—

(i) Interfer with enforcement proceedings;

(ii) Deprive a person of the right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source; or disclose information which, during a criminal investigation by a law enforcement authority or a lawful national security intelligence investigation by a Federal agency, is obtained only from the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel.

(8) Information contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of a Government agency that is responsible for the regulation or supervision of financial institutions.

(9) Geological and geophysical information and data (including maps) concerning wells.

(b) If a requested record contains information exempt from disclosure under the FOIA, NRC will provide the requester with any reasonably segregable, nonexempt portions of that record.

(c) If a requested record was received from another Government agency or deals with subject matter for which a Government agency other than the NRC has exclusive or primary responsibility, then that document will be promptly referred by NRC to that other agency for direct response to the requester, or for guidance for an NRC direct response.

(d) The exemptions listed in paragraph (a) will not be used as authority to withhold information from Congress.

§ 9.6 How can NRC records be requested under the Freedom of Information Act?

(a) Requests for records under the FOIA must be made in writing. Address the request to the Director, Division of Rules and Records, U.S. Nuclear Regulatory Commission, Washington,

D.C. 20555. Indicate both on the envelope and in the letter that it is a "Freedom of Information Act Request." Information concerning availability of NRC records under the FOIA may be obtained by writing or telephoning the FOIA/Privacy Branch, Division of Rules and Records.

(b) Any requests for records either at a Public Document Room or under the FOIA should describe them in enough detail that NRC will be able to know what is wanted. If possible, include identifying information such as title, docket or contract number, and date or time period of the desired records. If these are not known, describe as specifically and as narrowly as possible the particular issue or matter before the NRC, the category of records, or the subject matter. If a request under the FOIA is not clear enough so that a member of the staff familiar with the subject can readily locate what is being sought, NRC will, within 10 days after receipt of the request, ask the requester to submit additional information or to meet with the NRC staff to clarify the request.

§ 9.7 Is there a charge for records requested under the Freedom of Information Act?

The FOIA permits NRC to charge fees for searching for records, and for reproducing copies of them. Under certain conditions, the fees are waived. A requester is always notified before any fees are imposed, unless the request specifically includes a statement of willingness to accept whatever costs are involved. Details about fees, and information as to conditions under which fees will be reduced or waived, are included in Appendix A.

§ 9.8 When will NRC respond to a Freedom of Information Act request?

(a) The FOIA requires NRC to respond within 10 working days of receipt of the request.

(b) The 10-day period begins when the request is actually received by the Division of Rules and Records. If NRC determines that there will be a charge for the records, the 10-day period will not begin until the requester pays, or agrees to pay, the estimated costs, or NRC agrees to waive the fees.

(c) The NRC may notify the requester in writing that it needs additional time (not more than 10 working days) to reply to the request for records because:

(1) The NRC needs to look for and collect the requested records from NRC offices that are physically located apart from the office handling the request;

(2) The request for records will require the NRC to look for, collect, and review a voluminous amount of separate

records; or

(3) The NRC has to consult with another Federal agency before releasing the records sought; or two or more separate components of NRC need to consult.

(d) In exceptional circumstances where it does not appear possible to complete action on the request within the time set out in the FOIA, the NRC may ask the requester to agree to a further extension of time.

(e) If the NRC does not respond to a request within 10 working days, or within the extended period provided in the FOIA or agreed to with the requester, the requester may immediately appeal in accordance with

the procedures described in § 9.10, or may file suit in a United States District Court.

§ 9.9 How will the NRC respond to a Freedom of Information Act request?

(a) If a request does not adequately describe the records sought, the NRC will seek clarification (See § 9.6(b)).

(b) If a request adequately describes the records sought, the NRC will take one of the following actions:

(1) Send the records to the requester.

(2) Notify the requester when and where the records will be made available. Generally, this will be at the NRC's Public Document Room, located at 1717 H Street, NW., Washington, D.C.; or for docket-related material, at one of the NRC's Local Public Document Rooms (See § 9.3(b)).

(3) Notify the requester that there are fees for searching for or reproducing copies of records subject to the request. The requester will then have 10 working days to submit a deposit equal to the estimated costs, agree in writing to pay the costs, or submit a request for waiver or reduction of the fees. Until the requester takes one of the above actions, the NRC will suspend processing of the request (See § 9.8(b)).

(4) Notify the requester that a requested record was received from another Government agency or deals with subject matter for which a Government agency other than the NRC has exclusive or primary responsibility, and that the record will be promptly referred by the NRC to that agency for direct response to the requester or for guidance concerning the NRC's response.

(5) Notify the requester in writing that the records sought, or portions of them, will not be provided because they are exempt from disclosure under the FOIA (See § 9.5 for types of records that are exempt from disclosure). NRC's response will include—

(i) The reason for its denial;

(ii) The specific exemption under the FOIA and the Commission's regulations that authorizes the NRC to withhold the records;

(iii) The name and title or position of each person responsible for withholding the records;

(iv) A statement that an appeal may be submitted within 30 days to the Executive Director for Operations or, in some cases, to the Secretary of the Commission.

(8) Notify the requester that the record sought does not exist. The FOIA does not require the NRC to create a record in response to an FOIA request, nor to promise future delivery of a record not yet in existence.

If a requester seeks a waiver or reduction of fees and the waiver or reduction is denied, the NRC's response will explain why. (See Appendix A).

19-10 What can a requester do if the NRC denies a request for records, refuses to waive or reduce fees, or does not respond to the request?

(a) A requester may appeal a denial of a request for records or a denial for the waiver or reduction of fees. A requester may also appeal if the NRC does not respond within the time limits set out in 19-8.

(b) Appeals shall be in writing, and addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, unless NRC's letter of denial specifies that the appeal should be made to the Commission. In that case, the appeal is addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Both the appeal letter and the envelope should be marked "Appeal from Initial FOIA Decision."

(c) It is suggested that the letter of appeal set forth reasons why the initial denial should be reversed, including, where possible, a discussion of any relevant court decisions *should be included*.

19-11 When will the NRC respond to an appeal?

When an appeal letter is received by the Executive Director for Operations or the Secretary of the Commission, the NRC will have a 20-working-day period in which to respond. The NRC may, in writing, extend the period for response by no more than 10 additional working days. This extension is limited to the unused portion of the 10-day extension authorized by 19-8(d).

19-12 How will the NRC respond to an appeal?

(a) If the appeal is for access to records, the Commission or the Executive Director for Operations may—

(1) Grant the appeal by furnishing the records to the requester, or making them available at the Public Document Room or a Local Public Document Room; or

(2) Deny the appeal in whole or in part, notifying the requester as to which exemption in the FOIA gives the NRC the authority for the denial, how the exemption applies, and the reasons for the denial. If the appeal is only partially denied, the remaining requested records will be made available. When an appeal is denied, the NRC shall inform the requester that the denial is a final agency action, and that the requester may obtain judicial review of that action in a United States District Court.

(b) If the appeal is for waiver or reduction of fees, the Commission or the Executive Director for Operations may take either of the following actions:

(1) Reverse the denial, thereby granting the request for waiver or reduction of fees. In that case, the NRC will immediately begin its search for the requested records, and the provisions of 19-9 will apply.

(2) Uphold the denial, notifying the requester as to why the request does not meet the requirements of Appendix A.

19-13 How will the NRC respond to Freedom of Information Act requests directed to boards, panels, offices, or committees, reporting to the Commission?

(a) For boards, panels, and offices reporting directly to the Commission, and the Office of the Executive Legal Director, the initial determination on a request for records or a request for waiver or reduction of fees will be made by the head of such board, panel, or office; and an appeal of an adverse determination shall be made to the Commission.

(b) For the Advisory Committee on Reactor Safeguards and advisory committees established pursuant to Part 7 of this chapter, the Advisory Committee Management Officer will make the initial determination on a request for records or a request for waiver or reduction of fees, and an appeal of an adverse determination shall be made to the Commission.

19-14 How does the NRC inform Congress of its actions under the Freedom of Information Act?

(a) On or before March 1 of each calendar year, the Director, Office of Administration, submits to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committee of the Congress a report covering the preceding calendar year. A copy of each report is placed in the NRC Public Document Room.

Appendix A—Fees Charged for NRC Records

(a) Fees.

(1) The FOIA permits NRC to charge fees for searching for records, and for reproducing copies of them. Under certain conditions, the fees are waived (See (b)). A requester is always notified before any fees are imposed, unless the request specifically includes a statement of willingness to accept whatever costs are involved. NRC may require that the fee be paid in full before any records are given to the requester.

(2) Search charges are \$5.00 per hour for searches made by clerical or administrative employees, and \$12.00 per hour for searches made by professional or supervisory employees. Charges are imposed even when no records responsive to the request are found, or when all records found are exempt from disclosure. NRC does not charge a fee for—

(i) The first 4 hours of search time involved in a request or series of related requests;

(ii) Searches for records in the NRC Public Document Room or in any of NRC's Local Public Document Rooms; or

(iii) Searches for records requested by another Federal agency, State or local government, intergovernmental or international agency, or foreign government, under circumstances when furnishing records without charge is an appropriate courtesy.

(3) Charges to reproduce NRC records are as follows:

(i) For documents reproduced by NRC staff:

Sizes up to 8 1/2" x 14"—\$0.10 per page;

Other sizes—Charge is based on NRC's direct costs (including computer reprogramming, if necessary to obtain the requested records).

(ii) For documents located in the NRC Public Document Room, requesters may arrange for copies to be made by NRC's reproduction contractor there, with the following charges:

Sizes up to 8 1/2" x 14", \$0.08 per page.

Larger sizes up to 30" x 40", \$0.10 per page.

Microfiche, \$0.25 per copy.

Microfiche blowback, \$0.08 per page.

Coin-operated machines, \$0.10 per page.

The minimum charge for mail requests is \$2.00 plus shipping and mailing costs.

(iii) For documents requested at NRC's Local Public Document Rooms, charges are at the going rate charged other customers in that facility.

(iv) For transcripts of testimony in NRC proceedings that have been transcribed by a reporting firm under contract to NRC, charges are the same as for other records, if NRC makes the

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copies. The requester may purchase the transcripts directly from the reporting firm at the cost provided in its contract with NRC.

(4) Shipping or mailing costs are added to mail requests.

(5) When the actual cost differs from the cost previously estimated by NRC, NRC will refund an overpayment, or bill

the requester for an underpayment.

(b) Waiver or reduction of fees.
(To be completed later as stated in the statement of considerations.)

Written comments and suggestions on the revised Freedom of Information Act regulations of 10 CFR Part 9 should be submitted to the Secretary of the

Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received by the Commission may be examined and reproduced in the NRC's Public Document Room at 1717 H Street, N.W., Washington, DC.

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