

Mr. John F. Darke
P.O. Box 703
Copper Queen Station
Bisbee, Arizona 85603

OCT 9 1992

Dear Mr. Darke:

I am responding to your letter of October 1, 1992, in which you state that the U.S. Nuclear Regulatory Commission has not effectively responded to your previous letters that requested information about particular materials licensee's activities. Your previous requests were written in response to the Federal Register Notice (57FR20525) entitled, "Uranium Mill Facilities, Request for Public Comments on Revision of Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 119.(2) Product Material in Tailings Impoundments and Position and Guidance on the Use of Uranium Mill Feed Materials Other Than Natural Ores." Your staff has supplied all the readily available information to you each time that you have submitted a request (see the enclosed summary of correspondence).

Your requests for further information would entail an extensive search of records for all mill licensees. These types of broad information requests are more appropriately handled through the Freedom of Information Act (FOIA) process. We have therefore enclosed a copy of 10 CFR Part 9 Subpart A which provides the FOIA regulations. These regulations discuss specific procedures and fees for agency record requests such as yours.

Sincerely,

(SIGNED) JOHN J. SURMEIER

John J. Surmeier, Chief
Uranium Recovery Branch
Division of Low-level Waste Management
and Decommissioning
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Summary of Correspondence
2. 10 CFR Part 9 Subpart A

TICKET L-302

Distribution: Central File# NMSS r/f RBangart WBrach
JAustin EBrummett JSurmeier MFliegel DGillen
RHall,URFO LCallan,RIV LLUR r/f LLWM t/f MPSiemien

PCR YES ☒ NO ☐ Category: Proprietary ☐ or CF Only ☐

ACNW YES ☒ NO ☐

SUBJECT ABSTRACT: RESPOND TO J. DARKE REQUESTS FOR INFO ON MATLS LICENSEE'S ACTIVITIES

OFC	LLUR <i>EB</i>	LLUR <i>JS</i>	LLUR <i>JS</i>	LLWM <i>RB</i>	OGC
NAME	EBrummett/eb	MFliegel	JSurmeier	RBangart	MPSiemien
DATE	10/20/92	10/20/92	10/20/92	10/20/92	10/21/92

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SUMMARY OF CORRESPONDENCE

May 26, 1992, you asked for a list of U.S. Nuclear Regulatory Commission licensees (with docket numbers) which have made inquiry or application about disposal of non-11e.(2) byproduct material and the status of the NRC response to these.

RESPONSE: June 3, 1992, from Ramon E. Hall, Director of the Uranium Recovery Field Office in Region IV, "... we do not have a compiled list of facilities responsive to your request." He also stated that your letter will be docketed for consideration along with other comments on the Federal Register Notice (FRN).

June 1, 1992, you asked what requests for activities other than the normal processing of native uranium ore have been received by whom, from whom, and for what activities at which mills, and which of these were approved. You requested more time to comment. You also requested the title and number of the SECY paper, and the paper and other NRC records if available.

RESPONSE: June 11, 1992, from Myron Fliegel, Special Issues Section Leader, Uranium Recovery Branch, "... we do not have compiled lists of such requests. However, we have attached Commission papers SECY-91-243, SECY-91-347 and SECY-92-138 which contain additional background information on this general subject matter. While we cannot extend the comment period, any comments received after June 12, 1992, will be considered by the staff to the extent practical."

June 3, 1992, you asked how the Kerr-McGee case decision, as mentioned in the FRN, supported the claim that the Court: (1) arrived at a broad interpretation of the definition of byproduct material, (2) determined the material was 11e.(2) byproduct material or source material, and (3) arrived at a broad interpretation of the definition of ore, such that it is not restricted to native rock. You also asked what is the factual and legal basis for the claim that the term "ore" implies that a broad range of feed materials could be processed in a mill.

RESPONSE: June 11, 1992, Myron Fliegel stated that your questions related to the Kerr-McGee court decision had been forwarded to the NRC Office of the General Counsel. As a result, on June 26, 1992, Richard L. Bangart, Director of the Division of Low-Level Waste Management and Decommissioning, transmitted a copy of the legal opinion on the Kerr-McGee case to you.

June 23, 1992, you repeated a request for an extension of the 30-day comment period for the FRN. The request had also been made in a phone call to Mr. Bangart on June 22, 1992.

Enclosure 1

RESPONSE: June 26, 1992, Mr. Bangart reiterated his statements made in the June 22, 1992, phone conversation that there is no formal procedure for requesting an extension of the comment period, since this is not a rulemaking or licensing action. However, NRC did acknowledge (per the letter of June 11, 1992) that any comments received after the closing date would be considered to the extent practical. He stated that your comments would be considered if received by July 15, 1992, and any comments submitted after that date would be considered if we had not yet completed our analysis of comments. On July 2, 1992, Myron Fliegel wrote to reconfirm that we will consider comments received from you by July 15, 1992.

July 13, 1992, your 12-page letter included your impressions of the FRN (57-R20525), summaries of past requests for information, discussion of your other efforts to reach decisions on the guidance in the FRN, and quotes from the FRN and the SECY papers. The new questions identified by NRC staff are: (1) would the two guidance documents have only future effect or would they contemplate exoneration of any unlicensed or improperly licensed past processing or disposal, and (2) what written guidance. In each case, did NRC staff rely on in reviewing or responding to inquiries or applications for, or in allowing, such past waste disposal activities. NRC staff were also asked to consider all relevant scenarios for disposal and processing activities, i.e., all those of which the NRC staff has or should have had knowledge, and which did or should have impacted the establishment of the proposed guidance.

RESPONSE: The letter was given a docket number on July 15, 1992, and your name was again added to the list of commenters.

July 13, 1992, you informed the Commissioners of your efforts to obtain information related to the FRN and to secure an extension of the comment period. You requested that the Commission answer your questions on extension of the comment period and that the staff action proposed by the FRN be held in abeyance until the extension is granted.

RESPONSE: July, 29, 1992, the Assistant General Counsel advised you that your 12-page comment letter had been received on July 15, 1992, and would be taken into account. He anticipated that the matter of the comment period was resolved.

by the Commission to preside at adjudicatory proceedings; and officers or employees of Government agencies, including military personnel, assigned to duty at the NRC.

Working days mean Monday through Friday, except legal holidays.

[52 FR 49355, Dec. 31, 1987]

§ 9.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by an officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized as binding upon the Commission.

[52 FR 49356, Dec. 31, 1987]

§ 9.8 Information collection requirements: OMB approval.

(a) The NRC has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). OMB has approved the information collection requirements contained in this part under control number 3150-0043.

(b) The approved information collection requirements contained in this part appear in §§ 9.29, 9.41, 9.54, 9.55, and 9.202.

[52 FR 49356, Dec. 31, 1987]

Subpart A—Freedom of Information Act Regulations

Source: 52 FR 49356, Dec. 31, 1987, unless otherwise noted.

§ 9.11 Scope of subpart.

This subpart prescribes procedures for making NRC agency records available to the public for inspection and copying pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) and provides notice of procedures for obtaining NRC records otherwise publicly available. This subpart does not affect the dissemination or distribution of NRC-originated, or NRC contractor-originated, information to the public under any other

NRC public, technical, or other information program or policy.

§ 9.12 Definitions.

As used in this subpart:

Agency record is a record in the possession and control of the NRC that is associated with Governmental business. Agency record does not include records such as—

(1) Publicly available books, periodicals, or other publications that are owned or copyrighted by non-Federal sources;

(2) Records solely in the possession and control of NRC contractors;

(3) Personal records in possession of NRC personnel that have not been circulated, were not required to be created or retained by the NRC, and can be retained or discarded at the author's sole discretion, or records of a personal nature that are not associated with any Government business; or

(4) Non-substantive information in logs or schedule books of the Chairman or Commissioners, uncirculated except for typing or recording purposes.

Commercial-use request means a request made under § 9.23(b) for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

Direct costs mean the expenditures that an agency incurs in searching for and duplicating agency records. For a commercial-use request, direct costs include the expenditures involved in reviewing records to respond to the request. Direct costs include the salary of the employee category performing the work based on that basic rate of pay plus 16 percent of that rate to cover fringe benefits and the cost of operating duplicating machinery.

Duplication means the process of making a copy of a record necessary to respond to a request made under § 9.23. Copies may take the form of paper copy, microform, audio-visual materials, disk, magnetic tape, or machine readable documentation, among others.

Educational institution means an institution which operates a program or programs of scholarly research.

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Educational institution refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education.

Noncommercial scientific institution means an institution that is not operated on a commercial basis, as the term "commercial" is referred to in the definition of "commercial-use request," and is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

Office, unless otherwise indicated, means all officer boards, panels, and advisory committees of the NRC.

Record means any book, paper, map, photograph, brochure, punch card, magnetic tape, paper tape, sound recording, pamphlet, slide, motion picture, or other documentary material regardless of form or characteristics. Record does not include an object or article such as a structure, furniture, a tangible exhibit or model, a vehicle, or piece of equipment.

Representative of the news media means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscriptions by the general public.

Review means the process of examining records identified as responsive to a commercial-use request to determine whether they are exempted from disclosure in whole or in part. Also, review includes examining records to determine which Freedom of Information Act exemptions are applicable, identifying records or portions thereof to be disclosed, and excising from the records those portions which are to be withheld.

Search means all time spent looking for records, either by manual search or search using existing computer programs, that respond to a request including a page-by-page or line-by-line identification of responsive information within the records.

Unusual circumstances mean—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or, among two or more components of the NRC having substantial subject matter interest therein.

§ 9.15 Availability of records.

The NRC will make available for public inspection and copying any reasonably described agency record in the possession and control of the NRC under the provisions of this subpart and upon request by any person. Records that the NRC routinely makes publicly available are described in § 9.21. Procedures and conditions governing requests for records are set forth in § 9.23.

§ 9.17 Agency records exempt from public disclosure.

(a) The following types of agency records are exempt from public disclosure under § 9.15:

(1) Records (i) which are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and (ii) which are in fact properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of the agency;

(3) Records specifically exempted from disclosure by statute (other

than 5 U.S.C. 552b), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Interagency or intraagency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Matters contained in or related to examination, operating, or safety reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; or

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

(b) Nothing in this subpart authorizes withholding of information or limiting the availability of records to the public except as specifically provided in this part, nor is this subpart authority to withhold information from Congress.

(c) Whenever a request is made which involves access to agency records described in paragraph (a)(7) of this section, the NRC may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this subpart when—

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that—

(i) The subject of the investigation or proceeding is not aware of its pendency; and

(ii) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

§ 9.19 Segregation of exempt information and deletion of identifying details.

(a) For records required to be made available under 5 U.S.C. 552(a)(2), the NRC shall delete the name with any identifying details, if the release of the name or other identifying details of, or relating to, a private party will constitute a clearly unwarranted invasion of personal privacy. The NRC shall provide notification that names of parties and certain other identifying details have been removed in order to prevent a clearly unwarranted invasion of the personal privacy of the individuals involved.

(b) In responding to a request for information submitted under § 9.23, in which it has been determined to withhold exempt information, the NRC shall segregate—

(1) Information that is exempt from public disclosure under § 9.17(a) from underlying information; and

(2) Factual information from advice, opinion, and recommendations in pre-decisional records unless the information is inextricably intertwined, or is contained in drafts, legal work products, and records covered by the lawyer-client privilege, or is otherwise exempt from disclosure.

§ 9.21 Publicly available records.

(a) Publicly available records of NRC activities described in paragraphs (c) and (d) of this section are available through the National Technical Information Service. Subscriptions to these records are available on 48x microfiche and may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Single copies of NRC publications in the NUREG series, NRC Regulatory Guides, and Standard Review Plans are also available from the National Technical Information Service.

(b) For the convenience of persons who may wish to inspect without charge or purchase copies of a record or a limited category of records for a fee, publicly available records of the NRC's activities described in paragraph (c) of this section are also made available at the NRC Public Document Room. The NRC Public Document Room is located at 2120 L Street, NW., Washington, DC, and is open between 7:45 a.m. and 4:15 p.m. on Monday through Friday, except legal holidays.

(c) The following records of NRC activities are publicly available at the NRC Public Document Room for public inspection and copying:

(1) Final opinions including concurring and dissenting opinions as well as orders of the NRC issued as a result of adjudication of case;

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

(3) Nuclear Regulatory Commission rules and regulations;

(4) Nuclear Regulatory Commission Manual, and instructions to NRC personnel that are of any member of the public.

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(1) Information that is exempt from public disclosure under § 9.17(a) from underlying information; and

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(3) Nuclear Regulatory Commission rules and regulations;

(4) Nuclear Regulatory Commission Manual, and instructions to NRC personnel that are of any member of the public.

(5) Records made available for public inspection and copying under this chapter and the NRC Manual.

(6) Current indexes to records made available under 5 U.S.C. 552(a)(2) and that are made publicly available are listed in NUREG-0550, "Title of List of Documents Made Publicly Available," which is published monthly.

(7) Records made publicly available under paragraphs (c)(1), (2), and (5) of this section are also available for purchase through the National Technical Information Service.

(8) FR 49356, Dec. 31, 1987, as amended at 53 FR 43420 (Oct. 27, 1988).

§ 9.23 Requests for records.

(a)(1) A person may request access to records routinely made available by the NRC under § 9.21 in person or in writing at the NRC Public Document Room, 2120 L Street, NW., Washington, DC 20555.

(2) Each record requested must be described in sufficient detail to enable the Public Document Room to locate the record. If the description of the record is not sufficient to allow the Public Document Room staff to identify the record, the Public Document Room shall advise the requester to select the record from the indexes published under § 9.21(c)(6).

(3) In order to obtain copies of records expeditiously, a person may open an account at the Public Document Room with the private contracting firm that is responsible for duplicating NRC records.

(4) A person may also order records routinely made available by the NRC under § 9.21 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161.

(5) A person may request agency records by submitting a request authorized by 5 U.S.C. 552(a)(3) to the Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The request must be in writing and clearly state on the envelope

lore and in the letter that it is a "Freedom of Information Act request." The NRC does not consider a request as received until it has been received and logged in by the Director, Division of Freedom of Information and Publications Services, Office of Administration.

(1) A Freedom of Information request covers only agency records that are in existence on the date the Director, Division of Freedom of Information and Publications Services, receives the request. A request does not cover agency records destroyed or discarded before receipt of a request or which are created after the date of the request.

(2) All Freedom of Information Act requests for copies of agency records must reasonably describe the agency records sought in sufficient detail to permit the NRC to identify the requested agency records. Where possible, the requester should provide specific information regarding dates, titles, docket numbers, file designations, and other information which may help identify the agency records. If a requested agency record is not described in sufficient detail to permit its identification, the Director, Division of Freedom of Information and Publications Services, shall inform the requester of the deficiency within 10 working days after receipt of the request and ask the requester to submit additional information regarding the request or meet with appropriate NRC personnel in order to clarify the request.

(3) Upon receipt of a request made under paragraph (b) of this section, the NRC shall provide written notification to the requester that indicates the request has been received, the name of the individual and telephone number to contact to find out the status of the request, and other pertinent matters regarding the processing of the request.

(4) (i) The NRC shall advise a requester that fees will be assessed if—

(A) A request involves anticipated costs in excess of the minimum specified in § 9.39; and

(B) Search and duplication is not provided without charge under § 9.39, or

(C) The requester does not specifically state that the cost involved is acceptable or acceptable up to a specified limit.

(ii) The NRC has discretion to discontinue processing for records responsive to a request made under this paragraph (b) until—

(A) A required advance payment has been received;

(B) The requester has agreed to bear the estimated costs;

(C) A determination has been made on a request for waiver or reduction of fees; or

(D) The requester meets the requirements of § 9.39.

(c) If a requested agency record that has been reasonably described is located at a place other than the NRC Public Document Room or NRC headquarters, the NRC may, at its discretion, make the record available for inspection and copying at the other location.

(d) Except as provided in § 9.39—

(1) If the record requested under paragraph (b) of this section is a record available through the National Technical Information Service, the NRC shall refer the requester to the National Technical Information Service; and

(2) If the requested record has been placed in the NRC Public Document Room under § 9.21, the NRC may inform the requester that the record is in the PDR, and that the record may be obtained in accordance with the procedures set forth in paragraph (a) of this section.

(e) The Director, Division of Freedom of Information and Publications Services, shall promptly forward a Freedom of Information Act request made under § 9.23(b) for an agency record which is not publicly available in the NRC Public Document Room under § 9.21 to the head of the office primarily concerned with the records requested and to the General Counsel, as appropriate. The responsible office will conduct a search for the agency records responsive to the request and compile those agency records to be reviewed for initial disclosure determination under §§ 9.25 and 9.27.

(52 FR 49256, Dec. 31, 1987, as amended at 53 FR 43420, Oct. 27, 1988, 53 FR 52993, Nov. 30, 1988, 54 FR 53316, Dec. 28, 1989)

§ 9.25 Initial disclosure determination.

(a) The head of the responsible office shall review agency records located in a search under § 9.23(b) to determine whether the agency records are exempt from disclosure under § 9.17(a). If the head of the office determines that, although exempt, the disclosure of the agency records will not be contrary to the public interest and will not affect the rights of any person, the head of the office may authorize disclosure of the agency records. If the head of the office authorizes disclosure of the agency records, the head of the office shall furnish the agency records to the Director, Division of Freedom of Information and Publications Services, who shall notify the requester of the determination in the manner provided in § 9.27.

(b) Except as provided in paragraph (c) of this section, if, as a result of the review specified in paragraph (a) of this section, the head of the responsible office finds that agency records should be denied in whole or in part, the head of the office will submit that finding to the Director, Division of Freedom of Information and Publications Services, 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 Director, Division of Freedom of Information and Publications Services, 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 Director, Division of Freedom of Information and Publications Services, shall notify the requester of the determination in the manner provided in § 9.27.

(c) For agency records located in the office of a Commissioner or in the Office of the Secretary of the Commission, the Assistant Secretary of the Commission shall make the initial determination to deny agency records in whole or in part under § 9.17(a) in

stead of the Director, Division of Freedom of Information and Publications Services. For agency records located in the Office of the General Counsel, the General Counsel shall make the initial determination to deny agency records in whole or in part instead of the Director, Division of Freedom of Information and Publications Services. For agency records located in the Office of the Inspector General, the Assistant Inspector General for Audits or the Assistant Inspector General for Investigations shall make the initial determination to deny agency records in whole or in part instead of the Director, Division of Freedom of Information and Publications Services. If the Assistant Secretary of the Commission, the General Counsel, the Assistant Inspector General for Audits, or the Assistant Inspector General for Investigations determines that the agency records sought are exempt from disclosure and that their disclosure is contrary to the public interest and will adversely affect the rights of any person, the Assistant Secretary of the Commission, the General Counsel, the Assistant Inspector General for Audits, or the Assistant Inspector General for Investigations shall furnish that determination to the Director, Division of Freedom of Information and Publications Services, who shall notify the requester of the determination in the manner provided in § 9.27.

(d) If a requested record that is located is one of another Government agency or deals with subject matter over which an agency other than the NRC has exclusive or primary responsibility, the NRC shall promptly refer the record to that Government agency for disposition or for guidance regarding disposition.

(e) The 10-working day period for response to a request for agency records provided in paragraphs (a), (b), and (c) of this section may be extended for unusual circumstances as provided in § 9.31.

(f) In exceptional circumstances where it does not appear possible to complete action on a request within the maximum 20 working-day limit provided in § 9.31, the Director, Division of Freedom of Information and

Publications Services, may seek an agreement with the requester for a specified extension of time in which to act upon the request. The NRC shall confirm the agreement for an extension of time in writing.

(e) If the NRC does not respond to a request within the 10-working-day period, or within the extended periods described in paragraph c) of this section, the requester may treat that delay as a denial of the request and immediately appeal to the Executive Director for Operations as provided in § 9.29(a) or sue in a district court as noted in

152 FR 47, Dec. 31, 1987, as amended at 53 FR 52993, Dec. 30, 1988, 55 FR 33646, Aug. 17, 1990)

§ 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 Director, Division of Freedom of Information and Publications Services, shall 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 normally place copies of agency records disclosed in response to Freedom of Information Act requests in the NRC Public Document Room and, for agency records relating to a specific nuclear power facility, in the Local Public Document Room established for that facility. The NRC shall also advise the requester of any applicable fees under § 9.35.

(b) When the NRC denies access to a requested agency record or denies a request for a waiver or reduction of fees, the Director, Division of Freedom of Information and Publications Services, shall notify the requester in writing. The denial includes as appropriate—

- (1) The reason for the denial;
- (2) A reference to the specific exemption under the Freedom of Information Act and the Commission's regulations authorizing the withholding of the agency record or portions of it;
- (3) The name and title or position of each person responsible for the denial of the request, including the head of the office recommending denial of a record.

(4) A statement stating why the requester does not meet the requirements of § 9.41 if the request is for a waiver or reduction of fees; and

(5) A statement that the denial may be appealed within 30 days from the receipt of the denial to the Executive Director for Operations, to the Secretary of the Commission, or to the Inspector General as appropriate.

(c) The Director, Division of Freedom of Information and Publications Services, shall maintain a copy of each letter granting or denying a requested agency record or denying a request for waiver or reduction of fees in accordance with the NRC Comprehensive Records Disposition Schedule.

152 FR 42356, Dec. 31, 1987, as amended at 53 FR 52993, Dec. 30, 1988, 55 FR 33646, Aug. 17, 1990)

§ 9.29 Appeal from initial determination.

(a) A requester may appeal a notice of denial of a Freedom of Information Act request for agency records or a request for waiver or reduction of fees under this subpart within 30 days of the date of the NRC's denial. For agency records denied by an Office Director reporting to the Executive Director for Operations or for a denial of a request for a waiver or reduction of fees, the appeal must be in writing and addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. For agency records denied by an Office Director reporting to the Commission, the Assistant Secretary of the Commission, or the Advisory Committee Management Officer, the appeal must be in writing and addressed to the Secretary of the Commission. For agency records denied by the Assistant Inspector General for Audits or the Assistant Inspector General for Investigations, the appeal must be in writing and addressed to the Inspector General. 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 that is not marked as indicated in this paragraph as received until it is actually received by the Executive Director for

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Operations, Secretary of the Commission, or the Inspector General.

(b) The NRC shall make determination on any appeal made under this section within 20 working days after the receipt of the appeal.

(c)(1) If the appeal of the denial of the request for agency records is upheld in whole or in part, the Executive Director for Operations, or a Deputy Director, or the Secretary of the Commission, or the Inspector General shall notify the requester of the denial specifying—

- (i) The exemptions relied upon;
- (ii) An explanation of how the exemption applies to the agency record, withheld; and
- (iii) The reasons for asserting the exemption.

(2) If, on appeal, the denial of a request for waiver or reduction of fees for locating and reproducing agency records is upheld in whole or in part, the Executive Director for Operations or a Deputy Executive Director shall notify the person making the request of his decision to sustain the denial, including a statement explaining why the request does not meet the requirements of § 9.41.

(3) The Executive Director for Operations, or a Deputy Executive Director, or the Secretary of the Commission, or the Inspector General shall 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) The Executive Director for Operations, or a Deputy Executive Director, or the Secretary of the Commission, or the Inspector General shall furnish copies of all appeals and written determinations on appeals to the Director, Division of Freedom of Information and Publications Services.

152 FR 42356, Dec. 31, 1987, as amended at 53 FR 52993, Dec. 30, 1988, 54 FR 10138, Mar. 10, 1989, 55 FR 33646, Aug. 17, 1990)

§ 9.31 Extension of time for response.

(a) In unusual circumstances defined in § 9.13, the NRC may extend the time limits prescribed in § 9.25 or

§ 9.29 by not more than 10 working days. The extension may be made by written notice to the person making the request to explain the reasons for the extension and indicate the date on which a determination is expected to be dispatched.

(b) An extension of the time limits prescribed in § 9.25 and § 9.29 may not exceed a combined total of 10 working days per request.

§ 9.33 Search, review, and special service fees.

(a) The NRC charges fees for—

- (1) Search, duplication, and review, when agency records are requested for commercial use;
- (2) Duplication of agency records provided in excess of 100 pages when agency records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, or a representative of the news media;
- (3) Search and duplication of agency records in excess of 100 pages for request not described in paragraphs (a)(1) and (2) of this section;
- (4) The direct costs of searching for agency records. The NRC will assess fees even when no agency records are located as a result of the search or when agency records that are located as a result of the search are not disclosed; and
- (5) Computer searches which include the cost of operating the Central Processing Unit for that portion of operating time that is directly attributable to searching for agency records plus the operator/programmer salary apportionable to the search.

(b) The NRC may charge requester who request the following services for the direct costs of the service:

- (1) Certifying that records are true copies; or
- (2) Sending records by special methods, such as express mail, package delivery service, etc.

§ 9.34 Assessment of interest and debt collection.

(a) The NRC shall assess interest on the fee amount billed starting on the 31st day following the day on which the billing was sent in accordance with

NRC's regulations set out in § 15.37 of this chapter. Interest is at the rate prescribed in 21 U.S.C. 3717.

(b) The NRC will use its debt collection procedures under Part 15 of this chapter for any overdue fees.

§ 9.35 Duplication fees.

(a)(1) Charges for the duplication of records made available under § 9.21 at the NRC Public Document Room (PDR), 2120 L Street, NW, Lower Level, Washington, DC by the duplicating service contractor are as follows:

(i) 6 cents per page for paper copy to paper copy, except for engineering drawings and any other records larger than 17 x 11 inches for which the charges vary as follows depending on the reproduction process that is used:

(A) Xerographic process—\$1.50 per square foot for large documents or engineering drawings (random size up to 24 inches in width and with variable length, reduced or full size);

(B) Photographic process—\$7.50 per square foot for large documents or engineering drawings (random size exceeding 24 inches in width and up to a maximum size of 42 inches in length, full size).

(ii) 6 cents per page for microform to paper copy, except for engineering drawings and any other records larger than 17 x 11 inches for which the charge is \$3.00 per square foot, or \$3.00 for a reduced size print (18 x 24 inches).

(iii) 75 cents per microfiche to microfiche.

(iv) 75 cents per aperture card to aperture card.

(2) Self-service duplicating machines are available at the PDR for the use of the public. Paper to paper copy is 10 cents per page. Microform to paper is 10 cents per page on the reader printers.

(3) A requester may submit mail-order requests for contractor duplication of NRC records made by writing to the NRC Public Document Room. The charges for mail order duplication of records are the same as those set out in paragraph (a)(1) of this section plus mailing or shipping charges.

(4) A requester may open an account with the duplicating service contractor.

for. A requester may obtain the name and address and billing policy of the contractor from the NRC Public Document Room.

(5) Any change in the costs specified in this section will become effective immediately pending completion of the Commission's rulemaking that amends this section to reflect the new charges. The Commission shall post the charges that will be in effect for the interim period in the Public Document Room. The Commission shall complete the rulemaking necessary to reflect the new charges within 15 working days from the beginning of the interim period.

(b) The NRC shall assess the following charges for copies of records to be duplicated by the NRC at locations other than the NRC Public Document Room located in Washington, DC or at local Public Document Rooms:

(1) Sizes up to 8½ x 14 inches made on office copying machines—\$9.20 per page of copy; and

(2) The charge for duplicating records other than those specified in paragraphs (a) and (b) is computed on the basis of NRC's direct costs.

(c) In compliance with the Federal Advisory Committee Act, a requester may purchase copies of transcripts of testimony in NRC Advisory Committee proceedings, which are transcribed by a reporting firm under contract with the NRC directly from the reporting firm at the cost of reproduction as provided for in the contract with the reporting firm. A requester may also purchase transcripts from the NRC at the cost of reproduction as set out in paragraphs (a) and (b) of this section.

(d) Copyrighted material may not be reproduced in violation of the copyright laws.

(e) Charges for the duplication of NRC records located in NRC Local Public Document Rooms are those costs that the institutions maintaining the NRC Local Public Document Room collections establish.

(52 FR 85196 Dec 31, 1987, as amended at 53 FR 41639 Oct 27, 1988, 54 FR 36757 Sept 5, 1989, 56 FR 32071 July 15, 1991, 56 FR 67193 Dec 30, 1991)

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§ 9.37 Fees for search and review of agency records by NRC personnel.

The NRC shall charge the following hourly rates for search and review of agency records by NRC personnel:

(a) Clerical search, review, and duplication at a salary rate that is equivalent to a GG-7, Step 5 plus 16 percent fringe benefit;

(b) Professional/managerial search, review, and duplication at a salary rate that is equivalent to a GG-13, Step 5 plus 16 percent fringe benefits; and

(c) Senior executive or Commissioner search, review, and duplication at a salary rate that is equivalent to an ES-3 plus 16 percent fringe benefits.

§ 9.39 Search and duplication provided without charge.

(a) The NRC shall search for agency records requested under § 9.23(b), without charges when agency records are not sought for commercial use and the records are requested by an educational or noncommercial scientific institution, or a representative of the news media.

(b) The NRC shall search for agency records requested under § 9.23(b) without charges for the first two hours of search for any request not sought for commercial use and not covered in paragraph (a) of this section.

(c) The NRC shall duplicate agency records requested under § 9.23(b) without charge for the first 100 pages of standard paper copies, or equivalent pages in microfiche, computer, disks, etc., if the requester is not a commercial-use requester.

(d) The NRC may not bill any requester for fees if the cost of collecting the fee would be equal to or greater than the fee itself.

(e) The NRC may aggregate requests in determining search and duplication to be provided without charge as provided in paragraphs (a) and (b) of this section, if the NRC finds a requester has filed multiple requests for only portions of an agency record or similar agency records for the purpose of avoiding charges.

§ 9.36 Assessment of fees.

(a) If the request is expected to require the NRC to assess fees in excess of \$25 for search and/or duplication,

the NRC shall notify the requester that fees will be assessed unless the requester has indicated in advance his or her willingness to pay fees as high as estimated.

(b) In the notification, the NRC shall include the estimated cost of search fees and the nature of the search required and estimated cost of duplicating fees.

(c) The NRC will encourage requesters to discuss with the NRC the possibility of narrowing the scope of the request with the goal of reducing the cost while retaining the requester's original objective.

(d) If the fee is determined to be in excess of \$250, the NRC shall require an advance payment.

(e) Unless a requester has agreed to pay the estimated fees or, as provided for in paragraph (d) of this section, the requester has paid an estimated fee in excess of \$250, the NRC may not begin to process the request.

(f) If the NRC receives a new request and determines that the requester has failed to pay a fee charged within 30 days of receipt of the bill on a previous request, the NRC may not accept the new request for processing until payment of the full amount owed on the prior request, plus any applicable interest assessed as provided in § 9.34 is made.

(g) Within 10 working days of the receipt of NRC's notice that fees will be assessed, the requester shall provide advance payment if required, notify the NRC in writing that the requester agrees to bear the estimated costs, or submit a request for a waiver or reduction of fees pursuant to § 9.41.

§ 9.41 Requests for waiver or reduction of fees.

(a)(1) The NRC shall collect fees for searching for, reviewing, and duplicating agency records, except as provided in § 9.39, unless a requester submits a request in writing for a waiver or reduction of fees. To assure that there will be no delay in the processing of Freedom of Information Act requests, the request for a waiver or reduction of fees should be included in the initial Freedom of Information Act request letter.

(2) Each request for a waiver or reduction of fees must be addressed to the Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(b) A person requesting the NRC to waive or reduce search, review, or duplication fees shall:

(1) Describe the purpose for which the requester intends to use the requested information;

(2) Explain the extent to which the requester will extract and analyze the substantive content of the agency record;

(3) Describe the nature of the specific activity or research in which the agency records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding;

(4) Describe the likely impact on the public's understanding of the subject as compared to the level of understanding of the subject existing prior to disclosure;

(5) Describe the size and nature of the public to whose understanding a contribution will be made;

(6) Describe the intended means of dissemination to the general public;

(7) Indicate if public access to information will be provided free of charge or provided for an access fee or publication fee; and

(8) Describe any commercial or private interest the requester or any other party has in the agency records sought.

(c) The NRC will waive or reduce fees, without further specific information from the requester if, from information provided with the request for agency records made under § 9.23(b), it can determine that disclosure of the information in the agency records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(d) In making a determination regarding a request for a waiver or reduction of fees, the NRC shall consider the following factors:

(1) How the subject of the requested agency records concerns the operations or activities of the Government;

(2) How the disclosure of the information is likely to contribute to an understanding of Government operations or activities;

(3) If disclosure of the requested information is likely to contribute to public understanding;

(4) If disclosure is likely to contribute significantly to public understanding of Government operations or activities;

(5) If, and the extent to which, the requester has a commercial interest that would be furthered by the disclosure of the requested agency records; and

(6) If the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(e) If the written request for a waiver or reduction of fees does not meet the requirements of this section, the NRC will inform the requester that the request for waiver or reduction of fees is being denied and set forth the appeal rights under § 9.29 to the requester.

[52 FR 49356, Dec. 31, 1987, as amended at 53 FR 52993, Dec. 30, 1988; 54 FR 53316, Dec. 28, 1989]

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

(a) Within 10 working days after receipt of a request for access to agency records for which the NRC agrees to waive fees under § 9.35(a) through (d) or § 9.41(c), the NRC shall respond to the request as provided in § 9.25.

(b) In making a request for a waiver or reduction of fees, a requester shall provide the information required by § 9.41(b).

(c) After receipt of a request for the waiver or reduction of fees made in accordance with § 9.41, the NRC shall either waive or reduce the fees and notify the requester of the NRC's intent to promptly provide the agency records or deny the request and provide a statement to the requester ex-

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plaining why the request does not meet the requirements of § 9.41(b).

(d) As provided in § 9.29, a requester may appeal a denial of a request to waive or reduce fees within 30 days to the Executive Director for Operations.

§ 9.45 Annual report to Congress.

(a) On or before March 1 of each calendar year, the Chairman of the NRC will submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report includes—

(1) The number of determinations made by the NRC to deny requests for records made to the NRC under this part and the reasons for each determination;

(2) The number of appeals made by persons under § 9.29, the results of the appeals, and the reason for the action taken on each appeal that results in a denial of information;

(3) The names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records, or an explanation of why disciplinary action was not taken;

(5) A copy of every rule the NRC published affecting this part;

(6) A copy of the fee schedule and the total amount of fees collected by the NRC for making records available under this part; and

(7) Any other information that indicates efforts to administer fully the provisions of 5 U.S.C. 552.

(b) The NRC shall make a copy of each report submitted to the Congress under paragraph (a) of this section available for public inspection and copying in the NRC Public Document Room.

Subpart B—Privacy Act Regulations

Source: 40 FR 44484, Sept. 26, 1975, unless otherwise noted.

§ 9.50 Scope of subpart.

This subpart implements the provisions of section 3 of the Privacy Act of 1974, Pub. L. 93-579, 5 U.S.C. 552a, with respect to (a) the procedures by which individuals may determine the existence of, seek access to and request correction of NRC records concerning themselves, and (b) the requirements applicable to NRC personnel with respect to the use and dissemination of such records. The regulations in this subpart apply to all records which are retrievable from a system of records under the control of the Nuclear Regulatory Commission by the use of an individual's name or of an identifying number, symbol, or other identifying particular assigned to such individual. Except where specifically provided otherwise, this subpart applies to all NRC records maintained on individuals whether they predate or postdate September 27, 1975.

§ 9.51 Definitions.

As used in this subpart:

(a) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) The term *maintain* includes maintain, collect, use or disseminate.

(c) *Record* means any item, collection or grouping of information about an individual that is maintained by the NRC, including, but not limited to, his education, financial transactions, medical history, employment history or criminal history, and that contains the individual's name, or the identifying number, symbol or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(d) *System manager* means the NRC official responsible for maintaining a system of records.

(e) *Systems of records* means a group of records under the control of the NRC from which information is retrieved by the name of an individual or by an identifying number, symbol, or other identifying particular assigned to an individual.

(f) *Statistical record* means a record in a system of records maintained for statistical research or reporting pur-