[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

[NRC-2024-0044]

RIN 3150-AL14

Freedom of Information Act Implementing Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations that implement the Freedom of Information Act (FOIA) to provide clarity, promote agency accountability, improve efficiency in responding to FOIA requests, update roles and responsibilities, and align the regulations with current Federal best practices for implementing FOIA. This final rule addresses the Department of Justice (DOJ) recommendation that the NRC update its FOIA regulations and incorporate the DOJ's model language for FOIA regulations, where appropriate. The NRC is not soliciting public comment for these changes because the change is limited to an agency rule of procedure and practice.

DATES: This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Please refer to Docket ID NRC-2024-0044 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Electronically at https://www.regulations.gov. Search for Docket ID NRC-2024-0044. Address questions about NRC dockets to Helen Chang; telephone: 301-415-3228; email: Helen.Chang@nrc.gov. For technical

questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at https://www.nrc.gov/reading-rm/adams.html. To begin the search, select "Begin ADAMS Public Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section of this document.

- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Amy McKenna, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-7000, email: amy.mckenna@nrc.gov

SUPPLEMENTARY INFORMATION:

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I. Executive Order 14300: Ordering the Reform of the Nuclear Regulatory Commission

On May 23, 2025, President Donald J. Trump signed Executive Order (E.O.) 14300, "Ordering the Reform of the Nuclear Regulatory Commission." Section 5, "Reforming and Modernizing the NRC's Regulations," requires the NRC to undertake a review and wholesale revision of its regulations and guidance documents as guided by the policies set forth in section 2 of the E.O. Though rulemaking to update the NRC's Freedom of Information Act regulations began in 2024, the Commission directed staff to include it as part of the NRC's comprehensive review and reform of its regulations in accordance with E.O. 14300.

II. Background

The NRC promulgated its initial regulations implementing the Freedom of Information Act (FOIA) (Public Law 90-23, 5 U.S.C. sec. 552) on June 29, 1967 (32 FR 9214) in title 10 of the *Code of Federal Regulations* (10 CFR) part 9, "Public Records." Since that time, the NRC has updated these regulations several times, including updates for fee adjustments; changes to the appeal process; and complying with the Privacy Act of 1974, the Freedom of Information Reform Act of 1986, the Electronic Freedom of Information Act of 1996, and the FOIA Improvement Act of 2016. Among these updates,

the NRC reorganized its requirements in 10 CFR part 9 by creating several new subparts, including subpart A, which is exclusively used for its FOIA regulations.

On September 16, 2020, the National Archives and Records Administration (NARA) Office of Government Information Services (OGIS) published their compliance assessment of the NRC FOIA program. OGIS stated in Finding 2 of that assessment that the "NRC's regulations and official guidance for administering the FOIA are out of date and do not consistently or accurately reflect the agency's practices for implementing the statute." OGIS recommended that the NRC "update its FOIA regulations, FOIA Management Directive, and FOIA Desk Guide to ensure they are plainly written and reflect current processes and statutory requirements." OGIS also noted that the "NRC should reform its administrative appeals process to conform with [U.S. Department of Justice (DOJ)] guidance." On December 2, 2022, the DOJ Office of Information Policy published a FOIA regulation template that 1) contains guidelines addressing key elements to be addressed in each section of FOIA regulations, 2) is updated as needed by the Office of Information Policy to reflect changes in law and policy, and 3) provides sample language for agencies to use as they publish and update their regulations.

On March 20, 2024, the NRC staff submitted to the Commission via SECY-24-0024 a rulemaking plan that would address the recommended revisions identified in the OGIS report and incorporate the DOJ template language into the NRC's FOIA regulations, as appropriate. On April 24, 2024, in SRM-SECY-24-0024, the Commission approved the NRC staff's recommendation to initiate a rulemaking to revise the NRC's FOIA regulations.

III. Discussion

This final rule amends 10 CFR part 9, subpart A, “Freedom of Information Act Regulations,” to align with the Department of Justice’s (DOJ) “Template for Agency FOIA Regulations,” as well as revises language for clarity and re-organizes the content and names of sections for consistency with other agencies.

Additionally, this final rule includes more specific actions for NRC’s FOIA Public Liaison. Generally, under the current regulations, the liaison is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes. In this final rule, the NRC specifically details that its FOIA Public Liaison will: 1) ensure that NRC’s website of posted records is reviewed and updated on an ongoing basis; 2) assist requesters in determining the appropriate fee category, formatting requests, or resolving any problems that arise prior to submitting a request or during the processing of a request; 3) assist requesters when the statutory 20-day time limit to respond to requests will be extended for unusual circumstances; 4) assist requesters when the NRC grants requests in full or in part, or when the NRC denies requests in full or in part; and 5) assist requesters in reformulating a request to meet the requester’s needs at a lower cost.

Overall, this final rule assists the public with locating relevant provisions to submit their FOIA requests with greater ease and introduces customer service principles addressed by the FOIA Public Liaison that will be codified in relevant sections of the rule.

This final rule will apply to future FOIA requests submitted to and processed by NRC. It amends the following areas, as outlined in the DOJ template that reflect changes in law and policy and sets forth requirements for Federal agencies:

Revision of § 9.11 – Scope of Subpart

This final rule revises § 9.11 to include references to the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget. It also incorporates references to Privacy Act requests and considerations for processing these requests, as outlined in 10 CFR part 9, subpart B, "Privacy Act Regulations." These changes clarify that there is a separate subpart addressing requirements for individuals seeking records about themselves, which is a common type of request received by the NRC.

Renaming § 9.21 – Publicly Available Records and Proactive Disclosures

This final rule renames § 9.21 from "Publicly available records" to "Publicly available records and proactive disclosures." It also revises the section to provide clarity and re-organize content to align with the structure of the statutory language at 5 U.S.C. 552(a)(1-3). More specifically, this section clarifies: 1) how the NRC makes public information available, 2) how the NRC makes information available for public inspection in electronic format, and 3) how the NRC addresses requests for records and makes records promptly available to any person. In addition, the final rule requires the NRC to review and update its website of posted records on an ongoing basis. Finally, it adds requirements for offering requesters the assistance of the NRC's FOIA Liaison Officer in locating posted materials.

Section 9.23 – Requirements for Making Requests

This final rule renames § 9.23 from “Requests for records” to “Requirements for making requests.” It revises the section to provide clarity and re-organize content to set forth the instructions and requirements for submitting FOIA requests to the NRC and what occurs if the requests do not reasonably describe the records sought. This section is critical to the public understanding of what to include and how to submit a FOIA request. This final rule revises this section to include modern and frequently used methods for request submissions, such as email and online portals. Moreover, this section adds requirements to: 1) allow the requester to specify the proposed format of requested records, 2) offer resources of the FOIA Public Liaison to aid the requester in making a request and to assist requesters in correcting a request that does not reasonably describe the records sought, 3) describe the agency’s obligation to inform the requester why a particular request is insufficient, and 4) describe the consequences to the requester for failing to reasonably describe the records.

Section 9.25 – Responsibility for Responding to Requests

This final rule renames § 9.25 from “Initial disclosure determination” to “Responsibility for responding to requests.” It revises the section to clarify and re-organize its content to align with DOJ guidance. This final rule revises this section to: 1) designate a standard end-date for searches, 2) describe handling of misdirected requests, 3) describe how to handle requests involving classified information, and 4) include the use of record exclusions.

Section 9.26 – Timing of Responses to Requests

This final rule adds § 9.26, titled “Timing of responses to requests.” It relocates certain requirements from § 9.23, “Requests for records,” and § 9.25, “Initial disclosure determination,” to consolidate timeline considerations into a single section. This section

addresses when the NRC considers a request as received, specifies the timeline for initial disclosures and multi-track processing, and outlines extensions for unusual circumstances, expedited processing, and exceptional circumstances. Integrating all these topics under one section heading simplifies and clarifies the method of identifying timeline requirements.

Section 9.27 – Responses to Requests

This final rule renames § 9.27 from "Form and content of responses" to "Responses to requests." It revises this section to align with statutory language by making clarifying changes and re-organizing content. This final rule revises this section to add: 1) details to the requirements for content of denials that includes an estimate of the volume of records withheld, 2) a description of the appeal requirements, and 3) additional information on the assistance available from the NRC's FOIA Public Liaison. Additionally, this final rule revises this section to include a detailed description of adverse determinations of requests and markings on released documents.

Section 9.28 – Requests for Business Information Provided to the NRC

This final rule renames § 9.28 from "Predisclosure notification procedures for information containing trade secrets or confidential commercial or financial information" to "Requests for business information provided to the NRC." It revises this section to align with DOJ guidance and statutory language by making clarifying changes and re-organizing content. Moreover, this final rule revises this section to introduce the concept that entities that submit business information must make a good faith effort to designate withholding considerations at the time of submission, or at a reasonable time thereafter. In addition, this final rule revises this section to stipulate that the withholding considerations will expire 10 years after the date of submission unless the submitter

requests and provides justification for a longer designation period. Also, this final rule revises this section to introduce exceptions to predisclosure notification procedures.

Section 9.29 – Administrative Appeals

This final rule renames § 9.29 from "Appeal from initial determination" to "Administrative appeals." It updates this section to align with DOJ guidance in addition to clarifying NRC's administrative appeal process.

Section 9.35 – Duplication Fees for Documents in the Public Document Reading Room and for NRC Advisory Committee Proceedings

This final rule renames § 9.35, "Duplication fees," to "Duplication fees for documents in the Public Document Reading Room and for NRC Advisory Committee proceedings." While the content of the section remains unchanged, the new title more accurately reflects the specific types of duplication services the fees cover.

Section 9.37 – Fees for Processing NRC FOIA Requests

This final rule renames § 9.37, "Fees for search and review of agency records by NRC personnel," to "Fees for processing NRC FOIA requests." It consolidates and replaces six other fee-related sections including § 9.33, "Search, review, and special service fees"; § 9.34, "Assessment of interest and debt collection"; § 9.35, "Duplication fees"; § 9.39, "Search and duplication provided without charge"; § 9.40, "Assessment of fees"; § 9.41, "Requests for waiver or reduction of fees"; and § 9.43, "Processing requests for a waiver or reduction of fees." The updated § 9.37 ensures that FOIA-related searches, reviews, and duplications are handled efficiently and cost-effectively, outlines payment procedures, and provides clear information on duplication practices for FOIA responses.

Section 9.38 – Preservation of Records

This final rule adds § 9.38 and titles it “Preservation of Records.” This section addresses the preservation of all correspondence associated with a request until disposition or destruction is authorized pursuant to 44 U.S.C. 33 or the General Records Schedule 4.2.

Section 9.41 – Other Rights and Services

This final rule replaces § 9.41, “Requests for waiver or reduction of fees,” with “Other rights and services.” It revises the section to clarify that individuals are not entitled, as a matter of right, to services or disclosures beyond what FOIA provides. Provisions related to fee waivers or reductions are relocated to § 9.37.

IV. Rulemaking Procedure

Under the Administrative Procedure Act (5 U.S.C. 553(b)(A)) (APA), notice and comment requirements do not apply “to interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice.” Because this revision affects the NRC's rules of agency procedure and practice, the notice and comment provisions of the APA do not apply. Moreover, the final rule does not change the substantive responsibilities of any person or entity regulated by the NRC.

The amendments are effective upon publication in the *Federal Register*. Good cause exists under 5 U.S.C. 553(d) to dispense with the usual 30-day delay in the effective date of the final rule because the amendments are of administrative and non-substantive in nature dealing with changes to internal agency procedure and practice and do not require action by any person or entity regulated by the NRC.

V. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect those who make requests for access to information under the provisions of the FOIA. This rulemaking would align the NRC's FOIA regulations with the DOJ template consistent with other agencies. These are considered minor, non-substantive amendments and will not have an economic impact on NRC licensees or the public.

VI. Regulatory Analysis

A regulatory analysis has not been prepared because this final rule amends the NRC's FOIA regulations to incorporate language and guidance from the Department of Justice Template for Agency FOIA Regulations. The amendments in this final rule improve the clarity of existing regulations and are considered procedural, minor, non-substantive amendments. Further, these amendments do not have an economic impact on NRC licensees or members of the public.

VII. Backfitting and Issue Finality

This final rule amends the NRC's FOIA implementing regulations to improve clarity by using plain language, promote agency accountability, improve efficiency in responding to FOIA requests, update roles and responsibilities, and align the regulations with current Federal best practices for implementing FOIA. The final rule does not meet the definition of backfitting in 10 CFR 50.109, 70.76, 72.62, or 76.76, or affect issue

finality of an approval issued under 10 CFR part 52. Therefore, the NRC has determined that this final rule does not constitute a backfit or affect issue finality for any approvals issued under 10 CFR part 52.

VIII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31885).

IX. National Environmental Policy Act

The NRC has determined that this final rule is the type of action eligible for categorical exclusion because it meets the criterion described in § 51.22(c)(1). Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this final rule.

X. Paperwork Reduction Act

This final rule contains new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The NRC is not changing the burden estimates associated with each of the current information collection requirements. However, because the information collection requirements are being revised, and in some cases relocated to a different section, the NRC has developed a supporting statement for this rulemaking. Please refer to the Availability of Documents

section of this notice to view the supporting statement. The collections of information were approved by the Office of Management and Budget, under approval number 3150-0043.

Public Protection Notification

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

XI. Executive Orders

A. Executive Order 12866: Regulatory Planning and Review (as amended by Executive Order 14215, Ensuring Accountability for All Agencies).

The Office of Information and Regulatory Affairs (OIRA) has determined that this final rule is not significant regulatory action.

B. Executive Order 14154: Unleashing American Energy

NRC has examined this final rule and has determined that it is consistent with the policies and directives outlined in E.O. 14154.

C. Executive Order 14270: Zero-Based Regulatory Budgeting to Unleash American Energy

E.O. 14270, “Zero-Based Regulatory Budgeting to Unleash American Energy,” requires the NRC to insert a conditional sunset date into all new or amended NRC regulations provided the regulations are 1) promulgated under the Atomic Energy Act of 1954, as amended (AEA), the Energy Reorganization Act of 1974, as amended (ERA),

and the Nuclear Waste Policy Act of 1982, as amended (NWPA); 2) not statutorily required; and 3) not part of the NRC's permitting regime. The NRC determined that the regulatory changes in this rule are necessary for compliance with the Freedom of Information Act. Therefore, the NRC views this rulemaking to be outside the scope of Executive Order 14270 and did not insert conditional sunset dates for the regulatory changes in this final rule.

XII. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has found that it does not meet the criteria at 5 U.S.C. 804(2).

XIII. Availability of Guidance

The NRC will not be issuing guidance for this rulemaking. The amendments in this final rule would not necessitate creating new public guidance on the FOIA process.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

DOCUMENT	**ADAMS ACCESSION NO. / WEB LINK / *FEDERAL REGISTER* CITATION**
Rulemaking document	
OMB Supporting Statement for this final rule.	ML24303A096
NRC documents	

SECY-24-0024, “Rulemaking Plan for Freedom of Information Act Regulations, 10 CFR Part 9, Subpart A,” dated March 20, 2024	ML24026A182
SRM-SECY-24-0024, “Rulemaking Plan for Freedom of Information Act Regulations, 10 CFR Part 9, Subpart A,” dated April 26, 2024	ML24117A183
Legislative documents	
Freedom of Information Act, Pub. L. No. 90-23, 5 U.S.C. 552, 81. Stat. 54 (1967)	https://www.govinfo.gov/content/pkg/STATUTE-81/pdf/STATUTE-81-Pg54.pdf
Privacy Act of 1974, Pub. L. No. 93-579, 5 U.S.C.552a, 88 Stat. 1896(1974)	https://www.govinfo.gov/content/pkg/STATUTE-88/pdf/STATUTE-88-Pg1896.pdf
Freedom of Information Reform Act of 1986, Pub. L. 99-570, 100 Stat. 3207 (1986)	https://www.govinfo.gov/content/pkg/STATUTE-100/pdf/STATUTE-100-Pg3207.pdf
Electronic Freedom of Information Act of 1996, Pub. L. 104-231, 110 Stat. 3048 (1996)	https://www.govinfo.gov/app/details/PLAW-104publ231
FOIA Improvement Act of 2016, Pub. L. 114-185, 130 Stat. 538 (2016)	https://www.govinfo.gov/app/details/PLAW-114publ185
Other documents	
Federal Register Notice, “Availability to the Public of AEC Information and Records,” dated June 29, 1967	32 FR 9214
Executive Order 12866, “Regulatory Planning and Review,” October 4, 1993	58 FR 51735
Executive Order 14154, “Unleashing American Energy,” January 29, 2025	90 FR 8353
Executive Order 14215, “Ensuring Accountability for All Agencies,” February 24, 2025	90 FR 10447
Executive Order 14300, “Ordering the Reform of the Nuclear Regulatory Commission,” May 29, 2025	90 FR 22587
National Archives and Records Administration Office of Government Information Services compliance assessment of the NRC FOIA program, dated September 16, 2020	ML24038A042
Department of Justice Office of Information Policy FOIA regulation template, dated December 2, 2022	ML24038A025

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at https://www.regulations.gov under Docket ID NRC-2024-0044. In addition, the Federal rulemaking website allows members

of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: 1) navigate to the docket folder (NRC-2024-0044); 2) click the “Subscribe” button; and 3) enter an email address and click on the “Subscribe” button.

List of Subjects in 10 CFR Part 9

Administrative practice and procedure, Courts, Criminal penalties, Freedom of information, Government employees, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is amending 10 CFR part 9 as follows:

PART 9 – PUBLIC RECORDS

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

Authority: Atomic Energy Act of 1954, sec. 161 (42 U.S.C. 2201); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note.
Subpart A also issued under 31 U.S.C. 9701.
Subpart B also issued under 5 U.S.C. 552a.
Subpart C also issued under 5 U.S.C. 552b.
Subpart E also issued under 42 U.S.C. 405 note.

§ 9.6 [Amended]

2. In § 9.6 by:

a. In the first sentence, remove the phrase “facsimile to (301) 415-5130 or e-mail to foia@nrc.gov” and add in its place the phrase “email to FOIA.resource@nrc.gov”; and

b. In the third sentence, remove the phrase “the NRC’s Web site at http://www.nrc.gov/site-help/e-submittals.html; by e-mail to” and add in its place the phrase “the NRC’s website at https://www.nrc.gov/site-help/e-submittals.html; by email to”.

3. In § 9.8, revise paragraph (b) to read as follows:

§ 9.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 9.23, 9.25, 9.26, 9.28, 9.29, 9.37, 9.53, 9.54, 9.55, 9.65, 9.66, and 9.67.

4. Revise and republish subpart A to read as follows:

Subpart A—Freedom of Information Act Regulations

Sec.
9.11 Scope of subpart.
9.13 Definitions.
9.15 Availability of records.
9.17 Agency records exempt from public disclosure.
9.19 Segregation of exempt information and deletion of identifying details.
9.21 Publicly available records; proactive disclosures.
9.23 Requirements for making requests.
9.25 Responsibility for responding to requests.
9.26 Timing of responses to requests.
9.27 Responses to requests.
9.28 Requests for business information provided to the NRC.
9.29 Administrative appeals.
9.30 Contact for dispute resolution services.
9.35 Duplication fees for documents in the NRC Public Document Room and for NRC Advisory Committee proceedings.
9.37 Fees for processing NRC FOIA requests.
9.38 Preservation of records.
9.39 Annual report to the Attorney General of the United States and Director of the Office of Government Information Services.
9.41 Other rights and services.

§ 9.11 Scope of subpart.

This subpart prescribes procedures for making Nuclear Regulatory Commission (NRC or Commission) agency records available to the public for inspection and copying pursuant to the provisions of the Freedom of Information Act (FOIA) (5 U.S.C. 552) and provides notice of procedures for obtaining NRC records otherwise publicly available. This subpart should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Guidelines). Requests made by individuals for records

about themselves under the Privacy Act of 1974 (5 U.S.C. 552a) are processed in accordance with NRC's Privacy Act regulations at subpart B of this part. 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.

§ 9.13 Definitions.

As used in this part:

Agency record means a record in the possession and control of the NRC that is associated with Government 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.

Business information means commercial or financial information obtained by the NRC from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

Commercial-use request means a request made under § 9.23 and for information for a use or purpose that furthers a commercial, trade, or profit interest of the requester, which can include furthering those interests through litigation. The NRC’s decision to

place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information.

Compelling need means—

(1) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

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. The NRC will charge the requester for the actual direct costs of conducting an electronic records search, including computer search time, runs, and output. The NRC will also charge time spent by computer operators or programmers who conduct or assist in the conduct of an electronic records search.

Duplication means the process of making a copy of a record, or of the information contained in it, necessary to respond to a request made under § 9.23. Copies may take the form of paper copy, microform, audio-visual materials, or electronic records, among others. The NRC will honor a requester's preference for receiving a record in a particular form or format where it can readily reproduce it in the form or format requested.

Educational institution means an institution that operates a program or programs of scholarly research. Educational institution refers to a preschool, 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. A requester in this fee category must show that the request is made in connection with their role at the educational institution. The NRC may seek verification from the requester that the request is in furtherance of scholarly research.

Freedom of Information Act and Privacy Act Officer means the NRC official designated to fulfill the responsibilities for implementing and administering the Freedom of Information Act and the Privacy Act as specifically designated under the regulations in this part.

Noncommercial scientific institution means an institution that is not operated on a commercial basis, as the term 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. A requester in this category must show that the request is authorized by and is made under the direction of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use.

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

Other requester refers to a requester that does not fall within the fee categories of Commercial use, Educational institution, Noncommercial scientific institution, or Representative of the news media, as described in this section.

Record means any information that would be an agency record subject to the requirements of the Freedom of Information Act when maintained by the NRC in any format, including an electronic format. Record also includes a book, paper, map, drawing, diagram, 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, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. 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 “news” 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. Other examples of news media entities include online publications and websites that regularly deliver news content to the public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media will be considered to be news-media entities. A freelance journalist will be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the NRC may consider the past publication of the requester in making such a determination.

Review means the time devoted to examining records located in response to a request to determine whether any portion is exempt from disclosure. Review consists of the time for processing any record for disclosure, including ensuring that the records produced are responsive; de-duplicating records, redacting the record and marking the appropriate exemptions; conducting inter-agency or business submitter consultations;

and obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter. Review costs are properly charged even if a record ultimately is not disclosed. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search means the time devoted to looking for agency records responsive to requests. This includes a page-by-page or line-by-line identification of responsive information within the records and the reasonable efforts expended to locate and retrieve information from electronic records.

Submitter means any person from whom the NRC obtains business information, directly or indirectly. The term includes, without limitation, corporations, State, local or Tribal governments, and foreign governments.

Unusual circumstances means—

(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 demanded in a single request; or

(3) The need for consultation, which will be conducted with all practical 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 will be made available in any form or format requested by a person if the record is readily reproducible by NRC in that form or format. The NRC will make reasonable efforts to maintain its records in forms or

formats that are reproducible. The NRC will make reasonable efforts to search for records in electronic form or format when requested, except when these efforts would significantly interfere with the operation of any of the NRC's automated information systems. 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 FOIA provides for public access to information and records developed or maintained by Federal agencies.

(b) The following types of agency records are exempt from public disclosure under 5 U.S.C. 552(b):

(1) Records—

(i) That 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) That 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 the statute—

(i) Requires that the matters be withheld from the public in a manner that leaves 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 that are privileged or confidential;

(5) Interagency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency, provided

that the deliberative process privilege would not apply to records created 25 years or more before the date on which the records were requested;

(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 these 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, or 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 the 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 condition 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.

(c) 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.

(d)(1) The NRC will withhold information under this subpart only if—

(i) The NRC reasonably foresees that disclosure would harm an interest protected by an exemption described in paragraph (b) of this section; or

(ii) Disclosure is prohibited by law.

(2) Nothing in this subpart requires disclosure of information that is otherwise prohibited from disclosure by law, or otherwise exempted from disclosure under 5 U.S.C. 552(b)(3).

(e) Whenever a request is made that involves access to agency records described in paragraph (b)(7) of this section, the NRC may, during only the 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 will delete information that is exempt under one or more of the exemptions cited in §

9.17. The amount of information deleted will be indicated on the released portion of the record, unless providing this information would harm an interest protected by the exemption(s) under which the matter has been withheld.

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

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

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

(c) In denying a request for records, in whole or in part, the NRC will make a reasonable effort to estimate the volume of any information requested that is denied and provide the estimate to the person making the request, unless providing the estimate would harm an interest protected by the exemption(s) under which the information has been denied.

(d) When entire records or portions thereof are denied and deletions are made from parts of the record by computer, the amount of information deleted will be indicated on the released portion of the record, unless providing this indication would harm an interest protected by the exemption(s) under which the matter has been denied.

§ 9.21 Publicly available records; proactive disclosures.

(a) *Publication in the Federal Register*. The NRC will separately state, publish and maintain current in the Federal Register for the guidance of the public the following information:

(1) Descriptions of its headquarters and regional organization and the established place at which, the persons from whom, and the methods whereby, the public may obtain information, make submissions or requests, or obtain decisions;

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the NRC and available for public disclosure if subject to the Executive Order 12866 OIRA review process; and

(5) Each amendment, revision, or repeal of matters referred to in paragraphs (a)(1) through (4) of this section.

(b) *Public inspection*. Subject to the application of the FOIA exemptions and exclusion in 5 U.S.C. 552(b) and (c) and § 9.17, the NRC will make available for public inspection in an electronic format, including by posting on the NRC's website, https://www.nrc.gov, the following information:

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

(2) Those statements of policy and interpretations that have been adopted by the NRC but are not published in the Federal Register;

(3) NRC rules and regulations;

(4) NRC manuals and instructions to NRC personnel that affect any member of the public; and

(5) Copies of all records made publicly available pursuant to this section.

(c) *Indexes*. Individual indexes to publicly available records, including those records specified in this section, may be created by using the search features of the Agencywide Documents Access and Management System (ADAMS), located at the NRC website, https://www.nrc.gov/reading-rm/adams.html.

(d) *Information made available online and assistance from the FOIA Public Liaison*. The NRC will ensure that its website of posted records is reviewed and updated on an ongoing basis. The NRC has a FOIA Public Liaison who can assist individuals in locating particular records, in accordance with § 9.30.

(e) *NRC publications*. Single copies of NRC publications in the NUREG series, NRC Regulatory Guides, and Standard Review Plans as well as NRC issuances can be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

(f) *NRC Public Document Room*. 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 (a) of this section are also made available at the Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852-2738, by appointment.

(1) A person may request access to publicly available records in person, by telephone at 1-800-397-4209 or 301-415-4737, by email at PDR.Resource@nrc.gov, or by U.S. mail from the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852-2738.

(2) Each record requested must be described in sufficient detail to enable the NRC Public Document Room staff to locate the record.

(3) To obtain copies of records expeditiously, a person may open an account with the NRC Public Document Room reproduction contractor. Payment for reproduction services will be made directly to the contractor in accordance with § 9.35.

(g) *Disclosures of records frequently requested*. As provided in this section, the NRC will make publicly available all records regardless of form or format that have been released previously under 5 U.S.C. 552(a)(3) and this section, and that the NRC determines have become or are likely to become the subject of subsequent requests for the same, or substantially the same, records.

§ 9.23 Requirements for making requests.

(a) *In general*. Subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)), the NRC will promptly make its records available to any person pursuant to a request that conforms to the rules and procedures of this section.

(b) *Form of request*. A request will receive the quickest possible response if it is addressed to the NRC and addressed as a “Freedom of Information Act Request.” A request for records of the NRC must be made in writing and may be submitted in one of the following ways:

(1) By mail or delivery service to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001;

(2) By email to FOIA.Resource@nrc.gov, or other electronic means described on the FOIA page of the NRC’s website (https://www.nrc.gov); or

(3) Electronically to the National FOIA Portal at https://www.foia.gov.

(c) *Content of the request*. (1) To ensure the NRC’s ability to respond in a timely manner, a requester must describe each record sought in sufficient detail to enable NRC personnel knowledgeable about the subject matter to locate the record with a reasonable amount of effort. To the extent possible, requesters should include specific information that may help the NRC identify the requested records, such as the date, title

or name, author, recipient, subject matter of the record, case number, docket number, file designation, or other reference number.

(2) If after receiving a request the NRC determines that it does not reasonably describe the records sought, the NRC will inform the requester what additional information is needed or why the request is otherwise insufficient. If a request does not reasonably describe the records sought, the agency's response to the request may be delayed.

(3) To ensure the NRC's ability to communicate effectively with a requester, a request must include contact information for the requester, including the name of the requester and, to the extent available, a mailing address, telephone number, and email address at which the NRC may contact the requester regarding the request.

(4) A requester may specify the preferred form or format (including an electronic format) for the records they seek. The NRC will accommodate the requester's preference if the record is readily reproducible in that form or format.

(5) A requester must indicate in the request whether the requester is a commercial user, an educational institution, a non-commercial scientific institution, a representative of the news media, or "other" requester as those terms are defined in § 9.13, and the basis for claiming that fee category as described in § 9.37.

(6) If a requester seeks a waiver or reduction of fees associated with processing a request, then the request must include a statement to that effect as required by § 9.37.

(7) If a requester seeks expedited processing of a request, then the request must include a statement to that effect as required by § 9.26.

(d) *Perfected requests; effect of request deficiencies*. For purposes of computing its deadline to respond to a request, the NRC will deem a request to have been received only if, and on the date that, it receives a request that complies with paragraphs (b) and (c) of this section. If a request is deficient in any material respect, then the NRC may

return it to the requester and if it does so, it will advise the requester in what respect the request is deficient, and what additional information is needed to respond to the request. A determination by the NRC that a request is deficient in any respect is not a denial of a request for records and such determinations are not subject to appeal. If a requester fails to respond within 30 days after the NRC's notification that a request is deficient, the NRC will deem the request withdrawn.

(e) *Requests for NRC records pertaining to the requester*. An individual who wishes to inspect or obtain copies of records of the NRC that pertain to that individual must provide identity verification in accordance with § 9.54.

(f) *Requests for NRC records pertaining to an individual other than the requester*. Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (e.g., a copy of a death certificate or an obituary). As an exercise of administrative discretion, the NRC may require a requester to supply additional information if needed to verify that a particular individual has consented to disclosure.

(g) *Assistance from FOIA Public Liaison*. Requesters may contact the NRC's FOIA Public Liaison to seek assistance in determining the appropriate fee category, formatting of requests, or resolving any problems that arise prior to submitting a request or during the processing of a request, in accordance with § 9.30.

(h) *Requests for records not in NRC control or possession*. In determining which records are responsive to a request, the NRC ordinarily will include only records in its possession as of the date the NRC begins its search for the records. If any other date is used, the NRC will inform the requester of that date. A FOIA request covers only agency

records that are in existence on the date the perfected request is received under this section and does not cover agency records destroyed, discarded, or transferred to the National Archives and Records Administration before receipt of the request, or which are created after the date of the request.

§ 9.25 Responsibility for responding to requests.

(a) *Authority to grant or deny a request for records*. (1) Except as provided in paragraphs (a)(2) through (4) of this section, the head of the responsible NRC office, or their delegate, will make the initial determination either to grant or to deny in whole or in part requests for records. If disclosure is authorized, the head of the office or their delegate will furnish the agency records to the Freedom of Information Act and Privacy Act Officer, who will notify the requester of the determination.

(2) For records originated by, or located in, the files of the Office of the Inspector General, the Assistant Inspector General for Investigations, or their delegate, will make the initial determination either to grant or to deny in whole or in part requests for records. If disclosure is authorized, the Assistant Inspector General for Investigations will furnish the agency records to the Freedom of Information Act and Privacy Act Officer, who will notify the requester of the determination.

(3) For records originated by, or transmitted to, the Commission, a Commissioner, or records originated by, or for which the Office of the Secretary or an Advisory Committee has primary responsibility, the Deputy Secretary of the Commission, or their delegate, will make the initial determination either to grant or to deny in whole or in part a request for records. If disclosure is authorized, the head of the office will furnish the agency records to the Freedom of Information Act and Privacy Act Officer, who will notify the requester of the determination.

(4) For records originated by, or for which the Office of the General Counsel has principal responsibility, the General Counsel will make the initial determinations either to

grant or to deny in whole or in part requests for records. If disclosure is authorized, the head of the office will furnish the agency records to the Freedom of Information Act and Privacy Act Officer, who will notify the requester of the determination.

(b) *Content of the response*. (1) If the NRC determines that the request for records should be denied in whole or in part, then the requester will be notified by mail or by email. The letter of notification will:

(i) State the exemptions relied upon to deny the request in part or in whole;

(ii) If technically feasible, indicate the amount of information deleted and the exemptions under which the deletion is made at the place in the record where such deletion is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(iii) Set forth the name and title or position of the responsible official;

(iv) Advise the requester of the right to seek dispute resolution services from the NRC's FOIA Public Liaison, or the Office of Government Information Services (OGIS) in accordance with paragraph (c) of this section;

(v) Advise the requester of the right to an administrative appeal in accordance with § 9.29; and

(vi) Specify the official or office to which such an appeal will be submitted.

(2) If the NRC determines, after a reasonable search for records, that no responsive records have been found to exist, the NRC will notify the requester of the determination in writing or by email. The notification will also advise the requester of the right to administratively appeal the NRC's determination that no responsive records exist (i.e., to challenge the adequacy of the NRC's search for responsive records) in accordance with § 9.29. The response will specify the official or office to which the appeal will be submitted.

(c) *Resolution of disputes*. The NRC is committed to efficiently resolving disputes during the request process. The following resources are available to requesters to resolve any disputes that may arise during the request process:

(1) *FOIA Public Liaison*. Any request-related questions or concerns should be directed to the FOIA Public Liaison, who is responsible for reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes. Contact the NRC FOIA Public Liaison in accordance with § 9.30.

(2) *Dispute resolution*. OGIS offers non-compulsory, non-binding dispute resolution services to help resolve FOIA disputes. A requester may contact OGIS by mail, email, telephone, or fax as described at its webpage, https://www.archives.gov/ogis. Contact OGIS in accordance with § 9.30.

(d) *Use of record exclusions*. (1) In the event that the NRC identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c) or § 9.17(e), the NRC may confer with the Department of Justice, Office of Information Policy, to obtain approval to apply the exclusion.

(2) The NRC will maintain an administrative record of the process of invocation and approval of the exclusion by the Department of Justice, Office of Information Policy.

(e) *Consultation, referral, and coordination*. When reviewing records located by the NRC in response to a request, the NRC will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the agency must proceed in one of the following ways:

(1) *Consultation*. When records that originated with the NRC are responsive to a request but contain within them information of interest to another agency, the NRC ordinarily will consult with that other entity prior to making a release determination.

(2) *Referral*. (i) When the NRC believes that a different agency is best able to determine whether to disclose the record, the NRC ordinarily will refer the responsibility for responding to the request regarding that record to that agency because the agency that originated the record is presumed to be the best agency to make the disclosure determination. However, if the NRC and the originating agency jointly agree that the NRC is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever the NRC refers any part of the responsibility for responding to a request to another agency, the NRC will document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(3) *Coordination*. The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if the NRC locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, to avoid harm to an interest protected by an applicable exemption, the NRC will coordinate with the originating agency to seek its views on the disclosability of

the record. The NRC will then convey the release determination for the record that is the subject of the coordination to the requester.

(f) *Disclosure review*. (1) On receipt of any request potentially involving information exempt from disclosure (e.g. nonpublic information), the NRC will determine whether the information is exempt from disclosure under § 9.17. Whenever a request involves a record containing information that may be exempt from disclosure, but the responsible office, as specified in paragraph (a) of this section, determines that, although exempt, the disclosure of the agency records will not be contrary to the public health and safety, will not be harmful to the common defense or security, and will not affect the rights of any person, the responsible office may authorize disclosure of the agency records. If the responsible office authorizes disclosure of the agency records, the head of the office will furnish the agency records to the Freedom of Information Act and Privacy Act Officer, who will notify the requester of the determination in the manner provided in § 9.27.

(2) Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another agency under any applicable executive order concerning the classification of records, the NRC will refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever an agency's record contains information that has been derivatively classified (e.g., when it contains information classified by another agency), the NRC will refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(g) *Timing of responses to consultations and referrals*. All consultations and referrals received by the NRC will be handled according to the date that the first agency received the perfected FOIA request as described in § 9.23.

(h) *Agreements regarding consultations and referrals*. The NRC may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

§ 9.26 Timing of responses to requests.

(a) *In general*. The NRC does not consider a request as received until the date it is received by the Freedom of Information Act and Privacy Act Officer. When NRC personnel determine that a request was misdirected within the agency, the request will be routed promptly to the Freedom of Information Act and Privacy Act Officer. If a Freedom of Information Act request is misdirected, the response time provided by this section will begin on the date that the request is received by the Freedom of Information Act and Privacy Act Officer, but in any event not later than 10 working days, as defined in § 9.3, after the request is first received.

(b) *Time for initial disclosure determination*. In determining which records are responsive to a request, the NRC ordinarily will include only records in its possession as of the date the NRC begins its search for the records. If any other date is used, the NRC will inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c) is not considered responsive to a request. Except as provided in paragraphs (d) and (e) of this section, the NRC will notify a requester within 20 working days of its determination.

(c) *Multitrack processing*. (1) To ensure the most equitable treatment possible of all requesters, the NRC will seek to respond to requests according to their order of receipt within each track of the multitrack processing system. The NRC has designated processing tracks that distinguish between expedited, simple, and complex requests based on the estimated time it will take to process the request.

(2) The NRC will advise a requester of the track into which their request falls and, when appropriate, will offer the requester an opportunity to narrow the scope of their

request so that it can be placed in a different processing track. The NRC will notify the requester in writing if subsequent information substantially changes the estimated time to process a request. A requester may modify the request to allow it to be processed faster or to reduce the cost of processing. The NRC may provide partial or interim responses to requester, as appropriate.

(3) The NRC uses a three-track system.

(i) The first track is for expedited processing. The NRC will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in paragraph (g) of this section.

(ii) The second track is for simple requests (e.g., requests involving possible records from two or three offices and/or various types of files of moderate volume, of which, some are expected to be exempt).

(iii) The third track is for complex requests that, because of their unusual volume or other complexity, are expected to take more than 30 working days to complete (e.g., requests involving several offices, regional offices, another agency's records, classified records requiring declassification review, records for business information that are required to be referred to the submitter for their proprietary review prior to disclosure, records in large volumes which require detailed review because of the sensitive nature of the records such as investigative records or legal opinions and recordings of internal deliberations of agency staff).

(d) *Extension of time limit in unusual circumstances*. (1) Whenever the NRC cannot meet the statutory time limit for processing a request because of “unusual circumstances,” as defined in § 9.13, and the NRC extends the time limit on that basis, the NRC will, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which the agency estimates processing of the request will be completed. Where the extension exceeds 10

working days, the NRC will, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request. The NRC will make available its FOIA Public Liaison for this purpose in accordance with § 9.25(c).

(2) In unusual circumstances, the NRC may extend the time limit prescribed in paragraph (b) of this section 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 made. The NRC may consider the following factors in determining whether "unusual circumstances," as defined in § 9.13, apply:

(i) The need to search for and collect the requested records from three or more offices within NRC's headquarters and/or regional offices;

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

(iii) The need for consultation with another Government agency having a substantial interest in the determination of the request;

(iv) The need to undertake a declassification review of records;

(v) The need to refer records to a licensee or other business submitter under § 9.28; or

(vi) The need to retrieve records from Federal Records Centers or other off-site facilities.

(e) *Aggregating requests*. To satisfy unusual circumstances under the FOIA, the NRC may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. The NRC will not aggregate multiple requests that involve unrelated matters.

(f) *Exceptional circumstances*. (1) If the NRC cannot act upon the request within the time periods described in paragraph (b) or (c) of this section due to exceptional circumstances, the NRC will provide the requester with the reasons for the delay and provide a projected response date.

(2) A requester will be provided an opportunity to limit the scope of the request so that it may be processed in a shorter amount of time, or to agree to a reasonable alternative time frame for processing. When notifying a requester under this paragraph (f), the NRC will make available its FOIA Public Liaison to assist in the resolution of any disputes between the requester and the agency and will notify the requester of the requester's right to seek dispute resolution services from the Office of Government Information Services within the National Archives and Records Administration. See § 9.25(c).

(3) For the purposes of this paragraph (f), “exceptional circumstances” do not include delays that result from the normal predictable workload of FOIA requests or a failure by the NRC to exercise due diligence in processing the request. A requester's unwillingness to agree to reasonable modification of the request or an alternative time for processing the request may be considered as factors in determining whether exceptional circumstances exist and whether the agency exercised due diligence in responding to the request.

(g) *Expedited processing*. (1) The NRC may take requests and appeals out of order and give expedited treatment if the NRC determines that such requests or appeals involve a compelling need as defined in § 9.13.

(2) A request for expedited processing must:

(i) Be made in writing;

(ii) Be labelled “Expedited Processing Requested”;

(iii) Be submitted as part of a request for records in accordance with § 9.23; and

(iv) Include a statement certifying the compelling need given to be true and correct to the best of their knowledge and belief. The NRC may waive the certification requirement as a matter of administrative discretion.

(3) The Freedom of Information Act and Privacy Act Officer, or their delegate, will make the initial determination whether to grant or deny a request for expedited processing and will notify a requester within 10 calendar days after the request has been received whether expedited processing will be granted.

(4) If the NRC grants a request for expedited processing, then the NRC will give the expedited request priority over non-expedited requests and will process the expedited request as soon as practical.

(5) If the NRC denies a request for expedited processing, then the requester will have the right to submit an appeal to the denial determination in accordance with § 9.29. The NRC will communicate this appeal right as part of its written notification to the requester denying expedited processing. The requester will label its appeal request "Appeal for Expedited Processing."

§ 9.27 Responses to requests.

(a) *In general*. The NRC, to the extent practical, will communicate electronically with requesters having access to the internet, through online platforms such as email or web portal.

(b) *Acknowledgment of requests*. The NRC will acknowledge the request in writing and assign it an individualized tracking number if it will take longer than 10 working days, as defined in § 9.3, to process. The acknowledgment letter will contain the following information:

(1) The applicable tracking number;

(2) The date of receipt, as determined in accordance with § 9.23;

(3) A brief statement identifying the subject matter of the request; and

(4) Confirmation, with respect to any fees that may apply to the request pursuant to § 9.37, that the requester has sought a waiver or reduction in such fees, has agreed to pay any and all applicable fees, or has specified a higher limit that the requester is willing to pay in fees to process the request.

(c) *Estimated dates of completion and interim responses*. Upon request, the NRC will provide an estimated date by which the agency expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the NRC may provide interim responses, releasing the records on a rolling basis.

(d) *Grants of requests*. Once the NRC determines it will grant a request in full or in part, it will notify the requester in writing. The NRC will also inform the requester of any fees charged under § 9.37 and disclose the requested records to the requester promptly upon payment of any applicable fees.

(e) *Adverse determinations of requests*. The NRC will notify the requester, in writing, if the NRC makes an adverse determination denying a request in any respect, and include in its decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(f) *Content of denial*. The denial must be signed by the Freedom of Information Act and Privacy Act Officer or designee and must include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the head of the office recommending denial of the record;

(3) An estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption;

(4) A statement that the denial may be appealed under § 9.29, and a description of the appeal requirements; and

(5) A statement notifying the requester of the assistance available from the agency's FOIA Public Liaison, and the dispute resolution services offered by OGIS in accordance with § 9.25(c).

(g) *Markings on released documents*. Records disclosed, in part, will be marked to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted must also be indicated on the record, if technically feasible.

(h) *Discretionary disclosures*. Even though a FOIA exemption may apply to records requested, the NRC may, if not precluded by law, elect not to apply the exemption. The fact that the exemption is not applied by the NRC in response to a particular request will have no precedential significance in processing other requests.

§ 9.28 Requests for business information provided to the NRC.

(a) *In general*. Business information provided to the NRC by a business submitter will not be disclosed pursuant to a FOIA request except in accordance with this section.

(b) *Designation of business information*. A submitter of business information must use good faith efforts to designate by appropriate markings, at the time of submission or a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4). These

designations expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *Notice to submitters*. (1) The NRC will provide a submitter with notice of receipt of a request or appeal whenever:

(i) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4 of the FOIA; or

(ii) The NRC has reason to believe that the information may be protected from disclosure under Exemption 4 of the FOIA.

(2) The notice requirements of this paragraph (c) will not apply if:

(i) The NRC determines that the information is exempt under the FOIA;

(ii) The information lawfully has been published or otherwise made available to the public;

(iii) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600; or

(iv) The designation made by the submitter under paragraph (d)(1) of this section appears obviously frivolous, except that, in such a case, the NRC will, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(d) *Opportunity to object to disclosure before release*. (1) The submitter will be allowed 30 calendar days from the date of the notice described in paragraph (c) of this section to object to the disclosure of records containing its confidential business information prior to NRC disclosing it. If a submitter has any objection to the disclosure, the submitter must provide a detailed written statement. The statement must specify all grounds that support why the information is a trade secret or commercial or financial information that is privileged or confidential.

(2) If a submitter fails to respond to the notice within the time specified in the notice, the submitter will be considered to have no objection to the disclosure of the information. Information provided by the submitter that is received after the specified date for a response will not be considered unless that date is extended by the Freedom of Information Act and Privacy Act Officer upon request by the submitter.

(e) *Notice of final decision to disclose*. The NRC will consider a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Except as otherwise prohibited by law, when notice is given to a submitter under this section, the requester will be advised that such notice has been given to the submitter. Whenever the NRC decides to disclose business information over the objection of a submitter, the NRC will forward to the submitter a written notice that will include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

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

(3) A specified disclosure date that is not less than 30 calendar days after the notice of the final decision to release the requested information has been sent, by mail or email, to the submitter, after which the information will be made available to the public.

(f) *Notice of FOIA lawsuit*. Whenever a requester files a lawsuit seeking to compel disclosure of business information, the NRC will promptly notify the submitter.

§ 9.29 Administrative appeals.

(a) *Grounds for administrative appeals*. A requester may administratively appeal an adverse NRC determination on their initial request, including–

(1) Denial of a Freedom of Information Act request for access, in whole or part, to agency records;

(2) Denial of a request for waiver or reduction of fees, including a denial to assign a requester to a particular fee category; or

(3) Denial of a request for expedited processing.

(b) *Not grounds for administrative appeals*. A requester may not file an administrative appeal for the lack of a timely response.

(c) *Requirements for filing an administrative appeal*. To ensure a timely response to an appeal:

(1) The appeal must be made in writing;

(2) An appeal, other than an appeal of the denial of an expedited processing request, must be postmarked or submitted electronically within 90 calendar days of the date of an adverse determination;

(3) An appeal of a denial of an expedited processing request must be made within 10 calendar days of the date of an adverse determination;

(4) If an appeal is submitted by mail or delivery service, it must be addressed as set forth on the NRC's website;

(5) The appeal must be labelled "Freedom of Information Act Appeal";

(6) If an appeal is submitted by electronic means, it must be addressed as set forth on the NRC's website, https://www.nrc.gov/reading-rm/foia/foia-privacy.html. The appeal must be labelled "Freedom of Information Act Appeal";

(7) The appeal must set forth contact information for the requester, including to the extent available, a mailing address, telephone number, or email address at which the NRC may contact the requester regarding the appeal; and

(8) The appeal must specify the applicable request tracking number, the date of the initial request, and the date of the initial determination; and, where possible, enclose a copy of the initial request and the initial determination being appealed.

(d) *Processing of administrative appeals*. The receipt of the appeal will be acknowledged by the NRC and the requester will be advised of the date the appeal was received, the appeal tracking number, and the expected date of response.

(e) *Nondisclosed information*. On receipt of any appeal involving nondisclosed exempt information, the NRC will take appropriate action in accordance with § 9.25(f).

(f) *Determinations to grant or deny administrative appeals*. (1) The Chief Information Officer, or their delegate, will act on the appeal, except that the Inspector General will act on any appeal where the Assistant Inspector General for Investigations has made the initial determination being appealed; and the Secretary of the Commission, or their delegate, will act on any appeal where the Deputy Secretary of the Commission or General Counsel has made the decision being appealed.

(2) The official authorized to act on an appeal will decide whether to reverse the initial determination (in whole or in part), or to remand the initial determination to the Freedom of Information Act and Privacy Act Officer for further action, and will notify the requester of this decision in writing within 20 working days, as defined in § 9.3, after the date of receipt of the appeal, unless extended pursuant to § 9.26(d) and (f).

(3) If the appeal is denied (in whole or in part), the requester will be:

(i) Notified in writing of the denial;

(ii) Notified of the reasons for the denial, including which of the FOIA exemptions were relied upon;

(iii) Notified of the name and title or position of the official responsible for the determination on appeal;

(iv) Provided with a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has a principal place of business, the judicial district in which the requested records are located, or the District of Columbia in accordance with 5 U.S.C. 552(a)(4)(B); and

(v) Provided with notification that dispute resolution services are available to the requester as a non-exclusive alternative to litigation through the Office of Government Information Services in accordance with 5 U.S.C. 552(h)(3). Dispute resolution is a voluntary process. If the NRC agrees to participate in the dispute resolution services provided by the Office of Government Information Services, it will actively engage as a partner to the process in an attempt to resolve the dispute. See § 9.30 for OGIS contact information.

(4) If an initial determination is remanded or modified on appeal, the requester will be notified of that determination in writing. The NRC will then further process the request in accordance with that appeal determination and will respond directly to the requester.

(g) *When an appeal is required*. Before seeking review by a court of an adverse determination, a requester generally must first submit a timely administrative appeal.

(h) *Adjudication of administrative appeals of requests in litigation*. An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

§ 9.30 Contact for dispute resolution services.

(a) NRC's FOIA Public Liaison:

(1) By mail—11555 Rockville Pike, Rockville, MD 20852; and

(2) By email—FOIAPublicLiaison.Resource@nrc.gov.

(b) Office of Government Information Services within National Archives and Records Administration:

(1) By mail—8601 Adelphi Road-OGIS, College Park, MD 20740;

(2) By facsimile—202-741-5769; and

(3) By email—ogis@nara.gov.

§ 9.35 Duplication fees for documents in the NRC Public Document Room and for NRC Advisory Committee proceedings.

(a)(1) The charges by the duplicating service contractor for the duplication of records made available under § 9.21 at the NRC Public Document Room (PDR), One White Flint North, 11555 Rockville Pike, Room OWFN-P1 B35, Rockville, Maryland, may be found on the NRC's website at https://www.nrc.gov/reading-rm/pdr/copy-service.html, by calling the PDR at 1-800-397-4209 or 301-415-4737, or by email at PDR.Resource@nrc.gov and are as follows:

(i) Paper-to-paper reproduction is $0.30 per page for standard size (up to and including 11″ × 14″ reduced). Pages 11″ × 17″ are $0.30 per page. Pages larger than 11″ × 17″, including engineering drawings, are $1.50 per square foot.

(ii) Pages larger than 11″ × 17″ are $1.50 per square foot.

(iii) Microfiche-to-paper reproduction is $0.30 per page. Aperture card blowback to paper is $3.00 per square foot.

(iv) Microfiche card duplication is $5.00 per card; CD-ROM duplication is $10.00 each.

(v) The charges for Electronic Full Text (EFT) (ADAMS documents) copying are as follows:

(A) Electronic Full Text (EFT) copying of ADAMS documents to paper (applies to images, OCR TIFF, and PDF text) is $0.30 per page.

(B) EFT copying of ADAMS documents to CD-ROM is $5.00 per CD plus $0.15 per page.

(C) CD-ROM-to-paper reproduction is $0.30 per page.

(vi) Priority rates (rush processing) are as follows:

(A) The priority rate offered for standard size paper-to-paper reproduction is $0.35, microfiche-to-paper reproduction is $0.40, EFT copying of ADAMS documents to paper, and CD-ROM-to-paper production is $0.35 per page.

(B) The priority rate for aperture cards is $3.50 per square foot. The priority rate for copying EFT to CD-ROM is $6.00 per CD-ROM plus $0.20 per page.

(vii) Facsimile charges are $1.00 per page for local calls; $2.00 per page for U.S. long distance calls, and $6.00 per page for foreign long-distance calls, plus the regular per page copying charge.

(2) 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.

(3) A requester may open an account with the duplicating service contractor. A requester may obtain the name and address and billing policy of the contractor from the NRC Public Document Room.

(4) Any change in the costs specified in this section will become effective immediately pending completion of the final rulemaking that amends this section to reflect the new charges. The Commission will post the charges that will be in effect for the interim period at the NRC Public Document Room. The Commission will publish a final rule in the Federal Register that includes the new charges within 15 working days, as defined in § 9.3, from the beginning of the interim period.

(b) The NRC will assess the following charges for copies of records to be duplicated by the NRC at locations other than the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

(1) Sizes up to 8 ½ × 14 inches made on office copying machines—$0.20 per page of copy; and

(2) The charge for duplicating records other than those specified in paragraphs (a) and (b) of this section 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. Requesters will be given the citation to any copyrighted publication and advised to contact the NRC Public Document Room to arrange to view the publication.

§ 9.37 Fees for processing NRC FOIA requests.

(a) *In general*. The NRC may charge fees for processing a FOIA request. The NRC will determine whether and to what extent to charge a requester the fees described in this paragraph by determining a fee category for the requester (see paragraph (b) of this section) and then by charging the requester those fees applicable to the assigned category (see paragraph (c) of this section), unless circumstances exist (see paragraph (d) of this section) that render fees inapplicable or unless the requester has requested and the NRC has granted a reduction in or waiver of fees (see paragraph (e) of this section).

(1) The NRC will generally respond to a request electronically. Except where a requester specifically asks that the NRC provide released records in paper format, or where the records must be scanned to process the records, the NRC will ordinarily not charge duplication fees. However, where a requester asks that the NRC provide released records in paper format, or where scanning records into a digital format is necessary to process the records, the NRC will charge a requester the fees for the cost of printing or copying records at the rate of $0.20 per page.

(2) The NRC will charge the following hourly rates for search and review of agency records by NRC personnel, rounded up to the nearest full hour:

(i) Clerical search and review at a salary rate that is equivalent to a GG-9/step 7, plus 16 percent fringe benefits;

(ii) Professional/managerial search and review at a salary rate that is equivalent to a GG-14/step 7, plus 16 percent fringe benefits; and

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

(3) Search costs will be assessed even if no records are located, or, if records are located, all are exempt from disclosure.

(4) The NRC will honor the requester's preference for receiving records in a particular format whenever the NRC can readily reproduce the record in that format.

(b) *Categories of requesters*. (1) Within 20 calendar days of the receipt of a request, the NRC will determine the proper fee category that applies to a requester. The NRC will inform the requester of the determination in writing. Where the NRC has reasonable cause to doubt the use to which a requester will put the records sought or where that use is not clear from the request itself, the NRC will seek additional clarification before assigning the requester to a specific category.

(2) The requester will have the right to submit an appeal of the NRC's determination of fee category in accordance with § 9.29. The NRC will communicate this appeal right as part of its written determination of one of the following fee categories:

(i) Commercial user.

(ii) Educational institution.

(iii) Noncommercial scientific institution.

(iv) Representative of the news media.

(v) Other requester.

(c) *Fees applicable to each category of requester*. The following fee schedule applies to requests processed under the FOIA. Specific levels of fees are prescribed for each category of requester identified in paragraph (b)(2) of this section.

(1) Commercial users will be charged the full direct costs of searching for, reviewing, and duplicating the requested records.

(i) When a request is received for a disclosure that is primarily in the commercial interest of the requester, the NRC will not consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The NRC may recover the cost of searching for and reviewing records even when there is ultimately no disclosure of records or no records are located.

(ii) The NRC will not charge commercial use requesters for review at the administrative appeal stage of exemptions applied at the initial review stage. However, any costs associated with an agency's re-review of withheld information may be assessed as review fees.

(2) Educational and non-commercial scientific institution requesters will be charged only for the cost of duplicating records they request, except that the NRC will provide the first 100 pages of duplication free of charge.

(3) Representatives of the news media will be charged only for the cost of duplicating the records they request, except that the NRC will provide the first 100 pages of duplication free of charge.

(4) Other requesters who do not fit any of the categories described in paragraphs (c)(1) through (3) of this section will be charged the full direct cost of searching for and duplicating records that are responsive to the request, except that the NRC will provide the first 100 pages of duplication and the first two hours of search time free of charge.

(i) For copies of records produced on tapes, disks, or other media, the NRC will charge the direct costs of producing the copy, including operator time. The NRC may

recover the cost of searching for records even if there is ultimately no disclosure of records, or no records are located.

(ii) Requests from persons for records about themselves filed in the NRC's systems of records will be assessed fees as provided under the fee provisions in § 9.85.

(d) *Other circumstances when fees are not charged*. The NRC may not charge a requester certain FOIA processing fees in the following situations:

(1) If the cost of collecting a fee would be equal to or greater than the total FOIA processing fee, taking into account any free services to which the requester is entitled under this section, then the NRC will not charge a requester the FOIA processing fees.

(2) If the NRC has waived or reduced FOIA processing fees in accordance with paragraph (e) of this section, then the NRC will not charge the portion of the FOIA processing fees that has been waived or reduced.

(3) If the NRC fails to comply with any time limit under § 9.26, then the NRC will not assess search fees.

(4) If the requester is a representative of the news media or an educational or noncommercial scientific institution, then the NRC will not assess duplication fees, unless:

(i) A court has determined that exceptional circumstances, as defined by the FOIA, exist; or

(ii) The NRC has determined that unusual circumstances, as defined under § 9.13 and referenced in § 9.26, apply to the processing of the request; and

(A) Provided timely written notice to the requester of the unusual circumstances in accordance with § 9.26;

(B) Determined that more than 5,000 pages are necessary to respond to the request; and

(C) Discussed with the requester (or made not less than three good faith attempts to do so) how the requester could effectively limit the scope of the request.

(5) If the NRC determines, as a matter of administrative discretion, that waiving or reducing the fees would serve the interest of the United States Government.

(e) *Waiver or reduction of fees*. (1) A requester may seek from the NRC a waiver or reduction in the fees otherwise applicable to a FOIA request provided the requester:

(i) Requests such waiver or reduction of fees in writing as part of the FOIA request;

(ii) Labels the request for waiver or reduction of fees “Fee Waiver or Reduction Requested” on the FOIA request; and

(iii) Demonstrates that the fee reduction or waiver is in the public interest because:

(A) Furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Government; and

(B) Furnishing the information is not primarily in the commercial interest of the requester.

(2) However, a requester may submit a fee waiver request at a later time, so long as the underlying record request is pending or on administrative appeal.

(3) When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester must pay any costs incurred up to the date the fee waiver request was received.

(f) *Advance notice and prepayment of fees*. (1) Subject to paragraphs (f)(2) through (4) of this section, for requests other than those described in § 9.26(d) and (f), the NRC will not require the requester to make an advance payment before work is commenced or continued on a request. However, payment owed for work already

completed (i.e., payment before a response is issued to a requester) is not an advance payment.

(2) When the NRC determines or estimates that a total fee to be charged under this section will exceed $250.00, the NRC will require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to the NRC within 30 calendar days of the billing date, the NRC will require that the requester pay the full amount due, plus any applicable interest on that prior request, and make an advance payment of the full amount of any estimated fee before the NRC begins to process a new request or continues to process a pending request or any pending appeal. Where the NRC has a reasonable basis to believe that a requester has misrepresented the requester's identity to avoid paying outstanding fees, the NRC may require that the requester provide proof of identity.

(4) In situations in which the NRC requires advance payment, the request will not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the agency's fee determination, the request will be closed.

(g) *Notice of anticipated fees in excess of $25.00*. (1) When the NRC determines or estimates that the fees to be assessed in accordance with this section will exceed $25.00, the NRC will notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated.

(i) If only a portion of the fee can be estimated readily, the NRC will advise the requester accordingly.

(ii) If the request is for a noncommercial use, the notice will specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge.

(iii) If the requester is charged search fees, two hours of search time will be provided at no charge, and the NRC will advise the requester whether those entitlements have been provided.

(2) If the NRC notifies the requester that the actual or estimated fees are in excess of $25.00, the request will not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. The NRC will not accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the NRC estimates that the total fee will exceed that amount, the agency will toll (pause) the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The agency will inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) The NRC FOIA Public Liaison is available to assist any requester in reformulating a request to meet the requester's needs at a lower cost. Contact the NRC FOIA Public Liaison in accordance with § 9.30.

(h) *Charges for other services*. (1) Although not required to provide special services, if the NRC chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(2) For requests that require the retrieval of records stored by the NRC at a Federal records center operated by the National Archives and Records Administration (NARA), the NRC will charge additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(i) *Charging interest*. (1) The NRC will charge interest on any unpaid bill starting on the 31st day following the date the billing was sent to the requester in accordance with the NRC's regulations set out in § 15.37 of this chapter. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the agency.

(2) The NRC will use its debt collection procedures that are in part 15 of this chapter for any overdue fees.

(j) *Form of payment*. Payment may be tendered as set forth on https://www.nrc.gov/reading-rm/foia/foia-privacy.html.

(k) *Aggregating requests*. When the NRC reasonably believes that a requester or a group of requesters is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the NRC may aggregate those requests and charge accordingly. The NRC may presume that multiple requests of this type made within a 45-day period have been made to avoid fees. For requests separated by a longer period, the NRC will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

§ 9.38 Preservation of records.

The NRC will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration. Records described in this section will not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 9.39 Annual report to the Attorney General of the United States and Director of the Office of Government Information Services.

(a) On or before February 1 of each year, the NRC will submit a report covering the preceding fiscal year to the Attorney General of the United States and to the Director of the Office of Government Information Services that will include the information required by 5 U.S.C. 552(e)(1).

(b) The NRC will make its annual FOIA reports available to the public at the NRC website, https://www.nrc.gov.

§ 9.41 Other rights and services.

Nothing in this subpart will be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Dated: March 4, 2026.

For the Nuclear Regulatory Commission.

Carrie Safford,
Secretary of the Commission.