

# RULEMAKING ISSUE (Affirmation)

April 12, 2005

SECY-05-0061

FOR: The Commissioners

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

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

## PURPOSE:

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

## BACKGROUND:

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

Contact:  
Carol Ann Reed, OIS  
301-415-7169

DISCUSSION:

The final rule amends several provisions. In January 2001, the Commission announced a reorganization that directed the Chief Information Officer (CIO) to report to the Executive Director for Operations (EDO). To conform with this reporting relationship, the appellate authority, previously delegated to the Secretary of the Commission to serve as the appellate official for denials of requests for FOIA fee waivers and requests for expedited processing of FOIA requests, has been reassigned to the EDO or a Deputy EDO. Also, the Executive Assistant to the Secretary of the Commission has been designated the initial denying official for records located in the Office of the Commissioners, Office of the Secretary, and with Advisory Committees because the Assistant Secretary position was abolished.

This final rule establishes agency procedures for predisclosure notification to submitters of confidential financial and commercial information. The final rule also updates provisions relating to the location of publicly available NRC records, deletes the reference to the Chief Information Officer designating the FOIA/PA Officer, and makes several clarifications: where to send requests and appeals; how to establish an account with the PDR reproduction contractor; how to obtain access to copyrighted information; applicability of the independent determination made by the FOIA/PA Officer; and that failure of a requester to pay FOIA fees billed by another Federal agency may be a basis for not processing a request. The final rule makes several changes in the PA regulations. Reference to a specific Executive Order number that establishes criteria for classifying information has been deleted. A uniform approach for referral of PA records under the control of another Federal agency has been established. The final rule also removes the PA fee waiver provision because it is not needed, and readers are referred to the NRC Web site to find the particular exemptions applicable to a specific PA System of Records.

RECOMMENDATIONS:

That the Commission:

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

The Commissioners

COORDINATION:

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

**/RA Ellis W. Merschoff Acting for/**

Luis A. Reyes  
Executive Director  
for Operations

Attachment: Federal Register Notice

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150-AH12

Public Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect changes regarding officials who initially deny access to records or deny access to records whose initial denial has been appealed, and to reflect a change of an appellate official due to a reorganization. This amendment authorizes the Executive Assistant to the Secretary of the Commission, rather than the Assistant Secretary, to make the initial determination to deny NRC records, in whole or in part, under the NRC's regulations. An appeal of a denial of request for waiver or reduction of fees, or denial of a request for expedited processing is made to the Executive Director for Operations, rather than the Secretary of the Commission. The final rule establishes NRC procedures to give predisclosure notification to submitters of confidential

business or commercial information, and makes a number of additional clarifying and conforming amendments.

EFFECTIVE DATE: (insert date 30 days from date of publication)

ADDRESSES: Carol Ann Reed, Freedom of Information Act and Privacy Act Officer, Information and Records Services Division, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; Telephone: (301) 415-7169; Internet: [FOIA@nrc.gov](mailto:FOIA@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

The Freedom of Information Act (FOIA) grants individuals the right to seek access to agency records and the right to appeal an initial agency denial of access to the requested records. The Privacy Act (PA) allows an individual to request records filed under his or her name, or personal identifier, and to appeal a denial of access to the records.

On April 27, 2004 (69 FR 22737), a notice of proposed rulemaking to amend 10 CFR Part 9, Subpart A, Freedom of Information Act Regulations, and Subpart B, Privacy Act Regulations was published with a request for public comment by July 12, 2004.

The final rule amends several provisions. In January 2001, the Commission announced a reorganization that directed the Chief Information Officer (CIO) to report to the Executive Director for Operations (EDO). To conform with this reporting relationship, the appellate authority, previously delegated to the Secretary of the Commission to serve as the appellate

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

This final rule establishes agency procedures for predisclosure notification to submitters of confidential financial and commercial information.

The final rule also updates provisions relating to the location of publicly available NRC records, deletes the reference to the Chief Information Officer designating the FOIA/PA Officer, and makes several clarifications: where to send requests and appeals; how to establish an account with the PDR reproduction contractor; how to obtain access to copyrighted information; applicability of the independent determination made by the FOIA/PA Officer; and that failure of a requester to pay FOIA fees billed by another Federal agency may be a basis for not processing a request. The final rule makes several changes in the PA regulations. Reference to a specific Executive Order number that establishes criteria for classifying information has been deleted. A uniform approach for referral of PA records under the control of another Federal agency has been established. The final rule also removes the PA fee waiver provision because it is not needed. Readers are referred to the NRC Web site to find the particular exemptions applicable to a specific PA System of Records.

Comments on the Proposed Rule

The NRC received comments from one individual and three organizations. The individual's comment related to nuclear weapons and was not within the scope of this rule. The other comments relate to §9.28, a new provision that implements Executive Order 12600, issued June 23, 1987, and requires agencies to implement, by regulation, procedures for predisclosure notification to submitters of confidential business and financial information.

One commenter suggested that the notice of opportunity to object to NRC's initial disclosure determination provided in §9.28(a) should specify the grounds on which the agency based its determination. Often, NRC's initial determination does provide the basis for its determination. However, in some cases, the reason NRC gives initial notice is that the agency does not have an adequate record to make a determination. In many of these cases documents marked or believed to contain trade secrets or confidential commercial or financial information have been in NRC files for many years, thus the basis for continued withholding from public disclosure may no longer be applicable. In these cases, NRC's initial notice often seeks additional information on which to base a determination. Language has been added to §9.28(a) to clarify that some initial notices are for the purpose of obtaining information to support an agency determination.

Several commenters raised concerns regarding the time allowed for submitters to respond to NRC notices. Several requested that extensions be allowed. In response to these comments, §9.28(b) has been changed to allow 30 calendar days to respond to the NRC notice, rather than the 15 days allowed in the proposed rule. Also, §9.28(c)(3) has been changed to state that, should NRC deny the submitter's request for nondisclosure and decide to disclose the information, the disclosure date set by NRC would be 30 calendar days from the NRC's notice to the submitter, subject to a determination by the Commission that a shorter

period of time to respond is necessary in a particular instance. The proposed rule stated it would be a “reasonable period of time.”

Several commenters raised issues relating to withdrawal of information when NRC disagreed with a submitter’s claim that the information was a trade secret or confidential commercial or financial information or was voluntarily submitted, and to eliminate the balancing provision in 10 CFR 2.390. These suggestions have not been adopted. These same comments were received by the Commission in response to a proposed rule amending the predecessor to 10 CFR 2.390, 10 CFR 2.790 issued November 23, 1992 (57 FR 61013). The agency thoroughly discussed its reasons for rejecting these suggestions in its response to comments to a revised proposed rule (66 FR 52721; October 17, 2001) and its publication of the final rule (68 FR 18836; April 17, 2003).

A commenter suggested that §9.28(b) be changed to ensure that the NRC considers information furnished after the NRC-imposed deadline, but before NRC makes a final determination, if practicable. The agency does not believe this change is necessary. Section 9.28(b), the provision that allows the NRC FOIA/PA Officer to grant extensions, gives an adequate opportunity for the submitter to submit information after the initial response date and have it considered by the NRC.

Another commenter suggested that the agency provide an appeal provision if the agency decides to release information a submitter claims to be trade secrets or confidential commercial or financial information. The NRC does not believe that an appeal provision is necessary because §9.28(c)(3) states that, should NRC deny the submitter’s request for nondisclosure and decide to disclose the information, the disclosure date set by NRC would be



30 calendar days from the NRC's notice to the submitter, unless the Commission determines that a shorter period of time to respond is necessary. However, the Commission would give the submitter sufficient time to seek judicial review if the submitter objected to the NRC's final decision.

Finally, a commenter suggested establishing a standard for determining when voluntarily submitted information is proprietary. This suggestion was not adopted because §9.28 deals only with procedural provisions by which submitters of trade secrets or confidential commercial or financial information are given notice of agency determinations regarding this information once it has become subject to a FOIA request, and the submitters' rights with respect to agency determinations.

#### Discussion of Amendments

Section 9.8 includes a new §9.28 in the list of sections that contain an information collection requirement that appears in paragraph (b).

Section 9.13 deletes the reference to the Chief Information Officer designating the FOIA/PA Officer.

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

Section 9.21(c)(6) addresses the requirement that the agency publish a statement in the *Federal Register* determining that publication of an index quarterly or more frequently is unnecessary. This section states that it is unnecessary to continue publishing the monthly index because members of the public may create their own indexes to records, including those in the categories required to be made public by 5 U.S.C. 552(a)(2), by using the search features in ADAMS. Section 5 U.S.C. 552(a)(2)(E) requires that the agency maintain and make available for public inspection and copying current indexes for records that 5 U.S.C. 552(a)(2)(A), (B), (C), and (D) require be made public and publish that index quarterly or more frequently, unless determined by order published in the *Federal Register*, that the publication would be unnecessary or impracticable. To meet this requirement, before making ADAMS publicly accessible, the NRC published "Documents Made Publicly Available" (NUREG-0540) on a monthly basis. With the public's ability to create their own indexes using ADAMS, the NRC determined that publication of the monthly index was no longer necessary.

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

Section 9.25(g) is renumbered and reorganized so that the responsibility of each denying official is described in separate paragraphs. Section 9.25(g)(2) reflects that the Executive Assistant to the Secretary of the Commission makes the initial determination to deny agency records in whole or in part under §9.17(a) instead of the Assistant Secretary of the Commission. In addition, the Executive Assistant to the Secretary of the Commission is

designated as the denying official for records for which an Advisory Committee has responsibility. Section 9.25(h) clarifies that the independent determination by the FOIA/PA Officer applies to records other than those records for which the initial disclosure determination is made by the Executive Assistant to the Secretary of the Commission, the General Counsel, or the Assistant Inspector General for Investigations.

Section 9.27(a) indicates that non-sensitive records disclosed in response to FOIA requests are made publicly available through the ADAMS.

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

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

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

Section 9.40(f) states that failure to pay applicable fees billed by another agency for a previous FOIA request is a basis for not processing a new request received from the same requester. This conforms NRC regulations to past NRC and government-wide practice.

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

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

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

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

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

Sections 9.65 and 9.67 clarify that appeals of denials of access and Statements of Disagreement under the PA will continue to be directed to the appropriate appellate official, but are sent to the FOIA/PA Officer rather than to the appellate official to ensure that appeals directed to the EDO and to the Inspector General are uniformly tracked. Also §§9.65, 9.66, and 9.67 state that a PA appeal is not deemed received until it is actually received by the FOIA/PA Officer. Sections 9.65, 9.66, and 9.67 state that calendar days are used to calculate the time within which an appeal of denial of access to a record in a PA System of Records must be made and within which a Statement of Disagreement must be submitted.

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

Section 9.95 indicates that specific exemptions applicable to each PA System of Record is found in the PA notice published biannually in the *Federal Register* and a current version is available at the NRC Web site, <http://www.nrc.gov>. This avoids the need to revise NRC regulations each time a change is made to an exemption section of a PA notice for a PA

System of Record, and ensures that those who need this information will be able to obtain the most current information, with greater ease, from the NRC Web site.

#### National Technology Transfer and Advancement Act

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

#### Environmental Impact: Categorical Exclusion

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

#### Paperwork Reduction Act Statement

This final rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150-00043.

The burden to the public for these information collections is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to [INFOCOLLECTS@NRC.GOV](mailto:INFOCOLLECTS@NRC.GOV); and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0043), Office of Management and Budget, Washington, DC 20503.

#### Public Protection Notification

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

#### Regulatory Analysis

A regulatory analysis has not been prepared for this rule because this rule is administrative in that it amends the regulations to reflect the current NRC organization and current responsibilities of NRC officials for denying access to requests for information and other

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

#### Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule 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 and PA. These are considered minor, non-substantive amendments and will not have an economic impact on NRC licensees or the public.

#### Backfit Analysis

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

#### Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

#### List of Subjects in 10 CFR Part 9



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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 5 U.S.C. 553; the Freedom of Information Act as amended; the Privacy Act as amended, the NRC is adopting the following amendments to 10 CFR Part 9.

## PART 9 - PUBLIC RECORDS

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

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704; 112 stat. 2750 (44 U.S.C. 3504 note).

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

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

§9.8 Information collection requirements: OMB approval.

\* \* \* \* \*

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

3. In §9.13, the definition of the Freedom of Information Act and Privacy Act Officer is revised to read as follows:

§9.13 Definitions.

\* \* \* \* \*

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.

\* \* \* \* \*

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

§9.21 Publicly available records.

\* \* \* \* \*

(c)\*\*\*

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

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

\* \* \* \* \*

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

§9.23 Requests for records.

(a) \*\*\*

(1) \*\*\*

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

\* \* \* \* \*

(b) A person may request agency records by submitting a request authorized by 5 U.S.C. 552(a)(3) to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in §9.6 of this chapter. The request must be in writing and clearly state on the envelope and in the letter that it is a "Freedom of Information Act request." The NRC does not

consider a request as received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer.

\* \* \* \* \*

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

§9.25 Initial disclosure determination.

\* \* \* \* \*

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

(2) Initial disclosure determinations on requests for records originated by or transmitted to the Commission, or a Commissioner, or records originated by, or for which the Office of the Secretary or an Advisory Committee has primary responsibility. If, as a result of the review specified in paragraph (f) of this section, the Executive Assistant to the Secretary of the Commission finds that agency records originated by or transmitted to the Commission or a

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

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

(h) Initial disclosure determinations on requests for records other than those for which the initial disclosure determination is made by the Assistant Inspector General for Investigations, the Executive Assistant to the Secretary of the Commission, or the General Counsel. If, as a result of the review specified in paragraph (f) of this section, the head of the responsible office finds that agency records other than those described in paragraph (g) of this section, that are originated by, or for which the office has primary responsibility, should be denied in whole or in part, the head of the office will submit that finding to the Freedom of Information Act and Privacy Act Officer, who will, in consultation with the Office of the General Counsel, make an independent determination whether the agency records should be denied in whole or in part. If the Freedom of Information Act and Privacy Act Officer determines that the agency records sought are exempt from disclosure and disclosure of the records is contrary to

the public interest and will adversely affect the rights of any person, the Freedom of Information Act and Privacy Act Officer will notify the requester of the determination in the manner provided in §9.27.

\* \* \* \* \*

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

§9.27 Form and content of responses.

(a) When the NRC has located a requested agency record and has determined to disclose the agency record, the Freedom of Information Act and Privacy Act Officer will promptly furnish the agency record or notify the requester where and when the agency record will be available for inspection and copying. The NRC will also advise the requester of any applicable fees under §§9.35 and 9.37. The NRC will routinely make copies of non-sensitive records disclosed in response to Freedom of Information Act requests publicly available through the Agencywide Document Access and Management System (ADAMS) located in the NRC's Electronic Reading Room that can be accessed via the NRC Web site at <http://www.nrc.gov/NRC/reading-rm/adams.html>. Records that contain information personal to the requester, involve matters that are not likely to be of public interest to anyone other than the requester or contain privileged or confidential information that should only be disclosed to the requester will not be made publicly available on the NRC Web site.

\* \* \* \* \*

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

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

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

(b) Submitter objection to disclosure. The submitter will be allowed 30 calendar days from date of the notice described in paragraph (a) of this section to object to disclosure, unless the Commission determines that a shorter period of time to respond is necessary in a particular instance. If a submitter has any objection to disclosure, the submitter must provide a detailed written statement. The statement must specify all grounds that support why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified in the notice, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received until after the date specified for response will not be considered unless that date is extended by the Freedom of Information Act and Privacy Act Officer upon request by the submitter.

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

- (1) A statement of the reason(s) for the determination;
- (2) A description of the business information to be disclosed; and
- (3) A specified disclosure date, which will be 30 calendar days subsequent to the date of the notice, or less, as provided under paragraph (b) of this section, after which the information will be made available to the public.

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

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

9. Section 9.29 is revised to read as follows:

§9.29 Appeal from initial determination.



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

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

(c) For agency records to which access is denied by the Executive Assistant to the Secretary of the Commission, the General Counsel, or an office director reporting to the Commission, the appeal must be in writing directed to the Secretary of the Commission and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in §9.6. The appeal should clearly state on the envelope and in the letter that it is an "Appeal from Initial Freedom of Information Act Decision." The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act

Officer. The Secretary of the Commission will make the NRC determination on the appeal within 20 working days after the receipt of the appeal. If the Secretary of the Commission denies an appeal of access to records, in whole or in part, the Secretary of the Commission will notify the requester of the denial, explaining the exemptions relied upon and how the exemptions apply to the agency records withheld. The notice will inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

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

(e) For the denial of a request for expedited processing the appeal must be in writing directed to the Executive Director for Operations and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in §9.6. The appeal should clearly state on the envelope and in the letter that it is an "Appeal from Initial FOIA Decision." The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. The NRC will make a determination on the appeal within 10 working days after the receipt of the appeal. If the Executive Director for Operations or a Deputy Executive Director denies an appeal for expedited processing, the Executive Director for Operations or a Deputy Executive Director, will notify the person making the request of the decision to sustain the denial, including a statement explaining why the request does not meet the requirements of §9.25(e)(1) and (2). The notice will inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(f) For denial of a waiver or reduction of fees for locating and reproducing agency records, the appeal must be in writing directed to the Executive Director for Operations and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in §9.6. The appeal should clearly state on the envelope and in the letter that it is an "Appeal from Initial FOIA Decision." The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. The NRC will make a determination on the appeal within 20 working days after the receipt of the appeal. If the Executive Director for Operations or a Deputy Executive Director denies an appeal of a waiver or reduction of fees for locating and reproducing agency records, the Executive Director for Operations or a Deputy Executive Director, will notify the person making the request of the decision to sustain the denial, including a statement explaining why the request does not meet

the requirements of §9.41. The notice will inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

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

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

§9.35 Duplication fees.

\* \* \* \* \*

(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.

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

§9.40 Assessment of fees.

\* \* \* \* \*

(f) If the NRC receives a new request and determines that the requester has previously failed to pay a properly charged fee under the Freedom of Information Act to the NRC or other

Federal agency within 30 calendar days of receipt of the bill on a previous request, the NRC may refuse to accept the new request for processing until payment is made of the full amount owed on the prior request, plus any applicable interest assessed as provided in §9.34.

\* \* \* \* \*

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

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

\* \* \* \* \*

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

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

§9.53 Requests; how and where presented.

\* \* \* \* \*

(b) All written requests must be made to the Freedom of Information Act and Privacy Act Officer, U.S. Nuclear Regulatory Commission, and sent by an appropriate method listed in §9.6, and should clearly state on the envelope and in the letter, as appropriate: "Privacy Act

Request," "Privacy Act Disclosure Accounting Request," "Privacy Act Correction Request."  
The NRC does not consider a request received until the date it is actually received by the  
Freedom of Information Act and Privacy Act Officer.

\* \* \* \* \*

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

§9.54 Verification of identity of individuals making requests.

(a)<sup>\*\*\*</sup>

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

\* \* \* \* \*

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

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

16. Section 9.62 is revised to read as follows:

§9.62 Records under control of another Government agency.

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

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

§9.65 Access determinations; appeals.

\* \* \* \* \*

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

\* \* \* \* \*

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

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

\* \* \* \* \*

(b) Appeals from initial adverse determinations. If an individual's request to amend or correct a record has been denied, in whole or in part, the individual may appeal that action and



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

\* \* \* \* \*

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

§9.67 Statements of disagreement.

(a) Written "Statements of Disagreement" may be furnished by the individual within 30 calendar days of the date of receipt of the final adverse determination of the Inspector General or the Executive Director for Operations. "Statements of Disagreement" directed to the Executive Director for Operations must be sent to the Freedom of Information Act and Privacy

Act Officer by an appropriate method listed in §9.6, and should be clearly marked on the statement and on the envelope, "Privacy Act Statement of Disagreement." "Statements of Disagreement" directed to the Inspector General must be sent to the Freedom of Information Act and Privacy Officer by an appropriate method listed in §9.6, and should be clearly marked on the statement and on the envelope "Privacy Act Statement of Disagreement".

\* \* \* \* \*

20. Section 9.85 is revised to read as follows:

§9.85 Fees.

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

21. Section 9.95 is revised to read as follows:

§9.95 Specific exemptions.

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

Dated at Rockville, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_ 2005.

For the Nuclear Regulatory Commission.

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Annette L. Vietti-Cook,

Secretary of the Commission.