

# Proposed Rules

Federal Register

Vol. 62, No. 172

Friday, September 5, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 9

RIN 3150-AF78

### Electronic Freedom of Information Act: Implementation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to implement the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), which are designed to bring the Freedom of Information Act (FOIA) into the information and electronic age by clarifying that FOIA applies to records maintained in hardcopy or electronic format. The proposed rule would implement statutory provisions of the law that broaden public access to government information by placing more records on-line and expanding the role of the agency public document room. The proposed rule would implement statutory amendments that recognize the difficulty in responding to requests in the 10 working days formerly required and extend that time to 20 working days. It also provides procedures for agencies to discuss ways of tailoring requests to improve responsiveness. The proposed rule would amend NRC's FOIA regulations to comply with the requirements of the new statute. Certain other changes have been made to correct administrative errors and to update or remove obsolete information.

**DATES:** Submit comments by October 6, 1997. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-

0001, Attention: Rulemakings and Adjudications Staff.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm Federal workdays.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information section.

Examine comments received at: The NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Russell A. Powell, Chief, Freedom of Information/Local Public Document Room Branch, Office of Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: (301) 415-7169, e-mail: RAP1@nrc.gov.

### SUPPLEMENTARY INFORMATION:

#### Background Information

On October 2, 1996, the President signed into law the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), Public Law 231, 110 Stat. 3048 (1996). EFOIA includes provisions authorizing or requiring agencies to promulgate regulations implementing certain of its requirements, including the tracking of Freedom of Information Act (FOIA) requests, the aggregation of FOIA requests, and the expedited processing of FOIA requests. In addition, EFOIA changes the time limit for responding to a FOIA request from ten to twenty working days, the requirements for reporting FOIA activities to Congress, and the cases in which an agency may extend the time within which it will respond to a FOIA request. EFOIA also includes provisions regarding the availability of documents in electronic form, the treatment of electronic records, and the establishment of "electronic reading rooms."

The Nuclear Regulatory Commission proposes to amend its regulation implementing the FOIA, 10 CFR Part 9. The proposed amendments would revise the NRC's FOIA regulations to comply with EFOIA.

#### New Provisions

##### A. New and Revised Definitions

The proposed rule would establish a new title, Freedom of Information Act and Privacy Act Officer, for the

designated official responsible for administration of the FOIA and Privacy Act in lieu of using the organizational title of the responsible individual which may not be as indicative of these specific responsibilities. A new definition is proposed to be added to 10 CFR 9.13 to reflect this new title.

The definition of record would be amended to add "any information that would be an agency record subject to the requirements of (5 USC 552) when maintained by an agency in any format, including an electronic format" and to read "Record also includes a book, \* \* \* drawing, diagram, \* \* \*".

The definition of review time would be revised to remove from the definition the period spent "excising from the records those portions which are to be withheld."

##### B. Electronic Records

Section 3 of EFOIA amends 5 U.S.C. 552(f)(2) to define "agency record" for purposes of FOIA as including "any information that would be an agency record subject to the requirements of (5 U.S.C. 552) when maintained by an agency in any format, including an electronic format." Section 552(f) thus clarifies that the term "agency record" includes information stored in any computer readable format as well as traditional paper documents. The proposed regulations would amend 10 CFR 9.13 to specifically include information in an electronic format within the definition of the term "agency record." 10 CFR 9.13 specifically includes in the definition of "search" time spent reviewing records by automated means as well as manually.

##### C. Electronic Reading Room

Section 4 of EFOIA amends 5 U.S.C. 552(a)(2), which previously required agencies to make available for public inspection and copying certain information, such as agency opinions and policy statements, administrative staff manuals and staff instructions that affect a member of the public. The new law expands these categories to include agency records that have been made publicly available and are likely to be the subject of repetitive public requests, as well as a general index of these frequently sought documents. The amendments further provide that section 552(a)(2) records created on or after November 1, 1996, must be made

available by computer telecommunications within one year after such date, or if computer telecommunications have not been established, by other electronic means. The general index of these records is to be available by computer telecommunications by December 31, 1999. These new requirements, as well as the on-line address for NRC's homepage on the Internet, would be incorporated in 10 CFR 9.21 (c)(6) and (f).

Finally, where material has been withheld in electronic records made available to the public, the extent of the deletions must now be indicated on the portion of the record made available or published and, where technically possible, must be indicated at the place in the record where the deletion occurred. This new requirement would be included at 10 CFR 9.19(d).

#### *D. Honoring Form or Format of Requests*

EFOIA, 5 U.S.C. 552(a)(3) contains three significant new provisions. First, 5 U.S.C. 552(a)(3)(B) requires agencies, when making records available to the public, to do so "in any form or format requested by the person if the record is readily reproducible by the agency" in the requested manner. This new requirement would be included in 10 CFR 9.15. Second, 5 U.S.C. 552(a)(3)(C) makes it clear that when an FOIA request is received, an agency should not only search for hard copies, but should also search for the records in their electronic form. This new requirement would be included in 10 CFR 9.15. Finally, a "search" under the amendments means to review, manually "or by automated means," agency records for the purpose of locating those records which are responsive to a request. This new requirement would be incorporated in 10 CFR 9.13 in the definition of "search time."

#### *E. Time Limits for Responding to Requests*

In recognition of the fact that 10 working days is not a realistic timeframe, the EFOIA amendments, 5 U.S.C. 552(a)(6)(A)(i), extend the time to respond to a request from 10 to 20 working days. 10 CFR 9.25 would be amended to reflect the change in the time limits for initial disclosure determination from 10 to 20 working days effective October 2, 1997.

#### *F. Multitrack Processing of Requests*

However, Congress recognized that even with the increase in time to process requests, many agencies may not be prepared to meet a 20 working-day deadline for some requests.

Therefore, to help ensure timely agency responses to requests, the new law, 5 U.S.C. 552(a)(6)(D)(i), authorizes agencies to establish separate systems within the agency for handling simple and complex requests. Under these types of systems, called "multitrack processing," requests would be categorized based on the amount of agency effort involved in processing the request. This would replace the current first-in, first out approach generally employed at the NRC. Agencies must still exercise due diligence within each track. The new law, 5 U.S.C.

552(a)(6)(D)(ii), also requires agencies to give requesters the opportunity to limit the scope of their requests to qualify for processing under a faster track. This provision is intended to permit more requests to be completed more quickly by providing an incentive for requesters to frame narrower requests for fewer documents. These new provisions would be incorporated in NRC's proposed three-track system described in 10 CFR 9.25(c).

The first track is for simple requests or requests of moderate complexity that are expected to be completed within 20 working days (e.g., a request that does not involve a large volume of documents, retrieval of documents from regional offices, or extensive coordination between NRC offices).

The second track is for requests involving unusual circumstances that are expected to take between 21–30 working days to complete.

The third track is for requests that, because of their unusual volume or complexity, are expected to take more than 30 working days to complete.

Upon receipt of a request, NRC would notify the requester of the track in which the request has been placed for processing and the estimated time for completion. Should subsequent information substantially change the estimated time to process the request, the requester would be notified telephonically or in writing. A requester may modify the request to allow it to be processed under a different track for a faster response.

#### *G. Unusual Circumstances*

Even with use of multitrack processing, Congress recognized that in some circumstances the statutory response time will not be met. The EFOIA retains the provisions for agencies to extend the initial 20 working day response time for an initial request, or the 20 working day response time for an appeal, an additional 10 working days in "unusual circumstances." Agencies must provide the requester with a written justification for the

extension that contains the date of the expected agency response. The amendments would retain the definition of "unusual circumstances" as time needed to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; the need to search for, collect and appropriately examine a voluminous amount of material demanded in a single request; and the need for consultation with another agency having a substantial interest in the determination of the request or among two or more parts of the agency having substantial interest in the request. These consultations must be conducted "with all practicable speed." 5 U.S.C. 552(a)(6)(B)(iii).

#### *H. Exceptional Circumstances*

In addition to extensions under unusual circumstances, the EFOIA amendments, 5 U.S.C. 552(a)(6)(B)(ii), authorize the agency to negotiate a response time with a requester that may exceed the statutory maximum (20 working days plus a 10 working-day extension) for those FOIA requests that the agency determines cannot be processed within the statutory time limits. The agency must offer the requester an opportunity to limit the scope of the request so that it may be processed within the prescribed 20 working days. Congress asserted that this process for negotiated time limits reflects the policy that FOIA works best when requesters and agencies work together to define and fulfill reasonable requests. This new provision would be incorporated in 10 CFR 9.25(c).

#### *I. Aggregation of Requests*

The EFOIA amendments, 5 U.S.C. 552(a)(6)(B)(iv), authorize agencies to promulgate regulations that allow for the aggregation of FOIA requests by the same requester or by a group of requesters acting together. Aggregation may occur if the agency "reasonably believes" that these multiple requests do indeed constitute a single request. This new provision would be implemented in 10 CFR 9.39(e).

#### *J. Requests for Expedited Processing*

The EFOIA amendments, 5 U.S.C. 552(a)(6)(E)(i), require agencies to promulgate regulations to provide for "expedited processing" in cases where the person requesting the records demonstrates a "compelling need" and in other cases where the agency determines expedited processing is warranted. The amendments define "compelling need" in two ways. One is where "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." The other is where a "person primarily engaged in disseminating information" to the public has "an urgency to inform the public concerning actual or alleged Federal Government activity." The House Committee report explaining the legislation states that a person "primarily engaged" in the business of dissemination of information "should not include individuals who are engaged only incidentally in the dissemination of information," but requires that "information dissemination be the main activity of the requester, although it need not be their sole occupation." A requester who is "only incidentally" involved in information dissemination, in addition to other activities, would not satisfy this requirement.

The report further explains that the term "urgency to inform," one of the qualifying elements for expedited processing, must involve a matter of "current exigency to the American public" such that any reasonable person could conclude that delaying a response to a FOIA request would compromise a "significant recognized interest." The public's right to know, while "significant and important," would not stand alone as sufficient to satisfy this standard. Agencies will have to make both "factual and subjective judgments" about situations cited by requesters as reasons for expedited processing and must demonstrate "fairness and diligence" in exercising their discretion. Requesters must provide detailed explanations to support their expedited requests.

The EFOIA amendments, 5 U.S.C. 552(a)(6)(E)(ii), require that agency regulations provide that requesters be given notice within 10 calendar days after the date of the request as to the determination whether it qualifies for expedited processing. Once expedited processing is granted, agencies must process it "as soon as practicable" (5 U.S.C. 552 (a)(6)(E)(iii)). Any administrative appeal to a denial of expedited processing must be handled with "expeditious consideration" (5 U.S.C. 552 (a)(6)(E)(ii)(II)). If an agency denies the request for expedited processing or fails to act upon the request within the prescribed 10 calendar days, petitioner may seek judicial review. The NRC would implement the EFOIA requirements for expedited processing at 10 CFR 9.25(e) and 9.29.

#### *K. Estimates of the Volume of Materials Denied*

EFOIA, 5 U.S.C. 552(a)(6)(F), requires agencies to make a reasonable effort to estimate the volume of any requested record material that is denied in whole or in part, and to provide the estimate to the requester unless providing such estimate would harm an interest protected by a FOIA exemption. This new requirement would be implemented at 10 CFR 9.19(c).

#### *L. Annual Report to Congress*

The EFOIA, 5 U.S.C. 552(e), amended the annual requirements for reporting agency FOIA activities to Congress. On or before February 1 of each year beginning in 1999, agencies must submit to the Attorney General an annual report that covers the preceding fiscal year and includes the number of determinations made by the agency not to comply with the requests for records made to the agency and the reasons for those determinations; the number of appeals made by persons, the results of those appeals, and the reason for the action upon each appeal that results in a denial of information; a complete list of all statutes that the agency used to authorize the withholding of information under Section 552(b)(3), which exempts information that is specifically exempted from disclosure by other statutes; a description of whether a court has upheld the decision of the agency to withhold information under each of those statutes cited, and a concise description of the scope of any information upheld; the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that these requests had been pending before the agency as of that date; the number of requests for records received by the agency and the number of requests the agency processed; the median number of days taken by the agency to process different types of requests; the total amount of fees collected by the agency for processing requests; the average amount of time that the agency estimates as necessary, based on the past experience of the agency, to comply with different types of requests; the number of full-time staff of the agency devoted to the processing of requests for records under this section; and the total amount expended by the agency for processing these requests. The NRC would implement this amended EFOIA reporting requirement in 10 CFR 9.45.

The amendments require each agency to make these annual reports available to the public through a computer

network, or by other electronic means if computer networking is not a possibility for the agency. The NRC has posted its annual report on its website on the Internet that is accessible through the NRC homepage at: <http://www.nrc.gov>. The report is also available in the NRC Public Document Room.

#### **Electronic Access**

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld or connecting to the NRC interactive rulemaking web site, "Rulemaking Forum." The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1-800-303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld, consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct-dial phone number for the main FedWorld BBS: 703-321-3339; Telnet via Internet: [fedworld.gov](http://fedworld.gov) (192.239.93.3); File Transfer Protocol (FTP) via Internet: <ftp://fedworld.gov> (192.239.92.205); and World Wide Web using: <http://www.fedworld.gov> (this is the Uniform Resource Locator (URL)).

If using a method other than the toll-free number to contact FedWorld, access the NRC subsystem from the main FedWorld menu by selecting "F—Regulatory, Government Administration and State Systems," then selecting "A—Regulatory Information Mall." At that point, a menu will be displayed that has an option "A—U.S. Nuclear Regulatory Commission" that will take you to the NRC Online Main Menu. You can also go directly to the NRC Online area by

typing “/go nrc” at a FedWorld command line. If you access NRC from FedWorld’s Main Menu, then you may return to FedWorld by selecting the “Return to FedWorld” option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC’s toll-free number, then you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP, that mode only provides access for downloading files and does not display the NRC Rules Menu.

You may also access the NRC’s interactive rulemaking web site through the NRC home page (<http://www.nrc.gov>). This site provides the same access as the FedWorld bulletin board, including the facility to upload comments as files (any format), if your web browser supports that function.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Telephone: 301-415-5780; e-mail: AXD3@nrc.gov. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, Telephone: 301-415-6215; e-mail: CAG@nrc.gov.

#### Environmental Impact—Categorical Exclusion

The NRC has determined that this proposed rule 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 proposed rule.

#### Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, 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 it displays a currently valid OMB control number.

#### Regulatory Analysis

This proposed rule would implement the EFOIA by amending 10 CFR Part 9, Subpart A—Freedom of Information Act Regulations. This is an administrative regulatory action that would make NRC’s regulations reflect the new provisions of the EFOIA. The proposed rule would not have any adverse economic impact on any class of licensee or the NRC; on the contrary, the proposed rule with its new provisions allowing expedited and multitask processing may provide some new and additional benefit to those who may opt to use these regulations to obtain access to NRC records and information.

This constitutes the regulatory analysis for this proposed rule.

#### Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The amendments to 10 CFR Part 9 are procedural in nature and are required to implement the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), 5 U.S.C. 552.

#### Backfit Analysis

The NRC has determined that the backfit rule 10 CFR 50.109 does not apply to this proposed rule; therefore, a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I.

#### 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, 552a, and 553; the NRC is proposing to adopt the following amendment of 10 CFR Part 9, Subpart A—Freedom of Information Act Regulations.

#### 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).

Subpart A 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 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, 9.29, 9.40, 9.41, 9.53, 9.54, 9.55, 9.65, 9.66, and 9.67.

3. In Part 9, Subpart A is revised 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.
- 9.23 Requests for records.
- 9.25 Initial disclosure determination.
- 9.27 Form and content of responses.
- 9.29 Appeal from initial determination.
- 9.31 Extension of time for response.
- 9.33 Search, review, and special service fees.
- 9.34 Assessment of interest and debt collection.
- 9.35 Duplication fees.
- 9.37 Fees for search and review of agency records by NRC personnel.
- 9.39 Search and duplication provided without charge.
- 9.40 Assessment of fees.
- 9.41 Requests for waiver or reduction of fees.
- 9.43 Processing requests for a waiver or reduction of fees.
- 9.45 Annual report to Congress.

#### Subpart A—Freedom of Information Act Regulations

##### § 9.11 Scope of subpart.

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

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

### § 9.13 Definitions.

*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.

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

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

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

*Educational institution* means an institution 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.

*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 Privacy Act as specifically designated under this regulation.

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

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

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

*Review time* means the period devoted to examining records retrieved in response to a request to determine if they are in fact responsive, and to determine whether they are exempt from disclosure in whole or in part. Also, review time includes the period devoted to examining records to determine which Freedom of Information Act exemptions are applicable and identifying records or portions thereof to be disclosed.

*Search time* means the period devoted to reviewing, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request. This includes a page-by-page or line-by-line identification of responsive information within the records.

*Unusual circumstances* mean—

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

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

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

### § 9.15 Availability of records.

The NRC will make available for public inspection and copying any reasonably described agency record in the possession and control of the NRC under the provisions of this subpart, and upon request by any person. Records 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. NRC will make reasonable efforts to maintain its records in forms or formats that are reproducible. 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 following types of agency records are exempt from public disclosure under § 9.15:

(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

(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, 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.

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

(c) Whenever a request is made that involves access to agency records described in paragraph (a)(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 shall 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 indication 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 shall segregate—

(1) Information that is exempt from public disclosure under § 9.17(a) 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 lawyer-client privilege, or is otherwise exempt from disclosure.

(c) In denying a request for records, in whole or in part, 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.**

(a) Publicly-available records of NRC activities described in paragraphs (c) and (d) of this section are available through the National Technical Information Service. Subscriptions to these records are available on 48x

microfiche and may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Single copies of NRC publications in the NUREG series, NRC Regulatory Guides, and Standard Review Plans are also available from the National Technical Information Service.

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

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

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

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

(3) Nuclear Regulatory Commission rules and regulations;

(4) Nuclear Regulatory Commission Manuals and instructions to NRC personnel that affect any member of the public;

(5) Copies of records that have been released to a person under the Freedom of Information Act 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.

(6) A general index of the records released under the FOIA.

(d) Current indexes to records that are made publicly available are listed in NUREG-0540, "Title of List of Documents Made Publicly Available," which is published monthly. The records required to be made available under 5 U.S.C. 552(a)(2) are included in this listing.

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

(f) By November 1, 1997, NRC will begin making records identified in paragraph (c) of this section that were created after November 1, 1996, available by electronic means, including computer telecommunications to the extent NRC has implemented its

telecommunications capability, unless the records have been promptly published and copies offered for sale. Telecommunications access can be obtained via the Internet by accessing the NRC Home Page on the Internet at: <http://www.nrc.gov/>.

#### **§ 9.23 Requests for records.**

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

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

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

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

(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, Office of Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555. 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 it has been received and logged in by the office of the Freedom of Information Act and Privacy Act Officer.

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

(2) All Freedom of Information Act requests for copies of agency records must reasonably describe the agency records sought in sufficient detail to permit the NRC to identify the requested agency records. Where possible, the requester should provide specific information regarding dates, titles,

docket numbers, file designations, and other information which may help identify the agency records. If a requested agency record is not described in sufficient detail to permit its identification, the Freedom of Information Act and Privacy Act Officer will contact the requester within 10 working days after receipt of the request and inform the requester of the additional information or clarification needed to process the request.

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

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

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

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

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

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

(A) A required advance payment has been received;

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

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

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

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

(d) Except as provided in § 9.39—

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

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

(e) The Freedom of Information Act and Privacy Act Officer will promptly forward a Freedom of Information Act request made under § 9.23(b) for an agency record to the head of the office(s) primarily concerned with the records requested, as appropriate. The responsible office will conduct a search for the agency records responsive to the request and compile those agency records to be reviewed for initial disclosure determination and/or identify those that have already been made publicly available in the Public Document Room and Local Public Document Rooms.

#### **§ 9.25 Initial disclosure determination.**

(a) Time for initial disclosure determination. The NRC will notify a requester within 20 working days of its determination. If the NRC cannot act upon the request within this period, the NRC will provide the requester with the reasons for the delay and provide a projected response date.

(b) Extension of time limit in unusual circumstances. In unusual circumstances, the NRC may extend the time limit prescribed in paragraph (a) of this section by not more than 10 working days. The extension may be made by written or telephonic 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. "Unusual circumstances" is limited to one or more of the following reasons for delay:

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

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

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

(c) Exceptional circumstances. A requester may be notified in certain exceptional circumstances, when it appears that a request cannot be completed within the allowable time, and will be provided an opportunity to limit the scope of the request so that it may be processed in the time limit, or to agree to a reasonable alternative time frame for processing. For purposes of this paragraph, the term "exceptional



circumstances" does 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.

(d) Multiple-Track processing. To ensure the most equitable treatment possible of all requesters, the NRC will process requests on a first-in, first-out basis, using multiple tracking systems based upon the estimated time it will take to process the request.

(1) NRC uses a three-track system.

(i) The first track is for requests of simple to moderate complexity that are expected to be completed within 20 working days.

(ii) The second track is for requests involving unusual circumstances that are expected to take between 21–30 working days to complete (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 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 from businesses 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).

(2) Upon receipt of requests, NRC will notify requesters of the track in which the request has been placed for processing and the estimated time for completion. Should subsequent information substantially change the estimated time to process a request, the requester will be notified telephonically or in writing. A requester may modify the request to allow it to be processed faster or to reduce the cost of processing. Partial responses may be sent to requesters as documents are obtained by the FOIA office from the supplying offices.

(e) Expedited processing. (1) NRC may place a person's request at the front of the queue for the appropriate track for that request upon receipt of a written

request that clearly demonstrates a compelling need for expedited processing. For purposes of determining whether to grant expedited processing, the term compelling need means—

(i) 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

(ii) 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.

(2) A person requesting expedited processing must include a statement certifying the compelling need given to be true and correct to the best of his or her knowledge and belief.

(3) The Freedom of Information Act and Privacy Act Officer 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.

(f) Disclosure Review. The head of the responsible office shall review agency records located in a search under § 9.23(b) to determine whether the agency records are exempt from disclosure under § 9.17(a). If the head of the office determines that, although exempt, the disclosure of the agency records will not be contrary to the public interest and will not affect the rights of any person, the head of the office may authorize disclosure of the agency records. If the head of the office authorizes disclosure of the agency records, the head of the office 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.

(g) Initial disclosure determinations on requests for records located in offices under the Executive Director for Operations, the office of the Chief Financial Officer, and the office of the Chief Information Officer. Except as provided in paragraph (h) of this section, if, as a result of the review specified in paragraph (f) of this section, the head of the responsible office finds that agency records should be denied in whole or in part, the head of the office will submit that finding to the 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.

(h) Initial disclosure determinations on requests for records located in offices other than offices under the Executive Director for Operations. For agency records located in the office of a Commissioner or in the Office of the Secretary of the Commission, the Assistant Secretary of the Commission will make the initial determination to deny agency records in whole or in part under § 9.17(a) instead of the Freedom of Information Act and Privacy Act Officer. For agency records located in the Office of the General Counsel, the General Counsel will make the initial determination to deny agency records in whole or in part instead of the Freedom of Information Act and Privacy Act Officer. For agency records located in the Office of the Inspector General, the Assistant Inspector General for Investigations will make the initial determination to deny agency records in whole or in part instead of the Freedom of Information Act and Privacy Act Officer. If the Assistant Secretary of the Commission, the General Counsel, or the Assistant Inspector General for Investigations determines that the agency records sought are exempt from disclosure and that their disclosure is contrary to the public interest and will adversely affect the rights of any person, the Assistant Secretary of the Commission, the General Counsel, or the Assistant Inspector General for Investigations will furnish that determination 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.

(i) Records and information originated by another Federal agency. If a requested record is located that was originated or contains information originated by another Federal Government agency, or deals with subject matter over which an agency other than the NRC has exclusive or primary responsibility, the NRC will promptly refer the record to that Federal Government agency for disposition or for guidance regarding disposition.

(j) If the NRC does not respond to a request within the 20 working-day period, or within the extended periods described in paragraph (e) of this section, the requester may treat that delay as a denial of the request and immediately appeal to the Executive



Director for Operations as provided in § 9.29(a) or sue in a district court as noted in § 9.29(c).

**§ 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. The NRC will routinely place copies of non-sensitive agency records disclosed in response to Freedom of Information Act requests in the NRC Public Document Room and on microfiche in Local Public Document Rooms. Records will not be routinely placed in the NRC Public Document Room and Local Public Document Rooms that contain information personal to the requester, matters that are not likely to be of public interest to anyone other than the requester; or, that contain privileged or proprietary information that should only be disclosed to the requester.

(b) When the NRC denies access to a requested agency record or denies a request for expedited processing or for a waiver or reduction of fees, the Freedom of Information Act and Privacy Act Officer will notify the requester in writing. The denial will include as appropriate—

- (1) The reason for the denial;
- (2) A reference to the specific exemption under the Freedom of Information Act, or other appropriate reason, and the Commission's regulations authorizing the denial;
- (3) The name and title or position of each person responsible for the denial of the request, including the head of the office recommending denial of the record;
- (4) A statement stating why the request does not meet the requirements of § 9.41 if the request is for a waiver or reduction of fees; and

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

(c) The Freedom of Information Act and Privacy Act Officer will maintain a copy of each letter granting or denying requested agency records, denying a request for expedited processing, or denying a request for a waiver or reduction of fees in accordance with the NRC Comprehensive Records Disposition Schedule.

**§ 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. For agency records denied by an Office Director reporting to the Executive Director for Operations, the appeal must be in writing and addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. For agency records denied by an Office Director reporting to the Commission, the Assistant Secretary of the Commission, or the Advisory Committee Management Officer and for a denial of a request for a waiver or reduction of fees, or denial of a request for expedited processing, the appeal must be in writing and addressed to the Secretary of the Commission. For agency records denied by the Assistant Inspector General for Investigations, the appeal must be in writing and addressed to the Inspector General. The appeal should clearly state on the envelope and in the letter that it is an "Appeal from Initial FOIA Decision." The NRC does not consider an appeal that is not marked as indicated in this paragraph as received until it is actually received by the Executive Director for Operations, Secretary of the Commission, or the Inspector General.

(b) The NRC will make a determination on any appeal made under this section within 20 working days after the receipt of the appeal, except an appeal of the denial of a request for expedited processing will be determined within 10 working days after receipt of the appeal.

(c) (1) If the appeal is denied in whole or in part, the Executive Director for Operations or a Deputy Director, the Secretary of the Commission, or the Inspector General, as appropriate, will notify the requester of the denial, explaining the exemptions relied upon and how the exemptions apply to the agency records withheld.

(2) If, on appeal, the denial of a request for expedited processing or for a waiver or reduction of fees for locating and reproducing agency records is upheld in whole or in part, the Secretary of the Commission 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) or § 9.41.

(3) The Executive Director for Operations, or a Deputy Executive Director, or the Secretary of the

Commission, or the Inspector General 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) The Executive Director for Operations, or a Deputy Executive Director, or 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.

**§ 9.31 Extension of time for response.**

(a) In unusual circumstances defined in § 9.13, the NRC may extend the time limits prescribed in § 9.25 or § 9.29 by not more than 10 working days. The extension may be made by written notice to the person making the request to explain the reasons for the extension and indicate the date on which a determination is expected to be dispatched.

(b) An extension of the time limits prescribed in §§ 9.25 and 9.29 may not exceed a combined total of 10 working days per request, unless a requester has agreed to an alternative time frame as described in § 9.25(c).

**§ 9.33 Search, review, and special service fees.**

(a) The NRC charges fees for—

(1) Search, duplication, and review, when agency records are requested for commercial use;

(2) Duplication of agency records provided in excess of 100 pages when agency records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, or a representative of the news media;

(3) Search and duplication of agency records in excess of 100 pages for any request not described in paragraphs (a) (1) and (2) of this section;

(4) The direct costs of searching for agency records. The NRC will assess fees even when no agency records are located as a result of the search or when agency records that are located as a result of the search are not disclosed; and

(5) Computer searches which includes the cost of operating the Central Processing Unit for the portion of operating time that is directly attributable to searching for agency records plus the operator/programmer salary apportionable to the search.

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

(1) Certifying that records are true copies; or

(2) Sending records by special methods, such as express mail, package delivery service, courier, and other means other than ordinary mail.

(3) Producing or converting records to formats specified by a requester other than ordinary copying processes that are readily available in NRC.

#### **§ 9.34 Assessment of interest and debt collection.**

(a) The NRC will assess interest on the fee amount billed starting on the 31st day following the day on which the billing was sent in accordance with NRC's regulations set out in § 15.37 of this chapter. The rate of interest is prescribed in 31 U.S.C. 3717.

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

#### **§ 9.35 Duplication fees.**

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

(i) Paper to paper reproduction is \$0.08 per page standard size (up to and including 11 x 17 inches reduced). Pages 11 x 17 inches are \$0.15 each. Pages larger than 11 x 17 inches, including drawings, are \$1.50 each. Pages greater than legal size, 8½ x 14 inches, and smaller than or equal to 11 x 17 inches will be reduced to legal size and reproduced for \$0.08 per page, unless the order specifically requests full size reproduction.

(ii) Microfiche to paper reproduction is \$0.08 per page. Aperture card blowbacks are \$3.00 each (reduced size) or \$5.00 (full size).

(iii) Microfiche or aperture card duplications are \$0.75 each.

(iv) Rush processing is offered for standard size paper to paper reproduction and blowbacks, excluding standing order documents and pages reproduced from bound volumes. The charge is \$0.15 per page.

(v) Facsimile charges are: \$0.30 per page—local calls; \$0.50 per page—U.S. long distance; and \$1.50 per page—foreign long distance.

(2) Self-service duplicating machines are available at the Public Document Room for the use of the public. Paper to paper copy is \$0.08 per page. Microfiche to paper is \$0.10 per page on the reader printers.

(3) A requester may submit mail-order requests for contractor duplication of NRC records made by writing to the NRC Public Document Room. The

charges for mail-order duplication of records are the same as those set out in paragraph (a)(1) of this section, plus mailing or shipping charges.

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

(5) Any change in the costs specified in this section will become effective immediately pending completion of the 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 in the Public Document Room. The Commission will publish a final rule in the **Federal Register** that includes the new charges within 15 working days 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 in Washington, DC or at local Public Document Rooms:

(1) Sizes up to 8½ x 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. As such, requesters will be given the citation to any copyrighted documents and a copy of the material will be placed in the Public Document Room where it may be viewed by requesters.

(e) The cost for duplicating NRC records located in NRC Local Public Document Rooms are established by the institutions maintaining the NRC Local Public Document Room collections.

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

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

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

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

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

#### **§ 9.39 Search and duplication provided without charge.**

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

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

(c) The NRC will duplicate agency records requested under § 9.23(b) without charge for the first 100 pages of standard paper copies, or the equivalent cost of 100 pages of standard paper copies when providing the requester copies in microfiche or electronic form such as computer disks, if the requester is not a commercial use requester.

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

(e) The NRC may aggregate requests in determining search and duplication to be provided without charge as provided in paragraphs (a) and (b) of this section, if the NRC finds a requester or group of requesters acting in concert, have filed multiple requests that actually constitute a single request, and that the requests involve clearly-related matters.

#### **§ 9.40 Assessment of fees.**

(a) If the request is expected to require the NRC to assess fees in excess of \$25 for search and/or duplication, the NRC will notify the requester that fees will be assessed unless the requester has indicated in advance his or her willingness to pay fees as high as estimated.

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

(c) The NRC will encourage requesters to discuss with the NRC the possibility of narrowing the scope of the request with the goal of reducing the cost while

retaining the requester's original objective.

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

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

(f) If the NRC receives a new request and determines that the requester has failed to pay a fee charged within 30 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.

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

#### **§ 9.41 Requests for waiver or reduction of fees.**

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

(2) Each request for a waiver or reduction of fees must be addressed to the Freedom of Information Act and Privacy Act Officer, Office of Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) The Freedom of Information Act and Privacy Act Officer will make an initial determination whether a request for a waiver or reduction of fees meets the requirements of this section. The Freedom of Information Act and Privacy Act Officer will inform requesters whenever their request for a waiver or reduction of fees is denied and will

inform them of their appeal rights under § 9.29.

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

(a) Within 20 working days after receipt of a request for access to agency records for which the NRC agrees to waive fees under § 9.39(a) through (d) or § 9.41(c), the NRC will respond to the request as provided in § 9.25.

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

(c) After receipt of a request for the waiver or reduction of fees made in accordance with § 9.41, the NRC will either waive or reduce the fees and notify the requester of the NRC's intent to provide the agency records promptly or deny the request and provide a statement to the requester explaining why the request does not meet the requirements of § 9.41(b).

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

#### **§ 9.45 Annual report to Congress.**

(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 which shall include—

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

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

(3) A complete list of all statutes that the NRC relied upon to withhold information under subsection (b)(3) of 5 U.S.C. 552, a description of whether a court has upheld the decision of the NRC to withhold information under each such statute, and a concise description of the scope of any information withheld;

(4) The number of requests for records pending before the NRC as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;

(5) The number of requests for records received by the NRC and the number of requests that the NRC processed;

(6) The median number of days taken to process different types of requests;

(7) The total amount of fees collected by the NRC for processing requests;

(8) The number of full-time staff of the NRC devoted to processing requests under the FOIA and the total amount expended for processing these requests.

(b) The NRC will make a copy of each report available to the public on the NRC homepage on the Internet that can be accessed at: <http://www.nrc.gov>. A copy will also be available for public inspection and copying in the NRC Public Document Room.

Dated at Rockville, Maryland, this 19th day of August, 1997.

For the Nuclear Regulatory Commission.

**Arnold E. Levin**

*Arnold E. Levin, Acting Chief Information Officer.*

[FR Doc. 97-23612 Filed 9-4-97; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 917

[KY-215-FOR]

#### Kentucky Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Kentucky regulatory program (hereinafter the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Kentucky regulations pertaining to subsidence, water replacement, impoundments, definitions, subsidence control, sedimentation ponds, hydrology, and permits. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations.

**DATES:** Written comments must be received by 4 p.m., [E.D.T.], October 6, 1997. If requested, a public hearing on the proposed amendment will be held on September 30, 1997. Requests to speak at the hearing must be received by 4 p.m., [E.D.T.], on September 22, 1997.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to William J. Kovacic, Director, at the address listed below.

Copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all

written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (606) 233-2896. Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfurt, Kentucky 40601, Telephone: (502) 564-6940.

#### FOR FURTHER INFORMATION CONTACT:

William J. Kovacic, Director, Lexington Field Office, Telephone: (606) 233-2896.

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982 **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

##### II. Description of the Proposed Amendment

By letter dated July 30, 1997 (Administrative Record No. KY-1410), Kentucky submitted a proposed amendment to its program revising section 405 of the Kentucky Administrative Regulations (KAR) at 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:210.

Specifically, Kentucky proposes to make the following changes. At section 8:001—Definitions (405 KAR Chapter 8), Kentucky is defining the following terms:

*Community of Institutional Building* means any structure, other than a public building or occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services including,

but not limited to, water supply, power generation, or sewage treatment.

*Impounding Structure* means a dam, embankment, or other structure used to impound water, slurry, or other liquid or semi-liquid material.

*Impoundment* means a water, sediment, slurry, or other liquid or semi-liquid holding structure or depression, either naturally formed or artificially built.

*Material Damage* means (a) any functional impairment of surface lands, features, structures or facilities; (b) any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses of causes significant loss in production or income; or (c) any significant change in the condition, appearance, or utility of any structure or facility from its pre-subsidence condition.

*Noncommercial Building* means any building, other than an occupied residential dwelling, that at the time subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building. Any building used only for commercial, agricultural, industrial, retail, or other commercial enterprises is excluded.

*Occupied Residential Dwelling and Structures Related Thereto* means any building or other structure, that at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure, or facility installed on, above or below, or a combination thereof, the land surface if that building, structure, or facility is adjunct to or used in connection with an occupied residential dwelling.

*Previously Mined Area* means land that was affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to prescribed standards.

At section 8:030—Surface Coal Mining Permits, Kentucky is making the following changes. At subsection 16, Kentucky is requiring that a permit application identify and describe certain alternative water supply information if the determination of probable hydrologic consequences results in certain indications. At subsection 32(3)(e), Kentucky is requiring that a determination of probable hydrologic consequences include a finding on whether the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water that is used for domestic, agricultural, industrial, or other legitimate use within the permit