



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

February 26, 1981

The Honorable Toby Moffett, Chairman
Subcommittee on Environment, Energy and
Natural Resources
Committee on Government Operations
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed for your information are copies of a report on the administration of the Freedom of Information Act by the Nuclear Regulatory Commission for calendar year 1980. In accordance with Public Law 93-502 of November 21, 1974 (5 U.S.C. 552(d)), this report has been prepared and submitted to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress.

Sincerely,

John F. Ahearne
Chairman

Enclosures: As stated

cc: Rep. Joel Deckard

8103160648

REPORT BY THE NUCLEAR REGULATORY COMMISSION ON
THE ADMINISTRATION OF THE FREEDOM OF INFORMATION ACT FOR 1980

1. (a) Total number of initial determinations made by the agency not to comply with requests for records made under 5 U.S.C. 552 during calendar year 1980:

100

- (b) Authority relied upon for each such determination:

- (1) Exemptions in 5 U.S.C. 552(b):

<u>Exemptions Invoked</u> <u>(by number)</u>	<u>Number of Times Invoked</u>
1	9
2	0
3	13
4	28
5	18
6	48
7A	8
7B	1
7C	4
7D	1
7E	1
7F	0
8	0
9	0

- (2) Statute invoked pursuant to Exemption No. 3:

<u>Statutory Citation</u>	<u>Number of Times Invoked</u>
42 U.S.C. 2161-2165	8
42 U.S.C. 2167	5

- (3) The NRC also used the following exemptions of the Government in the Sunshine Act to withhold transcripts of closed Commission meetings:

<u>Exemptions Invoked</u> <u>(by number)</u>	<u>Number of Times Invoked</u>
1	3
6	2

2. (a) Total number of appeals made by persons from adverse initial decisions pursuant to 5 U.S.C. 552(a)(6):

(1) Number of appeals in which, upon review, the request was granted in full:

16*

(2) Number of appeals in which, upon review, the request was denied in full:

17

(3) Number of appeals in which, upon review, the request was denied in part:

5

*Includes five appeals where the requester appealed the failure of the agency to respond within the 10 day response period.

Includes two appeals in which the requester was given access to the denied records only for his participation in a licensing proceeding.

Includes two appeals in which the Commission determined to make the document subject to the appeal available; however, the originator of the document sued in Federal District Court to enjoin disclosure of the document. The Court has at this time barred disclosure of the document pending resolution of the various claims.

(b) Authority relied upon for total or partial denials on appeal:

(1) Exemptions in 5 U.S.C. 552(b):

<u>Exemptions Invoked (by number)</u>	<u>Number of Times Invoked</u>
1	4
2	0
3	5*
4	6
5	7
6	4
7A	1
7B	0
7C	1
7D	0
7E	0
7F	0
8	0
9	0

(2) Statute invoked pursuant to Exemption No. 3:

<u>Statutory Citation</u>	<u>Number of Times Invoked</u>
42 U.S.C. 2161-2165	2
42 U.S.C. 2167	3

3. (a) Names and titles or positions of each person who is responsible for the initial denial of records requested, and number of instances of participation of each:

<u>NAME</u>	<u>NUMBER OF INSTANCES OF PARTICIPATION</u>
1. Joseph M. Felton, Director, Division of Rules and Records, Office of Administration	81
2. John C. Carr, Acting Director, Division of Rules and Records, Office of Administration	1
3. Sheldon J. Wolfe, Chairman, Atomic Safety and Licensing Board	1

*Section 147 of the Atomic Energy Act (42 U.S.C. 2167) became effective on June 30, 1980. This Exemption 3 statute was used in three of the five appeals cited above. The NRC's use of Section 147 is now being challenged in the U.S. District Court. The three cases were denied at the initial request stage, appealed, and then the requesters sued in District Court before the NRC formally responded to the appeals. Accordingly, when the agency received notice of the court action, the appeals were deemed administratively to be denied.

3. (a) Continued

<u>NAME</u>	<u>NUMBER OF INSTANCES OF PARTICIPATION</u>
4. James J. Cummings, Director, Office of Inspector and Auditor	6
5. Edward Hanrahan, Director, Office of Policy Evaluation	2
6. Leonard Bickwit, General Counsel	3
7. Martin G. Malsch, Deputy General Counsel	1
8. Samuel J. Chilk, Secretary of the Commission	8
9. Raymond J. Brady, Director, Division of Security, Office of Administration	4
10. Edward Halman, Director, Division of Contracts, Office of Administration	3
11. James R. Shea, Director, Office of International Programs	3
12. William J. Dircks, Director, Office of Nuclear Material Safety and Safeguards	1
13. John G. Davis, Director, Office of Nuclear Material Safety and Safeguards	29
14. Harold R. Denton, Director, Office of Nuclear Reactor Regulation	6
15. Victor Stello, Jr., Director, Office of Inspection and Enforcement	17
16. Edward E. Tucker, Director, Office of Equal Employment Opportunity	1

3. (b) Names and titles or positions of each person, who, on appeal, is responsible for the denial of records requested, and the number of instances of participation in each:

<u>NAME</u>	<u>NUMBER OF INSTANCES OF PARTICIPATION</u>
1. John F. Ahearne, Chairman, NRC	7
2. Joseph M. Hendrie, Commissioner, NRC	5
3. Victor Gilinsky, Commissioner, NRC	4

3. (b) Continued

<u>NAME</u>	<u>NUMBER OF INSTANCES OF PARTICIPATION</u>
4. Richard T. Kennedy, Commissioner, NRC	5
5. Peter A. Bradford, Commissioner, NRC	3
6. Lee V. Gossick, Executive Director for Operations	2
7. William J. Dircks, Acting Executive Director for Operations	9
8. William J. Dircks, Executive Director for Operations	2

3. (c) In 1980, NRC cited the following officials of other Federal agencies as denying officials for information originated by other agencies and contained in records subject to FOIA requests submitted to the NRC.

<u>AGENCY</u>	<u>OFFICIAL</u>	<u>FOIA EXEMPTION</u>
Department of State	Louis V. Nosenzo, Deputy Assistant Secretary Bureau of Oceans and International Environmental and Scientific Affairs	(1)
Department of State	Clayton E. McManaway, Deputy Assistant Secretary Classification/Declassification Center	(1)&(5)
Department of State	Thomas W. Ainsworth, Director Mandatory Review Classification/Declassification	(1)&(5)
Federal Bureau of Investigation	David G. Flanders, Chief Freedom of Information-Privacy Acts Branch	(7A)&(7B)
Federal Bureau of Investigation	Joseph E. Ondrula, Assistant Agent in Charge	(7A)

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

Response: There have been no findings of arbitrary or capricious conduct on the part of NRC personnel, or proceedings conducted pursuant to 5 U.S.C. 552(a)(4)(F).

5. A copy of every rule made by the agency regarding 5 U.S.C. 552.

Response: The NRC regulations implementing the Freedom of Information Act are codified in Subpart A of 10 CFR Part 9, a copy of which is enclosed.

6. A copy of the fee schedule and the total amount of fees collected by the agency for making records available under 5 U.S.C. 552.

Response: The NRC fee schedule is set forth in 10 CFR 9.14. The total amount of fees collected by the NRC for making records available under 5 U.S.C. 552 was \$3,965.98, which includes \$1,470.60 search fees and \$2,495.38 for the reproduction of records.

In addition to the above fees, the NRC has entered into a contract with a private firm to reproduce for the public copies of records located at the NRC's Public Document Room in Washington, DC. During 1980, approximately \$150,000 was received by the contractor for the reproduction of paper copy and microfiche.

7. Such other information as indicates effort to administer fully 5 U.S.C. 552.

Response: During 1980, NRC received 639 FOIA requests. Copies of FOIA requests and the records disclosed as a result of such requests are normally placed in the NRC Public Document Room in Washington, DC and, for records which relate to a specific nuclear facility, in the Local Public Document Room near that facility. This procedure provides the general public with access to the same records released to any individual.

The NRC Public Document Room and Local Public Document Rooms are open to the public during normal business hours, and copies of most licensing and related records are readily available to the public for inspection and copying. The NRC currently maintains approximately 150 Local Public Document Rooms throughout the country.

The accident at the Three Mile Island Nuclear Power Plant (TMI) on March 28, 1979 served to awaken the American public to voice their concerns about nuclear issues generally. This in turn gave rise to an

7. Continued

increase in requests for information ranging from early nuclear test programs conducted in the 1940's to current items of interest such as the routing of spent fuel shipments through cities and towns.

The Freedom of Information Act has proven to be a popular vehicle not only for members of the public to obtain information about the nuclear industry, but for NRC employees who utilize the Act to receive information about themselves and internal personnel practices and procedures. NRC's policy has been to comply with both the spirit and the letter of the FOIA, such as by telephoning requesters to keep them informed concerning the status of their requests and by assisting them in tailoring requests so that they can be expeditiously handled by the agency at the least cost to the requester.

UNITED STATES NUCLEAR REGULATORY COMMISSION
RULES and REGULATIONS
TITLE 10, CHAPTER 1, CODE OF FEDERAL REGULATIONS—ENERGY

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9**

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**APPENDIX A—REQUESTS FOR
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AUTHORITY: Sec. 161, Pub. L. 83-703, 68 Stat. 948, (42 U.S.C. 2201); Sec. 201, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841); Subpart A also issued under 5 U.S.C. 552; Subpart B also issued under 5 U.S.C. 552a; Subpart C also issued under 5 U.S.C. 552b.

§9.1 Scope.

The regulations in this part implement:
(a) The provisions of the Freedom of Information Act, 5 U.S.C. 552, with respect to the availability to the public of Nuclear Regulatory Commission records for inspection and copying; (b) the provisions of the Privacy Act of 1974, Pub. L. 93-579, with respect to disclosure and availability of certain Nuclear Regulatory Commission records maintained on individuals; and (c) the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b, with respect to opening Commission meetings to public observation.

§9.1a Subparts.

Subpart A sets forth special rules applicable to matters pertaining to the Freedom of Information Act. Subpart B sets forth special rules applicable to matters pertaining to the Privacy Act of 1974. Subpart C sets forth special rules applicable to matters pertaining to the Government in the Sunshine Act.

§9.2 Definitions.

As used in this part:

- (a) "NRC" means the Nuclear Regulatory Commission, established by the Energy Reorganization Act of 1974.

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

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

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

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

§ 9.2a Interpretations.

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

Subpart A—Freedom of Information Act Regulations

§ 9.3 Scope of subpart.

This subpart prescribes procedures under which NRC records are made available to the public for inspection and copying pursuant to the provisions of 5 U.S.C. 552. This subpart does not affect the dissemination or distribution of NRC originated, or NRC contractor originated, information to the public pursuant to any NRC public, technical, or other information program or policy, nor is it intended to restrict or limit the free flow of information between the NRC and its contractors and subcontractors, or between the NRC and a Government agency. Except where specifically noted otherwise, this subpart applies to all records whether they predate or postdate July 4, 1987.

§ 9.3a Definitions.

As used in this subpart:

(a) "Office", unless otherwise indicated, means all offices and divisions of the NRC reporting to or through the Executive Director for Operations, except for the Office of the Executive Legal Director.

(b) "Record" means any book, paper, map, photograph, brochure, punch card, magnetic tape, paper tape, sound recording, pamphlet, slide, motion picture, or other documentary material regardless of form or characteristics made by, in the possession of, or under the control of the NRC pursuant to Federal law or in connection with the transaction of public business as evidence of NRC organization, functions, policies, decisions, procedures, operations, programs or other activities. "Records" do not include objects or articles such as structures, furniture, tangible exhibits or models, or vehicles and equipment.

§ 9.4 Availability of records.

Any identifiable record, whether in the possession of the NRC, its contractors, its sub contractors, or others, shall be made available for inspection and copying pursuant to the provisions of this part, upon request of any member of the public.

§ 9.5 Exemptions.

(a) The following types of records are exempt from public disclosure under § 9.4:

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

(2) Records related solely to the internal personnel rules and practices of the NRC. This exemption does not apply to rules relating to the work hours, leave, and working conditions of NRC personnel, or similar matters. To the extent that they cannot be disclosed without harm to the functions to which they pertain, examples of exempt records of the type specified in the first sentence of this paragraph include, but are not limited to:

(i) Operating rules, guidelines, manuals on internal procedure, schedules and methods utilized by NRC inspectors, investigators, auditors, and examiners;

(ii) Bargaining positions and limitations involved in a negotiation prior to the execution of a contract or the completion of the action to which the bargaining positions or limitations were applicable except as they may be exempt pursuant to other provisions of this section.

(iii) Personnel policies, procedures and instructions; internal staffing plans, requirements, authorizations, controls, and supporting data relating to position management and manpower utilization; and information involved in the determination of the qualifications of candidates for employment or advancement.

(3) records specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential. Matter subject to this exemption is that which is customarily held in confidence by the originator. It includes, but is not limited to:

(i) Information received in confidence, such as trade secrets, inventions and discoveries, and proprietary data;

(ii) Technical reports and data, designs, drawings, specifications, formulae, or other types of proprietary information which are generated or developed by the NRC or for the NRC under contract;

(iii) Statistical data or information concerning contract performance, income, profits, losses, and expenditures, if received in confidence from a contractor or potential contractor;

(iv) [Deleted 40 FR 8774.]

(5) Interagency or intraagency memorandums or letters which would not be available by law to a private party in litigation with the NRC. To the extent not so available by law, examples include, but are not limited to:

(i) Reports, memorandums, letters, correspondence, work papers, minutes of meetings, and staff papers prepared for use within the NRC or within the Executive Branch of the Government by (a) members of the Commission, NRC personnel, or any Government agency, or (b) an NRC contractor, or its personnel acting within the scope of a contract with the NRC;

(ii) Advance information on proposed NRC plans to procure, lease or otherwise acquire or dispose of materials, real estate, facilities, or functions, when such information would provide undue or unfair competitive advantage to any person;

(iii) Records prepared for use in proceedings before any Federal or State court or administrative body;

(iv) Evaluations of contractors or products;

(v) Information scheduled for public release, but as to which premature release would be contrary to the public interest, such as documents awaiting patent review;

† Redesignated.

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(vi) Reports of inspections or investigations or surveys which pertain to the internal management or administration of the NRC;

(vii) Financial accounts and records and supporting documents; budget documents and supporting papers used or arising in the preparation and/or execution of a budget; annual and multiyear program and financial plans and support papers; audit reports, programs, work papers, and other data developed during the course of audits.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Information in such files which is not exempt from disclosure pursuant to other provisions of this section will not be withheld from the individual concerned or from his designated legal representative, and it may be disclosed to others with his written consent. To the extent that they involve a clearly unwarranted invasion of personal privacy, examples of files exempt from disclosure include, but are not limited to:

(i) Files containing the names of individuals who have received exposure to radiation;

(ii) Files containing reports, records and other material pertaining to individual cases in which disciplinary or other administrative action has been or may be taken, including records of proceedings pertaining to the conduct or performance of duties by NRC personnel. Opinions and orders resulting from those proceedings shall be disclosed without identifying details if used, cited or relied upon as precedent, as provided in § 9.6.

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record 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, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures or (vi) endanger the life or physical safety of law enforcement personnel.

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

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

(b) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this section.

*(c) If a requested record is one of another Government agency or deals with subject matter as to which a Government agency other than the NRC has exclusive or primary responsibility, the request for such a record shall be promptly referred by the NRC to that Government agency for disposition or for guidance with respect to disposition.

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

§ 9.6 Deletion of identifying details.

Whenever the release of the name or names or other identifying details of, or relating to, a private party or parties will constitute a clearly unwarranted invasion of personal privacy, an opinion, order, or other record required to be made available pursuant to 5 U.S.C. section 552 will be published or made available with such identifying details deleted and with a notification such as the following as a preamble:

Names of parties and certain other identifying details have been removed in order to prevent a clearly unwarranted invasion of the personal privacy of the individuals involved.

§ 9.7 Publicly available records.

(a) The NRC Public Document Room is located at 1717 H Street, N.W., Washington, D.C., and is open between 8:30 a.m. and 5:00 p.m. on Monday through Friday, except legal holidays. The following records or documents are 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 made in the adjudication of cases;

* Redesignated 40 FR 7893.

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

(3) A record of the final votes of each member of the Commission in every proceeding;

(4) Nuclear Regulatory Commission rules and regulations;

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

(6) Current indexes of the foregoing records issued, adopted or promulgated after July 4, 1967.

(b) The NRC will publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of the indexes or supplements thereto, specified in paragraph (a) (6) of this section, unless it determines by order published in the FEDERAL REGISTER that publication would be unnecessary and impracticable, in which case the NRC will provide copies of such indexes on request at a cost not to exceed the direct cost of reproduction as provided in § 9.14.

§ 9.8 Requests for records.

(a) Copies of records may be requested in person at the NRC Public Document Room, 1717 H Street, N.W., Washington, D.C. Written requests for copies of records shall be addressed to the Director, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

The request should clearly state on the envelope and in the letter that it is a "Freedom of Information Act request".

A request that is not so marked will be deemed not to have been received by the NRC until it is actually received by the Director, Office of Administration.

(b) All requests for copies of records must reasonably describe the record sought in sufficient detail to permit the identification of the requested record. Where possible, specific information regarding dates, titles, docket numbers, file designations, and other information which may help identify the records should be supplied by the requester. If a request does not reasonably describe the record sought in sufficient detail to permit its identification, the requester will be

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so informed by the Director, Office of Administration, or his designee, within 10 working days after receipt of the request and requested to submit additional information regarding the request or to meet with appropriate NRC personnel in order to clarify the request. Requests for Waiver or reduction of fees shall be made in accordance with §9.14a, waiver or reduction of fees, and shall be processed in accordance with §9.14b, Processing of requests for a waiver or reduction of fees.

(c) If the record for which a request is made has been reasonably described pursuant to paragraph (b) of this section and is available in the NRC Public Document Room, the requester will be informed within 10 working days after receipt of the request by the Director, Office of Administration, or his designee, of the time and place where the record will be made available, and the estimated cost for furnishing copies of the record. In order to obtain copies of records in the most expeditious manner, a person may request copies of records in person at the NRC Public Document Room, or may open an account at the Public Document Room with the private firm contractually responsible for reproducing copies of NRC records.

(d) Requested records which have been reasonably described pursuant to paragraph (b) of this section but which are located at places other than the NRC Public Document Room or NRC headquarters may, at the discretion of the NRC, be made available for inspection and copying at such other locations within 10 working days after receipt of the request. For example, contracting officers may authorize an NRC contractor to disclose records in its possession at the contractor's facility or, if the record is in the possession of a subcontractor, at a subcontractor's facility. To the extent applicable, the charges specified in §9.14 for locating and reproducing copies of records shall be applied to records made available pursuant to this paragraph.

(e) A request for a record which is not available in the NRC Public Document Room shall be promptly forwarded by the Director, Office of Administration, or his designee, to the head of the office primarily concerned with the records requested. The Director, Office of Administration, or his designee will maintain, and the Executive Legal Director or his designee will be furnished, a copy of each request referred to another office, to-

gether with the following information: (1) the date the request was received; (2) the office to which it was referred; and (3) the date on which it was referred.

§9.9 Initial determination.

(a) If, after consultation with the Executive Legal Director or his designee, the head of the office to which a request has been referred finds that the record sought is exempt from production or disclosure, but that its production or disclosure is not contrary to the public interest and will not adversely affect the rights of any person, the head of the responsible office will authorize the production or disclosure of the record, and will notify the requester within 10 working days after receipt of the request that the records will be promptly made available.

(b) Except as provided in §9.15, if the head of the office to which a request has been referred finds that a request should be denied in whole or in part, he will submit such findings to the Director, Office of Administration, in sufficient time to comply with the time limits set forth in this paragraph for a response by the Director. The Director, Office of Administration, will, after consultation with the Executive Legal Director or his designee, make an independent determination whether to comply with or deny the request. If the Director, Office of Administration, determines that the record sought is exempt from production or disclosure pursuant to §9.5(a), and its production or disclosure is contrary to the public interest or will adversely affect the rights of any person, the Director, Office of Administration, will notify the requester in the manner provided in §9.10 within 10 working days after receipt of the request.

(c) The 10 working day period for response to a request for records provided in paragraphs (a) and (b) of this section may be extended for unusual circumstances as provided in §9.13.

(d) In exceptional circumstances where it does not appear possible to complete action on the request within the maximum 20 working day limit as provided in §9.13, the Director, Office of Administration may seek an agreement with the requester for a specific extension of time in which to act upon the request. Any such agreement shall be confirmed in writing.

(e) If the head of the office to which a request has been referred or the Director, Office of Administration, does not respond to a request within the 10 working

day period, or within such extended periods as provided in this Part, the requester may treat such delay as a denial of the request and immediately appeal to the Executive Director for Operations as provided in §9.11(a) or to a district court as provided in §9.11(c).

§9.10 Form and content of responses.

(a) When a requested record has been identified and is available, the head of the office in which a request has been referred or the Director, Office of Administration, will promptly furnish the record or notify the requester as to where and when the record will be available for inspection and copying. Copies of records disclosed in response to Freedom of Information Act requests will normally be placed in the NRC Public Document Room and, in the case of records relating to nuclear power facility, in the Local Public Document Room established for that facility. The notification will also advise the requester of any applicable fees under §9.14.

(b) A reply denying a request for a record or denying a request for waiver or reduction of fees filed pursuant to §9.14a will be in writing signed by the Director, Office of Administration, or his designee, and will include as appropriate:

- (1) The reason for the denial;
- (2) A reference to the specific exemption under the Freedom of Information Act and the Commission's regulations authorizing the withholding of the record;
- (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 request;
- (4) A statement as to why the request does not meet the requirements of §9.14a if the request is for a waiver or reduction of fees; and
- (5) A statement that the denial may be appealed within 30 days from the receipt thereof to the Executive Director for Operations.

(c) A copy of each letter granting or denying requested records or denying a request for waiver or reduction of fees will be maintained by or furnished to the Director, Office of Administration, or his designee.

§9.11 Appeal from initial determination.

(a) Except as provided in §9.15, a requester may within 30 days of receipt

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of a notice of denial of the request for records or denial of a request for waiver or reduction of fees pursuant to this subpart, appeal such denial to the Executive Director for Operations. The appeal shall be in writing, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from Initial FOIA Decision." An appeal that is not so marked will be deemed not to have been received by the NRC until it is actually received by the Executive Director for Operations.

(b) Except as provided in §9.13, the Executive Director for Operations will make a determination with respect to any appeal pursuant to this section within 20 working days after the receipt of such appeal.

(c)(1) If on appeal the denial of the request for records is upheld in whole or in part, the Executive Director for Operations will notify the person making such request of the denial, including the exemption relied upon, an explanation of how the exemption applies to the records withheld, and the reasons for asserting the exemption.

(2) If on appeal the denial of a request for waiver or reduction of fees for locating and reproducing records is upheld in whole or in part, the Executive Director for Operations will notify the person making such request of the denial, including a statement as to why the request does not meet the requirements of §9.14a.

(3) The requester shall be informed 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 his principal place of business, or in which the agency records are situated, or in the District of Columbia.

(d) Copies of all appeals and written determinations on appeal will be furnished by the Executive Director for Operations, or his designee, to the Director, Office of Administration, or his designee.

§9.12 Production or disclosure of exempt records.

(a) Records of the kind specified in §9.5(a) shall not be produced or disclosed by NRC personnel, or NRC contractors who have possession of such

records, except in accordance with this Part or §§ 2.744 and 2.790 of this chapter.

(b) NRC personnel and NRC contractors from whom a record exempt from disclosure is sought shall follow the procedure specified below:

(1) If an exempt record is sought from NRC personnel, the request or subpoena shall promptly be forwarded to the Director, Office of Administration, who shall process the request as provided in this Part of take such other action as may be appropriate.

(2) If an exempt record is sought from an NRC contractor, the request or subpoena shall promptly be forwarded to the NRC contracting officer administering the contract who will then follow the procedure specified in paragraph (b)(1) of this section.

(3) NRC personnel or NRC contractors who are required by a subpoena to produce or disclose a record of the types included in §9.5(a) shall appear in response thereto and shall respectfully decline to produce or disclose the record described, basing refusal on this paragraph, unless production or disclosure has been authorized pursuant to this Part.

§9.13 Extension of time for response.

(a) In unusual circumstances specified in paragraph (b) of this section, the time limits prescribed in §9.9 or §9.11 may be extended by not more than 10 working days by written notice to the person making such request, setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

(b) For purposes of this section, "unusual circumstances" means:

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

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

(3) the need for consultation, which shall 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) Any extension of time limits prescribed in §§9.9 and 9.11 may not exceed a combined total of 10 working days per request.

§9.14 Charges for production of records.

(a)(1) Charges for the copying of records at the NRC Public Document Room (PDR), 1717 H St. NW., Washington, D.C. by the copying service contractor are as follows:

(i) Five cents per page for paper copy to paper copy, except for engineering drawings and any other records larger than 8½ x 14 inches for which the charge varies between \$1.00 to \$2.00 per square foot, depending upon size.

(ii) Twenty-four cents per page for microform to paper copy, except for engineering drawings and other records larger than 8½ x 14 inches for which the charge is \$3.00 per square foot or \$6.00 for a reduced size print (18 x 24 inches).

(iii) Twenty-two cents per microfiche to microfiche.

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

(v) Charges for records copied by the contractor at the PDR must be paid when the copies are furnished.

(2) Self service, coin operated, copying machines are available at the PDR for the use of the public. Paper to paper is \$0.05 per page. Microform to paper is \$0.10 per page on the reader-printers.

(3) Mail order requests for contractor copying of NRC records may be made by writing to the PDR.

(i) The charges for mail order reproduction of records are the same as those set out in paragraph (a)(1) of this section, except there is a \$2.00 minimum charge for records, plus mailing or shipping charges.

(ii) Each order submitted by mail must contain a statement that the requester is willing to pay the applicable charges. The contractor will include an invoice when it sends the order to the requester. A requester may also open an account with the copying service contractor, Literature Research Company, P.O. Box 1001, Annandale, VA 22003 (703-941-8010).

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(b) Requests for copies of records to be reproduced and furnished by the NRC at locations other than the NRC Public Document Room located in Washington, D.C., will be honored at the following charges:

(1) Sizes up to 8 1/2 x 14 inches made on office copying machines—\$0.05 per page of copy.

(2) The charge for reproducing records other than those specified above will be computed on the basis of NRC's direct costs.

(3) If a request is for records at locations other than the NRC Public Document Room, a charge of \$5.00 per hour will be made for searching for the requested records by clerical or administrative employees and a charge of \$12.00 per hour for searching by professional or supervisory employees.

(4) When a computer search is necessary in order to fulfill a request, the computer search charge will be the actual direct cost of the computer search.

(5) Except as otherwise provided in §9.14a, unless the request specifically states that whatever cost is involved will be acceptable, or acceptable up to a specified limit, the NRC will, for requests involving anticipated costs in excess of the minimum specified in §9.14a(a), so advise the requester as provided in §9.14(b), and the request will not be

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deemed to have been received until a deposit equal to the estimated costs is received, or the requester has agreed to bear the anticipated costs, or a determination has been made on a request for waiver or reduction of fees. Fees may be required to be paid in full prior to the issuance of the requested records.

(6) Refunds of unused deposits or additional billings will be made to adjust the anticipated cost to the actual cost.

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

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

(e) The Director, Office of Administration, or his designee, or the Executive Director for Operations, on appeals, in accordance with the provisions of § 9.14a, will waive or reduce any fee required by this section upon a determination that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

§ 9.14a Waiver or reduction of fees.*

(a) Fees for searching and reproduction of records at locations other than the NRC Public Document Room shall be waived:

(1) for search fees when the time for the search does not exceed four hours, in the aggregate, for a request or series of related requests;

(2) where the records are requested by and made available to a Federal, State, or local government, to an intergovernmental agency, or to a foreign government or international agency, and furnishing the records without charge is an appropriate courtesy.

(b) Except as provided in paragraph (a) and (f) of this section, fees for searching and reproduction of records may be waived only upon request. A person requesting the NRC to waive or reduce search or reproduction fees under this subpart shall, as set forth in 9.14b(b) provide sufficient factual information to permit NRC to make the determination whether waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

* The application requirements contained in sections 9.14a(c) and 9.14b(d) have been approved by the U.S. General Accounting Office under number B-180225 (R0582).

(c) In making a request for waiver or reduction of fees, the requester shall provide a statement setting forth the following information to the extent possible:

(1) How the information obtained from the records, or how the conclusions or results from any review or analyses of the records, will be published or otherwise disseminated to the general public;

(2) The size of the public that will be benefited by the disclosure;

(3) The nature, significance and likelihood of any tangible benefit that the public may receive from dissemination of the information;

(4) The financial benefit, if any, the requester will receive from the use of the requested materials;

(5) The ability of the requester to pay for any of the anticipated costs;

(6) How the intended use of the various types of records requested is reasonably likely to:

(i) Result in actions to maintain or enhance the public's health, safety, or the quality of the environment;

(ii) Result in improved regulatory processes;

(iii) Reduce the cost of providing a government service;

(iv) Contribute substantially to public debate on an important policy issue; or

(v) Contribute substantially to matters of historical importance.

(d) Public benefit will not normally result:

(1) When the requested records will be used primarily for the personal benefit of an individual or group rather than the general public;

(2) When the requested records will be used primarily for a commercial purpose or financial benefit;

(3) When the requested records have already been made available, or are being made available in response to the request, for inspection and copying in the NRC Public Document Room or a Local Public Document Room;

(4) When the requested records will not add appreciably to the information already available to the public in the NRC Public Document Room or a Local Public Document Room;

(5) When the requested records consist primarily of technical data which will only be distributed or made available to the public by the requester without further analyses or comment;

(6) When the costs to the public outweigh any benefit which may accrue to the public.

(e) Based upon the information furnished by the requester in response to paragraph (c) and the criteria set forth in paragraph (d) of this section, and the NRC will determine if waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. In determining whether to waive fees in whole

or in part, the NRC will consider the total estimated search and reproduction costs necessary to comply with the request and the extent to which the requester has carried the burden of making the necessary public interest showing under paragraph (c) of this section.

(f) In the absence of a specific request for waiver or reduction of fees, if the information furnished by the requester is sufficient to meet the requirements of this section for waiver or reduction of fees, NRC may determine that production or disclosure of the requested records can be considered as primarily benefiting the general public.

(g) The NRC will not waive the reproduction costs for documents located or made available in the NRC Public Document Room or a local public document room in the absence of a compelling reason to do so.

§ 9.14b Processing of requests for a waiver or reduction of fees*

(a) Within 10 working days after receipt of a request for access to records which does not involve more than four hours of search time, or in which the NRC agrees to waive fees pursuant to § 9.14a(f), the NRC will respond to the request as provided in § 9.9. If the request is expected to require more than four hours of search time to locate the requested records and the NRC has not waived fees under § 9.14a(f), the NRC will notify the requester that fees will be assessed. The notification shall include the estimated cost of search fees and the nature of the search required. Requesters are encouraged to discuss with the NRC the possibility of narrowing the scope of the request while retaining the requester's original objective. The requester will be advised that he may agree to bear the estimated costs, submit a deposit equal to the estimated cost of complying with the request, or submit a request for waiver or reduction of fees pursuant to § 9.14a.

(b) Within 10 working days of the receipt of NRC's notice that fees will be assessed, the requester shall notify NRC in writing that he agrees to bear the estimated costs, submit a deposit equal to the estimated cost of responding to the request or submit a request for waiver or reduction of fees pursuant to § 9.14a. In making a request for waiver or reduction of fees, a requester must provide the information required by § 9.14a(c).

(c) Within 10 working days after receipt of a request for the waiver or reduction of fees made in accordance with § 9.14a, the NRC will waive or reduce the fees and notify the requester of the NRC's intent to promptly provide the records or will deny the re-

* The application requirements contained in sections 9.14a(c) and 9.14b(d) have been approved by the U.S. General Accounting Office under number B-180225 (R0582).

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quest and provide a statement to the requester as to why the request does not meet the requirements of § 9.14a(e).

(d) In those cases where a waiver of fees was requested and denied and the requester has agreed to bear the estimated cost, the requester may within 30 days of receipt of the requested documents resubmit a request for a waiver or reduction of fees if the receipt of documents has materially changed the information originally furnished by the requester pursuant to 9.14a(c).

(e) As provided in §§ 9.11 and 9.15, a denial of a request to waive or reduce fees may be appealed within 30 days to the Executive Director for Operations or to the Commission, as appropriate.

4. Section 9.15 is revised to read as follows:

§ 9.15 Committees, boards, panels, and offices reporting to the Commission.

(a) For boards, panels, and offices reporting directly to the Commission, and the Office of the Executive Legal Director, the initial determination on a request for records or request for waiver or reduction of fees for locating and reproducing such records, required by § 9.9 shall be made by the head of such board, panel, or office, or his designee, instead of the Director, Office of Administration, and an appeal of an adverse determination shall be made to the Commission instead of the Executive Director for Operations.

(b) The Advisory Committee Management Officer shall make the initial determination required by § 9.9 on requests for records of advisory committees established pursuant to Part 7 of this chapter, including the Advisory Committee on Reactor Safeguards, or requests for waiver or reduction of fees for locating and reproducing such records, and an appeal of an adverse determination shall be to the Commission.

(c) The head of boards, panels, and offices reporting directly to the Commission, and the Advisory Committee Management Officer for advisory committees established pursuant to Part 7 of this chapter, will make the initial determination required by paragraph (a) and (b) of this section only after consultation with the Office of the General Counsel.

§ 9.16 Annual Report to Congress.

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

(1) the number of determinations made by the NRC not to comply with re-

quests for records made to the NRC under this Part and the reasons for each such determination;

(2) the number of appeals made by persons under § 9.11, the results of such appeals, and the reason for the action upon each appeal that results in a denial of information;

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

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

(5) a copy of every rule made by the NRC regarding this Part;

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

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

(b) A copy of each report to the Congress made pursuant to paragraph (a) of this section will be made available for public inspection and copying in the NRC Public Document Room.

Subpart B—Privacy Act Regulations

§ 9.50 Scope of subpart.

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

§ 9.51 Definitions.

As used in this subpart:

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

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

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

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

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

(f) "Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by the Census Act, 13 U.S.C. 8.

(g) "Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected, as described in a notice published in the FEDERAL REGISTER.

PROCEDURES APPLICABLE TO REQUESTS BY INDIVIDUALS FOR INFORMATION, ACCESS OR AMENDMENT OF RECORDS MAINTAINED ABOUT THEM

PRESENTATION OF REQUESTS

§ 9.52 Types of requests.

(a) Individuals may make the following requests respecting records about themselves maintained by NRC in a system of records subject to the provisions of the Privacy Act of 1974:

(1) Request a determination whether a record about the individual is contained in a system of records.

(2) Request access to a record about the individual. Access requests may include requests to review the record and to have a copy made of all or any portion thereof in a form comprehensible to the individual.

(3) Request correction or amendment of a record about the individual.

(b) Requests for accounting of disclosures. Individuals may, at any time, request an accounting by NRC of disclosures to any other person or Government agency of any record about themselves contained in a system of records controlled by NRC, except the following: (1) Disclosures made pursuant to the Freedom of Information Act, 5 U.S.C. 552; (2) disclosures made within the Nuclear Regulatory Commission; (3) disclosures made to another Government agency or instrumentality for an authorized law enforcement activity pursuant to 5 U.S.C. 552a(b)(7); (4) disclosures expressly exempted by NRC regulations from the requirements of 5 U.S.C. 552a(c)(3) pursuant to 5 U.S.C. 552a(k).

§ 9.53 Requests: how and where presented.

(a) Requests may be made in person or in writing. Assistance regarding requests or other matters relating to the Privacy Act of 1974 may be obtained by writing to the Director, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Requests relating to records in multiple systems of records should be made to the Director, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. The Director, or his designee, shall assist the requestor in

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identifying his request more precisely and shall be responsible for forwarding the request to the appropriate system manager.

(b) All written requests shall be made to the Director, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should clearly state on a separate envelope and in the letter, as appropriate: "Privacy Act Request," "Privacy Act Disclosure Accounting Request," "Privacy Act Correction Request." A request that is not so marked will be deemed not to have been received by the NRC until it is actually received by the Director, Office of Administration.

(c) Requests may be made in person during official hours at the U.S. Nuclear Regulatory Commission office where the record is located, as listed in the "Notice of System of Records" for the system in which the record is contained.

§ 9.54 Verification of identity of individuals making requests.

(a) Identification requirements in paragraphs (a) (1) and (2) of this section are applicable to any individual who makes requests respecting records about himself, except that no verification of identity shall be required if the records requested are available to the public under the provisions of the Freedom of Information Act. With respect to certain sensitive records, additional requirements for verification of identity stated in the appropriate published "Notice of System of Records" may be imposed.

(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 photocopy of a driver's license or other document.

(2) *Requests in person.* An individual making a request in person respecting a record about himself may establish his identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear a name, address and signature (such as a driver's license or credit card).

(b) *Inability to provide requisite documentation of identity.* An individual making a request in person or in writing respecting a record about himself who cannot provide the necessary documentation of identity may provide a notarized statement, swearing or affirming to his identity and to the fact that he understands that penalties for false statements may be imposed pursuant to 18 U.S.C. 1001, and that penalties for obtaining a record concerning an individual under false pretenses may be imposed pursuant to 5 U.S.C. 552a(d)(3). Forms for such notarized statements may be obtained on request from the Director, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(c) *Verification of parentage or guardianship.* In addition to establishing the identity of the minor, or other individual

he represents as required in paragraph (a) of this section, the parent or legal guardian of a minor or of an individual judicially determined to be incompetent shall establish his status as parent or guardian by furnishing a copy of a birth certificate of the minor showing parentage or a copy of a court order establishing guardianship.

§ 9.55 Specification of records.

(a) (1) Requests relating to records shall, insofar as practicable, specify the nature of the record sought, the approximate dates covered by the record, the system of records in which the record is thought to be included and the system manager having custody of the record system as shown in the annual compilation, "Notices of Records Systems", published by the General Services Administration. Requests shall, in addition, comply with any additional specification requirements contained in the published "Notice of System of Records" for that system.

(2) Requests for correction or amendment of records shall, in addition, specify the particular record involved, state the nature of the correction or amendment sought and furnish justification for the correction or amendment.

(b) Requests which do not contain information sufficient to identify the record requested will be returned promptly to the requestor, with a notice indicating what information is lacking. Individuals making requests in person will be informed of any deficiency in the specification of records at the time the request is made. Individuals making requests in writing will be notified of any such deficiency when their request is acknowledged.

§ 9.56 Accompanying persons.

An individual requesting access to records about himself may be accompanied by another individual of his own choosing. Both the individual requesting access and the individual accompanying him shall sign the required form indicating that the Nuclear Regulatory Commission is authorized to discuss the contents of the subject record in the presence of both individuals.

NRC PROCEDURES FOR PROCESSING REQUESTS

§ 9.60 Acknowledgment of requests.

(a) Written requests by individuals to verify the existence of, obtain access to or correct or amend records about themselves maintained by NRC in a system of records subject to the provisions of the Privacy Act of 1974, shall be acknowledged in writing by the Director, Office of Administration, or his designee, within ten working days after date of actual receipt. The acknowledgment shall advise the requestor if any additional information is needed to process the request. Wherever practicable, the acknowledgment shall notify the individual whether his request to obtain access to the record or to correct or amend the record has been granted or denied.

(b) When an individual requests access to records or permission to correct or amend records in person, every effort will be made to make an immediate determination as to whether access or cor-

rection or amendment should be granted. If an immediate determination cannot be made, the request will be processed in the same manner as a written request. Records will be made available for immediate inspection whenever possible.

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

(a) When an individual requests information concerning the existence of, or access to, records about himself which have been compiled in reasonable anticipation of a civil action or proceeding in either a court or before an administrative tribunal, the NRC shall advise the individual only that no record available to him pursuant to the Privacy Act of 1974 has been identified.

(b) *Specific exemptions pursuant to 5 U.S.C. 552a(k).* Individual requests for access to records which have been exempted from access pursuant to the provisions of 5 U.S.C. 552a(k) and § 9.95 shall be processed as follows:

(1) *Information classified pursuant to Executive Order 12065 and exempted pursuant to 5 U.S.C. 552a(k)(1).* Requested information classified by NRC will be reviewed by the responsible official of the NRC to determine whether it continues to warrant classification under the criteria of "Section 1-301 of Executive Order 12065."

Information which no longer warrants classification under these criteria shall be declassified and made available to the individual. If the requested information has been classified by another agency, the responsible official of the NRC will request the classifying agency to review the information to ascertain if classification is still warranted. If the information continues to warrant classification, the individual shall be advised that the information sought is classified, that it has been reviewed and continues to warrant classification, and that it has been exempted from access pursuant to 5 U.S.C. 552a(k)(1).

(2) *Investigatory material compiled for law enforcement purposes exempted pursuant to 5 U.S.C. 552a(k)(2).* Requests shall be responded to in the manner provided in paragraph (a) of this section unless a review of the information indicates that the information has been used or is being used to deny the individual any right, privilege or benefit for which he is eligible or to which he would otherwise be entitled under Federal law. In that event, the individual shall be advised of the existence of the information and shall be provided the information except to the extent it would reveal the identity of a confidential source. Information that would reveal the identity of a confidential source shall be extracted or summarized in a manner which protects the source and the summary or extract shall be provided to the requesting individual.

(3) *Material within a system of records required by statute to be maintained and used solely as statistical records and exempted pursuant to 5 U.S.C. 552a(k)(4).* The exempted information requested will be reviewed by the responsible official of the NRC to determine whether it continues to warrant

*Amended 44 FR 50804

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exemption. Information which no longer warrants exemption shall be made available to the individual. If the information continues to warrant exemption, the individual shall be advised that the information sought is exempt from disclosure, that it has been reviewed and continues to warrant exemption, and that it has been exempted from access pursuant to 5 U.S.C. 552a(k)(4).

(4) *Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information and exempted pursuant to 5 U.S.C. 552a(k)(5).* Information exempted pursuant to 5 U.S.C. 552a(k)(5) shall be made available to an individual upon request except to the extent that the information would reveal the identity of a confidential source. Material that would reveal the identity of a confidential source shall be extracted or summarized in a manner which protects the source and the summary or extract shall be provided to the requesting individual.

(5) *Testing or examination material exempted pursuant to 5 U.S.C. 552a(k)(6).* Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service which has been exempted pursuant to 5 U.S.C. 552a(k)(6) shall not be made available to an individual if disclosure would compromise the objectivity or fairness of the testing or examination process but may be made available if no possibility of such compromise exists.

§ 9.62 Special procedures.

(a) *Records under the control of another government agency.* (1) *Medical records.* Requests received by NRC pertaining to medical records under the control of the U.S. Public Health Service or another Government agency will either be referred to the appropriate agency or returned to the requestor with the name of the controlling Government agency. If known, within ten working days after receipt by NRC. NRC will inform the requestor of any referral of his request to another Government agency at the time the referral is made.

(2) *Nonmedical records.* Requests received by NRC pertaining to nonmedical records under the control of another Government agency will be returned to the requestor with the name of the controlling Government agency, if known, within ten working days after receipt by NRC.

DETERMINATION AND APPEALS

§ 9.65 Access determinations; appeals.

(a) *Initial determinations.* The Director, Office of Administration, or his designee, with the advice of the system manager having control of the record to which access is requested, shall determine whether access to the record is available under the Privacy Act and notify the requesting individual in person or in writing of that determination. Unless the request presents unusual difficulties or involves extensive numbers of records, individuals shall be notified of determinations to grant or deny access

within 30 working days after receipt of the request.

(1) Notices granting access shall inform the individual when and where the requested record may be seen, how copies may be obtained, and of any fees or anticipated charges which may be incurred pursuant to § 9.85 of this subpart.

(2) Notices denying access shall state the reasons for the denial, and advise the individual that he may appeal the denial to the Executive Director for Operations in accordance with the procedures set forth in this section.

(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 his request by the Executive Director for Operations. A request for final review of an initial determination should be filed within 60 days of the receipt of the initial determination, shall be in writing, shall be addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should be clearly marked on the envelope and in the letter "Privacy Act Appeal—Denial of Access." A request that is not so marked will be deemed not to have been received by the NRC until it is actually received by the Executive Director for Operations.

(c) *Final determinations.* (1) The Executive Director for Operations, or his designee, shall make a final determination within 30 working days of receipt of the request for final review, unless he extends the time for good cause shown such as the need to obtain additional information, the volume of records involved or the complexity of the issue. The extension of time shall not exceed 30 additional working days. The requestor shall be advised in advance of any extension of time and of the reasons therefor.

(2) If the Executive Director for Operations, or his designee, determines that access was properly denied because the information requested has been exempted from disclosure, he shall undertake a review of the exemption to determine whether the information should continue to be exempt from disclosure. The Executive Director for Operations, or his designee, shall notify the individual in writing of his final determination to grant or deny the request for access. Notices denying access shall state the reasons therefor and shall advise the individual of his right to judicial review pursuant to 5 U.S.C. 552a(g).

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

(a) *Initial determinations.* (1) The Director, Office of Administration, or his designee, with the advice of the system manager having control of the record, shall determine whether to authorize or refuse correction or amendment of a record. Unless the request presents unusual difficulties or involves extensive numbers of records, individuals shall be notified of determinations to authorize or refuse correction or amendment of a

record within 30 working days after receipt of the request. In making this determination, the Director, or his designee, shall be guided by the following standards:

(i) Records shall contain only such information about an individual as is relevant and necessary to accomplish an NRC function required to be accomplished by statute or by executive order of the President;

(ii) Records used by NRC in making any determination about any individual shall be as accurate, relevant, current, and complete as is reasonably necessary to assure fairness to the individual in the determination;

(iii) No record shall describe how any individual has exercised rights guaranteed by the First Amendment unless such record is expressly authorized by statute or by the individual about whom the record is maintained, or is pertinent to and within the scope of an authorized law enforcement activity.

(2) If correction or amendment of a record is authorized, the Director, Office of Administration, or his designee, shall correct or amend the record, notify the requesting individual in writing that the correction or amendment has been made and provide the individual with a courtesy copy of the corrected record.

(3) If correction or amendment of a record is refused, the Director, Office of Administration, or his designee, shall notify the requesting individual in writing of the refusal and the reasons therefor, and shall advise the individual of his right to request a review of the refusal by the Executive Director for Operations in accordance with the procedures set forth in this section.

(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 request a final review and determination of his request by the Executive Director for Operations. A request for final review of an initial determination should be filed within 60 days of the receipt of the initial determination, shall be in writing, shall be addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should be clearly marked on the envelope and in the letter "Privacy Act Correction Appeal." An appeal that is not so marked will be deemed not to have been received by the NRC until it is actually received by the Executive Director for Operations. Requests for final review shall set forth the specific item of information sought to be corrected or amended and should include, where appropriate, documents supporting the correction or amendment.

(c) *Final determinations.* (1) The Executive Director for Operations, or his designee, shall make a final determination within 30 working days of receipt of the request for final review unless, for good cause shown such as the need to obtain additional information, the volume of records involved or the complexity of the issue, he extends the time for making the final determination. The extension of time shall not exceed 30 additional

† Redesignated 41 FR 44997.

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tional working days. The requestor shall be advised in advance of any extension of time and the reasons therefor.

(2) If the Executive Director for Operations, or his designee, makes a final determination that an amendment or correction of the record is warranted on the facts, he shall notify the Director, Office of Administration, to correct or amend the record pursuant to the procedures in § 9.66(a)(2).

(3) If the Executive Director for Operations, or his designee, makes a final determination that an amendment or correction of the record is not warranted on the facts, he shall notify the individual in writing of his refusal to authorize correction or amendment of the record in whole or in part, and of the reasons therefor, and shall advise the individual of his right to provide a "Statement of Disagreement" for the record and of his right to judicial review pursuant to 5 U.S.C. 552(a)(g).

§ 9.67 Statements of disagreement.

(a) Written "Statements of Disagreement" may be furnished by the individual within 30 working days of the date of receipt of the final adverse determination of the Executive Director for Operations. "Statements of Disagreement" shall be addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should be clearly marked on the statement and on the envelope "Privacy Act Statement of Disagreement".

(b) The Executive Director for Operations, or his designee, shall be responsible for ensuring that: (1) The "Statement of Disagreement" is included in the system or systems of records in which the disputed item of information is maintained; and (2) the original record is marked to indicate the information disputed, the existence of a "Statement of Disagreement", and the location of the "Statement of Disagreement" within the system of records.

§ 9.68 NRC Statements of Explanation.

The Executive Director for Operations, or his designee may, if he deems it appropriate, prepare a concise statement of the reasons why the requested amendments or corrections were not made. Any NRC "Statement of Explanation" shall be included in the system of records in the same manner as the "Statement of Disagreement". Courtesy copies of the NRC statement and of the notation of dispute as marked on the original record shall be furnished to the individual who requested correction or amendment of the record.

§ 9.69 Notices of correction or dispute.

(a) When a record has been corrected upon request or when a "Statement of Disagreement" has been filed, the Director, Office of Administration, or his designee, shall, within 30 working days thereof, advise all prior recipients of the affected record whose identity can be

determined pursuant to an accounting of disclosures required by the Privacy Act or any other accounting previously made, of the correction or of the filing of the "Statement of Disagreement".

(b) Any disclosure of disputed information occurring after a "Statement of Disagreement" has been filed shall clearly identify the specific information disputed and be accompanied by a copy of the "Statement of Disagreement" and a copy of any NRC "Statement of Explanation".

DISCLOSURE TO OTHERS OF RECORDS ABOUT INDIVIDUALS

§ 9.80 Disclosure of record to persons other than the individual to whom it pertains.

(a) NRC Commissioners and NRC personnel shall not disclose any record which is contained in a system of records maintained by NRC by any means of communication to any person, or to another Government agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record is:

(1) To NRC Commissioners and NRC personnel who have a need for the record in the performance of their duties;

(2) Required under 5 U.S.C. 552;

(3) For a routine use published in the FEDERAL REGISTER;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 of the United States Code;

(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record and the record is transferred in a form that is not individually identifiable. The advance written statement of assurance shall (i) state the purpose for which the record is requested, and (ii) certify that the record will be used only for statistical purposes. Prior to release for statistical purposes in accordance with the provisions of this paragraph, the record shall be stripped of all personally identifying information and reviewed to ensure that the identity of any individual cannot reasonably be determined by combining two or more statistical records;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or to the Administrator of General Services or his designee for evaluation to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the NRC specifying the particular portion of the record desired and the law enforcement activity for which the record is sought. A record may be disclosed to a law enforcement agency at the initiative of the NRC if criminal conduct is suspected, provided that such disclosure has been established as a rou-

tine use by publication in the FEDERAL REGISTER, and the instance of misconduct is directly related to the purpose for which the record is maintained;

(8) To any person upon a showing of compelling circumstances affecting the health or safety of any individual.

(9) To either House of Congress or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof or to any joint committee of the Congress or to any subcommittee of such joint committee;

(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

§ 9.81 Notices of subpoenas.

When records concerning an individual are subpoenaed or otherwise disclosed pursuant to court order, the NRC officer or employee served with the subpoena shall be responsible for assuring that the individual is notified of the disclosure within five days after such subpoena or other order becomes a matter of public record. The notice shall be mailed to the last known address of the individual and shall contain the following information: (1) The date the subpoena is returnable; (2) the court in which it is returnable; (3) the name and number of the case or proceeding; and (4) the nature of the information sought.

§ 9.82 Notices of emergency disclosures.

When information concerning an individual has been disclosed to any person under compelling circumstances affecting health or safety, the NRC officer or employee who made or authorized the disclosure shall notify the individual at his last known address within five days of the disclosure. The notice shall contain the following information: (a) The nature of the information disclosed; (b) the person or agency to whom the information was disclosed; (c) the date of the disclosure; and (d) the compelling circumstances justifying the disclosure.

FEES

§ 9.85 Fees.

(a) *When charged.* Fees shall not be charged for search for or review of records requested pursuant to this subpart or for making copies or extracts of records in order to grant access to records and make them available for review. Fees established pursuant to 31 U.S.C. 483a and 5 U.S.C. 552a(f)(5) shall be charged according to the schedule contained in paragraph (b) of this section for actual copies of records requested by individuals pursuant to the Privacy Act of 1974, unless the Director, Office of Administration, or his designee, waives the fee because of the inability of the individual to pay. Fees shall not be charged where they would amount, in the aggregate, to less than \$3.

(b) *Schedule of fees.* Fees may only be assessed for reproduction charges for actual copies of records requested by individuals pursuant to the Privacy Act of 1974 in accordance with the following

* Amended 41 FR 20645.

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schedule:

(1) Record sizes up to 8½ x 14 inches made on office copying machines—\$0.10 per page copy.

(2) Record sizes greater than 8½ x 14 inches—\$0.10 for each 8½ x 14 inch unit or fraction thereof per page copy.

(3) Microfiche—8½ x 11 inches—\$0.15 per page copy.

(4) The charge for reproducing records other than those specified above will be computed on the basis of NRC's direct costs.

(c) *Notice of anticipated charges.* When it is anticipated that fees chargeable under this section will amount to more than \$3, and the requestor has not indicated in advance his willingness to pay fees as high as are anticipated, the requestor shall be notified of the amount of the anticipated cost before copies are made. The notification shall offer the requestor the opportunity to confer with NRC personnel with the object of reformulating the request to meet the requestor's needs at lower cost.

(d) *Form and place of payment.* Fee payments shall be by check, draft or money order payable to the U.S. Nuclear Regulatory Commission. No employee of NRC is authorized to accept payment of fees in cash.

(e) *Advance deposit.* Where the anticipated fee chargeable under this section exceeds \$25, an advance deposit of 25% of the anticipated fee or \$25, whichever is greater, may be required. Where a requestor has previously failed to pay a fee under this section, an advance deposit of the full amount of the anticipated fee may be required.

ENFORCEMENT

§ 9.90 Violations.

(a) An injunction or other court order may be obtained pursuant to 5 U.S.C. 552a(g) (1-3) to compel NRC to permit an individual to review, amend or copy a record pertaining to him, or to be accompanied by someone of his own choosing when he reviews his record. A court order may be obtained for the payment of a civil penalty imposed pursuant to 5 U.S.C. 552a(g) (4) if NRC intentionally or willfully fails to maintain a record accurately, or fails to comply with any provision of 5 U.S.C. 552a, or any provision of this subpart. If such failure results in an adverse determination or has an adverse effect on an individual. Court costs and attorney's fees may be awarded in civil actions.

(b) Any officer or employee of NRC who willfully maintains a system of records without meeting the notice requirements of 5 U.S.C. 552a(e) (4), or who willfully discloses information knowing such disclosure to be prohibited by 5 U.S.C. 552a or by any rules or regulations issued thereunder, may be guilty of a criminal misdemeanor and upon conviction may be fined up to \$5000. Any person who knowingly and willfully requests or obtains any record concerning an individual from NRC under false pretenses may be convicted of a criminal misdemeanor and upon conviction may be fined up to \$5000.

EXEMPTIONS

§ 9.95 Specific exemptions.

Pursuant to 5 U.S.C. 552a(k), portions of the following systems of records are exempt from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), (I); and (f) and are subject to the provisions of § 9.61 of this part:

- (a) Contracts Records Files
- (b) Office of Inspector and Auditor Index File and Associated Records
- (c) Development and Advancement for Regulatory Employees (DARE) Records
- (d) Equal Employment Opportunity Records Files
- (e) General Personnel Records (Official Personnel Folder and Related Records)
- (f) Personnel Security Files and Associated Records
- (g) Personnel Performance Appraisals
- (h) Personnel Research and Test Validation Records
- (i) Recruiting, Examining and Placement Records
- (j) Secretariat Records Facility Files

(k) Protection support files and associated records.

(l) Information security files and associated records.

(m) Appointment and Promotion Certificate Records.

(n) Document Control System.

Subpart C—Government in the Sunshine Act Regulations

§ 9.100 Scope of Subpart.

This subpart prescribes procedures pursuant to which NRC meetings shall be open to public observation pursuant to the provisions of 5 U.S.C. Sec. 552b. This subpart does not affect the procedures pursuant to which NRC records are made available to the public for inspection and copying which remain governed by subpart A, except that the exemptions set forth in § 9.104(a) shall govern in the case of any request made pursuant to § 9.8 to copy or inspect the transcripts, recordings or minutes described in § 9.108. Access to documents considered at NRC meetings shall continue to be governed by subpart A of this Part.

§ 9.101 Definitions.

As used in this subpart:

(a) "Commission" means the collegial body of five Commissioners or a quorum thereof as provided by section 201 of the Energy Reorganization Act of 1974, or any subdivision of that collegial body au-

thorized to act on its behalf, and shall not mean any body not composed of members of that collegial body.

(b) "Commissioner" means an individual who is a member of the Commission.

(c) "Meeting" means the deliberations of at least a quorum of Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include deliberations required or permitted by §§ 9.105, 9.106, or § 9.108(c), gatherings of a social or ceremonial nature, or briefings of the Commission by representatives of other agencies or departments of the United States government, or representatives of foreign governments or international bodies where such briefings or discussions are informational in nature and are not conducted with specific reference to any particular matter then pending before the Commission.

(d) "Closed meeting" means a meeting of the Commission closed to public observation as provided by § 9.104.

(e) "Open meeting" means a meeting of the Commission open to public observation pursuant to this subpart.

(f) "Secretary" means the Secretary to the Commission.

(g) "General Counsel" means the General Counsel of the Commission as provided by section 25(b) of the Atomic Energy Act of 1954 and section 201(f) of the Energy Reorganization Act of 1974, and, until such time as the offices of that officer are in the same location as those of the Commission, any member of his office specially designated in writing by him pursuant to this subsection to carry out his responsibilities under this subpart.

§ 9.102 General requirement.

Commissioners shall not jointly conduct or dispose of Commission business in Commission meetings other than in accordance with this subpart. Except as provided in § 9.104, every portion of every meeting of the Commission shall be open to public observation.

§ 9.103 General provisions.

The Secretary shall ensure that all open Commission meetings are held in a location such that there is reasonable space, and adequate visibility and acoustics, for public observation. No additional right to participate in Commission meetings is granted to any person by this subpart. An open meeting is not part of the formal or informal record of decision of the matters discussed therein except as otherwise required by law. Statements of views or expressions of opinion made by Commissioners or NRC employees at open meetings are not intended to represent final determinations or beliefs.

Such statements may not be pleaded, cited, or relied upon before the Commission or in any proceeding under part 2 of these regulations (10 CFR part 2) except as the Commission may direct.

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Members of the public attending open Commission meetings may use small electronic sound recorders to record the meeting, but the use of other electronic recording equipment and cameras requires the advance written approval of the Secretary.

§ 9.104 Closed meetings.

(a) Except where the Commission finds that the public interest requires otherwise, Commission meetings shall be closed, and the requirements of §§ 9.105 and 9.107 shall not apply to any information pertaining to such meeting otherwise required by this subpart to be disclosed to the public, where the Commission determines in accordance with the procedures of § 9.105 that opening such meetings or portions thereof or disclosing such information, is likely to:

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

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. Sec. 552) provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, including such information as defined in § 2.790(d) of this title;

(5) Involve accusing any person of a crime, imposing a civil penalty on any person pursuant to 42 U.S.C. Sec. 2282 or 42 U.S.C. Sec. 5846, or any revocation of any license pursuant to 42 U.S.C. Sec. 2236, or formally censuring any person;

(6) Disclose information of a personal nature where such disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory reports compiled for law enforcement purposes, including specifically enforcement of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Sec. 2011 et seq., and the Energy Reorganization Act of 1974, as amended, 42 U.S.C. Sec. 5801 et seq., or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record 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, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or

(vi) endanger the life or physical safety of law enforcement personnel;

(8) [Reserved]

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action, except that this subparagraph shall not apply in any instance where the Commission has already disclosed to the public the content or nature of its proposed action, or where the Commission is required to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena, or the Commission's participation in a civil action or proceeding or an action or proceeding before a state or federal administrative agency, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition by the Commission of a particular case of formal agency adjudication pursuant to 5 U.S.C. Sec. 554 or otherwise involving a determination on the record after an opportunity for a hearing pursuant to part 2 or similar provisions.

(b) Examples of situations in which Commission action may be deemed to be significantly frustrated are (1) if opening any Commission meeting or negotiations would be likely to disclose information provided or requests made to the Commission in confidence by persons outside the Commission and which would not have been provided or made otherwise; (2) if opening a meeting or disclosing any information would reveal legal or other policy advice, public knowledge of which could substantially affect the outcome or conduct of pending or reasonably anticipated litigation or negotiations; or (3) if opening any meeting or disclosing any information would reveal information requested by or testimony or proposals to be given to other agencies of government, including the Congress and the Executive Branch before the requesting agency would receive the information, testimony or proposals. The examples in the above sentence are for illustrative purposes only and are not intended to be exhaustive.

§ 9.105 Commission procedures.

(a) Action under § 9.104 shall be taken only when a majority of the entire membership of the Commission votes to take such action. A separate vote of the Commissioners shall be taken with respect to each Commission meeting a portion or portions of which are proposed to be closed to the public pursuant to § 9.104, or with respect to any information which is proposed to be withheld under § 9.105 (c). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Commissioner participating in such vote shall be recorded and no proxies shall be allowed.

(b) Within one day of any vote taken pursuant to paragraph (a) of this section, § 9.106(a) or § 9.108(c) the Secretary shall make publicly available in the Public Document Room a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Secretary shall, within one day of the vote taken pursuant to paragraph (a) of this section or § 9.106(a), make publicly available in the Public Document Room a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(c) The notices and lists required by paragraph (b) of this section to be made public may be withheld from the public to the extent that the Commission determines that such information itself would be protected against disclosure by § 9.104 (a). Any such determinations shall be made independently of the Commission's determination pursuant to paragraph (a) of this section to close a meeting, but in accordance with the procedure of that subsection. Any such determination, including a written explanation for the action and the specific provision or provisions of § 9.104(a) relied upon, must be made publicly available to the extent permitted by the circumstances.

§ 9.106 Persons affected and motions for reconsideration.

(a) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of § 9.104, the Commission, upon request of any one Commissioner, shall vote by recorded vote whether to close such meeting.

(b) Any person may petition the Commission to reconsider its action under § 9.105(a) or paragraph (a) of this section by filing a petition for reconsideration with the Commission within seven days after the date of such action and before the meeting in question is held.

(c) A petition for reconsideration filed pursuant to paragraph (b) of this section shall state specifically the grounds on which the Commission action is claimed to be erroneous, and shall set forth, if appropriate, the public interest in the closing or opening of the meeting. The filing of such a petition shall not act to stay the effectiveness of the Commission action or to postpone or delay the meeting in question unless the Commission orders otherwise.

§ 9.107 Public announcement of Commission meetings.

(a) In the case of each meeting, the Secretary shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the Commission to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the Commission determines by a recorded vote that Commission business requires that such meeting be called at an earlier

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date, in which case the Secretary shall make public announcement of the time, place and subject matter of such meeting, and whether open or closed to the public, at the earliest practical time.

(b) The time or place of a meeting may be changed following the public announcement required by paragraph (a) of this section only if the Secretary publicly announces such changes at the earliest practicable time. The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (1) a majority of the entire membership of the Commission determines by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and (2) the Secretary publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(c) Immediately following each public announcement required by this section, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the Commission to respond to requests for information about the meeting, shall also be submitted for publication in the FEDERAL REGISTER.

(d) The public announcement required by paragraph (a) of this section shall consist of the Secretary:

(1) publicly posting a copy of the document in the Public Document Room at 1717 H Street, N.W., Washington, D.C.; and, to the extent appropriate under the circumstances,

(2) mailing a copy to all persons whose names are on a mailing list maintained for this purpose;

(3) submitting a copy for possible publication to at least two newspapers of general circulation in the Washington, D.C. metropolitan area;

(4) any other means which the Secretary believes will serve to further inform any persons who might be interested.

(e) Action under the second sentence of paragraph (a) or (b) of this section shall be taken only when the Commission finds that the public interest in prompt Commission action or the need to protect the common defense or security or to protect the public health or safety overrides the public interest in having full prior notice of Commission meetings.

§ 9.105 Certification, transcripts, recordings and minutes.

(a) For every meeting closed pursuant to subparagraphs (1) through (10) of § 9.104(a) and for every determination pursuant to subsection 9.105(c), the General Counsel shall publicly certify at the time of the public announcement of the meeting, or if there is no public announcement at the earliest practical time, that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive pro-

vision unless the Commission votes pursuant to § 9.105(c) that such certification is protected against disclosure by § 9.104(a). A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Commission. The Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (10) of § 9.104(c), the Commission shall maintain such a transcript or recording or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each Commissioner on the question). All documents considered in connection with any action shall be identified in such minutes.

(b) The Commission shall make promptly available to the public, in the Public Document Room, the transcript, electronic recording, or minutes (as required by paragraph (a) of this section) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Commission determines pursuant to paragraph (c) of this section to contain information which may be withheld under § 9.104 or § 9.105(c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person upon payment of the actual cost of duplication or transcription as provided in § 9.14. The Secretary shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Commission proceeding with respect to which the meeting or portion was held, whichever occurs later.

(c) In the case of any meeting closed pursuant to § 9.104, as the last item of business, the Commission shall determine which, if any, portions of the electronic recording, transcript or minutes and which, if any, items of information withheld pursuant to § 9.105(c) contain information which should be withheld pursuant to § 9.104; provided however, that should the Commission not make such determinations immediately following any such closed meeting, the Secretary of the Commission,* upon the advice of the Office of the General Counsel and after consulting with the Commission, shall make such determinations.

(d) If at some later time the Commission determines that there is no further justification for withholding any transcript, recording or other item of infor-

mation from the public which has previously been withheld, then such information shall be made available.

§ 9.109 Report to Congress.

The Secretary shall annually report to the Congress regarding the Commission's compliance with the Government in the Sunshine Act, including a tabulation of the total number of open meetings, the total number of closed meetings, and the reasons for closing such meetings and a description of any litigation brought against the Commission pursuant to the Government in the Sunshine Act, including any costs assessed against the Commission in such litigation (whether or not paid by the Commission).

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Appendix A—Request for Declassification Review

The following guidance is provided for members of the public desiring a classification review of a document of the Nuclear Regulatory Commission (NRC) pursuant to sections 3-5 of Executive Order 12065 (43 FR 28949, July 3, 1978), and section 300.D of the Information Security Oversight Office Directive No. 1 Covering the Classification, Downgrading, Declassification and Safeguarding of National Security Information, (43 FR 46280, October 5, 1978). A Freedom of Information Act request for a classified document may also be made in accordance with the procedures set forth in 10 CFR 9.8.

1. Request for Declassification Review of Documents. a. Any person desiring a declassification review of an NRC document containing information classified as National Security Information by reason of the provisions of Executive Order 12065 (or any predecessor Executive Order) should address such requests to the Director, Division of Security, U.S. Nuclear Regulatory Commission, Washington, DC, 20555.

b. Requests need not be made on any special form but shall, as specified in the Executive Order, reasonably describe the document to enable NRC personnel to identify and obtain the document from NRC records without expending more than a reasonable amount of effort.

c. Charges for locating and reproducing copies of records will be made in accordance with § 9.14 of this part.

2. Action on Requests for Declassification Review. a. Every effort will be made to complete action on each request within thirty (30) days of receipt of the request. If action cannot be completed within thirty (30) days, the requester shall be so advised by the Director, Division of Security, along with the reasons for the need for additional time. If the requester does not receive a decision on the request within sixty (60) days from the date of receipt of the request by NRC, the requester may appeal to the Chairman of the NRC Classification Review Committee for a decision on the request.

b. In the event the Director, Division of Security, determines that requested information must remain classified by reason of the provisions of Executive Order 12065, the requester shall be given prompt notification of that decision and shall be provided with a statement as to why the information or material cannot be declassified. Classified sections of the document will be identified, and the requester will be advised that a "sanitized" document can be provided with an appropriate unclassified description of the deleted information. Unclassified portions of the document will be made available to the requester unless withholding is warranted for some other reason under the provision of applicable law. If information is denied, the requester will be advised that the decision may be appealed to the NRC Classification Review Committee. An appeal should be made in writing addressed to the Chairman, Classification Review Committee, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Any such appeal should include a statement as to why the requester disagrees with the decision which

is being appealed.

c. The NRC Classification Review Committee will normally render a decision within 30 days of the receipt of an appeal. If a longer period is likely to be required because of the need for consultations with other agencies or the requester, the requester will be advised of the time needed to complete review of the matter.

d. In the event the Director, Division of Security, or the Classification Review Committee, determines that the record is unclassified but the information appears to be of the type exempt from public disclosure under § 9.5 of this part, the requester shall be so notified in writing as provided in § 9.10 of this part.

3. Suggestions and complaints. Any person may make suggestions or complaints with respect to NRC's administration of the provisions of Executive Order 12065 and the ISOO Directive by writing to the Chairman, Classification Review Committee, U.S.

Nuclear Regulatory Commission, Washington, DC 20555.

4. Other Material. NRC Manual Chapters covering the NRC's classification and declassification policies and procedures are available for inspection and copying in the NRC's Public Document Room, 1717 H Street, NW., Washington, DC.

5. Classification Advice in General. These procedures are intended to supplement the policies and practices of the NRC to provide classification guidance with respect to information originated by persons working in the nuclear energy field. The NRC will respond as promptly as available resources permit to questions about the proper classification of information and material.