

§ 9.25

10 CFR Ch. I (1–1–06 Edition)

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

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

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

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

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

(A) A required advance payment has been received;

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

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

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

(c) If a requested agency record that has been reasonably described is located at a place other than at the NRC Web site, <http://www.nrc.gov>, the NRC Public Document Room, or the NRC headquarters, the NRC may, at its discretion, make the record available for inspection and copying at either of the locations.

(d) Except as provided in § 9.39—

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

(2) If the requested record has been placed on the NRC Internet Web site, under § 9.21, the NRC may inform the requester that the record is available at the NRC Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room, and that the record may be obtained in accordance with the procedures set forth in paragraph (a) of this section.

(e) The Freedom of Information Act and Privacy Act Officer will promptly forward a Freedom of Information Act request made under paragraph (b) of this section for an agency record to the head of the office(s) primarily concerned with the records requested, as appropriate. The responsible office will conduct a search for the agency records

responsive to the request and compile those agency records to be reviewed for initial disclosure determination and/or identify those that have already been made publicly available at the NRC Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room.

[63 FR 2876, Jan. 20, 1998, as amended at 64 FR 48950, Sept. 9, 1999; 67 FR 67098, Nov. 4, 2002; 68 FR 58800, Oct. 10, 2003; 70 FR 34306, June 14, 2005]

§ 9.25 Initial disclosure determination.

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

(b) *Extension of time limit in unusual circumstances.* In unusual circumstances, the NRC may extend the time limit prescribed in paragraph (a) of this section by not more than 10 working days. The extension may be made by written or telephonic notice to the person making the request to explain the reasons for the extension and indicate the date on which a determination is expected to be made. “Unusual circumstances” is limited to one or more of the following reasons for delay:

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

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

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

(c) *Exceptional circumstances.* A requester may be notified in certain exceptional circumstances, when it appears that a request cannot be completed within the allowable time, and will be provided an opportunity to

limit the scope of the request so that it may be processed in the time limit, or to agree to a reasonable alternative time frame for processing. For purposes of this paragraph, the term “exceptional circumstances” does not include delays that result from the normal predictable workload of FOIA requests or a failure by the NRC to exercise due diligence in processing the request. A requester’s unwillingness to agree to reasonable modification of the request or an alternative time for processing the request may be considered as factors in determining whether exceptional circumstances exist and whether the agency exercised due diligence in responding to the request.

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

(1) NRC uses a three-track system.

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

(ii) The second track is for requests involving “unusual circumstances” that are expected to take between 21–30 working days to complete (e.g. requests involving possible records from two or three offices and/or various types of files of moderate volume, of which, some are expected to be exempt)

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

(2) Upon receipt of requests, NRC will notify requesters of the track in which the request has been placed for processing and the estimated time for com-

pletion. Should subsequent information substantially change the estimated time to process a request, the requester will be notified telephonically or in writing. A requester may modify the request to allow it to be processed faster or to reduce the cost of processing. Partial responses may be sent to requesters as documents are obtained by the FOIA office from the supplying offices.

(e) *Expedited processing.* (1) NRC may place a person’s request at the front of the queue for the appropriate track for that request upon receipt of a written request that clearly demonstrates a compelling need for expedited processing. For purposes of determining whether to grant expedited processing, the term compelling need means—

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

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

(2) A person requesting expedited processing must include a statement certifying the compelling need given to be true and correct to the best of his or her knowledge and belief. The certification requirement may be waived by the NRC as a matter of agency discretion.

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

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

records. If the head of the office authorizes disclosure of the agency records, the head of the office will furnish the agency records to the Freedom of Information Act and Privacy Act Officer, who will notify the requester of the determination in the manner provided in §9.27.

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

(2) *Initial disclosure determinations on requests for records originated by or transmitted to the Commission, or a Commissioner, or records originated by, or for which the Office of the Secretary or an Advisory Committee has primary responsibility.* If, as a result of the review specified in paragraph (f) of this section, the Executive Assistant to the Secretary of the Commission finds that agency records originated by or transmitted to the Commission or a Commissioner, or records originated by, or for which the Office of the Secretary or an Advisory Committee has primary responsibility, are exempt from disclosure and should be denied in whole or in part, and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the Executive Assistant to the Secretary of the Commission will submit that finding to the Freedom of Information Act and Privacy Act Officer who will notify the requester of the determination in the manner provided in §9.27.

(3) *Initial disclosure determination for records originated by, or for which the Office of the General Counsel has principal responsibility.* If, as a result of the review specified in paragraph (f) of this

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

(h) *Initial disclosure determinations on requests for records other than those for which the initial disclosure determination is made by the Assistant Inspector General for Investigations, the Executive Assistant to the Secretary of the Commission, or the General Counsel.* If, as a result of the review specified in paragraph (f) of this section, the head of the responsible office finds that agency records other than those described in paragraph (g) of this section, that are originated by, or for which the office has primary responsibility, should be denied in whole or in part, the head of the office will submit that finding to the Freedom of Information Act and Privacy Act Officer, who will, in consultation with the Office of the General Counsel, make an independent determination whether the agency records should be denied in whole or in part. If the Freedom of Information Act and Privacy Act Officer determines that the agency records sought are exempt from disclosure and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the Freedom of Information Act and Privacy Act Officer will notify the requester of the determination in the manner provided in §9.27.

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

(j) If the NRC does not respond to a request within the 20 working-day period, or within the extended periods described in paragraph (b) of this section, the requester may treat that delay as a denial of the request and immediately appeal as provided in § 9.29(a) or sue in a Federal District Court as noted in § 9.29(c).

[63 FR 2876, Jan. 20, 1998, as amended at 70 FR 34306, June 14, 2005]

§ 9.27 Form and content of responses.

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

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

(1) The reason for the denial;

(2) A reference to the specific exemption under the Freedom of Information Act, or other appropriate reason, and the Commission's regulations authorizing the denial;

(3) The name and title or position of each person responsible for the denial of the request, including the head of

the office recommending denial of the record;

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

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

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

[63 FR 2876, Jan. 20, 1998, as amended at 70 FR 34307, June 14, 2005]

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

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

(b) *Submitter objection to disclosure.* The submitter will be allowed 30 calendar days from date of the notice described in paragraph (a) of this section to object to disclosure, unless the Commission determines that a shorter period of time to respond is necessary in a particular instance. If a submitter