

information relevant to licensing decisions, e.g., the license application, as well as changes thereto, correspondence between the licensee and NRC,² and inspection reports, are available in ADAMS and continue also to be available in the PDR. NRC also has a comprehensive set of reporting requirements which have had the benefit of public comment and have been promulgated in accordance with the Administrative Procedure Act after careful consideration as to whether NRC needs to obtain licensees' records and information to carry out NRC's public health and safety responsibilities. The Petitioner has apparently discounted the process by which NRC determined that many of the documents which are the subject of the petition for rulemaking are unnecessary for NRC to possess in order to make regulatory decisions that protect the public health and safety, or has determined may be kept onsite at licensees' facilities for NRC inspection purposes but are not required to be submitted to NRC. In addition, much of the information which is of interest to the Petitioner and being retained onsite by licensees may also be available to members of the public because it is contained in, or has been relocated to, other documents that have been submitted (as part of applications or in response to requests for additional information) and are placed in NRC's Public Electronic Reading Room and/or the PDR.

III. Summary of the Public Comments

The notice of receipt of the petition for rulemaking invited interested parties to submit written comments concerning the petition. The NRC received 27 comment letters and an additional letter responding to those comments from OCRE. Of these, three letters from private citizens and the Clean Water Fund of North Carolina, an environmental group, favored granting the petition. Twenty-four letters opposing the petition were sent primarily by utilities or representatives of utilities such as Nuclear Energy Institute (NEI) and Nuclear Utility Backfitting and Reform Group (NUBARG). Many of the letters contained comments that were similar in nature. The following section summarizes, by issue, the public comments received and provides responses to those comments.

Comment 1. Licensee-Held Information Should Not Be Withheld From the Public

Of those responding in favor of granting the petition, one private citizen contended that the petition is justified because it is illegal and unfair that the public does not have access to licensee-held information. Another private citizen agreed with that position but pointed out that the petition, as written, is too general with respect to the scope of records covered by the proposal and suggested that the scope be limited to the records used by the licensee to support a docketed submittal (i.e., those records which could have been included with the submittal). That commenter also noted that any proposed change to 10 CFR part 9 must not interfere with the handling of licensee-prepared records as proprietary information. The Clean Water Fund of North Carolina supported the Petitioner's view that limiting public access to information increases public cynicism regarding the regulation of nuclear energy.

NRC Response

Applicants for an NRC license and licensees provide information to NRC under the agency's requirements. See, e.g., 10 CFR 30.6, 30.32 and 10 CFR 50.4, 50.33, 50.34, 50.90, which set out certain NRC license application requirements; 10 CFR 50.72 and 50.73, which require nuclear power reactor licensees immediately to notify NRC when certain conditions arise, followed by written event reports; and, licensee reports sent in response to NRC requests for additional information as part of a specific licensing or regulatory action. This information is submitted on the docket for the particular licensee and, except when it contains safeguards, personal information or other information that may be protected from public disclosure under 10 CFR 2.790, is placed in the PDR where it is available for public inspection and copying³ and, in most instances, is available in electronic form through NRC's Public Electronic Reading Room, discussed above. In this way, the public has access to very large amounts of relevant licensee information. In addition, NRC allows licensees to retain specified records onsite for inspection purposes. Although NRC has the right to access these records or obtain them

permanently, NRC has determined that it is not necessary, under most circumstances, for licensees to submit this information to NRC. To require the submission of information and documents beyond those that NRC determines it needs to have submitted for its regulatory function would be contrary to the objectives of the PRA. Finally, general information held by a licensee but not required to be retained or submitted for NRC's regulatory purposes is the property of the licensee. Absent an NRC determination that such information must be submitted to NRC in order for NRC to carry out its statutory and regulatory obligations, the AEA does not provide NRC with the authority to require that licensees provide such information to a third party.

Comment 2. The Petition Would, in Effect, Modify the FOIA Without Congressional Action

Several of the commenters endorsed NEI's comment that the proposed petition for rulemaking would expand the NRC's current requirements for granting public access to licensee documents. They believe that the proposed rulemaking, without Congressional action, would modify the FOIA by making the statute applicable to entities other than government agencies and to records other than those within a government agency's control. In addition, most commenters believe that the petition challenges the Congressional delegation of authority to the NRC by giving access to almost all of a licensee's internal documents, including those which the NRC has determined can be retained onsite, as well as those which NRC believes are unnecessary for it to possess or obtain access to in order to protect the public health and safety.

NRC Response

NRC believes the requested amendment is overly broad and, if granted, would allow access to almost all of a licensee's internal documents including drafts and other documents without a showing of need. The petition requests access to "any record relevant to NRC licensed or regulated activities held by a possessor." In the context of NRC regulation, a very broad range of licensees' records may arguably be "relevant" to NRC activities. OCRE's petition relies heavily on NRC's authority under the AEA to access and, if it chooses, obtain permanent custody of such records. Section 1610. of the AEA, for example, provides NRC with the authority to require reports and recordkeeping, and to require licensees

² Although the terrorist attacks of September 11, 2001, led to the NRC's decision to remove material from its website, the agency, after conducting a deliberate and systematic review of that material, has now restored most of the material to the Web site.

³ NRC has restored access to a large volume of licensing and regulatory materials that were removed from its website and PDR for review and screening following the September 11, 2001 terrorist attacks on the World Trade Center and the Pentagon.