

to maintain these documents for inspection purposes, for specified activities and studies, and activities under licenses issued pursuant to the AEA, "as may be necessary to effectuate the purposes of" the AEA.

When in the possession and control of NRC, documents become "agency records," and, in accordance with FOIA and the agency's regulations, such documents are available for public inspection and copying upon request by any person. The petition, if granted, would arguably amount to an unprecedented and legally questionable extension of the FOIA by granting access to private documents of regulated entities that are not "agency records" (as defined in the PRA) and are not required for NRC regulation and licensing. The FOIA applies to every record which an agency has, in fact, obtained; and not to documents which merely could have been obtained. The United States Supreme Court considered this issue in *Forsham v. Harris*, 445 U.S. 169 (1980), and concluded that Congress could not have intended FOIA to embrace documents that the Federal Government has the right of access to, as this would include an extraordinarily large amount of private documents.

*Comment 3. There Are Many Administrative Costs Associated With Information Requests*

Commenters stated that there are many administrative costs associated with information requests. Most commenters believe that since the subject of a request does not have to be well defined, nor is a stated purpose for the search required, it is likely that many licensees would have to create or recreate their filing systems at a substantial cost to accommodate broad requests. This cost would, in turn, be passed on to consumers. One commenter, the Mayo Clinic, stated that "the petition would result in increased licensee efforts and costs with no benefit nor increase in safety for society. These additional costs would need to be passed on to customers who would gain nothing. In particular, medical licensees would be forced to pass these costs onto patients while at the same time reacting to federal health care initiatives to reduce costs." One licensee (Commonwealth Edison) estimated that any one request costs anywhere from \$1,500 to \$3,000, and would clearly require dedicated resources to this proposed effort.

*NRC Response*

NRC agrees with the general comments and assertions that the

requirements proposed by the Petitioner would result in some, possibly substantial, administrative costs for licensees to respond to requests for documents. A licensee's process would likely include provisions for: (1) Receipt, acknowledgment, and tracking of the request; (2) evaluation of the request to determine if it will require a document search effort, and, if so, the nature and scope of the search; (3) conducting a search including interactions with document custodians; (4) reviewing collected materials and screening for "relevance" or other bases for non-disclosure such as trade secrets or privileged information; and (5) reproduction and transmittal of responsive documents. Since the documents which can be requested are "any record," there are likely to be significant administrative burdens and costs for locating and compiling the requested information for reproduction. The cost could include dedicating personnel to this task. In addition, unlike the FOIA, the petitioner's proposal does not provide for the recovery of the costs associated with searching and reviewing documents.

Granting the petition could adversely impact the effectiveness of NRC by increasing the burden on the Commission's adjudicatory activities without a corresponding enhancement of safety. The appeal process provided by this petition would require AJs to be called upon to determine if a record can be the subject of a request, if reproduction fees are reasonable, and if the licensees' responses are timely. The proposal would strain the existing resources of the Atomic Safety and Licensing Board Panel. It might also necessitate seeking additional resources for NRC which might be difficult to obtain in the absence of a safety justification. The petition does not provide for effective Commission oversight of the AJs that is afforded for other adjudicatory matters; indeed, the Petitioner's proposal that the AJs' decisions would be final and would not be appealable or subject to review by the Commission, undermines the Commission's ability to effectively monitor and administer its adjudicatory processes. The Commission's regulations require licensees to provide full disclosure of information that NRC has determined is necessary for it to fulfill its mission to protect the public health and safety. OCRE's petition does not explain how its proposed document access and appeal process would enhance NRC's ability to accomplish that mission.

*Comment 4. OCRE Has Not Provided a Specific Purpose for the Information Other Than Wanting Access to It*

Several commenters stated that OCRE has not provided any specific reason for needing to review the onsite information it is requesting other than its belief that the public should have access to this information. The Petitioner has pointed out that the requested access is not directly for protection of the public health and safety. The commenters' criticisms further questioned whether OCRE is not casting public citizen groups into the role of providing oversight of NRC's regulatory program.

*NRC Response*

NRC recognizes the important contribution the public makes to NRC's regulatory process. To facilitate public involvement, NRC has developed more effective and efficient methods of providing information to the public in order that the public can be more fully informed on the licensing and regulatory process and issues associated with these activities. With the improvement of communication technology since the submittal of OCRE's petition, NRC has developed ADAMS, as discussed above, that provides access to documents relevant to its licensing decisions, as well as the Web site with additional links containing information regarding the regulation and management of nuclear facilities and materials to facilitate public participation in the regulatory process. A newly created "Homepage" and improved "search engines" were added in 2000 and have been updated recently, making "navigation" of this information easier. NRC is satisfied that the access to licensee-held documents envisioned by OCRE's petition is not necessary to participate in the hearing process, given the voluminous amounts of information available to the public regarding NRC's licensing review and regulatory decisions. For example, subpart L of 10 CFR part 2, "Informal Procedures for Adjudications in Materials and Operator Licensing Proceedings," contains provisions that allow any person whose interest may be affected by a proceeding for the grant, renewal, or licensee-initiated amendment of a license subject to subpart L, to file a request for a hearing. Subpart L also requires the Secretary of the NRC to maintain a docket for each adjudication under this subpart, commencing with the filing of a request for a hearing, which includes the request for a hearing and other related documents, as well as a hearing file