

Neither the AEA or the FOIA, which applies to records which an agency has, in fact, obtained, and not to records which merely could have been obtained, provide the NRC with the authority to require licensees to supply such documents to the public.

2. OCRE has not made a showing that supplementing the safety information which underlies and supports Commission action and is available to the public, would result in enhanced safety. In fact, granting the petition may have an adverse impact on safety. Resources that licensees would use to defend and explain matters would not be available to address substantive safety issues. Granting the petition may also have a chilling effect and discourage employees of licensees from documenting information that may be perceived as adverse to their employers resulting in less candid and frank self-assessments and "lessons learned" analysis. The access required by the petition could discourage licensee self-assessments and self-identification of the need for corrective action.

3. Without a corresponding enhancement of safety, the petition would create a significant but unnecessary administrative and economic burden on licensees without justification. Because the records which could be requested are "any record," such requests could significantly impact licensees which would be required to bear the cost of creating a system to assemble these documents as well as dedicating the administrative personnel necessary to locate and compile the requested information for reproduction. Unlike FOIA, which allows for the recovery of the costs associated with searching and reviewing documents, the only cost which the petition allows is the cost of document production.

4. The petition is contrary to efficient regulatory oversight of NRC facilities, as well as the legislative move to reduce unnecessary recordkeeping and reporting requirements. NRC has been engaged in activities to eliminate unnecessary requirements and to move toward risk-informed requirements which focus on safety matters. These internal agency initiatives have gone hand-in-hand with the objectives and requirements of the PRA. The documents which are the subject of the petition for rulemaking include documents that NRC has determined are unnecessary for NRC to fulfill its mission regarding the protection of the public health and safety and the common defense and security.

5. Granting the petition would adversely impact the effectiveness of the 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 whether a record can be the subject of a request; whether reproduction fees are reasonable; and, whether a licensee's response is timely. This would increase the work load of NRC AJs which would affect the amount of time available for other cases. The petition does not provide for the Commission to review the decisions of its subordinate judges which undermines the Commission's ability to effectively monitor and administer its adjudicatory processes.

6. OCRE has not made a showing that without this amendment to 10 CFR part 9 the public will not be able to fully participate in the NRC hearing process provided for under the AEA. The AEA, as implemented by the Commission's regulations, provides the opportunity for a hearing to any person whose interests may be affected by the granting, suspending, revoking or amending of an NRC license or application to transfer control. The documents which provide the basis for an application to grant, renew, or amend, a license, are available in electronic form for viewing or downloading at the NRC's Public Electronic Reading Room, <http://www.nrc.gov/reading-rm.html>, or at the NRC's PDR for public inspection and copying. These documents are sufficient for a member of the public to make an informed decision as to whether the person desires to participate in the hearing process and to formulate appropriate contentions. The Commission is satisfied that, given the information that the NRC ensures is available to the public, the access to licensee-held documents that the petition requests is not necessary for meaningful participation in the hearing process.

V. Conclusion

In sum, granting the petition could create a significant administrative and economic burden on licensees and increased administrative burden on the NRC without a corresponding enhancement of safety. The potential but speculative benefits that might occur from public access to licensee-held documents are outweighed by the burden granting the petition would impose. Moreover, the Commission does not have the authority to require a licensee to provide documents to members of the public that NRC has determined are not necessary to be kept as agency records to provide the basis for NRC's regulatory and licensing

actions. The petition for rulemaking filed by OCRE, PRM-9-2, is denied.

Dated at Rockville, Maryland, this 22nd of October, 2003.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY63-263, FRL-7579-5]

Approval and Promulgation of Implementation Plans; New York; Revised Motor Vehicle Emissions Budgets for 1990 and 2007 Using MOBILE6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the New York State Implementation Plan (SIP) for the attainment and maintenance of the 1-hour national ambient air quality standard (NAAQS) for ozone. Specifically, EPA is proposing approval of New York's revised 1990 and 2007 motor vehicle emission budgets recalculated using MOBILE6; and modified date for submittal of the State's mid-course review. The intended effect of this action is to approve a SIP revision that will help the State continue to plan for attainment of the 1-hour NAAQS for ozone in its portion of the New York-Northern New Jersey-Long Island nonattainment area (NAA). **DATES:** Comments must be received on or before November 28, 2003. Public comments on this action are requested and will be considered before taking final action.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007-1866. Electronic comments could be sent either to Werner.Raymond@epa.gov or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. Go directly to <http://www.regulations.gov>, then select "Environmental Protection Agency" at the top of the page and use the "go" button. Please follow the on-