

or regulate, from the standpoint of radiological health and safety, byproduct, source, and special nuclear material or production and utilization facilities. Even those States which have entered into a section 274 agreement with the AEC (Agreement States) lack authority to license or regulate, from the standpoint of radiological health and safety, the construction and operation of production and utilization facilities (including nuclear power plants) and other activities reserved to the AEC by section 274c. (To the extent that Agreement States have authority to regulate byproduct, source, and special nuclear material, their section 274 Agreements require them to use their best efforts to assure that their regulatory programs for protection against radiation hazards will continue to be compatible with the AEC's program for the regulation of byproduct, source and special nuclear material.)

(k) The following judicial precedents and legal authorities support the foregoing conclusions: Northern California Ass'n, Etc. v. Public Utilities Commission, 37 Cal. Rep. 432, 390 P. 2d 200 (1964); Boswell v. City of Long Beach, CCH Atomic Energy Law Reports, par. 4045 (1960); Opinion of the Attorney General of Michigan (Oct. 31, 1962); Opinion of the Attorney General of South Dakota (July 23, 1964); New York State Bar Association, Committee on Atomic Energy, State Jurisdiction to Regulate Atomic Activities (July 12, 1963). No precedents or authorities to the contrary have come to our attention.

[34 FR 7273, May 3, 1969]

§ 8.5 Interpretation by the General Counsel of § 73.55 of this chapter; illumination and physical search requirements.

(a) A request has been received to interpret 10 CFR 73.55(c)(5) and 73.55(d)(1). 10 CFR 73.55(c)(5) provides:

Isolation zones and all exterior areas within the protected area shall be provided with illumination sufficient for the monitoring and observation requirements of paragraphs (c)(3), (c)(4), and (h)(4) of this section, but not less than 02. footcandle measured horizontally at ground level.

(b) The requester contends that the regulation is satisfied if 0.2 footcandle

is provided only at the protected area boundary and the isolation zone. The language of the regulation is clearly to the contrary. It requires not less than 0.2 footcandle for "all exterior areas within the protected area." This regulation helps effectuate the monitoring and observation requirements of 10 CFR 73.55. For example, 10 CFR 73.55(c)(4) states that "All exterior areas within the protected area shall be periodically checked to detect the presence of unauthorized persons, vehicles, or materials." In the absence of illumination, such checking could not be fully effective.

(c) The requester also asks whether the illumination requirement extends to the tops and sides of buildings within the protected area. To effectuate the monitoring and observation requirements cited above, illumination must be maintained for the tops and sides of all accessible structures within the protected area. This interpretation is consistent with that given by the Commission's staff to affected licensees and applicants at a series of regional meetings held in March of 1977 and will be reflected in forthcoming revisions to NUREG 0220, Draft Interim Acceptance Criteria for a Physical Security Plan for Nuclear Power Plants (March 1977).

(d) 10 CFR 73.55(d)(1) provides in pertinent part: The search function for detection of firearms, explosives, and incendiary devices shall be conducted either by a physical search or by use of equipment capable of detecting such devices.

(e) The requester contends that until "equipment capable of detecting such devices" is in place, a licensee need not comply with the search requirement, but can utilize instead previous security programs. This contention is based on the first sentence of 10 CFR 73.55 which provides in pertinent part that the requirements of paragraph (d) of that section shall be met by May 25, 1977, "except for any requirement involving construction and installation of equipment not already in place expressed in (paragraph)(d)(1) * * *" Under this sentence only those requirements of paragraph (d) which involve "construction and installation of equipment" do not take effect on May 25, 1977. Because a "physical search"

does not require “constuction and installation of equipment”, implementation of such searches is required on May 25, 1977. The regulation provides alternative: “the search function * * * shall be conducted either by a physical search or by use of equipment * * *.” Thus when appropriate equipment is in place, the search function need not involve a physical search.

(f) The paragraphs above set forth interpretation of regulations; they do not apply those regulations to particular factual settings. For example, no effort is made to state what lighting system might be used for a given facility; all that is stated is that a system must provide not less than 0.2 footcandle for all exterior areas within the protected area. Similarly, no effort is made to define what is an adequate “physical search”; all that is stated is that, in the absence of appropriate equipment, such searches must begin on May 25, 1977.

[42 FR 33265, June 30, 1977]

PART 9—PUBLIC RECORDS

Sec.

- 9.1 Scope and purpose.
- 9.3 Definitions.
- 9.5 Interpretations.
- 9.8 Information collection requirements: OMB approval.

Subpart A—Freedom of Information Act Regulations

- 9.11 Scope of subpart.
- 9.13 Definitions.
- 9.15 Availability of records.
- 9.17 Agency records exempt from public disclosure.
- 9.19 Segregation of exempt information and deletion of identifying details.
- 9.21 Publicly available records.
- 9.23 Requests for records.
- 9.25 Initial disclosure determination.
- 9.27 Form and content of responses.
- 9.29 Appeal from initial determination.
- 9.31 Extension of time for response.
- 9.33 Search, review, and special service fees.
- 9.34 Assessment of interest and debt collection.
- 9.35 Duplication fees.
- 9.37 Fees for search and review of agency records by NRC personnel.
- 9.39 Search and duplication provided without charge.
- 9.40 Assessment of fees.
- 9.41 Requests for waiver or reduction of fees.

- 9.43 Processing of requests for a waiver or reduction of fees.
- 9.45 Annual report to the Attorney General of the United States.

Subpart B—Privacy Act Regulations

- 9.50 Scope of subpart.
- 9.51 Definitions.

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

PRESENTATION OF REQUESTS

- 9.52 Types of requests.
- 9.53 Requests; how and where presented.
- 9.54 Verification of identity of individuals making requests.
- 9.55 Specification of records.
- 9.56 Accompanying persons.

NRC PROCEDURES FOR PROCESSING REQUESTS

- 9.60 Acknowledgement of requests.
- 9.61 Procedures for processing requests for records exempt in whole or in part.
- 9.62 Special procedures.

DETERMINATIONS AND APPEALS

- 9.65 Access determinations; appeals.
- 9.66 Determinations authorizing or denying correction of records; appeals.
- 9.67 Statements of disagreement.
- 9.68 NRC statement of explanation.
- 9.69 Notices of correction or dispute.

DISCLOSURE TO OTHERS OF RECORDS ABOUT INDIVIDUALS

- 9.80 Disclosure of record to persons other than the individual to whom it pertains.
- 9.81 Notices of subpoenas.
- 9.82 Notices of emergency disclosures.

FEEES

- 9.85 Fees.

ENFORCEMENT

- 9.90 Violations.

EXEMPTIONS

- 9.95 Specific exemptions.

Subpart C—Government in the Sunshine Act Regulations

- 9.100 Scope of subpart.
- 9.101 Definitions.
- 9.102 General requirement.
- 9.103 General provisions.
- 9.104 Closed meetings.
- 9.105 Commission procedures.
- 9.106 Persons affected and motions for reconsideration.
- 9.107 Public announcement of Commission meetings.