costs had increased such that the Class I differentials did not offer sufficient pricing incentives to cover the cost of transporting milk from reserve northern surplus regions to the deficit southern region of the marketing area.

As noted in almost all the exceptions to the recommended decision, marketing conditions since the close of the hearing have changed substantially no longer warranting a change in the Class I price surface of the Mideast marketing area. Exceptions filed on behalf of the proponents of Proposal 1 (Michigan Milk Producers Association, Inc., Foremost Farms USA Cooperative, Inc., National Farmers Organization Inc., and Dairy Farmers of America, Inc.) requested that USDA take no action.

Termination of Proceeding

In view of the foregoing, it is hereby determined that this proceeding with respect to proposed amendment to the Mideast order regarding Class I prices should be and is hereby terminated.

List of Subjects in 7 CFR Parts 1000 and 1033

Milk marketing orders.

The authority citation for 7 CFR Parts 1000 and 1033 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

Dated: July 14, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–18393 Filed 7–21–11; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC–2011–0164]

Criminal Penalties for Unauthorized Introduction of Weapons and Sabotage

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment; notice of public Webinar.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is seeking input from the public, licensees, certificate holders, Agreement States, non-Agreement States, and other stakeholders on whether to conduct further rulemaking to implement the criminal penalty provisions found under Sections 229 and 236 of the *Atomic Energy Act of 1954,* as amended (AEA). To aid in that process, the NRC is requesting comments on the issues discussed in this document. While the NRC has not initiated a rulemaking on this subject, it is using the conventionally established rulemaking comment channels. Additionally, the NRC will hold a public Webinar to discuss these issues.

DATES: Submit comments on the issues discussed in this document by October 20, 2011. Comments received after the above date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0164 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0164. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*
- *Federal Rulemaking Web site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0164.

FOR FURTHER INFORMATION CONTACT: Mr. Fritz Sturz, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6678; e-mail: *Fritz.Sturz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 229 of the AEA provides Federal criminal sanctions for the wrongful introduction of weapons or explosives into specified classes of facilities, installations or real property under the jurisdiction, administration, in the custody of, or subject to the licensing authority or certification by the Commission. Similarly, Section 236 of the AEA provides Federal criminal sanctions for sabotage of specified classes of nuclear facilities or materials.

On August 8, 2005, President Bush signed into law the *Energy Policy Act of 2005* (EPAct), Public Law 109–58, 119 Stat. 594 (2005). Section 654 of the EPAct, ''Unauthorized Introduction of Dangerous Weapons'' (119 Stat. 812), amended Section 229 of the AEA, ''Trespass on Commission Installations'' (42 U.S.C. 2278a), to broaden the list of facilities covered by Section 229. Similarly, Section 655 of the EPAct, ''Sabotage of Nuclear Facilities, Fuel, or Designated Material'' (119 Stat. 594), amended Section 236 of the AEA, ''Sabotage of Nuclear Facilities or Fuel'' (42 U.S.C. 2284), to broaden the list of facilities that are covered by Section 236. Additionally, Section 655 of the EPAct added a provision in Section 236(a) authorizing the NRC to identify certain radioactive material or other property for inclusion within the scope of the criminal penalties in Section 236, if the Commission determines by rulemaking or order that such material

or other property is of significance to public health and safety or the common defense and security.

Section 229 of the AEA now authorizes the NRC to issue regulations ''relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration, in the custody of the Commission, or subject to the licensing authority of the Commission or certification by the Commission under this Act or any other Act.''

Section 236 of the AEA makes it a Federal crime to knowingly destroy or cause physical damage, or to attempt or to conspire to commit such acts, to any of the following: (1) Production facilities or utilization facilities licensed under the AEA; (2) nuclear waste treatment, storage, or disposal facilities licensed under the AEA; (3) nuclear fuel (destined) for such utilization facilities or spent nuclear fuel from such utilization facilities; (4) uranium enrichment, uranium conversion, or nuclear fuel fabrication facilities licensed or certified by the NRC; (5) production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, uranium conversion, or nuclear fuel fabrication facilities subject to licensing or certification under the AEA during the construction of the facility, if the destruction or damage caused or attempted to be caused could adversely affect public health and safety during the operation of the facility; or (6) primary facilities or backup facilities from which a radiological emergency preparedness alert and warning system is activated.

II. Discussion

A. Comments on Proposed Rule

On September 3, 2008, the NRC published a proposed rule in the **Federal Register** (73 FR 51378) containing draft regulations implementing the NRC's authority to impose Federal criminal penalties on individuals who, without authorization, introduce weapons or explosives into specified classes of facilities and installations subject to the regulatory authority of the NRC. In addition to the proposed regulations, the notice identified several specific issues for which the NRC sought comments. These issues included whether the rule's scope should be extended beyond the facilities listed in the proposed rule to cover hospitals and other classes of facilities licensed to possess nationally tracked sources that are included in the NRC's National Source Tracking System (*i.e.,* licensees possessing certain quantities of radioactive material).

Seventeen comments were received on the proposed rule. Some commenters addressed the issue of whether a final rule should cover additional facilities. Some of these comments favored extending coverage to hospitals and other facilities possessing nuclear or radioactive material. The reasons given included: (1) Anyone who introduces a dangerous weapon, explosive, or other dangerous material into such a facility most likely intends to do harm; (2) anyone bringing such an item into a hospital or other facility that ''stores nuclear or radioactive material'' should expect to be penalized for doing so; (3) warning signs will ensure that the rule is not violated by accident, although anyone who intends to cause harm in a covered facility would likely not be deterred by the rule anyway; and (4) those seeking to access nuclear or radioactive materials in such facilities for illicit purposes would likely be able to locate those materials even if there are no warning signs posted pursuant to this rule. A major medical institution commented on the proposed rule and recommended against extending the sign-posting requirement to medical facilities. This commenter reasoned as follows: (1) Warning signs would attract attention to the location of radioactive material sources covered by the NRC's National Source Tracking System, thereby potentially rendering them less secure, given that many licensees currently try to avoid drawing attention to the locations of such materials; (2) the strong language in the posting could be frightening to patients in hospitals, who may already be in a vulnerable state caused by their medical situations; and (3) persons with unescorted access to facility areas of concern can simply be trained both to understand the rule themselves and to warn persons they escort about the rule's existence.

This commenter also noted that if the NRC expands the National Source Tracking System in the future to include Category 3 and 1/10th of Category 3 byproduct material sources [1], then a corresponding expansion of byproduct material sources under Title 10 of the Code of Federal Regulations (10 CFR), § 73.75, would encompass many additional hospitals and other facilities.

On September 22, 2009, the Commission, in its Staff Requirements Memorandum on SECY–09–0087 (ADAMS Accession No. ML092650473), directed the staff to ''conduct an assessment to determine whether including any such facilities [under the new authority of Section 229 or Section 236, or both, of the AEA] is warranted considering existing Federal, State, and local laws regarding the introduction of firearms and other weapons into these types of facilities, as well as other relevant facility specific considerations.'' The Commission further directed that ''[t]he staff should engage with appropriate stakeholders, including the Organization of Agreement States [OAS]''; ''[i]f the staff concludes, based on its assessment, that additional rulemaking is warranted, it should submit a rulemaking plan for the Commission's approval explaining the need for the rule and describing the views of stakeholders.''

The NRC has concluded it would be appropriate to consider whether the agency should specify certain byproduct material, high-level radioactive waste, and source material as being of such significance to public health and safety or the common defense and security as to warrant criminal sanctions under the AEA for the introduction of dangerous weapons into, or damage or attempted damage to, facilities holding these materials.

Accordingly, the NRC is seeking input from the public, licensees, certificate holders, Agreement States, non-Agreement States, and other stakeholders on whether to conduct a rulemaking to develop regulations implementing the criminal penalty provisions of Section 229 or Section 236, or both, of the AEA regarding unauthorized introduction of weapons or explosives into specified classes of NRC- and Agreement State-regulated facilities and the sabotage or attempted sabotage of specified classes of radioactive materials and other property, respectively.

B. Significant Issues

Section 229 of the AEA establishes Federal criminal penalties for individuals who trespass upon or introduce dangerous instruments or material likely to cause harm or damage to NRC-regulated facilities or otherwise under the jurisdiction of the Commission. Section 236 of the AEA establishes Federal criminal penalties for individuals who knowingly commit, attempt or conspire to destroy or cause damage to certain nuclear facilities or

[1] Category 3 equals one-tenth (1/10th) of the Category 2 values listed in 10 CFR Part 73, Appendix I, International Atomic Energy Agency (IAEA) Code of Conduct, *http://www.iaea.org/newscenter/features/researchreactors/conduct.html/adams.html.*

materials. Criminal penalties are designed, in part to serve as a deterrent to such acts. In considering the question of an effective deterrent, the NRC notes that the punishment for a conviction for a violation of Section 229 can range from a fine not to exceed $1,000 up to a fine not to exceed $5,000, or imprisonment for not more than 1 year, or both, depending on the circumstances of the offense. By contrast, the punishment for a conviction for a violation of Section 236 can be a fine of not more than $10,000 or imprisonment for not more than 20 years, or both, and, if death results to any person, imprisonment shall be for any term of years or for life, depending on the circumstances of the offense. Notwithstanding any changes to Sections 229 and 236 of the AEA, the States would retain their full authority to impose appropriate sanctions for violations of state laws.

States typically have a large range of existing statutes to prosecute individuals who introduce or cause to be introduced dangerous weapons, explosives, or other dangerous material into, or use such items in the commission of a crime against, an NRC- or Agreement State-regulated facility (*e.g.,* murder, attempted murder, assault, assault with a deadly weapon). However, the variability of State law and consistency of State prosecution are factors that may limit the effectiveness and consistency of these penalties as a deterrent strategy. Relying on Federal statutes for prosecution might create a more consistent deterrent strategy. Consequently, the NRC is seeking stakeholder views on whether the NRC should promulgate regulations implementing the NRC's expanded authority set forth in Sections 229 and 236 of the AEA.

C. Agreement State Compatibility[2]

In seeking stakeholder input on whether to include other facilities containing nuclear and radioactive material, the NRC is also using this notice to obtain input from stakeholders regarding the bases for the rulemaking and associated Agreement State compatibility. The designation of the authority being used for regulations does have significance in determining whether the Agreement States or the NRC would be responsible for overseeing the implementation of these requirements for Agreement State licensees. The NRC relinquishes its regulatory authority to Agreement States for certain materials, under Section 274 m. of the AEA. However, if a rulemaking were to be issued solely under the NRC's authority to protect the common defense and security, only the NRC would have the authority to impose these requirements on Agreement State licensees, and the NRC would be responsible for the inspection and enforcement of these requirements for Agreement State licensees. When a rulemaking applies to both the NRC's public health and safety and common defense and security missions, the operative question is whether NRC oversight is necessary to fulfill the common defense and security aspects of the regulations. The NRC believes that a rulemaking implementing the provisions of Section 229 could have a ''public health and safety'' basis or a ''common defense and security'' basis.

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), a rulemaking under the NRC's public health and safety authority would be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among the Agreement States and the NRC requirements. The NRC program elements (including regulations) are placed into four compatibility categories. In addition, the NRC program elements can be identified as having particular health and safety significance or as being reserved solely to the NRC. Compatibility Category A includes those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B includes those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C includes those program elements that do not meet the criteria of Category A or B but nonetheless an Agreement State should adopt the essential objectives of the Category C program elements to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. Compatibility Category D includes those program elements that do not meet any of the criteria of Category A, B, or C, above, and thus do not need to be adopted by Agreement States for purposes of compatibility. The health and safety category includes program elements that are not required for compatibility but are identified as having a particular health and safety role (*i.e.,* adequacy) in the regulation of agreement material within the State. Although not required for compatibility, the State should adopt program elements in Category D based on those NRC elements that embody the essential objectives of the NRC program because of particular health and safety considerations.

Both the NRC and Agreement States regulate byproduct material under Section 274 of the AEA. Therefore, several regulatory and process issues could arise in a rulemaking to add byproduct material licensees to the classes of facilities covered under Section 229 of the AEA. Under the NRC's current regulations, classes of licensees specified in 10 CFR 73.75(a) are required to post warning signs on the exterior of their protected area or the exterior of buildings located outside a protected area that contain certain radioactive material. These signs are intended to warn individuals that ''the willful unauthorized introduction of any dangerous weapons, explosives, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property'' is a Federal crime. Were the NRC to establish regulations implementing Section 229 under its authority to protect the public health and safety, the required action for compatibility by Agreement States only involves establishing requirements for applicable Agreement State licensees to post warning signs. Agreement States would not have to establish criminal penalties equivalent to Section 229 of the AEA. Furthermore, an NRC rulemaking would not limit States from establishing their own penalties under State law. Agreement States would retain their full authority to impose appropriate sanctions for violations of state laws. However, the Agreement States would perform inspections verifying that any affected licensees under their jurisdiction had installed the warning signs at their facilities. Likewise, the NRC would perform inspections to verify warning signs at NRC licensed facilities.

In the case of implementing regulations under the NRC's authority to protect the common defense and

[2] Refer to Handbook 5.9 Management Directive 5.9, ''Adequacy and Compatibility of Agreement State Programs'' *(http://www.nrc.gov/reading-rm/doc-collections/management-directives/volumes/vol-5.html).*

security, the compatibility category would be designated as ''NRC.'' Compatibility Category ''NRC'' includes those program elements that address areas of regulation that cannot be relinquished to Agreement States pursuant to the AEA or the provisions of 10 CFR. The Agreement States do not adopt these program elements. In this situation, the NRC's rulemaking establishes regulations that would apply to both affected NRC licensees and Agreement State licensees, and the NRC would be responsible for enforcing the requirements.

The NRC has not previously chosen to issue regulations to implement the authority of Section 236 of the AEA. Instead, the NRC has viewed the language of this statute as-plain enough to enable the Department of Justice (DOJ) to initiate prosecutions for criminal acts, as the DOJ deemed appropriate. A rulemaking would allow the NRC to identify certain radioactive material or other property for inclusion within the scope of Section 236 if the Commission determines that such material or other property is of significance to the public health and safety or the common defense and security. The NRC could conduct a rulemaking to implement the provisions of Section 236 using a ''common defense and security'' basis without the need for Agreement State-compatible program elements.

D. Options for Radioactive Material, Nuclear Material, and Other Property

In deciding whether further rulemaking is warranted, additional types of radioactive material and other property are being considered.

• Materials in Appendix I, ''Category 1 and 2 Radioactive Materials,'' to 10 CFR Part 73, ''Physical Protection of Plants and Materials,'' which would be considered under the authority of both Sections 229 and 236, including multiple radionuclides, in accordance with the Appendix I aggregation formula[3].

The consideration of Category 1 and 2 radioactive materials listed in Appendix I to 10 CFR Part 73 as significant to public health and safety or to the common defense and security is based on ''The 2010 Radiation Source Protection and Security Task Force Report,'' dated August 11, 2010, (*http://www.nrc.gov/security/byproduct/2010-task-force-report.pdf,* ADAMS Accession No. ML102230141). The interagency task force assessed the quantities of radioactive material sufficient to create a significant radiological dispersal device (RDD) and a significant radiation exposure device (RED), with consideration of social, economic, and psychological consequences. These risk-significant radioactive materials are the same as specified in the 2004 International Atomic Energy Agency's Code of Conduct on the Safety and Security of Radioactive Sources and as listed in Appendix I to 10 CFR part 73.

• Production-reactor spent nuclear fuel (SNF) and naval-reactor SNF.

Production-reactor SNF and naval-reactor SNF also present the potential for significant health hazards and would be considered under the authority of Section 236. While production facilities are included in 10 CFR 73.75 under the authority of Section 229, they are not specifically included in Sections 236.a.(1) through 236.a.(6). Since these SNFs could be stored alongside SNF from utilization facilities at an NRC-licensed facility, the same Federal criminal sanctions for malevolent acts are appropriate and warranted. Including these SNFs as radioactive material under the authority of Section 236.a.(7) would also provide the same Federal criminal sanctions for malevolent acts during transport to and from NRC-licensed facilities.

• Source material (either unenriched or depleted uranium) in the physical form of uranium hexafluoride (UF_6).

The UF_6 presents the potential for significant health hazards and would be considered under the authority of Section 236. The UF_6 at uranium enrichment, uranium conversion, or nuclear fuel fabrication facilities is included in 10 CFR 73.75 under the authority of Section 229. However, including UF_6 as radioactive material under the authority of Section 236.a.(7) would also provide the same Federal criminal sanctions for malevolent acts during transport.

• Uranium enrichment technology classified as Confidential—Restricted Data or Secret—Restricted Data.

The classified material (*i.e.,* components), apart from the SNM, are of significance to the common defense and security. Uranium enrichment facilities are included in 10 CFR 73.75 under the authority of Section 229. However, including classified uranium enrichment technologies as property under the authority of Section 236.a.(7) would provide the same Federal criminal sanctions for malevolent acts during transport.

E. Options for Rulemaking

The NRC is seeking stakeholder input on four options, including a no-action alternative:

(1) Take no action (do not conduct further rulemaking on these statutes).

(2) Conduct further rulemaking to implement the authority of only Section 229 of the AEA. Under this option, the NRC would incur the cost of the rulemaking; affected licensees would incur the cost of the procurement, installment, and maintenance of the warning signs; and affected licensees would incur the cost of the inspection of their installation of the warning signs. If a rulemaking is conducted under the NRC's public health and safety authority, then Agreement States would also need to adopt compatible program elements for the notice posting requirement only (*e.g.,* rulemaking, licensing and inspection etc).

(3) Conduct further rulemaking to implement the authority of only Section 236 of the AEA. This option would resolve the current inability to impose Federal criminal sanctions for malevolent acts against SNF from production reactors or naval reactors located at an NRC-regulated facility and would allow for the inclusion of additional classes of radioactive material, nuclear material, and other property designated by the Commission (including radioactive or nuclear material being transported on public roads, railways, or waterways). While this option would not include the specific criminal acts of introducing any dangerous weapon, explosive, or other dangerous instrument or material specified in Section 229, it can be argued that the introduction of such dangerous weapons, explosives, or other dangerous instruments or materials (without actually using them) is an attempted act of sabotage under Section 236. Also, this option does not limit the criminal act to a specific facility. Rather, it includes destruction of radioactive material or other property wherever it is located (*i.e.,* in transport). A rulemaking, accomplished under the NRC's authority to protect the common defense and security, would not require Agreement State or licensee actions (compatible program elements and warning signs).

(4) Conduct further rulemaking to implement the authority of both Sections 229 and 236 of the AEA. This option is essentially the same as Options 2 and 3. However, under Option 4, the NRC could conduct a rulemaking to implement Section 229 under its authority to protect ''public health and safety'' and to implement

[3] These materials are also provided in other formats in Appendix E to 10 CFR Part 20 and Appendix P to 10 CFR part 110.

Section 236 under its authority to protect ''the common defense and security.''

The Staff believes that Option 1 does not accomplish the objectives of increasing the deterrence of malevolent acts against NRC- and Agreement State-regulated facilities, radioactive material, nuclear material, or property. Option 2 is limited in scope to facilities or installations with risk-significant radioactive material and would not provide the desired deterrent value of consistent Federal criminal sanctions for certain other nuclear material or property, particularly during transport. Because Section 236 offers greater flexibility and greater capability for punishment than Section 229, Option 3 would likely have a greater deterrent value than Option 2. Option 3 would be simpler for licensees, the NRC, and Agreement States. Option 4 accomplishes the greatest increase in deterrence.

III. Specific Questions

To assist the NRC in evaluating whether additional rulemaking should be undertaken to implement the criminal penalty provisions of Sections 229 and 236 of the AEA, the NRC is seeking stakeholder input on the following specific questions:

Q1.1. Should the NRC conduct further rulemaking to implement the authority of Section 229 or Section 236 of the AEA, or both?

Q1.2. Should the NRC forgo further rulemaking and rely on State criminal statutes (for both Agreement States and non-Agreement States) to deter individuals with malevolent intentions? Why?

Q1.3. If the commenter's view is that the NRC should conduct a rulemaking, which option for rulemaking is best? Why? The available options (1 through 4) include no-action, rulemaking implementing the authority of Section 229 alone, Section 236 alone, or both Sections 229 and 236.

If a rulemaking is undertaken, the NRC is also seeking stakeholder input on the following questions:

Q2.1. Should the NRC include the range of radioactive materials specified in Appendix I to 10 CFR Part 73 in quantities equal to or exceeding the Category 2 threshold limits?

Q2.2. Alternatively, should the NRC use a different list of radionuclides, or different quantity limits? If so, what does the commenter suggest? Why?

Q3.1. Should the NRC include the waste materials recommended by the NRC staff, specifically SNF from production reactors and naval reactors? These new requirements would apply only to activities regulated by the NRC, not to facilities or activities regulated by the U.S. Department of Energy.

Q3.2. Should the NRC include source material in the form of UF_6? This would include both natural uranium and depleted uranium but not SNM, which is already covered as ''nuclear fuel'' under the current language of Section 236a.(3). Additionally, the NRC notes that uranium conversion and fuel fabrication facilities are already covered under the current language of Section 236a.(4). Thus, adding source material and depleted uranium in the form of UF_6 would allow for prosecution of malevolent acts against these materials while they are in transit.

Q3.3. Should the NRC include the other property recommended by its staff, specifically, classified enrichment technology components? Since the language of Section 236a.(4) currently includes uranium enrichment facilities, adding this classified material would allow for the prosecution of malevolent acts against classified enrichment technology while these components are in transit.

Q4.1. If the NRC conducts a rulemaking to implement the authority of Section 229 (Option 2), should it use a ''public health and safety'' basis or a ''common defense and security'' basis? Why? As noted above, the NRC is not recommending further rulemaking using the authority of Section 229; however, the agency is seeking stakeholder views on this issue.

Q4.2. If the NRC conducts a rulemaking to implement the authority of Section 236 (Option 3), should it use a ''public health and safety'' basis or a ''common defense and security'' basis? Why? As noted above, the NRC is recommending conducting a rulemaking to implement the authority of Section 236, using a ''common defense and security'' basis; however, the agency is seeking stakeholder views on this issue.

Q4.3. Should the NRC conduct a rulemaking implementing the combined authority of Sections 229 and 236 (Option 4), using either a ''public health and safety'' basis or a ''common defense and security'' basis? Why?

Q4.4. If the NRC conducts a rulemaking implementing the authority of Section 229, Section 236, or a combination of both, and uses a ''public health and safety'' basis, what is the appropriate Agreement State compatibility category for this rulemaking? Why?

IV. Public Webinar

To facilitate the understanding of the public and other stakeholders of these issues and the submission of informed comments, the NRC staff is planning to schedule a Webinar in August or September, 2011. Participants must register to participate in the Webinar. Registration closes 1 day before the Webinar. When the Webinar is scheduled, registration information may be found at the NRC's public Web site under the headings Public Meetings & Involvement > Public Meeting Schedule; see Web page *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

Dated this 8th day of July 2011.

For the Nuclear Regulatory Commission.

Michael C. Layton,

Acting Director, Division of Security Policy, Office of Nuclear Security and Incident Response.

[FR Doc. 2011–18608 Filed 7–21–11; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2011–BT–STD–0047]

RIN 1904–AC56

Energy Conservation Program: Energy Conservation Standards for Direct Heating Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including direct heating equipment. In this notice, the U.S. Department of Energy (DOE) proposes to amend its definitions pertaining to direct heating equipment. Specifically, DOE is proposing to change to the definition of ''vented hearth heater,'' a type of direct heating equipment, to clarify the scope of the current exclusion for those vented hearth heaters that are decorative hearth products. The proposed modification to the existing exclusion would shift the focus from the current maximum input capacity limitation (*i.e.,* 9,000 Btu/h) to a number of other factors, including the absence of a standing pilot light or other continuously burning ignition source. DOE has tentatively concluded that these amendments would result in increased energy savings overall, as well as for the types of units under the exclusion. The notice also announces a