

DRAFT SUPPORTING STATEMENT
FOR
10 CFR PART 9, PUBLIC RECORDS

(3150-0043)

REVISION

Description of the Information Collection

The Freedom of Information Act (FOIA), 5 U.S.C. 552, and the implementing regulations, 10 CFR Part 9, require individuals seeking access to records under the FOIA and Privacy Act to submit a request in writing and to describe the records sought sufficiently for the NRC to conduct a reasonable search. The statute and regulations authorize NRC to charge fees for processing requests under the Acts.

10 CFR Part 9, Public Records: Subpart A (Freedom of Information Act regulations) prescribes the procedures under which NRC records are made available to the public for inspection and copying pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552).

The Privacy Act of 1974, 5 U.S.C. § 552a, establishes a code of fair information practices that governs the collection, maintenance, use, and dissemination of information about individuals that is maintained in systems of records by federal agencies. Specifically, Subpart B (Privacy Act regulations) implements the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) with respect to the procedures by which individuals may determine the existence of, seek access to, and request correction of NRC records concerning themselves.

The NRC is currently using an OMB approved form, NRC-509, Statement of Estimated Fees for Freedom of Information Act (FOIA) Request. The form is used: 1) by the NRC to notify requesters that fees will be assessed for processing their FOIA requests, 2) by the requester to notify NRC in writing of their agreement to pay fees, 3) by the NRC to notify the requester to submit a written request for a waiver pursuant to 10 CFR 9.41 with 10 working days from the receipt of the notice, and 4) by the NRC to notify the requester to provide advanced payment of estimated fees.

The NRC is revising NRC Form 507, Freedom of Information-Privacy Act Record Request Form. Currently this form is serving two purposes. First, the form can be used as a FOIA or Privacy Act request. Second, the form can be used to verify the identity of individuals who were seeking records about themselves or to authorize the disclosure of their records to another person. The NRC's experience is that requesters are not using this form to submit their FOIA or Privacy Act requests. The form is almost exclusively used by requesters to submit identity verifications or third-party authorizations. For these reasons, the NRC is simplifying the form by eliminating the information that would be required if it is used as a FOIA or Privacy Act request. The revised NRC Form 507 will only be used by requesters to provide the identity verification or third-party authorization that is needed by the NRC in order to process their requests. By providing requesters with this revised form, the goal is to shorten the time requesters spend on completing this form and to clarify which sections should be completed for each type of request.

Requesters can currently submit FOIA and/ or PA requests in writing, fax, email, or by using the electronic online submission form on the FOIAonline website:

<https://foiaonline.regulations.gov/foia/action/public/home>. Instructions on how to submit a FOIA request can be found on our website at <https://www.nrc.gov/reading-rm/foia/foia-request.html#how>. Instructions on how to submit a Privacy Act request can be found on our website <https://www.nrc.gov/reading-rm/foia/privacy-request.html#how>.

A. JUSTIFICATION

1. Need for and Practical Utility of the Collection of Information

NRC needs this information in order to comply with the FOIA and Privacy Act.

Information Collections in 10 CFR Part 9 are listed in Appendix A.

2. Agency Use of Information

Respondents can request records at any time. Their request must describe each requested record in sufficient detail to enable the NRC staff to locate the record, including specific information regarding dates, titles, docket numbers, and file designations, whenever possible. Requesters who are informed by the NRC that they will be assessed processing fees have ten working days following receipt of the notice to provide advanced payment, notify the NRC in writing that they agree to pay the fees, or narrow the scope of their request.

If information is denied under FOIA to requesters, and requesters wish to appeal the decision, they must submit an appeal in writing, fax, email, or by using the electronic online submission form on the FOIAonline website: <https://foiaonline.regulations.gov/foia/action/public/home>, within 90 calendar days from the date of the denial. Similarly, if a fee waiver or expedited processing request is denied and requesters wish to appeal the decision, they must also submit an appeal in writing, fax, email, or by using the electronic online submission form on the FOIAonline website: <https://foiaonline.regulations.gov/foia/action/public/home>.

If requesters wish to appeal a denial of access to Privacy Act Records or appeal a denial of a request to amend or correct a record, they must submit an appeal in writing within 60 calendar days. If these appeals are denied, requesters may submit in writing a statement of disagreement within 30 calendar days.

The NRC uses the information provided by requesters to process requests from the public and to keep NRC statistics.

In addition to information received by the NRC from individuals requesting information, as part of the FOIA process, the NRC also receives information from parties who have previously submitted information to the NRC. Whenever the NRC makes an initial determination that information should be disclosed, which was previously designated by the submitter as trade secrets or confidential commercial or financial information, the NRC notifies the submitter in writing. If the submitter objects to the release of this information, the submitter must provide

a detailed written statement within 30 calendar days. The NRC needs this information from submitters to properly process FOIA requests that involve confidential information or trade secrets.

3. Reduction of Burden Through Information Technology

There are no legal obstacles to reducing the burden associated with this information collection. The NRC encourages respondents to use new automated information technology when it would be beneficial to them. NRC receives FOIA and Privacy Act requests and other information related to Part 9 through writing, fax, email, or by using the electronic online submission form on the FOIAonline website: <https://www.foiaonline.gov/foiaonline/action/public/request>. It is currently estimated that approximately 90% of the potential requests will be submitted electronically.

4. Effort to Identify Duplication and Use Similar Information

No sources of similar information are available. There is no duplication of requirements.

5. Effort to Reduce Small Business Burden

The request is made on a one-time basis, and thus would have virtually no impact on small business since most of the requesters are individuals who are acting in a personal capacity.

6. Consequences to Federal Program or Policy Activities if the Collection is Not Conducted or is Conducted Less Frequently

The program could not be conducted without the public submitting their requests for information each time information is sought that is not already publicly available.

7. Circumstances Which Justify Variation from OMB Guidelines

The information collection is in compliance with OMB Guidelines.

8. Consultations Outside the NRC

Opportunity for public comment on the information collection requirements for this clearance package has been published in the *Federal Register*.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality of Information

FOIA Confidential and proprietary information is protected in accordance with NRC regulations at 10 CFR 9.17(a) and 10 CFR 2.390(b). When a request for

confidential or proprietary information is submitted, it is handled in accordance with 10 CFR 9.28.

Privacy Act information is made available only to the requester and is not made publicly available. The collection of this information is covered under NRC-10, System of Records Notice, Freedom of Information Act (FOIA) and Privacy Act (PA) Request Record.

11. Justification for Sensitive Questions

Not applicable.

12. Estimated Burden and Burden Hour Cost

The number of requests and forms received by the NRC during the past three years was reviewed. The estimates for the current renewal are based on averages calculated using this data. The estimated annual burden is 2,082.30 reporting hours at an estimated total cost to the public of \$580,961.70 at a rate of \$279/hour. There is no recordkeeping burden. See Table 1.

13. Estimate of Other Additional Costs

There are no other additional costs.

14. Estimated Annualized Cost to the Federal Government

The estimated annual burden to the NRC is 52,737 staff hours at a cost of \$14,713,623 at a rate of \$279/hour for labor costs. See Table 2.

15. Reasons for Changes in Burden or Cost

Overall, the burden has increased by 971 hours from 1,111 hours to 2,082 hours, and the number of responses increased from 2,490 to 3,803 based on an increase in the number of requests received within the last three reporting years. In addition, the fee rate has increased from \$263 to \$279.

16. Publication for Statistical Use

Not applicable.

17. Reason for Not Displaying the Expiration Date

NRC Form 509 and NRC Form 507 display an expiration date. However, the remaining recordkeeping and reporting requirements for this information collection are associated with regulations and are not submitted on instruments such as forms or surveys. Amending the regulatory text of the CFR to display information that, in an annual publication, could become obsolete would be unduly burdensome and too difficult to keep current.

18. Exceptions to the Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.

| Table 1: ANNUAL REPORTING BURDEN | | | | | | | |
|------------------------------------|--|-----------------------|--------------------------|-----------------|---------------------|---------------------------|---------------------------|
| CFR PART | DESCRIPTION | NUMBER OF RESPONDENTS | RESPONSES PER RESPONDENT | TOTAL RESPONSES | BURDEN PER RESPONSE | TOTAL ANNUAL BURDEN HOURS | COST TO PUBLIC @ \$279/HR |
| 9.23(b), 9.53(a) & (b), 9.54(a)(1) | Requests for agency records under the FOIA & Privacy Act, including verification of Identity | 1,734.00 | 1.00 | 1,734.00 | 0.75 | 1300.50 | \$362,839.50 |
| 9.25(e) | Requests for expedited processing | 87.00 | 1.00 | 87.00 | 0.50 | 43.50 | \$12,136.50 |
| 9.28(b) | Submitted objection to disclosure | 5.00 | 1.00 | 5.00 | 10.00 | 50.00 | \$13,950.00 |
| 9.29(a)-(f) | Appeals from initial determination, submitted by requester | 406.00 | 1.00 | 406.00 | 1.00 | 406.00 | \$113,274.00 |
| 9.40(g) NRC Form 509 | Agreement to pay fees, or a request for a waiver | 1,258.00 | 1.00 | 1,258.00 | 0.10 | 125.80 | \$35,098.20 |
| 9.41(a) & (b) | Fee waiver requests submitted with a FOIA request | 313.00 | 1.00 | 313.00 | 0.50 | 156.50 | \$43,663.50 |

| | | | | | | | |
|------------|--|------|------|----------|------|----------|--------------|
| 9.54(b) | Notarized statement (submitted in lieu of documents supporting the requesters identity) for Privacy Act requests | 0.00 | 1.00 | 0.00 | 0.50 | 0.00 | \$0.00 |
| 9.54(c) | Documents verifying percentage or guardianship for Privacy Act requests | 0.00 | 1.00 | 0.00 | 0.50 | 0.00 | \$0.00 |
| 9.55(a)(1) | Specification of records sought in Privacy Act request | 0.00 | 1.00 | 0.00 | 0.50 | 0.00 | \$0.00 |
| 9.55(a)(2) | Request for correction or amendment of a record | 0.00 | 1.00 | 0.00 | 1.00 | 0.00 | \$0.00 |
| 9.65(b) | Appeals from denials of access for Privacy Act request | 0.00 | 1.00 | 0.00 | 1.00 | 0.00 | \$0.00 |
| 9.66(b) | Appeals from an initial adverse determination for Privacy Act request | 0.00 | 1.00 | 0.00 | 1.00 | 0.00 | \$0.00 |
| 9.67(a) | Privacy Act statements of disagreement | 0.00 | 1.00 | 0.00 | 3.00 | 0.00 | \$0.00 |
| TOTAL | | | | 3,803.00 | | 2,082.30 | \$580,961.70 |

TABLE 2: ANNUAL COSTS TO THE FEDERAL GOVERNMENT

| CFR Part | Description | Total Responses | Burden Per Response | NRC Staff Hours | Costs to Public @\$279/hr |
|------------------------------------|---|------------------------|----------------------------|------------------------|----------------------------------|
| 9.23(b), 9.53(a) & (b), 9.54(a)(1) | Requests for agency records under the FOIA & Privacy Act, including verification of Identity | 1734.00 | 30.00 | 52,020.00 | \$14,513,580.00 |
| 9.25(e) | Requests for expedited processing | 87.00 | 0.10 | 8.70 | \$2,427.30 |
| 9.28(b) | Submitter objection to disclosure | 5.00 | 4.00 | 20.00 | \$5,580.00 |
| 9.29(a)-(f) | Appeals from initial determination, submitted by requestor | 406.00 | 1.00 | 406.00 | \$113,274.00 |
| 9.40(g) NRC Form 509 | Agreement to pay fees, or a request for a waiver | 1258.00 | 0.10 | 125.80 | \$35,098.20 |
| 9.41(a) & (b) | Fee waiver request submitted with a FOIA request | 313.00 | 0.50 | 156.50 | \$43,663.50 |
| 9.54(b) | Notarized statement (submitted in lieu of documents supporting the requestor's identity) for Privacy Act requests | 0.00 | 0.10 | 0.00 | \$0.00 |
| 9.54(c) | Documents verifying parentage or guardianship for Privacy Act requests | 0.00 | 0.00 | 0.00 | \$0.00 |
| 9.55(a)(1) | Specification of records sought in Privacy Act request | 0.00 | 0.10 | 0.00 | \$0.00 |
| 9.55(a)(2) | Request for correction or amendment of a record | 0.00 | 0.00 | 0.00 | \$0.00 |
| 9.65(b) | Appeals from denials of access for Privacy Act request | 0.00 | 1.00 | 0.00 | \$0.00 |
| 9.66(b) | Appeals from an initial adverse determination for Privacy Act request | 0.00 | 0.00 | 0.00 | \$0.00 |
| 9.67(a) | Privacy Act statements of disagreement | 0.00 | 0.00 | 0.00 | \$0.00 |
| TOTAL | | 3,803.00 | | 52,737.00 | \$14,713,623.00 |

APPENDIX A

10 CFR Part 9 Information Collections Requirements (As it pertains to the Freedom of Information Act):

10 CFR 9.23(b) requires that a person may request agency records by submitting a request authorized by 5 U.S.C. 552(a)(3) to the Freedom of Information Act and Privacy Act Officers, by an appropriate method listed in §9.6. The request must be in writing and clearly state on the envelope and in the letter that it is a "FOIA request." The NRC does not consider a request as received until the date it is actually received by the FOIA Officer. (1) A FOIA request covers only agency records that are in existence on the date the FOIA Officer receives the request. A request does not cover agency records destroyed or discarded before receipt of a request or which are created after the date of the request. (2) All FOIA requests for copies of agency records must reasonably describe the agency records sought in sufficient detail to permit the NRC to identify the requested agency records. Where possible, the requester should provide specific information regarding dates, titles, docket numbers, file designations, and other information which may help identify the agency records. If a requested agency record is not described in sufficient detail to permit its identification, the FOIA Officer will contact the requester within 10 working days after receipt of the request and inform the requester of the additional information or clarification to process the request. (3) Upon receipt of a request made under paragraph (b) of this section, the NRC will provide written notification to the requester that indicates the request has been received, the name and telephone number of the NRC point of contact to find out the status of the request, and other pertinent matters regarding the processing of the request. (4)(i) The NRC shall advise a requester that fees will be assessed if—(A) A request involves anticipated costs in excess of the minimum specified in §9.39; and (B) Search and duplication is not provided without charge under §9.39; or (C) The requester does not specifically state that the cost involved is acceptable or acceptable up to a specified limit. (ii) The NRC has discretion to discontinue processing a request made under this paragraph until—(A) A required advance payment has been received; (B) The requester has agreed to bear the estimated costs; (C) A determination has been made on a request for waiver or reduction of fees; or (D) The requester meets the requirements of §9.39.

10 CFR 9.25(e) permits a requester to request expedited processing. (1) NRC may place a person's request at the front of the queue for the appropriate track for that request upon receipt of a written request that clearly demonstrates a compelling need for expedited processing. For the purposes of determining whether to grant expedited processing, the term compelling need means—(i) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or (ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity. (2) A person requesting expedited processing must include a statement certifying the compelling need given to be true and correct to the best of his or her knowledge and belief. The certification requirement may be waived by the NRC as a matter of agency discretion. (3) The FOIA Officer will make the initial determination whether to grant or deny a request for expedited processing and will notify a requester within 10 calendar days after the request has been received whether expedited processing will be granted.

10 CFR 9.28(b) permits the submitter 30 calendar days from the date of the notice described in paragraph (a) of this section to object to disclosure. If a submitter has any objection to disclosure, the submitter must provide a detailed written statement. The statement must specify all grounds that support why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified in the notice, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received until after the date specified for response will not be considered unless that date is extended by the FOIA Officer upon request by the submitter.

10 CFR 9.29(a) requires that a requester may appeal a notice of denial of a FOIA request for access to agency records, denial of a request for waiver or reduction of fees, or denial of a request for expedited processing under this subpart within 90 calendar days of the date of the NRC's denial.

10 CFR 9.29(b) requires an appeal of records denied by the Assistant IG for Investigations be in writing, directed to the IG, and sent to the FOIA Officer. The NRC does not consider an appeal received until the date it is actually received by the FOIA Officer.

10 CFR 9.29(c) requires an appeal of records denied by the Executive Assistant to the Secretary of the Commission, the General Counsel, or an office director reporting to the Commission be in writing, directed to the Secretary of the Commission, and sent to the FOIA Officer. The NRC does not consider an appeal received until the date it is actually received by the FOIA Officer.

10 CFR 9.29(d) requires an appeal of records denied by an Office Director reporting to the EDO be in writing, directed to the EDO, and sent to the FOIA Officer. The NRC does not consider an appeal received until the date it is actually received by the FOIA Officer.

10 CFR 9.29(e) requires an appeal of a denial of a request for expedited processing be in writing, directed to the EDO, and sent to the FOIA Officer. The NRC does not consider an appeal received until the date it is actually received by the FOIA Officer.

10 CFR 9.29(f) requires an appeal of a denial of a waiver or reduction of fees for locating and reproducing agency records be in writing, directed to the EDO, and sent to the FOIA Officer. The NRC does not consider an appeal received until the date it is actually received by the FOIA Officer.

10 CFR 9.40(g) requires those requesters that are notified that fees will be assessed for processing their request to notify the NRC in writing of their agreement to pay the fees. Requesters can use NRC Form 509 (see attached).

10 CFR 9.41(a)(1) The NRC will collect fees for searching for, reviewing, and duplicating agency records, except as provided in §9.39, unless a requester submits a request in writing for a waiver or reduction of fees. To ensure that there will be no delay in the processing of FOIA requests, the request for a waiver or reduction of fees should be included in the initial FOIA request letter.

10 CFR 9.41(a)(2) states that each request for a waiver or reduction of fees should be addressed to the Office of the Chief Information Officer and sent using an appropriate method listed in §9.6.

10 CFR 9.41(b) requires that a person requesting the NRC to waive or reduce search, review, or duplications fees will—(1) Describe the purpose for which the requester intends to use the requested information; (2) Explain the extent to which the requester will extract and analyze the substantive content of the agency record; (3) Describe the nature of the specific activity or research in which the agency records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding; (4) Describe the likely impact on the public's understanding of the subject as compared to the level of understanding of the subject existing prior to disclosure; (5) Describe the size and nature of the public to whose understanding a contribution will be made; (6) Describe the intended means of dissemination to the general public; (7) Indicate if public access to information will be provided free of charge or provided for an access fee or publication fee; and (8) Describe any commercial or private interest the requester or any other party has in the agency records sought.

10 CFR 9.53(a) Requests may be made in person or in writing. Assistance regarding requests or other matters relating to the Privacy Act of 1974 may be obtained by writing to the FOIA Officer, by an appropriate method listed in §9.6. Requests relating to records in multiple systems of records should be made to the FOIA and/or PA Officers. The FOIA and PA Officers shall assist the requester in identifying his request more precisely and shall be responsible for forwarding the request to the appropriate system manager.

10 CFR 9.53(b) requires all written requests be made to the FOIA Officer are sent by an appropriate method listed in §9.6 and should clearly state on the envelope and in the letter, as appropriate: "Privacy Act Request," "Privacy Act Disclosure Accounting Request," or "Privacy Act Correction Request." The NRC does not consider a request received until the date it is actually received by the FOIA Officer.

10 CFR 9.54(a) requires identification requirements in paragraphs (1) and (2) of this section which are applicable to any individual who makes requests respecting records about himself, except that no verification of identity shall be required if the records requested are available to the public under the provisions of the FOIA. With respect to certain sensitive records, additional requirements for verification of identity stated in the appropriate published "Notice of System of Records" may be imposed. (1) Written requests. An individual making a written request respecting a record about himself may establish his identity by a signature, address, date of birth, employee identification number, if any, and one other item of identification such as a copy of a driver's license or other document. (2) Requests in person. An individual making a request in person respecting a record about himself may establish his identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear a name, address and signature (such as a driver's license or credit card).

10 CFR 9.54(b) requires an individual making a request in person or in writing respecting a record about himself who cannot provide the necessary documentation of identity may provide a notarized statement, swearing or affirming to his identity and to the fact that he understands that penalties for false statements may be imposed pursuant to 18 U.S.C. 1001, and that penalties for obtaining a record concerning an individual under false pretenses may be imposed pursuant to 5 U.S.C. 552a(i)(3). Forms for such notarized statements may be obtained on request from the FOIA Officer and may be sent by an appropriate method listed in §9.6.

10 CFR 9.54(c) requires verification of parentage or guardianship. In addition to establishing the identity of the minor, or other individual he represents as required in paragraph (a) of this section, the parent or legal guardian of a minor or of an individual judicially determined to be incompetent shall establish his status as parent or guardian by furnishing a copy of a birth certificate of the minor showing parentage or a copy of a court order establishing guardianship.

10 CFR 9.55(a)(1) requires requests relating to records shall, insofar as practicable, specify the nature of the record sought, the approximate dates covered by the record, the system of records in which the record is thought to be included and the system manager having custody of the record system as shown in the annual compilation, "Notices of Records Systems", published by the GSA. Requests shall, in addition, comply with any additional specification requirements contained in the published "Notice of System of Records" for that system.

10 CFR 9.55(a)(2) requires requests for correction or amendment of records shall, in addition, specify the particular record involved, state the nature of the correction or amendment sought and furnish justification for the correction or amendment.

10 CFR 9.65(b) Appeals from denials of access. If an individual has been denied access to a record the individual may request a final review and determination of that individual's request by the IG or the EDO, as appropriate. A request for final review of an initial determination must be filed within 60 calendar days of the receipt of the initial determination. For agency records denied by the Assistant IG for Investigations, the appeal must be in writing directed to the IG and sent to the FOIA or PA Officers by an appropriate method listed in §9.6. For agency records denied by the FOIA Officer, the appeal must be in writing directed to the EDO and sent to the FOIA Officer by an appropriate method listed in §9.6. The appeal should clearly state on the envelope and in the letter "Privacy Act Appeal-Denial of Access." The NRC does not consider an appeal received until the date it is actually received by the FOIA Officer.

10 CFR 9.66(b) Appeals from initial adverse determinations. If an individual's request to amend or correct a record has been denied, in whole or in part, the individual may appeal that action and request a final review and determination of that individual's request by the IG or the EDO, as appropriate. An appeal of an initial determination must be filed within 60 calendar days of the receipt of the initial determination. For agency records denied by the Assistant IG for Investigations, the appeal must be in writing directed to the IG and sent to the FOIA Officer by an appropriate method listed in §9.6. For agency records denied by the FOIA Officer, the appeal must be in writing directed to the EDO and sent to the FOIA Officer by an appropriate method listed in §9.6. The appeal should clearly state on the envelope and in the letter "Privacy Act Correction Appeal." The NRC does not consider an appeal received until the date it is

actually received by the FOIA Officer. Requests for final review must set forth the specific item of information sought to be corrected or amended and should include, where appropriate, records supporting the correction or amendment.

10 CFR 9.67(a) provides that a written "Statements of Disagreement" may be furnished by the individual within 30 calendar days of the date of receipt of the final adverse determination of the IG or the EDO. "Statements of Disagreement" directed to the EDO must be sent to the FOIA Officer by an appropriate method listed in §9.6 and should be clearly marked on the statement and on the envelope "Privacy Act Statement of Disagreement." "Statements of Disagreement" directed to the IG must be sent to the FOIA Officer by an appropriate method listed in §9.6 and should be clearly marked on the statement and on the envelope "Privacy Act Statement".