

DRAFT SUPPORTING STATEMENT
FOR
10 CFR PART 140

"FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS"
(3150-0039)

EXTENSION

DESCRIPTION OF THE INFORMATION COLLECTION

The regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 140 provide appropriate procedures and requirements for determining the financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to Section 170 of the Atomic Energy Act of 1954, as amended (the Act), and the liability insurance required of uranium enrichment facility licensees pursuant to Section 193 of the Act. The Price-Anderson Act provides a system to pay public liability claims for bodily injury and property damage resulting from a nuclear incident. The Act provides \$375 million in nuclear liability insurance and \$111.9 million in secondary retrospective premium insurance. Approximately \$12 billion in primary and secondary insurance is available to pay public liability and property damage claims. When a licensee is initially granted a license to operate, it must provide evidence of primary and secondary insurance from American Nuclear Insurers. In case of an injury, the licensee must submit a report to the Commission.

A. JUSTIFICATION

1. Need For and Practical Utility of the Collection of Information. Part 140 implements Section 170 of the Act, the Price-Anderson Act.

Section 140.6(a) requires that licensees submit a report to the Nuclear Regulatory Commission (NRC) in the event of bodily injury or property damage arising out of the possession or use of radioactive material. This information assists NRC in assessing the extent of any damages which may have occurred or are expected to occur so that appropriate action may be taken to initiate the remedies provided by the Price-Anderson Act.

Section 140.6(b) states that the Commission may require any person subject to this part to keep such records and furnish such reports to the Commission as the Commission deems necessary for the administration of the regulations in this part.

Section 140.7(b) pertains to a situation where a licensee manufactures a number of nuclear reactors (rated at 3 1/3 megawatts or less) and operates them at its site prior to delivery to a buyer. Each such reactor is indemnified under the Price-Anderson Act system, and because of such indemnification, the manufacturer is liable to pay a fee for each reactor operated. Rather than be billed for each reactor separately, the licensee is required to estimate the maximum number of reactors operating at any one time, and the fee is based on this estimate.

If experience shows that more or less than this estimated maximum has operated, the licensee will inform the NRC so that the fee can be adjusted.

Section 140.8 pertains to specific exemptions when the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and are otherwise in the best interest of the public.

Section 140.13 requires that each holder of a Part 50 construction permit, or a holder of a combined license under Part 52, who also holds a license under part 70 license must maintain \$1 million in financial protection prior to issuance of an operating license under Part 50 or a combined license under Part 52, and submit evidence of fulfilling this requirement, as required by Section 170 of the Act.

Section 140.13(a) requires that each holder of a Part 70 license to possess and use plutonium at a plutonium processing and fuel fabrication plant must maintain \$300 million of financial protection and submit evidence of fulfilling this requirement, as required by Section 170 of the Act.

Section 140.13b requires proof of liability insurance to be filed with the Commission, pursuant to 140.15, before issuance of a license for a uranium enrichment facility, as required by Section 193 of the Act.

Section 140.14(b) requires the licensee to obtain written approval of the Commission if they wish to substitute one type of financial protection for another type pursuant to Section 170(b) of the Act.

Section 140.15(a)(1) requires those licensees who choose to maintain financial protection in the form of liability insurance required pursuant to Section 170(b) of the Act to submit proof to the NRC of their financial protection (copies of new policies and copies of endorsements, i.e., amendments to the policies). All liability policies are with the nuclear insurance pool, American Nuclear Insurers.

Section 140.15(a)(2) requires alternative proof of financial protection in the form of a copy of the declarations page from a nuclear energy liability policy be accompanied by a certificate from the insurers stating that the copy is a true copy of the declarations page of a currently effective policy and identify the policy by reference to the policy form which has been filed by the licensee with the Commission. The licensees are not required to submit information annually under this section, and would only submit documentation if alternative proof of financial protection is provided.

Section 140.15(b)(1) requires proof of financial protection for those licensees who maintain financial protection in whole or in part in the form specified in § 140.14(a)(2) shall consist of showing that the licensee clearly has adequate resources to provide the financial protection required under this part, by filing annual financial statements for the three complete calendar or fiscal years preceding the date of filing, together with an opinion therein by a Certified Public Accountant. The financial statements shall include balance sheets, operating

statements, and supporting schedules as needed for interpretation of the balance sheets and operating statements. NRC reviews this information to determine whether the licensee has adequate financial protection. This information is provided at the issuance of an operating license under Part 50, or a holder of a combined license under Part 52.

Section 140.15(b)(2) requires that if the most recent financial statements required by Section 140.15(b)(1) have been prepared as of a date more than 90 days prior to the dates of filing, similar financial statements prepared as of a date not more than 90 days prior to the date of filing should be included. NRC reviews this information to determine whether the licensee has adequate financial protection. This information is provided at issuance of a license.

Section 140.15(c) requires any licensee to file with the NRC such additional proof of financial protection or other financial information as the NRC determines to be necessary to determine whether financial protection is being maintained pursuant to 10 CFR Part 140.

Section 140.15(e) requires licensees to promptly notify the NRC of any material change in financial protection or in other financial information so that NRC can reevaluate these changes.

Section 140.17(a) requires licensees to submit to NRC proof that organizations which have issued financial protection policies are legally authorized to issue them and do business in the United States, and have clear ability to meet their obligations. This information allows NRC to ensure continued liability protection and reliability of licensee liability policies.

Section 140.17(b) requires that at least 30 days prior to termination, licensees notify the NRC of liability insurance policies, renewal of such policy, or file other proof of financial protection. With this information, NRC judges the legality and reliability of licensee liability policies.

Section 140.18 requires licensees to file with the NRC such financial information as the Commission determines to be appropriate to determine whether the licensee is maintaining financial protection pursuant as required by this Part.

Section 140.20(c) specifies that licensees, who indicate that they will not be paying retrospective premium assessments, immediately submit their financial statements to NRC. Retrospective premiums are required pursuant to Section 170(b) of the Act. As required, subsequent submission of financial statements by such licensees may be requested by NRC. These statements are necessary to determine whether the NRC will be required to pay, on behalf of a licensee, any unpaid retrospective premiums. The Act authorizes the NRC to levy liens to obtain payment from the licensee.

Section 140.21 requires each license required to have and maintain financial protection for each nuclear reactor as determined in § 140.11(a)(4). At the issuance of the license, the licensee must provide evidence that it maintains the

following types of guarantee of payment of deferred premiums in an amount of \$17.5 million for each reactor:

- Surety bond,
- Letter of credit,
- Revolving credit/term loan agreement,
- Maintenance of escrow deposits of government securities,
- Annual certified financial statement showing that a cash flow can be generated within 3 months or a cash reserve or combination of cash flow and cash flow,
- Such other type of guarantee as may be approved by the Commission.

Copies of these financial devices provide NRC with the assurance that licensees maintain adequate financial protection.

Section 140.22 requires licensees to execute an indemnity agreement with the Commission that provides for the payment to the Commission of deferred premiums not paid by the licensee and reimbursement of the Commission by the licensee as required pursuant to Section 170(b) of the Act. The general forms of agreement to be entered into by the Committee and licensees are set forth in Section 140.92, Appendix B, and Section 140.93, Appendix C. This agreement is required to be submitted at the issuance of the license.

The NRC completes its review of this information within approximately one month after its receipt.

2. Agency Use of Information

As stated specifically above, NRC uses the information required by 10 CFR Part 140 to assess (a) the financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to Section 170 of the Act and (b) the liability insurance required of uranium enrichment facility licensees pursuant to Section 193 of the Act.

3. Reduction of Burden Through Information Technology

There are no legal obstacles to reducing the burden associated with this information collection. NRC encourages respondents to use new automated information technology when it would be beneficial to them. NRC issued a regulation on October 10, 2003, (68 FR 58791), consistent with the Government Paperwork Elimination Act, which allows its licensees, vendors, applicants, and members of the public the option to make submissions electronically via CD-ROM, e-mail, special Web-based interface, or other means. Requests which are not for personal records that require verification of identity of the requester are being accepted by electronic mail and facsimile transmission in addition to mail and in-person written request. It is anticipated that approximately 80% of all 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. NRC has in place an ongoing program to examine all information collections with the goal of eliminating all duplication and/or unnecessary information collections.

5. Effort to Reduce Small Business Burden

Small business is not affected by 10 CFR 140 information collection requirements.

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

Not collecting this information or collecting it at less frequent intervals would be deleterious to NRC's mission to protect public health and safety. The information collection is necessary pursuant to the implementation of the Price-Anderson Act.

7. Circumstances Which Justify Variation from OMB Guidelines

This information collection does not vary from 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

Confidential and proprietary information is protected in accordance with NRC regulations at 10 CFR 9.17 (a) and 10 CFR 2.390 (b). However, no information normally considered confidential or proprietary is requested.

11. Justification for Sensitive Questions

Part 140 information collections do not involve sensitive or private information.

12. Estimated Industry Burden and Burden Hour Cost

When a licensee is initially granted a license to operate, it must provide evidence of primary and secondary insurance from American Nuclear Insurers. To date, 170 entities have provided this information (104 operating power reactor licenses, 14 power reactor licenses in decommissioning, 31 operating non-power reactor licenses; 12 non-power reactor licenses in decommissioning; 5 plutonium

processing and fuel fabrication licenses; and 4 combined licenses that were issued in 2012). This is a one-time report, provided at the time of licensing.

During the current clearance cycle, 3 licensees are anticipated to provide documentation of insurance coverage. This includes 2 combined licenses who will submit under Section 140.13 and 140.15(a)(1) and 1 uranium enrichment facility that will submit under Section 140.13b. Therefore, the average number of annual respondents during this three year clearance period will be 1 ($3 \text{ respondents} / 3 \text{ years} = 1 \text{ respondent per year}$).

Other requirements in Part 140 will not apply to any respondents during the clearance cycle; therefore, no burden will be accrued for these requirements. For example, in case of an injury, the licensee must submit a report to the Commission. This occurrence is rare; therefore no reports are expected during this clearance cycle. In addition, the NRC does not anticipate receiving any reports of material changes in financial protection or other financial information during the clearance period. Finally, although the potential exist for submittals under Sections 140.17(a) and (b); no licensees are expected to participate in the information collections associated with this section. All liability policies are issued by the existing nuclear insurance pool, American Nuclear Insurers. The provisions of this section would become operable only if and when a new insurance carrier enters that market; this is not expected to occur during this clearance cycle, eliminating the need to utilize a universe of potential respondents.

Table 1 summarizes the estimated annual burden on NRC licensees to prepare reports required under 10 CFR Part 140. The estimated annual burden is 8 hours at a cost of \$2,192 ($8 \text{ hours} \times \$274/\text{hr}$).

13. Estimate of Other Additional Costs

There are no additional costs.

14. Estimated Annualized Cost to the Federal Government

The annual cost for the staff to review and analyze the data, provide follow-up, prepare reports is 44.9 hours, at a cost of \$12,303 ($44.9 \text{ hours} \times \$274/\text{hr}$). See Table 2.

This cost is fully recovered through fee assessments to NRC licensees pursuant to 10 CFR Parts 170 and/or 171.

15. Reasons for Changes in Burden or Cost

The burden for this collection has decreased from 1,307 hours and 151 responses to 8 hours and 1.67 responses, a decrease of 1,299 hours and 149.3 responses. The significant reduction in the number of respondents and responses is due to the correction of the method used to determine the number of respondents for each requirement. The previous renewal included the number

of respondents to whom each requirement could potentially apply (91 total respondents), whether or not those respondents would be providing a report to the NRC during the clearance period. The current submission includes only the actual expected respondents and responses during this clearance period (a total of 3 respondents over the course of the 3 year clearance period).

The largest reduction is due to the removal of 75 responses and 600 hours under section 140.21. No licensees are providing annual evidence of financial protection under 140.21 (a) – (e); rather, the NRC is assured of their financial protection under a bond not requiring annual submission as allowed in 140.21(f).

Although there is an increase in the fee rate from \$238 to \$274 per hour the reduction in the overall burden projection results in a significant reduction in cost from the previous cycle.

16. Publication for Statistical Use

The collected information is not published for statistical purposes.

17. Reason for Not Displaying the Expiration Date

The requirement is contained in a regulation. Amending the Code of Federal Regulations 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

None.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.

Table 1
Annual Industry Reporting Burden

Section	Number of Respondent	Responses Per Respondent	Number of Responses	Burden Hours Per Response	Total Annual Burden Hours	Cost @ \$274/Hour
140.6(a)	0	0	0	15	0	\$0
140.6(b)	0	0	0	15	0	\$0
140.7(b)	0	0	0	3	0	\$0
140.8	0	0	0	5	0	\$0
140.13	0.67	1	0.67	1	0.67	\$184
140.13a	0	1	0	1	0	\$0
140.13b	0.33	1	0.33	2	0.66	\$181
140.14(b)	0	0	0	1	0	\$0
140.15(a)	0.67	1	0.67	10	6.7	\$1,836
140.15(b)	0	0	0	12	0	\$0
140.15(c)	0	0	0	8	0	\$0
140.15(e)	0	0	0	8	0	\$0
140.17(a) & (b)	0	0	0	1	0	\$0
140.18	0	0	0	0	0	\$0
140.20(c)	0	0	0	1	0	\$0
140.21	0	0	0	8	0	\$0
140.22	0	0	0	8	0	\$0
Total	1		1.67		8 ¹	\$2,192

10 CFR Part 140 Burden

Number of Annual Respondents: 1
Number of Responses: 1.67
Total Burden Hours: 8
Total Burden Hour Cost: \$2,192

¹ 8 hours total burden is rounded from 8.03 hours. As a result of rounding, the total cost will not equal the sum of the costs for individual requirements above.

Table 2
Costs to the Federal Government

Section	Number of Responses Received	Government Hours Per Response	Total Government Hours	Government Cost
140.6(a)	0	0	0	\$0
140.6(b)	0	0	0	\$0
140.7(b)	0	0	0	\$0
140.8	0	0	0	\$0
140.13	0.67	6	4	\$1,096
140.13a	0	5	0	\$0
140.13b	0.33	2	0.6	\$192
140.14(b)	0	0	0	\$0
140.15(a)	0.67	60	40.2	\$11,015
140.15(b)	0	0	0	\$0
140.15(c)	0	0	0	\$0
140.15(e)	0	0	0	\$0
140.17(a)&(b)	0	1	0	\$0
140.20(c)	0	1	0	\$0
140.21	0	0	0	\$0
140.22	0	8	0	\$0
Total	1.67		44.9	\$12,303