

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. Prior to the issuance of a license to operate a nuclear reactor, an applicant must provide evidence of financial protection as outlined in 10 CFR Part 140. The Price-Anderson Act provides a system through which evidence of financial protection can be demonstrated. The Price-Anderson Act provides a two-tiered financial protection system to pay public liability claims for bodily injury and property damage resulting from a nuclear incident. Under the existing framework, reactor licensees pay a yearly premium for the first tier of financial protection, worth \$375 million, in private insurance coverage. If a nuclear incident were to cause damages in excess of this primary tier, each licensee would be assessed a prorated share of the excess up to \$121.255 million. The secondary tier of financial protection is a retrospective and variable amount and results in an industry total of approximately \$12 billion. If the secondary tier of financial protection is depleted, Congress may provide additional incident relief. Price-Anderson covers bodily injury, sickness, disease or resulting death, property damage, loss, and living expenses for displaced individuals.

A. JUSTIFICATION

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

Section 140.6(a) requires licensees to submit a report to the U.S. 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 the 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 Commission 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 each holder of a Part 50 construction permit, or a holder of a combined license under Part 52 of this chapter before the date that the Commission had made the finding under Section 52.103(g), who also holds a license under Part 70 of this chapter authorizing ownership, possession, and storage only of special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor after issuance of either an operating license under Part 50 or combined license under Part 52, shall, during the period before issuance of a license authorizing operation under Part 50, or the period before the Commission makes the finding under Section 52.103(g) of this chapter, as applicable, to have and maintain financial protection in the amount of \$1 million. Proof of financial protection shall be filed with the Commission in the manner specified in Section 140.15 of this chapter before issuance of the license under Part 70 of this chapter.

Section 140.13a requires each holder of a license issued pursuant to Part 70 of this chapter to possess and use plutonium at a plutonium processing and fuel fabrication plant to have and maintain financial protection in the form specified in Section 140.14 in the amount of \$200 million. Proof of financial protection shall be filed with the Commission in the manner in Section 140.15 prior to issuance of the license under Part 70 of this chapter.

Section 140.13b requires proof of liability insurance to be filed with the Commission, pursuant to Section 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.

Section 140.15(a)(1) requires licensees who maintain financial protection, in whole or in part, in the form of liability insurance to provide proof of financial protection that consists of a copy of the liability policy (or policies) together with the certificate by the insurers issuing the policy stating that the copy is a true copy of the currently effective policy issued to the licensee.

Section 140.15(a)(2) allows for alternative proof of financial protection in the form of a copy of the declarations page from a nuclear energy liability policy, if it is filed by the insurers to the Commission and is 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 identifies the policy by reference to the policy form which has been filed by the licensee to the Commission. The licensees are not required to submit information annually under this part, and would only submit documentation if alternative proof of financial protection is provided.

Section 140.15(b)(1) states that proof of financial protection for those licensees who maintain financial protection in whole or in part in the form specified in Section 140.14(a)(2) (adequate resources to provide financial protection required by Sections 140.11, 140.12, 140.13 or 140.13a) 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 thereon by a Certified Public Accountant (CPA). The financial statements shall include balance sheets, operating statements, and supporting schedules as needed for interpretation of this information.

Section 140.15(b)(2) states 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 date of filing, similar financial statements prepared as of a date not more than 90 days prior to the date of filing should be included. These statements need not be reviewed by a CPA.

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

Section 140.15(e) requires licensees to promptly notify the Commission of any material change in financial protection or in other financial information filed with the Commission pursuant Part 140.

Section 140.17(a) requires licensees to submit proof to the Commission 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 the 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 of any insurance policy, licensees notify the Commission of the renewal of such policy or shall file other proof of financial protection. The NRC uses this information to judge the legality and reliability of licensee liability policies.

Section 140.18 requires licensees who undertake to maintain financial protection in the form specified in Section 140.14(a)(2) for all or part of the financial protection required by Part 140, to file with the Commission such financial information as the Commission determines to be appropriate to determine whether the licensee is maintaining financial protection.

Section 140.20(c) specifies that the Commission shall require the immediate submission of financial statements by those licensees who indicate, after an assessment of the retrospective premium by the insurance pools, that they will not pay the assessment. Such financial statements shall include, as a minimum, exhibits indicating internally generated funds from operations and accumulated retained earnings. Subsequent submission of financial statements by such licensees may be requested by the Commission, as required. These statements are necessary to determine whether the NRC will be required to pay, on behalf of a licensee, and unpaid retrospective premiums. The Act authorizes the NRC to levy liens to obtain payment from the licensee.

Section 140.21 states that each licensee required to have and maintain financial protection for each nuclear reactor as determined in Section 140.11(a)(4) shall at the issuance of the license and annually, on the anniversary of the date on which the indemnity agreement is effective, provide evidence to the Commission that it maintains the following types of guarantee of payment of deferred premium in an amount specified in Section 140.11(a)(4) for each reactor it is licensed to operate:

- Surety bond,
- Letter of credit,
- Revolving credit/term loan arrangement,
- Maintenance of escrow deposits of government securities,
- Annual certified financial statement showing either that a cash flow (i.e., cash available to a company after all operating expenses, taxes, interest charges, and dividends have been paid) can be generated and would be available for payment of retrospective premiums within three months after submission of the statement, or a cash reserve or combination of cash flow and cash reserve, or
- Such other type of guarantee as may be approved by the Commission.

Copies of these financial devices provide the 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 by the Commission of deferred premiums not paid by the licensee and reimbursement of the Commission by the licensee. The general forms of agreement to be entered into by the Commission 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.

2. Agency Use of Information

The 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. The NRC encourages respondents to use new automated information technology when it would be beneficial to them. The 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. It is anticipated that approximately 90 percent, or greater, 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 businesses are 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 detrimental to the NRC's mission of protecting public health and safety. The information collection is necessary to implement the Price-Anderson Act.

7. Circumstances Which Justify Variation from the Office of Management and Budget Guidelines

This information collection does not vary from the Office of Management and Budget 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, information that is normally considered confidential or proprietary is not 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 an applicant is initially granted a license to operate a nuclear reactor, it must provide evidence of primary and secondary insurance. At present, 168 entities have provided this information (99 operating power reactor licenses, 19 power reactor licenses in decommissioning, 31 operating non-power reactor licenses; 8 non-power reactor licenses in decommissioning; 7 plutonium processing and fuel fabrication licenses; and 4 combined licenses).

During this clearance cycle, 99 licensees are anticipated to provide documentation in association with 10 CFR Part 140. One licensee is expected to provide two responses in one year with information for Part 140.8 to request an exemption to lower primary insurance and withdraw from the secondary insurance pool after the reactor enters the decommissioning stage and spent fuel cooling has occurred. Another applicant is expected to submit one response in one year for information related to 140.3. It is also expected that a total of 99 responses per year will be related to Part 140.21, and include submittals to provide the NRC with the assurance that licensees maintain adequate financial protection. Therefore, the average number of annual respondents during this three year clearance period will be approximately 99, as reflected in Table 1.

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 and a report is not 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 a potential for submittals under Sections 140.17(a) and (b) exists, licensees are not expected to participate in the information collections associated with this part. All liability policies are issued by the existing nuclear insurance pool, American Nuclear Insurers. The provisions of this part 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 industry burden and burden hour cost on NRC licensees to prepare reports required under 10 CFR Part 140.

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, prepare reports, and provide follow-up, is 1441 hours, at an annual cost of \$402,039 (1441 hours x \$279/hour). This increase in hours is due to staff transitions and experience. The effort required will be monitored over the duration of the clearance cycle to ensure as accurate an estimate as possible during the next renewal. 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 overall burden for this collection has significantly increased from 8 hours and 1.67 responses in the previous renewal to 803 hours and 102 responses in this cycle. The significant increase of 795 hours total in the number of respondents and responses is due previously to the staff inadvertently miscalculating the number of respondents and responses for each requirement. Licensees under Sections 140.21(a) – (e) are adhering to the regulations by providing evidence of financial protection on an annual basis. This renewal reflects the actual expected respondents and responses during this clearance period and accounts for a better understanding of the regulations and effort required by the licensee to meet those regulations and will continued to be reviewed and applied in future renewals.

A slight increase in cost is also due to the increase in fee rate, from \$274/hour to \$279/hour.

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 REPORTING BURDEN							
Requirement	Description	No. of Respondents	Responses per Respondent	Number of Responses	Burden Hours per Response	Total Annual Burden Hours	Cost at \$279/hr
140.6(a)	Reports	0.0	0.0	0.0	15.0	0.0	\$0
140.6(b)	Reports	0.0	0.0	0.0	15.0	0.0	\$0
140.7(b)	Fees	0.0	0.0	0.0	3.0	0.0	\$0
140.8	Specific Exemptions	1.0	2.0	2.0	5.0	10.0	\$2,790
140.13	Amount of financial protection required of certain holders of construction permits and combined licenses under 10 CFR Part 52	1.0	1.0	1.0	1.0	1.0	\$279
140.13a	Amount of financial protection required for plutonium processing and fuel fabrication plants	0.0	0.0	0.0	1.0	0.0	\$0
140.13b	Amount of liability insurance required for uranium enrichment facilities	0.0	0.0	0.0	2.0	0.0	\$0
140.14(b)	Types of financial protection	0.0	0.0	0.0	1.0	0.0	\$0
140.15(a)	Proof of financial protection	0.0	0.0	0.0	10.0	0.0	\$0
140.15(b)	Proof of financial protection	0.0	0.0	0.0	12.0	0.0	\$0
140.15(c)	Proof of financial protection	0.0	0.0	0.0	8.0	0.0	\$0
140.15(e)	Proof of financial protection	0.0	0.0	0.0	8.0	0.0	\$0
140.17(a) & (b)	Special provisions applicable to licensees furnishing financial protection in whole or in part in the form of liability insurance	0.0	0.0	0.0	1.0	0.0	\$0
140.18	Special provisions applicable to licensees furnishing financial protection in whole or in part in the form of adequate resources	0.0	0.0	0.0	0.0	0.0	\$0
140.20(c)	Indemnity agreements and liens	0.0	0.0	0.0	1.0	0.0	\$0
140.21	Licensee guarantees of payment of deferred premiums	99.0	1.0	99.0	8.0	792.0	\$220,968
140.22	Commission guarantee and reimbursement agreements	0.0	0.0	0.0	8.0	0.0	\$0
TOTAL				102.0		803.0	\$224,037

10 CFR Part 140 Burden

Number of Annual Respondents	101.0
Number of Responses	102.0
Total Burden Hours	803.0
Total Burden Hour Cost	\$ 224,037

TABLE 2: COSTS TO THE FEDERAL GOVERNMENT					
Requirement	Description	Number of Responses Received	Government Hours Per Response	Total Government Hours	Government Cost at \$279/hr
140.6(a)	Reports	0.0	40.0	0.0	\$0
140.6(b)	Reports	0.0	15.0	0.0	\$0
140.7(b)	Fees	0.0	3.0	0.0	\$0
140.8	Specific Exemptions	2.0	15.0	30.0	\$8,370
140.13	Amount of financial protection required of certain holders of construction permits and combined licenses under 10 CFR Part 52	1.0	25.0	25.0	\$6,975
140.13a	Amount of financial protection required for plutonium processing and fuel fabrication plants	0.0	25.0	0.0	\$0
140.13b	Amount of liability insurance required for uranium enrichment facilities	0.0	25.0	0.0	\$0
140.14(b)	Types of financial protection	0.0	1.0	0.0	\$0
140.15(a)(1)	Proof of financial protection	0.0	15.0	0.0	\$0
140.15(a)(2)	Proof of financial protection	0.0	25.0	0.0	\$0
140.15(b)(1)	Proof of financial protection	0.0	40.0	0.0	\$0
140.15(b)(2)	Proof of financial protection	0.0	12.0	0.0	\$0
140.15(c)	Proof of financial protection	0.0	8.0	0.0	\$0
140.15(e)	Proof of financial protection	0.0	8.0	0.0	\$0
140.17(a) & (b)	Special provisions applicable to licensees furnishing financial protection in whole or in part in the form of liability insurance	0.0	20.0	0.0	\$0
140.18	Special provisions applicable to licensees furnishing financial protection in whole or in part in the form of adequate resources	0.0	25.0	0.0	\$0
140.20(c)	Indemnity agreements and liens	0.0	10.0	0.0	\$0
140.21	Licensee guarantees of payment of deferred premiums	99.0	14.0	1,386.0	\$386,694
140.22	Commission guarantee and reimbursement agreements	0.0	15.0	0.0	\$0
TOTAL				1,441.0	\$402,039