

DRAFT SUPPORTING STATEMENT FOR
NRC'S POLICY OF COOPERATION WITH STATES AT
COMMERCIAL NUCLEAR POWER PLANTS
AND OTHER NUCLEAR PRODUCTION AND UTILIZATION FACILITIES
(3150-0163)

EXTENSION

Description of the Information Collection

The Atomic Energy Act of 1954, as amended (Act), includes Section 274, "Cooperation with States," which authorizes the U.S. Nuclear Regulatory Commission (NRC) to enter into agreements with any State, or group of States, to perform health and safety inspections or other functions on a cooperative basis as the Commission deems appropriate. Also, Section 161 of the Act allows NRC to "... utilize or employ the services of personnel of any government agency or any State or local government, or voluntary or uncompensated personnel, to perform such functions on its behalf as may appear desirable." Based on these legislative provisions, the Commission has a number of programs and activities which involve coordination with States, requesting their input on proposed policies and rules, and exchanging information on reactor status, radioactive waste issues, transportation, emergency planning and preparedness and other topics. The information collection requirements for which the Office of Management and Budget (OMB) approval is being sought are contained in an existing NRC policy statement entitled, "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (Cooperation with States), which was published at 57 FR 6462, February 25, 1992. The policy sets a uniform means for States to observe and participate in NRC inspections at nuclear power plants. All States which participate are expected to cooperate with the NRC and provide information requested by the policy statement. Currently, the NRC has 23 current instruments of cooperation with 10 different States. There are 99 operating power reactors located in 30 States; however, only one State has Resident State Engineers. Since the policy on cooperation with States went into effect in 1989, representatives from many States and the Prairie Island Dakota Indian Community have signed protocols to observe NRC inspections at nuclear power plants.

After the events of September 11, 2001, the NRC entered into reimbursable agreements under Section 274i of the Act with Agreement States for the States to: 1) verify that Agreement State materials licensees are in compliance with NRC's Orders requiring additional security measures for enhancing security at their facilities and 2) report inspection findings, including potential violations, to the NRC for follow up and enforcement action, as appropriate. The expansion of the scope of this collection for Agreement State materials security licensees was in response to an expected increase in materials safety inspections under Section 274i of the Act. The NRC began implementing these inspections on March 1, 2004. At this time, three Agreement States have renewed their agreement to perform materials security re-inspections of their irradiators, radioactive materials in quantities of concern (RAMQC), manufacturing and distribution (M&D) and non-M&D service provider licensees to verify that they are in compliance with NRC's Orders requiring additional security measures for enhancing security at their facilities. It is expected that the number of reimbursable inspections conducted under these 274i agreements will decrease as States implement regulations that are compatible to 10 CFR Part 37, "Physical protection of category 1 and category 2 quantities of radioactive material." As a State implements its regulations, the NRC will rescind its security orders to the State's licensees. Once

this occurs, the State will have the authority to conduct the inspections under their own authority and their inspections will no longer be conducted under a reimbursable agreement.

An Agreement State is one that has signed an agreement with the NRC that authorizes the State to regulate the use of certain radioactive materials within the State pursuant to the Act. The NRC Office of Nuclear Material Safety and Safeguards (NMSS) has the responsibility within NRC for administering this policy statement and other programs involving interactions with States.

A. JUSTIFICATION

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

States are involved and interested in monitoring the safety status of nuclear power plants and radioactive materials. This involvement is, in part, in response to the States' public health and safety responsibilities and, in part, in response to their citizens' desire to become more knowledgeable about the safety of nuclear power plants and radioactive materials. States have identified NRC inspections as one possible source of knowledge for their personnel regarding plant and materials licensee activities, and the NRC, through the policy statement on Cooperation with States, has been amenable to accommodating the States' needs in this regard.

The NRC has entered into reimbursable agreements with certain States under Section 274i of the Act, as amended, to employ their resources to conduct radioactive materials security inspections against NRC Orders. States may conduct inspections under the reimbursable agreement until the State has implemented regulations that are compatible with those at 10 CFR Part 37, at which time the NRC Orders will be rescinded.

The information collected is necessary to: 1) allow the States and the NRC to reach an agreement covering the cooperative activities; 2) ensure clear roles for the State; 3) allow the needed coordination between States and the NRC for the conduct of the inspections; 4) ensure that the State inspectors are qualified; 5) ensure that the information can be used by the NRC; and 6) address the results of the State activities (e.g., inspection results, inspection observations, and potential licensee violations identified as a result of the State inspection activities). For reimbursable agreements, information is needed to allow for the appropriate accounting, billing, and reimbursement for the inspection activities conducted under the agreement.

2. Agency Use of the Information.

The information collected contributes to the NRC's oversight of regulated activities and the safe and secure use of radioactive material in licensed activities. Some of the information is used to enable State participation in the inspections and to enable the NRC to reimburse States for work performed under a reimbursable agreement. The information provided by the States will be used by the NRC to: 1) develop guidance; 2) develop inspection procedures; 3) develop Orders enhancing materials security; and 4) identify potential

violations of NRC regulatory requirements, non-conformances, and allegations. The information also allows States to participate in the assessment and disposition of potential enforcement issues. State inspections conducted under a reimbursable agreement streamline the regulatory oversight of the affected Agreement State licensees and allow the NRC to use information provided by the State that would otherwise require a separate NRC inspection.

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. Requests which are not for personal records that require verification of identity of the requestor are being accepted by electronic mail and facsimile transmission in addition to mail in-person written request. The responses made under this clearance will take different forms. Some responses may be verbal. Some responses are more amenable to being submitted electronically than others.

It is anticipated that 90% of the submitted observation requests with addendum protocol agreements will be submitted electronically. It is anticipated that approximately 75% of the responses relating to participating in inspections will be submitted electronically. It is anticipated that 0% of the 274i State inspection reports will be submitted electronically.

4. Effort to Identify Duplication and Use of Similar Information.

The NRC considers State proposed inspection activities for a site when formulating its Master Inspection plans for the site. The State is to make adjustments to the State inspection recommendations to address the NRC comments. The NRC Resident Inspector and the State Resident Engineer may accompany the other during inspections. The reimbursable agreements for the security inspections require the State to consult with the NRC in those situations where the State is considering taking an enforcement action where the underlying facts for the State action also represent a violation of the NRC's requirements to reduce the need for both the State and the NRC to take enforcement action. The 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.

Indian Tribes may qualify as a small entity and participate as an observer for inspections. Efforts have been made to keep the requirements for participating as an observer to a minimum. Site access training, badging, and obtaining the appropriate security clearance are necessary for any inspector. The NRC allows

the Tribe to determine the technical and professional competence of its representatives.

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

The information collections are needed for the NRC to: 1) be responsive to States interested in performing health and safety inspections and use information obtained by the State or 2) enter into the reimbursable agreements that allow Agreement States to conduct inspections to verify that their licensees are in compliance with NRC Orders requiring additional security measures for enhancing security at their facilities. This would harm the States by limiting their ability to become knowledgeable about the safety of nuclear power plants operating in, or near, their State.

Without the information collection, States would not be able to inspect their licensees for compliance with the NRC security Orders. The NRC would conduct the inspections of the Agreement State licensees for compliance with the NRC security Orders, if the State does not conduct the reimbursable inspections. The information collection is necessary to allow the reimbursable inspections. Consequently, the States would have less control for the oversight of their licensees until 1) they have issued regulations compatible with 10 CFR Part 37 and 2) the NRC Orders to their licensees have been rescinded.

7. Circumstances Which Justify Variation from OMB Guidelines.

There is no variation 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.

Agreement States that conduct inspections associated with Orders issued by the NRC to provide for security of radioactive material may be reimbursed for inspections that they conduct on behalf of the NRC.

10. Confidentiality of the Information.

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

11. Justification for Sensitive Questions.

The NRC does not require the State to submit any sensitive personal information.

12. Estimated Burden and Burden Hour Cost.

Observations of NRC inspections at nuclear power plants - 99 hours
33 respondents at 2 responses per respondent x 1.5 hours per response = total burden \$26,532 (99 hours/year x \$268/hr).

Participating in NRC inspections at nuclear power plants – 636 hours
1 respondent (3 sites) at 178 responses per year x 3.43 hours per response +
1 respondent at 0.1 response per year x 250 hours per response
Total annual cost - \$170,448 (636 hours/year x \$268/hr).

Reimbursable Inspections of Agreement State Materials Licensees - 80 hours
(2 respondents at 2 responses per respondent x 20 hours per response)
Total annual cost - \$21,440 (80 x \$268/hr).

Total annual cost: 815 hours which comes to \$218,420

13. Estimate of Other Additional Costs.

Additional costs include per diem costs for the State Resident Engineer to attend training; reimbursement for special training offered by the NRC; fitness-for-duty, site access, and onsite space and support costs, obtaining a clearance. These additional costs are estimated to be \$25,800/year.

14. Estimated Annualized Cost to the Federal Government.

It is estimated that the NRC staff expends an average of 500 (450+50) professional hours annually in support of this program. Staff experience indicates approximately 45 (40 + 5) hours of clerical time is expended annually. Based upon current estimates, the total government burden is 545/hours, resulting in a cost of \$136,115 (500 hrs. x \$268/hour = \$134,000 + 45 hours x \$47/hr. = \$2,115). This cost is fully recovered through fee assessments to NRC licensees pursuant to 10 CFR 170 and 171.

Agreement States which have radioactive materials licensees subject to the NRC's security Orders are not obligated to enter into 274i agreements. The NRC conducts the inspections in those States electing not to enter into a Section 274i agreement. In those cases, the NRC's costs for collecting the information are either recovered through fee assessments or are funded through the NRC's budget that is not fee based.

15. Reasons for Changes in Burden or Cost.

The overall burden will decreased by 185 hours from 1,000 hours to 815 hours.

The estimated burden for the reimbursable materials security inspections has decreased, because there will be fewer States conducting reimbursable inspections and the number of inspections is expected to decrease. These have decreased because the security Orders are being rescinded as Agreement States issue their regulations or add license conditions on their licensees.

The estimated burden for States observing or participating in inspections at nuclear power plants and other nuclear production and utilization facilities has increased from 500 hours to 735 hours. The change in the estimated burden is from the staff's re-estimate of the burden. The re-estimate reflects a change in the number of respondents from 55 to 36, based on the location of nuclear power plants and other production and utilization facilities. Most States, and the one participating Tribe, observe inspections.

The re-estimate of the burden also includes changes in the number of responses and the burden per response to reflect the increased burden associated with a State having a State Resident Engineer. Exhibit 3 in the Directive Handbook attached to Management Directive 5.2, "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities," (ADAMS Accession Number: [ML102220529](#)) provides a sample memorandum of understanding between the NRC and a State to allow the State to participate in inspections. The burden associated with the information collection includes: 1) obtaining security clearances, 2) complying with licensee access requirements, 3) qualification and certification of State Resident Inspectors (i.e., the State Resident Engineers) by the State, 4) making recommendations to the NRC inspection plans, 5) submitting monthly inspection recommendations to the NRC Resident Inspector, 6) making adjustments to the State's monthly inspection recommendations to address NRC comments, 7) providing allegations received by the State Resident Engineer to the NRC Resident Inspectors, 8) providing assistance to the NRC as the NRC addresses allegations, 9) discussing the State Resident Engineers' inspections with the NRC Resident Inspectors, 10) informing the NRC Resident Inspectors of situations with immediate safety significance, 11) providing written reports documenting the results of inspection activities to the NRC, 12) assisting the NRC in preparing enforcement actions, 13) assisting the NRC during enforcement conferences with licensees, 14) participating in an annual meeting with the NRC to exchange information on matters of common concern pertaining to the memorandum of understanding, 15) providing press releases about the State's activities under the memorandum of understanding to the NRC, and 16) providing the NRC with written notice before placing a State Resident Engineer at a site. The burden also reflects costs associated with 1) training for the State Resident Engineer, 2) reimbursement to the NRC for special training, 3) obtaining the security clearance for the State Resident Engineer, 4) computer costs, 5) other office costs, and 6) fitness-for-duty costs (e.g., drug testing).

Staff professional and clerical hourly rates also changed from \$274/hr. to \$268/hr.

16. Publication for Statistical Use.

There is no application of statistics in the information collection. There is no publication of this information.

17. Reason for Not Displaying the Expiration Date.

The Paperwork Reduction Act Statement is in the policy statement; however, it is impractical to put the expiration date in the statement. Doing so would require republishing the policy statement every time a renewal of the information collection requirements was approved by OMB.

18. Exceptions to the Certification Statement.

As described under item 5, *Effort to Reduce Small Business Burden*, Tribes may qualify as a small entity. Efforts have been made to keep the burden to a minimum, but a certain amount of burden is needed for any inspector. The Tribe has control over how the Tribe determines the technical and professional competence of its representatives.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.