

DRAFT SUPPORTING
STATEMENT FOR
10 CFR PART 140

“FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS”
(3150-0039)

EXTENSION

DESCRIPTION OF THE INFORMATION COLLECTION

Section 170 of the Atomic Energy Act of 1954, as amended (AEA), is better known as the Price Anderson Act (PAA). The NRC implements the PAA through the regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 140, “Financial Protection Requirements and Indemnity Agreements.” The regulations in 10 CFR Part 140 specify the information to be submitted by certain part 40, 50, 52, and 70 applicants and licensees that enables the NRC to assess (a) financial protection required by applicants and licensees and for the indemnification and limitation of liability pursuant to the PAA, and (b) the liability insurance required of uranium enrichment facility applicants and licensees pursuant to Section 193 of the AEA of 1954, as amended. Prior to the issuance of a license to operate a nuclear reactor, an applicant must provide evidence of financial protection to the Nuclear Regulatory Commission (NRC) as outlined in 10 CFR Part 140. The NRC also requires licensees to submit reports in the event of bodily injury or property damage arising out of, or in connection with, the possession or use of radioactive material; proof of liability insurance; proof of financial protection (which includes, but is not limited to, financial statements); notices of material changes in financial protection; and certificates by the insurers issuing the policies as well as any notifications of termination. Licensees maintain records of these documents.

A. JUSTIFICATION

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

The information is needed in order to determine licensee compliance with the regulations set forth in 10 CFR Part 140.

Details of these regulations can be found at the end of this supporting statement in “Description of Requirements.”

2. Agency Use and Practical Utility of Information

The NRC uses the information required by 10 CFR Part 140 to evaluate (a) the financial protection required of applicants and 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 to ensure sufficient funds would be available to satisfy public liability claims resulting from a nuclear incident.

3. Reduction of Burden Through Information Technology

The NRC has issued [Guidance for Electronic Submissions to the NRC](#) which provides direction for the electronic transmission and submittal of documents to the NRC. Electronic transmission and submittal of documents can be accomplished via the following avenues: the Electronic Information Exchange (EIE) process, which is

available from the NRC's "Electronic Submittals" Web page, by Optical Storage Media (OSM) (e.g. CD-ROM, DVD), by facsimile or by e-mail. It is anticipated that approximately 90 percent 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.

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

The information collection is necessary to implement the Price-Anderson Act. Collecting this information at the required intervals ensures the licensee maintains adequate financial protection throughout the life of the license and provides assurance that sufficient funds would be available to satisfy public liability claims resulting from a nuclear incident. If the information collection were not conducted, or were conducted less frequently, the NRC would not be able to ensure that licensees maintained adequate financial protection. This could result in licensees being out of compliance with the Price-Anderson Act, as implemented in 10 CFR Part 140.

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

The part 140 information collection does not solicit or request sensitive or private information.

12. Estimated Industry Burden and Burden Hour Cost

The total estimated cost for information collection requirements associated with 10 CFR Part 140 is estimated to be 753 hours at a cost of \$210,087 (753 hours x \$279).

| Total Burden and Responses | | |
|----------------------------|-------|-----------|
| | Hours | Responses |
| Reporting | 727 | 104 |
| Recordkeeping | 26 | 104 |
| Third Party Disclosure | 0 | 0 |
| TOTAL | 753 | 208 |

Detailed burden estimates are included in the supplemental burden spreadsheet titled, "Table 1 - Summary of Supporting Statements."

When an applicant is initially granted a license to operate a production or utilization facility, it must provide evidence of primary and secondary insurance. At present, approximately 168 entities have provided this information (94 operating power reactor licenses; 25 power reactor licenses in decommissioning; 31 operating non-power reactor licenses; 4 non-power reactor licenses in decommissioning; 6 fuel cycle facility licenses plutonium processing and fuel fabrication licenses; and 8 combined licenses).

During this clearance cycle, 104 licensees are anticipated to provide documentation in association with 10 CFR Part 140:

- It is also expected that a total of 104 responses per year will be related to Parts 140.13 and 140.21 and include submittals to provide the NRC with the assurance that licensees have and maintain adequate financial capacity to pay for deferred premiums in the event of a nuclear incident.

Other requirements in Part 140 are not anticipated to apply to any respondents during the clearance cycle; therefore, no burden will be accrued for these requirements. For example, the licensee must submit a report to the Commission if there is an occurrence of a bodily injury arising out of the possession or use of radioactive material as required pursuant to Section 140.6. A review of historical records in the Agencywide Documents Access and Management System (ADAMS) indicates that this occurrence has been rare and there is a low expectation of the need for a report during this clearance cycle. In addition, while the NRC does require reports of material changes in financial protection or other financial information in accordance with Section 140.15(e), currently all the power reactors maintain financial protection in the form of liability insurance for both primary and secondary layers of financial protection. 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 currently issued by American Nuclear Insurers. The provisions of this part would become operable should a new insurance carrier enter the market; this is not expected to occur during this clearance cycle.

Table 1 summarizes the estimated industry burden and burden hour cost on NRC licensees to prepare reports required under 10 CFR Part 140.

The \$279 hourly rate used in the burden estimates is based on the Nuclear Regulatory Commission's fee for hourly rates as noted in 10 CFR 170.20 "Average cost per professional staff-hour." For more information on the basis of this rate, see the Revision of Fee Schedules; Fee Recovery for Fiscal Year 2019 (85 FR 37250, June 19, 2020).

13. Estimate of Other Additional Costs

The NRC has determined that the quantity of records to be maintained is roughly proportional to the recordkeeping burden and, therefore, can be used to calculate approximate records storage costs. Based on the number of pages maintained for a typical clearance, the records storage cost has been determined to be equal to 0.0004 times the recordkeeping burden cost. Because the recordkeeping burden is estimated to be 26 hours, the storage cost for this clearance is \$3.00 (26 hours x 0.0004 x \$279/hour).

14. Estimated Annualized Cost to the Federal Government

The staff has developed estimates of annualized costs to the Federal Government related to the conduct of this collection of information. These estimates are based on staff experience and subject matter expertise and include the burden needed to review, analyze, and process the collected information and any relevant operational expenses.

The annualized estimated cost to the government is \$382,788 (1,372 staff hours x \$279) as shown on the attached Summary Table.

15. Reasons for Changes in Burden or Cost

The burden and number of responses have changed as described in the tables below:

Burden change:

| | 2018 Estimates | Current Submission | Change |
|------------------------|----------------|--------------------|--------|
| Reporting | 796 | 727 | -69 |
| Recordkeeping | 0 | 26 | +26 |
| Third Party Disclosure | 0 | 0 | 0 |
| TOTAL | 796 | 753 | -43 |

Change in Responses

| | 2018 Estimates | Current Submission | Change |
|------------------------|----------------|--------------------|--------|
| Reporting | 102 | 104 | +2 |
| Recordkeeping | 0 | 104 | +104 |
| Third Party Disclosure | 0 | 0 | 0 |
| TOTAL | 102 | 208 | +106 |

The overall burden hours for this collection has decreased from 796 hours in the previous cycle to 753 total hours in this cycle (an overall decrease of 43 hours).

Changes in burden include:

- There is a reduction of operating reactor licensees submitting information related to Section 140.21, this number has been reduced from 98 in the previous cycle to 89 in this cycle resulting in a reduction of 72 hours; the burden per response was not affected.
- 10 hours have been removed under the Section 140.3, no submission have been received in the previous two cycles, therefore, none are anticipated for this cycle.
- The number of responses increased to include 15 licensees reporting under Section 140.13.
- The previous submission inadvertently omitted recordkeeping burden maintaining these documents under 140.6(b); the burden has been included in the current submission. Industry has not indicated a significant amount of time is required to maintain these documents electronically. Therefore, the total annual recordkeeping burden is estimated at 15 minutes annually, or 26 hours for all respondents.

16. Publication for Statistical Use

The collected information is not published for statistical purposes.

17. Reason for Not Displaying the Expiration Date

The recordkeeping and reporting requirements for this information collection are associated with regulations and are not submitted on instruments such as forms or surveys. For this reason, there are no data instruments on which to display an OMB expiration date. Furthermore, 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

None.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.

DESCRIPTION OF INFORMATION COLLECTION REQUIREMENTS CONTAINED IN
10 CFR PART 140

“FINANCIAL PROTECTION REQUIREMENTS
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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.

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) where a licensee manufactures a number of nuclear reactors each having a power level not exceeding $3\frac{1}{3}$ megawatts, for sale to others and operates them at the licensee's location temporarily prior to delivery, the licensee shall report to the Commission the maximum number of such reactors to be operated at that location at any one time. In the event the number of reactors operated at any one time exceed the estimate so reported, the licensee shall report the additional number of reactors to the Commission.

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. 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. 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.

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.

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.

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.

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.