

OMB SUPPORTING STATEMENT FOR
10 CFR PART 9, PUBLIC RECORDS, PROPOSED RULE
(3150-0043)

Description of the Information Collection

10 CFR Part 9, Public Records, prescribes procedures for making NRC records available to the public for inspection and copying pursuant the provisions of the Freedom of Information Act (5 U.S.C. 552) and provides notice of procedures for obtaining NRC records otherwise available.

NRC is proposing to amend 10 CFR Part 9 to add a new section 9.28. Paragraph 9.28(a) would require that the NRC give written notice to submitters of trade secrets or confidential commercial or financial information of the NRC's intent to disclose this information in response to a Freedom of Information Act request. Paragraph 9.28(b) would provide that if the submitter objects to the disclosure, he must provide within 15 days a written statement that specifies all grounds why the information is a trade secret or commercial or financial information that is privileged or confidential. If the requester does not meet the required submittal date, he must request an extension to the response date.

A. JUSTIFICATION

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

Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information (52 FR 23781), issued June 23, 1987, requires Federal agencies to establish procedures for predisclosure notification to submitters of confidential business and financial information. This new requirement would implement this Executive Order by providing a submitter of information who has designated that information to be trade secrets or confidential commercial and financial information the right to be notified prior to the NRC disclosing that information. The submitter is also given the opportunity to object to the disclosure and to provide a written statement that specifies all grounds why the information is a trade secret or commercial or financial information that is privileged or confidential.

2. Agency Use of Information.

The NRC will consider a submitter's written statement and specific grounds for nondisclosure. If the NRC agrees to accept the submitter's grounds for non-disclosure, NRC will inform the requester of the information of the agency decision to deny access to the submitter's information. Whenever the NRC decides to reject the submitter's grounds for nondisclosure and decides to disclose the information, the NRC shall give the submitter written notice, which shall include:

- (1) A statement of the reason(s) for the determination;
- (2) A description of the business information to be disclosed; and
- (3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

3. Reduction of Burden Through Information Technology.

NRC permits submitters of information, at their discretion, to use its Electronic Information Exchange to submit information to the NRC. It is anticipated that rarely will a submitter use this mechanism to submit trade secrets or confidential or commercial information.

4. Effort to Identify Duplication and Use Similar Information.

There is no duplication and no way to use similar information, as each request is unique to the requester.

5. Effort to Reduce Small Business Burden.

Each submitter has the responsibility to provide the grounds for not disclosing trade secrets or commercial or financial information. The burden on a submitter is on a one-time basis, and thus would have very limited impact on small businesses.

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 submitter providing grounds for non-disclosure because the government must have a submitter's basis for non-disclosure in order to determine if the submitter's information should be withheld from public disclosure.

7. Circumstances Which Justify Variation from OMB Guidelines.

Contrary to OMB Guidelines in 5 CFR 1320(b), Section 9.28(b) requires a submitter to provide within 15 days a written statement that specifies all grounds why the information is a trade secret or commercial or financial information that is privileged or confidential if the submitter objects to the disclosure of the information. The Freedom of Information Act requires that agencies respond to requests for access to records within 20 working days. Thus, to meet this statutory obligation, NRC, to the extent possible, must require submitters to expedite their review of a NRC decision to disclose information claimed by the submitter to be a trade secret or commercial or financial information that is privileged or confidential and inform NRC of any objection to that decision. Giving a submitter 15 days to object reflects NRC's good faith effort to comply with the mandatory response times in the Freedom of Information Act, and NRC believes that it also meets the requirement of Executive Order 11600, Section 4, to provide the submitter a reasonable time to object to the agency decision to disclose the information.

8. Consultations Outside the NRC.

No consultations have been conducted outside the NRC. However, NRC has had many years experience conducting a predisclosure review process with submitters of trade secrets or commercial or financial information that followed the process that would be implemented by this new requirement.

9. Payment or Gift to Respondents.

Not applicable.

10. Confidentiality of Information.

Information that NRC determines qualify as trade secrets or commercial or financial information is not disclosed to the public.

11. Justification for Sensitive Questions.

Not applicable.

12. Estimated Burden and Burden Hour Cost.

NRC estimates that maximum of 10 objections would be filed annually, and any additional burden for requesting an extension is included in the burden estimate. The estimated annual burden is 100 hours at an estimated total cost to the public of \$15,200 at a rate \$157/hour.

| CFR Part | No. of Respondents | Total Responses | Burden Per Response | Burden Hours | Cost to Public |
|----------|--------------------|-----------------|---------------------|--------------|----------------|
| 9.28 (b) | 10 | 10 | 10 hours | 100 | \$15,700 |

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 40 staff hours at a cost \$6,200 at a rate of \$157/hour for labor costs.

| CFR Part | Total Responses | Burden Per Response | NRC Staff Hours | Cost to NRC |
|----------|-----------------|---------------------|-----------------|-------------|
| 9.28(b) | 10 | 4 | 40 | \$6,280 |

15. Reasons for Changes in Burden or Cost.

The proposed rulemaking would increase the burden by 100 hours and the number of responses by 10, based on a new requirement in Section 9.28(b), that would provide an opportunity of a submitter to object to the disclosure of trade secrets or confidential commercial or financial information by providing a written statement.

16. Publication for Statistical Use.

Not applicable.

17. Reason for Not Displaying the Expiration Date.

The requirement will be contained in a regulation. Amending the Code of Federal Regulations to display information that, in an annual publication, could become out of date would confuse the public.

18. Exceptions to the Certification Statement.

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.