

DRAFT OMB SUPPORTING STATEMENT FOR
OFFICE OF STATE AND TRIBAL PROGRAMS REQUESTS TO
NON-AGREEMENT STATES FOR INFORMATION
(3150-0200)
EXTENSION

Description of the Information Collection

Occasionally, requests may be made of Non-Agreement States that are similar to those of Agreement States to provide a more complete overview of the national program for regulating radioactive materials. This information would be used in the decision-making of the Commission. The legal basis is that Section 274(a)(3) of the Atomic Energy Act authorizes and directs the U.S. Nuclear Regulatory Commission (NRC) to cooperate with the States to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials. With Agreement States and as part of the NRC cooperative post-agreement program with the States pursuant to Section 274(b), information on licensing and inspection practices, and/or incidents, and other technical and statistical information are exchanged. Agreement State comments are also solicited in the areas of proposed implementing procedures relative to NRC Agreement State program policies.

With the enactment of the Energy Policy Act of 2005, specifically Section 651(e), NRC now has regulatory authority over the use of accelerator-produced radioactive materials and discrete sources of radium-226 and other naturally occurring radioactive material as specified by the Commission. The Energy Policy Act allows the NRC to grant a waiver that would allow current State programs to continue to regulate these radionuclides during the waiver period. The NRC issued this waiver August 25, 2005. It was published in the *Federal Register* on August 31, 2005 (70 FR 51581). The waiver is effective through August 7, 2006, for import and export of materials covered by the waiver, unless terminated sooner if the Commission determines that an earlier termination is warranted. For all other matters, it is effective through August 7, 2009, unless terminated sooner if the Commission determines that an earlier termination is warranted or required. After expiration of the waiver, and completion of transition activities, NRC may need to promulgate regulations applicable to non-Agreement States and Agreement States. Therefore, information requests sought from Non-Agreement States may take the form of one-time surveys, e.g., telephonic and electronic surveys/polls and facsimiles (questionnaires).

A. JUSTIFICATION

1. Need for and Practical Utility of the Collection Information

The 19 Non-Agreement States (including the territories, i.e., the District of Columbia and the Commonwealth of Puerto Rico) may be asked for information similar to that requested of Agreement States. These information requests will primarily refer to certain naturally occurring and accelerator-produced radioactive materials which currently may be subject to State regulations. The reason for requesting such information is that the information can assist the Commission in its considerations and decisions involving Atomic Energy Act materials programs in an effort to make the national nuclear materials program more uniform and consistent in view of Section 651(e) of the Energy Policy Act of 2005.

In 1959, Section 274 of the Atomic Energy Act was enacted to spell out a State's role and to provide a statutory basis under which the Federal government could relinquish to the States portions of its regulatory authority. The 1959 amendments made it possible for the States to license and regulate byproduct, source materials, and small quantities of special nuclear material. The mechanism for the transfer of NRC's authority to a State is an Agreement between the Governor of the State and the NRC. Thirty-three States have entered into such Agreements with NRC. These States now regulate approximately 80 percent of byproduct, source and special nuclear material licenses in the United States, as permitted by Section 274 of the Atomic Energy Act.

As part of the NRC cooperative post-agreement program with the States, information on licensing and inspection practices, and/or incidents, and other technical and statistical information is voluntarily exchanged. Similar sharing of information may be requested of the 19 Non-Agreement States with regard to discrete sources of radium-226 and accelerator-produced radioactive materials (ARM) that currently may be subject to State regulations.

2. Agency Use of Information

The collection of data from the individual Non-Agreement States enables the NRC and States to identify issues, and plan and evaluate options for future actions. The data are also utilized in preparing responses to Congressional inquiries and requests for information from other sources. There is no ready source, other than the Conference of Radiation Control Program Directors, Inc., for obtaining such necessary information other than from the Non-Agreement States.

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. 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 estimated that approximately 60 percent of the potential responses are filed electronically. Sixty percent collection through electronic technology is expected from Non-Agreement States based on Agreement States experience. There are no legal obstacles to reducing the burden associated with this information collection through the use of information technology. The NRC encourages the respondents to use any innovative technology which would reduce the burden.

4. Effort to Identify Duplication and Similar Use Information

These as-needed information collections address specific generic issues and events or procedures and guidance that are unique to the Non-Agreement States and are not addressed by use of existing data collections. The Information Requirements Control Automated System (IRCAS) was searched and no duplication was found.

5. Effort to Reduce Small Business Burden

There is no impact or burden on small businesses because the recipients of the requests are State agencies.

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

The information collections are as-needed actions, which address specific issues generic to the Non-Agreement States. The consequences of not collecting information, such as licensing and inspection practices, incidents and other technical and statistical information, could potentially impact the American public health and safety and also hamper the identification and evaluation of issues and options for the development of program responses to national problems. Further, the opportunity for valuable Non-Agreement State review and comment on proposed policy and program updates, and revisions would not be timely or eliminated all together.

7. Circumstances Which Justify Variation From OMB Guidelines

Because information would be collected in the most expedient manner possible in order to respond to an exigent or unique circumstance which could affect public health and safety, it is possible that such a request would require a response in less than 30 days. Further, the opportunity for valuable Non-Agreement State review and comment on proposed policy and program updates, and revisions would not be timely or would be eliminated altogether.

8. Consultation Outside the NRC

The opportunity for public comment has been published in the Federal Register.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality of the Information

Proprietary information would be handled with confidentiality, as required under 10 CFR 2.790(d). All other information would be made part of the public record.

11. Justification for Sensitive Questions

It is unlikely that any sensitive information would be required to be collected from Non-Agreement States because NRC does not require the Agreement States to submit any sensitive information on a systematic basis.

12. Estimated Burden and Burden Hour Cost

Materials previous regulated by Non-Agreement States are now regulated by NRC with the enactment of the Energy Policy Act of 2005, specifically Section 651(e). This has increased NRC's initial estimate from issuing 1 voluntary request annually to 18 Non-

Agreement States in the last clearance package to 6 requests annually to 19 Non-Agreement States. A one hundred percent response rate is estimated because of the importance of the requests. For 6 requests, it will take 7.5 hours per State per request for a total annual burden of 941 hours (19 Non-Agreement States X 6 responses X 7.5 burden hours per response) based on Agreement State experience. The requests will be analyzed by professional staff with support from clerical staff and responses formulated and sent to NRC. For professionals, the estimated cost is \$185,377 (941 hours X \$197 per professional staff hour). For clerical support, the estimated cost is \$5,160 (86 hours (10 percent of professional time) X \$60 per clerical staff hour). The total estimated burden for Non-Agreement States is 941 hours at a cost of \$190,537. [For lack of data, the State professional and clerical pay rates are assumed to be equal to the Federal pay rates shown in item 14.]

13. Estimate of Other Additional Costs

None.

14. Estimated Annualized Cost to the Federal Government

The professional staff will compile and analyze the responses or comments, and respond to the States, as applicable. Clerical staff will support professional staff. For six requests with 19 Non-Agreement States responding, the estimated annualized professional cost to the Federal government is \$16,942, assuming an hourly fee of \$197 per hour and 86 hours of work (about 10 percent of the Non-Agreement State hours shown in item 12.). For clerical support, the estimated cost is \$516 (\$60 per hour x 10 percent of professional time, 8.6 hours). The total Federal government cost is estimated to be \$17,458 (combined professional and clerical cost).

15. Reasons for Change in Burden

The estimated burden has increased by 806 hours from 135 to 941 hours because materials previously regulated by Non-Agreement States are now regulated by NRC with the enactment of the Energy Policy Act of 2005, specifically Section 651(e). This has increased NRC's initial estimate from the issuing of 1 voluntary request annually to 18 Non-Agreement States in the last clearance package to 6 requests annually to 19 (17 Non-Agreement States and 2 territories). NRC now has regulatory authority over the use of accelerator-produced radioactive materials and discrete sources of radium-226 and other naturally occurring radioactive material as specified by the Commission. NRC's need for information from the Non-Agreement States' naturally occurring and accelerator produced radioactive materials (NARM) programs pertains, for example, to comments on draft rules, guidance, and program elements.

In addition, the number of Non-Agreement States increased from 18 to 19. Since the initial OMB Statement, Wisconsin became an Agreement State. That action would decrease the number of Non-Agreement States to 17. However, 2 territories were added for a total of 19 respondents. With the passage of the Energy Policy Act of 1995, the two territories states (the District of Columbia and the Commonwealth of Puerto Rico) were included because they have not signed 274(b) Agreement with NRC and are considered to be Non-Agreement States under the Atomic Energy Act, as amended.

16. Publication for Statistical Use

This information will not be published for statistical use.

17. Reason for Not Displaying the Expiration Date

In the case of an exigent or unique circumstance which would trigger a telephonic NRC survey of Non-Agreement States, the expiration date for OMB approval will be verbally transmitted.

18. Exceptions to the Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.

