DRAFT SUPPORTING STATEMENT
FOR
10 CFR PART 140

"Financial Protection Requirements and Indemnity Agreements"
(OMB Clearance No. 3150-0039)

EXTENSION

DESCRIPTION OF THE INFORMATION COLLECTION

The regulations in 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.

A. JUSTIFICATION

Section 140.6(a) need for and Practical Utility of the Collection of Information requires that licensees submit a report to the NRC in the event of bodily injury or property damage arising out of the possession or use of radioactive material. This information assists 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 140.7(b) pertains to a situation where a reactor manufacturer (licensee) builds a number of small research 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 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 have operated, the licensee will inform the NRC 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 that each holder of a construction permit under Part 50 and each holder of a Part 70 license must maintain $1 million in financial protection prior to issuance of a Part 50 operating license and submit evidence of fulfilling this requirement, as required by Section 170 of the Act.

Section 140.13a(a) requires that each holder of a Part 70 license to possess and use plutonium at a plutonium processing and fuel fabrication plant must maintain

$300 million of financial protection and submit evidence of fulfilling this requirement, as required by Section 170 of the Act.

Section 140.13b requires proof of liability insurance to be filed with the Commission, pursuant to 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 type pursuant to Section 170(b) of the Act.

Section 140.15(a)(1) requires those licensees who choose to maintain financial protection in the form of liability insurance required pursuant to Section 170(b) of the Act to submit proof to the NRC of their financial protection (copies of new policies and copies of endorsements, i.e., amendments to the policies). All liability policies are with the nuclear insurance pool, American Nuclear Insurers (ANI).

Section 140.15(a)(2) requires alternative proof of financial protection in the form of a copy of the declarations page from a nuclear energy liability policy be 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 identify the policy by reference to the policy form which has been filed by the licensee with the Commission.

Section 140.15(b)(1) requires proof of financial protection for those licensees who maintain financial protection in whole or in part in the form specified in § 140.14(a)(2) 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 therein by a Certified Public Accountant. The financial statements shall include balance sheets, operating statements, and supporting schedules as needed for interpretation of the balance sheets and operating statements. NRC reviews this information to determine whether the licensee has adequate financial protection.

Section 140.15(b)(2) requires 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 dates of filing, similar financial statements prepared as of a date not more than 90 days prior to the date of filing should be included. NRC reviews this information to determine whether the licensee has adequate financial protection.

Section 140.15(c) requires any licensee to file with the NRC such additional proof of financial protection or other financial information as the NRC determines to be necessary to determine whether financial protection is being maintained pursuant to 10 CFR Part 140.

Section 140.15(e) requires licensees to promptly notify the NRC of any material change in financial protection or in other financial information so that NRC can reevaluate these changes.

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

Section 140.18 requires licensees to file with the NRC such financial information as the Commission determines to be appropriate to determine whether the licensee is maintaining financial protection pursuant as required by this Part.

Section 140.20(c) specifies that licensees, who indicate that they will not be paying retrospective premium assessments, immediately submit their financial statements to NRC. Retrospective premiums are required pursuant to Section 170(b) of the Act. As required, subsequent submission of financial statements by such licensees may be requested by NRC. These statements are necessary to determine whether the NRC will be required to pay, on behalf of a licensee, any unpaid retrospective premiums. The Act authorizes the NRC to levy liens to obtain payment from the licensee.

Section 140.21 requires each license required to have and maintain financial protection for each nuclear reactor as determined in § 140.11(a)(4), at the issuance of the license and annually on the anniversary of the date on which the indemnity agreement is effective, provide evidence that it maintains the following types of guarantee of payment of deferred premiums in an amount of $16.5 million for each reactor:

- surety bond,
- letter of credit,
- revolving credit/term loan agreement,
- Maintenance of escrow deposits of government securities,
- Annual certified financial statement showing that a cash flow can be generated within 3 months or a cash reserve or combination of cash flow and cash flow,
- Such other type of guarantee as may be approved by the Commission.

Copies of these financial devices provide 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 to the Commission of deferred premiums not paid by the licensee and reimbursement of the Commission by the licensee as required pursuant to Section 170(b) of the Act. The general forms of agreement to be entered into by the Committee 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.

The NRC completes its review of this information within approximately one month after its receipt.

2. Agency Use of Information

As stated specifically above, 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. 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 requester are being accepted by electronic mail and facsimile transmission in addition to mail and in-person written request. It is anticipated that three-fourths 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 business is 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 deleterious to NRC's mission to protect public health and safety.

7. Circumstances Which Justify Variation from OMB Guidelines

This information collection does not vary from OMB guidelines.

8. Consultations Outside the NRC

The opportunity for public comment on the information collections was 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, no information normally considered confidential or proprietary is 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

The universe of respondents is 184. However, it is anticipated that only 91 of the respondent universe (34 power reactor licensees; 52 non-power licensees and 5 plutonium processing and fuel fabrication licensees) will participate in the information collections associated with this 10 CFR Part.

Section 140.6(a)

Section 140.6(a) applies to about 184 licensees maintaining an indemnity agreement. There is no schedule for imposing the requirements specified in Part 140 since the information is only submitted when an accident occurs.

To date, five reports have been submitted by licensees under this section covering damages alleged to have occurred as a result of NRC-licensed activities. The reports are 3 to 5 pages in length. Approximately 8 to 15 hours of effort are needed to prepare a report. No reports are anticipated during this clearance period.

Section 140.7(b)

There are no licensees under Section 140.7(b) to which this information collection requirement currently applies. An indication of the maximum number of reactors operating at any one time is the only requirement imposed under 140.7(b). Its purpose is to reduce the number of times a licensee is required to notify the NRC when a small reactor needs to be indemnified and, thus, when a fee is due. The report is due as required by the number of reactors being manufactured at one time.

This paragraph has rarely been applied and no further use is foreseen. If used, 3 hours per report is estimated to be required.

Because only an estimate of number of reactors operating at one time is required, which would be readily available to the licensee, the only cost involved would be for preparing the report itself.

Section 140.8

No exemptions are expected during this clearance period. However, the Commission may, 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.

Sections 140.13 and 13a

At present, there are no construction permit holders required to comply with Section 140.13. Section 140.13a applies to five licensees who must have insurance providers provide necessary documentation of insurance coverage which requires approximately 1 hour per response to prepare, resulting in a burden of 5 hours (5 licensees X 1 hour = 5 burden hours). A rate of $238 per hour is applied towards this section for a cost of $1,190 ($238 per hour x 5 hours).

Section 140.13b

One application is expected during this clearance period from applicants for uranium enrichment facilities. It is estimated to take approximately 2 hours to prepare and file proof of liability insurance, resulting in an estimated burden of 2 hours (1 licensee X 2 hours = 2 burden hours). A rate of $238 per hour is applied towards this section for a cost of $476 ($238 per hour x 2 hours).

Section 140.14(b)

Section 140.14(b) does not currently apply to any licensees. During this clearance period, no cases are expected where a licensee will substitute one type of financial protection for another and obtain written approval of the Commission.

Sections 140.15(a)(1) and (2)

Sections 140.15(a)(1) and (2) apply to about 70 licensees. Two hours are required for preparation of these records with an additional 8 hours to receive management approval for transmittal to NRC for a total of 10 hours. Clerical costs for submitting these records are minimal, consisting of the time and duplicating cost associated with copying the policies and endorsements. It is estimated to take approximately 10 hours to prepare proof of liability insurance, resulting in an estimated burden of 700 hours for 70 licensees. The cost of completing this section is $166,600 (70 licensees X 10 hours x $238 per hour).

Sections 140.15(b)(1) and (2)

Sections 140.15(b)(1) and (2) do not currently apply to any licensees.

The required information would be available as part of a firm's standard financial information system and would thus impose no costs other than nominal duplicating and clerical costs. The under-90-day statement would require no more than 8 to 16 staff hours of a professional accountant's time, or an average of 12 hours at a rate of $238 per hour.

Section 140.15(c)

Section 140.15(c) could apply to about 70 licensees. No licensees are expected to file additional proof of financial protection during this clearance period.

Section 140.15(e)

Section 140.15(e) applies to all licensees with whom an indemnity agreement is executed.

Since this section has never been utilized, no respondent time can be estimated.

Sections 140.17(a) and (b)

Sections 140.17(a) and (b) potentially apply to about 116 licensees. However, it is anticipated that only 91 licensees (34 power reactor licensees; 52 non-power licensees and 5 plutonium processing and fuel fabrication licensees) will participate in the information collections associated with this section.

All liability policies are issued by the existing nuclear insurance pools. The provisions of this section would become operable only if and when a new insurance carrier enters that market and would require only a nominal reproducing and clerical effort.

Sections 140.18

Sections 140.17(a) and (b) potentially apply to about 70 licensees. It is anticipated that no licensees will be required to file financial information with the Commission for the purpose of determining whether the licensee is maintaining financial protection as required by 10 CFR Part 140.

Section 140.20(c)

Section 140.20(c) potentially applies to 75 licensees jointly.

This reporting requirement would be used only for those firms which cannot or will not pay the assessed retrospective premium. The required information would be available as part of a firm's standard financial reporting system and would, thus, impose no costs other than nominal duplicating and clerical costs. No licensees are expected to report that they will not pay the assessment of their premium during this clearance period.

Section 140.21

Section 140.21 potentially applies to 75 licensees jointly.

Sections 140.21(a) through (d) would simply require a copy of the appropriate agreement between the licensee and the party providing the financial service. Cost would thus be nominal. Section 140.21(e), the annual certified financial statement, may require information in a format not normally produced by the licensee in the standardized financial reports. However, such information should be readily available from the licensee's internal records and should require no more than one day of effort by the licensee's accounting staff. No licensee who has utilized this method of guarantee (effective August 1, 1977) has indicated any difficulty or undue burden in compiling the needed information. It takes approximately 8 hours to prepare financial devices to guarantee a licensees payment of a premium assessment, resulting in 600 burden hours for 75 licensees at a cost of $142,800 (75 licensees X 8 hours = 600 burden hours X $238 = $142,800).

Section 140.22

Section 140.22 potentially applies to 75 licensees jointly.

Section 140.22 requires licensees required to have and maintain financial protection for each nuclear reactor to execute an indemnity agreement with the Commission the will provide for payment by the Commission of deferred premiums not paid by the licensee and reimbursement of the Commission by the licensee. This agreement was entered into at the time of the license application and is complete.

Summary of Industry Annual Burden

The table below summarizes the estimated annual burden on NRC licensees of preparing reports required under various sections of 10 CFR Part 140. The total estimated burden is 1,307 hours.

Section	Number of Respondent	Responses Per Respondent	Number of Responses	Burden Per Response	Total Annual Burden Hours	Cost @ $238/Hour
140.6(a)	0	1	0	15 hrs	0	0
140.7(b)	0	1	0	3 hrs/rpt	0	0
140.8	0	1	0	5 hrs	0	0
140.13	0	1	0	1 hr*	0	0
140.13a	5	1	5	1 hr*	5	$1,190
140.13b	1	1	1	2 hrs	2	$476
140.14(b)	75	1	0	1 hr	0	0
140.15(a)	70	1	70	10 hrs	700	$166,600
140.15(b)	0	0	0	12 hrs	0	0
140.15(c)	70	1	0	0	0	0
140.15(e)	0	1	0	N/A	0	0
140.17(a) & (b)	91	1	0	1 hr	0	0
140.18	70	1	0	0	0	0
140.20(c)	75	1	0	1 hr	0	0
140.21	75	1	75	8 hrs	600	$142,800
140.22	75	1	0	8 hrs	Completed	0
Total	91		151		1,307	$311,066

* Burden on Insurers

10 CFR Part 140 Burden

Number of Responses: 151
Number of Respondents: 91

Total Burden Hours: 1,307
Total Burden Hour Cost: $311,066 (1,307 hours x $238 per hour)

13. Estimate of Other Additional Costs

None

14. Estimated Annualized Cost to the Federal Government

The annual cost for the staff to review and analyze the data, provide follow-up, prepare reports and clerical support and typing is $35,938. This is based on the following:

Section	Number of Respondents	Number of Responses	Government Burden Hours	Government Cost
140.6(a)	184	15 (only in the event of an accident)	0	0
140.7(b)	0	1	0	0
140.8	0	5	0	0
140.13	0	1	0	0
140.13a	5	1	5	$1,190
140.13b	1	1	1	$238
140.14(b)	75	1	0	0
140.15(a)	70	1	70	$16,660
140.15(b)	0	4	0	0
140.15(c)	70	0	0	0
140.15(e)	0	2	0	0
140.17(a)&(b)	91	1 hr when required	0	0
140.20(c)	75	4 hrs when required	0	0
140.21	75	1	75	$17,850
140.22	75	1	0	0
Total			151	$35,938

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 hourly cost increased from $201 to $238 per hour for reactor licensees.

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.