DRAFT SUPPORTING STATEMENT FOR
NRC'S POLICY STATEMENT
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," 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, 31 States have operating commercial nuclear power plants which are licensed, and one State (Illinois) has negotiated three MOUs with the NRC under this policy to perform inspections for the NRC. 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

Additionally, given the events of September 11, 2001, the scope of this collection has expanded to include NRC Agreement States which have entered into reimbursable Agreements with NRC under Section 274i of the Act 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 due to an expected increase in materials safety inspections under Section 274i of the Atomic Energy Act. Sixteen Agreement State materials licensees affected by NRC materials security orders were expected to provide information under Section 274i reimbursable Agreements. NRC began implementing these inspections on March 1, 2004. Five Agreement States have entered into agreements in 2012 to perform 18 materials security re-inspections of their irradiator licensees, manufacturing and distribution (M&D) licensees, non-manufacturing and distribution licensees (Non-M&D), and licensees authorized to possess and transfer items containing radioactive material in quantities

of concern (RAMQC) to verify that they are in compliance with NRC's Orders requiring additional security measures for enhancing security at their facilities.

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 Federal and State Materials and Environmental Management Programs (FSME) 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 NRC, through the policy statement on Cooperation With States, has been amenable to accommodating the States' needs in this regard. Additionally, 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.

In order for States to be involved in NRC's inspection program, there are several information collections required:

- The States must request, in writing, to observe an inspection, identifying the type of inspection activity and facility to be observed.

- If a State is not the host State to a facility, the State must inform the host State of its request to NRC for observation of an inspection.

- If a State desires to enter into an instrument of cooperation with the NRC, the State must identify the planned activities and propose a program that specifies qualification requirements. The State must transmit any findings to NRC in accordance with Federal and NRC regulations. All written communications with an NRC licensee must be made through NRC. If the State prepares a written report of the results of an inspection activity covered under a Memorandum of Understanding (MOU) under this policy, the report will not be sent directly to the licensee, but will be sent to the appropriate NRC regional office. If NRC identifies potential violations of NRC regulatory requirements as a result of the State's inspection activities, the State will assist NRC in the preparation of enforcement actions.

- Any State that holds an instrument of cooperation is encouraged to modify the agreement if necessary to conform with this policy statement.

- When a State observer's conclusions differ substantially from those of an NRC inspector, the State will notify the NRC team leader and forward those views in writing to the appropriate NRC Regional Administrator.

- FSME and the Regional offices are the chief negotiators with States for MOU's which cover specific activities of cooperation such as low-level radioactive waste storage inspections, transportation and packaging, nuclear power plant inspections, and radioactive materials security inspections. This negotiation requires frequent exchange of information regarding the State's inspection qualification program and other factors which require consideration.

  Any Agreement State desiring the option of conducting inspections associated with Orders issued by the NRC to provide for security of radioactive material must enter into an Agreement with the NRC under the provisions of Section 274i of the Act. This Agreement includes provisions governing what information is to be collected from materials licensees, how the information is to be formatted and reported to the NRC.

  NRC requires the requested information to identify when a State is interested in either observing an NRC inspection or performing inspections for the NRC and that all applicable requirements are satisfied.

2. Agency Use of the Information.

NRC uses this information to determine when a State has the desire to observe, perform radioactive materials security inspections, or accompany NRC on an inspection and if the State has special needs which would require specific training or additional meetings. NRC would also use this information to identify trends which may signal the need for additional NRC actions, policies or guidance. If the State is requesting an agreement to participate in an NRC inspection, NRC must determine that the State meets the following six criteria before it can begin a program of participation in NRC inspections: The State must propose a program that (1) recognizes the Federal Government, primarily NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act; (2) is in accordance with Federal standards and regulations; (3) specifies minimum education, experience, training, and qualifications requirements for State representatives which are patterned after those of NRC inspectors; (4) contains provisions for the findings of State representatives to be transmitted to NRC for disposition; (5) would not impose an undue burden on the NRC and its licensees and applicants; and (6) abides by NRC protocol not to publicly disclose inspection findings prior to the release of the NRC inspection report. The NRC will also use State inspection

results as a supplement to its inspection activity and may use State inspection results in order to take appropriate enforcement action.

Consistent with Section 274c. of the Act, as amended, the NRC will not consider State proposals for instruments of cooperation that do not include the elements listed above, which are designed to ensure close cooperation and consistency with the NRC inspection program. As a practical matter, the NRC is concerned that independent State inspection programs could direct an applicant's or licensee's attention to areas not consistent with NRC safety priorities, misinterpret NRC safety requirements, or give the perception of dual regulation. For purposes of this policy, an independent State inspection program is one in which State representatives would conduct inspections and assess NRC-regulated activities on a State's own initiative and authority without close cooperation with, and oversight by, an authorized NRC representative. NRC uses the requested information to ensure that the above criteria are satisfied.

Agreement States desiring the option of conducting inspections associated with security Orders issued by the NRC to radioactive materials licensees must agree with the provisions contained in the Section 274i Agreement for collecting and reporting the information to the NRC. NRC in turn agrees to fund these Agreement States for the security training of its inspectors and for preparing, conducting, documenting and reporting the results of the inspections to the NRC.

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 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 50 percent of the potential responses are filed electronically.

4. Effort to Identify Duplication and Use of 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.

None of the State agencies affected qualify as small business enterprises or entities.

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

If the required information were not obtained from interested States, NRC would not be able to process State requests to observe NRC inspections at nuclear power plants or to respond to a State's request to enter into an MOU for the purpose of performing inspections for the NRC. This would not further the Commission's policy of allowing States to observe or participate in inspections or meet the needs of States which desire this additional information. The information is required to determine if the State has met the applicable Federal and NRC requirements to ensure close cooperation and consistency. The frequency of collection is dependent upon the States' interest at the time. There is no set frequency for when the States make a request.

Agreement States which have radioactive materials licensees subject to NRC's security Orders are not obligated to enter into 274i Agreements, which are voluntary. NRC conducts the materials security inspections in those States electing not to enter into a Section 274i Agreement. In those cases, NRC staff conducts the materials security inspections and collects the information.

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.

Not applicable.

Agreement States desiring the option of conducting inspections associated with Orders issued by the NRC to provide for security of radioactive material must enter into an Agreement with the NRC under the provisions of Section 274i of the Act. This Agreement includes provisions governing the reimbursable funds that NRC will provide to the Agreement State based on the number of inspections it conducts 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). However, no information normally considered confidential or proprietary is requested.

11. Justification for Sensitive Questions.

The NRC does not require the State to submit any sensitive personal information; however a State may need to provide NRC with sensitive information associated with materials security inspection findings.

12. Estimated Burden and Burden Hour Cost.

1,000 hours / $274,000 annual cost

Nuclear Power Plant Licensee Information - 500 hours
(50 respondents at 1 response per respondent x 10 hours per response)
Total annual cost - $137,000 (500 x $274/hr.).

Materials Security Licensee Information - 500 hours
(5 respondents at 4 responses per respondent x 25 hours per response)
Total annual cost - $137,000 (500 x $274/hr.).

13. Estimate of Other Additional Costs.

There are no additional cost.

14. Estimated Annualized Cost to the Federal Government.

It is estimated that the NRC staff expends an average of 1,000 (500 + 500) professional hours annually in support of this program. Staff experience indicates approximately 150 (100 + 50) hours of clerical time is expended annually. Based upon current estimates, the total government burden is 1,150/hours, resulting in a cost of $281,050 (1,000 hrs. x $274/hour = $274,000 + 150 hours x $47/hr. = $7,050). 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 NRC's security Orders are not obligated to enter into 274i Agreements. NRC conducts the inspections in those States electing not to enter into a Section 274i Agreement. In those cases, NRC costs for collecting the information are either recovered through fee assessments or are funded through NRC's budget that is not fee based.

15. Reasons for Changes in Burden or Cost.

The overall burden will increase by 200 hours from 800 hours to 1,000 hours mainly due to an increase of hours per response from 10 to 25 hours. The increase in the current estimated time of 25 hours is based on experience and the amount of time the States have actually needed to complete the inspections. Some States have needed more time than 25 hours to prepare for an inspection and inspect a facility, depending on the licensee, and some States use less than 25 hours. Based on experience and the amount of time States bill for their prep and inspections, 25 hours has been an approximate estimation that takes into

account the average time needed across the States, which at times include a follow-up inspection (depending on the licensee and the complexity of the inspection/findings identified). There is a reduction by one Agreement State participating in Section 274i reimbursable Agreements, which dropped from 6 to 5. This reduction is due to the States currently participating in 274i Agreement inspections that include Massachusetts, Maryland, Illinois, Ohio and Florida. North Carolina participated previously but dropped out in 2009. The 11 Agreement States are no longer active participants under this Agreement. Also, the estimated number of responses per respondent decreased from 5 to 4 responses per respondent based on the learning curve for the Agreement States. The five remaining Agreement States are now expected to complete their information collection requirements with 4 responses per respondent, resulting in a reduction of one response per respondent. The overall burden increase is associated with reimbursable Section 274i Agreement materials security inspections and materials security information requirements for frequent exchange of information regarding the State's inspection collection qualification program and Agreements to allow States to conduct inspections associated with Orders.

There is no change in the expected responses from all 50 States to the policy statement that requires written requests to observe or participate in nuclear power plant inspections, proposals of programs to specify qualifications requirements, and disclosure of differing conclusions from that of an NRC inspector. For nuclear power plant licensee information the burden remains at 500 hours.

Staff professional and clerical hourly rates also changed from $238/hr to $274/hr for both nuclear power plants and materials licensees.

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.

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.