

FINAL SUPPORTING STATEMENT FOR
NRC'S POLICY OF 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" (Cooperation with States), 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, the NRC has 23 instruments of cooperation with 10 different States. There are 99 operating power reactors located in 30 States; however, only one State has Resident State Engineers. Since the policy on cooperation with States went into effect in 1989, representatives from many States and the Prairie Island Indian Community have signed protocols to observe NRC inspections at nuclear power plants.

After the events of September 11, 2001, the NRC entered into reimbursable agreements under Section 274i of the Act with Agreement States for the States 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 in response to an expected increase in materials safety inspections under Section 274i of the Act. The NRC began implementing these inspections on March 1, 2004. It is expected that the reimbursable inspections conducted under these 274i agreements will cease, because States are close to implementing regulations that are compatible to 10 CFR Part 37, "Physical protection of category 1 and category 2 quantities of radioactive material," or establish other legally binding requirements on their licensees. The States with reimbursable agreements under Section 274i of the Act have agreed to have the NRC complete security inspections. As a State implements its regulations or legally binding requirements on their licensees, the NRC will rescind the security orders previously issued to the State's licensees. Once this occurs, the State will have the authority to conduct the inspections under their own authority and their inspections will no longer be conducted under a reimbursable agreement.

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 Nuclear Material Safety and Safeguards (NMSS) 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 the NRC, through the policy statement on Cooperation with States, has been amenable to accommodating the States' needs in this regard.

The 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. States may conduct inspections under the reimbursable agreement until the State has implemented regulations that are compatible with those at 10 CFR Part 37 or established other legally binding requirements, at which time the NRC orders will be rescinded.

The information collected is necessary to: 1) allow the States and the NRC to reach an agreement covering the cooperative activities; 2) ensure clear roles for the State; 3) allow the needed coordination between States and the NRC for the conduct of the inspections; 4) ensure that the State inspectors are qualified; 5) ensure that the information can be used by the NRC; and 6) address the results of the State activities (e.g., inspection results, inspection observations, and potential licensee violations identified as a result of the State inspection activities). For reimbursable agreements, information is needed to allow for the appropriate accounting, billing, and reimbursement for the inspection activities conducted under the agreement.

2. Agency Use of the Information.

The information collected contributes to the NRC's oversight of regulated activities and the safe and secure use of radioactive material in licensed activities. Some of the information is used to enable State participation in the inspections and to enable the NRC to reimburse States for work performed under a reimbursable agreement. The information provided by the States will be used by the NRC to: 1) develop guidance; 2) develop inspection procedures; 3) develop orders enhancing materials security; and 4) identify potential

violations of NRC regulatory requirements, non-conformances, and allegations. The information also allows States to participate in the assessment and disposition of potential enforcement issues. State inspections conducted under a reimbursable agreement streamline the regulatory oversight of the affected Agreement State licensees and allow the NRC to use information provided by the State that would otherwise require a separate NRC inspection.

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. The 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 requestor are being accepted by electronic mail and facsimile transmission in addition to mail in-person written request. The responses made under this clearance will take different forms. Some responses may be verbal. Some responses are more amenable to being submitted electronically than others.

It is anticipated that 90 percent of the submitted observation requests with addendum protocol agreements will be submitted electronically. It is anticipated that approximately 5 percent of the responses relating to participating in inspections will be submitted electronically. It is anticipated that 0 percent of the 274i State inspection reports will be submitted electronically.

4. Effort to Identify Duplication and Use of Similar Information.

The NRC considers State proposed inspection activities for a site when formulating its Master Inspection Plans for the site. The State is to make adjustments to the State inspection recommendations to address the NRC comments. The NRC Resident Inspector and the State Resident Engineer may accompany the other during inspections. The reimbursable agreements for the security inspections require the State to consult with the NRC in those situations where the State is considering taking an enforcement action. Specifically, this would occur when the underlying facts for the State action also represent a violation of the NRC's requirements. This reduces the need for both the State and the NRC to take enforcement action. The 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.

Indian Tribes may qualify as a small entity and participate as an observer for inspections. Efforts have been made to keep the requirements for participating as an observer to a minimum. Site access training, badging, and obtaining the appropriate security clearance are necessary for any inspector. The NRC allows the Tribe to determine the technical and professional competence of its representatives.

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

The information collections are needed for the NRC to: 1) be responsive to States interested in performing health and safety inspections and use information obtained by the State; or 2) enter into the reimbursable agreements that allow Agreement States to conduct inspections to verify that their licensees are in compliance with NRC orders requiring additional security measures for enhancing security at their facilities. This would harm the States by limiting their ability to become knowledgeable about the safety of nuclear power plants operating in, or near, their State or to conduct inspections within the scope of a reimbursable agreement.

Without the information collection, States would not be able to inspect their licensees for compliance with the NRC security orders or to observe or to participate in inspections at commercial nuclear power plants or other production or utilization facilities. The NRC would conduct the inspections of the Agreement State licensees for compliance with the NRC security orders, if the State does not conduct the reimbursable inspections. The information collection is necessary to allow the reimbursable inspections. Consequently, the States would have less control for the oversight of their licensees until: 1) they have issued regulations compatible with 10 CFR Part 37; and 2) the NRC orders to their licensees have been rescinded.

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 was published in the *Federal Register* on August 26, 2015 (80 FR 51847). Four individuals, representing three respondents, were contacted as part of the public consultation process from November 23, 2015, through December 4, 2015, by e-mail and by phone. The individuals contacted were: Michael Bear, Chief, Radiological Branch, Ohio Emergency Management Agency; Michael Snee, Chief, Bureau of Radiation Protection, Ohio Department of Health; Sherrie Flaherty, Supervisor, Radioactive Materials Unit, Environmental Monitoring, Minnesota Department of Health; and Alwyn Settles, Section Head, Nuclear Facility Inspection, Bureau of Nuclear Facility Safety,

Illinois Emergency Management Agency. The respondents contacted include the one State that participates in inspections, two States that observe NRC inspections, and two States that have also participated in the reimbursable inspections of their licensees against the NRC security orders.

Comment: The feedback included that observing and participating in the NRC inspections were a valuable experience for the States. The burden was considered to be low and fairly streamlined. One respondent made a suggestion on how the NRC could reduce the burden further; that is to allow the persons observing the inspections to sign a protocol agreement that covers a period of time, rather than for each inspection. Another suggestion to reduce the burden was to use an on-line system to allow States to register for observing an inspection.

Response: Currently, the NRC does allow each regional administrator to determine how frequently the protocol agreements need to be signed. The burden associated with submitting the State's request to observe an inspection and the State observers signing a copy of the protocol agreement is small. The use of an on-line system to register for inspections would be limited on the amount of burden that it could reduce from the information collection and is not being developed by the NRC at this time.

Comment: The burden associated with the State inspectors obtaining the safety and access training required to access the facility was described by two respondents and ranged from 4 hours per inspector to 2 weeks per inspector, but reflect different degrees of access. States observing the inspections are typically not identifying non-conformances that need to be raised with the NRC inspectors and are not holding views significantly different than those of the NRC that would have to be discussed with the NRC inspectors.

Response: The NRC has updated the estimated burden associated with State inspectors observing the NRC inspections in response to the results of the information provided by the respondents to include the range of the burden for the State inspectors to gain and maintain access to the site. The burden per response in the draft supporting statement reviewed by the commenter was 1.5 hours, whereas the revised estimate in the current supporting statement is 8.92 hours.¹ The NRC has updated the estimated burden to reflect fewer occurrences where the State observers either identify a non-conformance or have significantly different views than those held by the NRC inspectors.

Comment: The State of Illinois considered the burden to be very low and that the benefits, which are considered to be of great value to the State, far outweigh the costs. The State of Illinois viewed the estimate for as being high, because they do not directly experience the costs (e.g., site access, fitness-for-duty, obtaining a clearance, maintaining onsite space) that are covered by the utility. Some of the costs are considered to be incidental, because the State would still incur

¹ The burden estimate for an inspection includes a number of smaller activities, resulting in the 8.92 hour estimate.

them. Some of the information from the State Resident Engineers is provided electronically, but many of the interactions are face-to-face, so it may be difficult to enhance the quality, utility, and clarity of the information being collected. The costs for the State Resident Engineers, including site access costs; onsite space and support costs, fitness-for-duty costs, and incidental costs are paid by the utility and the State does not see, or pay directly, the costs. The training costs average about \$2500/year, excluding some special training, where there is no estimate for the cost. The effort to set up the program was not a small undertaking and took about 10 years to complete.

Response: The NRC has reduced the fraction of responses from the State Resident Engineers that are submitted electronically to reflect the greater frequency of face-to-face discussions. The NRC has adjusted the burden associated with the activities of the State Resident Engineers downward, but did not change the amount for the other costs to reflect the costs of the information collection that may fall on a third party, such as a utility. The NRC has also increased the estimated effort to establish a State Resident Engineer program.

9. Payment or Gift to Respondents.

Agreement States that conduct inspections associated with orders issued by the NRC to provide for security of radioactive material may be reimbursed for inspections that they conduct 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).

11. Justification for Sensitive Questions.

The NRC does not require the State to submit any sensitive personal information.

12. Estimated Burden and Burden Hour Cost.

1,380 hours / \$369,572 annual cost
213 responses

Observations of NRC inspections at nuclear power plants – 589 hours
(33 respondents at 2 responses per respondent = 66 responses
66 responses x 8.92 hours per response = 589 hours)
Total annual cost - \$157,852 (589 hours/year x \$268/hour).

Participating in NRC inspections at nuclear power plants – 711 hours
(1 respondent (3 sites) at 143 responses per year = 143 responses
143 responses x 4.62 hours per response = 661 hours
1 respondent at 0.1 response per year = .1 responses
.1 responses x 500 hours per response = 50 hours
Total annual cost - \$190,548 (711 hours/year x \$268/hour).

Reimbursable Inspections of Agreement State Materials Licensees – 80 hours
 (2 respondents at 2 responses per respondent = 4 responses
 4 responses x 20 hours per response = 80 hours)
 Total annual cost - \$21,440 (80 x \$268/hour).

13. Estimate of Other Additional Costs.

Additional costs include per diem costs for the State Resident Engineer to attend training; reimbursement for special training offered by the NRC; costs related to fitness-for-duty requirements; costs related to obtaining and maintaining site access; costs related to obtaining a security clearance; costs related to maintaining onsite space; and costs related to operating the onsite location (e.g., computers and office supplies). These additional costs are estimated to be \$25,800/year.

14. Estimated Annualized Cost to the Federal Government.

It is estimated that the NRC staff expends an average of 500 (450+50) professional hours annually in support of this program. Staff experience indicates approximately 45 (40 + 5) hours of clerical time is expended annually. Based upon current estimates, the total government burden is 545 hours, resulting in a cost of \$136,115 (500 hours x \$268/hour = \$134,000 + 45 hours x \$47/hour = \$2,115). 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 the NRC's security orders are not obligated to enter into 274i agreements. The NRC conducts the inspections in those States electing not to enter into a Section 274i agreement. In those cases, the NRC's costs for collecting the information are either recovered through fee assessments or are funded through the NRC's budget that is not fee based.

15. Reasons for Changes in Burden or Cost.

The overall burden will increase by 380 hours from 1,000 hours to 1,380 hours.

The estimated burden for the reimbursable materials security inspections has decreased. It is expected that there will be fewer States conducting reimbursable inspections and fewer inspections. States will be implementing regulations that are compatible to 10 CFR Part 37, "Physical protection of category 1 and category 2 quantities of radioactive material," or other legally binding requirements and will not be conducting reimbursable inspections of their licensees. New reimbursable agreements are possible for future NRC security orders, but new reimbursable agreements are not expected.

The estimated burden for States observing or participating in inspections at nuclear power plants and other nuclear production and utilization facilities has increased from 500 hours to 1299 hours. The change in the estimated burden is

from the staff's re-estimate of the burden and from information provided by respondents. The re-estimate reflects a change in the number of respondents from 50 to 36, based on the location of nuclear power plants and other production and utilization facilities. Most States, and the one participating Tribe, observe inspections.

The re-estimate of the burden also includes changes in the number of responses and the burden per response to reflect the increased burden associated with a State having a State Resident Engineer. Exhibit 3 in the Directive Handbook attached to Management Directive 5.2, "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities," (https://adamsxt.nrc.gov/WorkplaceXT/IBMgetContent?objectStoreName=Main.____.Library&vsId=%7B9E1AF4CB-9778-4020-8E41-0F093692AF27%7D&id=%7BEABADD69-D55A-4DDA-AE73-3FC04C97E3F8%7D&objectType=document) provides a sample memorandum of understanding between the NRC and a State to allow the State to participate in inspections. The burden associated with the information collection includes: 1) obtaining security clearances; 2) complying with licensee access requirements; 3) qualification and certification of State Resident Inspectors (i.e., the State Resident Engineers) by the State; 4) making recommendations to the NRC inspection plans; 5) submitting monthly inspection recommendations to the NRC Resident Inspector; 6) making adjustments to the State's monthly inspection recommendations to address NRC comments; 7) providing allegations received by the State Resident Engineer to the NRC Resident Inspectors; 8) providing assistance to the NRC as the NRC addresses allegations; 9) discussing the State Resident Engineers' inspections with the NRC Resident Inspectors; 10) informing the NRC Resident Inspectors of situations with immediate safety significance; 11) providing written reports documenting the results of inspection activities to the NRC; 12) assisting the NRC in preparing enforcement actions; 13) assisting the NRC during enforcement conferences with licensees; 14) participating in an annual meeting with the NRC to exchange information on matters of common concern pertaining to the memorandum of understanding; 15) providing press releases about the State's activities under the memorandum of understanding to the NRC; and 16) providing the NRC with written notice before placing a State Resident Engineer at a site. The burden also reflects costs associated with: 1) training for the State Resident Engineer; 2) reimbursement to the NRC for special training; 3) obtaining the security clearance for the State Resident Engineer; 4) computer costs; 5) other office costs; and 6) fitness-for-duty costs (e.g., drug testing).

Staff professional rates also changed from \$274/hour to \$268/hour.

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 policy statement (last published in 1992). 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.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.