

FINAL OMB SUPPORTING STATEMENT FOR
REQUESTS TO
NON-AGREEMENT STATES FOR INFORMATION
(3150-0200)
EXTENSION WITH REVISION

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 (EPA) of 2005, specifically Section 651(e), NRC now has regulatory authority over use of accelerator-produced radioactive materials and discrete sources of radium-226 and other naturally occurring radioactive material as specified by the Commission. Section 651(e) of the EPA requires that the NRC issue final regulations that establish requirements for licensing and regulating Atomic energy Act Section 11e(3) and 11e(4) byproduct material, while cooperating with the States and using model States standards to the maximum extent practicable. The NRC published its final regulations on October 1, 2007 (*Federal Register* (72 FR 55864)). 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. The NRC has begun terminating the waiver in phases. The first phase of waiver terminations occurred on November 30, 2007, (the effective date of the final rule). On this date, the NRC terminated the waiver for Federal Government agencies, Federally Recognized Indian Tribes, Delaware, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Indiana, Wyoming, and Montana. Upon waiver termination, all persons who possessed the new byproduct materials in these States, U.S. Territories, or areas of exclusive Federal jurisdiction were to be in compliance with NRC regulations. Being in compliance means that such persons are responsible for the proper handling, transfer, and disposal of these new byproduct materials as specified in NRC regulations.

The NRC is preparing for the second phase of waiver terminations. This phase of waiver terminations occurred on September 30, 2008. The agency determined that Vermont, West Virginia, Missouri, Idaho, South Dakota, Guam, and all territories and possessions of the United States that were not identified as part of the first phase of waiver termination were included in the second phase on September 30, 2008. Waivers for the remaining non-Agreement States, which include Connecticut, Virginia, New

Jersey, Michigan, Alaska, and Hawaii, will be terminated in the third phase of waiver terminations in the summer of 2009, but no later than August 7, 2009.

The NRC published a notice in the *Federal Register* on March 18, 2008, (72 FR 14376) that notified users of the second phase of waiver terminations. The NRC will publish another notice in the *Federal Register* approximately 6 months before the effective date of the third phase of waiver terminations. In addition, the NRC plans to terminate the waiver for any non-Agreement State that enters into agreement with the NRC under Section 274(b) of the Atomic Energy Act coincident with the effective date of such an agreement. Pennsylvania was the first State to become an Agreement State during this transition period. The waiver terminated for Pennsylvania on the effective date of its agreement, March 31, 2008. Therefore, information requests sought from Non-Agreement States may pertain to comments on draft rules, guidance, and program elements.

A. JUSTIFICATION

1. Need for and Practical Utility of the Collection Information

The 16 Non-Agreement States (including the territories, i.e., 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-six States have entered into such Agreements with NRC. Note: Effective March 31, 2009, Virginia became the latest Agreement State. These States now regulate approximately 83 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 16 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 of collections through electronic technology is expected from Non-Agreement States based on Agreement States experience.

4. Effort to Identify Duplication and Similar Use 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

There is no impact or burden on small business 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 action, 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 would be 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 on the information collection requirements for this clearance package was published in the Federal Register on February 11, 2009 (74 FR 6922). No comments were received.

9. Payment or Gift to Respondents

Not applicable.

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

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

The NRC anticipates issuing eight requests annually to 16 Non-Agreement States. A one hundred percent response rate is estimated because of the importance of the requests. For eight requests, the Non-Agreement States will take 8.25 hours per State per request to respond for a total annual burden of 1056 hours (16 Non-Agreement States x 8 responses x 8.25 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 \$251,328 (1056 hours x \$238 per professional staff hour). For clerical support, the estimated cost is \$4,982 (106 hours (10 percent of professional time) x \$47 per clerical staff hour).

The total estimated burden for Non-Agreement States is 1,162 hours at a cost of \$256,310.

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 eight requests with 16 Non-Agreement States responding, the estimated annualized professional cost to the Federal government is \$25,228, assuming an hourly fee of \$238 per hour and 106 hours of work (about 10 percent of the Non-Agreement State hours shown in item 12.). For clerical support, the estimated cost is \$517 (\$47 per hour x 10 percent of professional time, 11 hours). The total Federal government cost is estimated to be \$25,745 (combining professional and clerical cost).

15. Reasons for Change in Burden

The estimated burden has increased by 271 hours from 891 to 1162 hours because NRC's initial estimate from the issuing of 6 voluntary request annually to 18 Non-Agreement States in the last clearance package, to 8 request annually to 16 States (14 Non-Agreement States and 2 territories, the District of Columbia and the Commonwealth of Puerto Rico). Therefore, the number of responses increased by 20 from 108 to 128 since the last clearance renewal. NRC continues to have 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.

Although the number of respondents decreased to 16, since the initial OMB clearance, Pennsylvania and Virginia became Agreement States. However, the burden cost for professional staff hours increased from \$197 to \$238.

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.