

FINAL1 SUPPORTING STATEMENT FOR
TITLE 10 OF THE CODE OF FEDERAL REGULATION PART 62
CRITERIA AND PROCEDURES FOR EMERGENCY ACCESS TO
NON-FEDERAL AND REGIONAL LOW-LEVEL WASTE DISPOSAL FACILITIES
(3150-0143)

REVISION

Description of the Information Collection

Part 62 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 62) sets out the information that will have to be provided to the U.S. Nuclear Regulatory Commission (NRC) by any Low-Level Radioactive Waste (LLRW) generator or State seeking emergency access to an operating LLW disposal facility pursuant to Section 6 of the LLW Policy Amendments Act of 1985 (PL 99-240, January 15, 1986) (the Act).

A. Justification

1. Need for and Practical Utility of the Collection of Information

Section 6 of the Act provides that the NRC can override denial of access decisions and grant generators "emergency access" to the operating non-Federal disposal facilities. To receive emergency access, a State or generator must request it and successfully demonstrate to the NRC that access to LLW disposal is necessary in order to eliminate a serious and immediate threat to the public health and safety or the common defense and security, and that the threat cannot be mitigated by any alternative consistent with the public health and safety, including ceasing the activities that generate the waste. From the information provided by the requester, the NRC must be able to make both determinations prior to granting emergency access. The NRC is also directed to grant extensions of emergency access and temporary emergency access under specified circumstances.

The Act also provides that as part of the overall decision to grant emergency access, the NRC is to designate the operating LLW disposal facility/facilities which will receive the waste requiring emergency access. The requester must submit the information necessary for the NRC to make sure that the LLW approved for emergency access disposal is compatible in form, composition, waste package, radioactivity, etc., with the criteria established by the license or the licensing agreement of the facility designated to receive the waste. The Act provides that any requests for emergency access should contain all information and certifications that the NRC may require to make its determinations.

The Commission has promulgated a rule (10 CFR Part 62) establishing the criteria and procedures to be used for granting emergency access to non-Federal and regional LLW disposal facilities. The rule sets out the information and certifications to be provided in a request for emergency access in order for the NRC to determine whether emergency access should be granted and which disposal facilities should receive the wastes.

Section 62.5 specifies the Commission may, upon application of any interested person or upon its own initiative, grant an exemption from the requirements of the regulations in this part that it determines is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

Section 62.11 specifies the filing and distribution requirements for a request for the Commission's determination. This section also provides for publication in the *Federal Register* of a notice acknowledging the receipt of a request for a determination and asking for public comment on the request to be submitted to the NRC within 10 days of the date of notice. Section 62.11 also provides that a copy of the notice be transmitted to specific potentially affected parties.

Section 62.12 specifies the information that must be provided to the NRC in a request for emergency access. For each generator for which the request applies, general information to include the name and address of the requester and persons or companies requiring emergency access must be provided. In addition, a statement indicating if the request is based on public health and safety or common defense and security, a certification that the waste is low-level, the activity responsible for generating the waste, the name of disposal facility receiving waste prior to generator being denied access, a description of the waste including characteristics and composition, volume, time duration, and packaging, and a description of volume reduction and waste minimization techniques must be provided. The NRC also requires that information concerning the circumstances that led to the denial of access, a description of the situation responsible for creating the threat to the public health and safety or the common defense and security, a description of actions taken by the requester to prevent the need for making the request, and the impacts on public health and safety and common defense and security if emergency access is not granted, or if generator services, including research activities were to be curtailed for a limited time or indefinitely.

Section 62.13 specifies the information that must be included in a request for emergency access on alternatives to emergency access. Information detailing the process used by the requester to identify, consider, and reject alternatives to emergency access is required, as well as information concerning the actual alternatives.

Section 62.14 specifies the information that must be provided in a request for an extension of emergency access, including documentation that the generator of the LLW and the State in which the waste was generated has diligently acted to eliminate the need for emergency access (as is required by the Act).

Section 62.15 specifies that the Commission may require additional information from the requester on any portion of the request for emergency access. This section also specifies that the Commission shall deny a request for emergency access if the additional information is not provided by the requester within 10 days from the date of the request for additional information.

2. Agency Use of Information

The requested information will enable the NRC to make the required statutory findings that:

- a serious and immediate threat exists to the public health and safety or the common defense and security,
- no mitigating alternatives are available,
- a grant of emergency access to an operating non-Federal or regional LLW disposal facility is necessary, and
- the facility/facilities should receive the low-level waste.

In case of requests for an extension of emergency access, the information required will also enable the Commission to determine whether the person making the request has diligently pursued alternatives to emergency access.

The Act directs the Commission to decide on requests for emergency access within 45 days of their receipt. It is important if the NRC is to be able to respond within this timeframe that all information necessary for making the required determinations be submitted as part of the initial request.

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. Electronic transmission and submittal of documents can be accomplished via the following avenues: the Electronic Information Exchange (EIE) process, which is available from the NRC's "Electronic Submittals" Web page, by Optical Storage Media (OSM) (e.g. CD-ROM, DVD), by facsimile or by e-mail. Because of the infrequency of submission, currently, there are no electronic submissions for this clearance, if submissions are received, they'd submit by letter.

4. Effort to Identify Duplication and Use Similar Information

No sources of similar information are available. There is no duplication of requirements. 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

Since access to LLW disposal may be denied to any generator of LLW¹, the rule could potentially affect both large and small generators. The generators of LLW are nuclear power plants, medical and academic facilities, radiopharmaceutical manufacturers, fuel fabrication facilities, and Government licensees. Of these categories, all but the power plants, fuel fabrication facilities, and Government licensees could potentially include small entities. However, since the generator itself triggers imposition of the requirements of the rule by requesting emergency access from the NRC, information requirements are the same for both large and small entities, and total number of requests for emergency access is expected to be small, the NRC does not believe it is possible to reduce the burden for small businesses either by less frequent or less complete information submittals.

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

If the collection is not conducted, the NRC will be unable to determine whether a serious and immediate threat to public health and safety or the common defense and security exists that warrants the granting of emergency access to the low-level waste disposal facility. The NRC is not using Part 62 to impose a schedule for a periodic collection of information. The information collection requirements set out in the rule will only apply when an LLW generator requests emergency access from the NRC. Thus, the frequency of collection will not be controlled by the NRC, but will be dictated by the needs of the generators.

7. Circumstances Which Justify Variations from Office of Management and Budget Guidelines

The rule contains one variation from OMB guidelines. Section 62.15 allows a person requesting emergency access only 10 days to provide the NRC with any additional information identified by the NRC as necessary for its review. This period of time is significantly shorter than the 30 days normally required for such information collection under the OMB guidelines. However, given that the request will be for an emergency situation, that NRC will have less than 45 days total to review requests for emergency access and arrive at its decisions, and given the complexity of the review and decision-making process, it would be impossible to accommodate a 30-day response time. The 10-day response time for additional information is both necessary and reasonable.

¹ In 2008, access to the Barnwell, South Carolina, Low-level Waste Disposal Facility was denied to generators in all but three States. This has led to no emergency access requests. In 2012, the Waste Control Specialists site near Andrews, Texas was made available to generators that otherwise have no disposal access. This makes any request for emergency access even less likely.

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 April 24, 2018 (83 FR 18353.) As part of the public consultation process, two States with low-level waste disposal sites were contacted by email and informed of the Federal Register notice and their opportunity to comment on this clearance package. The two States contacted were South Carolina and Texas. No comments were received in response to these consultations.

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

None.

12. Estimated Burden and Burden Hour Cost

Only one exemption under 10 CFR 62.5 during the next three years is estimated. The total anticipated burden for one respondent is an estimated 6 hours at a cost of \$1,578 (6 hours at \$263/hour).

Only one emergency access request is estimated. The total anticipated burden for one respondent is an estimated 227 hours at a cost of \$59,701 (227 hours at \$263/hour).

Therefore, the total burden for 10 CFR Part 62 is 233 hours (227 hours + 6 hours) at a cost of \$61,279 (233 hours of staff time at \$263/hour). These numbers are estimates, and actual burden will vary depending on which kind of generators requires emergency access and the circumstances involved.

The \$263 hourly rate used in the burden estimates is based on the Nuclear Regulatory Commission's fee for hourly rates as noted in 10 CFR 170.20 "Average cost per professional staff-hour." For more information on the basis of this rate, see the Revision of Fee Schedules; Fee Recovery for Fiscal Year 2017 (82 FR 30682; June 30, 2017).

13. Estimate of Other Additional Costs

There are no additional costs.

14. Estimated Annualized Cost to the Federal Government

- a) Only one exemption request is estimated. The following costs would be incurred by the NRC:

For a request for an exemption under Section 62.5, the NRC estimates that it would likely require 11 hours to make a determination that an exemption is appropriate at a total cost of \$2,893 (11 hours of staff time \$263/hour).

- b) The NRC's cost to process a request for emergency access is dependent on the basis of the following threats:

If the threat is on the basis of public health and safety, the NRC estimates that it will take approximately 480 hours for staff to analyze the information submitted in a request for emergency access at a cost of \$126,240 (480 hours of staff time at \$263/hour).

If the threat is on the basis of common defense and security, the NRC estimates that it will take approximately 320 hours for staff to analyze the information submitted in a request for emergency access at a cost of \$84,160 (320 hours of staff time at \$263/hour).

For all the threats, the NRC intends to involve Department of Energy (DOE) and/or Department Defense (DOD) in the decision making process for requests for emergency access based on a threat to the common defense and security. The NRC estimates that approximately 70 hours would be required for each emergency access request processed by DOE or DOD at a cost of \$18,410 (70 hours of staff time at \$263/hour).

The NRC assumes one request based on a threat to public health and safety, and no requests based on common defense and security. The total burden to the Federal government for emergency access is 480 hours.

The potential cost to the Federal government for this renewal is \$126,133 (491 hours of staff time at \$263/hour).

15. Reasons for Change in Burden or Cost

The overall burden for this renewal remains unchanged at 233 hours. The number of responses has been updated from one response to two responses (one exemption and one emergency access request). Although the previous submission included hours for both an exemption request and an emergency access request, these were counted one response. The number of responses has been corrected for this submission.

Previously an administrative hourly rate was used in the calculation of the estimated annualized cost to the Federal government. This practice was discontinued as administrative costs are included in the NRC's published staff time rate. As a result, all government burden uses the same hourly rate.

The staff time rate decreased from \$279 to \$263 per hour. The \$263 hourly rate used in the burden estimates is based on the Nuclear Regulatory Commission's fee for hourly rates as noted in 10 CFR 170.20 "Average cost per professional staff-hour."

16. Publication for Statistical Use

None.

17. Reason for Not Displaying the Expiration Date

The recordkeeping and reporting requirements for this information collection are associated with regulations and are not submitted on instruments such as forms or surveys. For this reason, there are no data instruments on which to display an OMB expiration date. Further, amending the regulatory text of the CFR 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

There are no exceptions.

B. Collection of Information Employing Statistical Methods

Statistical methods are not used in this collection of information.