

FINAL OMB SUPPORTING STATEMENT
FOR
10 CFR PART 62
CRITERIA AND PROCEDURES FOR EMERGENCY ACCESS TO
NON-FEDERAL AND REGIONAL LOW-LEVEL WASTE DISPOSAL FACILITIES
(3150-0143)

EXTENSION REQUEST

Description of the Information Collection

Part 62 of Title 10 of the Code of Federal Regulations sets out the information that will have to be provided to the Nuclear Regulatory Commission (NRC) by any low-level radioactive waste (LLW) generator or State seeking emergency access to an operating low-level radioactive waste disposal facility pursuant to Section 6 of the Low-Level Radioactive Waste 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

The Act directs the States to develop their own LLW disposal facility or to form Compacts and cooperate in the development of regional LLW disposal facilities, so that the new facilities will be in operation by January 1, 1993. The Act establishes procedures and milestones for the selection and development of these disposal facilities. It also establishes a system of incentives for meeting the milestones, and penalties for failing to meet them. As provided by the Act, if States or Compacts without an LLW disposal facility fail to meet key milestones in the Act, the States or Compacts with operating non-Federal or regional LLW disposal facilities are authorized to demand additional fees for waste accepted for disposal from the LLW generators in the delinquent State or Compact, and ultimately to deny them further access to their facilities.

Section 6 of the Act provides that 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 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, NRC must be able to make both determinations prior to granting emergency access. 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, 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 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 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 NRC to determine whether emergency access should be granted and which disposal facilities should receive the wastes.

Section 62.11 specifies the number of copies that must be submitted with a request for emergency access. NRC requires that the original and nine copies be submitted with the request. This section also provides for publication in the Federal Register of a notice acknowledging 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 that notice be transmitted to specific potentially affected parties.

Section 62.12 specifies the information that must be provided to NRC in a request for emergency access. For each generator for which the request applies, general information identifying the generator of the LLW requiring emergency access, the activity responsible for generating the waste, and a description of the waste including its composition, characteristics, volume, and packaging, are required. The NRC also requires that information concerning the circumstances which resulted in the need to request emergency access, and the impacts to the public health and safety or the common defense and security, if emergency access is not granted, be provided in requests for emergency access.

Section 62.13 specifies the information that must be provided to demonstrate that there are no mitigating alternatives. 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 themselves.

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 have 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. Such additional information may be needed to clarify the material provided in the original request or to rectify deficiencies in the information submitted so that the NRC staff can make the necessary statutory findings. This section also specifies that NRC will deny a request for emergency access if the information it needs is not provided by the requester within 10 days.

2. Agency Use of Information

The information required by NRC will be reviewed by the Division of Waste Management and other NRC offices and will enable NRC to make the required statutory findings:

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

The regulation does not preclude the use of improved technology in information collection and recordkeeping. The approach used for Part 62 was to specify what information must be provided to NRC by the requesters but not to specify how the information must be maintained or presented. (For example, no application form is specified.) NRC anticipates that much of the information required by the rule would be collected and assembled as a part of the normal conduct of any business resulting in the continuing generation of LLW. Any advanced technology employed by a generator to collect or manipulate such information could likely be applied to the Part 62 collection of information to reduce the associated burden.

4. Effort to Identify Duplication and Use Similar Information

The Information Requirements Control Automated System (IRCAS) was searched to determine duplication. None was found. It is probable that a person requesting emergency access will have general regulatory/licensing documents related to the activity on file with NRC which could contain similar information to that required by the rule. NRC considered whether such information could be used in reviewing emergency access requests. However, because emergency situations will be involved, because NRC will have only a very short time to take necessary action (45 days), and because of the waste-specific and circumstance-specific nature of the information required, NRC has concluded that it is not practical to attempt to search our files to assemble pertinent bits and pieces of information from widespread sources when responding to requests for emergency access. Thus,

the usual practice of encouraging an applicant to incorporate information by reference is not suitable for emergency access requests.

In establishing the information requirements for requests for extensions of emergency access, NRC has provided requesters with an opportunity to avoid some repetition in filing. Rather than requesting the submittal of all new information, Section 62.14 specifies that requests for extensions of emergency access should include updates of the information provided in the original request.

5. Effort to Reduce Small Business Burden

Since access to LLW disposal may be denied to any generator of LLW, 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 NRC, since the information requirements are the same for both large and small entities, and since the total number of requests for emergency access is expected to be small, 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, 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. NRC is not using Part 62 to impose a schedule for a periodic collection of information. The information requirements set out in the rule will only apply when an LLW generator requests emergency access from NRC. Thus, the frequency of collection will not be controlled by NRC but will be dictated by the needs of the generators.

7. Circumstances Which Justify Variations from OMB Guidelines

The rule contains two variations from OMB guidelines. The first is that the number of copies required for submittal of a request to NRC exceeds the number allowed by the guidelines. The second is that the rule requires a person requesting emergency access to respond to requests for additional information in 10 days, which is less than the 30 days specified by the guidelines.

The rule requires that one original and nine copies of a request for emergency access be submitted to NRC to allow the Commission to complete the review mandated by Section 6(c)(1) of the Act in the short time provided. Requests for emergency access are likely to contain considerable amounts of detailed technical information. In order to make the various determinations required of NRC within the 45 days provided in the Act, it will be necessary for several technical reviewers in the Division of Waste Management (DWM) to review requests concurrently with the reviewers in other NRC offices. The combination of the short review period, the

many considerations involved in the evaluation of a request, the necessary complexity of NRC's review and decisionmaking process, and the need for concurrent review, dictate the requirements for filing multiple copies.

The following NRC staff organizations would require copies of a request:

●	Division of Waste Management (NMSS)	5
	(DLWM Division Director	1)
	(Project Manager Coordinating Review	1)
	(One for Each of 3 Branches in Division	3)
●	Office of General Counsel	2
	(Counsel for Rulemaking and Fuel Cycle	1)
	(Counsel for Hearings & Enforcement	1)
●	Office of Nuclear Reactor Regulation or Division of Industrial and Medical Nuclear Safety or Division of Fuel Cycle Safety and Safeguards	1
●	Office of State Programs	1
●	NRC Regional Administrator	1
	Total	10

As previously discussed, Section 62.15 allows a person requesting emergency access only 10 days to provide NRC with any additional information identified by 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 decisionmaking process, it would be impossible to accommodate a 30-day response time, and the 10-day response time for additional information is both necessary and reasonable.

8. Consultations Outside the NRC

The opportunity for public comment was published in the Federal Register on January 17, 2003 (68 FR 2591). One comment was received. The following provides the comment received and the NRC response.

Comment:

The commenter requested that NRC develop a procedure in which a telephone call would result in a response to emergency access needs. The commenter stated that this procedure would be an alternative to the rule's standard information collection and processing requirements. The commenter also expressed concern about California's lack of access to a low-level waste facility and about the information collection requirements discussed in the FRN.

Response:

The request for a new procedure to expedite the process for access to a low-level waste facility is addressed by the rule's broad exemption at 10 CFR 62.5. The exemption states that the "Commission may, upon application of any interested person or upon its own initiative, grant an exemption from the requirements for the regulations in this part." Should a national security emergency occur that requires expediting this process, the exemption provision at 10 CFR 62.5 would likely apply.

The NRC, the Office of Homeland Security, and other Federal, State and local agencies are addressing radioactive dispersion device (RDD) issues. Some of these efforts include developing evacuation and sheltering guidelines, distributing potassium iodide, planning for the relocation of affected populations, and developing cleanup standards. Be assured that the NRC and the other agencies would be particularly responsive if a RDD explosion or similar event were to occur and would take the necessary steps to ensure the protection of the public.

In the event of a terrorist attack, radioactive contamination would need to be removed from affected areas before the public would be permitted to return to those areas. However, immediate disposal of this material is not essential to maintain protection of the public health and safety, which must be ensured for the granting of emergency access to a disposal site. Radioactive waste generated during an event could be stored temporarily in a safe location or sent to licensed waste processors to be prepared for disposal.

Regarding the commenter's concern about the estimated paperwork hours and frequency of a request, they are staff estimates. The NRC staff does not foresee a situation necessitating emergency access to a low-level radioactive waste facility, but consider it prudent to maintain this regulation should such a situation arise. No changes are being made to the estimates.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality of Information

Information collected will be a part of the legal file for each request and will be available to the public. The Commission has rules in place in 10 CFR 2.790 for processing and protecting information impacting the national security. These rules would be applied to any information submitted to NRC by the requester, by the Department of Defense (DOD), or the Department of Energy (DOE), under a claim

of a serious and immediate threat to the common defense and security. Proprietary information will be adequately protected.

11. Sensitive Questions

None.

12. Estimated Burden and Burden Hour Cost

As previously explained, NRC is not actually imposing an annual burden on generators of LLW as a direct result of the rule. Congress intended emergency access to be used only under rare and unusual circumstances. A generator will only have to develop the necessary information when submitting a request to NRC for emergency access. As a result, NRC expects that most LLW generators will not be burdened at all by the information collection required by Part 62.

NRC estimates that one request will be submitted every 3 years. For those generators who must request emergency access, NRC estimates it will take 5 professional staff approximately 3 weeks (for a total of 600 hours) to collect the information and perform the analyses necessary to support a request for emergency access. An additional 2 weeks of professional staff and clerical time (80 hours) will be required to process the paperwork necessary to complete a request for emergency access pursuant to the requirements set out in Part 62. Thus, the total burden to submit a request would be 680 hours once every three years, or approximately 227 hours per year on an annualized basis. At \$152 per hour, this would result in a cost of \$ 34,504 per year. These numbers will vary depending on which kind of generators require emergency access and the circumstances involved.

13. Estimate of Other Additional Costs

None. For licensees under 10 CFR Part 62, it is most likely that purchases of equipment and services were made (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

14. Estimated Annualized Cost to the Federal Government

Because Congress intended that requests for emergency access be made only under rare and unusual circumstances, NRC may never receive a request for emergency access. However, for the purposes of this clearance request, NRC estimates that we will receive one request every 3 years. Under this scenario, NRC has estimated the cost of responding to a single request for emergency access, and from that has estimated the annualized cost to the Federal government associated with the implementation of the information collection required by Part 62.

The following discusses the costs to the Federal government when only NRC resources are involved (a request based on a threat to the public health and safety)

and then discusses the costs where it will be necessary to involve other agencies (a request based on a threat to the common defense and security).

a) Cost of responding to an individual request for emergency access submitted to NRC on the basis of threat to the public health and safety:

As provided by Section 6 of the Act, NRC will have only 45 days to respond to each request for emergency access. NRC estimates that there will be approximately 30 working days available to conduct the review (45 calendar days = approximately 6 1/2 weeks = approximately 30 working days). NRC estimates that it will take 6 NRC staff to analyze the information submitted in a request for emergency access for a total of 1,440 hours per request. At \$152 per hour, the cost for NRC to review a request for emergency access is projected to be \$218,880. Thus, if one request is received every third year, the annualized cost to the Federal government will be approximately \$72,960.

b) Cost of responding to a request for emergency access based on a threat to the common defense and security:

The cost to the Federal government for the review of requests for emergency access based on a threat to the common defense and security would likely be higher than the above. For such requests, NRC intends to involve DOE and/or DOD in the decision making process. NRC estimates that approximately 5 staff weeks would be required for each emergency access request processed by DOE or DOD at a cost of \$30,400 (5 staff weeks = 200 hours, x \$152/hour). For each one submitted, NRC estimates that the total cost to the Federal government could be approximately \$249,280. Thus, if one request is received every third year, the annualized cost to the Federal government could be approximately \$83,093.

NRC's costs are fully recovered by fee assessments to NRC licensees pursuant to 10 CFR Parts 170 and 171.

15. Reasons for Change in Burden or Cost

There is no change in burden. There was a change in cost because the hourly rate increased from \$140 to \$152.

16. Publication for Statistical Use

None.

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

There are no exceptions.

B. Collection of Information Employing Statistical Methods

Statistical methods are not used in this collection of information.