

## Nuclear Regulatory Commission

## § 62.12

(b) The approved information collection requirements contained in this part appear in §§ 62.11, 62.12, 62.13, 62.14, and 62.15.

[54 FR 5420, Feb. 3, 1989, as amended at 62 FR 52188, Oct. 6, 1997]

### Subpart B—Request for a Commission Determination

#### § 62.11 Filing and distribution of a determination request.

(a) The person submitting a request for a Commission determination shall file a signed original and nine copies of the request with the Commission at the address specified in § 62.3 of this part, with a copy also provided to the appropriate Regional Administrator at the address specified in appendix D to part 20 of this chapter. The request must be signed by the person requesting the determination or the person's authorized representative under oath or affirmation.

(b) Upon receipt of a request for a determination, the Secretary of the Commission shall publish a notice acknowledging receipt of the request in the *FEDERAL REGISTER*. The notice must require that public comment on the request be submitted within 10 days of the publication date of the notice. A copy of the request will be made available for inspection or copying at the NRC Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room. The Secretary of the Commission shall also transmit a copy of the request to the U.S. Department of Energy, to the Governors of the States of the Compact region where the waste is generated, to the Governors of the States with operating non-Federal low-level radioactive waste disposal facilities, to the Compact Commissions with operating regional low-level radioactive waste disposal facilities, and to the Governors of the States in the Compact Commissions with operating disposal facilities.

(c) Upon receipt of a request for a determination based on a serious and immediate threat to the common defense and security, the Commission will notify DOD and/or DOE and provide a copy of the request as needed for their consideration.

(d) Fees applicable to a request for a Commission determination under this

part will be determined in accordance with the procedures set forth for special projects under category 12 of § 170.31 of this chapter.

(e) In the event that the allocations or limitations established in section 5(b) or 6(h) of the Act are met at all operating non-Federal or regional LLW disposal facilities, the Commission may suspend the processing or acceptance of requests for emergency access determinations until additional LLW disposal capacity is authorized by Congress.

[54 FR 5420, Feb. 3, 1989, as amended at 64 FR 48954, Sept. 9, 1999]

#### § 62.12 Contents of a request for emergency access: General information.

A request for a Commission determination under this part must include the following information for each generator to which the request applies:

(a) Name and address of the person making the request;

(b) Name and address of the person(s) or company(ies) generating the low-level radioactive waste for which the determination is sought;

(c) A statement indicating whether the generator is basing the request on the grounds of a serious and immediate threat to the public health and safety or the common defense and security;

(d) Certification that the radioactive waste for which emergency access is requested is low-level radioactive waste within § 62.1(c) of this part;

(e) The low-level waste generation facility(ies) producing the waste for which the request is being made;

(f) A description of the activity that generated the waste;

(g) Name of the disposal facility or facilities which had been receiving the waste stream of concern before the generator was denied access;

(h) A description of the low-level radioactive waste for which emergency access is requested, including—

(1) The characteristics and composition of the waste, including, but not limited to—

(i) Type of waste (e.g. solidified oil, scintillation fluid, failed equipment);

(ii) Principal chemical composition;

(iii) Physical state (solid, liquid, gas);

(iv) Type of solidification media; and

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- (v) Concentrations and percentages of any hazardous or toxic chemicals, chelating agents, or infectious or biological agents associated with the waste;
- (2) The radiological characteristics of the waste such as—
- (i) The classification of the waste in accordance with 61.55;
- (ii) A list of the radionuclides present or potentially present in the waste, their concentration or contamination levels, and total quantity;
- (iii) Distribution of the radionuclides within the waste (surface or volume distribution);
- (iv) Amount of transuranics (nanocuries/gram);
- (3) The minimum volume of the waste requiring emergency access to eliminate the threat to the public health and safety or the common defense and security;
- (4) The time duration for which emergency access is requested (not to exceed 180 days);
- (5) Type of disposal container or packaging (55 gallon drum, box, liner, etc.); and
- (6) Description of the volume reduction and waste minimization techniques applied to the waste which assure that it is reduced to the maximum extent practicable, and the actual reduction in volume that occurred;
- (i) Basis for requesting the determination set out in this part, including—
- (1) The circumstances that led to the denial of access to existing low-level radioactive waste disposal facilities;
- (2) A description of the situation that is responsible for creating the serious and immediate threat to the public health and safety or the common defense and security, including the date when the need for emergency access was identified;
- (3) A chronology and description of the actions taken by the person requesting emergency access to prevent the need for making such a request, including consideration of all alternatives set forth in § 62.13 of this part, and any supporting documentation as appropriate;
- (4) An explanation of the impacts of the waste on the public health and safety or the common defense and security if emergency access is not granted, and the basis for concluding that these impacts constitute a serious and immediate threat to the public health and safety or the common defense and security. The impacts to the public health and safety or the common defense and security should also be addressed if the generator's services, including research activities, were to be curtailed, either for a limited period of time or indefinitely;
- (5) Other consequences if emergency access is not granted;
- (j) Steps taken by the person requesting emergency access to correct the situation requiring emergency access and the person's plans to eliminate the need for additional or future emergency access requests;
- (k) Documentation certifying that access has been denied;
- (l) Documentation that the waste for which emergency access is requested could not otherwise qualify for disposal pursuant to the Unusual Volumes provision (Section 5(c)(5) of the Act) or is not simultaneously under consideration by the Department of Energy (DOE) for access through the Unusual Volumes allocation;
- (m) Date by which access is required;
- (n) Any other information which the Commission should consider in making its determination.

### § 62.13 Contents of a request for emergency access: Alternatives.

- (a) A request for emergency access under this part must include information on alternatives to emergency access. The request shall include a discussion of the consideration given to any alternatives, including, but not limited to, the following:
- (1) Storage of low-level radioactive waste at the site of generation;
- (2) Storage of low-level radioactive waste in a licensed storage facility;
- (3) Obtaining access to a disposal facility by voluntary agreement;
- (4) Purchasing disposal capacity available for assignment pursuant to the Act;
- (5) Requesting disposal at a Federal low-level radioactive waste disposal facility in the case of a Federal or defense related generator of LLW;
- (6) Reducing the volume of the waste;

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(7) Ceasing activities that generate low-level radioactive waste; and

(8) Other alternatives identified under paragraph (b) of this section.

(b) The request must identify all of the alternatives to emergency access considered, including any that would require State or Compact action, or any others that are not specified in paragraph (a) of this section. The request should also include a description of the process used to identify the alternatives, a description of the factors that were considered in identifying and evaluating them, a chronology of actions taken to identify and implement alternatives during the process, and a discussion of any actions that were considered, but not implemented.

(c) The evaluation of each alternative must consider:

(1) Its potential for mitigating the serious and immediate threat to public health and safety or the common defense and security posed by lack of access to disposal;

(2) The adverse effects on public health and safety and the common defense and security, if any, of implementing each alternative, including the curtailment or cessation of any essential services affecting the public health and safety or the common defense and security;

(3) The technical and economic feasibility of each alternative including the person's financial capability to implement the alternatives;

(4) Any other pertinent societal costs and benefits;

(5) Impacts to the environment;

(6) Any legal impediments to implementation of each alternative, including whether the alternatives will comply with applicable NRC and NRC Agreement States regulatory requirements; and

(7) The time required to develop and implement each alternative.

(d) The request must include the basis for:

(1) Rejecting each alternative; and

(2) Concluding that no alternative is available.

**§ 62.14 Contents of a request for an extension of emergency access.**

A request for an extension of emergency access must include:

(a) Updates of the information required in §§ 62.12 and 62.13; and

(b) Documentation that the generator of the low-level radioactive waste granted emergency access and the State in which the low-level radioactive waste was generated have diligently, though unsuccessfully, acted during the period of the initial grant to eliminate the need for emergency access. Documentation must include:

(1) An identification of additional alternatives that have been evaluated during the period of the initial grant, and

(2) A discussion of any reevaluation of previously considered alternatives, including verification of continued attempts to gain access to a disposal facility by voluntary agreement.

**§ 62.15 Additional information.**

(a) The Commission may require additional information from a person making a request for a Commission determination under this part concerning any portion of the request.

(b) The Commission shall deny a request for a Commission determination under this part if the person making the request fails to respond to a request for additional information under paragraph (a) of this section within ten (10) days from the date of the request for additional information, or any other time that the Commission may specify. This denial will not prejudice the right of the person making the request to file another request for a Commission determination under this part.

**§ 62.16 Withdrawal of a determination request.**

(a) A person may withdraw a request for a Commission determination under this part without prejudice at any time prior to the issuance of an initial determination under § 62.21 of this part.

(b) The Secretary of the Commission will cause to be published in the FEDERAL REGISTER a notice of the withdrawal of a request for a Commission determination under this part.

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### § 62.17 Elimination of repetition.

In any request under this part, the person making the request may incorporate by reference information contained in a previous application, Statement, or report filed with the Commission provided that these references are updated, clear, and specific.

### § 62.18 Denial of request.

If a request for a determination is based on circumstances that are too remote and speculative to allow an informed determination, the Commission may deny the request.

## Subpart C—Issuance of a Commission Determination

### § 62.21 Determination for granting emergency access.

(a) Not later than (45) days after the receipt of a request for a Commission determination under this part from any generator of low-level radioactive waste, or any Governor on behalf of any generator or generators located in his or her State, the Commission shall determine whether—

(1) Emergency access to a regional disposal facility or a non-Federal disposal facility within a State that is not a member of a Compact for specific low-level radioactive waste is necessary because of an immediate and serious threat—

(i) To the public health and safety or  
(ii) The common defense and security; and

(2) The threat cannot be mitigated by any alternative consistent with the public health and safety, including those identified in § 62.13.

(b) In making a determination under this section, the Commission shall be guided by the criteria set forth in § 62.25 of this part.

(c) A determination under this section must be in writing and contain a full explanation of the facts upon which the determination is based and the reasons for granting or denying the request. An affirmative determination must designate an appropriate non-Federal or regional LLW disposal facility or facilities for the disposal of wastes, specifically describe the low-level radioactive waste as to source,

physical and radiological characteristics, and the minimum volume and duration (not to exceed 180 days) necessary to eliminate the immediate threat to public health and safety or the common defense and security. It may also contain conditions upon which the determination is dependent.

### § 62.22 Notice of issuance of a determination.

(a) Upon the issuance of a Commission determination the Secretary of the Commission will notify in writing the following persons of the final determination: The person making the request, the Governor of the State in which the low-level radioactive waste requiring emergency access was generated, the Governor of the State in which the designated disposal facility is located, and if pertinent, the appropriate Compact Commission for such approval as is specified as necessary in section 6(g) of the Act. For the Governor of the State in which the designated disposal facility is located and for the appropriate Compact Commission, the notification must set forth the reasons that emergency access was granted and specifically describe the low-level radioactive waste as to source, physical and radiological characteristics, and the minimum volume and duration (not to exceed 180 days) necessary to alleviate the immediate and serious threat to public health and safety or the common defense and security. For the Governor of the State in which the low-level waste was generated, the notification must indicate that no extension of emergency access will be granted under § 62.24 of this part absent diligent State and generator action during the period of the initial grant.

(b) The Secretary of the Commission will cause to be published in the FEDERAL REGISTER a notice of the issuance of the determination.

(c) The Secretary of the Commission shall make a copy of the final determination available for inspection at the NRC Web site, <http://www.nrc.gov>.

[54 FR 5420, Feb. 3, 1989, as amended at 64 FR 48954, Sept. 9, 1999]