

**RULEMAKING ISSUE  
NOTATION VOTE**

July 18, 2013

SECY-13-0075

FOR: The Commissioners

FROM: R. W. Borchardt  
Executive Director for Operations

SUBJECT: PROPOSED RULE: LOW-LEVEL RADIOACTIVE WASTE DISPOSAL  
(10 CFR PART 61) (RIN 3150-AI92)

PURPOSE:

To request Commission approval to publish a proposed rule in the *Federal Register* that would amend Part 61 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Licensing Requirements for Land Disposal of Radioactive Waste."

SUMMARY:

The Commission adopted licensing requirements for the disposal of commercial low-level radioactive waste (LLRW) in land disposal facilities more than thirty years ago in 1982 (47 FR 57446). The proposed amendments would revise 10 CFR Part 61 to require LLRW disposal licensees and license applicants to conduct updated and new site-specific analyses and to permit the development of criteria for future LLRW acceptance based on the results of these analyses. These amendments would ensure that LLRW streams that are significantly different from those considered during the development of the current regulations will be disposed of safely and meet the performance objectives for land disposal of LLRW.

The proposed rule would update the existing technical analysis requirements for protection of the general population (i.e., performance assessment) to include a 10,000-year compliance period; add a new site-specific technical analysis for the protection of inadvertent intruders

CONTACTS: Andrew Carrera, FSME/DILR  
301-415-1078

Michael P. Lee, FSME/DWMEP  
301-415-6887

SECY NOTE: THIS SECY PAPER TO BE RELEASED TO THE PUBLIC 10 WORKING DAYS WITH THE EXCEPTION OF ENCLOSURE 4.

(i.e., intruder assessment) that would include a 10,000-year compliance period and a dose limit; add a new analysis for certain long-lived LLRW (i.e., performance period analysis) that would include a post-10,000 year performance period; and revise the technical analyses required at closure.

The U.S. Nuclear Regulatory Commission (NRC) would also add a new requirement to develop criteria for the acceptance of LLRW for disposal based on either the results of these technical analyses or on the existing LLRW classification requirements. This would facilitate consideration of whether a particular disposal site is suitable for future disposal of depleted uranium (DU), blended LLRW, or any other previously unanalyzed LLRW stream. Additionally, the NRC is proposing amendments to facilitate implementation and better align the requirements with current health and safety standards. This rule would affect LLRW disposal licensees and license applicants that are regulated by the NRC or the Agreement States.

#### BACKGROUND:

In the adjudicatory proceeding for the Louisiana Enrichment Services license application, the Commission, as part of Order CLI-05-05, dated January 18, 2005, determined that DU waste is properly classified as LLRW. Although the Commission stated that a literal reading of the current 10 CFR 61.55(a)(6) would render DU LLRW a Class A LLRW, it acknowledged that in creating the LLRW classification tables in 10 CFR 61.55, "Waste Classification," the NRC did not explicitly analyze the disposal of large quantities (greater than 629,000 megabecquerel (17 curies)) of DU LLRW that might result from commercial uranium enrichment. Because of this omission, in Order CLI-05-20, dated October 19, 2005, the Commission directed the staff, outside of the adjudication, to consider whether the potential quantities of DU LLRW generated by commercial uranium enrichment facilities warranted amending 10 CFR 61.55(a)(6) or the 10 CFR 61.55(a) LLRW classification tables.

Based on the direction in Order CLI-05-20, the staff performed a technical analysis to evaluate the impacts of near-surface disposal of large quantities of DU LLRW. The staff submitted the results of this analysis to the Commission in SECY-08-0147, "Response to Commission Order CLI-05-20 Regarding Depleted Uranium," dated October 7, 2008 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML081820762). The paper presented four options that staff concluded would facilitate safe disposal of large quantities of DU LLRW.

In the staff requirements memorandum for SECY-08-0147, "Response to Commission Order CLI-05-20 Regarding Depleted Uranium," dated March 18, 2009 (ADAMS Accession No. ML090770988), the Commission approved the staff's recommendation to: a) proceed with rulemaking in 10 CFR Part 61 to specify a requirement for an updated site-specific technical analysis for the disposal of large quantities of DU and develop the technical requirements for such an analysis; and b) develop and seek public comment on a guidance document that outlines the parameters and assumptions to be used in conducting such site-specific analyses. The Commission also acknowledged that "for waste streams consisting of significant amounts of DU, there may be a need to place additional restrictions on the disposal of the DU at a specific site or deny such disposal based on unique site characteristics and those restrictions should be

determined by a site specific analysis.” The Commission did not approve altering the LLRW classification of DU as part of this limited scope rulemaking.

Subsequently, in an October 8, 2009, memorandum, “Blending of Low-Level Waste” (ADAMS Accession No. ML093070605), the Chairman directed the staff to conduct an analysis of issues associated with the large-scale blending of LLRW. This direction responded to the industry’s interest in large-scale blending of some types of Class B and Class C LLRW with similar Class A LLRW to produce a homogeneous Class A LLRW mixture. This homogeneous Class A LLRW mixture could then be disposed of at existing LLRW disposal facilities that only accept Class A LLRW, or in Class A disposal cells at facilities that accept Class A, Class B, and Class C LLRW. In SECY-10-0043, “Blending of Low-Level Radioactive Waste,” dated April 7, 2010 (ADAMS Accession No. ML090410531), the staff provided the Commission with the results of the staff’s analysis on the blending of LLRW. The staff recommended that the Commission’s position on large-scale blending be revised to be more risk-informed and performance-based. In the staff requirements memorandum for SECY-10-0043, “Blending of Low-Level Radioactive Waste,” dated October 13, 2010 (ADAMS Accession No. ML102861764), the Commission approved the staff’s recommendation and directed the staff to implement the recommendation through a combination of rulemaking and the issuance of guidance. Because the regulatory issues being addressed for large-scale blending were very similar to those in the ongoing DU rulemaking, these two regulatory efforts were combined into a single rulemaking.

On January 19, 2012, in Staff Requirements Memorandum (SRM)-COMWDM-11-0002/COMGEA-11-0002, “Revision to 10 CFR Part 61,” dated January 19, 2012 (ADAMS Accession No. ML120190360), the Commission directed the staff to expand the ongoing limited-scope revision to 10 CFR Part 61 to include the following issues: 1) allowing the licensees the flexibility to use International Commission on Radiological Protection (ICRP) dose methodologies in a site-specific performance assessment for the disposal of all radioactive LLRW; 2) developing a two-tiered approach that establishes a compliance period that covers the reasonably foreseeable future and a longer period of performance that is not for a predetermined set of years, but is established to evaluate the performance of the site over longer timeframes; 3) providing flexibility for disposal facilities to establish site-specific LLRW acceptance criteria based on the results of the site’s performance assessment and intruder assessment; and 4) adopting a compatibility category for the elements of the revised rule that ensures alignment between the States and Federal Government on safety fundamentals, while providing the States with the flexibility to determine how to implement these safety requirements. Based on the Commission’s direction, the NRC staff revised the regulatory basis document associated with this rulemaking, “Regulatory Basis for Proposed Revisions to Low-Level Waste Disposal Requirement (10 CFR Part 61)” (ADAMS Accession No. ML12356A242).

The NRC developed the current 10 CFR Part 61 based on assumptions regarding the types of LLRW likely to go into a commercial disposal facility in the late 1970s and early 1980s. These assumptions were based on a survey<sup>1</sup> of LLRW generators at that time. The results of this survey ultimately formed the regulatory basis for the source terms used in the analysis to define the allowable isotopic concentration limits in Tables 1 and 2 of 10 CFR 61.55, which established

---

<sup>1</sup> NRC, “Final Environmental Impact Statement on 10 CFR Part 61, ‘Licensing Requirements for Land Disposal of Radioactive Waste,’” NUREG-0945, Volumes. 1–3, November 1982, ADAMS Accession Nos. ML052590184, ML052920727, and ML052590187.

four classes of LLRW (Class A, Class B, Class C, and greater-than-Class-C) that are suitable for near-surface disposal. Currently, Table 1 provides limiting concentrations for long-lived radionuclides, and Table 2 provides limiting concentrations for short-lived radionuclides.

In addition to determining the acceptability of LLRW for disposal in a near-surface land disposal facility, the LLRW classification system is also integral to determining Federal and State responsibilities for LLRW and requirements for transfers of LLRW intended for disposal. The Low-Level Radioactive Waste Policy Act of 1980 (as amended in 1985) defines Federal and State responsibilities for the disposal of LLRW based on 10 CFR 61.55. Specifically, the Act assigns responsibility for disposal of Class A, Class B, and Class C commercial LLRW to the States and responsibility for disposal of commercial LLRW with concentrations that exceed the limits for Class C LLRW to the Federal Government. [Note: These responsibilities would not be changed as a result of the proposed rule recommended by the staff in this paper].

Low-level radioactive waste streams generated by the U.S. Department of Energy, including large quantities of DU LLRW, were not considered in the original analysis to determine the concentration limits in Tables 1 and 2 of 10 CFR 61.55. LLRW streams from commercial uranium enrichment facilities and blended LLRW, which might result in large quantities of material near the upper bounds of an LLRW class, also were not considered. Further, new technologies might result in the future generation of different LLRW streams not evaluated when the current 10 CFR Part 61 regulations were developed. Thus, if LLRW differs significantly in quantity and concentration from what was considered in the development of the current 10 CFR Part 61, then it might be possible to dispose of LLRW that meets the disposal requirements but results in an intruder dose (if calculated) that exceeds the dose limit used to develop the LLRW classification tables (i.e., 5 milliSieverts per year (mSv/yr) (500 millirem per year (mrem/yr))).

Currently, 10 CFR Part 61, Subpart C, contains performance objectives that set standards for: a) "Protection of the general population from releases of radioactivity" (10 CFR 61.41), b) "Protection of individuals from inadvertent intrusion" (10 CFR 61.42), c) "Protection of individuals during operations" (10 CFR 61.43), and d) "Stability of the disposal site after closure" (10 CFR 61.44). License applicants under 10 CFR Part 61 must prepare an assessment of potential future dose impacts to the general population to demonstrate that they will meet the 10 CFR Part 61, Subpart C, performance objectives. License applicants must also demonstrate the protection of potential inadvertent intruders into the LLRW disposal facility who might occupy the site at any time after institutional controls over the LLRW disposal facility are removed and would be unaware of the radiation hazard from the LLRW. Under the current regulations, protection of inadvertent intruders is demonstrated by compliance with the LLRW classification (10 CFR 61.55) and segregation requirements (10 CFR 61.52, "Land disposal facility operation and disposal site closure"), and by providing adequate barriers to inadvertent intrusion.

Explicit dose limits for an inadvertent intruder are currently not provided in 10 CFR Part 61 because an intruder dose assessment is not specifically required, but the LLRW classification limits for radionuclides, in Tables 1 and 2 of 10 CFR 61.55, were based on a dose of 5 mSv/yr (500 mrem/yr) to an inadvertent intruder. The final LLRW classification tables were developed assuming that only a fraction of the LLRW being disposed would approach the LLRW classification limits. Thus, the dose to an intruder exposed to a large volume of disposed LLRW at the classification limits could exceed 5 mSv/yr (500 mrem/yr). By complying with the LLRW classification and segregation requirements, a licensee can demonstrate that an inadvertent intruder will be protected if the LLRW stream proposed for disposal is sufficiently similar to that

considered in the regulatory basis for the current 10 CFR Part 61 regulations, if the underlying assumptions are not violated.

Recently, there have been proposals for disposal of large quantities of DU LLRW and blended LLRW in commercial LLRW disposal facilities. The staff anticipates that in the future, other previously unanalyzed LLRW also might be considered for disposal in a commercial LLRW disposal facility. To best address current and future LLRW streams, the staff determined that the proposed rule's required analysis should include current inventories and result in LLRW acceptance criteria to be applied to acceptance of all future LLRW shipments that would be added to current inventory, rather than attempt to address each new LLRW stream in the current rulemaking. This approach will reduce the need for future rulemakings to address any new, unanalyzed LLRW, and reflect a risk-informed, performance-based approach.

### DISCUSSION:

The staff is proposing amendments to 10 CFR Part 61 to add new definitions and concepts, require LLRW disposal licensees and license applicants to conduct updated and new site-specific technical analyses, as well as develop site-specific LLRW acceptance criteria, and introduce amendments to facilitate implementation and better align the requirements with current health and safety standards. The site-specific technical analyses required by the proposed amendments would include: a) an updated analysis to demonstrate protection of the general population, called a performance assessment, which would use a defined compliance period; b) a new analysis to demonstrate protection of inadvertent intruders, called an intruder assessment, which would also use a defined compliance period; and c) new performance period analyses to evaluate how the disposal system could mitigate the risk from the disposal of long-lived LLRW after the expiration of the compliance period. The site-specific technical analyses would also need to be included with any application to amend the license for closure.

In response to the Commission's direction in SRM-COMWDM-11-0002/COMGEA-11-0002, the staff is recommending a two-tiered approach for the analysis with a "compliance period within 10,000 years" and a "performance period of 10,000 or more years." In the compliance period analysis, the licensee would demonstrate compliance with the performance objectives, and during the performance period, the licensee would demonstrate how the facility design will mitigate the long-term impacts. In the performance period analyses, the licensee would also communicate the uncertainties associated with disposing of long-lived LLRW. The performance period analyses may identify the need to limit the disposal materials in the future to ensure proper management of these uncertainties. The staff's recommended elements for this approach are the following: a) a compliance period within 10,000 years; and b) analyses for 10,000 or more years following closure of the disposal facility that demonstrates releases will be minimized to the extent reasonably achievable, as an indicator of long-term facility performance.

The staff proposes that performance period analyses be required to consider the uncertainties associated with the disposal of long-lived LLRW streams and evaluate how the disposal system could mitigate the risk from the disposal of long-lived LLRW. The performance period analyses, which would be required by proposed 10 CFR 61.13(e), would also help determine whether limitations on the disposal of some LLRW streams at certain sites might be needed to properly manage the disposal of LLRW. The performance period analyses only apply for disposal sites containing long-lived radionuclides exceeding concentrations listed in the proposed Table A of 10 CFR 61.13(e) or if necessitated by site-specific conditions. The staff is proposing

requirements that would update the terminology and specify updated requirements for a performance assessment, and add a new requirement—a site-specific intruder assessment which would include a proposed annual dose limit of 5 mSv/yr (500 mrem/yr) as specified in 10 CFR 61.13, “Technical analyses.” Once completed, the licensee would develop site-specific acceptance criteria for future shipments based on the existing LLRW classification system or on the technical analyses prepared in accordance with this proposed rule, as required by the new requirements proposed in 10 CFR 61.58, “Waste acceptance.” The staff is also proposing corresponding changes to Appendix G of 10 CFR Part 20, “Standards for Protection Against Radiation,” to be consistent with the new requirements in 10 CFR 61.58. In addition, the staff is proposing an amendment to 10 CFR 61.28, “Contents of application for closure,” to require licensees to include updated site-specific analyses in their applications to amend their licenses for closure to provide greater assurance of compliance with the performance objectives of 10 CFR Part 61, Subpart C, and to enhance the safe disposal of LLRW.

The staff will publish a draft NUREG guidance document, “Guidance for Conducting Technical Analyses for 10 CFR Part 61” (ADAMS Accession No. ML13112A282), for public comment concurrently with the publication of this proposed rule. Once issued in final form, the guidance document will supplement existing guidance on performance assessment and provide guidance on the new requirements that would be added to 10 CFR Part 61 by this rulemaking.

In addition to the *Federal Register* notice (FRN) for the proposed rule ([Enclosure 1](#)), the staff is providing the Commission with a draft regulatory analysis ([Enclosure 2](#)). If approved by the Commission, this document will be published for public comment concurrently with the proposed rule.

The Commission approved Option 2 in SECY-10-0043, “Blending of Low-Level Radioactive Waste,” dated April 7, 2010 (ADAMS Accession No. ML090410246), in which the staff proposed that “...disposal of blended ion exchange resins from a central processing facility would be compared to direct disposal of the resins, onsite storage of certain wastes when disposal is not possible and further volume reduction of the Class B and Class C concentration resins.” The staff addressed this comparison of alternatives in the form of a comparative environmental evaluation of the specified ion exchange resin LLRW handling options. A draft report on this comparative evaluation was completed in September 2012 and was made available for public comment in a separate FRN (77 FR 58416) because the analysis is not related to the 10 CFR Part 61 rulemaking action as currently proposed by the staff. The public comment period on the draft report ended on January 18, 2013, and the staff is currently in the process of responding to the 60 comments received and preparing the final report.

Finally, in SRM-SECY-10-0043, the Commission stated, “The staff should not include waste at Greater-Than-Class C (GTCC) concentrations in the scope of this rulemaking; GTCC waste is a Federal responsibility and these volumes should not be made into a State responsibility, even if the waste has been blended into a lower classification.” Consistent with 10 CFR Part 20, Appendix G, Section I.C.12, LLRW is not required to be classified until it is shipped for disposal (i.e., consigned to a LLRW disposal facility). Low-level radioactive waste classified as GTCC LLRW cannot be disposed of in a facility licensed to receive only Class A, Class B, or Class C LLRW, unless specifically authorized by the regulatory authority. For these reasons, the staff has not specified new requirements for disposal of GTCC LLRW within the scope of this rulemaking. In addition, the staff believes the amount of blendable LLRW at GTCC concentrations to be small in any case. Licensees avoid producing ion exchange resins (the

principal blendable LLRW stream that could reach GTCC levels) at these concentrations because of the difficulty of disposing of them.

#### CUMULATIVE EFFECTS OF REGULATION:

In developing this proposed rule, the NRC has had considerable public interactions, including licensees, disposal site operators, Agreement States, and the Advisory Committee on Reactor Safeguards (ACRS), as part of the implementation of the cumulative effects of regulation process enhancements and as directed by the Commission in SRM-SECY-11-0032, "Consideration of the Cumulative Effects of Regulation in the Rulemaking Process" (ADAMS Accession No. ML112840466). These public interactions and feedback on the 10 CFR Part 61 preliminary proposed rule documents, including feedback from the ACRS and the Agreement States, are summarized in "Summary of Public and Advisory Committee on Reactor Safeguards (ACRS) Interactions and Comments Received in Response to Preliminary Documents for Low-Level Radioactive Waste Disposal (10 CFR Part 61) Rulemaking" ([Enclosure 3](#)).

Additionally, in the FRN for the proposed rule, the staff has included a request for specific comments on the cost estimates provided in the Regulatory Analysis, and any potential unintended consequences of the proposed rule. The staff is also publishing draft guidance for public comments along with the proposed rule. The staff plans to conduct at least one public meeting on the proposed rule during the comment period.

#### PUBLIC INTERACTIONS:

On May 3, 2011, the staff published preliminary proposed rule language and an associated regulatory basis document on <http://www.regulations.gov>, under Docket ID NRC-2011-0012, for public comment (76 FR 24831). The staff also conducted a public meeting on May 18, 2011, to discuss the preliminary proposed rule language and the associated regulatory basis document. Based on additional direction from the Commission in SRM-COMWDM-11-0002/ COMGEA-11-0002 (ADAMS accession number ML120190360), the staff conducted three public meetings to solicit the public's input for the development of the regulatory basis, revised the regulatory basis document associated with this rulemaking, and developed a second version of the preliminary rule language. On December 7, 2012, the staff published the revised preliminary rule language on <http://www.regulations.gov>, under Docket ID NRC-2011-0012, for public comment (77 FR 72997). The staff also met with the ACRS several times in 2012 and 2013. Public interactions and feedback on the 10 CFR Part 61 preliminary proposed rule documents, including feedback from the ACRS, are summarized in "Summary of Public and Advisory Committee on Reactor Safeguards (ACRS) Interactions and Comments Received in Response to Preliminary Documents for Low-Level Radioactive Waste Disposal (10 CFR Part 61) Rulemaking" ([Enclosure 3](#)).

#### AGREEMENT STATE COMMENTS:

On September 28, 2011, the staff provided a pre-decisional copy of the draft proposed rule and draft implementation guidance document to the Agreement States for review and comment. The NRC received comment letters from the Organization of the Agreement States, the Conference of Radiation Control Program Directors, and the State of Utah Division of Radiation Control. On March 13, 2013, after receiving additional Commission direction in the January 2012 SRM, the staff provided a revised pre-decisional copy of the draft proposed rule and draft

implementation guidance document to the Agreement States for review and comment. The Agreement State comments are summarized in “Summary of Public and Advisory Committee on Reactor Safeguards (ACRS) Interactions and Comments Received in Response to Preliminary Documents for Low-Level Radioactive Waste Disposal (10 CFR Part 61) Rulemaking” ([Enclosure 3](#)).

#### AGREEMENT STATE COMPATIBILITY:

The NRC staff has analyzed the proposed rule in accordance with the procedures established in Part III of the Handbook to Management Directive 5.9, “Categorization Process for NRC Program Elements.” The staff is proposing Agreement State compatibility designations for the newly proposed sections of 10 CFR Part 61 and is proposing to modify the designations for a number of existing sections. The proposed Agreement State compatibility designations are discussed in detail in Section VI of the enclosed FRN for the proposed rule. The Standing Committee on Compatibility reviewed the proposed rule and agreed that these amendments to the NRC regulations are a matter of compatibility between the NRC and the Agreement States. The Committee agreed with the staff’s proposed compatibility designations.

One particular compatibility designation proposed by the staff that is directly related to the Commission direction outlined in SRM-COMWDM-11-0002/COMGEA-11-0002 is for the development of LLRW acceptance criteria in 10 CFR 61.58. The staff recommends that 10 CFR 61.58 be designated as Compatibility Category C. As a Compatibility Category C designation, the Agreement State would have to adopt all the essential objectives of the section but could also impose more stringent requirements. The staff notes that, if the Commission approves the staff’s recommendation with 10 CFR 61.58 designated as Compatibility Category C, the Commission direction outlined in SRM-COMWDM-11-0002/COMGEA-11-0002 would allow licensees the flexibility to base LLRW acceptance criteria on the technical analyses developed for 10 CFR 61.13 or on the classification tables. The expectation is that the Agreement States would preserve the flexibility in implementing this provision, however States are allowed to develop the language in their compatible regulations which may include decreased flexibility.

#### COMMITMENTS:

This action includes no new commitments other than routine rule-related actions.

#### RECOMMENDATIONS:

The staff recommends that the Commission take the following actions:

Approve: for publication, in the *Federal Register*, the proposed amendments to 10 CFR Part 61 ([Enclosure 1](#)).

#### Note:

- a. That the public will be provided 75 days to comment on the proposed amendments.



- b. That the Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it, as required by the Regulatory Flexibility Act, 5 U.S.C. § 605(b).
- c. That, as noted, a draft environmental assessment resulting in a draft finding of no significant impact is included in the FRN for the proposed rule, and a separate draft regulatory analysis has been prepared for this rulemaking ([Enclosure 2](#)).
- d. That appropriate Congressional committees will be informed of this action.
- e. That the Office of Public Affairs will issue a press release when the proposed rulemaking is filed with the Office of the Federal Register.
- f. The resources needed to complete the rulemaking are included in non-public Enclosure 4.

An Office of Management and Budget (OMB) Paperwork Reduction Act review is required and a clearance package will be forwarded to OMB no later than the date on which the proposed rule is submitted to the Office of the Federal Register for publication.

***/RA M. Weber for/***

R. W. Borchardt  
Executive Director  
for Operations

Enclosures:

- 1. [Federal Register notice](#)
- 2. [Draft Regulatory Analysis](#)
- 3. [Summary of Stakeholder Feedback](#)
- 4. Resources for 10 CFR Part 61 Rulemaking

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Parts 20 and 61**

**RIN 3150-AI92**

**[NRC-2011-0012]**

**LOW-LEVEL RADIOACTIVE WASTE DISPOSAL**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations that govern low-level radioactive waste (LLRW) disposal facilities to require new and revised site-specific technical analyses, to permit the development of criteria for LLRW acceptance based on the results of these analyses, and to facilitate implementation and better align the requirements with current health and safety standards. This rule would affect LLRW disposal licensees or license applicants that are regulated by the NRC or the Agreement States.

**DATES:** Submit comments on the rule by **[INSERT DATE: 75 DAYS FROM DATE OF PUBLICATION]**. Submit comments specific to the information collections aspects of this proposed rule by **[INSERT DATE: 30 DAYS FROM DATE OF PUBLICATION]**. Comments received after these dates will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before these dates.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2011-0012**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact one of the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this notice.

- **E-mail comments to:** [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic e-mail reply confirming receipt, then contact us at 301-415-1677.

- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

- **Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677.

For additional direction on accessing information and submitting comments, see “Accessing Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Andrew Carrera, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1078, e-mail: [Andrew.Carrera@nrc.gov](mailto:Andrew.Carrera@nrc.gov); or Gary Comfort, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-8106, e-mail: [Gary.Comfort@nrc.gov](mailto:Gary.Comfort@nrc.gov).

## **SUPPLEMENTARY INFORMATION:**

- I. Accessing Information and Submitting Comments.
- II. Background.
  - A. Existing Regulatory Framework.
  - B. Low-Level Radioactive Waste Classification System.
  - C. Previous Public Interactions.
- III. Discussion.
  - A. What action is the NRC taking?
  - B. Who would this action affect?
  - C. Why do the regulatory requirements need to be revised?
  - D. When does this rule become effective?
  - E. What LLRW streams are affected by this rule?
  - F. What are site-specific technical analyses?
    - 1. Performance assessment.
    - 2. Intruder assessment.
    - 3. Performance period analyses.
    - 4. Updated technical analyses for closure.
  - G. Why is a 10,000-year compliance period appropriate?
    - 1. Options considered for selection of analyses timeframes.
    - 2. NRC proposed option.
  - H. What are waste acceptance criteria (WAC)?
    - 1. Options considered.
    - 2. NRC proposed option.
  - I. What other changes are proposed?

1. Adding new definitions to 10 CFR 61.2, and updating concepts in 10 CFR 61.7.
  2. Implementing changes to appendix G to 10 CFR part 20 to conform to proposed LLRW acceptance requirements.
  3. Modifying the site suitability requirements in 10 CFR 61.50, to be consistent with the proposed analyses framework.
  4. Updating the dose calculation system used in 10 CFR part 61.
- J. What guidance documents will be available?
  - K. Are there any cumulative effects of regulation associated with this rule?
  - L. Request for additional public comments.
  - M. What should I consider as I prepare my comments to submit to the NRC?
- IV. Discussion of Proposed Amendments by Section.
  - V. Criminal Penalties.
  - VI. Agreement State Compatibility.
  - VII. Plain Writing.
  - VIII. Voluntary Consensus Standards.
  - IX. Draft Environmental Assessment and Draft Finding of No Significant Environmental Impact.
  - X. Paperwork Reduction Act Statement.
  - XI. Regulatory Analysis.
  - XII. Regulatory Flexibility Certification.
  - XIII. Backfitting.

## I. Accessing Information and Submitting Comments.

### A. Accessing Information.

Please refer to Docket ID **NRC-2011-0012** when contacting the NRC about the availability of information for this proposed rule. You may access information related to this proposed rulemaking, which the NRC possesses and is publicly available, by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2011-0012**.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### B. Submitting Comments.

Please include Docket ID **NRC-2011-0012** in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## **II. Background.**

### **A. Existing Regulatory Framework.**

The NRC's licensing requirements for the disposal of commercial LLRW in near-surface disposal facilities can be found in part 61 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Licensing Requirements for Land Disposal of Radioactive Waste." The NRC adopted 10 CFR part 61 in 1982 (47 FR 57446). The existing LLRW disposal facilities are located in and licensed by Agreement States, and those Agreement States have incorporated many of the requirements in current 10 CFR part 61 into their corresponding regulations and as license conditions.

The current 10 CFR part 61 emphasizes an integrated systems approach to the disposal of commercial LLRW, including site selection, disposal facility design and operation, LLRW characteristics, and disposal facility closure. To reduce reliance on institutional controls, the

current 10 CFR part 61 emphasizes passive rather than active systems to limit and retard the releases of LLRW to the environment.

Subparts of the existing 10 CFR part 61 cover general provisions and procedural licensing matters, performance objectives, technical requirements for near-surface disposal, financial assurance, state and tribal participation, and records, reports, tests, and inspections. The regulations cover all phases of near-surface commercial LLRW disposal from site selection through facility design, licensing, operations, closure, postclosure stabilization, and the end of active institutional controls. The overall philosophy that underlies the regulatory requirements of 10 CFR part 61 are provided in 10 CFR 61.7, "Concepts."

The following are key provisions in current 10 CFR part 61:

- Standards for: 1) protection of the general population in 10 CFR 61.41, "Protection of the general population from the releases of radioactivity;" 2) protection of an inadvertent intruder in 10 CFR 61.42, "Protection of individuals from inadvertent intrusion;" 3) protection of individuals during facility operations in 10 CFR 61.43, "Protection of individuals during operations;" and 4) site stability in 10 CFR 61.44, "Stability of disposal site after closure." These standards are collectively known as the "Performance Objectives" in subpart C of 10 CFR part 61.
- Specification of the minimum geologic and geomorphic characteristics for an acceptable near-surface LLRW disposal site in 10 CFR 61.50, "Disposal site suitability requirements for land disposal."
- A LLRW classification system (LLRW being categorized as Class A, Class B, Class C, or greater-than-Class C) for commercial LLRW in 10 CFR 61.55, "Waste classification," based on the concentration of certain radionuclides.
- Specification of the LLRW characteristics, in 10 CFR 61.56, "Waste characteristics," that commercial LLRW forms must meet to be acceptable for disposal.



- Requirements for caretaker oversight in the form of institutional controls of LLRW disposal facilities, in 10 CFR 61.59, “Institutional requirements,” for a period of 100 years following facility closure.

Currently, to grant a license, the NRC must conclude that there is reasonable assurance that the performance objectives will be met. To demonstrate that a license applicant will meet these performance objectives, 10 CFR part 61 license applicants need to prepare the analyses required by 10 CFR 61.13, “Technical analyses.”

To demonstrate that the general population is protected from releases of radioactivity, license applicants are required to prepare an analysis of exposure pathways leading to potential radiological doses to the general population. The current 10 CFR part 61 does not impose a specific performance timeframe for use in the analysis to protect the general population, and there are currently differences among Agreement States regarding the analysis timeframe. For example, some Agreement States have required licensees to analyze the disposal facility for only 500 years, while others have required analyses to the peak dose. For certain long-lived LLRW, a shorter timeframe for the analysis could result in a situation where the long-term impacts from the disposal of long-lived LLRW are not adequately identified in a licensee’s analysis. Conversely, the increasing uncertainties associated with very long timeframes could diminish the value of the information generated with technical analyses for applicants, regulators, and other stakeholders. The NRC has drafted this proposed rule to balance the consideration of the risks from disposal of long-lived LLRW with the uncertainties associated with long-term analyses.

License applicants must also demonstrate that potential inadvertent intruders into the LLRW disposal facility will be protected. Inadvertent intruders might occupy the site at any time after institutional controls over the LLRW disposal facility are no longer effective and may not be aware of the radiation hazard from the LLRW. Under the current regulations, protection of

inadvertent intruders is demonstrated by compliance with the LLRW classification (10 CFR 61.55) and segregation requirements (10 CFR 61.52, “Land disposal facility operation and disposal site closure”), and by providing adequate barriers to inadvertent intrusion. The NRC developed the LLRW classification requirements as part of the original 10 CFR part 61 rulemaking. Explicit dose limits for an inadvertent intruder are not currently provided in 10 CFR part 61 because an intruder dose assessment is not required, but the LLRW classification concentration limits for radionuclides, in tables 1 and 2 of 10 CFR 61.55, were based on a dose of 5 milliSieverts per year (mSv/yr) (500 millirem per year (mrem/yr)) to an inadvertent intruder. The LLRW classification tables were developed assuming that only a fraction of the LLRW being disposed would approach the LLRW classification limits; thus, the dose to an intruder exposed to a large volume of disposed LLRW at the classification limits could exceed 5 mSv/yr (500 mrem/yr). By complying with the LLRW classification and segregation requirements, an inadvertent intruder will be protected if the underlying assumptions are not violated.

In the existing 10 CFR part 61 regulations, 10 CFR 61.13(a) through (d) require the technical analyses needed to demonstrate that the performance objectives are met. The regulations in 10 CFR part 61 are risk-informed and performance-based, and ensure public health and safety are protected in the operation of any commercial LLRW disposal facility. Applicants can demonstrate how their proposals meet the respective performance objectives for the specific near-surface disposal method selected (47 FR 57446). The NRC is proposing to modify the current regulations to ensure that LLRW streams that are significantly different than those considered in the development of the existing 10 CFR part 61 are adequately considered during the licensing of LLRW disposal facilities and to ensure that the 10 CFR part 61 performance objectives will be met for disposal of those LLRW streams.

## **B. Low-Level Radioactive Waste Classification System.**

The NRC developed 10 CFR part 61 based on assumptions regarding the types of LLRW likely to go into a commercial disposal facility. These were based on a survey of LLRW generators published in NUREG-0945, "Final Environmental Impact Statement on 10 CFR Part 61, 'Licensing Requirements for Land Disposal of Radioactive Waste'" (ADAMS Accession Nos. ML052590184, ML052920727, and ML052590187) in 1982. The results of this survey ultimately formed the regulatory basis for the source terms used in the analysis to define the allowable isotopic concentration limits in tables 1 and 2 of 10 CFR 61.55, which established four classes of LLRW (Class A, Class B, Class C, and greater-than-Class-C). Table 1 provides limiting concentrations for long-lived radionuclides and table 2 provides limiting concentrations for short-lived radionuclides. As the LLRW class increases in hazard, greater controls (e.g., protection for a longer period of time or greater burial depth) are required in order to reduce the risk from disposal of the LLRW. Class A LLRW is the least hazardous to the inadvertent intruder and requires the fewest controls, while Class C LLRW is more hazardous and requires additional controls. For example, Class C LLRW may require either greater burial depth or an engineered barrier that will prevent inadvertent intrusion for 500 years. The additional controls for Class C LLRW reduce the radiological risk from the greater hazard.

Low-level radioactive waste with greater-than-Class-C concentrations of radionuclides is generally not suitable for near-surface disposal because of the radiological risk that can result from disposal of this LLRW without adequate barriers or other protective measures.

As part of the initial 10 CFR part 61 rulemaking, the NRC considered inadvertent intrusion scenarios and the physical stability and isotopic concentration of the LLRW when it developed the 10 CFR part 61 LLRW classification system. These isotopic concentration limits were based on the NRC's understanding of the characteristics and volumes of commercial

LLRW reasonably expected for commercial disposal through the year 2000, as well as the potential disposal methods likely to be used.

In the Statements of Consideration for the final rule (47 FR 57457), the Commission noted the following:

[W]aste that is stable for a long period helps to ensure the long-term stability of the site, eliminating the need for active maintenance after the site is closed. This stability requirement helps to assure against water infiltration caused by failure of the disposal covers and, with the improved leaching properties implicit in a stable wastefrom, minimizes the potential for radionuclide migration in groundwater. Stability also plays an important role in protecting an inadvertent intruder, since the stable wastefrom is recognizable for a long period of time and minimizes any effects from dispersion of the waste upon intrusion.

The Commission also noted that “to the extent practicable, wastefroms or containers should be designed to maintain gross physical properties and identity over 300 years, approximately the time required for Class B waste to decay to innocuous levels . . . .” (47 FR 57457).

In addition to determining the acceptability of LLRW for disposal in a near-surface land disposal facility, the LLRW classification system is also integral to determining Federal and State responsibilities for LLRW and requirements for transfers of LLRW intended for disposal. The Low-Level Radioactive Waste Policy Act of 1980 (as amended in 1985) defines Federal and State responsibilities for the disposal of LLRW based on 10 CFR 61.55, as in effect on January 26, 1983. Specifically, the Act assigns responsibility for disposal of Class A, Class B, and Class C commercial LLRW to the States and responsibility for disposal of commercial LLRW with concentrations that exceed the limits for Class C LLRW to the Federal Government.

Appendix G to 10 CFR part 20, “Requirements for Transfers of Low-Level Radioactive Waste Intended for Disposal at Licensed Land Disposal Facilities and Manifests” (60 FR 15664), imposes manifest requirements on shipments of LLRW consigned for disposal. Manifests for LLRW shipments must identify the LLRW classification and a certification that the LLRW is “...properly classified, described, packaged, marked, and labeled....”

### **C. Previous Public Interactions.**

On May 3, 2011, the NRC published preliminary proposed rule language (76 FR 24831) and an associated regulatory basis document, "Technical Analysis Supporting Definition of Period of Performance for Low-level Waste Disposal" (ADAMS Accession No. ML111030586) on <http://www.regulations.gov> for public comment. The staff conducted a public meeting on May 18, 2011, in Rockville, MD, to discuss the preliminary proposed rule language and its associated regulatory basis document. A summary and transcript of this meeting can be found in ADAMS under Accession No. ML111570329. The comment period ended on June 18, 2011; the NRC received 15 comment letters from a diverse group of people, including those from public interest groups, industry, and government organizations.

As a result of additional direction from the Commission in a SRM-COMWDM-11-0002/COMGEA-11-0002, "Revisions to Part 61," dated January 19, 2012 (ADAMS Accession No. ML120190360), the NRC staff published, for public comment (77 FR 72997; December 7, 2012), a second version of the preliminary proposed rule language (ADAMS Accession No. ML12311A444), and an associated regulatory basis document, "Regulatory Basis for Proposed Revisions to Low-Level Waste Disposal Requirements (10 CFR part 61)" (ADAMS Accession no. ML12356A242) on <http://www.regulations.gov>. The comment period ended on January 7, 2013; the NRC received 24 comment letters from a diverse group of people, including those from public interest groups, industry, and government organizations. Since these early comment periods were outside of the formal proposed rule notice-and-comment rulemaking process, the NRC staff did not and does not plan to prepare formal responses to the comments received on the preliminary documents. However, the NRC staff did consider these comments in the development of the proposed rule and some of the comments did result in modifications to the preliminary proposed rule language.

The NRC staff also briefed the Advisory Committee on Reactor Safeguards (ACRS), Radiation Protection and Nuclear Materials Subcommittee, on June 23 and August 17, 2011, and the full committee on July 13 and September 8, 2011. The NRC staff again briefed the ACRS, Radiation Protection and Nuclear Materials Subcommittee, on April 9 and June 18, and the full committee on July 10, 2013. Summaries and transcripts of these meetings can be found at the ACRS' website, <http://www.nrc.gov/about-nrc/organization/acrsfuncdesc.html>.

Based on early comments and interactions with the ACRS, the NRC staff revised the preliminary proposed rule language.

### **III. Discussion.**

#### **A. What action is the NRC taking?**

The NRC is proposing to amend 10 CFR part 61 to require LLRW disposal licensees or license applicants to prepare new and revised site-specific technical analyses to ensure that LLRW streams that are significantly different from the LLRW streams considered in the current 10 CFR part 61 regulatory basis can be disposed of safely and meet the performance objectives in 10 CFR part 61, subpart C. These new and revised analyses would also more easily identify any additional measures that would be prudent to implement for continued disposal of radioactive LLRW at a particular facility.

The NRC is also proposing to amend 10 CFR part 61 to require LLRW disposal facility licensees or license applicants to develop criteria for the acceptability of LLRW for disposal. These amendments maintain the existing LLRW classification system, but permit disposal facility licensees or license applicants to account for facility design, disposal practices, and site characteristics to determine criteria for accepting shipments of LLRW for disposal at their site. Because licensees or license applicants are required to develop criteria for the acceptability of

LLRW for disposal, the NRC is also proposing to amend appendix G of 10 CFR part 20, “Standards for Protection Against Radiation,” to conform to the proposed requirements for LLRW acceptance. The NRC is also proposing additional amendments to the regulations to facilitate implementation and better align the requirements with current health and safety standards.

Table 1 compares the proposed new and revised technical analyses to the current 10 CFR part 61 requirements. The inadvertent intruder assessment would be a new requirement under 10 CFR 61.42. The inadvertent intruder assessment would have a proposed 5 mSv (500 mrem) annual dose limit and would require licensees or license applicants to use a newly defined 10,000-year compliance period. A performance assessment would also be required for the protection of the general population from releases of radioactivity. This analysis would update the current exposure-pathway analysis to use a more modern performance-assessment methodology that would better align 10 CFR part 61 with the Commission’s policy regarding the use of probabilistic risk assessment methods in nuclear regulatory analysis (60 FR 42622). The performance assessment would also use a newly defined 10,000-year compliance period. The performance assessment would retain the current 0.25 mSv (25 mrem) annual dose limit and the as low as reasonably achievable (ALARA) concept, but the dose methodology would be consistent with the dose methodology specified in the standards for radiation protection set forth in the current 10 CFR part 20. Finally, the long-term analyses would also be a new requirement under 10 CFR 61.13. The long-term analyses would require licensees or license applicants to assess how the disposal facility and site characteristics limit the potential long-term radiological impacts, consistent with available data and current scientific understanding, for the protection of the general population and the inadvertent intruder.

Table 1 - Comparison Table of Current and Proposed 10 CFR Part 61 Regulations

	<b>Protection of the general population from releases of radioactivity (10 CFR 61.41)</b>	<b>Protection of individual from inadvertent intrusion (10 CFR 61.42)</b>	<b>Technical analyses (long-term analyses) (10 CFR 61.13(e))</b>
<b>Current 10 CFR Part 61 regulations</b>	<ul style="list-style-type: none"> <li>- Pathway analysis</li> <li>- Undefined period of performance</li> <li>- 0.25 mSv (25 mrem) annual whole body dose limit for the protection of the general population from releases of radioactivity</li> <li>- ALARA concept</li> </ul>	<ul style="list-style-type: none"> <li>- Comply with 10 CFR 61.55 LLRW classification and segregation requirements</li> <li>- Provide adequate barriers to inadvertent intrusion</li> <li>- Undefined period of performance</li> <li>- No annual dose limit</li> </ul>	<ul style="list-style-type: none"> <li>- None</li> </ul>
<b>Proposed 10 CFR Part 61 regulations</b>	<ul style="list-style-type: none"> <li>- Performance assessment that estimates peak annual dose that occurs within 10,000 years following closure of disposal facility</li> <li>- 0.25 mSv (25 mrem) annual dose limit for the protection of the general population from the releases of radioactivity that occurs within 10,000 years following closure of disposal facility</li> <li>- ALARA concept</li> </ul>	<ul style="list-style-type: none"> <li>- Comply with LLRW acceptance criteria</li> <li>- Provide adequate barriers to inadvertent intrusion</li> <li>- Intruder assessment that estimates peak annual dose that occurs within 10,000 years following closure of disposal facility</li> <li>- 5 mSv (500 mrem) annual dose limit</li> </ul>	<ul style="list-style-type: none"> <li>- Analyses for 10,000 or more years following closure of disposal facility that demonstrates releases will be minimized to the extent reasonably achievable for the protection of the general population and the inadvertent intruder</li> <li>- Analyses only apply for disposal sites containing long-lived radionuclides exceeding concentrations listed in table A of 10 CFR 61.13(e), or if necessitated by site-specific conditions</li> <li>- Analyses that demonstrate how the facility has been designed to limit long-term releases</li> </ul>

**B. Who would this action affect?**

This proposed rule would affect existing and future LLRW disposal facilities that are regulated by the NRC or an Agreement State.



### **C. Why do the regulatory requirements need to be revised?**

Development of 10 CFR part 61 was based on commercial LLRW streams that were being disposed of at that time and did not contemplate some of the LLRW streams that licensees are seeking to dispose of now. The regulatory requirements in 10 CFR part 61 would be revised to require site-specific technical analyses and technical requirements for the analyses to ensure that LLRW streams that are significantly different from the LLRW considered in the current 10 CFR part 61 regulatory basis can be disposed of safely and meet the performance objectives in 10 CFR part 61, subpart C, for the protection of public health and safety. The site-specific technical analyses and technical requirements for the analyses are further discussed in sections III.F and III.G of this notice.

Recently, the industry and the NRC have identified new LLRW streams that were not envisioned during the development of 10 CFR part 61. These LLRW streams include depleted uranium (DU) from enrichment facilities, LLRW from the U.S. Department of Energy (DOE) operations, and blended LLRW streams. In addition, new technologies might result in the future generation of different LLRW streams not previously evaluated during the development of the current 10 CFR part 61 regulations.

Some radionuclides, such as isotopes of uranium, were not expected to be generated in sufficient quantities or concentrations in commercial LLRW streams to warrant inclusion in the LLRW classification tables. The NRC derived concentration limits for uranium, but these limits were not included in the final rule because the NRC determined that, based on the relatively small quantities of uranium expected to be generated by commercial facilities at the time, uranium did not pose a sufficient hazard to warrant inclusion in the 10 CFR 61.55(a) tables (47 FR 57456).

The renewed interest in licensing new uranium enrichment facilities in the United States has brought disposal of DU LLRW to the forefront of commercial LLRW disposal issues. In the

regulatory basis supporting the development of 10 CFR part 61, the NRC did not consider the relatively high concentrations and large quantities of DU LLRW that are generated by enrichment facilities. Additionally, the NRC did not anticipate that the DOE would dispose of large quantities of DU LLRW or any other defense-related LLRW in commercial disposal facilities. With the existing DOE DU stockpile at the Paducah and Portsmouth Gaseous Diffusion Plants, and the recent licensing of the Louisiana Energy Services National Enrichment Facility and the United States Enrichment Corporation American Centrifuge Plant, the DOE and the industry might need to dispose of more than  $10^9$  kilograms (1 million metric tons) of DU LLRW.

In a 2008 analysis provided in SECY-08-0147, "Response to Commission Order CLI-05-20 Regarding Depleted Uranium," dated October 7, 2008 (ADAMS Accession No. ML081820762), involving a land disposal scenario for large quantities of DU, the NRC staff identified conditions that would likely not meet the current performance objectives in 10 CFR 61.41 and 10 CFR 61.42, if large quantities of DU were disposed under those conditions (e.g., shallow disposal, such as that commonly associated with Class A LLRW, or disposal at humid sites with a potable ground water supply). The NRC staff determined that the disposal of large quantities of DU as Class A LLRW, with no additional restrictions, could result in inadvertent intruders receiving a dose greater than 5 mSv/yr (500 mrem/yr) for both acute and chronic exposure scenarios. The estimated dose would result from pathways such as inadvertent ingestion of uranium-contaminated soil and inhalation of radon gas (a member of the uranium decay chain). These results are consistent with those found in an earlier analysis of possible DU disposal in an LLRW disposal facility discussed in a Sandia National Laboratories report titled, "Performance Assessment of the Proposed Disposal of Depleted Uranium as Class A Low-Level Waste" (ADAMS Accession No. ML101890179).

The blending of different classes of LLRW could also result in LLRW streams with concentrations that are inconsistent with the assumptions used to develop tables 1 and 2 of 10 CFR 61.55. Blending of LLRW would enable some materials that would otherwise have been disposed of as a higher class (e.g., Class B or Class C LLRW) to be blended with a lower class (e.g., Class A LLRW) or lower concentration LLRW of the same class. The result of the blending process would be to create large volumes of blended LLRW that have concentrations near the LLRW classification limits. The NRC did not evaluate the disposal of large volumes of LLRW with concentrations near the LLRW classification limits in the regulatory basis for the current 10 CFR part 61. The LLRW concentration values published in the draft regulatory basis for 10 CFR part 61 were based on the assumption that all LLRW would be disposed at the LLRW classification limit. However, the final LLRW classification tables were developed with the assumption that only a fraction of the LLRW being disposed would approach the LLRW classification limit. In SECY-10-0043, "Blending of Low-Level Radioactive Waste," dated April 7, 2010 (ADAMS Accession No. ML090410246), the NRC staff noted that large-scale blending of Class B and Class C concentrations of LLRW with Class A to produce a Class A mixture could result in a dose to an inadvertent intruder that is above 5 mSv/yr (500 mrem/yr) (i.e., the dose limit used in developing the current LLRW classification in 10 CFR 61.55(a)).

Other unanticipated LLRW streams may also need to be considered for future disposal at LLRW disposal facilities. For example, the Energy Policy Act of 2005 expanded the NRC's regulatory authority under the Atomic Energy Act of 1954, as amended (AEA), to include discrete sources of naturally occurring radioactive material (including radium-226) that might be produced, extracted, or converted as a byproduct material. The regulatory basis for the current 10 CFR part 61 considered only a small quantity of radium-226 bearing LLRW in the development of the 10 CFR part 61 LLRW classification system.<sup>1</sup> More recently, consistent with

---

<sup>1</sup> For example, the equivalent of 0.5 nanocuries/gram of radium-226 contained in about 68 kg (about 150 pounds)

the National Defense Authorization Act for Fiscal Year 2013,<sup>2</sup> LLRW also includes radioactive material that, notwithstanding Section 2 of the Nuclear Waste Policy Act of 1982, results from the production of medical isotopes that have been permanently removed from a reactor or subcritical assembly, for which there is no further use, and the disposal of which can meet the performance objectives in 10 CFR part 61. Because the types of LLRW streams requiring disposal at a LLRW disposal facility have expanded over time, the NRC has concluded that rulemaking is necessary to better ensure that a broad spectrum of LLRW types and volumes are disposed of in a manner that is protective of public health and safety and the surrounding environment.

Further, as part of its effectiveness strategy described in NUREG-1614, Volume 5, “Strategic Plan” Fiscal Years 2008-2013 (Updated), the Commission strives, through its regulatory processes, to expand the use of risk-informed and performance-based insights in the NRC decision making process and to use state-of-the-art technologies to inform regulatory actions. The NRC concluded that amending the regulations to permit licensees or license applicants to develop criteria for LLRW acceptance from the results of the site-specific technical analyses as an alternative to the LLRW classification requirements allows for increased use of site-specific information to develop risk insights to support the safe disposal of LLRW. The new amendments also provide flexibility to determine how licensees can best meet the performance objectives for the specific design and operational practices of their disposal facility, as well as the specific environmental characteristics of their site.

---

of natural uranium ore (at equilibrium with its daughter products) was considered for the purposes of designating Class A LLRW (47 FR 57453–57454).

<sup>2</sup> National Defense Authorization Act for Fiscal Year 2013. Subtitle F, Sec 3173. Improving the reliability of Domestic Isotope Supply. H.R. 4310 (112th).

#### **D. When does this rule become effective?**

For the NRC licensees and license applicants, the rule would become effective 1 year after the final rule is published in the *Federal Register*. The Agreement States will have 3 years from the published date of the *Federal Register* notice for the final rule to adopt compatible regulations.

#### **E. What LLRW streams are affected by this rule?**

The NRC considered a number of options in developing this proposed rule. In the end, the agency decided that requiring site-specific technical analyses for all LLRW inventories would be the most comprehensive approach. This approach would ensure that as LLRW streams are generated, analyses would be performed to determine if the performance objectives would be met for disposal of all isotopic concentrations and volumes of LLRW. Under the proposed rule, all sites would be required to complete performance assessments and intruder assessments for the compliance period. In addition, land disposal sites with long-lived LLRW would be required to complete performance period analyses.

#### **F. What are site-specific technical analyses?**

This rulemaking would require licensees and license applicants to prepare a performance assessment and a new intruder assessment to demonstrate that its disposal site and design meet the performance objectives. Licensees and license applicants under 10 CFR part 61 would be required to prepare the following, as part of their site-specific technical analyses: a) a revised analysis, called a performance assessment, to demonstrate the protection of the general population from releases of radioactivity (10 CFR 61.41); b) a new analysis, called an intruder assessment, to demonstrate the protection of inadvertent intruders (10 CFR 61.42); and c) performance period analyses to evaluate how the disposal system may

mitigate the long-term risk from disposal of long-lived LLRW (10 CFR 61.13(e)). The site-specific technical analyses would be required to be updated at facility closure, to provide assurance of compliance with the performance objectives for the disposal of LLRW streams that were not analyzed in the original 10 CFR part 61 regulatory basis.

#### 1. Performance assessment.

The first performance objective of subpart C of 10 CFR part 61, which provides protection of the general population from releases of radioactivity, would continue to be demonstrated with a technical analysis that would be revised and renamed in 10 CFR 61.13 as a “performance assessment.”<sup>3</sup> A performance assessment, as described in NUREG-1636, “Regulatory Perspectives on Model Validation in High-Level Radioactive Waste Management Programs: A Joint NRC/SKI White Paper” (ADAMS Accession No. ML012260054), would be a systematic analysis that addresses what can happen, how likely it is to happen, what the resulting impacts are, and how these impacts compare to regulatory standards. The essential elements of a performance assessment for a LLRW disposal site are the same as the essential elements of a performance assessment for a HLW repository described in “Risk Assessment: A Survey of Characteristics, Applications, and Methods Used by Federal Agencies for Engineered Systems” (ADAMS Accession No. ML040090236). The essential elements of a performance assessment for a LLRW disposal site are: a) a description of the site and engineered system, b) an understanding of events likely to affect long-term facility performance, c) a description of processes controlling the movement of radionuclides from LLRW disposal units to the general environment, d) a computation of doses to members of the general population, and e) an evaluation of uncertainties in the computational results.

---

<sup>3</sup> The current 10 CFR part 61 refers to a “technical analysis.”

Many features, events, and processes can influence the ability of a LLRW disposal facility to limit releases of radioactivity to the environment. Disposal system behavior is influenced by the LLRW disposal facility design, the characteristics of the LLRW, and the geologic and environmental characteristics of the disposal site. A performance assessment evaluates the projected behavior of an LLRW disposal system and the uncertainties in the projected performance of the system. The performance assessment identifies the specific characteristics of the disposal site (e.g., hydrology, meteorology, geochemistry, biology, geomorphology); degradation, deterioration, or alteration processes of the engineered barriers (including the wastefrom and container) and natural system; and interactions between the disposal site characteristics and engineered barriers that might affect the performance of the LLRW disposal system. The performance assessment examines the effects of these processes and interactions on the ability of the LLRW disposal system to limit LLRW releases, and calculates the annual dose to a member of the public for comparison with the appropriate performance objective.

Currently, the descriptions of the technical information, technical analysis, and requirement to demonstrate compliance with the protection of the general population from releases of radioactivity can be found in 10 CFR 61.12, "Specific technical information," 10 CFR 61.13(a), and 10 CFR 61.41, respectively, although these analyses are not called a "performance assessment." In addition, these technical analyses do not have a prescribed compliance period. The original guidance documents associated with these requirements can be found in NUREG-1300, "Environmental Standard Review Plan for the Review of a License Application for a Low-Level Radioactive Waste Disposal Facility" (ADAMS Accession No. ML053010347); NUREG-1199, Revision 2, "Standard Format and Content of a License Application for a Low-Level Radioactive Waste Disposal Facility" (ADAMS Accession No. ML022550605); and NUREG-1200, Revision 3, "Standard Review Plan for the Review of a

License Application for a Low-Level Radioactive Waste Disposal Facility” (ADAMS Accession No. ML061370484).

Proposed 10 CFR 61.41 would require licensees or license applicants to complete a performance assessment to estimate peak dose within the compliance period following closure of the disposal facility. The proposed compliance period is defined as 10,000 years following closure of the facility. The definition of a compliance period would add an important technical parameter to the current technical analyses. An appropriate compliance period is important for the evaluation of LLRW streams that were not considered in the original 10 CFR part 61 rulemaking as well as for evaluation of long-lived LLRW that were considered in the original rulemaking. The NRC believes that the results of a performance assessment would assist in demonstrating that the protection of the general population from releases of radioactivity can be achieved. The proposed 10 CFR 61.41, new definitions, technical analyses requirements, and concepts would be risk-informed and flexible. Proposed 10 CFR 61.41 uses a risk-informed regulatory framework that specifies what requirements need to be met and provides flexibility to a licensee or applicant with regard to what information or approach they use to satisfy those requirements. The NRC believes that the proposed approach is warranted because of the site-specific nature of LLRW disposal, which can rely on different designs operating at different sites. The site-specific nature of LLRW disposal may suggest that the NRC should propose a site-specific approach to the compliance period for the performance assessment and the intruder assessment. Section G of this notice discusses why the NRC is not proposing this approach.

The proposed amendments formally introduce the concept of features, events, and processes (FEPs), which ensure appropriate comprehensiveness of any site-specific technical analysis. The NRC staff has developed a draft guidance document, “Guidance for Conducting Technical Analyses for 10 CFR Part 61” (ADAMS Accession No. ML13112A282), to facilitate



the development of information and analyses that will support licensees or license applicants in addressing the regulatory requirements. This draft guidance document is being published for public comment concurrently with the publication of this proposed rule.

## 2. Intruder assessment.

In 10 CFR part 61, the NRC recognizes that it is possible, though unlikely, that an inadvertent intruder might occupy a disposal site in the future and engage in normal pursuits without knowing that they are receiving radiation exposure. Therefore, the second performance objective in subpart C of 10 CFR part 61 is the protection of inadvertent intruders. Currently, 10 CFR part 61 does not require a site-specific analysis to demonstrate the protection of an inadvertent intruder. Instead, the safety of an inadvertent intruder is demonstrated by compliance with the LLRW classification system and the disposal requirements imposed for each class of LLRW. The connection between the LLRW classification system and protection of an inadvertent intruder is reflected in the LLRW classification tables in 10 CFR 61.55. The regulatory basis for the current 10 CFR part 61, published in NUREG-0945, contains an analysis of a reference disposal facility that evaluates the impacts of LLRW disposal on an inadvertent intruder. This analysis supported the concentration-based LLRW classification tables developed for 10 CFR 61.55.

Consistent with the development of the LLRW classification system, the technical analysis requirements currently found in 10 CFR 61.13(b) specify that the analyses of the protection of inadvertent intruders must include a demonstration that there is reasonable assurance that the LLRW classification and segregation requirements will be met and that adequate barriers to inadvertent intrusion will be provided. The regulations ensure the safety of the inadvertent intruder through the LLRW classification system and the LLRW disposal requirements imposed for each class of LLRW. However, as they are presently written, the

regulations do not explicitly require an analysis of inadvertent intruder doses. Differences between LLRW disposal inventories, disposal practices, and the underlying assumptions used to develop the LLRW classification tables in 10 CFR 61.55 can result in varying doses with respect to the protection of an inadvertent intruder. Therefore, the new proposed regulatory provisions require licensees and license applicants to conduct an analysis of inadvertent intruder doses.

The proposed revisions would add a requirement for licensees and license applicants to conduct a site-specific intruder assessment to demonstrate compliance with 10 CFR 61.42. The proposed intruder assessment would quantitatively estimate the radiological exposure of an inadvertent intruder at an LLRW disposal facility following an assumed loss of institutional controls at the end of the active institutional control period. The results of the intruder assessment would then be compared to the performance objective in 10 CFR 61.42. The intruder assessment would have to identify the intruder barriers, examine the capability of the barriers, and address the effects of uncertainty on the performance of the barriers. The capabilities of the barriers to inhibit contact with the disposed LLRW or limit the radiological exposure of an inadvertent intruder and the time period over which the capability persists must be demonstrated and a technical basis must be provided. In performing the proposed intruder assessment, licensees would be expected to employ a methodology similar to that used for a performance assessment, but the intruder assessment would assume that an inadvertent intruder occupies the LLRW disposal site after closure, engages in normal activities, and is unknowingly exposed to radiation from the LLRW.

With the intruder assessment requirement, the NRC is proposing to specify an intruder dose limit as described in the original 10 CFR part 61 analysis to develop the LLRW classification tables. The regulatory basis for 10 CFR part 61 assumed that inadvertent intrusion occurred following a cessation of a caretaker or active institutional control period.

Institutional control of the site was expected to occur beyond the active institutional control period, although it could not be assured because of the long timeframes involved. Therefore, an intruder was assumed to occupy the LLRW disposal facility and engage in normal activities, such as agriculture or dwelling construction. The analysis assumed that the intruder directly contacted the disposed LLRW, and was exposed to radionuclides through inhalation of contaminated soil and air, direct radiation, and ingestion of contaminated food and water. The NRC based the LLRW classification tables in 10 CFR 61.55 on radionuclide concentrations that would yield a 5 mSv/yr (500 mrem/yr) dose.

The dose limit used to develop the current LLRW classification tables was selected from a range of values that were consistent with exposure guidelines of different orders of magnitude: 0.25 mSv/yr (25 mrem/yr), 5 mSv/yr (500 mrem/yr), and 50 mSv/yr (5,000 mrem/yr). In NUREG-0945, the NRC selected the 5 mSv/yr (500 mrem/yr) dose based primarily on safety as reflected in similarity to the effective dose limit in 10 CFR part 20 at that time and public opinion gained through the four regional workshops held on the preliminary draft of 10 CFR part 61. The NRC continues to believe that this dose limit provides an acceptable level of protection to an inadvertent intruder. The NRC is proposing to add an annual intruder dose limit to 10 CFR 61.42 to ensure protection of any inadvertent intruder who occupies the disposal site or contacts the LLRW at any time after active institutional controls are removed.

The amendments proposed in 10 CFR 61.42 would require licensees or license applicants to prepare an intruder assessment with an annual dose limit of 5 mSv/yr (500 mrem/yr) to estimate the peak annual dose that occurs within 10,000 years (i.e., the compliance period). Given the uncertainty in predicting human behavior into the distant future and to limit associated speculation, the NRC is proposing to change the definition of the inadvertent intruder to limit the scenarios to reasonably foreseeable activities.

As discussed in section J, the NRC has prepared a draft guidance document that describes acceptable approaches for determining reasonably foreseeable intruder activities to be assessed in the intruder assessment. The draft guidance describes how licensees or license applicants can take credit for physical characteristics (e.g., water quality) and during the first few hundreds of years following closure, societal information (e.g., land use patterns) related to the disposal facility to limit speculation about the types of activities in which an inadvertent intruder might engage. For very long timeframes following closure, the draft guidance document suggests the use of default generic intruder scenarios to avoid unnecessary speculation about future human activity and to mitigate the impact of uncertainties. Specific examples for the use of generic intruder scenarios are given in the draft guidance document. The default generic scenarios are conservative to ensure protection of the inadvertent intruder.

The proposed approach, consistent with the current approach, is to assume that the active institutional controls will fail after the end of the active institutional control period. The NRC does not believe that controls will fail, but rather that the durability of the controls cannot be assured. In addition, the NRC is not assuming the probability is 100 percent that contact with the LLRW by an intruder will occur. As in the current regulation, engineered barriers and disposal practices such as greater disposal depth are to be considered in the intruder assessment. For example, with an assured protective cover of at least 5 m (16 feet) thickness, consideration of a scenario in which a dwelling foundation is excavated in a disposal unit would not be reasonable. A 5 mSv (500 mrem) dose limit for the intruder, compared to a 0.25 mSv (25 mrem) annual dose limit for the public in 10 CFR 61.41, demonstrates the NRC expectation that the intruder scenario is unlikely. The NRC is publishing the draft guidance document for public comment concurrently with the publication of this proposed rule and is seeking comments on whether the approaches described in the guidance are adequate or if further specification for inadvertent intruder scenarios in the proposed rule is necessary.

As previously indicated, the current 10 CFR part 61 provides LLRW classification and segregation requirements. The NRC considered, based on comments received on the preliminary proposed rule language (76 FR 24831), whether additional requirements such as minimum depth of disposal were needed for large quantities of long-lived LLRW (e.g., DU). The NRC proposes that a more risk-informed approach would be to require an intruder assessment that would allow the actual disposal depth and form of LLRW to be considered in the analysis.

### 3. Performance period analyses.

The current regulations in 10 CFR part 61 limit radiological risks from land disposal of LLRW regardless of the half-life of the LLRW. To ensure protection of public health and safety, 10 CFR part 61 includes regulations regarding analyses, LLRW classification, site-selection, LLRW characteristics, and other requirements. A long-term analysis (e.g., longer than 10,000 years) was not necessary under 10 CFR part 61, as originally written, because the NRC developed LLRW classification limits for long-lived radionuclides. The regulatory system was designed to ensure the short- and long-term impacts were limited by regulatory requirements such as the LLRW classification system. The NRC is now proposing additional analyses to ensure that LLRW streams that are significantly different from those considered in the original 10 CFR part 61 regulatory basis (e.g., large quantities of DU) can be disposed of safely and that the performance objectives will be met or LLRW disposal will be prohibited. The use of a two-tiered analyses system with different performance metrics for each tier should allow licensees or applicants to perform risk-informed assessments of the land disposal of LLRW for the protection of public health and safety. The analyses-based approach to regulation is more risk-informed than the concentration-based approach used in the current 10 CFR part 61 regulations. The concentration-based approach cannot be easily adjusted to differing site conditions because concentration limits were derived based on conservative assumptions.

The long-term analyses, termed “performance period analyses” as set forth in 10 CFR 61.13(e), would require licensees or license applicants to prepare long-term analyses (i.e., after the compliance period) that assess how the disposal facility and site characteristics limit the potential long-term radiological impacts, consistent with available data and current scientific understanding. The proposed performance period analyses will only be required for land disposal sites with long-lived LLRW that contains radionuclides with average concentrations exceeding the values listed in the proposed table A of 10 CFR 61.13(e), “Average Concentrations of Long-lived Radionuclides Requiring Performance Period Analyses,” or if necessitated by site-specific conditions.

The average concentrations, as explained in greater detail in the associated draft guidance document, are disposal site-averaged concentrations. Disposal site-averaged concentrations can include the volume of the LLRW, uncontaminated materials used to stabilize LLRW or reduce void space within LLRW packages, the volume of uncontaminated materials placed within the disposal units, and the volume of engineered or natural materials used to construct the disposal units. For the purpose of determining if performance period analyses are necessary, the disposal site-averaged concentrations should be based on the total volume of LLRW averaged over the total volume of all disposal units. For radionuclides where the concentrations are based on mass and not volume, the average density of the different materials within the disposal units can be used. The averaging calculations are explained in further detail in the draft guidance document.

The metric for the performance period analyses would be to minimize releases to the public to the extent reasonably achievable. The NRC considered a variety of approaches for metrics to evaluate the performance period analyses. The aforementioned metric was selected because it would allow socioeconomic information to be considered in a risk-informed manner. Considering the timeframes involved, uncertainties may be considerable and therefore the

precision typically assigned to a dose limit is not warranted. Whereas the calculated dose in a numerical model may be precise, the significance of that dose to a future generation is unknowable in the present. Although a dose limit is not prescribed, it is recommended that doses or concentrations and fluxes of radionuclides in the environment are calculated as they are appropriate to use to compare alternatives using a common metric. The NRC believes the value of information an applicant would provide to describe its actions to mitigate long-term impacts to future generations is higher than the value of long-term dose estimates. The minimization of releases and barrier analyses for the performance period can demonstrate how an applicant is proposing to limit impacts to future generations. The draft guidance document discusses in more details an acceptable approach to performing the analyses for the performance period.

The proposed performance period analyses must identify and describe the features of the design and site characteristics that will demonstrate that the performance objectives set forth in 10 CFR 61.41(b) and 10 CFR 61.42(b) will be met. These analyses would also help determine whether any additional measures are needed at a disposal site to ensure the protection of the general population and the inadvertent intruder from disposal of long-lived LLRW with average concentrations exceeding the values listed in the proposed table A of 10 CFR 61.13(e), or if necessitated by site-specific conditions, and to determine whether limitations on the disposal of some LLRW streams at certain sites may be needed to properly manage the disposal of LLRW.

An ending time for the performance period analyses is not specified in the proposed regulation. A number of factors influenced this decision. First, the analyses may demonstrate the time when the peak impact is likely to occur such that further calculation beyond this time is unnecessary. Because long-term impacts are going to be driven by site-specific characteristics and the particular LLRW that is disposed, the timing of peak impacts may differ substantially

from site to site. A licensee or license applicant must demonstrate that impacts are minimized to the extent reasonably achievable, ensuring that facilities and disposal cells are not under-designed. Second, the analyses that are developed for the performance period may differ from traditional projections of long-term radiological doses. Performance period analyses may demonstrate that the performance period metrics have been satisfied irrespective of peak radiological impacts. The proposed approach is based on the position that there are many uncertainties in the risks imposed on future generations, especially from processes or events other than LLRW disposal. In addition, there is uncertainty in the projected radiological risk to future populations from LLRW disposal, which may be based on a number of assumptions about the behavior and characteristics of future society. The proposed approach focuses on a demonstration of how the natural and engineered barriers of the disposal system could limit releases of material rather than the radiological impact to an individual or group. The NRC is seeking feedback on the proposed approach, especially with regard to whether a dose limit is needed for the long-term analyses or whether the proposed metric combined with barrier analyses is more appropriate.

#### 4. Updated technical analyses for closure.

Current 10 CFR 61.28, "Contents of application for closure," requires licensees to submit an application to amend the license for closure. This application must include 1) a final revision and specific details of the disposal site closure plan, and 2) an environmental report or a supplement to an environmental report. Currently 10 CFR 61.28 does not require licensees to prepare updated site-specific technical analyses. The proposed rule would require licensees to include updated technical analyses in their applications to amend their licenses for closure, to provide greater assurance of compliance with the performance objectives that ensure the safe disposal of LLRW streams significantly different from those considered in the original 10 CFR



part 61 regulatory basis (i.e., large quantities of depleted uranium). In particular, 10 CFR 61.28 would be revised to require licensees to also prepare updated performance period analyses required by proposed 10 CFR 61.13, 10 CFR 61.41, and 10 CFR 61.42. The NRC believes that this change, coupled with current 10 CFR 61.28(c) which is not being amended by this rulemaking, may require licensees to take additional action prior to closure to ensure that the LLRW that has been disposed of will meet the performance objectives.

#### **G. Why is a 10,000-year compliance period appropriate?**

The NRC developed a position paper on the analyses timeframe for LLRW disposal and a revised regulatory basis that provides more detail than the summary provided here. For more information, refer to the NRC's "Technical Analysis Supporting Definition of Period of Performance for Low-level Waste Disposal," issued in April 2011, and "Regulatory Basis for Proposed Revisions to Low-Level Waste Disposal Requirements (10 CFR Part 61)" issued in December 2012.

Currently, 10 CFR 61.7 discusses a number of timeframes that licensees or license applicants should consider in selecting a site, designing stable wastefoms or containers, controlling access to the site, and developing intruder barriers. The timeframes discussed are provided within the context of a LLRW management system that attempts to ensure that LLRW decays to innocuous levels prior to public exposure to radiation. The concentrations and quantities of long-lived LLRW for disposal would be limited thereby limiting potential exposures. For instance, 10 CFR 61.7(a)(2) indicates that in choosing a disposal site, site characteristics should be considered for the indefinite future and evaluated for at least a 500-year timeframe. However, 10 CFR part 61 does not provide a value for the time period<sup>4</sup> to demonstrate compliance with the performance objectives. The existing regulatory basis for 10 CFR part 61

---

<sup>4</sup> Different terminology has historically been used to refer to the timeframe assessed for regulatory compliance or other analyses, including "performance period," "time of compliance," "compliance period," and other variants.

in NUREG-0945 and the related guidance in NUREG-1573, “A Performance Assessment Methodology for Low-Level Radioactive Waste Disposal Facilities: Recommendations of NRC’s Performance Assessment Working Group” (ADAMS Accession No. ML003770778) recognize the need to use an analysis timeframe commensurate with the persistence of the hazard of the source. In selecting an analysis timeframe, the general practice is to consider the characteristics of the LLRW, the analysis framework (e.g., assumed scenarios, receptors, and pathways), societal uncertainties, and uncertainty in predicting the behavior of natural systems over time. Both technical factors (e.g., the characteristics and persistence of the radiological hazard attributed to the LLRW) and socioeconomic factors (e.g., transgenerational equity) should be considered.<sup>5</sup> The purpose of completing a performance assessment of a LLRW disposal facility is to ensure that public health and safety are protected with an acceptable degree of confidence. A variety of groups, internal and external to the NRC, have discussed the merits of various approaches to defining analysis timeframes for LLRW disposal. Those discussions are summarized in the NRC’s “Technical Analysis Supporting Definition of Period of Performance for Low-level Waste Disposal,” and “Regulatory Basis for Proposed Revisions to Low-Level Waste Disposal Requirements (10 CFR Part 61).”

For development of the proposed approach, the NRC evaluated what other countries and international agencies use to manage the radiological risks from the disposal of long-lived LLRW. Some organizations impose a requirement to identify impacts from the disposal of long-lived LLRW in the technical analyses. Results of the analyses are used to impose appropriate restrictions on LLRW disposal, if necessary. Almost every country that the NRC looked at places restrictions on how much LLRW can be disposed of in the near surface or does not allow near-surface disposal of long-lived LLRW. Most countries place explicit numerical limits on concentrations of long-lived alpha-emitting LLRW. These concentration limits are set

---

<sup>5</sup> ICRP, “Radiation Protection Recommendations as Applied to the Disposal of Long-lived Solid Radioactive Waste,” ICRP Publication 81, Annals of the ICRP, Vol. 28, No. 4, ICRP Publication 81, 2000.

by regulators based on generic technical analyses or policy decisions. The concentration limits are not developed based on the results of site-specific technical analyses. Site-specific technical analyses are performed, but only for LLRW that satisfies the generic limits. This approach is very similar to what was done for the initial development of 10 CFR part 61. The current requirements in 10 CFR part 61 supplement technical analyses with LLRW concentration limits and other disposal requirements, such as minimum disposal depth for certain types of LLRW. This approach works well for countries that only have one disposal site. However, if numerous sites are regulated in this manner the concentration limits must be based on the most limiting conditions in order to assure that public health and safety is protected.

In general, different international programs have used regulatory approaches that vary considerably in methodology used to achieve protection of future generations from the disposal of LLRW. However, countries and international safety organizations consistently apply limiting conditions on the near-surface disposal of LLRW (e.g., prohibit disposal, concentration limits, disposal depth requirements, flux limits, long-term analyses).

Performance assessments are used to understand how a system (e.g., a disposal facility and natural environment) may perform. They are used to understand the potential impacts of uncertainties on public health and safety decisions that decision makers need to consider. The many sources of uncertainty associated with projecting the future risks from disposal of LLRW include, but are not limited to, natural, engineering, and societal sources. The selection of analyses timeframes or an approach to selection of analyses timeframes for the evaluation of the disposal of LLRW should consider the different sources of uncertainty and how the uncertainties may impact projected future radiological risk. The uncertainties influence how the projected future radiological risks are interpreted by decision makers. The staff evaluated these uncertainties and their impact on intergenerational decision making through review of the work

by the National Academy of Public Administration, the Organization for Economic Co-Operation and Development, and others.

1. Options considered for selection of analyses timeframes.

In the NRC's "Technical Analysis Supporting Definition of Period of Performance for Low-level Waste Disposal," and "Regulatory Basis for Proposed Revisions to Low-Level Waste Disposal Requirements (10 CFR Part 61)," the NRC considered a variety of options for selection of the analysis timeframe for the assessment of LLRW disposal. These options were based on two different approaches to waste management:

- Analyses-based approach to safety, and
- Design- and control-based approach to safety.

These two approaches are not mutually-exclusive and each can contain elements of the other approach. Traditionally, for the disposal of LLRW, analyses-based approaches projecting performance of the disposal facility into the future have been used. Disposal of municipal and industrial waste that is non-radioactive have used the design- and control-based approach to safety. The primary decision is what specific regulatory requirements are needed to ensure that public health and safety will be protected.

**Analyses-based approach:** A variety of different options were considered with respect to the analyses-based approaches. A key consideration of these approaches is the obligation of the current generation to protect future generations from the disposal of LLRW. Though this section discusses the NRC's options for analyses timeframes, the technical analyses should be considered in context with all the requirements of the regulation. The primary decision variables with respect to analyses timeframes considered by the NRC were:

- 1) How many tiers for the analyses?
- 2) What should be the duration of the tiers?
- 3) What limits should be prescribed to each tier?

*Single Tier.* The regulatory requirements for a single-tier approach would involve specifying the timeframe of the analyses as well as an associated metric to be met during the timeframe.

Variants of the single tier approach considered by NRC included the following:

1) Current – no change approach: In this approach, a compliance period is not specified for the assessment of the performance objectives. All four currently operating commercial low-level waste disposal facilities are located in Agreement States, and they all have different requirements for the compliance period. No additional action would be required by NRC to maintain the current approach.

2) Peak dose approach: This approach would require the calculation of peak dose for the compliance determination regardless of when the peak occurs (which could be greater than 10,000 years if large amounts of DU are disposed). If regulatory limits are met, this approach ensures that all future generations would be provided with the same level of protection as the current generation. It would also ensure that the burden from the disposal of LLRW by the present generation is not deferred to any future generations, no matter how distant in the future.

3) Regulator-derived concentration limits approach: This approach would involve using a single tier for the analyses of up to a few thousand years, complemented with regulator-derived concentration and quantity limits for long-lived isotopes. This approach is used by some foreign nations. The NRC believes this approach can be effective at mitigating the impact of long-term uncertainties while avoiding unnecessary speculation and ensuring protection of public health and safety for present and future generations. The challenge of using this approach is that it would be difficult to take into account different site, disposal facility, and

other characteristics when determining regulator-derived concentration and quantity limits for long-lived isotopes. The NRC believes that this approach could work well for a single LLRW disposal site (which is most common in foreign nations), but would be difficult to implement in a risk-informed manner for numerous disposal sites. To ensure protection of public health and safety, the limits that would be derived using this approach may need to be set at values derived for the most limiting conditions (e.g., site and design) and may be inappropriately restrictive for some sites.

4) Limited duration approach: This approach would assign a 1,000-year compliance period to the analysis using a single tier. No limits would be prescribed for impacts that would occur after this period. Proposed guidance would indicate that it may be useful to evaluate longer-term impacts and consider modifications to the disposal system, if practical. A challenge with this approach is that, without limits on the disposal of long-lived isotopes, the dose estimated in a 1,000-year analysis timeframe may not be close in magnitude to the peak dose even for disposal of traditional LLRW. Another shortcoming of this approach is that a performance assessment could demonstrate that the performance objectives would be met within the first 1,000 years but then be exceeded by a large margin afterwards. In fact, this result would be expected, especially for the disposal of DU where the maximum dose achieved within 1,000 years is only about  $1/1000^{\text{th}}$  of the peak dose. Because Agreement States have selected different compliance periods, staff anticipates that the lack of a standard approach with respect to long-term impacts (after 1,000 years) will likely result in differences in interpretation among Agreement States. The approach would also create ambiguity with respect to the Commission's objectives for the management of long-term impacts. The decisions for additional action under this approach will be subjective, with case-by-case decisions being made by different regulators using different metrics.

*Two Tiers:* The regulatory requirements for a two-tier approach would involve specification of a duration for the analyses for each tier as well as an associated metric (or evaluation) to be met for each tier. Variants of the two-tier approach considered by NRC included the following:

1) Risk-informed analyses approach: This approach sets standards for the analyses timeframes to ensure consistency, but then affords flexibility to licensees with respect to the technical analyses used to demonstrate compliance with the subpart C performance objectives. This approach of tailoring the analyses to the problem is modeled after the current approach in 10 CFR part 61 for waste classification and the analyses that are performed for decommissioning of sites under 10 CFR part 20. The process under 10 CFR 61.58, "Alternative Requirements for Waste Classification and Characteristics," can be used to develop alternate LLRW classification with site-specific analyses (i.e., a risk-informed analyses approach). Decommissioning of sites under 10 CFR part 20 uses analyses of increasing complexity commensurate with the risk and complexity of the site to be decommissioned. Risk-informed analyses are also used for decommissioning of sites. The analyses are specified in guidance, not in regulations. For decommissioning, the NRC developed screening values that a licensee can use to determine if a site-specific dose assessment is needed. If the screening values are not met, then a site-specific technical analysis can be performed using the RESidual RADioactivity (RESRAD) computational model whose development was, in part, sponsored by the NRC. In some cases, the site may be complex or the problem may be conceptually different than the RESRAD computational model. Licensees or license applicants can choose to develop their own computational models to perform the site-specific dose assessments. The tiered-analyses framework has been used successfully to decommission a large number of contaminated sites. It is risk-informed for licensees, license applicants, and regulators because the type of analyses that are performed can be tailored to the problem. These two examples of

tiered analyses are generic and not specific to the long-term protection of public health and safety from the disposal of LLRW.

To ensure the long-term protection of public health and safety from the disposal of LLRW, the risk-informed analyses approach would be characterized by:

- A compliance period of up to 10,000 years.
- A second tier (performance period) that is only applicable when facility-averaged LLRW concentrations exceed values defined in the regulation (i.e., proposed table A of 10 CFR 61.13(e)), or if necessitated by site-specific conditions.

The analyses for the second tier would include: 1) a screening process to identify if performance period analyses are necessary, and 2) performance period analyses, if applicable. The performance requirement for the performance period analyses would be to minimize releases to the extent reasonably achievable. The analyses that could be used for the second tier would be described in guidance. The regulations would describe the analyses at a high-level.

Under this risk-informed approach, licensees or license applicants of LLRW disposal facilities that dispose of short-lived LLRW or limited quantities of long-lived LLRW would perform their compliance analyses, and no additional analyses would be required. If LLRW has average concentrations exceeding the values listed in the proposed table A of 10 CFR 61.13(e), or if necessitated by site-specific conditions, then the licensees or license applicants would have to perform analyses for the second tier. Guidance would describe the use of a conservative screening analysis or, if desired, a site-specific technical analysis for the second tier. The screening analysis would be based on a conservative approach (e.g., peak in-growth of progeny, no retardation during transport, defined scenarios) to manage long-term uncertainties and ensure that public health and safety is protected. If the screening analysis results showed the performance objectives would not be met, then inventory limits would be established based



on the screening analysis or quantitative performance period analyses could be performed to demonstrate that public health and safety will be protected. Using this framework, the analyses would be risk-informed.

Specification of certain LLRW that the second tier would apply to may eliminate the need for some licensees or license applicants to develop performance period analyses. However, the language “or if necessitated by site-specific conditions” is then needed because it is difficult to determine an absolute threshold for all sites below which the projected radiological risk, especially for 10 CFR 61.41, would be acceptably low. This proposed approach attempts to address this issue by providing LLRW disposal site-averaged concentrations for which the long-term radiological risk is expected to be suitably low for most facilities, but affords flexibility for additional analyses if warranted by site-specific conditions. The draft guidance document would describe the types of conditions that may warrant performance period analyses even with the disposal of low concentrations of long-lived LLRW.

2) Waste characteristics approach: The NRC considered several two-tier approaches that would be based on LLRW characteristics. For many programs, when establishing regulatory requirements for the disposal of LLRW, the primary consideration is the characteristics of the LLRW being disposed. This approach would be applied to the disposal of traditional commercial LLRW (i.e., primarily short-lived LLRW with limited quantities and concentrations of long-lived LLRW), while allowing for longer analyses for long-lived LLRW, if necessary. This approach would account for the effect of an increasing radiological hazard, such as with DU. It would also account for increasing uncertainty associated with long timeframes as well as decreasing site-stability and increased ground water transport of radioactivity, if released, and would afford flexibility to licensees, applicants, and Agreement State regulators.

One variant of this approach would define the first tier by using a peak annual dose within 10,000 years following closure, a 0.25 mSv (25 mrem) limit for 10 CFR 61.41, and a 5 mSv (500 mrem) limit for 10 CFR 61.42. This differs from the risk-informed approach in that it would also specify a dose limit for the second tier (post 10,000 years) of the analysis (e.g., 1 mSv (100 mrem)) and would align the requirement with regulatory precedent in similar programs (e.g., high-level waste disposal at Yucca Mountain, LLRW disposal staff guidance).

The NRC also considered using a first tier that would be defined by the peak annual dose within 20,000 years, a 0.25 mSv (25 mrem) limit for 10 CFR 61.41, and a 5 mSv (500 mrem) limit for 10 CFR 61.42. The second tier would be defined by the peak annual dose that would occur after the first tier. However, no dose limit was applied to the second tier. The NRC issued a version of this approach for public comment in 2011 (76 FR 24831).

3) Site-specific approach: A final option using a two-tiered approach would be described as involving a compliance period of somewhere between a few hundred to 1,000 years, which would cover what the staff believes is a reasonably foreseeable period for estimating future human activities. If uncertainty associated with the societal component of the problem is managed by specifying reasonably conservative scenarios, then the compliance period could be as long as 10,000 years. The time period for the second tier of this approach would not be defined in the regulation, instead it would be determined on a site-specific basis. Under this option a dose limit could be established for the second tier or an alternative metric could be used.

*Three Tiers:* Only one option for a three-tiered requirement was considered by the NRC – the uncertainty-informed approach.

The uncertainty-informed approach would provide decision points and regulatory limits that would consider major sources of uncertainty associated with the projection

of radiological risk from the disposal of LLRW. This approach would be divided into three timeframes—compliance period, assessment period, and performance period—and is referred to as the Compliance, Assessment, and Performance approach (CAP).

The *compliance period* would be defined as the period of time when the disposal facility performance could be estimated quantitatively with relative confidence. Societal uncertainties, though large, would not prevent the performance calculations from providing meaningful information.

The *assessment period* would be the period of time after the compliance period where performance of the disposal facility would be assessed quantitatively and the results would be interpreted semi-quantitatively considering the increasing uncertainties in natural and engineered system components. The assessment period would be used to evaluate the relative performance of natural and engineered barriers.

The *performance period* would be the period of time after the assessment period where performance of the disposal facility would be evaluated qualitatively or quantitatively, as appropriate, because numerous and significant sources of uncertainty could significantly influence the results.

The objective of the CAP approach would be to balance the need to consider radiological risks to future generations, even over long periods of time, with the uncertainties that could impact the interpretation of the results of the performance calculations. For LLRW streams with long-lived radionuclides and with in-growth of more mobile progeny, the CAP approach is one way to ensure that the long-term risks would be incorporated into decision making. The tiered approach would ensure that the potential long-term radiological risks are communicated to decision makers while properly reflecting the uncertainties associated with the calculations.

**Design-based approach:** The NRC considered an approach to managing long-lived LLRW that requires continual review and reassessment (e.g., perpetual institutional control, monitoring, and maintenance), as is done with facilities that dispose of industrial metals. Currently, 10 CFR part 61 contemplates that involvement of a disposal site operator will follow a well-defined timeline. The more open-ended process associated with the disposal of industrial metals is viewed as a disadvantage to adoption of this type of approach.

Under current 10 CFR part 61, after satisfactory disposal site closure, licenses are transferred to the State or Federal Government, one of which is required to own the disposal site. A five-year period during which the licensee would remain at the disposal site to ensure that the site is stable and ready for institutional control is required, though the Commission would be able to prescribe longer periods of time to demonstrate that the disposal site is stable, if warranted. The disposal site is transferred to the State or Federal Government after this period.

## 2. NRC proposed option.

The proposed rule includes a two-tier approach that is based on the risk-informed analyses approach. The proposed option would include a compliance period of 10,000 years applicable to both a performance assessment used to demonstrate compliance with 10 CFR 61.41 and to an intruder assessment used to demonstrate compliance with 10 CFR 61.42. The second tier of the proposed option would include a performance period of undefined duration during which a licensee must demonstrate that effort has been made “to minimize releases to the extent reasonably achievable.” This metric for the second tier would afford the flexibility for consideration of long-term radiological doses, cost-benefit type of analyses, and concentration and fluxes of radionuclides in the environment. The duration would be undefined to allow for consideration of site- and waste-specific factors as well as different methods to demonstrate that the requirements have been met. This approach was informed by

the views expressed by various members of the public about the consideration of long-term uncertainties. Conditions would be established to determine when the performance period analyses should be performed, thus risk-informing the approach. In order to determine if performance period analyses are necessary, it is proposed that a licensee or license applicant compares LLRW disposal site-averaged concentrations of long-lived radionuclides to values provided in the proposed table A of 10 CFR 61.13(e). This requirement would ensure that the analyses are performed only when dictated by the radiological characteristics of the LLRW or if necessitated by site-specific conditions. The concentration values are primarily, but not solely, based on the Class A LLRW concentration values from table 1 of 10 CFR 61.55. Unlike the existing table 1, the proposed table A includes non-transuranic long-lived isotopes, as well as transuranic long-lived isotopes. It is appropriate to include the non-transuranic isotopes in the performance period analyses if they could potentially be disposed of in significant concentrations and quantities. The radiological risk is estimated using the dose conversion factors of individual isotopes at the concentration provided (10 nanoCuries per gram (nCi/g)). The dose conversion factors for all isotopes have variability; there are different values of dose conversion factors for different solubility classes of an isotope as well as different values of dose conversion factors for different isotopes. When deriving the 10 nCi/g concentration value for transuranic isotopes in Class A LLRW, the NRC applied the same conversion of concentration to dose for all of these isotopes. The dose conversion factors for non-transuranic isotopes are generally comparable to the transuranic isotopes, and the NRC believes it is appropriate to simplify the variability similar to what was done in the original rulemaking. This simplification results in a single concentration value for all long-lived alpha emitting radionuclides rather than a table of values for different isotopes. The concentrations provided in the proposed table A of 10 CFR 61.13(e) are only used to determine if performance period analyses are necessary. As explained in detail in the draft guidance document, the complexity of the analyses would be

driven by the projected impacts. The results of the performance period analyses would determine if any resultant actions are necessary (e.g., establish inventory limits).

The specification of certain LLRW for which the performance period calculations would apply would eliminate the need for all licensees or license applicants to develop performance period analyses. However, the language “or if necessitated by site-specific conditions” is needed because it is difficult to determine an absolute threshold for all sites below which the projected radiological risk, especially for 10 CFR 61.41, would be acceptably low. The risk to the public from the land disposal of LLRW can be driven by many variables, including but not limited to, concentration of LLRW, quantity of LLRW, disposal facility design, hydrogeology, release pathways, and receptor location and behavior. It is technically challenging to reduce this multi-dimension problem into one-dimension (i.e., concentrations) in a risk-informed manner. The approach proposed in this rule attempts to address this issue by providing disposal site-averaged concentrations for which the long-term radiological risk is expected to be suitably low for most facilities, but would afford flexibility for additional analyses if warranted by site-specific conditions. The draft guidance document describes the types of conditions that may warrant performance period analyses even with the disposal of low concentrations of long-lived LLRW.

The reasons for selecting this option are:

- It would provide for a tiered, risk-informed analysis that allows tailoring of the analysis to the problem.
- It would provide a consistent minimum analysis time frame appropriate for the disposal of both short- and long-lived LLRW.
- By providing radionuclide concentration limits for the second tier, it would provide a uniform approach for determining when analyses are needed.

- The use of the metric of minimizing releases to the extent reasonably achievable for the second tier analyses would provide a framework to put the effects in the proper context, given the uncertainties, and would afford flexibility to decisionmakers.

- Selective constraints are provided while affording regulatory flexibility, where warranted.

As discussed in section G.1, one of the factors underlying the approach considered by the NRC staff in the preliminary proposed rule language published in 2011 was the DU LLRW stream. The DU radiological characteristics are somewhat unique in that DU is very long-lived and there is potentially a large quantity of DU that needs to be disposed. In addition, the hazard of DU increases over very long periods of time because of the slow decay of uranium and the in-growth of progeny. The approach considered, as part of preliminary proposed rule language published for comment in 2011, attempted to balance the radiological characteristics of the LLRW with the uncertainties associated with long-term performance assessment. The time at which the concentration of radionuclides in the LLRW is within one order of magnitude of the peak concentration is sensitive to the assumed isotopic mass fractions in the initial LLRW. At higher mass fractions of uranium-234, this time can occur sooner. The result is that the estimation of the peak annual dose within the 10,000 year compliance period is, at higher mass fractions of uranium-234, technically equivalent to the previous staff recommendation of 20,000 years. A compliance period of 10,000 years has the additional benefits of consistency with the compliance period used in other Federal regulations for the disposal of long-lived radioactive waste. In addition, 10,000 years was the compliance period staff recommended in LLRW guidance developed in 2000, and some Agreement States have used it in their licensing of LLRW disposal facilities. As of 2012, the compliance periods selected by the Agreement States with disposal facilities are: 10,000 years for the State of Washington, 10,000 years for disposal of large quantities of uranium (500 years otherwise) for the State of Utah, 2,000 years for the

State of South Carolina, and analyses to peak dose of the more mobile long-lived radionuclides (which in practice was up to 50,000 years) for the State of Texas.

Performing analyses that ensure public health and safety are protected when disposing of long-lived LLRW, and considering the information from the analyses in the decisionmaking process, is a risk-informed approach. However, it is not a risk-informed approach to disregard potential long-term impacts in the decisionmaking process because of large uncertainties without applying other regulatory requirements to ensure public health and safety will be protected. It would also not be a risk-informed approach to apply expensive and burdensome requirements on the present generation to offset hypothetical and unknown risks to generations long into the future. The proposed approach balances these competing influences. In the analyses performed in 2008 as part of the development of SECY-08-0147, the NRC staff estimated that concentrated, long-lived LLRW (e.g., DU) could be disposed of in the near-surface but only in either limited quantities or under certain conditions. Without specifying regulatory requirements to either identify when the conditions for disposal are appropriate or to prevent disposal under inappropriate conditions, there may be instances when the performance objectives will not be met. Most other concentrated, long-lived LLRW in significant quantities may need some type of restrictions for near surface disposal. The proposed approach is to use site-specific technical analyses to identify what restrictions are necessary.

The main advantage of the current approach is that it would allow the Agreement States to select analyses timeframes consistent with State policies. Currently there is ambiguity regarding how a compliance period should be selected by an Agreement State to meet the intent of NRC's regulations and what timeframes should be applied to the analysis supporting demonstration of compliance with different sections of the regulations. This approach has resulted in different analyses timeframes from State to State (ranging from 500 to 50,000 years as of 2009). During the workshops that the NRC held in September 2009, most of the



participants stated that the selection of a compliance period should be consistent across the national LLRW program. Most members of the public indicated that the LLRW regulations should specify a compliance period or an approach to analyses timeframes to ensure consistency. Approximately 165 people attended the two workshops in 2009. As reflected in the transcript and meeting summary for the first workshop (ADAMS Accession Nos. ML092580469 and ML092580481), and second workshop (ADAMS Accession Nos. ML092890511 and ML092890516), the majority of those who spoke on the topic of analyses timeframes supported the addition to the regulation.

#### **H. What are waste acceptance criteria (WAC)?**

The NRC's current WAC can be found in subpart D of 10 CFR part 61, which specifies technical requirements for land disposal facilities for commercial LLRW. The technical requirements specify the classes and characteristics of LLRW that are acceptable for near-surface disposal, as well as other requirements. Currently, 10 CFR 61.55 provides the primary criteria related to LLRW acceptance and identifies the classes of LLRW acceptable for near-surface disposal (i.e., the LLRW classification system). Section 61.56 identifies the minimum characteristics for all classes of LLRW and characteristics intended to provide stability of certain LLRW (i.e., Class B and Class C LLRW). Additionally, 10 CFR 61.52(a) specifies requirements for near-surface LLRW disposal facility operation, including segregation and intruder barrier requirements for various classes of LLRW. Section 61.58 currently allows for other provisions for the classification and characteristics of LLRW on a case-by-case basis if, after evaluation, the Commission finds reasonable assurance of compliance with the performance objectives.

The LLRW classification system is well integrated with the requirements for LLRW characteristics and disposal facility operation. This integration stemmed from the generic nature

of the original regulatory basis for 10 CFR part 61. The integrated requirements are intended to ensure that the performance objectives are met.

In addition to reviewing other regulatory approaches, the NRC also considered the original regulatory basis for 10 CFR part 61 in the development of the proposed revisions to 10 CFR 61.58. The principle basis used for setting the current 10 CFR part 61 classification limits, LLRW characteristic requirements, and operational requirements was limiting exposures to a potential inadvertent intruder at a reference LLRW disposal facility. Other considerations, such as long-term environmental impacts, LLRW disposal facility stability, institutional control costs, and financial impacts to small entities, were also considered. The NRC developed the LLRW classification system in 10 CFR part 61 from an analysis performed in 1981 of a representative LLRW disposal facility that was operated consistent with then current practices and considered a projected set of LLRW streams (46 FR 38081; July 24, 1981). Specifically, the LLRW class limits were derived from an analysis that considered a combination of factors including radionuclide characteristics and concentrations, the wastefrom, the methods of emplacement, and to some extent, the site characteristics. These factors influenced the concentration of radionuclides transferred from the disposed LLRW to the access points for the intruder scenarios. These factors are dependent upon the LLRW disposed, methods of emplacement, engineering design, and site characteristics, which can vary from facility to facility.

For example, one of the factors the NRC considered is site characteristics, which plays a role in the movement of radionuclides between environmental media (e.g., soil to air). The movement of radionuclides depend on the environmental conditions at the location of the LLRW disposal facility. The reference LLRW disposal facility used in the original regulatory basis was not intended to represent any particular location, but rather, it was used to reflect the typical environmental conditions within its region. The NRC chose the southeastern region because, at

the time, most of the LLRW was produced in the eastern portion of the nation and was projected to be disposed regionally. Today, only one of the four operating LLRW disposal sites is located in the eastern United States; the other three are located in the arid or semi-arid western United States. The Southeastern region was selected for the reference facility location because the environmental characteristics of the reference LLRW disposal facility were expected to be conservative compared to more arid site locations.

Regardless of whether the assumptions regarding the LLRW, operational practices, facility design, or site characteristics of the reference LLRW disposal facility are consistent with current facilities, the NRC believes that the 10 CFR part 61 LLRW classification system remains protective of public health and safety for the LLRW streams that were analyzed in the development of the regulations because of the reasonably conservative nature of the analysis used to develop the LLRW classification system. However, inconsistency between actual site conditions and practices at an LLRW disposal facilities and the generic assumptions used to develop the LLRW classification system may cause the radionuclide concentration limits to be either overly restrictive or permissive. If radionuclide concentration limits are overly restrictive based on actual site characteristics, facility design, and operational practices, the LLRW classification system would ensure the safe disposal of LLRW, but it would impose unnecessary regulatory burdens on licensees and LLRW generators. Whereas, if the generic concentration limits at a LLRW disposal facility are overly permissive based on actual site characteristics, facility design, and operational practices, the LLRW classification system alone may not adequately ensure the protection of public health and safety. If the Commission found that the LLRW classification requirements were overly permissive at a particular disposal facility, it could impose additional requirements to ensure that the 10 CFR part 61 performance objectives would be met. Thus, it's the 10 CFR part 61 performance objectives that ultimately ensure protection of public health and safety. However, the inconsistency between the generic

assumptions and current practices highlights the need for flexibility to develop site-specific WAC. The site-specific WAC would provide assurance that public health and safety can be protected, while offering the possibility for the relief of unnecessary regulatory burdens for facilities with superior site characteristics, design, and operational practices. The specifics of WAC background information, other regulatory approaches regarding LLRW acceptance practices, technical considerations, and public comments are discussed further in Section 5.2, “Flexibility for Site-Specific Waste Acceptance Criteria,” of the regulatory basis document issued in December 2012.

In addition to considering the original regulatory basis for 10 CFR part 61, the NRC also performed a review of other regulatory approaches, domestic and international, regarding LLRW acceptance practices to develop the proposed revisions to 10 CFR 61.58. In general, practices vary but are constrained between specification of criteria by the regulatory agency and development of site-specific WAC by LLRW disposal facility operators. In all cases, the regulatory authority maintains oversight of disposal, including approval of the LLRW acceptance requirements.

#### 1. Options considered.

The NRC considered three options for revising the regulatory framework associated with waste acceptance criteria for the near-surface disposal of LLRW. In the first option, the NRC considered maintaining the current approach for determining LLRW acceptability, namely the generic LLRW classification system. The NRC staff also considered a second option, in which the current LLRW classification system is replaced with criteria allowing flexibility for licensees or license applicants to determine site-specific WAC. Finally, the NRC considered a third option that would add flexibility to establish site-specific WAC to the existing LLRW classification system. These options included the following:

Option 1. *No change from current approach.* The regulations in 10 CFR part 61 currently provide general criteria for LLRW acceptability for near surface disposal through the classification and LLRW characteristics requirements set forth in 10 CFR 61.55 and 10 CFR 61.56. Because of the conservative nature of the assumptions used in the original 10 CFR Part 61 regulatory basis to develop the LLRW classification, the LLRW classification system is expected to be protective of public health and safety as long as LLRW disposal facilities operate within the regulatory basis of the original 10 CFR part 61 regulations.

However, new practices that differ from the assumptions of the original analyses create uncertainty regarding the protectiveness of the LLRW classification system. For instance, new LLRW streams that were not considered during the development of 10 CFR part 61 are being considered for disposal (e.g., large quantities of concentrated DU and LLRW results from the production of medical isotopes). Also, current LLRW disposal facility design and operational practices can differ from the generic assumptions employed in the development of the LLRW classification system (e.g., disposal of LLRW containers in concrete vaults).

Currently, 10 CFR part 61 allows for alternative provisions for LLRW acceptability (i.e., LLRW classification and characterization) on a case-by-case basis through 10 CFR 61.58. Section 61.58 allows the Commission, either upon request or upon its own initiative, to authorize alternate provisions for classification or characteristics of LLRW. The requirements for LLRW classification and characteristics are found in 10 CFR 61.55 and 10 CFR 61.56, respectively. Such alternative provisions could be authorized after an evaluation showing that the specific LLRW disposal facility, and disposal method being proposed, would provide reasonable assurance of compliance with the performance objectives. Agreement States that regulate LLRW facilities would apply their own regulatory provisions in these situations.

At present, only one of the four Agreement States that has an operating near-surface LLRW disposal facility has adopted a corresponding regulation to 10 CFR 61.58. Currently,

Agreement States are not required to adopt 10 CFR 61.58, therefore, the Agreement State compatibility designation for 10 CFR 61.58 must be changed in order to require Agreement States to adopt an alternative provision for LLRW classification and characteristics. Agreement State compatibility designation for 10 CFR 61.58 is discussed further in Section VI, "Agreement State Compatibility," of this notice.

Option 2. *Site-specific waste acceptance approach.* Another possible approach to provide flexibility for licensees or license applicants to determine site-specific WAC would be for the NRC to abandon the existing LLRW classification system and replace it with requirements for developing site-specific WAC from the results of the site-specific technical analyses. This approach would require LLRW disposal facilities to define the acceptability of LLRW. In defining LLRW streams with acceptable radionuclide concentrations or activities and wasteforms, LLRW disposal facilities would be required to use the results of the site-specific technical analyses set forth in the proposed 10 CFR 61.13. Under the site-specific LLRW acceptance approach, licensees and license applicants would also need to develop strategies for characterizing LLRW and methods to certify that LLRW meets acceptance criteria that are commensurate with the analyses used to derive the site-specific WAC.

Removal of the current LLRW classification system from 10 CFR part 61 as part of a limited-scope rulemaking would present challenges because the LLRW classification requirements are well integrated with other requirements of 10 CFR part 61. For instance, requirements for the operation of a LLRW disposal facility specifically reference the LLRW classes of 10 CFR 61.55. Therefore, complete replacement of the LLRW classification system would likely expand the rule revisions beyond the scope of this rulemaking.

Further, removal of the LLRW classification system from 10 CFR part 61 would not result in total abandonment of the system because the classification of LLRW is referenced in the Low-Level Radioactive Waste Policy Act of 1980 (as amended in 1985). The Low-Level

Radioactive Waste Policy Act of 1980 (as amended in 1985) establishes Federal and State responsibilities for the disposal of LLRW based on the LLRW classification system in 10 CFR part 61 as it existed on January 26, 1983. Specifically, Section 3 of the Low-Level Radioactive Waste Policy Act of 1980 (as amended in 1985) states that the responsibilities of each State shall include the disposal of LLRW generated within the State (other than by the Federal Government) that consists of, or contains, Class A, Class B, or Class C LLRW, as defined by 10 CFR 61.55, in effect on January 26, 1983. Likewise, the Low-Level Radioactive Waste Policy Act of 1980 (as amended in 1985) states that the Federal Government responsibilities shall include LLRW with concentrations of radionuclides that exceed the Class C limits established in 10 CFR 61.55 in effect on January 26, 1983.

Because the Low-Level Radioactive Waste Policy Act of 1980 (as amended in 1985) relies on 10 CFR part 61 as it existed in 1983, removing the LLRW classification system from 10 CFR part 61 would not change the assignment of responsibilities for the disposal of commercial LLRW to the States and Federal Government. Therefore, the existing LLRW classification system would remain relevant to assigning responsibilities to the States and Federal Government, regardless of its presence in 10 CFR part 61. Removal of the LLRW classification system from 10 CFR part 61, however, may create confusion among stakeholders about how responsibility is assigned. One possible approach to avoid confusion would be to maintain a version of the LLRW classification system in an appendix to 10 CFR part 61, for the sole purpose of aiding in the determination of Federal and State responsibilities for the disposal of LLRW. Alternatively, the LLRW classification requirements could be included in appendix G to 10 CFR part 20, where LLRW is manifested for shipment. The purpose of appendix G to 10 CFR part 20 is to address the various regulatory information needs for the transfer and disposal of LLRW. These informational needs, which were identified in the Statement of Consideration that accompanies the final rule (60 FR 15664) include, among others, access to

information needed for assessments to demonstrate compliance with the performance objectives in 10 CFR part 61. This includes information necessary for the States and Compacts to carry out their responsibilities. Therefore, preserving the LLRW classification requirements in appendix G to 10 CFR part 20 would minimize confusion for shippers to provide accurate information that allows the States and Compacts to carry out their responsibilities.

The NRC is assuming that changes to the Low-Level Radioactive Waste Policy Act of 1980 (as amended in 1985) will not be made to accommodate any revisions to the 10 CFR part 61 regulations. Instead, as previously noted, the NRC has developed a proposal that would implement this option without requiring changes to the Low-Level Radioactive Waste Policy Act of 1980 (as amended in 1985). If the NRC adopts these changes, the NRC could request that Congress consider legislative changes in the future.

Option 3. *Hybrid waste acceptance approach.* A third approach that the NRC considered would be to allow licensees or license applicants to develop site-specific WAC from the results of the technical analyses or from the requirements of the existing LLRW classification system. This proposed approach would still require licensees or license applicants to determine the acceptability of LLRW. In defining LLRW streams with acceptable radionuclide concentrations or activities and wasteforms, licensees or license applicants would be allowed to use either the results of the site-specific technical analyses set forth in 10 CFR 61.13, or the LLRW classification requirements in 10 CFR 61.55. Beyond the radionuclide limits and acceptable LLRW characteristics, licensees or license applicants would, as discussed previously in the site-specific waste acceptance approach, need to develop strategies for characterizing LLRW and methods to certify that LLRW meets acceptance criteria.

For licensees that choose to develop WAC based on the LLRW classification system in 10 CFR 61.55, this approach would not result in a significant additional burden to their current operating practices since they are currently using acceptance practices with essentially the



same type of criteria. Licensees typically develop these site-specific WAC from the existing 10 CFR part 61 requirements and the NRC guidance.<sup>6</sup> These licensees would still be required to demonstrate through the technical analyses set forth in 10 CFR 61.13 that they will meet the performance objectives. The required analyses may demonstrate that additional mitigation should be performed for certain LLRW streams, particularly those that were not considered in the development of the LLRW classification system.

Because the hybrid waste acceptance approach would not alter the LLRW classification requirements in 10 CFR part 61, the approach also would maintain consistency between the LLRW classification requirements in 10 CFR part 61 and the assignment of Federal and State responsibilities in the Low-Level Radioactive Waste Policy Act of 1980 (as amended in 1985), for the disposal of commercial LLRW. For instance, States may choose to permit the acceptance of LLRW designated as a Federal responsibility (e.g., greater-than-Class-C LLRW) under the Low-Level Radioactive Waste Policy Act of 1980 (as amended in 1985), if the results of the site-specific technical analyses demonstrate the LLRW would be acceptable for disposal at a specific disposal facility. Further, under the existing 10 CFR part 61 regulations, though States are responsible for disposal of LLRW with concentrations less than the upper limits for Class C, some States have exercised flexibility to further limit disposal of certain LLRW for which they are responsible at specific LLRW disposal facilities. The NRC proposes not to alter this flexibility under this proposed approach. In all cases, the regulatory authority maintains oversight of disposal, including approval of the LLRW acceptance requirements.

The NRC also considered whether licensees and license applicants should have the flexibility to consider alternative active institutional control periods to derive site-specific WAC, under both the site-specific waste acceptance and hybrid waste acceptance approaches. To allow this flexibility when developing site-specific WAC, the NRC would need to revise

---

<sup>6</sup> NRC, "Branch Technical Position on Concentration Averaging and Encapsulation," January 17, 1995, Division of Waste Management.

10 CFR 61.59 to permit licensees or license applicants to develop site-specific WAC for periods beyond 100 years.

During the original development of 10 CFR part 61, in NUREG-0782, "Draft Environmental Impact Statement (EIS) on 10 CFR Part 61 'Licensing Requirements for Land Disposal of Radioactive Waste'" (ADAMS Accession No. ML052590348), the NRC considered a range of time periods for active institutional controls but decided that 100 years is an appropriate period for determining how long the government would be able to ensure custodial care for a near-surface disposal facility. When the public commented that longer times would be appropriate, the NRC determined that, while the longevity of government may reasonably be assumed to extend beyond 100 years, the limit is tied to the possibility of bureaucratic error, which is more difficult to assess. For example, the government could, at some future date, unintentionally permit activities on the site as a result of an incomplete records search. The NRC indicated that it saw no compelling reason to abandon a 100-year institutional control period. Further, the institutional control period is a regulatory component of defense-in-depth by limiting the period of time over which oversight would need to be effective. Federal regulations for disposal of a variety of waste, including municipal and hazardous wastes, allow for a wide range of institutional control periods. International approaches for LLRW disposal vary for the period over which institutional controls are assumed to function, but generally they are limited to 300 years or less. Therefore, allowing unlimited flexibility would appear to be inconsistent with current international practice regarding the longevity of institutional controls.

Since the 100-year time duration is an integral assumption in the analyses that originally derived the radionuclide concentration limits set forth in 10 CFR 61.55, the hybrid waste acceptance approach would also need to maintain the current 100-year limit for licensees or license applicants that continue to use the LLRW classification system. The NRC maintains its earlier assessment and sees no new compelling reason to consider a revision to 10 CFR 61.59.

Therefore, the NRC proposes to maintain the 100-year limit set out in 10 CFR 61.59.

## 2. NRC proposed option.

In the proposed rule, the NRC is proposing the hybrid waste acceptance approach (Option 3) as the regulatory LLRW acceptance framework for the near-surface disposal of LLRW. The hybrid waste acceptance approach provides a framework for the use of either the generic LLRW classification system specified in 10 CFR 61.55 or the results of the technical analyses required in 10 CFR 61.13. Either approach, when combined with the other revisions recommended for this rulemaking, would provide reasonable assurance that public health and safety would be protected. The hybrid waste acceptance approach would provide a framework for determining LLRW acceptability at a disposal facility while achieving the following:

- providing flexibility to develop site-specific WAC;
- minimizing revisions to 10 CFR part 61;
- maintaining consistency with the Low-Level Radioactive Waste Policy Act of 1980

(as amended in 1985);

- limiting additional regulatory burden on licensees and license applicants;
- providing States flexibility to exercise their regulatory authority within a national

framework; and

- maintaining consistency with the range of domestic and international practices for the disposal of LLRW.

The implementation of the hybrid waste acceptance approach would require revisions to 10 CFR part 61 that allow land disposal facilities flexibility to establish site-specific WAC based either on the LLRW classification system specified in 10 CFR 61.55 or the results of the analyses required in 10 CFR 61.13 for any land disposal facility. The use of the LLRW classification system would be limited to a near surface disposal facility because the LLRW classification requirements were originally developed as technical requirements for disposal in a

near-surface LLRW disposal facility. The revisions would specify the minimum content of the WAC and the proposed 10 CFR 61.52(a)(12) would limit the disposal facility to disposing only LLRW that meet the WAC.

The revisions would also require licensees or license applicants to develop approaches and methods for generators to characterize LLRW, to certify that LLRW meets acceptance criteria in order to demonstrate compliance with the WAC, and to annually review the content and implementation of the LLRW acceptance program. Requiring licensees and license applicants to specify acceptable methods to characterize LLRW, ensures that generators appropriately characterize the LLRW and that the data are sufficient to demonstrate that the disposal facility's WAC are met. Certification requirements ensure an appropriate administrative process developed by the licensees or license applicants is used by generators to demonstrate that the WAC are met, that necessary records are maintained, and that certified LLRW is managed to maintain its certification. Resource burdens associated with administrative and recordkeeping processes used to demonstrate compliance with disposal facility's WAC requirements are further discussed in Section X, "Paperwork Reduction Act Statement," of this document and the accompanying draft regulatory analysis.

Additionally, implementation of the hybrid waste acceptance approach requires revisions to specific manifesting requirements specified in sections I, II, and III of appendix G to 10 CFR part 20 and the related guidance in NUREG/BR-0204, "Instructions for Completing NRC's Uniform Low-Level Radioactive Waste Manifest" (ADAMS Accession No. ML071870172), that provide information considered important for demonstrating compliance with the performance objectives and for States and Compacts to carry out their responsibilities under the Low-Level Radioactive Waste Policy Act of 1980 (as amended in 1985). The proposed revisions to appendix G to 10 CFR part 20 ensure that specific manifesting requirements, which were previously linked directly to the LLRW classification requirements, are revised to maintain

consistency with the proposed requirements for LLRW acceptance in 10 CFR part 61. The proposed revisions to appendix G to 10 CFR part 20 also ensure that information important for States and Compacts to carry out their responsibilities under the Low-Level Radioactive Waste Policy Act of 1980 (as amended in 1985) will continue to be reported.

## **I. What other changes are proposed?**

The NRC is proposing additional changes to the 10 CFR part 61 regulations to facilitate implementation and better align the requirements with current health and safety standards. These changes would include: 1) adding new definitions to 10 CFR 61.2, "Definitions," and updating concepts in 10 CFR 61.7; 2) implementing changes to appendix G to 10 CFR part 20, to conform to proposed LLRW acceptance requirements; 3) modifying site suitability requirements in 10 CFR 61.50, to be consistent with the proposed analyses framework; and 4) Updating the dose calculation system used in 10 CFR part 61.

### **1. Adding new definitions to 10 CFR 61.2 and updating concepts in 10 CFR 61.7.**

Currently, 10 CFR 61.2 defines common terms used in 10 CFR part 61, and 10 CFR 61.7 provides conceptual information for the disposal facility, LLRW classification and near-surface disposal, and licensing process for LLRW disposal facilities. These concepts include descriptions of: a) the parameters for near-surface disposal in engineered facilities and the layout of land and buildings necessary to carry out the disposal; b) the safety objectives for near-surface LLRW disposal, which emphasize the stability of the wasteforms and disposal sites; and c) the licensing processes that the licensees or license applicants go through during the preoperational, operational, and site closure periods.

The NRC proposes to add definitions and concepts to 10 CFR 61.2 and 10 CFR 61.7, respectively, to support the site-specific technical analyses and LLRW acceptance

requirements. These terms and concepts are needed to provide consistency and facilitate implementation of the proposed 10 CFR part 61 regulations.

The NRC is proposing to add definitions for “compliance period,” “intruder assessment,” “long-lived waste,” “performance assessment,” and “performance period” to facilitate implementation of the proposed requirements for site-specific analyses. However, one specific definition that deserves to be discussed in greater detail is “long-lived waste” because the proposed performance period analyses are only necessary for the disposal of long-lived LLRW.

The performance period analyses are designed to be completed if there is long-lived LLRW to be disposed. The proposed “long-lived waste” definition contains three components. The first component is a radionuclide that does not decay sufficiently over the compliance period. The reason the NRC is expressing this as a percentage of initial activity of a radionuclide remains after 10,000 years, instead of a half-life value such as 3,000 years as suggested by some members of the public, is to ensure that stakeholders understand that the “long-lived waste” definition is conditional on the analyses framework. The second component is a long-lived radionuclide parent that produces short-lived radionuclide progeny. The second component is designed to ensure that the analysis includes radionuclide progeny, such as those resulting from the uranium decay series. The third component is a short-lived radionuclide parent that results in long-lived radionuclide progeny. Examples would include the curium decay series or the isotope Am-241 which produces Np-237, a long-lived radionuclide that can be fairly mobile in the environment. The inventory of LLRW at the time of disposal can differ considerably from the inventory at future times. The “long-lived waste” definition is designed to take this into account.

2. Implementing changes to appendix G to 10 CFR part 20 to conform to proposed LLRW acceptance requirements.

Appendix G to 10 CFR part 20 imposes manifest requirements on shipments of LLRW consigned for disposal. The purpose of the requirements in appendix G to 10 CFR part 20 is to address various regulatory information needs for the transfer of LLRW. These information needs, which were identified in the Statement of Consideration accompanying the current regulations (60 FR 15664), include access to information needed for the analyses to demonstrate compliance with the performance objectives and that the States and Compacts believe is necessary to carry out their responsibilities. In particular, manifests for LLRW shipments must identify the LLRW classification and certify that the LLRW is "...properly classified, described, packaged, marked, and labeled...." Therefore, the NRC is proposing changes to these requirements to conform to the proposed addition of the LLRW acceptance requirements in 10 CFR 61.58.

To meet these needs, the requirements in appendix G to 10 CFR part 20 require shippers to properly classify, describe, package, mark, and label LLRW that will be transferred and is intended for disposal. Further, shippers must certify that these actions have been completed in accordance with the applicable requirements, including those in 10 CFR part 61 for LLRW classification (i.e., 10 CFR 61.55), characteristics (i.e., 10 CFR 61.56), and labeling (i.e., 10 CFR 61.57). Therefore, the NRC is also proposing to amend the regulations at appendix G to 10 CFR part 20 to conform to the flexibility afforded by the proposal to determine site-specific WAC.

Specifically, sections I.C.12 and I.D.4 of appendix G to 10 CFR part 20 currently require the shipper of LLRW consigned to a LLRW disposal facility to identify the LLRW classification per 10 CFR 61.55 and to state if it meets the structural stability requirements of 10 CFR 61.56(b) on the uniform manifest. Because the proposed revisions to 10 CFR 61.58 allow a licensee or license applicant to use the classification system to develop site-specific WAC, shipping manifest requirements related to LLRW classification will be retained so that

States and Compacts continue to receive information allowing them to carry out their responsibilities as defined by the Low-Level Radioactive Waste Policy Act of 1980 (as amended in 1985).

Information on LLRW acceptability at a disposal facility is essential to demonstrate compliance with the performance objectives. Therefore, the NRC proposes adding a requirement to section II of appendix G to 10 CFR part 20 to specify in the uniform manifest whether the LLRW being shipped to a disposal facility conforms to the facility's WAC. The addition of this requirement would also require a revision of NRC Form 541, "Uniform Low-Level Radioactive Waste Manifest—Container and Waste Description," to conform to this new requirement and the accompanying guidance NUREG/BR-0204, Rev. 2.

Further, the proposed requirements for LLRW acceptance would require revisions to the certification requirements of section II of appendix G to 10 CFR part 20. Section II requires LLRW generators, processors, or collectors to certify that the transported LLRW is properly classified. Since the proposed 10 CFR part 61 requirements would require licensees and license applicants to develop criteria for LLRW acceptability using either the existing LLRW classification system or the results of site-specific analyses, this certification requirement would be updated so that shippers are certifying that LLRW consigned to a disposal facility meets the facility's criteria for LLRW acceptability.

The proposed 10 CFR part 61 requirements for LLRW acceptability would also require revisions to section III of appendix G to 10 CFR part 20. Section III of appendix G to 10 CFR part 20 imposes requirements on the control and tracking of LLRW transferred to a disposal facility. Specifically, current sections III.A.1 through 3 and III.C.3 through 5 require the LLRW to be classified according to 10 CFR 61.55 and meet the LLRW characteristics requirements in 10 CFR 61.56. The container must be labeled with the appropriate LLRW class, and the licensee who transfers the LLRW must implement a quality assurance program to assure



compliance with 10 CFR 61.55 and 10 CFR 61.56. Since the proposed 10 CFR part 61 requirements would require licensees or license applicants to develop criteria for LLRW acceptability using either the existing LLRW classification system or the results of site-specific technical analyses, these requirements would be revised so that shippers are preparing, labeling, and providing quality assurance in accordance with the disposal facility operator's criteria for LLRW acceptability.

3. Modifying the site suitability requirements in 10 CFR 61.50 to be consistent with the proposed analyses framework.

The site suitability requirements in 10 CFR 61.50 specify the minimum characteristics a disposal site must have to be acceptable for use as a near-surface disposal facility. The primary factors considered for disposal site suitability are isolation of LLRW—which is dependent on the radiological characteristics of the LLRW—and disposal site features that ensure that the long-term performance objectives of subpart C of this part are met, as opposed to short-term convenience or benefits. The concept of site characteristics is explained in 10 CFR 61.7. Site characteristics should be considered in terms of the indefinite future, take into account the radiological characteristics of the LLRW, and be evaluated for at least a 500-year timeframe. Site characteristics and site suitability requirements play an integral role in ensuring that the site is appropriate for the type of LLRW proposed for disposal. When the site suitability requirements were originally developed, it was envisioned that LLRW would primarily contain short-lived radionuclides with low concentrations of long-lived radionuclides. The NRC developed the LLRW classification framework around this concept. However, the regulation at 10 CFR 61.55(a)(6) allows long-lived LLRW not currently listed in table 1 or 2 of 10 CFR 61.55 to be disposed in the near surface as Class A LLRW.

In the proposed revision, it is recognized that not all LLRW may decay to relatively innocuous levels within 500 years, so a technical analysis would be required to determine if site-specific restriction of disposal of LLRW is necessary. The regulation at 10 CFR 61.50 would be revised to clarify the interpretation of site characteristics. The site suitability characteristics have not been changed, but have been reorganized to distinguish the hydrological site characteristics from other characteristics. The hydrological site characteristics have been separated to clarify that for 500 years the hydrological site characteristics must be met regardless of the results of any technical analyses. Historically, most of the problems encountered in LLRW disposal resulted from water impacting the LLRW disposal system. A site that is unlikely to satisfy the hydrological site characteristics (e.g., disposal of LLRW in the zone of water table fluctuation, flooding) in the next 500 years is unlikely to be defensibly characterized and modeled. If the site cannot be defensibly characterized and modeled, the radiological risk from the disposal of LLRW cannot be reliably projected. The short-lived radionuclides that are disposed of can result in significant impacts if they are improperly managed. Therefore, the hydrological site characteristics are treated differently than the other site characteristics. After 500 years for hydrological characteristics and for all timeframes for other characteristics, it is appropriate to consider if the characteristics will limit the ability of the licensee or applicant to meet the 10 CFR part 61 subpart C performance objectives. Historically, the other characteristics have not been associated to a significant degree with problems encountered in LLRW disposal. Therefore it is anticipated that it is less likely that the other characteristics will be associated with performance issues compared to the hydrological characteristics. The proposed revisions to 10 CFR 61.50 clarify the requirements for site suitability.

4. Updating the dose calculation system used in 10 CFR part 61.

Currently, 10 CFR 61.41 requires that concentrations of radioactive material released to the general environment “not result in an annual dose exceeding an equivalent of 0.25 mSv/yr (25 mrem/yr) to the whole body, 0.75 mSv/yr (75 mrem/yr) to the thyroid, and 0.25 mSv/yr (25 mrem/yr) to any other organ of any member of the public.” The objective of modeling in a performance assessment that would be used to evaluate compliance with 10 CFR 61.41 is described in NUREG-1573, and provides estimates of doses to humans from radioactive releases from an LLRW disposal facility after it has been closed.

Currently, 10 CFR part 20 provides for the use of current NRC health physics practices for NRC licensees. In May 1991, the NRC updated 10 CFR part 20 based on a dosimetric modeling and effective dose equivalent approach described in the International Commission on Radiological Protection (ICRP) Publications 26 and 30.<sup>7</sup> In 1991, the 10 CFR part 20 standards were updated to the total effective dose equivalent (TEDE) approach, consistent with the Federal radiation protection guidance signed by the President on January 20, 1987 (56 FR 23360), for occupational exposure to implement the ICRP recommendations found in Publication 26. The current 10 CFR part 61 dose limits, and several others within the regulations, stem from a method of calculating and limiting doses that date back to the late 1950s and were based on recommendations in ICRP Publication 2.<sup>8</sup> The NRC proposes to revise the 10 CFR part 61 regulations to require licensee to use the dose calculation methodology found in ICRP Publication 26 and allow the use of more up-to-date ICRP recommendations for dosimetry modeling purposes.

The topic of using updated dosimetry has been raised before. In the matter of the NRC’s site-specific regulations for a geologic repository for high-level radioactive waste at

---

<sup>7</sup> ICRP, “Recommendations of the International Commission on Radiological Protection,” *Annals of the ICRP*, Vol. 1, No. 3, 1977, (ICRP Publication 26); ICRP, “Limits for Intakes of Radionuclides by Workers,” *Annals of the ICRP (Part 1)*, Vol. 2, Nos. 3-4, 1979, (ICRP Publication 30).

<sup>8</sup> ICRP, “Report of ICRP Committee II on Permissible Dose for Internal Radiation (1959), with Bibliography for Biological, Mathematical and Physical Data,” *Health Physics*, Vol. 3, [1959], (Reprinted in 1975 as ICRP Publication 2).

Yucca Mountain, for example, the Commission was aware of the potential for future updates to the ICRP's recommendations that might be available following promulgation of its regulations in 10 CFR part 63, "Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada." As a consequence, rather than index the site-specific regulations to a particular version of the ICRP, the Commission alternatively allowed the DOE to use "... the most current and appropriate ..." dosimetry in its performance assessment calculations, without specifying which particular version or edition of that guidance to employ. Any updated radiation and organ or tissue weighting factors, however, would need to have been incorporated by the U.S. Environmental Protection Agency (EPA) into Federal radiation protection guidance. The Commission also stated that, "Additionally, as scientific models and methodologies for estimating doses are updated, the DOE may use the most current and appropriate (e.g., those accepted by the ICRP) scientific models and methodologies to calculate the TEDE. The weighting factors used in the calculation of the TEDE must be consistent with the methodology used to perform the calculation" (74 FR 10828). The specific language in the current 10 CFR 63.102(o), "Concepts," reads, in part, as follows:

After the effective date of this regulation, the Commission may allow [a licensee] to use updated factors, which have been issued by consensus scientific organizations and incorporated by EPA [U.S. Environmental Protection Agency] into Federal radiation guidance. Additionally, as scientific models and methodologies for estimating doses are updated, [a licensee] may use the most current and appropriate (e.g., those accepted by the International Commission on Radiological Protection) scientific models and methodologies to calculate the TEDE. The weighting factors used in the calculation of TEDE must be consistent with the methodology used to perform the calculation.

The topic of using updated methodology and terminology was also addressed by the Commission in SRM-SECY-12-0064, "Recommendations for Policy and Technical Direction to Revise Radiation Protection Regulations and Guidance," dated December 17, 2012 (ADAMS Accession No. ML12352A133). The Commission approved the staff's development of the regulatory basis for a revision to 10 CFR part 20 to align with the most recent methodology and

terminology for dose assessment. The Commission further directed that appropriate steps should be undertaken to assure that conforming changes are made as soon as practical to make these methods consistent throughout all NRC regulations.

During the development of the regulatory basis that supports this rulemaking, the majority of the public commenters supported the proposal to allow licensees or license applicants the flexibility to use the latest ICRP dose methodologies in a site-specific performance assessment. However, some people questioned the value and the safety significance in removing critical organ dose limits in updating the dose limits in 10 CFR 61.41.

The benefit of updating the dose limit to an effective dose, whether it is the TEDE or a more current effective dose methodology, is that it provides a holistic and consistent evaluation of the risks of radiation, whether the worker or member of the public is exposed from external radiation, inhalation, ingestion, or some combination of these. Because an effective dose methodology compares, and more importantly, sums the doses from different organs, exposure routes, and radionuclides, an overall risk is evaluated. This was not possible with the critical organ system provided by the ICRP Publication 2. When the ICRP Publication 2 was developed, organ weighting factors were unknown. The doses to different organs, in the critical organ system, do not account for the radiosensitivity of the organ, nor did the system use the wider range of organs and tissues evaluated with modern approaches. A holistic approach provides a large benefit in LLRW disposal dose assessment because of the range of radionuclides that co-mingled within the LLRW. Each radionuclide has its own predominant exposure pathway and dose rate, depending on the manner in which a member of the public may get exposed. Without a holistic method that sums the total exposures across exposure pathways and radionuclides, a risk-informed, performance-based decision is harder to make, as the doses between scenarios or situations would not be comparable especially when one is trying to optimize the resources to provide maximum protection within the disposal system.

The critical organ dose approach was developed to limit doses from the intake of radioactive materials. In the critical organ dose approach, doses to a limited number of individual organ systems were calculated based on models of the movement of elements within the human body. For example, iodine collects mainly in the thyroid, ingested uranium provides doses largely to the bones and kidneys, ingested cesium provides doses to multiple organ systems with total body or liver being the critical organ.<sup>9</sup> However, the potential result of a dose to a specific organ was not well-known at the time. Without this radiosensitivity information, doses could not be added together to evaluate the overall risk to the individual from radionuclides present in multiple organs. In addition, any external dose was only added to the “whole body” critical organ (which is not directly comparable to the TEDE in the ICRP Publication 26 or later publications). Because of the uncertainty, limits for the public were developed that gave each of the organs equal weighting, except the thyroid (for which some data was available). In the final rule for 10 CFR part 20 (56 FR 23360), the NRC responded to comments about proposed appendix B as follows:

The former ICRP-2 “critical organ” concept based the limiting intake upon controlling the dose rate to the organ receiving the highest dose rate (the “critical organ”). The doses to organs other than the critical organ did not have to be evaluated, even if these doses [sic] were close to the estimated dose to the critical organ.

The TEDE approach, recommended in ICRP Publication 26, and subsequently updated by ICRP Publication 60 and ICRP Publication 103, uses a different approach to limiting the risk from radiation. Because more information on the risk associated with dose to specific organs exists, it is possible to calculate the overall increased risk of stochastic effects (e.g., cancer) to an individual. Each of the major organ or tissue systems and the six remaining highest organs or tissues were assigned weighting factors based on the age and gender averaged risk for each

---

<sup>9</sup> Battelle Pacific Northwest Laboratories, “Age-Specific Radiation Dose Commitment Factors for a One-Year Chronic Intake,” NUREG-0172, NRC, November 1977.

organ or tissue. The internal dose to each organ system from an intake of a radionuclide, or mixture of radionuclides, is calculated, multiplied by the appropriate weighting factor, and then the results are summed to give a risk-weighted “effective dose.” To calculate the TEDE, the external dose is added to the risk-weighted effective dose. This radiation protection system thus reflects the doses to all principal organs or tissues that are irradiated, not just the one organ that receives the highest dose, as was done in 10 CFR part 20 before 1991.

In the TEDE approach, the dose to individual organs also needs to be considered to ensure that deterministic effects do not occur. For this reason, an organ limit of 0.5 Sv (50 rem) is applied in addition to the TEDE dose limit for workers of 50 mSv (5 rem). Because the dose limit in 10 CFR part 20 for a member of the public is 50 times less than the occupational limit, the same concern for deterministic effects in organs does not occur. As noted in appendix B to 10 CFR part 20, “Annual Limits on Intake (ALIs) and Derived Air Concentrations (DACs) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sewerage,” consideration of nonstochastic effects is unnecessary at the dose levels established for members of the public because the organ dose can never reach the organ limit for the nonstochastic effects of 0.5 Sv/year (50 rem/year), without the TEDE dose being greater than the public dose limit (or any fraction of the public dose limit stated in 10 CFR 61.41). Therefore, in modifying a dose limit such as 10 CFR 61.41 to be consistent with 10 CFR part 20, organ dose limits are unnecessary. The TEDE approach protects all the organ systems and provides adequate protection to members of the public, from both individual radionuclides, as well as multiple radionuclides through all exposure routes (i.e., external, inhalation, and ingestion).

The NRC considered the following three options to revise the 10 CFR part 61 regulations to allow the use of more up-to-date ICRP recommendations for dosimetry modeling purposes:

Option 1. *No change from current approach.* The NRC considered allowing the rule to remain silent on this matter and address the issue in the accompanying LLRW performance assessment guidance.

Option 2. *Edition-specific approach.* The NRC considered requiring a dose calculation approach found in ICRP Publication 26 and specifying in the regulations which version of the ICRP the licensees or license applicants should implement in any 10 CFR part 61 license application.

Option 3. *Edition-neutral approach.* The NRC considered requiring a dose calculation approach found in ICRP Publication 26 and adopting an edition-neutral approach, to allow the use of more up-to-date ICRP recommendations, for dosimetry modeling purposes.

The NRC is proposing to adopt option 3, the edition-neutral approach, for the revision of the 10 CFR part 61 regulations, to allow the use of more up-to-date ICRP recommendations for dosimetry modeling purposes. The NRC favors this approach because it has already approved and implemented this particular type of regulatory approach in its 10 CFR part 63 regulations. As the ICRP's recommendations have historically been updated more frequently than the Commission's LLRW regulations, adopting an edition-neutral approach in the regulations would obviate the need for updating 10 CFR part 61 at some future date in response to some comparable update to Federal radiation protection guidance and the associated ICRP recommendations provided that the guidance and the ICRP recommendation continue to ensure the Agency's approach to adequate protection. Licensees would need to use the dose calculation method required in 10 CFR part 20 (currently based on ICRP Publication 26) because since 10 CFR part 61 would not refer to a specific dose calculation method the general radiation protection regulations of 10 CFR part 20 would apply.

**J. What guidance document will be available?**



The NRC is announcing for public comment a draft guidance document, “Guidance for Conducting Technical Analyses for 10 CFR Part 61,” concurrently with this proposed rule. The draft guidance document is intended to supplement existing guidance on performance assessment (e.g., NUREG-1573, “A Performance Assessment Methodology for Low-Level Radioactive Waste Disposal Facilities—Recommendations of NRC's Performance Assessment Working Group,” issued in October 2000, and NUREG-1854, “NRC Staff Guidance for Activities Related to U.S. Department of Energy Waste Determinations—Draft Report for Interim Use,” issued in August 2007) and to provide additional guidance on the new requirements that would be added to 10 CFR part 61 by this rulemaking. The draft guidance covers performance assessment topics such as source term, radionuclide transport, consideration of uncertainty, and model support. It also represents detailed guidance on conducting technical analyses, such as intruder assessment, analysis of site stability after closure of the disposal site, and a performance period analysis for the disposal site beyond the compliance period. Additionally, the document contains guidance on acceptable approaches for determining WAC based on the results of the site-specific analyses, establishing LLRW characterization methods, and implementing a certification program. The document also contains guidance on conducting risk-informed, performance-based analyses; general technical analysis considerations, such as the incorporation of features, events, and processes into performance assessments; as well as other considerations, such as setting inventory limits and mitigation techniques.

**K. Are there any cumulative effects of regulation associated with this rule?**

In the SRM to SECY-11-0032, “Consideration of the Cumulative Effects of Regulation in the Rulemaking Process” (ADAMS Accession No. ML112840466), dated October 11, 2011, the Commission provided direction to the staff on issues related to the implementation of the cumulative effects of regulation process enhancements. The concept of cumulative effects of

regulation describes the challenges that licensees, or other impacted entities (such as State partners) face while implementing new regulatory positions, programs, and requirements (e.g., rules, generic letters, backfits, or inspections). Cumulative effects of regulation is an organizational effectiveness challenge that results from a licensee or impacted entity implementing a number of complex positions, programs or requirements within a limited implementation period and with available resources (which may include limited available expertise to address a specific issue). Cumulative effects of regulation can potentially distract licensees from executing other primary duties that ensure safety or security. The NRC is specifically requesting comment on the cumulative effects of this rulemaking. In developing comments on cumulative effects of regulation, consider the following questions:

(1) In light of any current or projected cumulative effects of regulation challenges, does the proposed rule's effective date provide sufficient time to implement the new proposed requirements, including changes to programs, procedures, and the facility?

(2) If current or projected cumulative effects of regulation challenges exist, what should be done to address this situation (e.g., if more time is required to implement the new requirements, what period of time would be sufficient)?

(3) Do other (NRC or other agency) regulatory actions (e.g., orders, generic communications, license amendment requests, or inspection findings of a generic nature) influence the implementation of the proposed requirements?

(4) Are there unintended consequences? Does the proposed rule create conditions that would be contrary to the proposed rule's purpose and objectives? If so, what are the consequences and how should they be addressed?

(5) Is the cost and benefit estimate developed in the regulatory analysis sufficient?

**L. Request for additional public comments.**

The NRC is requesting public comment on the following questions:

- Is the proposed two-tier approach (a quantitative compliance period analysis, followed by a qualitative performance period analysis) appropriate?
- Should a dose limit other than 0.25 mSv (25 mrem) be applied to a performance assessment?
- Is the compliance period of 10,000 years appropriate for long-lived LLRW?
- Should there be a dose limit associated with the performance period analysis, and if so, what should that dose limit be?
- Is Compatibility Category C appropriate for 10 CFR 61.58 (i.e., the staff requires the essential objective of developing WAC, but allows a more restrictive overall approach by an Agreement State)?

#### **M. What should I consider as I prepare my comments to submit to the NRC?**

When submitting your comments, remember to:

- Identify the rulemaking with the Regulation Identified Number (RIN 3150-AI92) and NRC Docket ID (NRC-2011-0012).
- Explain why you agree or disagree with the proposed revisions, and suggest alternatives and substitute language to the proposed changes.
- Describe any assumptions and provide any technical information or data that support your comments.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline.

- The NRC is particularly interested in your comments concerning the issues raised in Section III, Discussion, of this notice. In addition, the NRC is requesting comment on the information in the following sections of this document: 1) Section VI, Agreement State Compatibility; 2) Section VII, Plain Writing; 3) Section IX, Draft Environmental Assessment and Draft Finding of No Significant Environmental Impact; 4) Section X, Paperwork Reduction Act Statement; 5) Section XI, Regulatory Analysis; and 6) Section XII, Regulatory Flexibility Certification.

#### **IV. Discussion of Proposed Amendments by Section.**

##### **Section 20.1003 Definitions.**

Section 20.1003 defines common terms used in 10 CFR part 20. The NRC is proposing to revise the term “waste” to capture waste streams resulting from the production of medical isotopes that have been permanently removed from a reactor or subcritical assembly, for which there is no further use, and the disposal of which can meet the requirements of this part, consistent with the National Defense Authorization Act for Fiscal Year 2013.

##### **10 CFR Part 20, Appendix G, Section II Certification.**

Current section II of appendix G to 10 CFR part 20, requires LLRW generators, processors, or collectors to certify that the transported LLRW is properly classified. Since 10 CFR 61.58 would require licensees to develop criteria for LLRW acceptability, using either the existing LLRW classification system or the results of site-specific technical analyses, the NRC proposes to revise the requirements in section II so that shippers are certifying that LLRW consigned to a disposal facility meets the facility’s criteria for LLRW acceptability. Section II would also be revised to enhance its readability.

## **10 CFR Part 20, Appendix G, Section III Control and Tracking.**

Current section III of appendix G to 10 CFR part 20 places requirements on the control and tracking of LLRW transferred to a disposal facility. Current sections III.A and III.C only require the LLRW to be classified according to 10 CFR 61.55 and meet the LLRW characteristic requirements in 10 CFR 61.56, and does not provide requirements for compliance with the WAC of the proposed 10 CFR 61.58. Since the amended rule would require site-specific technical analyses, and then have LLRW disposal licensees to develop criteria for LLRW acceptability using either the existing LLRW classification system or the results of site-specific technical analyses, the NRC proposes to revise the requirements in sections III.A.1, III.A.2, III.A.3, III.C.3, III.C.4, and III.C.5, to ensure that shippers prepare, label, and provide quality assurance in accordance with the disposal facility operator's criteria for LLRW acceptability, if applicable.

### **Section 61.2 Definitions.**

Section 61.2 defines common terms used in 10 CFR part 61. The NRC is proposing to make the following revisions: 1) revise the definitions of "site closure and stabilization" and "stability" to correct misspellings; 2) revise the definition of "inadvertent intruder" to include the phrase "reasonably foreseeable" to limit speculation of the analyses; and 3) revise the term "waste" to capture waste streams resulting from the production of medical isotopes that have been permanently removed from a reactor or subcritical assembly, for which there is no further use, and the disposal of which can meet the requirements of this part, consistent with the National Defense Authorization Act for Fiscal Year 2013. The NRC is also proposing to add definitions for "compliance period," "intruder assessment," "long-lived waste," "performance assessment," and "performance period" to facilitate implementation of the proposed requirements for site-specific analyses. For more information on "compliance period," "intruder assessment," "long-lived waste," and "performance assessment" see Section III, Discussion, of this notice.

## **Section 61.7 Concepts.**

Current 10 CFR 61.7 provides conceptual information for the licensing of a disposal facility, the LLRW classification system, and near-surface disposal. Paragraph 61.7(a) describes the parameters for near-surface LLRW disposal in engineered facilities and the layout of land and buildings necessary to carry out the disposal. Paragraph 61.7(b) describes the safety objectives for near-surface LLRW disposal and emphasizes the stability of the wasteforms and disposal sites. Paragraph 61.7(c) describes the licensing processes that the applicant and licensee must complete during the preoperational, operational, and site closure periods.

The NRC proposes to revise 10 CFR 61.7(a)(1) and 10 CFR 61.7(a)(2) to enhance its readability. An additional sentence would be added to clarify that the additional technical criteria may be developed on a case-by-case basis for land disposal techniques that are not explicitly considered in 10 CFR part 61.

The NRC proposes to redesignate paragraphs (b) and (c) as paragraphs (e) and (f). The NRC proposes to revise redesignated paragraphs (e) and (f) to enhance the readability of these paragraphs. Additionally, paragraph (e) would be revised to clarify that the effective life of these intruder barriers should be at least 500 years and an additional sentence would be added to clarify that the disposal of LLRW above the Class C limit will be evaluated on a case-by-case basis with the technical analyses required in 10 CFR 61.13. Also paragraph (e) would provide conceptual information on the requirement for enhanced controls or limitations at a particular LLRW disposal facility to provide reasonable assurance that the LLRW will not present an unacceptable risk over the compliance period.

The NRC proposes to add new paragraphs (b), (c), (d), and (g) to 10 CFR 61.7. Proposed 10 CFR 61.7(b) would describe the performance objectives of the 10 CFR part 61 regulations. Proposed 10 CFR 61.7(c) would provide conceptual information for demonstrating

compliance with the performance objectives of the technical analyses, which include performance assessment and intruder assessment. Proposed 10 CFR 61.7(d) would provide conceptual information for demonstrating compliance with the performance objectives through a determination of criteria for the acceptance of LLRW. Proposed 10 CFR 61.7(g) would provide conceptual information on the requirement for the use of dose methodology that is consistent with those set forth in 10 CFR part 20. Proposed 10 CFR 61.7(g) would also describe the flexibility of the licensees' ability to consistently use the latest dose methodology to demonstrate compliance with the performance objectives.

#### **Section 61.8 Information collection requirements: OMB approval.**

Current 10 CFR 61.8 (b) lists sections that contain the approved information collection requirements in 10 CFR Part 61.

The NRC proposes to revise 10 CFR 61.8(b) to include 10 CFR 61.41 and 61.42.

#### **Section 61.12 Specific technical information.**

Current 10 CFR 61.12 lists specific technical information that must be included in an application for a 10 CFR part 61 disposal facility license. This information is needed to demonstrate that the performance objectives of 10 CFR part 61, subpart C, and the applicable technical requirements of 10 CFR part 61, subpart D, "Technical requirements for land disposal facilities," would be met. The specific technical information includes a description of natural and demographic disposal site characteristics as determined by disposal site selection and characterization activities.

The NRC proposes to revise the introductory text of this section to enhance its readability. The NRC also proposes to revise 10 CFR 61.12(a) to include geochemistry and geomorphology in the description of the natural and demographic disposal site characteristics.

Geochemical and geomorphological characteristics need to be included in the description because they play a role in the transportation of long-lived radionuclides and the long-term erosion of the disposal site, respectively. Paragraphs 61.12(e) and (g) would be revised to enhance the readability of these sections. Proposed 10 CFR 61.12(i) would require applicants to include the criteria for acceptance of LLRW for disposal, and 10 CFR 61.12(j) would require applicants to include the development of technical analyses to the description of the quality assurance program.

### **Section 61.13 Technical analyses.**

Current 10 CFR 61.13 lists technical information that must be included in an application for a 10 CFR part 61 disposal facility license to demonstrate that the performance objectives of subpart C of 10 CFR part 61 would be met.

Current 10 CFR 61.13 does not indicate how existing licensees would be captured in the requirements to conduct the 10 CFR 61.13 site-specific technical analyses. The NRC proposes to revise 10 CFR 61.13 to clarify that licensees must conduct the analyses set forth in 10 CFR 61.13 to demonstrate that the performance objectives of subpart C will be met. Licensees with licenses for land disposal facilities in effect on the effective date of this subpart must submit these analyses at the next license renewal or within 5 years of the effective date of this subpart, whichever comes first. Current 10 CFR 61.13(a) does not require considerations of features, events, and processes that can influence the ability of the LLRW disposal facility to limit the releases of radioactivity to the environment; these features, events, and processes are important elements of a performance assessment. The NRC proposes to revise 10 CFR 61.13(a) to require a license applicant to prepare a performance assessment.

Current 10 CFR 61.13(b) requires an applicant to prepare analyses that demonstrate there is reasonable assurance an applicant will meet the LLRW classification and segregation



requirements and that it will provide adequate barriers to inadvertent intrusion. The NRC proposes to revise 10 CFR 61.13(b) to require a site-specific intruder assessment to demonstrate the protection of inadvertent intruders. The NRC is also proposing to add a dose limit to 10 CFR 61.42(a), which would apply to this analysis. The NRC also proposes to revise the term “analyses of the protection of individuals from inadvertent intrusion” to “inadvertent intruder analyses.” This paragraph would also be revised to enhance its readability.

The NRC proposes to add a new paragraph (e) to 10 CFR 61.13 to require licensees and applicants to prepare performance period analyses that assess how the disposal facility and site characteristics limit the potential long-term radiological impacts, consistent with available data and current scientific understanding. The analyses would be required for LLRW disposal facilities with long-lived LLRW that contains radionuclides with average concentrations exceeding the values listed in proposed table A of 10 CFR 61.13(e), or if necessitated by site-specific conditions. The analyses would identify and describe the features of the design and site characteristics that will demonstrate that the performance objectives set forth in 10 CFR 61.41(b) and 10 CFR 61.42(b) will be met. The NRC also proposes to include table A in this paragraph to facilitate the implementation of this requirement. Finally, in order to allow licensees sufficient time to conduct the required analyses, the analyses would be required to be submitted at the next license renewal or within 5 years of the effective date of the final rule, whichever comes first.

### **Section 61.23 Standards for issuance of a license.**

Current 10 CFR 61.23 lists standards that must be met for the Commission to issue a license for receipt, possession, and disposal of LLRW containing or contaminated with source, special nuclear, or byproduct material.

The NRC proposes to revise 10 CFR 61.23(b), (c), (d), and (e) to require licensees to include the proposed WAC in the list of standards for issuance of a license.

#### **Section 61.25 Changes.**

Current 10 CFR 61.25 provides restrictions on the licensee to make changes in the LLRW disposal facility procedures described in the license application.

The NRC proposes to revise 10 CFR 61.25(a) to correct a misspelling, and 10 CFR 61.25(b) to include a provision restricting changes to the WAC.

#### **Section 61.28 Contents of application for closure.**

Current 10 CFR 61.28 lists items that must be included in an application for closure. These items include 1) a requirement for a final revision and specific details of the disposal site closure plan, and 2) an environmental (or a supplemental) report.

Proposed revisions to 10 CFR 61.28(a)(2) would require licensees to provide an updated site-specific technical analysis using the details of the final closure plan and LLRW inventory as would be required in the proposed revisions in 10 CFR 61.13. Under current 10 CFR 61.28(c), which is not being amended by this rulemaking, the NRC can only authorize closure of the LLRW disposal facility if there is reasonable assurance that the long-term performance objectives of subpart C will be met. As a result of the proposed revision to 10 CFR 61.28(a)(2), licensees may be required to take additional action prior to closure to ensure that the LLRW that has already been disposed, including large quantities of depleted uranium and other LLRW streams that were not analyzed in the original 10 CFR Part 61 regulatory basis, will meet the long-term performance objectives of subpart C.

#### **Section 61.41 Protection of the general population from releases of radioactivity.**

Current 10 CFR 61.41 specifies a dose limit (organ and whole body equivalent) for protection of the general population from the releases of radioactivity and requires licensees to exercise reasonable effort to keep all doses ALARA.

The NRC proposes to revise 10 CFR 61.41 by adding paragraphs (a) and (b). Proposed 10 CFR 61.41(a) would retain the dose limits and the ALARA concept, and would be updated to use a dose methodology that is consistent with the dose methodology used in 10 CFR part 20. Compliance with the proposed 10 CFR 61.41(a) would be demonstrated through analyses that meet the requirements specified in the proposed 10 CFR 61.13(a).

Proposed 10 CFR 61.41(b) would require that the licensee make an effort to minimize releases of radioactivity from a disposal facility to the general environment to the extent reasonably achievable at any time during the performance period. Compliance with the proposed 10 CFR 61.41(b) would be demonstrated through analyses that meet the requirements specified in the proposed 10 CFR 61.13(e).

#### **Section 61.42 Protection of inadvertent intruders.**

Current 10 CFR 61.42 requires the facility to be designed, operated, and closed to ensure the protection of any inadvertent intruder after the lifting of institutional controls.

The NRC proposes to revise 10 CFR 61.42 by adding paragraphs (a) and (b). Proposed 10 CFR 61.42(a) would retain the current regulatory language and would be updated to add an annual dose limit of 5 mSv/yr (500 mrem/yr) for the intruder assessment. Compliance with the proposed 10 CFR 61.42(a) paragraph would be demonstrated through analyses that meet the requirements specified in the proposed 10 CFR 61.13(b).

Proposed 10 CFR 61.42(b) would require that the licensee make an effort to minimize exposures to any inadvertent intruder to the extent reasonably achievable at any time during the

performance period. Compliance with the proposed 10 CFR 61.42(b) would be demonstrated through analyses that meet the requirements specified in the proposed 10 CFR 61.13(e).

#### **Section 61.50 Disposal site suitability requirements for land disposal.**

Current 10 CFR 61.50 specifies site suitability requirements for the minimum characteristics a disposal site must have to be acceptable for use as a near-surface LLRW disposal facility. Site suitability requirements play an integral role in ensuring that the site is appropriate for the type of LLRW proposed for disposal.

The NRC proposes to revise 10 CFR 61.50 to clarify the interpretation of site characteristics. The technical content of the site suitability characteristics would not be changed. However, the site suitability characteristics would be reorganized to distinguish the hydrological site characteristics from other characteristics.

#### **Section 61.52 Land disposal facility operation and disposal site closure.**

Current 10 CFR 61.52 imposes requirements to ensure the integrity of the LLRW, the proper marking of the disposal unit boundary, and the proper maintenance of the buffer zone.

The NRC proposes to revise 10 CFR 61.52(a)(3) and (a)(8) to enhance its readability and to conform to the proposed new requirements in 10 CFR 61.52(a)(12) and (a)(13).

The NRC proposes to add new paragraphs (a)(12) and (a)(13). Proposed 10 CFR 61.52(a)(12) would only allow the disposal of LLRW meeting the disposal facility's LLRW acceptance criteria, and proposed 10 CFR 61.52(a)(13) would require licensees to prepare updated site-specific analyses using the details of the final closure plan and LLRW inventory.

#### **Section 61.55 Waste classification.**

The NRC proposes to revise 10 CFR 61.55(a)(6) to enhance its readability. The change would not alter the meaning or intent of this regulation.

#### **Section 61.56 Waste characteristics.**

Currently, 10 CFR 61.56(a) lists minimum requirements for all classes of LLRW, intended to facilitate handling at the disposal site and provide protection of health and safety of personnel at the disposal site.

The NRC proposes to revise 10 CFR 61.56(a) to replace the phrase “all classes of wastes” with the phrase “all waste” which includes all classes of LLRW and WAC.

#### **Section 61.57 Labeling.**

Currently, 10 CFR 61.57 requires the listing of LLRW class in accordance with 10 CFR 61.55 and does not reference the proposed WAC.

The NRC proposes to revise 10 CFR 61.57 to include any information required by the land disposal facility’s criteria for LLRW acceptance developed according to 10 CFR 61.58.

#### **Section 61.58 Waste acceptance.**

Current 10 CFR 61.58 grants exemptions for the classification and characterization of LLRW, on a case-by-case basis, if the Commission finds reasonable assurance of compliance with the performance objectives. In the proposed rule, the alternative requirements in 10 CFR 61.58 would be replaced by the proposed LLRW acceptance requirements.

The NRC proposes to retitle and revise 10 CFR 61.58 to specify the minimum content of the WAC and require disposal facility licensees to develop approaches for generators to characterize LLRW and methods for generators to certify that such LLRW meets the acceptance criteria for demonstration compliance with the site-specific WAC. Proposed

10 CFR 61.58 would also require licensees to annually review their LLRW acceptance plan and to comply with 10 CFR 61.20 when modifying their approved WAC. Additionally, the new regulatory language would indicate that the NRC would incorporate, where consistent with State and Federal law, the WAC into existing licenses.

### **Section 61.80 Maintenance of records, reports, and transfers.**

Currently, 10 CFR 61.80 requires the licensee to keep records on the LLRW received for disposal, to provide annual reports of site and financial activities, and to comply with specified provisions of 10 CFR parts 30, 40, and 70 for any transfer by the licensee of byproduct, source, or special nuclear material.

The NRC proposes to restructure 10 CFR 61.80(i)(2) to meet codification requirements of the Office of the Federal Register. In 10 CFR 61.80(i)(1), the erroneous reference to 10 CFR 60.4 would be corrected to reference 10 CFR 61.4.

The NRC also proposes to add a new paragraph (m) to 10 CFR 61.80. This addition would require licensees and license applicants to maintain their provisions for LLRW acceptance and audits and other reviews of program content and implementation.

### **V. Criminal Penalties.**

For the purpose of Section 223 of the AEA, the NRC is proposing to amend 10 CFR part 61 under one or more of sections 161b., 161i., or 161o. of the AEA. Willful violations of the rule would be subject to criminal enforcement.

## **VI. Agreement State Compatibility.**

Under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the *Federal Register* (62 FR 46517; September 3, 1997), this proposed rule would be a matter of compatibility between the NRC and the Agreement States, which would ensure consistency between the Agreement State requirements and the NRC requirements. The NRC staff analyzed the proposed rule in accordance with the procedure established in Part III, “Categorization Process for NRC Program Elements,” of the Handbook for Management Directive 5.9, “Adequacy and Compatibility of Agreement State Programs” (see <http://www.nrc.gov/reading-rm/doc-collections/management-directives/>).

The NRC program elements (including regulations) are placed into four compatibility categories (see the proposed compatibility table in this section). In addition, the NRC program elements can be identified as having particular health and safety significance or as being reserved solely to the NRC. Compatibility Category A applies to those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Compatibility Category A program elements in an essentially identical manner to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B includes those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Compatibility Category B program elements in an essentially identical manner. Compatibility Category C includes those program elements that do not meet the criteria of Compatibility Categories A or B, but reflect essential objectives that an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. An Agreement State should adopt the essential objectives of the Compatibility Category

C program elements. Compatibility Category D applies to those program elements that do not meet any of the criteria of Compatibility Categories A, B, or C and, thus, do not need to be adopted by Agreement States for compatibility.

Health and Safety (H&S) program elements are elements that are not required for compatibility, but are identified as having a particular health and safety role (i.e., adequacy) in the regulation of agreement material within the State. Although not required for compatibility, the State should adopt program elements in this H&S category based on those elements that embody the essential objectives of the NRC program elements because of particular health and safety considerations. Compatibility Category NRC contains those program elements that address areas of regulation that cannot be relinquished to Agreement States under the Atomic Energy Act or 10 CFR. These program elements are not adopted by Agreement States.

Proposed definition “compliance period” and “performance period” in 10 CFR 61.2 would be assigned to Compatibility Category C. The NRC believes the essential objectives of this definition need to be adopted to ensure consistent application of 10 CFR 61.41 and 10 CFR 61.42. Proposed definition of “long-lived waste” in 10 CFR 61.2 would be assigned to Compatibility Category B because inconsistent definitions of this term could have direct and significant effects in multiple jurisdictions. Proposed definition of “intruder assessment” and “performance assessment” in 10 CFR 61.2 would be assigned to Compatibility Category H&S. The NRC believes that the H&S compatibility designation of these definitions is appropriate to support paragraphs 61.13(a) and 61.13(b). The compatibility category of other amended definitions in 10 CFR 61.2 would remain unchanged.

Paragraphs 61.7(c)(1), (c)(2), (c)(4), (c)(5), (d), (e)(4), and (g) would be assigned to Compatibility Category H&S. The compatibility category of other amended paragraphs in 10 CFR 61.7 would remain unchanged.



Section 61.12 in its entirety would be reassigned from Compatibility Category D to Compatibility Category H&S. The NRC believes that all the requirements in 10 CFR 61.12 should be designated as Compatibility Category H&S to support 10 CFR 61.41(a) and 10 CFR 61.42(a). The NRC believes that the absence of these provisions could create a situation that could result in individual exposures that exceed the basic radiation protection standards of 10 CFR 61.41(a) and 10 CFR 61.42(a).

Section 61.13, in its entirety, would be reassigned from Compatibility Category H&S to Compatibility Category C. The NRC believes the essential objectives of this definition need to be adopted to ensure consistent application of 10 CFR 61.41 and 10 CFR 61.42.

Sections 61.41 and 61.42 currently exist as single paragraphs. The NRC is proposing to separate each of these sections into two paragraphs, assigned as paragraph (a) and paragraph (b). The NRC is proposing to retain the existing compatibility level of Category A for paragraph 61.41(a) because this paragraph provides a basic radiation protection standard. Paragraph 61.41(b) would be assigned to Compatibility Category C because the NRC believes that the Agreement States need to adopt the essential objectives of this paragraph.

Similarly, the NRC is proposing to designate paragraph 61.42(a) as Compatibility Category A (instead of Compatibility Category H&S, which is the current compatibility level for 10 CFR 61.42) because of the prescribed annual dose limit of 5 mSv (500 mrem) for the protection of an inadvertent intruder. Paragraph 61.42(b) would be assigned to Compatibility Category C because the NRC also believes that the essential objectives of this paragraph need to be adopted by the Agreement States.

Sections 61.52(a)(12) and (a)(13) would be assigned to Compatibility Category H&S. The compatibility categories of 10 CFR 61.52(a)(3) and (a)(8) would remain unchanged.

At present, only one of the four Agreement States that has an operating near-surface LLRW disposal facility has adopted a corresponding regulation to 10 CFR 61.58. Currently,

Agreement States are not required to adopt 10 CFR 61.58, therefore, the compatibility designation for this section must be changed in order to require Agreement States to adopt an alternative provision for LLRW classification and characteristics. Thus, the NRC is retitling, revising and reclassifying the compatibility for 10 CFR 61.58. Section 61.58 would be assigned to Compatibility Category C because the LLRW acceptance characterization will be site specific. As a Compatibility Category C designation, the Agreement State would have to adopt all the essential objectives of the section but could also impose more stringent requirements, including a requirement that LLRW acceptance criteria be developed based on the classification tables only.

Sections 61.80(m) would be assigned to Compatibility Category C. The compatibility category of 10 CFR 61.80(i)(1) and (i)(2) would remain unchanged.

The compatibility categories of the remaining sections (10 CFR 20.1003; appendix G to 10 CFR part 20, sections II and III; and 10 CFR 61.8, 61.23, 61.28, 61.50, 61.55, 61.56, and 61.57) would remain unchanged.

The NRC invites comment on the compatibility category designations in this proposed rule and suggests that commenters refer to the Handbook for NRC Management Directive 5.9 for more information. Comments on the proposed compatibility categories need to be received by the end of the public comment period.

The following table lists the parts and sections that would be revised and their corresponding categorization under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs.”

**Proposed Compatibility Table for 10 CFR Part 20, Appendix G**

10 CFR Part 20, Appendix G Proposed Rule Section	Change	Subject	Compatibility	
			Existing	New

20.1003	Amend	Definition Waste.	B	B
II	Amend	Certification.	D	D
III.A	Amend	Control and Tracking.	D	D
III.C	Amend	Control and Tracking.	D	D

**Proposed Compatibility Table for 10 CFR Part 61**

10 CFR Part 61 Proposed Rule Section	Change	Subject	Compatibility	
			Existing	New
61.2	New	Definition-Compliance period.	-	C
61.2	Amend	Definition-Inadvertent intruder.	C	C
61.2	New	Definition-Intruder assessment.	-	H&S
61.2	New	Definition-Long-lived waste.	-	B
61.2	New	Definition-Performance assessment.	-	H&S
61.2	New	Definition-Performance period.	-	C
61.2	Amend	Definition-Site closure and stabilization.	D	D
61.2	Amend	Definition-Stability.	D	D
61.2	Amend	Definition-Waste.	B	B
61.7(a)(1)	Amend	Concepts.	H&S	H&S
61.7(a)(2)	Amend	Concepts.	H&S	H&S
61.7(b)	Amend	Concepts. (Previously 61.7(b)(1))	H&S	H&S
61.7(c)(1)	New	Concepts.	-	H&S
61.7(c)(2)	New	Concepts.	-	H&S
61.7(c)(3)	Amend	Concepts. (Previously 61.7(b)(3))	H&S	H&S
61.7(c)(4)	New	Concepts.	-	H&S
61.7(c)(5)	New	Concepts.	-	H&S
61.7(d)	New	Concepts.	-	H&S
61.7(e)(1)	Amend	Concepts. (Previously 61.7(b)(2))	H&S	H&S
61.7(e)(2)	Amend	Concepts. (Previously 61.7(b)(4))	H&S	H&S
61.7(e)(3)	Amend	Concepts. (Previously 61.7(b)(5))	H&S	H&S
61.7(e)(4)	New	Concepts.	-	H&S
61.7(f)(1)	Amend	Concepts. (Previously 61.7(c)(1))	H&S	H&S
61.7(f)(2)	Amend	Concepts. (Previously 61.7(c)(2))	H&S	H&S
61.7(f)(3)	Amend	Concepts. (Previously 61.7(c)(3))	H&S	H&S
61.7(f)(4)	Amend	Concepts. (Previously 61.7(c)(4))	H&S	H&S
61.7(g)	New	Concepts.	-	H&S
61.8	Amend	Information collection requirements: OMB approval	D	D
61.12(a)	Amend/ Revised Compatibility Category	Specific technical information.	D	H&S

61.12(b)	Revised Compatibility Category	Specific technical information.	D	H&S
61.12(c)	Revised Compatibility Category	Specific technical information.	D	H&S
61.12(d)	Revised Compatibility Category	Specific technical information.	D	H&S
61.12(e)	Amend/Revised Compatibility Category	Specific technical information.	D	H&S
61.12(f)	Revised Compatibility Category	Specific technical information.	D	H&S
61.12(g)	Amend/Revised Compatibility Category	Specific technical information.	D	H&S
61.12(h)	Revised Compatibility Category	Specific technical information.	D	H&S
61.12(i)	Amend/Revised Compatibility Category	Specific technical information.	D	H&S
61.12(j)	Amend/Revised Compatibility Category	Specific technical information.	D	H&S
61.12(k)	Revised Compatibility Category	Specific technical information.	D	H&S
61.12(l)	Revised Compatibility Category	Specific technical information.	D	H&S
61.12(m)	Revised Compatibility Category	Specific technical information.	D	H&S
61.12(n)	Revised Compatibility Category	Specific technical information.	D	H&S
61.13(a)	Amend/Revised Compatibility	Technical analyses.	H&S	C

	Category			
61.13(b)	Amend/ Revised Compatibility Category	Technical analyses.	H&S	C
61.13(c)	Amend/ Revised Compatibility Category	Technical analyses.	H&S	C
61.13(d)	Amend/ Revised Compatibility Category	Technical analyses.	H&S	C
61.13(e)	New	Technical analyses.	-	C
61.23(b)	Amend	Standards for issuance of a license.	H&S	H&S
61.23(c)	Amend	Standards for issuance of a license.	H&S	H&S
61.23(d)	Amend	Standards for issuance of a license.	H&S	H&S
61.23(e)	Amend	Standards for issuance of a license.	H&S	H&S
61.25(a)	Amend	Changes.	D	D
61.25(b)	Amend	Changes.	D	D
61.28(a)(2)	Amend	Contents of application closure.	D	D
61.41(a)	Amend	Protection of the general population from releases of radioactivity.	A	A
61.41(b)	New	Protection of the general population from releases of radioactivity.	-	C
61.42(a)	Amend	Protection of individuals from inadvertent intrusion.	H&S	A
61.42(b)	New	Protection of individuals from inadvertent intrusion.	-	C
61.50	Amend	Disposal site suitability requirements for land disposal.	H&S	H&S
61.52(a)(3)	Amend	Land disposal facility operation and disposal site closure.	H&S	H&S
61.52(a)(8)	Amend	Land disposal facility operation and disposal site closure.	H&S	H&S
61.52(a)(12)	New	Land disposal facility operation and disposal site closure.	-	H&S
61.52(a)(13)	New	Land disposal facility operation and disposal site closure.	-	H&S
61.55(a)(6)	Amend	Waste classification.	B	B
61.56(a)	Amend	Waste characteristics.	H&S	H&S

61.57	Amend	Labeling.	H&S	H&S
61.58	Retitled, revised and Revised Compatibility Category	Waste acceptance (Previously titled Alternative requirements for waste classification and characteristics)	D	C
61.80(i)(1)	Amend	Maintenance of records, reports, and transfers.	C	C
61.80(i)(2)	Amend	Maintenance of records, reports, and transfers.	C	C
61.80(m)	New	Maintenance of records, reports, and transfers.	-	C

### **VII. Plain Writing.**

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to the clarity and effectiveness of the language used.

### **VIII. Voluntary Consensus Standards.**

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC is proposing to amend its regulations that govern LLRW disposal facilities to require new and revised site-specific technical analyses and to permit the development of criteria for LLRW acceptance based on the

results of these analyses. These amendments would ensure that LLRW streams that are significantly different from those considered in the regulatory basis for the current regulations can be disposed of safely and meet the performance objectives for land disposal of LLRW. These amendments would also increase the use of site-specific information to ensure public health and safety is protected. Additionally, the NRC is also proposing amendments to facilitate implementation and better align the requirements with current health and safety standards. The NRC is not aware of any voluntary consensus standards that address the proposed subject matter of this proposed rule. The NRC will consider using a voluntary consensus standard if an appropriate standard is identified. If a voluntary consensus standard is identified for consideration, the submittal should explain why the standard should be used.

#### **IX. Draft Environmental Assessment and Draft Finding of No Significant Impact.**

##### **A. The Proposed Action and the Need for the Proposed Action.**

The proposed action is to amend some of the requirements in 10 CFR part 61. The NRC is proposing to amend its regulations that apply to LLRW disposal facilities to require new and revised site-specific technical analyses and to permit the development of criteria for LLRW acceptance based on the results of these analyses. These amendments would ensure that LLRW streams that are significantly different from those considered in the regulatory basis for the current regulations can be disposed of safely and meet the performance objectives for land disposal of LLRW. These amendments would also increase the use of site-specific information to ensure public health and safety is protected. These amendments would revise the existing technical analysis for protection of the general population (i.e., performance assessment) to include a 10,000-year compliance period; add a new site-specific technical analysis for the protection of inadvertent intruders (i.e., intruder assessment) that would include a 10,000-year

compliance period and a dose limit; add a new analysis for certain long-lived LLRW (i.e., performance period analysis) that would include a post-10,000 year performance period; and revise the application for closure to include updates to the technical analyses. The NRC would also be adding a new requirement to develop criteria for the acceptance of LLRW for disposal based on either the results of these technical analyses or the existing LLRW classification requirements. Additionally, the NRC is proposing amendments to facilitate implementation and better align the requirements with current health and safety standards.

#### B. Environmental Impact of the Proposed Action.

The proposed action is to amend parts of 10 CFR part 61. The proposed rulemaking would modify the analyses that licensees need to perform to demonstrate compliance with the subpart C performance objectives and to permit the development of criteria for LLRW acceptance based on the results of these analyses. These amendments would not authorize the construction of LLRW disposal facilities and do not authorize the disposal of additional LLRW in existing facilities. Licensees and applicants would need to request and receive separate regulatory approval before conducting these activities. The proposed action would require existing licensees to perform updated and new analyses and to develop criteria for LLRW acceptance based on the existing LLRW classification tables or the results of these analyses, prior to disposal and before the closure of a facility to confirm that the subpart C performance objectives would be met. Applicants for new facilities will be required to perform these site-specific technical analyses and to develop criteria for LLRW acceptance based on the results of these analyses, as part of their license application. Consequently, the NRC has determined that the proposed action would result in no significant environmental impacts.

#### C. Alternatives to the Proposed Action.



As an alternative to the proposed action, the NRC staff considered the “no-action” alternative. Under this alternative, the NRC would not modify 10 CFR part 61, no performance period analyses would be required, no period of compliance would be specified, no intruder assessment would be required, and development of waste acceptance plan would not be required. However, requiring new and revised site-specific technical analyses to demonstrate compliance with the subpart C performance objectives and development of LLRW acceptance criteria for LLRW acceptance would ensure the safe disposal of LLRW and would provide assurance that LLRW streams not considered in the original 10 CFR part 61 regulatory basis comply with the subpart C performance objectives. Further, these analyses would identify any additional measures that would be prudent to implement, and these amendments would improve the efficiency of the regulations by making changes to facilitate implementation and better align the requirements with current health and safety standards. Not taking the proposed action would not provide the added assurance that disposal of the LLRW streams not considered in the original 10 CFR part 61 regulatory basis comply with the subpart C performance objectives. Therefore, the NRC has decided to reject the no-action alternative and publish the proposed rule for public comment.

#### D. Alternative Use of Resources.

This action would not result in any irreversible commitments of resources.

#### E. Agencies and Persons Contacted and Resources Used.

The NRC sent a copy of this proposed rule containing this draft environmental assessment and the proposed rule to all State Liaison Officers and requested their comments on the assessment. Aside from those sources referenced in this notice, the NRC staff did not

use any additional sources and did not contact any additional persons or agencies to develop this environmental assessment.

#### F. Draft Finding of No Significant Impact.

The Commission has preliminarily determined under the National Environmental Policy Act and the Commission's regulations in subpart A, "National Environmental Policy Act—Regulations Implementing Section 102(2)," of 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," that the proposed amendments to 10 CFR part 61 described in this document would not be a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement would not be required. The amendments would require LLRW disposal facility licensees and license applicants to conduct new and updated site-specific technical analyses to demonstrate compliance with the performance objectives in 10 CFR part 61 and develop criteria for LLRW acceptance based on the results of these analyses, which would ensure the safe disposal of LLRW. The amendments would also make additional changes to the regulations to facilitate implementation and better align the requirements with current health and safety standards. The amendments would be primarily procedural and administrative in nature and would have no significant impact on the quality of the human environment.

The preliminary determination of this draft environmental assessment is that there would be no significant impact to the quality of the human environment from this proposed action. The NRC is, however, seeking public comment on this draft environmental assessment and draft finding of no significant impact. Comments on the draft environmental assessment and draft finding of no significant impact may be submitted to the NRC by any of the methods provided in the ADDRESSES section of this document.

## **X. Paperwork Reduction Act Statement.**

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget (OMB) for review and approval of the information collection requirements.

Type of submission, new or revision: Revision.

The title of the information collection: 10 CFR Parts 20 and 61, "Low Level Radioactive Waste Disposal."

The form number if applicable: NRC Forms 540 and 541.

How often the collection is required: On occasion.

Who will be required or asked to report: Current and future LLRW disposal facilities that are regulated by the NRC or an Agreement State.

An estimate of the number of annual responses: 0.

The estimated number of annual respondents: 0.

An estimate of the total number of hours needed annually to complete the requirement or request: New applicants and current LLRW disposal facility licensees seeking to amend their licenses to address the requirements in these amendments will incur a reporting burden to submit performance period analyses, compliance period analyses, and LLRW acceptance plans

beginning approximately 4 years from publication of the final rule. The estimated one-time reporting burden per licensee to perform these analyses is 23,976 hours. An additional 80 hours of annual recordkeeping per licensee would be required once its LLRW acceptance plan has been submitted. However, the NRC does not expect to receive any license applications or license closure applications within the OMB information collection period of 3 years following publication of the final rule, and no current licensees are anticipated to amend their licenses within the information collection period; therefore, there is no estimated annual burden (0 hours) for the next 3 years.

Abstract: The NRC is proposing to amend its regulations to require LLRW disposal facilities to conduct site-specific technical analyses to demonstrate compliance with the performance objectives of 10 CFR Part 61. The intent of the rule is to ensure performance objectives are met at disposal sites for safe disposal of LLRW that was not analyzed in the original 10 CFR part 61 regulatory basis (i.e., large quantities of depleted uranium). The site-specific technical analyses would include compliance period analyses with both a performance assessment and an intruder assessment, performance period analyses to evaluate how the disposal system could mitigate the risk from long-lived LLRW, and an LLRW acceptance plan identifying the WAC for the disposal facility. In addition, licensees must review their LLRW acceptance plan annually and update analyses as part of the application for closure.

NRC Forms 540 and 541 would be updated to allow licensees to indicate the use of LLRW acceptance criteria.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule (or proposed policy statement) and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

The public may examine and have copied for a fee publicly available documents, including the draft supporting statement at the NRC's Public Document Room, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB information collection requests are available at the NRC's Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC's page for 60 days after the signature date of this notice.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by **(INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER)** to the Information Services Branch (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to [INFOCOLLECTS.RESOURCE@NRC.GOV](mailto:INFOCOLLECTS.RESOURCE@NRC.GOV) and to the Desk Officer, Chad Whiteman, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0135, 3150-0164, and 3150-0166), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Comments can also be e-mailed to [Chad\\_S\\_Whiteman@omb.eop.gov](mailto:Chad_S_Whiteman@omb.eop.gov) or submitted by telephone at (202) 395-4718.

### **Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

### **XI. Regulatory Analysis.**

The Commission has prepared a draft regulatory analysis on this proposed regulation, and it is available in ADAMS under Accession No. ML13129A264. The draft regulatory analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC by any of the methods provided in the ADDRESSES section of this document.

### **XII. Regulatory Flexibility Certification.**

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if adopted, have a significant economic impact on a substantial number of small entities. The LLRW licensees and license applicants impacted by this rule do not fall within the scope of the definition of “small entities” given in the Regulatory Flexibility Act or the standards established by the NRC in 10 CFR 2.810, “NRC size standard.”

The NRC is seeking public comment on the potential impact of the proposed rule on small entities. The NRC particularly desires comments from licensees who qualify as small businesses, specifically as to how the proposed rule would affect them and how the rule may be tiered or otherwise modified to impose less stringent requirements on small entities while still

adequately protecting the public health and safety and common defense and security.

Comments on how the rule could be modified to take into account the differing needs of small entities should specifically discuss:

(a) The size of the business and how the proposed rule would result in a significant economic burden upon it as compared to a larger organization in the same business community;

(b) How the proposed rule could be modified to take into account the business's differing needs or capabilities;

(c) The benefits that would accrue, or the detriments that would be avoided, if the NRC adopts the commenter's suggestion;

(d) How the proposed rule, as modified, would more closely equalize the impact of NRC regulations as opposed to providing special advantages to any individuals or groups; and

(e) How the proposed rule, as modified, would still adequately protect the public health and safety and common defense and security.

Comments should be submitted by any of the methods provided in the ADDRESSES section of this document.

### **XIII. Backfitting.**

A backfit analysis is not required for this rule. The NRC's backfit provisions appear in the regulations at 10 CFR 50.109, 52.39, 52.63, 52.83, 52.98, 52.145, 52.171, 70.76, 72.62, and 76.76. The requirements in this proposed rule do not involve any provisions that would impose backfits on nuclear power plant licensees as defined in 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," or in 10 CFR part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," or on licensees under 10 CFR part 70, "Domestic

Licensing of Special Nuclear Material,” 10 CFR part 72, “Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste,” and 10 CFR part 76, “Certification of Gaseous Diffusion Plants.”

## **List of Subjects**

### **10 CFR Part 20**

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

### **10 CFR Part 61**

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552, the NRC is proposing to adopt the following amendments to 10 CFR Parts 20 and 61.

## **PART 20 -- STANDARDS FOR PROTECTION AGAINST RADIATION**

1. The authority citation for 10 CFR part 20 continues to read as follows:

**Authority:** Atomic Energy Act secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 223, 234, 1701 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2273, 2282, 2297f),



Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 sec. 651(e), Pub. L. No. 109-58, 119 Stat. 549 (2005) (42 U.S.C. 2014, 2021, 2021b, 2111).

2. In § 20.1003, revise the definition of “Waste” to read as follows:

**§ 20.1003 Definitions.**

\* \* \* \* \*

*Waste* means those low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraphs (2), (3), and (4) of the definition of Byproduct material set forth in this section. Consistent with the National Defense Authorization Act for Fiscal Year 2013, low-level radioactive waste also includes radioactive material that, notwithstanding Section 2 of the Nuclear Waste Policy Act of 1982, results from the production of medical isotopes that have been permanently removed from a reactor or subcritical assembly, for which there is no further use, and the disposal of which can meet the requirements of this part.

\* \* \* \* \*

3. In appendix G to part 20:
  - a. Revise section II (Certification); and
  - b. Revise section III, paragraphs III.A.1, III.A.2, III.A.3, III.C.3, III.C.4, and III.C.5.

The revisions read as follows:

**Appendix G to Part 20 -- Requirements for Transfers of Low-Level Radioactive Waste  
Intended for Disposal at Licensed Land Disposal Facilities and Manifests**

\* \* \* \* \*

**II. \* \* \***

An authorized representative of the waste generator, processor, or collector shall certify by signing and dating the shipment manifest that the transported materials meet the waste acceptance criteria for disposal; are properly classified, described, packaged, marked, and labeled; and are in proper condition for transportation according to the applicable regulations of the Department of Transportation and the Commission. A collector who signs the certification is certifying that nothing has been done to the collected waste that would invalidate the waste generator's certification.

**III. \* \* \***

**A. \* \* \***

1. Prepare all wastes according to the land disposal facility's criteria for waste acceptance developed in accordance with § 61.58 of this chapter;
2. Label each disposal container (or transport package if potential radiation hazards preclude labeling of the individual disposal container) of waste in accordance with § 61.57 of this chapter;
3. Conduct a quality assurance program to assure compliance with the land disposal facility's criteria for waste acceptance that has been developed in accordance with § 61.58 of this chapter (the program must include management evaluation of audits);

\* \* \* \* \*

C. \* \* \*

3. Prepare all wastes according to the land disposal facility's criteria for waste acceptance developed in accordance with § 61.58 of this chapter;
4. Label each package of waste in accordance with § 61.57 of this chapter;
5. Conduct a quality assurance program to assure compliance with the land disposal facility's criteria for waste acceptance that has been developed in accordance with § 61.58 of this chapter (the program shall include management evaluation of audits);

\* \* \* \* \*

#### **PART 61 -- LICENSING REQUIREMENTS FOR LAND DISPOSAL RADIOACTIVE WASTE**

4. The authority citation for 10 CFR part 61 continues to read as follows:

**Authority:** Atomic Energy Act secs. 53, 57, 62, 63, 65, 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846), sec. 211, Pub. L. 95-601, sec. 10, as amended by Pub. L. 102-486, sec. 2902 (42 U.S.C. 5851). Pub. L. 95-601, sec. 10, 14, 92 Stat. 2951, 2953 (42 U.S.C. 2021a, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, sec. 651(e), Pub. L. 109-58, 119 Stat. 806-810 (42 U.S.C. 2014, 2021, 2021b, 2111).

5. In § 61.2:
  - a. Revise the definitions of "Inadvertent intruder;" "Site closure and stabilization," "Stability," and "Waste;" and
  - b. Add the definitions of "Compliance period," "Intruder assessment," "Long-lived waste," "Performance assessment," and "Performance period" in alphabetical order.

The revisions read as follows:

**§ 61.2 Definitions.**

\* \* \* \* \*

*Compliance period* is the time during which compliance with the performance objectives specified in §§ 61.41, 61.42, and 61.44 must be demonstrated. This period ends 10,000 years after closure of the disposal facility.

\* \* \* \* \*

*Inadvertent intruder* means a person who might occupy the disposal site after closure and engage in normal activities, such as agriculture, dwelling construction, resource exploration or exploitation (e.g., well drilling) or other reasonably foreseeable pursuits that might unknowingly expose the person to radiation from the waste.

\* \* \* \* \*

*Intruder assessment* is an analysis that (1) assumes an inadvertent intruder occupies the site and engages in normal activities or other reasonably foreseeable pursuits that might unknowingly expose the person to radiation from the waste; (2) examines the capabilities of intruder barriers to inhibit an inadvertent intruder's contact with the waste or to limit the inadvertent intruder's exposure to radiation; and (3) estimates an inadvertent intruder's potential annual dose, considering associated uncertainties.

\* \* \* \* \*

*Long-lived waste* means waste containing radionuclides (1) where more than 10 percent of the initial activity of a radionuclide remains after 10,000 years (e.g., long-lived parent), (2) where the peak activity from progeny occurs after 10,000 years (e.g., long-lived parent – short-lived progeny), or (3) where more than 10 percent of the peak activity of a radionuclide (including progeny) within 10,000 years remains after 10,000 years (e.g., short-lived parent – long-lived progeny).

\* \* \* \* \*

*Performance assessment* is an analysis that (1) identifies the features, events, and processes that might affect the disposal system; (2) examines the effects of these features, events, and processes on the performance of the disposal system; and (3) estimates the annual dose to any member of the public caused by all significant features, events, and processes.

\* \* \* \* \*

*Performance period* is the timeframe established for considering waste and site characteristics to evaluate the performance of the site after the compliance period.

\* \* \* \* \*

*Site closure and stabilization* means those actions that are taken upon completion of operations that prepare the disposal site for custodial care and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

\* \* \* \* \*

*Stability means* structural stability.

\* \* \* \* \*

*Waste* means those low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraphs (2), (3), and (4) of the definition of Byproduct material set forth in § 20.1003 of this chapter. Consistent with the National Defense Authorization Act for Fiscal Year 2013, low-level radioactive waste also includes radioactive material that, notwithstanding Section 2 of the Nuclear Waste Policy Act of 1982, results from the production of medical isotopes that have been permanently removed from a reactor or subcritical assembly, for which there is no further use, and the disposal of which can meet the requirements of this part.

\* \* \* \* \*

6. In § 61.7:
  - a. Revise paragraphs (a)(1) and (a)(2);
  - b. Redesignate paragraphs (b) and (c) as paragraphs (e) and (f);
  - c. Revise redesignated paragraphs (e) and (f);
  - d. Add new paragraphs (b), (c), (d), and (g)

The revisions read as follows:

**§ 61.7 Concepts.**

(a) *The disposal facility.* (1) Part 61 is intended to apply to land disposal of radioactive waste and not to other methods such as sea or extraterrestrial disposal. Part 61 contains procedural requirements and performance objectives applicable to any method of land disposal. It contains specific technical requirements for near-surface disposal of radioactive waste, a subset of land disposal, which involves disposal in the uppermost portion of the earth,

approximately 30 meters. Near-surface disposal includes disposal in engineered facilities that may be built totally or partially above-grade provided that such facilities have protective covers. Near-surface disposal does not include disposal facilities that are partially or fully above-grade with no protective cover, which are referred to as "above-ground disposal." Burial deeper than 30 meters may also be satisfactory. Technical requirements for alternative methods may be added in the future. Alternative methods of disposal may be approved on a case-by-case basis as needed under § 61.6.

(2) Near-surface disposal of radioactive waste takes place at a near-surface disposal facility, which includes all of the land and buildings necessary to carry out the disposal. The disposal site is that portion of the facility used for disposal of waste and consists of disposal units and a buffer zone. A disposal unit is a discrete portion of the disposal site into which waste is placed for disposal. A buffer zone is a portion of the disposal site that is controlled by the licensee and that lies under the site and between the boundary of the disposal site and any disposal unit. It provides controlled space to establish monitoring locations, which are intended to provide an early warning of radionuclide movement. An early warning allows a licensee to perform any mitigation that might be necessary. In choosing a disposal site, site characteristics should be considered in terms of the indefinite future, take into account the radiological characteristics of the waste, and be evaluated for at least a 500-year timeframe.

(b) *Performance objectives.* Disposal of radioactive waste in land disposal facilities has the following safety objectives: protection of the general population from releases of radioactivity, protection of inadvertent intruders, protection of individuals during operations, and ensuring stability of the site after closure. Achieving these objectives depends upon many factors including the design of the land disposal facility, operational procedures, characteristics of the environment surrounding the land disposal facility, and the radioactive waste acceptable for disposal.

(c) *Technical analyses.* (1) Demonstrating compliance with the performance objectives requires assessments of the site-specific factors including engineering design, operational practices, site characteristics, and radioactive waste acceptable for disposal. Technical analyses assess the impact of site-specific factors on the performance of the disposal facility and the site environment both during the operational period, as in the analysis for protection of individuals during operations and, importantly for disposal of radioactive waste, over the longer term, as in the analyses for protection of the general population from releases of radioactivity, protection of inadvertent intruders, and stability of the disposal site after closure.

(2) A performance assessment is an analysis that is required to demonstrate protection of the general population from releases of radioactivity. A performance assessment identifies the specific characteristics of the disposal site (e.g., hydrology, meteorology, geochemistry, biology, and geomorphology); degradation, deterioration, or alteration processes of the engineered barriers (including the waste form and container); and interactions between the site characteristics and engineered barriers that might affect performance of the disposal site. A performance assessment examines the effects of these processes and interaction on the ability of the disposal site to limit waste releases and estimates the annual dose to a member of the public for comparison with the appropriate performance objective of subpart C of this part.

(3) It is possible, but unlikely, that persons might occupy the site in the future and engage in normal pursuits without knowing that they were receiving radiation exposure. These persons are referred to as inadvertent intruders. Protection of inadvertent intruders can involve two principal controls: institutional control over the site after operations by the site owner to ensure that no such occupation or improper use of the site occurs; or, designating which waste could present an unacceptable dose to an intruder, and disposing of this waste in a manner that provides some form of intruder barrier that is intended to prevent contact with the waste. These regulations incorporate both types of protective controls.



(4) Demonstrating protection of inadvertent intruders requires an assessment of potential radiological exposures should an inadvertent intruder occupy the disposal site following a loss of institutional controls after closure. The intruder can be exposed to radioactivity that has been released into the environment as a result of disturbance of the waste or from radiation emitted from waste that is still contained in the disposal site. The results of the intruder assessment are compared with the appropriate performance objective of subpart C of this part. An intruder assessment can employ a similar methodology to that used for a performance assessment, but the intruder assessment must assume that an inadvertent intruder occupies the disposal site following a loss of institutional controls after closure, and engages in activities that unknowingly expose the intruder to radiation from the waste.

(5) Waste with significant concentrations and quantities of long-lived radionuclides may require special processing, design, or site conditions for disposal. Demonstrating protection of the general population from releases of radioactivity and inadvertent intruders from the disposal of this waste requires an assessment of long-term impacts. Performance period analyses are used to evaluate the suitability of this waste for disposal on a case-by-case basis. In general, for disposal facilities with limited quantities of long-lived waste, performance period analyses are not necessary to demonstrate protection of the general population from releases of radioactivity and protection of inadvertent intruders. However, there may be site-specific conditions that require licensees to assess disposal facilities beyond the compliance period even when long-lived waste is limited. These conditions should be evaluated on a case-by-case basis to determine whether analyses beyond the compliance period would be required.

(d) *Waste acceptance.* Demonstrating compliance with the performance objectives also requires a determination of criteria for the acceptance of waste. The criteria can be determined from the results of the technical analyses that demonstrate compliance with the performance

objectives for any land disposal facility or, for a near-surface disposal facility, the waste classification requirements of subpart D of this part.

(e) *Waste classification and near-surface disposal.* (1) A cornerstone of the waste classification system is stability of both the waste and disposal site, which minimizes the access of water to waste that has been emplaced and covered. Limiting the access of water to the waste minimizes the migration of radionuclides, which may avoid the need for long-term active maintenance and reduces the potential for release of radioactivity into the environment. While stability is desirable, it is not necessary from a health and safety standpoint for most waste because the waste does not contain sufficient radioactivity to be of concern. This lower-activity waste (e.g., ordinary trash-type waste) tends to be unstable. If unstable waste is disposed with the waste requiring stability, the deterioration of unstable waste could lead to the failure of the system. The failure of the system could permit water to penetrate the disposal unit, which may cause problems with the waste that requires stability. Therefore, to avoid placing requirements for a stable waste form on relatively innocuous waste, these wastes have been classified as Class A waste. Unstable Class A waste will be disposed of in separate disposal units at the disposal site. However, stable Class A waste may be disposed of with other classes of waste. Wastes that must be stable for proper disposal are classified as Class B and C waste. To the extent that it is practicable, Class B and C waste forms or containers should be designed to be stable (i.e., maintain gross physical properties and identity) over 300 years. The stability of the disposal site for the disposal of long-lived waste may be more uncertain and require more robust technical evaluation of the processes that are unlikely to affect the ability of the disposal system to isolate short-lived waste. For long-lived waste and certain radionuclides prone to migration, a maximum disposal site inventory based on the characteristics of the disposal site may be established to limit potential exposure.

(2) Institutional control of access to the site is required for up to 100 years. This permits the disposal of Class A and B waste without special provisions for intrusion protection, since these wastes contain types and quantities of radionuclides that generally will decay during the 100-year period and will present an acceptable hazard to the intruder. However, waste that is Class A under 61.55(a)(6) may not decay to acceptable levels in 100 years. For waste classified under 61.55(a)(6), safety is provided by limiting the quantities and concentrations of the material consistent with the disposal site design. Safe disposal of waste classified under 61.55(a)(6) is demonstrated by the technical analyses and compliance with the performance objectives. The government landowner administering the active institutional control program has flexibility in controlling site access, which may include allowing productive uses of the land provided the integrity and long-term performance of the site are not affected.

(3) Waste that will not decay to levels that present an acceptable hazard to an intruder within 100 years is designated as Class C waste. Class C waste must be stable and be disposed of at a greater depth than the other classes of waste so that subsequent surface activities by an intruder will not disturb the waste. Where site conditions prevent deeper disposal, intruder barriers such as concrete covers may be used. The effective life of these intruder barriers should be at least 500 years. A maximum concentration of radionuclides is specified in tables 1 and 2 of § 61.55 so that at the end of the 500-year period, the remaining radioactivity will be at a level that does not pose an unacceptable hazard to an inadvertent intruder or to public health and safety. Waste with concentrations above these limits is generally unacceptable for near-surface disposal. There may be some instances where waste with concentrations greater than permitted for Class C would be acceptable for near-surface disposal with special processing or design. Disposal of this waste will be evaluated on a case-by-case basis with the technical analyses required in § 61.13.

(4) Regardless of the classification, some waste may require enhanced controls or limitations at a particular land disposal facility. A performance assessment and an intruder assessment are used to identify these enhanced controls and limitations, which are site- and waste-specific. Enhanced controls or limitations could include additional limits on waste concentration or total activity, more robust intruder barriers, deeper burial depth, and waste-specific stability requirements. These enhanced controls or limitations could mitigate the uncertainty associated with the evolutionary effects of the natural environment and the disposal facility performance over the compliance period.

(f) *The licensing process.* (1) During the preoperational phase, the potential applicant goes through a process of disposal site selection by selecting a region of interest, examining a number of possible disposal sites within the area of interest, and narrowing the choice to the proposed site. Through a detailed investigation of the disposal site characteristics the potential applicant obtains data on which to base an analysis of the disposal site's suitability. Along with these data and analyses, the applicant submits other more general information to the Commission in the form of an application for a license for land disposal. The Commission's review of the application is in accordance with administrative procedures established by rule and may involve participation by affected State governments or Indian tribes. While the proposed disposal site must be owned by a State or the Federal Government before the Commission will issue a license, it may be privately owned during the preoperational phase if suitable arrangements have been made with a State or the Federal Government to take ownership in fee of the land before the license is issued.

(2) During the operational phase, the licensee carries out disposal activities in accordance with the requirements of these regulations and any conditions on the license. Periodically, the authority to conduct the above ground operations and dispose of waste will be subject to a license renewal, at which time the operating history will be reviewed and a decision

made to permit or deny continued operation. When disposal operations are to cease, the licensee applies for an amendment to the site license to permit site closure. After final review of the licensee's site closure and stabilization plan, the Commission may approve the final activities necessary to prepare the disposal site so that ongoing active maintenance of the site is not required during the period of institutional control.

(3) During the period when the final site closure and stabilization activities are being carried out, the licensee is in a disposal site closure phase. Following that, for a period of five years, the licensee must remain at the disposal site for a period of postclosure observation and maintenance to assure that the disposal site is stable and ready for institutional control. The period of postclosure observation and maintenance is used to ensure that the final site closure and stabilization activities have not resulted in unintended instability at the disposal site. The Commission may approve shorter or require longer periods if conditions warrant. At the end of this period, the licensee applies for a license transfer to the disposal site owner.

(4) After a finding of satisfactory disposal site closure, the Commission will transfer the license to the State or Federal Government that owns the disposal site. If the Department of Energy is the Federal agency administering the land on behalf of the Federal Government the license will be terminated because the Commission lacks regulatory authority over the Department for this activity. Under the conditions of the transferred license, the owner will carry out a program of monitoring to assure continued satisfactory disposal site performance, perform physical surveillance to restrict access to the site, and carry out minor custodial activities. During this period, productive uses of the land might be permitted if those uses do not affect the stability of the site and its ability to meet the performance objectives. At the end of the prescribed period of institutional control, the license will be terminated by the Commission.

(g) *Implementation of dose methodology.* The dose methodology used to demonstrate compliance with the performance objectives of this part shall be consistent with the dose

methodology specified in the standards for radiation protection set forth in part 20 of this chapter. After the effective date of these regulations, applicants and licensees may use updated factors incorporated by the Environmental Protection Agency into federal radiation protection guidance or may use the most current scientific models and methodologies (e.g., those accepted by the International Commission on Radiological Protection) appropriate for site-specific circumstances to calculate the dose. The weighting factors used in the calculation of the dose must be consistent with the methodology used to perform the calculation.

7. In § 61.8:
  - a. Revise paragraph (b) to read as follows:

**§ 61.8 Information collection requirements: OMB approval.**

(a) \* \* \*

(b) The approved information collection requirements contained in this part appear in §§ 61.3, 61.6, 61.9, 61.10, 61.11, 61.12, 61.13, 61.14, 61.15, 61.16, 61.20, 61.22, 61.24, 61.26, 61.27, 61.28, 61.30, 61.31, 61.32, 61.41, 61.42, 61.53, 61.55, 61.57, 61.58, 61.61, 61.62, 61.63, 61.72, and 61.80.

\* \* \* \* \*

8. In § 61.12, revise the introductory text and paragraphs (a), (e), (g), (i), and (j) to read as follows:

**§ 61.12 Specific technical information.**

The specific technical information must include the following to demonstrate that the performance objectives of subpart C of this part and the applicable technical requirements of subpart D of this part will be met:

(a) A description of the natural and demographic disposal site characteristics as determined by disposal site selection and characterization activities. The description must include geologic, geotechnical, geochemical, geomorphological, hydrologic, meteorologic, climatologic, and biotic features of the disposal site and vicinity.

\* \* \* \* \*

(e) A description of codes and standards that the applicant has applied to the design and that will apply to construction of the land disposal facilities.

\* \* \* \* \*

(g) A description of the disposal site closure plan, including those design features that are intended to facilitate disposal site closure and eliminate the need for ongoing active maintenance.

\* \* \* \* \*

(i) A description of the kind, amount, and specifications of the radioactive material proposed to be received, possessed, and disposed of at the land disposal facility, including the criteria for acceptance of waste for disposal.

\* \* \* \* \*

(j) A description of the quality assurance program, tailored to low-level radioactive waste disposal, developed and applied by the applicant for –

- (1) the determination of natural disposal site characteristics;
- (2) the development of technical analyses; and
- (3) quality assurance during the design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste.

\* \* \* \* \*

9. In § 61.13: Revise the introductory text and paragraphs (a) and (b); and
  - a. add paragraph (e) to read as follows:

**§ 61.13 Technical analyses.**

The specific technical information must also include the following analyses needed to demonstrate that the performance objectives of subpart C of this part will be met. Licensees with licenses for land disposal facilities in effect on the effective date of this subpart must submit these analyses at the next license renewal or within 5 years of the effective date of this subpart, whichever comes first.

(a) A performance assessment that demonstrates that there is reasonable assurance that the exposure to humans from the release of radioactivity will meet the performance objective set forth in § 61.41(a). A performance assessment shall:

(1) Consider features, events, and processes that might affect demonstrating compliance with § 61.41(a). The features, events, and processes considered must represent a range of phenomena with both beneficial and adverse effects on performance, and must consider the specific technical information required in §§ 61.12(a) through (i). A technical basis for either inclusion or exclusion of specific features, events, and processes must be provided. Specific features, events, and processes must be evaluated in detail if their omission would significantly affect meeting the performance objective specified in § 61.41(a).

(2) Consider the likelihood of disruptive or other unlikely features, events, or processes for comparison with the limits set forth in § 61.41(a).

(3) Provide a technical basis for either inclusion or exclusion of degradation, deterioration, or alteration processes (e.g., of the engineered barriers, waste form, site characteristics) and interactions between the disposal facility and site characteristics that might affect the facility's ability to meet the performance objective in § 61.41(a).



(4) Provide a technical basis for models used in the performance assessment such as comparisons made with outputs of detailed process-level models or empirical observations (e.g., laboratory testing, field investigations, and natural analogs).

(5) Evaluate pathways including air, soil, groundwater, surface water, plant uptake, and exhumation by burrowing animals.

(6) Account for uncertainties and variabilities in the projected behavior of the disposal system (e.g., disposal facility, natural system, and environment).

(7) Consider alternative conceptual models of features and processes that are consistent with available data and current scientific understanding, and evaluate the effects that alternative conceptual models have on the understanding of the performance of the disposal facility.

(8) Identify and differentiate between the roles performed by the natural disposal site characteristics and design features of the disposal facility in limiting releases of radioactivity to the general population.

(b) Inadvertent intruder analyses that demonstrate there is reasonable assurance that:

(1) the waste acceptance criteria developed in accordance with § 61.58 will be met,

(2) adequate barriers to inadvertent intrusion will be provided, and

(3) any inadvertent intruder will not be exposed to doses that exceed the limits set forth in § 61.42(a) as part of the intruder assessment. An intruder assessment shall:

(i) Assume that an inadvertent intruder occupies the disposal site at any time during the compliance period after the period of institutional controls ends, and engages in normal activities including agriculture, dwelling construction, resource exploration or exploitation (e.g., well drilling), or other reasonably foreseeable pursuits that unknowingly expose the intruder to radiation from the waste.

(ii) Identify adequate barriers to inadvertent intrusion that inhibit contact with the waste or limit exposure to radiation from the waste, and provide a basis for the time period over which barriers are effective.

(iii) Account for uncertainties and variabilities.

\* \* \* \* \*

(e) Analyses that assess how the disposal site limits the potential long-term radiological impacts, consistent with available data and current scientific understanding. The analyses shall be required for disposal sites with waste that contains radionuclides with average concentrations exceeding the values listed in table A of this paragraph, or if necessitated by site-specific conditions. For wastes containing mixtures of radionuclides found in table A, the total concentration shall be determined by the sum of fractions rule described in paragraph 61.55(a)(7). The analyses must identify and describe the features of the design and site characteristics that will demonstrate that the performance objectives set forth in §§ 61.41(b) and 61.42(b) will be met.

**Table A - Average Concentrations of Long-lived Radionuclides Requiring Performance Period Analyses**

Radionuclide	Concentration (Ci/m <sup>3</sup> ) <sup>1</sup>
C-14	0.8
C-14 in activated metal	8
Ni-59 in activated metal	22
Nb-94 in activated metal	0.02
Tc-99	0.3
I-129	0.008
Long-lived alpha-emitting nuclides <sup>2</sup>	10 <sup>3</sup>
Pu-241	350 <sup>3</sup>
Cm-242	2,000 <sup>3</sup>

<sup>1</sup> Values derived from § 61.55 Class A limits.

<sup>2</sup> Includes alpha-emitting transuranic nuclides as well as other long-lived alpha-emitting nuclides.

<sup>3</sup> Units are nanocuries per gram.

10. In § 61.23, revise paragraphs (b), (c), (d), and (e) to read as follows:

**§ 61.23 Standards for issuance of a license.**

\* \* \* \* \*

(b) The applicant's proposed disposal site, disposal design, waste acceptance criteria, land disposal facility operations (including equipment, facilities, and procedures), disposal site closure, and postclosure institutional control demonstrate that they are adequate to protect the public health and safety because they provide reasonable assurance that the general population will be protected from releases of radioactivity as specified in the performance objective in § 61.41.

(c) The applicant's proposed disposal site, disposal site design, waste acceptance criteria, land disposal facility operations (including equipment, facilities, and procedures), disposal site closure, and postclosure institutional control demonstrate that they are adequate to protect the public health and safety because they provide reasonable assurance that individual inadvertent intruders are protected in accordance with the performance objective in § 61.42.

(d) The applicant's proposed waste acceptance criteria and land disposal facility operations (including equipment, facilities, and procedures) demonstrate that they are adequate to protect the public health and safety because they provide reasonable assurance that the standards for radiation protection set out in part 20 of this chapter will be met.

(e) The applicant's proposed disposal site, disposal site design, waste acceptance criteria, land disposal facility operations, disposal site closure, and postclosure institutional control demonstrate that they are adequate to protect the public health and safety because they provide reasonable assurance that long-term stability of the disposed waste and the disposal site will be achieved and will eliminate to the extent practicable the need for ongoing active maintenance of the disposal site following closure.

\* \* \* \* \*

11. In § 61.25, revise paragraphs (a) and (b) to read as follows:

**§ 61.25 Changes.**

(a) Except as provided for in specific license conditions, the licensee shall not make changes in the land disposal facility or procedures described in the license application. The license will include conditions restricting subsequent changes to the facility and the procedures authorized that are important to public health and safety. These license restrictions will fall into three categories of descending importance to public health and safety as follows:

(1) those features and procedures that may not be changed without (i) 60 days prior notice to the Commission, (ii) 30 days notice of opportunity for a prior hearing, and (iii) prior Commission approval;

(2) those features and procedures that may not be changed without (i) 60 days prior notice to the Commission, and (ii) prior Commission approval; and

(3) those features and procedures that may not be changed without 60 days prior notice to the Commission. Features and procedures falling in paragraph (a)(3) of this section may not be changed without prior Commission approval if the Commission so orders, after having received the required notice.

(b) Amendments authorizing waste acceptance criteria changes, site closure, license transfer, or license termination shall be included in paragraph (a)(1) of this section.

\* \* \* \* \*

12. In § 61.28, revise paragraph (a)(2) to read as follows:

**§ 61.28 Contents of application for closure.**

(a) \* \* \*

(2) The results of tests, experiments, or any other analyses relating to backfill or excavated areas, closure and sealing, waste migration and interaction with emplacement media, or any other tests, experiments, or analysis pertinent to the long-term containment of emplaced waste within the disposal site, including revised analyses for § 61.13 using the details of the final closure plan and waste inventory.

\* \* \* \* \*

13. Revise § 61.41 to read as follows:

**§ 61.41 Protection of the general population from releases of radioactivity.**

(a) Concentrations of radioactive material that may be released to the general environment in ground water, surface water, air, soil, plants, or animals must not result in an annual dose exceeding an equivalent of 0.25 milliSievert (25 millirems) to any member of the public within the compliance period. Reasonable effort should be made to maintain releases of radioactivity in effluents to the general environment as low as is reasonably achievable during the compliance period. Compliance with this paragraph must be demonstrated through analyses that meet the requirements specified in § 61.13(a).

(b) Effort shall be made to minimize releases of radioactivity from a disposal facility to the general environment to the extent reasonably achievable at any time during the performance period. Compliance with this paragraph must be demonstrated through analyses that meet the requirements specified in § 61.13(e).

14. Revise § 61.42 to read as follows:

**§ 61.42 Protection of inadvertent intruders.**

(a) Design, operation, and closure of the land disposal facility must ensure protection of any inadvertent intruder into the disposal site who occupies the site or contacts the waste at any time after active institutional controls over the disposal site are removed. The annual dose must not exceed 5 milliSieverts (500 millirems) to any inadvertent intruder within the compliance period. Compliance with this paragraph must be demonstrated through analyses that meet the requirements specified in § 61.13(b).

(b) Effort shall be made to minimize exposures to any inadvertent intruder to the extent reasonably achievable at any time during the performance period. Compliance with this paragraph must be demonstrated through analyses that meet the requirements specified in § 61.13(e).

15. Revise § 61.50 to read as follows:

**§ 61.50 Disposal site suitability requirements for land disposal.**

(a) *Disposal site suitability for near-surface disposal.* The purpose of this section is to specify the minimum characteristics a site must have to be acceptable for the disposal of radioactive waste in the near surface.

(1) To the extent practicable, the disposal site shall be capable of being characterized, modeled, analyzed, and monitored.

(2) The hydrologic characteristics that a site must have for 500 years following closure of the land disposal facility to be acceptable for the disposal of radioactive waste in the near surface include:

(i) Waste disposal shall not take place in a poorly drained site or a site subject to flooding or frequent ponding, or in a 100-year flood plain, coastal high-hazard area or wetland, as defined in Executive Order 11988, "Floodplain Management Guidelines."

(ii) Upstream drainage areas must be minimized to decrease the amount of runoff which could erode or inundate waste disposal units.

(iii) The disposal site must provide sufficient depth to the water table that ground water intrusion, perennial or otherwise, into the waste will not occur. The Commission will consider an exception to this requirement to allow disposal below the water table if it can be conclusively shown that disposal site characteristics will result in molecular diffusion being the predominant means of radionuclide movement and the rate of movement will result in the performance objectives of subpart C of this part being met. In no case will waste disposal be permitted in the zone of fluctuation of the water table.

(iv) The hydrogeologic unit used for disposal shall not discharge ground water to the surface within the disposal site.

(3) After 500 years, the hydrologic characteristics specified in paragraph (2) of this section shall not significantly affect the ability of the disposal site to meet the performance objectives of subpart C of this part.

(4) Other characteristics of the site shall not significantly affect the ability of the disposal site to meet the performance objectives of subpart C of this part, or preclude defensible modeling and estimation of longer-term impacts. The characteristics include:

(i) Within the region or state where the facility is to be located, a disposal site should be selected so that projected population growth and future developments are not likely to affect the ability of the disposal facility to meet the performance objectives of subpart C of this part.

(ii) Areas must be avoided having known natural resources which, if exploited, would result in failure to meet the performance objectives of subpart C of this part.

(iii) Areas must be avoided where tectonic processes such as faulting, folding, seismic activity, or volcanism may occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of subpart C of this part, or may preclude defensible modeling and prediction of long-term impacts.

(iv) Areas must be avoided where surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of subpart C of this part, or may preclude defensible modeling and prediction of long-term impacts.

(v) The disposal site must not be located where nearby facilities or activities could adversely impact the ability of the site to meet the performance objectives of subpart C of this part or significantly mask the environmental monitoring program.

(b) *Disposal site suitability requirements for land disposal other than near-surface (reserved).*

16. In § 61.52, revise paragraph (a)(3) and (a)(8); and add paragraphs (a)(12) and (a)(13) to read as follows:

**§ 61.52 Land disposal facility operation and disposal site closure.**

(a) \* \* \*

(3) All wastes shall be disposed of in accordance with the requirements of paragraphs (a)(4) through (13) of this section.

\* \* \* \* \*



(8) A buffer zone of land must be maintained between any buried waste and the disposal site boundary and beneath the disposed waste. The buffer zone shall be of adequate dimensions to allow a licensee to carry out environmental monitoring activities specified in § 61.53(d) of this part and take mitigative measures if needed.

\* \* \* \* \*

(12) Only waste meeting the acceptance criteria shall be disposed of at the disposal site.

(13) Waste will be disposed of consistent with the description provided in § 61.12(f) and the technical analyses required by § 61.13.

\* \* \* \* \*

17. In § 61.55, revise paragraph (a)(6) to read as follows:

**§ 61.55 Waste classification.**

(a) \* \* \*

(6) Classification of wastes with radionuclides other than those listed in tables 1 and 2 of this section. If radioactive waste does not contain any nuclides listed in either table 1 or 2 of this section, it is Class A.

\* \* \* \* \*

18. In § 61.56:

a. Revise paragraph (a) to read as follows:

**§ 61.56 Waste characteristics.**

(a) The following requirements are minimum requirements for all waste and are intended to facilitate handling at the disposal site and provide protection of health and safety of personnel at the disposal site.

\* \* \* \* \*

19. Revise § 61.57 to read as follows:

**§ 61.57 Labeling.**

Each package of waste must be clearly labeled to identify any information required by the land disposal facility's criteria for waste acceptance developed according to § 61.58. Each package of waste disposed in a land disposal facility with waste acceptance criteria developed in accordance with the waste classification requirements must indicate whether it is Class A waste, Class B waste, or Class C waste, in accordance with § 61.55.

20. Revise § 61.58 to read as follows:

**§ 61.58 Waste acceptance.**

(a) *Waste acceptance criteria.* Each applicant shall provide, for approval by the Commission, criteria for the acceptance of waste for disposal that provide reasonable

assurance of compliance with the performance objectives of subpart C of this part. Waste acceptance criteria shall specify, at a minimum, the following:

(1) Allowable activities and concentrations of specific radionuclides. Allowable activities and concentrations shall be developed from the technical analyses required by either § 61.13 for any land disposal facility or the waste classification requirements set forth in § 61.55 for a near-surface disposal facility.

(2) Acceptable wastefrom characteristics and container specifications. The characteristics and specifications shall meet the minimum requirements for waste characteristics set forth in § 61.56(a) for all waste, and the requirements in § 61.56(b) for waste that requires stability to demonstrate compliance with the performance objectives of subpart C of this part.

(3) Restrictions or prohibitions on waste, materials, or containers that might affect the facility's ability to meet the performance objectives in subpart C of this part.

(b) *Waste characterization.* Each applicant shall provide, for Commission approval, acceptable methods for characterizing the waste for acceptance. The methods shall identify the characterization parameters and acceptable uncertainty in the characterization data. The following information, at a minimum, shall be required to characterize waste:

(1) Physical and chemical characteristics;

(2) Volume, including the waste and any stabilization or absorbent media;

(3) Weight of the container and contents;

(4) Identities, activities, and concentrations;

(5) Characterization date;

(6) Generating source; and

(7) Any other information needed to characterize the waste to demonstrate that the waste acceptance criteria set forth in § 61.58(a) are met.

(c) Waste certification. Each applicant shall provide, for Commission approval, a program to certify that waste meets the acceptance criteria prior to shipment to the disposal facility. The certification program shall:

(1) Designate authority to certify and receive waste for disposal at the disposal facility.

(2) Provide procedures for certifying that waste meets the waste acceptance criteria.

(3) Specify documentation required for waste acceptance including waste characterization, shipment (including the requirements set forth in appendix G of 10 CFR part 20), and certification.

(4) Identify records, reports, tests, and inspections that are necessary to comply with the requirements in § 61.80.

(5) Provide approaches for managing waste that has been certified as meeting the waste acceptance criteria in a manner that maintains its certification status.

(d) Licensees with licenses for land disposal facilities in effect on the effective date of this subpart shall comply with the requirements of paragraphs (a), (b), and (c) of this section at the next license renewal or within 5 years of the effective date of this subpart, whichever comes first.

(e) For license applicants, the waste acceptance criteria will be incorporated into the facility license. For licensees with licenses for land disposal facilities in effect on the effective date of this subpart, upon Commission approval and if otherwise consistent with applicable State and Federal law, the NRC will issue an amendment to the license incorporating the waste acceptance criteria in to the existing license.

(f) Each licensee shall annually review the content and implementation of the waste acceptance criteria, waste characterization methods, and certification program.

(g) Applications for modification of approved waste acceptance criteria must be filed in accordance with § 61.20.

(h) In determining whether waste acceptance criteria will be approved, the Commission will apply the criteria set forth in § 61.23.

- 21. In § 61.80:
  - a. Revise paragraphs (i)(1) and (i)(2); and
  - b. Add paragraph (m) to read as follows:

**§ 61.80 Maintenance of records, reports, and transfers.**

\* \* \* \* \*

(i) (1) Each licensee authorized to dispose of waste materials received from other persons under this part shall submit annual reports to the Director, Office of Federal and State Materials and Environmental Management Programs, by an appropriate method listed in § 61.4, with a copy to the appropriate NRC Regional Office shown in appendix D to 10 CFR part 20. Reports must be submitted by the end of the first calendar quarter of each year for the preceding year.

(2)(i) The reports shall include:

(A) Specification of the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in airborne effluents during the preceding year;

(B) The results of the environmental monitoring program;

(C) A summary of licensee disposal unit survey and maintenance activities;

(D) A summary of activities and quantities of radionuclides disposed of;

(E) Any instances in which observed site characteristics were significantly different from those described in the application for a license; and

(F) Any other information the Commission may require.

(ii) If the quantities of radioactive materials released during the reporting period, monitoring results, or maintenance performed are significantly different from those expected in the materials previously reviewed as part of the licensing action, the report must cover this specifically.

\* \* \* \* \*

(m) Each licensee shall maintain waste acceptance records including:

(1) Provisions for waste acceptance including the waste acceptance criteria, characterization methods, and certification program.

(2) Audits and other reviews of program content and implementation. The licensee shall retain records of audits and other reviews for 3 years after the record is made.

Dated at Rockville, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,  
Secretary of the Commission.

---

---

**Draft Regulatory Analysis for Proposed Rule:  
Low-Level Radioactive Waste Disposal (10 CFR  
Part 61)**

---

---

**U.S. Nuclear Regulatory Commission**

**Office of Federal and State Materials and Environmental  
Management Programs**

**Division of Intergovernmental Liaison and Rulemaking**

**XXXX 2013**



## TABLE OF CONTENTS

Executive Summary.....	iii
Acronyms .....	1
1. Introduction.....	2
1.1 Statement of the Problem and Reasons for Rulemaking .....	2
1.2 Background .....	3
2. Identification of Alternative Approaches.....	5
2.1 Alternative 1: No-Action.....	5
2.2 Alternative 2: Rulemaking to Amend 10 CFR Part 61 .....	5
3. Estimation and Evaluation of Benefits and Costs.....	8
3.1 Analytical Methodology.....	8
3.2 Assumptions.....	8
3.3 Affected Entities.....	13
3.4 Identification of Affected Attributes .....	13
4. Presentation of Results .....	15
5. Benefits and Costs .....	21
6. Decision Rationale .....	22
7. Implementation .....	23
8. References .....	23



## Executive Summary

The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations that govern low-level radioactive waste (LLRW) disposal facilities to require new and revised site-specific technical analyses and to permit the development of criteria for LLRW acceptance based on the results of these analyses. These amendments would ensure that LLRW streams that are significantly different from those considered during the development of the current regulations (i.e., depleted uranium and other unanalyzed waste streams) can be disposed of safely and meet the performance objectives for land disposal of LLRW. These amendments would also increase the use of site-specific information to ensure performance objectives are met that are designed to provide protection of public health and safety. These amendments would revise the existing technical analysis for protection of the general population (i.e., performance assessment) to include a 10,000-year compliance period; add a new site-specific technical analysis for the protection of inadvertent intruders (i.e., intruder assessment) that would include a 10,000-year compliance period and a dose limit; add a new analysis for certain long-lived LLRW (i.e., performance period analysis) that would include a post-10,000-year performance period; and a requirement to update the technical analyses at closure. The NRC would also be adding a new requirement to develop criteria for the acceptance of LLRW for disposal, based on either the results of these technical analyses or the existing LLRW classification requirements. Additionally, the NRC is also proposing amendments to facilitate implementation and better align the requirements with current health and safety standards. This rule would affect LLRW disposal licensees or license applicants that are regulated by the NRC or the Agreement States.

This regulatory analysis examines the benefits and costs of the proposed requirements. The key findings of the analysis are as follows:

- **Cost to the Industry.** The proposed rule would result in additional costs to the industry with the majority of the costs resulting from implementation. On average, each licensee would incur an estimated implementation cost of \$837,000, followed by an estimated annual cost of \$4,000. Overall, the industry will incur an estimated implementation cost of \$3.3 million, followed by an estimated annual cost of \$16,000.
- **Cost to the Agreement States.** The proposed rule would result in additional costs to the Agreement States with all costs resulting from implementation. On average, each Agreement State would incur an estimated implementation cost of \$428,515. Overall, the Agreement States will incur an estimated implementation cost of \$1.7 million.
- **Cost to the NRC.** The NRC would incur an implementation cost for drafting and implementing a final rulemaking based on the proposed rule. This cost is estimated to be \$260,000. Because the NRC does not have any LLRW disposal licensee, no annual NRC cost is expected. The NRC would also incur an estimated implementation cost of \$225,225, for drafting a final guidance document based on the final rule.

**Decision Rationale.** Although the NRC did not quantify the benefits of this rule, the agency did examine its benefits qualitatively. These include both the direct benefits that would accrue and the indirect benefits from risks that could be avoided if the NRC adopted the rule. The principal qualitative benefits of the proposed action would include: 1) ensuring that LLRW streams that are significantly different from those considered during the development of the current regulations can be disposed of safely and meet the performance objectives for land disposal of

LLRW; 2) facilitating the use of site-specific information and up-to-date dosimetry methodology in site-specific technical analyses to ensure public health and safety is protected; and 3) promoting a risk-informed regulatory framework that specifies what requirements need to be met and provides flexibility to a licensee or applicant with regard to what information or approach they use to satisfy those requirements. The NRC concluded that the rule is cost-justified because the proposed regulatory initiatives would ensure the safe disposal of LLRW that was not analyzed in the original 10 CFR Part 61 regulatory basis (e.g., large quantities of depleted uranium).

## **Acronyms**

ADAMS	Agencywide Documents Access and Management System
CFR	Code of Federal Regulations
BLS	Bureau of Labor Statistics
FTE	Full-time equivalent
LLRW	Low-level radioactive waste
NRC	U.S. Nuclear Regulatory Commission
OMB	Office of Management and Budget

## 1. Introduction

The NRC adopted licensing requirements for the disposal of commercial LLRW in land disposal facilities in 1982 (47 FR 57446). The proposed amendments would revise Title 10 of the *Code of Federal Regulations* (10 CFR) Part 61 to require LLRW disposal licensees and license applicants to conduct site-specific analyses and permit the development of criteria for LLRW acceptance based on the results of these analyses. These amendments would ensure that LLRW streams that are significantly different from those considered during the development of the current regulations can be disposed of safely and meet the performance objectives for land disposal of LLRW. These amendments would also increase the use of site-specific information to ensure that public health and safety is protected.

This regulatory analysis evaluates the costs and benefits associated with the proposed rule, "Proposed Rule: Low-Level Radioactive Waste Disposal (10 CFR Part 61)." This document presents background material, rulemaking objectives, alternatives, input assumptions, analysis of the costs and benefits of the proposed rule and a decision rationale.

The remainder of this introduction is divided into two sections. Section 1.1 states the problem and objective of the rulemaking. Section 1.2 provides background information.

### 1.1 Statement of the Problem and Reasons for Rulemaking

The NRC developed the current 10 CFR Part 61 regulations based on assumptions from a survey of LLRW generators regarding the types of LLRW likely to go into a commercial disposal facility.<sup>1</sup> The results of this survey formed the regulatory basis for the source terms used in the analysis to define the allowable isotopic concentration limits in Tables 1 and 2 of 10 CFR 61.55, "Waste classification," which established three classes of LLRW (Class A, Class B, and Class C) that are suitable for near-surface disposal. Tables 1 and 2 of 10 CFR 61.55 provides limiting concentrations for long-lived radionuclides and limiting concentrations for short-lived radionuclides, respectively.

In addition to determining the acceptability of LLRW for disposal in a near-surface land disposal facility, the LLRW classification system is also integral to determining Federal and State responsibilities for LLRW and requirements for transfers of LLRW intended for disposal. The Low-Level Radioactive Waste Policy Act of 1980 (LLRW Act), as amended in 1985, defines Federal and State responsibilities for the disposal of LLRW based on 10 CFR 61.55, as in effect on January 26, 1983. Specifically, the LLRW Act assigns responsibility for disposal of Class A, Class B, and Class C commercial LLRW to the States and responsibility for disposal of commercial LLRW with concentrations that exceed the limits for Class C LLRW to the Federal Government.

Low-level radioactive waste streams generated by the U.S. Department of Energy, including large quantities of DU, were not considered in the original analysis to determine the

---

<sup>1</sup> NRC, "Final Environmental Impact Statement on 10 CFR Part 61, 'Licensing Requirements for Land Disposal of Radioactive Waste,'" NUREG-0945, Vols. 1–3, November 1982, ADAMS Accession Nos. ML052590184, ML052920727, and ML052590187.

concentration limits in Tables 1 and 2 of 10 CFR 61.55. LLRW streams from commercial uranium enrichment facilities and blended LLRW, which might result in large quantities of material near the upper bounds of an LLRW class, also were not considered. Further, new technologies might result in the future generation of different LLRW streams not evaluated when the current 10 CFR Part 61 regulations were developed. Thus, if LLRW differs significantly in quantity and concentration from what was considered in the development of the current 10 CFR Part 61, then it might be possible to dispose of LLRW that meets the disposal requirements but results in an intruder dose (if calculated) that exceeds the dose limit used to develop the LLRW classification tables (i.e., 5 milliSieverts per year (mSv/yr) (500 millirem per year (mrem/yr))).

## **1.2 Background**

The NRC adopted the current 10 CFR Part 61 in 1982 (47 FR 57446). The regulations place emphasis on an integrated systems approach to the disposal of commercial LLRW, including site selection, disposal facility design and operation, minimum waste form requirements, and disposal facility closure. To reduce reliance on institutional controls, 10 CFR Part 61 emphasizes passive, rather than active, systems to limit and retard the release of LLRW to the environment.

The regulations at 10 CFR Part 61, Subpart C, contains performance objectives, which set standards for a) 10 CFR 61.41, "Protection of the general population from the releases of radioactivity;" b) 10 CFR 61.42, "Protection of individuals from inadvertent intrusion;" c) 10 CFR 61.43, "Protection of individuals during operations;" and d) 10 CFR 61.44, "Stability of disposal site after closure." License applicants under 10 CFR Part 61 must prepare an assessment of potential dose impacts to the general population to demonstrate that they will meet the 10 CFR Part 61, Subpart C performance objectives. License applicants must also demonstrate adequate protection of potential inadvertent intruders into the LLRW disposal facility, who might occupy the site at any time after institutional controls over the LLRW disposal facility are removed and are unaware of the radiation hazard from the LLRW. Currently, licensees demonstrate protection of inadvertent intruders by complying with the LLRW classification (10 CFR 61.55) and segregation requirements (10 CFR 61.52, "Land disposal facility operation and disposal site closure,") and by providing adequate barriers to inadvertent intrusion.

Explicit dose limits for an inadvertent intruder are not currently provided in 10 CFR Part 61 because an intruder dose assessment is not required, but the LLRW classification concentrations limits for radionuclides, in Tables 1 and 2 of 10 CFR 61.55, were based on a dose of 5 mSv/yr (500 mrem/yr) to an inadvertent intruder. The final LLRW classification tables were developed assuming that only a fraction of the LLRW being disposed would approach the LLRW classification limits and that the dose to an intruder exposed to a large volume of disposed LLRW at the classification limits could exceed 5 mSv/yr (500 mrem/yr). By complying with the LLRW classification and segregation requirements, a licensee can demonstrate that an inadvertent intruder will be protected if the LLRW stream proposed for disposal is sufficiently similar to that considered by the regulatory basis for the current 10 CFR Part 61 regulations and if the underlying assumptions are not compromised.

Currently, 10 CFR Part 61 does not specify a time period<sup>2</sup> for the protection of the general population from releases of radioactivity. The regulatory basis for 10 CFR Part 61 regulations and the related guidance documents recognize the need to use an analysis timeframe commensurate with the persistence of the hazard. Selection of an analysis timeframe generally considers the characteristics of the LLRW, the analysis framework (assumed scenarios, receptors, and pathways), societal uncertainties, uncertainty in predicting the behavior of natural systems over time, and national and international LLRW disposal practices. The analysis timeframe needs to consider both technical factors (e.g., the characteristics and persistence of the radiological hazard attributed to the LLRW) and socioeconomic factors (e.g., transgenerational equity).<sup>3</sup> The purpose of assigning an analysis timeframe to the site-specific technical analyses is to ensure that public health and safety are protected to prescribed limits with an acceptable degree of confidence. Proposing a specific analysis timeframe in the regulations would ensure the safe disposal of LLRW by providing clear direction to licensees, license applicants, and the Agreement States.

The NRC is proposing a 10,000-year compliance period based primarily on the natural cycling of climate, characteristics of the LLRW, radionuclide transport characteristics, national and international programs, and previous recommendations by the Advisory Committee on Nuclear Waste<sup>4</sup> and the performance assessment working group.<sup>5</sup> The regulatory basis for the NRC's selection of the compliance period can be found in the NRC's position paper, "Technical Analysis Supporting Definition of Period of Performance for Low-Level Waste Disposal," dated April 28, 2011 (ADAMS Accession No. ML111030586), and "Regulatory Basis for Proposed Revisions to Low-Level Waste Disposal Requirements (10 CFR Part 61)," dated December 19, 2012 (ADAMS Accession No. ML12356A242).

The NRC's existing criteria for LLRW acceptance can be found in Subpart D of 10 CFR Part 61, which specifies technical requirements for land disposal facilities for commercial LLRW. The technical requirements specify the classes and characteristics of LLRW that are acceptable for near-surface disposal, as well as other requirements. Currently, 10 CFR 61.55 provides the primary criteria related to LLRW acceptance and identifies the classes of LLRW acceptable for near-surface disposal (i.e., the LLRW classification system). Section 10 CFR 61.56, "Waste characteristics," identifies minimum characteristics for all classes of LLRW and characteristics to ensure the stability of certain LLRW (i.e., Class B and Class C). Additionally, 10 CFR 61.52, "Land disposal facility operation and disposal site closure," specifies requirements for

---

<sup>2</sup> Different terminology has historically been used to refer to the timeframe assessed for regulatory compliance or other analyses including "performance period," "time of compliance," "compliance period," and other variants.

<sup>3</sup> ICRP, "Radiation Protection Recommendations as Applied to the Disposal of Long-lived Solid Radioactive Waste," ICRP Publication 81, Annals of the ICRP, Vol. 28, No. 4, ICRP Publication 81, 2000.

<sup>4</sup> Pomeroy, P.W., Chairman, Advisory Committee on Nuclear Waste, Letter to the Honorable Shirley Ann Jackson, Chairman, U.S. NRC, "Time of Compliance for Low-Level Nuclear Waste Disposal Facilities," Washington, DC, February 11, 1997, ADAMS Accession No. ML091490047.

<sup>5</sup> NRC, "A Performance Assessment Methodology for Low-Level Radioactive Waste Disposal Facilities: Recommendations of NRC's Performance Assessment Working Group," NUREG-1573, October 2000, ADAMS Accession No. ML003770778.

near-surface LLRW disposal facility operation, including segregation and intruder barrier requirements for various classes of LLRW. Section 10 CFR 61.58, “Alternative requirements for waste classification and characteristics,” currently allows for other provisions for the classification and characteristics of LLRW on a case-by-case basis if, after evaluation, the Commission finds reasonable assurance of compliance with the Subpart C performance objectives.

## **2. Identification of Alternative Approaches**

The following discussion describes the two alternatives being considered in this regulatory analysis, with additional analysis presented in Section 3.

### **2.1 Alternative 1: No-Action**

Alternative 1, the no-action alternative, would maintain the regulations as written. Under this option, the NRC would not modify 10 CFR Part 61. The rules would continue to provide no performance period analyses requirements, no specified compliance period, no new intruder assessment or performance assessment requirements, no dose limit for the inadvertent intruder, no updated compliance and performance period analyses, and no LLRW acceptance plan. Alternative 1 would avoid the costs that the proposed rule revisions would impose, but would not update the existing LLRW disposal requirements to ensure the current level of protection for public health and safety. Alternative 1, the no-action alternative, is the baseline of this regulatory analysis.

### **2.2 Alternative 2: Rulemaking to Amend 10 CFR Part 61**

Under Alternative 2, the NRC would ensure the safe disposal of LLRW by amending 10 CFR Part 61 through the rulemaking process. The amended 10 CFR Part 61 would require LLRW disposal facility licensees and license applicants to prepare new and updated site-specific technical analyses to demonstrate compliance with 10 CFR Part 61, Subpart C performance objectives. The amended rules would apply to LLRW disposal licensees and license applicants regulated by the NRC. Agreement States would be required to develop conforming regulations within 3 years of the publication date of the final amended 10 CFR Part 61.

This rulemaking would require LLRW disposal licensees or license applicants to prepare: 1) an updated performance assessment to demonstrate the protection of the general population from releases of radioactivity (proposed 10 CFR 61.41); 2) a new intruder assessment to demonstrate the protection of inadvertent intruders (proposed 10 CFR 61.42); 3) new performance period analyses to evaluate how the disposal system could mitigate the risk from disposal of long-lived LLRW (proposed 10 CFR 61.13(e)); and 4) a new LLRW acceptance plan for shipments of LLRW (proposed 10 CFR 61.58), to provide greater assurance of compliance with the performance objectives of Subpart C in 10 CFR Part 61, and to ensure safe disposal of LLRW that was not analyzed in the original 10 CFR Part 61 regulatory basis (e.g., large quantities of depleted uranium). Licensees would also be required to provide updated compliance and performance period analyses with the application to amend the license for closure (proposed 10 CFR 61.28).

The regulations at 10 CFR 61.41 require licensees to prepare an analysis to demonstrate protection of the general population from releases of radioactivity—this analysis is currently

called a technical analysis. In the proposed rule, the staff is proposing to update the terminology and specify updated requirements for this analysis. The proposed rule would replace the outdated term “technical analysis” with the more modern term “performance assessment,” in 10 CFR 61.13, “Technical analyses.” The proposed performance assessment would estimate peak dose within the 10,000-years compliance period following closure of the disposal facility. The proposed performance assessment would identify and evaluate the specific characteristics of the disposal site; degradation, deterioration, or alteration processes of the engineered barriers and natural system; and interactions between the site characteristics and engineered barriers that might affect the performance of the disposal system. The proposed 10,000-year timeframe for this assessment is an important additional technical parameter for these analyses over existing requirements and is significant when evaluating LLRW streams that were not considered in the original 10 CFR Part 61 rulemaking. The requirement to prepare a performance assessment is a risk-informed approach that provides flexibility to a licensee or applicant regarding what information or approach they may use to satisfy those requirements. The NRC believes that the proposed approach is warranted because of the site-specific nature of LLRW disposal, which can rely on different facility designs at different sites.

Currently, 10 CFR 61.42 does not require a site-specific technical analysis to demonstrate the protection of an inadvertent intruder. Instead, the safety of an inadvertent intruder is demonstrated by compliance with the LLRW classification system and the disposal requirements imposed for each class of LLRW. The connection between the LLRW classification system and protection of an inadvertent intruder is reflected in the LLRW classification tables in 10 CFR 61.55(a). The proposed revisions to 10 CFR 61.42 would require an intruder assessment that quantitatively estimates the radiological exposure of an inadvertent intruder at a LLRW disposal facility following an assumed loss of institutional controls. The results of the intruder assessment would then be compared to the performance objective in 10 CFR 61.42. The intruder assessment would have to identify the intruder barriers, examine the capability of the barriers, and address the effects of uncertainty on the performance of the barriers. The capabilities of the barriers to inhibit contact with the disposed LLRW or to limit the radiological exposure of an inadvertent intruder and the time period over which the capability persists must be demonstrated with an intruder assessment. Proposed 10 CFR 61.42 would also include a proposed annual dose limit of 5 mSv/yr (500 mrem/yr), which would ensure that the dose limit that provided the basis for the 10 CFR 61.55 LLRW classification tables (i.e., 5 mSv/yr (500-mrem/yr)), is not exceeded. The NRC proposed amendments to 10 CFR 61.42 to ensure protection of any inadvertent intruder who occupies the disposal site or contacts the LLRW at any time after active institutional controls are removed.

The current 10 CFR Part 61 regulations developed a system of analyses, LLRW classification, site-selection, LLRW characteristics, and other requirements to ensure protection of public health and safety. Impacts, regardless of timeframes, were expected to be assessed by licensees or license applicants. The need for a licensee or applicant to perform performance period analyses (e.g., after 10,000 years) was eliminated when NRC developed LLRW classification limits for long-lived radionuclides. The regulatory system was designed to ensure the short- and long-term impacts were limited by regulatory requirements such as the LLRW classification system. The performance period analyses in proposed 10 CFR 61.13(e), “Technical analyses,” would require licensees or license applicants to prepare performance period analyses (i.e., after 10,000 years) that assess how the LLRW disposal facility and site characteristics limit the potential long-term radiological impacts, consistent with available data



and current scientific understanding. The analyses are proposed to only be required for land disposal facilities with long-lived LLRW that contains radionuclides with average concentrations exceeding the values listed in proposed Table A of 10 CFR 61.13(e), "Average Concentrations of Long-lived Radionuclides Requiring Performance Period Analyses," or if necessitated by site-specific conditions. The proposed amendment to 10 CFR 61.13(e) would evaluate any additional measures that are needed at a disposal site to ensure the protection of the general population and the inadvertent intruder from disposal of long-lived LLRW.

The NRC is also proposing to amend 10 CFR 61.58, along with a new title "Waste acceptance," to require LLRW disposal licensees or license applicants to develop criteria for the acceptability of shipments of LLRW for disposal. These amendments maintain the existing LLRW classification system, but permit licensees or license applicants to account for facility design, disposal practices, and site characteristics to determine if LLRW would be acceptable for disposal. Under the proposed 10 CFR 61.58(f), licensees are also required to conduct an annual review of the LLRW acceptance plan to determine if they need to be updated, to ensure that the LLRW disposal facility complies with the Subpart C performance objectives. Because licensees or license applicants are permitted to develop site-specific LLRW acceptance criteria rather than rely on the LLRW classification system for acceptance criteria under the proposed LLRW acceptance amendments, the NRC is also proposing to amend Appendix G of 10 CFR Part 20, "Standards for Protection Against Radiation," to conform to proposed requirements for LLRW acceptance.

Currently, 10 CFR 61.28, "Contents of application for closure," requires LLRW disposal licensees to submit an application to amend their license for closure. This application must include: a) a final revision and specific details of the disposal site closure plan, and b) an environmental report or a supplement to an environmental report. This section currently does not include site-specific technical analyses. The proposed rule would require licensees to include updated site-specific technical analyses in their application to amend their license for closure to provide greater assurance of compliance with the Subpart C performance objectives, and to ensure the safe disposal of LLRW. Under current 10 CFR 61.28(c), which is not being amended by this rulemaking, the NRC can only authorize closure of the facility if there is reasonable assurance that the long-term performance objectives in Subpart C of 10 CFR Part 61 will be met. Therefore, requiring updated compliance period and performance period analyses by licensees may result in the licensee being required to take additional action prior to closure to ensure that the LLRW that has been disposed of will meet the long-term Subpart C performance objectives.

Currently, 10 CFR 61.23, "Condition of licenses," requires LLRW disposal licensees to provide updated technical analyses, as part of an application for amendment of a license, if they are to deviate from the licensing conditions. Actions considered deviations would include, but not be limited to, receiving new LLRW streams or LLRW that are different in volumes and concentrations from those listed in Tables 1 and 2 of 10 CFR 61.55 or the LLRW acceptance plan specified in 10 CFR 61.58. The proposed rule would require licensees to update site-specific technical analyses and the LLRW acceptance plan, as would be required by proposed 10 CFR 61.13(e), 10 CFR 61.41, 10 CFR 61.42, and 10 CFR 61.58, to ensure that the LLRW disposal facility complies with the Subpart C performance objectives.

Section 5 discusses the reasons for choosing Alternative 2.

### **3. Estimation and Evaluation of Benefits and Costs**

This section describes the analysis that the NRC conducted to identify and evaluate the benefits and costs of the two regulatory alternatives. Section 3.1 describes how the benefits and costs have been analyzed. Section 3.2 presents the assumptions of the analysis. Section 3.3 identifies the entities expected to be affected by the proposed rulemaking. Section 3.4 identifies the attributes expected to be affected by the proposed rulemaking.

#### **3.1 Analytical Methodology**

This section describes the methodology used to analyze the consequences associated with the proposed rule. The benefits include any desirable changes in the affected attributes. The costs include any undesirable changes in affected attributes.

The NRC collected input assumptions using data and information from NRC staff experience, NRC documents, and other related documents.

The attributes expected to be affected, as described in Section 3.4, are evaluated quantitatively, if possible. Therefore, licensee implementation and operation, Agreement State implementation, and NRC implementation attributes are evaluated quantitatively. Public health (accident) attribute is evaluated qualitatively.

In accordance with guidance from the Office of Management and Budget (OMB), Circular A-4 and NUREG/BR-0058, Revision 4, this regulatory analysis presents the results of the analysis using both 3-percent and 7-percent real discount rates. The real discounted rates or present-worth calculation determines how much society would need to invest today to ensure that the designated dollar amount is available in a given year in the future. By using present-worth calculations, costs and benefits, regardless of time, are valued equally. Based on OMB guidance (OMB Circular No. A-4, dated September 17, 2003), present-worth calculations are presented using both 3-percent and 7-percent real discount rates. The 3-percent rate approximates the real rate of return on long-term government debt which serves as a proxy for the real rate of return on savings. This rate is appropriate when the primary effect of the regulation is on private consumption. Alternatively, the 7-percent rate approximates the marginal pretax real rate of return on an average investment in the private sector, and is the appropriate discount rate whenever the main effect of a regulation is to displace or alter the use of capital in the private sector.

#### **3.2 Assumptions**

The NRC assumes the following for the purpose of this regulatory analysis:

##### **3.2.1 General assumptions**

1. The proposed rule allows the affected licensees up to 5 years after the final rule goes into effect to conduct the proposed analyses. For this regulatory analysis, the NRC assumes the analyses are completed during the first year after a final rule takes effect in each Agreement State. Therefore, the one-time implementation costs associated with conducting the proposed analyses would be incurred in calendar year 2018. This is based on the NRC publishing the final rule in 2014 and the

Agreement States should adopt the final rule and develop conforming regulations within 3 years of the effective date of the rule.<sup>6</sup>

2. The NRC calculates benefits and costs over a 10-year period, discounted at a 7-percent and 3-percent discount rate and expressed in 2013 dollars.
3. Currently, three of the four existing LLRW disposal facilities are subject to a 5-year license renewal period. One of the four existing LLRW disposal facilities just initiated its 15-year initial licensing period. Thus, the NRC assumes an average license renewal period for the four licensees is 10 years. This 10-year period is also assumed for the period analyzed in the regulatory analysis.
4. For the purpose of this analysis, two of the four LLRW disposal facilities are assumed to accept only LLRW streams with short-lived radionuclides, and the remaining two facilities are assumed to accept, in addition to the short-lived LLRW streams, LLRW streams with long-lived radionuclides. These assumptions are based on information received from the Agreement States and NRC documents indicating two of the four existing LLRW disposal facilities have expressed an interest in accepting large quantities of long-lived LLRW, one existing LLRW disposal facility indicated that it would not accept more long-lived LLRW, and one existing LLRW disposal facility has not made its intentions known.
5. Currently, only one of the four existing LLRW disposal facilities plans to close its facility by 2044. To capture the facility closure costs, the NRC assumes that all four LLRW disposal facilities will close upon the next license renewal, assumed above to be after 10 years. This also coincides with the tenth year of the regulatory analysis period. The costs associated with LLRW disposal facility closures are included in the implementation cost.

### 3.2.2 Site-specific technical analysis assumptions

1. The NRC assumes that all four licensees would develop an LLRW acceptance plan as required by the proposed 10 CFR 61.58. This analysis also assumes site-specific technical analyses include compliance period analyses and performance period analyses. Compliance period analyses are performance assessments and intruder assessments that estimate peak annual doses that occur within the first 10,000 years, after facility closure, as would be required by proposed 10 CFR 61.41 and 10 CFR 61.42, respectively. Performance period analyses are analyses that assess how the LLRW disposal facility and site characteristics limit the potential long-term radiological impacts after the initial 10,000 years, as would be required by proposed 10 CFR 61.13(e).
2. The NRC assumes that the Agreement States will adopt compatible regulations 3 years after the final rule and that the licensees' initial analyses will be performed at next license renewal or within 5 years of the effective date. The costs for these initial

<sup>6</sup>

NRC, "Adequacy and Compatibility of Agreement States Program," Directive 5.9, February 1998, ADAMS Accession No. ML041770094.

analyses and LLRW acceptance plan would be incurred as one-time implementation costs. All four affected licensees are assumed to be Agreement States' licensees, the NRC assumes that licensees' initial analyses would be conducted after the Agreement States' adoption of the compatible regulations, or at a time determined by the Agreement States.

3. The NRC assumes that all LLRW disposal facilities would update site-specific technical analysis and LLRW acceptance plans once during the 10-year regulatory analysis period.

### 3.2.3 Labor rate and full-time equivalent (FTE) assumptions

1. The NRC's labor rates are determined using the methodology in Abstract 5.2, "NRC Labor Rates," of NUREG/CR-4627, "Generic Cost Estimates, Abstracts from Generic Studies for Use in Preparing Regulatory Impact Analyses." This methodology considers only variable costs (including salary and benefits) that are directly related to the development, implementation, and continuing support of the proposed amendments. Currently, the NRC hourly labor rate is \$126, including all benefits. The estimation of costs for rulemaking is based on professional NRC FTE, without administrative staff support. Based on data from the NRC's time and labor system, the number of hours in 1 year that directly relate to a professional staff's implementation of assigned duties is 1,375; excluding hours such as leave, training, and completing administrative tasks. Therefore, an NRC professional staff FTE hourly rate is based on 1,375 hours. The NRC labor rate for one FTE is \$173,250.
2. As described in the Office of Management and Budget (OMB) Circular A-76, "Performance of Commercial Activities," the number of productive hours in 1 year is 1,776. As this actual value is likely to vary from State to State and no specific data are available, the FTE costs for the States and licensees are based on the number of hours estimated in OMB Circular A-76.
3. The NRC staff determined Agreement State labor rates using National Wage Data available on the Bureau of Labor Statistics (BLS) web site ([www.bls.gov](http://www.bls.gov)). Because exact hourly rates for each state vary from State to State, nationwide mean hourly rates are used. Also, the exact rulemaking burden varies from State to State depending, among other things on the mix of different professional skills and administrative support required. For review of licensee documents, the NRC estimates \$31.54/hour, using the BLS Employer Costs for Employee Compensation data set for "Environmental Scientist." These rates are multiplied by 1.5 to account for items such as pension, insurance, overhead, and other legally-required benefits. For the development and review of site-specific technical analyses and LLRW acceptance plans associated with this proposed rulemaking, the NRC uses a labor rate of \$47.31/hour, 1.5 times the \$31.54 hourly rate from the BLS's employer cost data set for a state government "Environmental Scientist."
4. Licensee labor rates were also obtained from Bureau of Labor Statistics National Wage Data available on the BLS web site. The NRC selected an appropriate mean hourly labor rate depending on the listed industry and the occupation (e.g., manufacturing, health and safety, etc.) and multiplying by 1.5 to account for

pension, insurance, and other legally-required benefits. Because exact licensee hourly rates can vary significantly, the NRC used nationwide mean hourly rates. For the development of site-specific technical analyses and LLRW acceptance plans associated with this proposed rulemaking, \$49.62/hour is used ( $\$33.08 \times 1.5$ ), which is from the BLS employer cost data set for an "Environmental Scientist" in the private sector.

### 3.2.4 Agreement State and licensee effort assumptions:

1. This analysis assumes two cost scenarios for these licensees. In scenario 1, the licensee accepts only LLRW streams with short-lived radionuclides, and, therefore, is required to conduct only compliance period analyses. These analyses include: 1) an initial performance assessment required by the proposed 10 CFR 61.41; 2) an initial intruder assessment required by the proposed 10 CFR 61.42; and 3) an initial LLRW acceptance plan required by proposed 10 CFR 61.58. The licensee or license applicant would also be required to conduct updated compliance period analyses with the application to amend the license for closure as required by proposed 10 CFR 61.28. In addition, the licensee is required to update its compliance period analyses and LLRW acceptance plan, as part of an operating license amendment. The NRC assumes that two licensees follow this scenario.

In scenario 2, the licensee or license applicant would accept, in addition to the LLRW streams with short-lived radionuclides, LLRW with long-lived radionuclides. Therefore, in addition to the required compliance period analyses and LLRW acceptance plan, this licensee would also have to conduct: 1) the initial performance period analyses required by the proposed 10 CFR 61.13(e) and 2) the updated performance period analyses with the application to amend the license for closure as required by proposed 10 CFR 61.28. The NRC assumes that in addition to their initial performance period analyses, these licensees would also be required to conduct the updated performance period analyses and LLRW acceptance plan as part of an operating license amendment. The NRC also assumes that two licensees follow this scenario.

2. The analysis also assumes two cost scenarios for the Agreement States. An Agreement State regulating a licensee that falls under cost scenario 1 incurs costs to review its licensee's compliance period analyses and LLRW acceptance plan. These reviews would include: 1) an initial performance assessment required by the proposed 10 CFR 61.41; 2) an initial intruder assessment required by the proposed 10 CFR 61.42; and 3) an initial LLRW acceptance plan required by proposed 10 CFR 61.58. An Agreement State would also review updated compliance period analyses with the application to amend the license for closure. In addition, the Agreement State also incurs costs to review its licensee's updated compliance period analyses and LLRW acceptance plan, as part of an operating license amendment. The NRC assumes that two Agreement States follow this scenario.

An Agreement State regulating a licensee that falls under cost scenario 2 also incurs costs to review, in addition to its licensee's compliance period analyses and LLRW

acceptance plan: 1) the initial performance period analyses as required by the proposed 10 CFR 61.13(e) and 2) the updated performance period analyses as required by proposed 10 CFR 61.28 to be included with the application to amend the license for closure. In addition, the Agreement State also incurs costs to review its licensee's updated performance period analyses and LLRW acceptance plan, as part of an operating license amendment. The NRC assumes that two Agreement States follow this scenario.

3. In FY2011, the NRC performed a review of a site-specific technical analysis (compliance period analyses and performance period analyses) conducted by the U.S. Department of Energy (DOE), for its Savannah River Site F-Area Tank Farm Waste Determination. The DOE proposed to perform a Waste Determination to assign the residual high-level radioactive waste remaining in the liquid high-level radioactive waste tanks after cleaning, as LLRW. To do so, the DOE must demonstrate that the 10 CFR Part 61 performance objectives will be met. Therefore, the DOE's site-specific technical analyses are of a scope similar (though not identical) to a 10 CFR Part 61 LLRW disposal licensee's analysis. The NRC spent approximately 3,700 staff hours (three FTE) on the review, which includes multiple public and non-public efforts to develop and resolve "requests for additional information," review of DOE's modeling, and to develop a technical evaluation report. The NRC used this information and NRC staff experience derived from its review of the DOE Waste Determination to assume the following estimated costs for a licensee to conduct and an Agreement State to review the proposed site-specific technical analyses and LLRW acceptance plan:
  - a) The NRC assumes that an Agreement State requires the same effort to review a licensee's initial site-specific technical analyses as the NRC required to review DOE's site-specific technical analyses. Therefore, the NRC assumes that an Agreement State devotes 5,328 hours (three FTE) to review the licensee's initial site-specific technical analyses.
  - b) Based on NRC technical expertise, the NRC assumes that the estimated effort for an Agreement State to review a licensee's compliance period analyses is 1,776 hours (one FTE) and the estimated effort for an Agreement State to review the licensee's performance period analyses is 3,552 hours (two FTE).
  - c) Based on NRC technical expertise, the NRC assumes that the estimated effort for an Agreement State to review a licensee's updated compliance period analyses is 888 hours (0.5 FTE) and the estimated effort for an Agreement State to review the licensee's updated performance period analyses is 1,776 hours (one FTE).
  - d) Based on NRC technical expertise, the NRC assumes that the estimated effort for an Agreement State to review a licensee's LLRW acceptance plan is 888 hours (0.5 FTE) and the estimated effort for an Agreement State to review a licensee's updated LLRW acceptance plan is 177.6 hours (0.1 FTE).
  - e) Based on NRC technical expertise, the NRC assumes that a licensee expends twice the estimated effort developing all analyses provided below than the Agreement State expends reviewing the licensee's analyses.

- f) Based on the NRC assumption provided in e) of this section, the NRC assumes that a licensee expends 10,656 hours (six FTE) developing the initial site-specific technical analyses.
- g) Based on the NRC assumption provided in e) of this section, the NRC assumes that a licensee incurs 3,552 hours (two FTE) developing the compliance period analyses and 7,104 hours (four FTE) developing the performance period analyses.
- h) Based on the NRC assumption provided in e) of this section, the NRC assumes that a licensee expends 1,776 hours (one FTE) developing the updated compliance period analyses and 3,552 hours (two FTE) developing the updated performance period analyses.
- i) Based on the NRC assumption provided in e) of this section, the NRC assumes that a licensee expends 1,776 hours (one FTE) developing the initial LLRW acceptance plan.
- j) Based on the NRC assumption provided in e) of this section, the NRC assumes that a licensee incurs 888 hours (0.5 FTE) developing the updated LLRW acceptance plan.

### **3.3 Affected Entities**

The affected entities are those entities that could be impacted from any of the alternatives. Currently, no new LLRW disposal facility is expected to be built during the regulatory analysis period. The affected entities are four licensees located in four separate Agreement States. The affected entities (Agreement State licensees and Agreement States) are the following:

- a) The four existing LLRW disposal licensees are:
  1. EnergySolutions at Clive, UT
  2. US Ecology, Inc., at Richmond, WA
  3. Waste Control Specialists LLC at Andrews, TX
  4. EnergySolutions at Barnwell, SC
- b) The four existing Agreement States are:
  1. Utah
  2. Washington
  3. Texas
  4. South Carolina

### **3.4 Identification of Affected Attributes**

This section identifies the factors within the public and private sectors that the proposed rule is expected to affect, using the list of potential attributes provided in Chapter 5 of NUREG/BR-0184, "Regulatory Analysis Technical Evaluation Handbook," issued January

1997<sup>7</sup>, and in Chapter 4 of NUREG/BR-0058, Revision 4, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," issued September 2004.<sup>8</sup> The evaluation considered each attribute listed in Chapter 5 of NUREG/BR-0184. The basis for selecting those attributes is presented below.

Affected attributes include the following:

- *Licensee Implementation*--The proposed changes require a licensee to develop: 1) initial compliance period analyses, which include a performance assessment (proposed 10 CFR 61.41); 2) a compliance period intruder assessment (proposed 10 CFR 61.42); 3) the initial performance period analyses (proposed 10 CFR 61.13(e)); and 4) initial LLRW acceptance plan (proposed 10 CFR 61.58). The licensee is also required to provide updated compliance and performance period analyses with the application to amend the license for closure (proposed 10 CFR 61.28). In addition, the proposed changes also require a licensee to conduct updated compliance period analyses, performance period analyses, and LLRW acceptance plan, as part of a license amendment.
- *Licensee Operation*--The proposed changes require a licensee to conduct an annual review of the LLRW acceptance plan as required under the proposed 10 CFR 61.58(f). In addition, licensees are also required to keep records under proposed 61.80(m).
- *Agreement State Implementation*--An Agreement State incurs costs to develop its conforming regulations to the 10 CFR Part 61 final rules. The proposed changes would also require an Agreement State to review its licensee's: 1) initial compliance period analyses, which include a performance assessment (proposed 10 CFR 61.41); 2) and a compliance period intruder assessment (proposed 10 CFR 61.42); 3) initial performance period analyses required (proposed 10 CFR 61.13(e)); and 4) initial LLRW acceptance plan (proposed 10 CFR 61.58). The Agreement State is also required to review its licensee's updated compliance and performance period analyses with the application to amend its license for closure (proposed 10 CFR 61.28). In addition, this proposed rule requires an Agreement State's licensee to conduct an update to its compliance period analyses, performance period analyses, and LLRW acceptance plan, as part of a license amendment; this would also require that an Agreement State incur the cost of reviewing these amendments.
- *NRC Implementation*--Under the proposed action, the NRC develops the proposed and final rule packages to be published in the *Federal Register*.

---

<sup>7</sup> NRC, "Regulatory Analysis Technical Evaluation Handbook, Final Report," NUREG/BR-0184, January 1997, ADAMS Accession No. ML050190193.

<sup>8</sup> NRC, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," NUREG/BR 0058, Rev. 4, September 2004, ADAMS Accession No. ML042820192.



The NRC also develops an implementation guidance document to support the requirements that would be added or modified by the rulemaking process.

- *Public Health (Accident)*--The proposed rule requires new site-specific technical analyses to ensure that an inadvertent intruder, who occupies the site and might unknowingly be exposed to radiation from disposed LLRW, will be protected. These analyses must demonstrate there is reasonable assurance that any inadvertent intruder will not be exposed to doses that exceed the performance objectives set forth in proposed 10 CFR 61.42.

Attributes that are not affected include the following: Agreement State operations, NRC operations, public health (routine), general public, regulatory efficiency, occupational health (routine), occupational health (accident), off-site property, on-site property, environmental considerations, antitrust considerations, safeguards and security considerations, and improvement in knowledge.

#### **4. Presentation of Results**

This section presents the results of the alternatives. Table 4-1 summarizes the costs of Alternative 2 by entity over the 10-year regulatory analysis period.

##### **4.1 Alternative 1: No action**

By definition, the No-Action Alternative, the baseline for the main analysis, does not result in any change of benefits or costs. The baseline assumes full compliance with existing NRC requirements.<sup>9</sup>

##### **4.2 Alternative 2: Rulemaking to amend 10 CFR Part 61**

Alternative 2 is divided into four sections: licensee costs, including implementation and operation costs; Agreement State implementation costs; NRC implementation costs; and public health (accident).

###### **4.2.1 Licensee:**

This analysis assumes that four separate licensees would incur costs for implementation and operation because of the rulemaking. Unless stated otherwise, each cost is incurred by all four licensees. Licensees could incur costs by the following impacts:

###### **4.2.1.1 Licensee Implementation:**

- a) Conducting initial performance period analyses.

---

<sup>9</sup> NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," the NRC's staff guidance for regulatory analyses, states that, "in evaluating a new requirement...the staff should assume that all existing NRC requirements have been implemented."

Proposed 10 CFR 61.13(e) requires a licensee to conduct the initial performance period analyses that impacts two of the four affected licensees. The NRC estimates that the costs for each licensee to conduct the initial performance period analyses would be equal to 7,104 hours (four FTE). Therefore, the estimated cost to conduct the initial performance period analyses is to be \$352,502 per licensee and the total estimated cost to industry is \$705,004.

- b) Conducting initial compliance period analyses.

Proposed 10 CFR 61.41 and 10 CFR 61.42 require a licensee to conduct initial compliance period analyses, which include a performance assessment and an intruder assessment. The NRC estimates that the costs for each licensee to conduct its initial compliance period analyses would equal 3,552 hours (two FTE). Thus, the estimated total incremental cost, which is in addition to the cost to conduct the technical analysis currently required, is \$176,250 per licensee and the total estimated cost to the industry is \$705,000.

- c) Conducting initial LLRW acceptance plan.

Proposed 10 CFR 61.58 requires a licensee to develop an initial LLRW acceptance plan that impacts four licensees. The licensee's cost of developing an initial LLRW acceptance plan is estimated to 1,776 hours (one FTE) for a total cost of \$88,125 per licensee and the total estimated cost to the industry is \$352,500.

- d) Conducting updated compliance period analyses with the application to amend the license for closure.

Proposed 10 CFR 61.28 requires a licensee to update its compliance period analyses, which include a performance assessment and an intruder assessment, with the application to amend the license for closure. The NRC assumes that each licensee will conduct the analysis during the tenth year of the regulatory analysis period. The NRC estimates that the costs for each licensee to conduct its updated compliance period analyses would be 1,176 hours (one FTE), or \$88,125 per licensee and the total estimated cost to the industry is \$352,500.

- e) Conducting updated performance period analyses with the application to amend the license for closure.

Proposed 10 CFR 61.28 also requires a licensee to update its performance period analyses, which would include an intruder analysis, with the application to amend the license for closure. This impacts the two licensees that accept long-lived LLRW. The NRC assumes that each licensee will conduct the analysis during the tenth year of the regulatory analysis period. The NRC estimates that these updated performance period analyses would require 3,552 hours (two FTE), or \$176,250 per licensee and the total cost to the industry is \$352,500.

- f) Conducting updated performance period analyses during facility operations.

To ensure compliance with the Subpart C performance objectives, proposed 10 CFR 61.13(e) requires licensees to update their performance period analyses. This impacts the two licensees that accept long-lived LLRW. This analysis assumes that each licensee would conduct this update during the fifth year of the analysis period. The NRC estimates that each licensee's updated performance period analysis would require 3,552 hours (two FTE), or \$176,250 with the total cost to industry of \$352,500.

- g) Conducting updated compliance period analyses during facility operations.

Ensure compliance with the Subpart C performance objectives, proposed 10 CFR 61.41 and 10 CFR 61.42 requires a licensee to update its compliance period analyses, including a performance assessment and an intruder assessment. This would demonstrate that Subpart C would be met during the 10,000-year compliance period. This analysis assumes that each licensee would conduct this update during the fifth year of the regulatory analysis period. The NRC estimates that the costs for completing both updated compliance period analyses would require 1,776 hours (one FTE), or \$88,125 per licensee with the total cost to industry of \$352,500.

- h) Conducting updated LLRW acceptance plan during facility operations.

Proposed 10 CFR 61.58 ensures compliance with the Subpart C performance objectives by requiring licensees to update their LLRW acceptance plans. This analysis assumes that each licensee would conduct this update during the fifth year of the regulatory analysis period. The NRC estimates that each LLRW acceptance plan update would require 888 hours (0.5 FTE), or \$44,063 per licensee with the total cost to industry of \$176,250.

#### 4.2.1.2 Licensee Operation:

- a) Conducting annual reviews of LLRW acceptance plan during facility operations.

Proposed 10 CFR 61.58(f) requires a licensee to review its LLRW acceptance plan annually to determine whether an update would be needed. The NRC estimates that each annual review of a LLRW acceptance plan would require 40 hours (0.02 FTE), or \$1,985 per licensee with a total annual cost to the industry of \$7,940.

- b) Recordkeeping requirements.

Proposed language for 61.80(m) requires licensees to maintain records of their audits and other reviews of program content and implementation. The NRC estimates that each recordkeeping effort would require 40 hours (0.02 FTE), or \$1,985 per licensee with a total annual cost to the industry of \$7,940.

## 4.2.2 Agreement States:

The NRC assumes that four licensees would locate their LLRW disposal facilities in four different Agreement States and the Agreement State also incurs costs as a result of this rulemaking. Unless stated otherwise, each cost is incurred by all four Agreement States. The impacts on the Agreement States are as follows:

### 4.2.2.1 Agreement State Implementation:

- a) Reviewing initial performance period analyses.

Proposed 10 CFR 61.13(e) requires an Agreement State to review its licensee's initial performance period analyses and impacts two Agreement States, and estimates that the costs for each Agreement State to review its licensee's initial performance period analyses would be 3,552 hours (two FTE), or \$168,045 per Agreement State with a total cost for the Agreement States of \$336,090.

- b) Reviewing initial compliance period analyses.

Proposed 10 CFR 61.41 and 10 CFR 61.42 requires an Agreement State to review its licensee's initial compliance period analyses and impacts four Agreement States. The NRC estimates that the costs for each Agreement State to review its licensee's initial compliance period analyses would be equal to 1,776 hours (one FTE). This cost is estimated to be \$84,023 per Agreement State with a total cost for the Agreement States of \$336,090.

- c) Reviewing initial LLRW acceptance plan.

Proposed 10 CFR 61.58 requires an Agreement State to review its licensee's initial LLRW acceptance plan and impacts four Agreement States. The Agreement State's cost for reviewing its licensee's initial LLRW acceptance plan is estimated to be 888 hours (0.5 FTE) for a total cost of \$42,011 per Agreement State with a total cost for the Agreement States of \$168,044.

- d) Conducting rulemaking and guidance documents.

The Agreement States' staff develops the rule packages and procedures to accommodate the requirements that would be added or modified by the rulemaking process. The effort to develop the rule package requires 888 hours (0.5 FTE) for each Agreement State. This would result in a total cost of \$42,011 cost per Agreement State with a total cost for the Agreement States of \$168,044.

- e) Reviewing updated compliance period analyses with the application to amend the license for closure.

Proposed 10 CFR 61.28 requires an Agreement State to review its licensees' updated compliance period analyses at facility closure. The NRC estimates that each Agreement State review of its licensee's updated compliance period analyses during the tenth year

of the regulatory analysis period and requires 888 hours (0.5 FTE), or \$42,011 per Agreement State with a total cost for the Agreement States of \$168,045.

- f) Reviewing updated performance period analyses with the application to amend the license for closure.

Under proposed 10 CFR 61.28, an Agreement State is required to review its licensee's updated performance period analyses with the application to amend the license for closure. This requirement affects the two Agreement States assumed to have licensees accepting long-lived LLRW for disposal during the tenth year of the regulatory analysis period. The NRC estimates that each Agreement State review of its licensee's updated performance period analyses would require 1,776 hours (one FTE), or \$84,023 per Agreement State with a total cost for the Agreement States of \$168,045.

- g) Reviewing updated performance period analyses during facility operations.

To ensure each licensee's compliance with the Subpart C performance objectives under proposed 10 CFR 61.13(e), each Agreement State is required to review its licensee's updated performance period analyses. This impacts the two Agreement States that have licensees accepting long-lived LLRW. Each Agreement State reviews the updated performance period analyses during the fifth year of the regulatory analysis period. The NRC estimates that each of these Agreement State reviews would require 1,776 hours (one FTE), or \$84,023 with a total Agreement States cost of \$168,045.

- h) Reviewing updated compliance period analyses during facility operations.

Under proposed 10 CFR 61.41 and 10 CFR 61.42, an Agreement State is required to review its licensee's updated compliance period analyses to ensure compliance with the Subpart C performance objectives. Each Agreement State reviews the updated performance period analyses during the fifth year of the regulatory analysis period. The NRC estimates that each Agreement State's review of its licensee's updated compliance period analyses would require 888 hours (0.5 FTE), or \$42,011 per Agreement State with a total Agreement States cost of \$168,045.

- i) Reviewing updated LLRW acceptance plan.

To ensure compliance with the Subpart C performance objectives under proposed 10 CFR 61.58, an Agreement State is required to review its licensee's updated LLRW acceptance plan. Each Agreement State reviews the updated LLRW acceptance plan during the fifth year of the regulatory analysis period. The NRC estimates that each Agreement State would require 177.6 hours (0.1 FTE), or \$8,402 per Agreement State with a total Agreement States cost of \$33,608.

### **4.2.3 NRC:**

The four currently existing LLRW disposal facilities are located in Agreement States and not regulated by the NRC. The current NRC professional staff FTE hourly rate is based on 1,375 hours. The NRC labor rate for one FTE is \$173,250.

#### **4.2.3.1 NRC Implementation:**

a) Conducting rulemaking:

The NRC incurs only the costs of drafting the final rule following publication of the proposed rule for public comment. The estimated NRC effort required is 2,062.5 hours (1.5 FTE) to respond to comments, draft the final rule, and complete the rulemaking, for an estimated total cost of \$260,000.

b) Developing the implementing guidance document:

The NRC incurs only the costs of drafting a final implementing guidance document following its publication for public comment. The NRC estimates the NRC effort is 1,787.5 hours (1.3 FTE), for an estimated total cost of \$225,100.

### **4.2.4 Public Health (Accident)**

Although the NRC did not quantify the benefits of this proposed rule, the agency did qualitatively examine the benefits. These include both the direct and indirect benefits that would accrue from risks that are avoided if the NRC adopted the rule.

### **4.2.5 Totals**

**Cost to the Industry.** The proposed rule would result in additional costs to the industry with the majority of the costs resulting from implementation. On average, each licensee would incur an estimated implementation cost of \$837,000, followed by an estimated annual cost of \$4,000. Overall, the industry will incur an estimated implementation cost of \$3.3 million, followed by an estimated annual cost of \$16,000.

**Cost to the Agreement States.** The proposed rule would result in additional costs to the Agreement States with all costs resulting from implementation. On average, each Agreement State would incur an estimated implementation cost of \$428,515. Overall, the Agreement States will incur an estimated implementation cost of \$1.7 million.

**Cost to the NRC.** The NRC would incur an implementation cost for drafting and implementing a final rulemaking based on the proposed rule. This cost is estimated to be \$260,000. Because the NRC does not have any LLRW disposal licensee, no annual NRC cost is expected. The NRC would also incur an estimated implementation cost of \$225,100 for drafting a final guidance document based on the final rule.

**Table 4-1 Quantitative Results: Total Present Value for the Cost**

Table 4-1 summarizes the costs by entity, over a 10-year analysis period for Alternative 2.

Description	One-time Implementation Costs	Annual Operating Costs	Total combined Implementation and Annual Cost for 10-year period undiscounted	Total combined Implementation and Annual Cost for 10-year period at 3-percent discount rate	Total combined Implementation and Annual Cost for 10-year period at 7-percent discount rate
Industry Costs	\$3,348,755	\$15,878	\$3,507,539	\$3,484,201	\$3,460,278
Agreement States	\$1,714,060	\$0	\$1,714,060	\$1,714,060	\$1,714,060
NRC Costs	\$485,100	\$0	\$485,100	\$485,100	\$485,100
Total	\$5,547,915	\$15,878	\$5,706,699	\$5,683,361	\$5,659,438

**5. Benefits and Costs**

This section presents the benefits and costs from the proposed rule. To the extent that the affected attributes can be analyzed quantitatively, the net effect of each alternative is calculated and presented below. However, some benefits and costs could be evaluated only on a qualitative basis.

Although the NRC did not quantify the benefits of this proposed rule, the agency did qualitatively examine the benefits. These include both the direct and indirect benefits that would accrue from risks that are avoided if the NRC adopted the rule. The qualitative benefits of the proposed action includes assurance that public health and safety would be protected from the disposal of LLRW and an improved regulatory structure that facilitates implementation and better aligns 10 CFR Part 61 requirements with current health and safety standards.

The proposed 10,000-year compliance period is an important additional technical parameter for these analyses over existing requirements and is significant when evaluating LLRW streams that were not considered in the original 10 CFR Part 61 rulemaking. Currently, there is ambiguity regarding how a compliance period should be selected by an Agreement State and what timeframes should be applied to the analysis supporting demonstration of compliance with different sections of the regulations. In addition, the proposed site-specific analyses use a risk-informed regulatory framework that specifies requirements that need to be met and provides flexibility to a licensee or applicant with regard to the information or approach used to satisfy those requirements. Also, proposed 10 CFR 61.42 ensures protection of any inadvertent intruder who occupies the disposal site or contacts the LLRW at any time after active institutional controls are removed, proposed 10 CFR 61.13(e) evaluates any additional measures that are needed at a disposal site to ensure the protection of the general population and the inadvertent intruder from disposal of long-lived LLRW, and proposed 10 CFR 61.58,

when combined with the other revisions recommended for this rulemaking, provides reasonable assurance that public health and safety would be protected from the disposal of LLRW.

Table 5-1 summarizes the results of the benefits and costs analysis. The rulemaking alternative results in additional costs when compared to the no-action alternative. The quantitative impact estimated of the rulemaking alternative is estimated to cost between approximately \$5,659,438 and \$5,683,361 (7-percent and 3-percent discount rate, respectively).

**Table 5-1 Summary of Benefits and Costs**

Net Monetary Costs – Total Present Value in Millions (\$)	Nonmonetary Benefits/Costs
<p><b>Alternative 1: No Action</b></p> <p>Licensee: 0 NRC: 0</p>	<p><u>Qualitative Benefits:</u> None</p> <p><u>Qualitative Costs:</u> None</p>
<p><b>Alternative 2: Rulemaking</b></p> <p><u>Licensee:</u></p> <p>\$3.48M using a 3% discount rate \$3.46M using a 7% discount rate</p> <p><u>Agreement States:</u></p> <p>\$1.7M using a 3% discount rate \$1.7M using a 7% discount rate</p> <p><u>NRC:</u></p> <p>\$0.5M using a 3% discount rate \$0.5M using a 7% discount rate</p> <p><u>Total:</u></p> <p>\$5.68M using a 3% discount rate \$5.65M using a 7% discount rate</p>	<p><u>Qualitative Benefits:</u></p> <p>These amendments ensure that LLRW streams that are significantly different from those considered during the development of the current regulations can be disposed of safely and meet the performance objectives for land disposal of LLRW.</p> <p>These amendments would facilitate the use of site-specific information and up-to-date dosimetry methodology to ensure public health and safety is protected.</p> <p><u>Qualitative Costs:</u> None</p>

## 6. Decision Rationale

This regulatory analysis evaluated two alternatives. Alternative 1, the no-action alternative, would maintain the regulations as currently written. Under this option, the NRC would not modify 10 CFR Part 61. The regulations at 10 CFR Part 61 would continue to provide no performance period analyses requirements, no specified compliance period, no new intruder assessment or performance assessment requirements, no dose limit for the inadvertent intruder, no updated compliance and performance period analyses, and no LLRW acceptance plan. Alternative 1 avoids the costs that the proposed rule would impose, but would not update the existing LLRW disposal requirements to ensure the current level of protection for public health and safety. Accepting the no-action alternative does not provide the assurance that the



disposal of the LLRW streams not considered in the original 10 CFR Part 61 regulatory basis complies with the performance objectives in the regulations.

Alternative 2, the rulemaking alternative, would amend 10 CFR Part 61 by adding requirements for licensees and license applicants to prepare new and revised compliance and performance period analyses. These analyses include: 1) a revised and renamed compliance period performance assessment to demonstrate the protection of the general population from releases of radioactivity, 2) a new compliance period intruder assessment to demonstrate the protection of inadvertent intruders, 3) new performance period analyses to determine whether limitations on the disposal of some LLRW streams at certain sites may be needed to properly manage the disposal of LLRW, and 4) a LLRW acceptance plan to provide assurance of compliance with the Subpart C performance objectives and to ensure the safe disposal of LLRW that was not analyzed in the original 10 CFR Part 61 regulatory basis (e.g., large quantities of depleted uranium). In addition, licensees and license applicants are required to update compliance and performance analyses in applications to amend a license for closure.

Requiring updated and new compliance and performance period analyses to demonstrate compliance with the performance objectives ensures the safe disposal of LLRW and provides assurance that the disposal of LLRW streams not considered in the original 10 CFR Part 61 regulatory basis complies with the Subpart C performance objectives. Further, these analyses may identify additional measures that should be implemented, and these amendments would facilitate implementation and better align the requirements with current health and safety standards. This rulemaking provides assurance that LLRW disposal meet the Subpart C performance objectives in 10 CFR Part 61. Therefore, the NRC staff recommends publishing the proposed rule for public comment.

## **7. Implementation**

Following the publication of the proposed rule and the draft regulatory guide, the staff would revise the proposed rule and draft regulatory guide as appropriate and submit a draft final rule and draft final regulatory guide to the Commission in 2014.

## **8. References**

- NUREG/BR-0184, "Regulatory Analysis Technical Evaluation Handbook, Final Report," U.S. Nuclear Regulatory Commission, Washington, DC, January 1997.
- NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Revision 4, U.S. Nuclear Regulatory Commission, Washington, DC, September 2004.
- NUREG/CR-4627, "Generic Cost Estimates, Abstracts from Generic Studies for Use in Preparing Regulatory Impact Analyses."
- OMB Circular No. A-4, September, 17, 2003.
- Department of Labor (U.S.), Bureau of Labor Statistics. Occupational Employment Statistics, Occupational Employment and Wages.

**SUMMARY OF PUBLIC AND ADVISORY COMMITTEE ON REACTOR SAFEGUARDS  
INTERACTIONS AND COMMENTS RECEIVED IN RESPONSE TO PRELIMINARY  
DOCUMENTS FOR LOW-LEVEL RADIOACTIVE WASTE DISPOSAL  
(10 CFR PART 61) RULEMAKING**

**BACKGROUND:**

In September 2009, the staff conducted two public workshops to solicit public input on the technical basis for the proposed rule. Transcripts for these workshops can be found at Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML092580469, ML092580481, ML092890511, and ML092890516. The staff also briefed the Advisory Committee on Reactor Safeguards (ACRS), Radiation Protection and Nuclear Materials Subcommittee, on December 16, 2009, and the full ACRS on March 4, 2010, on the status of this rulemaking. The ACRS provided a letter report (ADAMS Accession No. ML100760264), dated March 18, 2010, to the Commission that recommended methods to address certain low-level radioactive waste (LLRW) performance assessment issues. In a response to the ACRS letter, the staff noted that it would consider the Committee's advice and recommendations. As a result of comments received from these workshops and ACRS interactions, the staff developed a regulatory basis document titled "Technical Basis for Proposed Rule to Amend 10 CFR Part 61 to Specify Requirements for the Disposal of Unique Waste Streams, Including Large Quantities of Depleted Uranium" (ADAMS Accession No. ML111040419) and started the 10 CFR Part 61 limited-scope rulemaking. On May 3, 2011, the staff published preliminary proposed rule language, an associated regulatory basis document, and an issue paper titled "Technical Analysis Supporting Definition of Period of Performance for Low-level Waste Disposal" (ADAMS Accession No. ML111030586) on <http://www.regulations.gov>, for public comment (76 FR 24831). In conjunction with the publication of the preliminary documents, the staff conducted a public meeting on May 18, 2011, in Rockville, MD, to discuss the preliminary proposed rule language and its associated regulatory basis documents. A summary and transcript of this meeting can be found at ADAMS Accession No. ML111570329. The comment period for the preliminary proposed rule language ended on June 18, 2011; the U.S. Nuclear Regulatory Commission (NRC) received 15 comment letters from a diverse group of people, including public interest groups, industry, and other government organizations. The comment letters for the May 2011 preliminary proposed rule language are available on <http://www.regulations.gov> under Docket ID NRC-2011-0012.

On January 19, 2012, in Staff Requirements Memorandum (SRM)-COMWDM-11-0002/COMGEA-11-0002, "Revisions to Part 61," dated January 19, 2012 (ADAMS Accession No. ML120190360), the Commission directed the staff to expand the ongoing limited-scope revision to 10 CFR Part 61 to include the following issues: 1) allowing the licensees the flexibility to use International Commission on Radiological Protection (ICRP) dose methodologies in a site-specific performance assessment for the disposal of all radioactive LLRW; 2) developing a two-tiered approach that establishes a compliance period that covers the reasonably foreseeable future and a longer period of performance that is not a priori and is established to evaluate the performance of the site over longer timeframes; 3) providing flexibility for disposal facilities to establish site-specific LLRW acceptance criteria based on the results of the site's performance assessment and intruder assessment; and 4) recommending a compatibility category for the elements of the revised rule that ensures alignment between the States and Federal Government on safety fundamentals, while providing the States with the flexibility to determine how to implement these safety requirements. Based on the Commission's direction, the NRC staff revised the regulatory basis document associated with

this rulemaking, “Regulatory Basis for Proposed Revisions to Low-Level Waste Disposal Requirement (10 CFR Part 61)” (ADAMS Accession No. ML12356A242) and developed a second version of the preliminary rule language.

Comments on Revised Preliminary Proposed Rule Language:

In connection with SRM-COMWDM-11-0002/COMGEA-11-0002, “Revision to 10 CFR Part 61,” the Commission directed the staff to seek public feedback on the four expanded regulatory requirements for the ongoing 10 CFR Part 61 rulemaking. The staff conducted three public meetings in 2012 to solicit public input. Transcripts of those meetings are available under ADAMS Accession Nos. ML120820051, ML12143A197, and ML12244A524. In connection with the NRC-sponsored public meetings, the staff also placed *Federal Register* notices, requesting comment on the Commission’s 2012 expanded rulemaking direction. The staff also held direct conversations with the Agreement States, both by telephone and in person. A summary of the Agreement States and the public initial views on the four expanded regulatory requirements is included in Section 6, ‘Stakeholder Interactions and Comments,’ of the revised regulatory basis document.

On December 7, 2012, the staff published the revised preliminary proposed rule language and the revised regulatory basis document on <http://www.regulations.gov> for public comment (77 FR 72997). The comment period ended on January 7, 2013. The NRC received 25 comment letters from a diverse group of people, including those from public interest groups, industry, and government organizations. The comment letters are also available on <http://www.regulations.gov> under Docket ID NRC-2011-0012.

In general, comment letters from the December 7, 2012, solicitation both supported and opposed the staff’s proposed rulemaking approach.

In the preliminary proposed rule language, the staff proposed a compliance period of 10,000 years. Commenters suggested their preferences for a range for the compliance period from 500 to 1,000 years, 10,000 years, 20,000 years, and out to peak annual dose. Some commenters felt that the results of site-specific technical analyses would not be meaningful considering the large uncertainty resulting from a 10,000-year compliance period. Others suggested that, in addition to evaluating uncertainties in the performance assessment, the NRC should also apply a dose limit for the time period beyond the compliance period.

The staff also proposed a requirement to perform analyses during the post-10,000 year performance period. The performance period analyses required by proposed 10 CFR 61.13(e), “Technical analyses,” would require licensees or license applicants to prepare performance period analyses (i.e., after 10,000 years) that assess how the LLRW disposal facility and site characteristics limit the potential long-term radiological impacts, consistent with available data and current scientific understanding. The analyses would use the as low as reasonably achievable (ALARA) dose methodology as a metric to indicate the impacts from disposal of LLRW during the performance period. Commenters supported the proposed performance period analyses requirement, but believed that ALARA is not an appropriate methodology to use, since ALARA has been traditionally used in association with a prescribed dose limit (e.g., in 10 CFR Part 20) and the staff’s proposed performance period analyses do not have a prescribed dose limit. Other commenters suggested that an alternative to the staff’s proposed performance period metric that uses a high dose limit or “realistic threat of catastrophic

consequences” would be more appropriate. Based on public comments, the staff reconsidered its approach and replaced the ALARA requirement with a requirement that the disposal facility “minimize exposures to the extent reasonably achievable.”

In the preliminary proposed rule language, the staff proposed to permit the development of criteria for LLRW acceptance based on the results of site-specific technical analyses. Some commenters expressed concerns that the LLRW acceptance criteria (proposed 10 CFR 61.58, “Waste acceptance”) for determining the acceptability of LLRW for disposal at any given LLRW disposal facility, “must not either explicitly or by interpretation be a means to by-pass the existing waste classification requirements of Subpart 61.55.” These commenters requested that “the existing classification system of low-level radioactive waste remain in place, with the ability of a state, such as Utah, to enforce state prohibitions on wastes with higher radioactive levels.” Other commenters believed that site-specific LLRW acceptance criteria would allow State regulators a greater level of control and certainty over LLRW originating in another State. Some commenters suggested that there should be a requirement to annually update the LLRW acceptance criteria every 5 years and further clarify in the regulation that the disposed LLRW must meet the LLRW acceptance criteria. Based on the comments, the staff revised the proposed rule language to require a licensee to conduct an annual review of the LLRW acceptance criteria to determine if they need to be updated. The staff also made revisions to clarify that the disposed LLRW must meet the LLRW acceptance criteria.

Finally, the staff also proposed to allow the use of updated dosimetry modeling techniques in conducting the proposed site-specific technical analyses. Some commenters believed that, by abandoning the current organ dose methodology in 10 CFR Part 61, the NRC’s regulations would be less protective of public health and safety. Other commenters were supportive of the proposal to allow licensees or license applicants the flexibility to use the latest ICRP dose methodologies in a site-specific performance assessment.

Some commenters suggested that the NRC should adopt the strictest Agreement State compatibility level to ensure consistency in the implementation of the proposed requirements among the Agreement States, while others suggested a more flexible compatibility level and that the NRC work with the States so that there would be no unintended consequences resulting from the proposed requirements.

Some commenters questioned the applicability of the proposed requirements to existing facilities, asking “if a sited state made the determination to apply Part 61 to a facility that was licensed at the time Part 61 originally was adopted, would the sited state then be required to apply the current revisions to that facility?” Other commenters suggested that clarification should be made in the proposed rule regarding whether current LLRW disposal facilities that are regulated by the Agreement States would need to comply with these requirements or would be “grandfathered.” Based on comments, the staff recommends that the proposed requirements would apply to current licensees and license applicants.

#### Advisory Committee on Reactor Safeguards Comments:

The staff also met with the ACRS, Radiation Protection and Nuclear Materials Subcommittee on June 23 and August 17, 2011, and the full ACRS on July 13 and September 8, 2011, to provide an update and solicit the Committee’s views on certain technical issues related to the 10 CFR Part 61 rulemaking and implementation guidance document developments. The transcripts for

these meetings can be found in ADAMS (Accession Nos. ML11187A276, ML11242A170, ML11221A059, and ML11256A117, respectively).

The staff briefed the ACRS on the May 2011 preliminary proposed rule language, the associated regulatory basis documents, and the comments received from the public. Following the staff's briefings, the ACRS provided a letter report (ADAMS Accession No. ML11256A191), dated September 22, 2011, to the Commission. This report fundamentally disagreed with the NRC's current and proposed regulatory framework for LLRW disposal. In the report, the ACRS recommended that the compliance period for the performance assessment should be a site-specific time span, not a specified period of 20,000 years. The ACRS also disagreed with the current treatment of inadvertent intruders and indicated that, with respect to the proposed requirements, compliance with the performance objectives after the institutional control period ends, as well as the possible doses to hypothetical intruders, should be evaluated considering the natural features, events, and processes for a given site for a period of time commensurate with the risk for a specific facility and site. In a response letter dated November 3, 2011 (ADAMS Accession No. ML112911386), the staff explained that the proposed amendments to 10 CFR Part 61 would allow licensees flexibility to demonstrate compliance with performance objectives using site-specific analyses. The staff also indicated that its proposed approach for a two-tiered period of performance is consistent with 1) Commission direction to specify parameters of analyses; 2) public feedback to specify a compliance period; and 3) previous recommendations of the Advisory Committee on Nuclear Waste to consider adopting the two-tiered approach.

The NRC staff again briefed the ACRS Radiation Protection and Nuclear Materials Subcommittee on April 9 and June 18 and the full committee on July 10, 2013. Summaries and transcripts of these meetings can be found at the ACRS' website, <http://www.nrc.gov/about-nrc/organization/acrsfuncdesc.html>. The staff awaits receipt of the ACRS' comment letter following the recent full committee meeting.

#### Agreement States Comments:

On September 28, 2011, the staff provided a pre-decisional copy of the initial draft of the proposed rule and draft implementation guidance document to the Agreement States for review and comment. On November 9, 2011, the NRC received a comment letter from the Conference of Radiation Control Program Directors (CRCPD). The letter stated that the CRCPD's comments were consistent with the ACRS's comments in the ACRS letter report dated September 22, 2011. The CRCPD also stated that, because of the large volumes of depleted uranium at existing LLRW disposal facilities, some States with disposal sites were initially concerned that there would be a need for site remediation due to the proposed revised requirements for long-term site performance standards for unique LLRW streams. The CRCPD indicated that its concern could be addressed through "grandfathering." However, the CRCPD stated that it was still concerned because assuring compliance with the 10 CFR Part 61 performance objectives after 20,000 years would be difficult. The CRCPD supported the ACRS's position of a site-specific approach regarding the compliance period.

On November 30, 2011, the NRC received a comment letter from the Utah Division of Radiation Control (DRC). The DRC recommended several changes to the initial draft of the proposed rule text, such as new definitions and clarifications. The DRC also recommended that a longer time period than the 20,000-year proposal should be considered for the intruder assessment

because of the long half-life of depleted uranium and the significant in-growth of radium-226. Additionally, the DRC recommended that the NRC establish a maximum dose limit for the period beyond 20,000 years because of the burden that it would place on Agreement States in the absence of a dose limit. Finally, the DRC noted that the four Agreement States that currently host LLRW disposal facilities specify concentration limits for Ra-226; whereas, the NRC does not have any LLRW concentration limits for Ra-226 specified in 10 CFR 61.55.

On March 13, 2013, the staff provided a pre-decisional copy of the revised draft proposed rule language, based on comments received from the revised preliminary proposed rule language, to the Agreement States for review and comment. On April 12, 2013, the NRC received a comment letter from the CRCPD. The letter stated that the CRCPD is concerned that an unintended consequence of the proposed requirements of 10 CFR Part 61 would be a need to remediate existing LLRW disposal facilities, and this concern should be addressed through "grandfathering" of LLRW that are already disposed in existing facilities. In addition, the CRCPD recommended deleting the proposed requirements in 10 CFR 61.13, "For licensees with licenses for land disposal facilities in effect on the effective date of this subpart, such analyses shall be submitted within one year of the effective date of this subpart" and allowing the State to decide whether a current licensee should submit the analyses or be reviewed during an inspection. The staff believes that a submittal timeframe should be specified to clarify when the analyses must be submitted. However, the staff revised the required submittal timeframe from "one year of the effective date" to "at the next license renewal or within five years of the effective date of this subpart, whichever comes first," to provide a more reasonable timeframe for the licensees to conduct the required analyses. The staff also would note that performing the analyses proposed and developing acceptance criteria for future receipt of LLRW shipments would not result in a necessity for immediate site remediation activities with respect to existing LLRW. The staff recognizes that the results of the analyses may impact evaluations conducted at the time of license termination for the disposal facility.

On April 12, 2013, the NRC received a comment from the State of Kentucky. The State of Kentucky commented that while it understands that utilizing site-specific technical analyses and foregoing specific inclusion of uranium limits in the 10 CFR 61.55(a) tables allows for more flexibility and "fairness" to a potential licensee intending to open a LLRW disposal facility, it believes that some of the proposed regulatory changes stop short of what should be protective in certain scenarios. The State of Kentucky stated that it further believes the long-term hazards of these types of waste justify a "hard" regulatory requirement of deeper burial, in arid conditions, with significant depth to any water table. The State of Kentucky expressed its concern that, without express prohibition of sites and designs that should not be utilized to store extremely long-lived waste forms, such sites will be proposed and be justified with models, despite the inherent risks.

On April 12, 2013, the NRC received a comment letter from the State of Washington. The letter stated that the State of Washington supports the staff's proposed two-tiered approach and the 10,000-year compliance period. However, the State of Washington stated that it believes, given the extraordinarily large uncertainties associated with these timeframes, dose limits should not be applied to the performance period. The State of Washington also stated that it agrees with the staff's recommended approach of adopting an edition neutral approach in order to allow for the most up-to-date ICRP recommendations to be utilized and supports the concept of allowing States to develop their own waste acceptance criteria.

On April 13, 2013, the NRC received a comment letter from the Organization of Agreement States (OAS). The letter stated that the OAS does not agree with the statement that 10 CFR 61.58 would have significant transboundary implications associated with the staff's proposed designation of Compatibility Category "B" for this section, without including specific examples or more explanation to support the proposed compatibility designation. The OAS recommends the compatibility be changed to a "C." The staff agrees with the OAS and revised the proposed compatibility designation of 10 CFR 61.58 from Compatibility Category "B" to Compatibility Category "C." The OAS also recommends the deletion of the sentence, "For licensees with licenses for land disposal facilities in effect on the effective date of this subpart, such analyses shall be submitted within one year of the effective date of this subpart," and allowing the state to decide whether a current licensee should submit the analyses or be reviewed during an inspection. The staff believes that a submittal timeframe should be specified to clarify when the analyses must be submitted. The staff revised the required submittal timeframe from "one year of the effective date" to "at the next license renewal or within five years of the effective date of this subpart, whichever comes first," to provide a more reasonable timeframe for the licensees to conduct the required analyses.

On April 17, 2013, the NRC received a comment letter from the DRC. The DRC recommended several changes to the initial draft of the *Federal Register* notice and proposed rule text, such as proposed Table A of proposed 10 CFR 61.13(e) and clarifications. The DRC stated that it is concerned with the staff's approach to comparing the proposed Table A limits, found in proposed 10 CFR 61.13(e), to LLRW concentrations averaged over the entire disposal site and that this approach is different than Utah's current practice of addressing LLRW licensing actions on an embankment-specific basis. The DRC stated that it believes its practice would allow a licensing agency to determine if a licensee is able to take credit for low activity inventory already in the ground to "dilute" higher activity concentrations that may be proposed. Therefore, the DRC proposed to revise the description of the proposed Table A in the *Federal Register* notice to reflect that the Table A values will be compared against either the LLRW concentrations averaged over the entire disposal site, or the average for a given disposal embankment, at the discretion of the licensing agency such as an Agreement State. The DRC also encouraged the staff to develop implementation guidance to aid the States that host LLRW disposal facilities in determining how often LLRW sampling and analysis need to be performed and how much time can be allowed to elapse between the results of the technical analyses and the time of disposal. The DRC also requested the NRC consider the likely increased resource burden on States that host LLRW disposal facilities resulting from the proposed amendments. The staff has prepared a guidance document to facilitate the implementation of the proposed rule and a draft regulatory analysis (enclosure 2) to examine the costs and benefits of this proposed regulation.

On May 6, 2013, the NRC received a comment letter from the Texas Commission on Environmental Quality (TCEQ). The TCEQ stated that it recommends that the definition of "Performance period" be expanded to include some type of demonstration period such as time at which peak dose occurs or another metric such as cost-benefit analysis. The TCEQ also stated that it believes the applicability of dose limits, 500 millirem per year in the proposed 10 CFR 61.42(a) and 25 millirem per year in the current 10 CFR 61.41(a), may be unclear and recommended that the NRC define which dose limits apply to which receptors. The comment letter was submitted after the closing of the comment period. The staff plans to consider the TCEQ comments as part of the review of comments on the proposed rule.

### Staff's Analysis

In general, comments from stakeholders on the staff's preliminary proposed rule language appear equally divided between support for and opposition to the staff's proposed rulemaking approach. After careful consideration, the staff concluded that its approach is viable, and that none of the alternate approaches are more clearly preferable in achieving the Commission's direction for the reasons elaborated upon in the draft *Federal Register* notice for the proposed rule. The staff has reviewed and considered all the comments received during the comment period. Where appropriate, the staff made changes to the preliminary proposed rule language based on public comments, including those from the industry, the ACRS, and the Agreement States. Because the comment period for the preliminary proposed rule documents is outside of the formal rulemaking process, the staff did not and does not intend to provide written responses to the commenters. The public will have an additional opportunity to comment on the rule language when it is published as a proposed rule in accordance with the provisions of the Administrative Procedures Act. The staff will respond to any such comments in the Statements of Consideration for the final rule.