

TABLE 2.—UNIT RATES—Continued

Service <sup>1,3</sup>	Rough rice	Brown rice for processing	Milled rice
Interpretive line samples: <sup>2</sup>			
(a) Milling degree (per set) .....	.....	.....	94.00
(b) Parboiled light (per sample) .....	.....	.....	23.00
Extra copies of certificates (per copy) .....	3.00	3.00	3.00

<sup>1</sup> Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or in combination at other than at the applicant's facility.

<sup>2</sup> Interpretive line samples may be purchased from the U.S. Department of Agriculture, GIPSA, FGIS, Technical Services Division, 10383 North Ambassador Drive, Kansas City, Missouri 64153-1394. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Director, Field Management Division, USDA, GIPSA, FGIS, 1400 Independence Avenue, SW., STOP 3630, Washington, DC 20250-3630. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor "Parboiled Light" rice.

<sup>3</sup> Fees for other services not referenced in Table 2 will be based on the noncontract hourly rate listed in § 868.90, Table 1.

Dated: February 24, 2003.

**Donna Reifschneider,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 20

#### Rulemaking on Controlling the Disposition of Solid Materials: Scoping Process for Environmental Issues and Notice of Workshop

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Request for comments on scope of proposed rulemaking and notice of workshop.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is conducting an enhanced participatory rulemaking on alternatives for controlling the disposition of solid materials that originate in restricted or impacted areas of NRC-licensed facilities, and that have no, or very small amounts of, radioactivity resulting from licensed operations. The NRC is seeking stakeholder participation and involvement in identifying alternatives and their environmental impacts that should be considered as part of the rulemaking. Considerable information collection effort has been conducted in this area and the Commission is building on existing information to focus on potential solutions. To assist in this process, the NRC is holding a workshop to solicit new input with a focus on the feasibility of alternatives identified in this notice that would limit where solid material can go. The NRC has not made a decision on the scope or details of a regulation and is continuing

to develop a solid technical basis for the rulemaking.

**DATES:** Submit comments by June 30, 2003. Comments received after this date will be considered if it is practicable to do so, but the Commission is able to assure consideration only for comments received on or before this date.

In addition to providing opportunity for written (and electronic) comments, a workshop to solicit comments on alternatives, with a focus on the feasibility of alternatives identified in this notice that would limit where solid materials can go, will be held on May 21-22, 2003 from 8:30 a.m.-5 p.m. in the NRC Auditorium, 11545 Rockville Pike, Rockville, Maryland.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov> (then select "Information/Comment Requests" from left-hand column). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking web page, contact Ms. Carol Gallagher, (301) 415-5905 ([cag@nrc.gov](mailto:cag@nrc.gov)).

Copies of any comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Frank Cardile, telephone: (301) 415-6185; e-mail: [fpc@nrc.gov](mailto:fpc@nrc.gov), Office of Nuclear Material Safety and Safeguards, USNRC, Washington, DC 20555-0001. Specific comments on the public meeting process should be directed to Chip Cameron; e-mail [fxc@nrc.gov](mailto:fxc@nrc.gov), telephone: (301) 415-1642; Office of the

General Counsel, USNRC, Washington, DC 20555-0001. Specific comments on the environmental scoping process discussed in Section VI should be directed to Phyllis Sobel; e-mail [pas@nrc.gov](mailto:pas@nrc.gov), telephone: (301) 415-6714; Office of Nuclear Material Safety and Safeguards, USNRC, Washington, DC 20555-0001.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The NRC is conducting a rulemaking to evaluate alternatives for controlling the disposition of solid materials with no, or very small amounts of, radioactivity resulting from licensed operations. This **Federal Register** Notice (FRN) provides information on this effort as follows:

(1) *Sections II.1-II-7:* These sections provide background information about why we are conducting this effort and what are some alternatives for controlling the disposition of solid materials.

(2) *Sections III.1-III.2:* These sections discuss the considerable information collection efforts we have conducted to date in this area and what we have learned about the alternatives.

(3) *Sections IV and V:* These sections discuss our current effort to build on information previously collected in this area. The NRC has not made a decision on any alternatives for controlling the disposition of solid materials and invites stakeholders to present new information on alternatives. In particular, Section IV asks specific questions about the feasibility of alternatives that would limit where solid material can go, and Section V announces a workshop scheduled for May 21-22, 2003.

(4) *Section VI:* This section announces a re-opening of the scoping process and requests input on environmental impacts of alternatives.

To further assist stakeholders, the staff is also placing on its website an

information packet which discusses ways in which stakeholders can review the alternatives and issues involved, provide comments to the NRC, and link to other documents (Go to <http://www.nrc.gov/materials.html> and select "Controlling the Disposition of Solid Materials.").

## II. Background

The information below in Sections II.1–II.7 has been discussed in various NRC documents and public meetings.<sup>1</sup> It is provided here in summary form as background information on the issues involved and on alternatives for controlling the disposition of solid materials.

### 1. Solid Materials Being Considered

Just as is the case for many industrial operations (or in a home), there are "solid materials" that are no longer needed or useful at facilities licensed by NRC. This can occur, for example, during normal facility operations when: (a) Metal equipment and tools become surplus, obsolete or worn; (b) glass, plastic, paper, or other trash-like materials are no longer useful; or (c) concrete from a building being renovated or soil being excavated from a site is no longer needed. This can also occur at the end of facility operations when a licensee seeks to terminate its NRC license. At such times, NRC's licensees seek disposition alternatives for solid material that are protective of public health and safety and are economical.

NRC licensees fall into broad categories that include: (a) Academic—university laboratories and small reactors that use radioactivity for research and teaching purposes; (b) medical—hospitals and clinics that use radioactivity for diagnostic and therapeutic medical purposes; (c) manufacturing—facilities and labs that manufacture products that use radioactivity, e.g., smoke detectors, certain types of gauges; and (d) power production—reactor facilities and fuel cycle facilities that handle radioactivity as part of the generation of electricity.

### 2. The Nature of These Solid Materials

This effort is focused on controlling the disposition of solid materials that are present in areas in NRC-licensed facilities where radioactive materials are used or stored. These areas of the facilities are generally referred to as

either "restricted<sup>2</sup>" or "impacted<sup>3</sup>" areas. Despite their location in these restricted or impacted areas, much of this solid material has no, or very small amounts of, radioactivity resulting from licensed operations either because the material was exposed to radioactivity in the facility to only a limited extent or because it has been cleaned. These solid materials can include furniture and ventilation ducts in buildings; metal equipment and pipes; wood, paper, and glass; laboratory materials (gloves, beakers, etc); routine trash; site fences; concrete; soil; or other similar materials.

Other solid materials in these restricted or impacted areas can contain more appreciable levels of radioactivity. However, these are separated from those materials with no, or very small amounts of, radioactivity at the licensed facility and are required to be disposed of at licensed low-level waste (LLW) disposal sites under NRC's existing regulations in 10 CFR part 61. Solid materials containing appreciable levels of radioactivity are not the subject of this NRC rulemaking.

Solid materials not located in restricted or impacted areas, and considered to be free of radioactivity resulting from licensed operations, are not currently required to be part of a disposition radiological survey program. Such materials can include furniture, glass bottles, paper, equipment, or trash in administrative buildings or office areas. This rulemaking does not propose to alter this approach, and therefore, these materials are also not the subject of this NRC effort.

The remainder of this FRN discusses those solid materials from restricted or impacted areas of an NRC-licensed facility that have no, or very small amounts of, radioactivity resulting from licensed operations. For ease of reference, these are referred to as "solid materials."

### 3. The NRC's Current Approach for Controlling the Disposition of Solid Materials

Currently, the NRC has requirements in its regulations in 10 CFR part 20 that require that solid materials that have been in restricted or impacted areas be surveyed before leaving the site. Solid materials can currently be released for

any unrestricted use if the survey does not detect radioactivity from licensed operations on the material or, if it does detect radioactivity, the amount is below a level that is considered to be protective of public health and safety and the environment.

However, 10 CFR part 20 does not currently specify the level below which the material can be released. Decisions on disposition of solid materials are currently made using levels contained in a set of existing guidelines that are based primarily on the ability of survey meters to measure the radioactivity level on, or in, the solid material.<sup>4</sup>

### 4. Why NRC Is Examining This "Current Approach"

A report by the National Academies indicates that NRC's current approach for controlling the disposition of solid materials protects public health and does not need immediate revamping.

However, the National Academies report also indicates that the current approach is incomplete and inconsistent and that NRC's approach should be based more directly on a risk basis. As a result, the National Academies study states that NRC should conduct a process to evaluate alternatives to provide clear risk-informed direction on controlling the disposition of solid materials.

### 5. Why NRC Is Conducting a Rulemaking to Potentially Revise its Current Approach

The NRC agrees with the findings in the National Academies report regarding the need to consider modifying its current approach to provide specific direction on controlling the disposition of solid materials.

The generally accepted process that Federal Agencies use to examine or replace an approach that needs improvement is to conduct a rulemaking to amend the Code of Federal Regulations (CFR). A rulemaking is an open process that evaluates the advantages and disadvantages of a range of alternatives and that invites public input on the alternatives early on and throughout the process.

### 6. NRC's Guiding Policy in Conducting a Rulemaking To Develop a Regulation

NRC's overall policy, as discussed in NUREG-1614 entitled "U.S. Nuclear Regulatory Commission Strategic Plan, Fiscal Year 2000–2005," is that the nation's use of radioactive material be conducted in a manner that protects

<sup>2</sup> A restricted area is defined in the NRC's regulations in 10 CFR 20.1003.

<sup>3</sup> An impacted area is defined in the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) which was jointly prepared by the U.S. Environmental Protection Agency, the U.S. Department of Energy, the U.S. Department of Defense, and the NRC. An impacted area is defined in MARSSIM as an area with a possibility of containing residual radioactivity in excess of natural background or fallout levels.

<sup>1</sup> Many of the documents, as well as summaries of public meetings and other background information, discussed in this paper are available via the NRC's web page at <http://nrc.gov/materials.html>.

<sup>4</sup> These guidelines are discussed in the June 1999 Issues Paper and in an All-Agreement States letter (STP-00-070), dated August 22, 2000.

public health and safety and the environment. In carrying out this policy, the NRC is guided by broad “performance goals” that include:

(1) Maintain safety, protection of the environment, and the common defense and security;

(2) Increase public confidence in our regulatory process;

(3) Make NRC’s activities and decisions effective, efficient, and realistic;

(4) Reduce unnecessary regulatory burden on stakeholders.

As discussed in NUREG-1614, protection of public health and safety is paramount among the NRC goals and it is likewise our principal goal in controlling the disposition of solid materials. We also recognize that, in considering alternatives in this area, our decision-making process needs to provide stakeholders with clear and accurate information about, and a meaningful role in, the process. In addition, any requirements we promulgate in this area must not impose unnecessary regulatory burdens beyond what is necessary and sufficient for providing reasonable assurance that public health and safety will be protected.

### 7. Alternatives for Controlling the Disposition of Solid Materials

Paths by which solid materials with no, or very small amounts of, radioactivity could leave a licensed facility fall into general disposition categories of “release” or “disposal.” A set of preliminary alternatives for controlling the disposition of solid materials along these paths was first described in an NRC Issues Paper published for public comment in the **Federal Register** (FR) on June 30, 1999 (64 FR 35090); these alternatives are summarized here:

**A. Release:** In this disposition path, solid materials could be released into general commerce if a radiation survey verifies that public health and safety is protected and if the materials have some benefit in either a recycled or re-used product. Alternatives for control include:

(1) *Unrestricted use:* Unrestricted use means that solid materials could be released for any use in general commerce after a radiation survey verifies that an allowable level has been met.<sup>5</sup> Two unrestricted use alternatives are:

*Alternative 1:* Continue NRC’s current approach (see Section II.3) which allows

unrestricted use based on existing guidance on survey capabilities;

*Alternative 2:* Amend the NRC’s regulations to include a dose based criterion for unrestricted use.

(2) *Conditional use (Alternative 3):* In this alternative, solid material could be released but its further use would be restricted to only certain authorized uses with limited public exposures such as use in controlled or low exposure environments. Examples might include industrial uses such as metals in bridges, sewer lines, or industrial components in a factory, or concrete in road fill.<sup>6</sup>

**B. Disposal:** In this disposition path, solid materials would be prohibited from general commerce and isolated from the public. Alternatives<sup>7</sup> for control include:

(1) *Landfill disposal (Alternative 4):* In this alternative, solid material would be prohibited from general commerce by requiring it to be placed in an EPA-regulated landfill;

(2) *NRC/Agreement State (AS)-licensed low-level waste (LLW) disposal site (Alternative 5):* In this alternative, solid material would be prohibited from general commerce by requiring it to be placed in an NRC/AS-licensed LLW disposal site and regulated under the NRC’s regulations in 10 CFR Part 61.

### III. Summary of Efforts to Date and What NRC Has Learned About Alternatives

#### 1. Efforts to Date To Examine Alternatives

The NRC’s Issues Paper, published in the FR for public comment in June 1999, indicated that NRC was examining its alternatives for controlling the disposition of solid materials. To provide further opportunity for public input, NRC held a series of four public meetings during the fall of 1999.

The NRC received over 800 public comment letters from stakeholders representing the metals, metal scrap, and concrete industries; citizens groups; licensees and licensee organizations; landfill operators; Federal and State agencies; and Tribal governments. Comments were also received from stakeholders at the four public meetings. Comments were sharply diverse in the

<sup>6</sup> Other terms have been used for this alternative, including “conditional clearance” and “restricted use.” However, the term “Conditional use” is deemed more appropriate and is used throughout the remainder of this document.

<sup>7</sup> Other terms have been used for this alternative, including “prohibition” and “no release.” The alternatives listed here are considered to be clearer in that they provide more information as to the destination of the material and hence are used throughout the remainder of this document.

views expressed, and there was support and rationale provided by commenters for a range of alternatives for controlling the disposition of solid materials.

On March 23, 2000, the NRC staff provided the Commission with a paper (SECY-00-0070) on the diversity of views expressed in public comments received on the Issues Paper. Attachment 2 of SECY-00-0070 provides a summary of views and comments received; summaries of the comments can also be viewed in NUREG/CR-6682, “Summary and Categorization of Public Comments on the Control of Solid Materials” (September 2000). SECY-00-0070 also provided the status of the staff’s technical analyses being developed as support for making decisions in this area and noted the related actions of international and national organizations and agencies that could be factors in NRC’s decision-making.

To solicit additional input, the Commission held a public meeting on May 9, 2000, at which stakeholder groups presented their views and discussed alternatives for controlling the disposition of solid materials.

On August 18, 2000, the Commission decided to defer a final decision on whether to proceed with rulemaking and directed the staff to request that the National Academies conduct a study of alternatives for controlling the disposition of solid materials. The Commission also directed the staff to continue to develop technical information and to stay informed of international and U.S. agency activities in this area.

The National Academies study of alternatives for controlling the disposition of solid materials was initiated in August 2000. As part of the study, the National Academies held three information gathering meetings in January, March, and June of 2001, at which it obtained input from various stakeholder groups similar to those that presented information to the NRC earlier. Based on these meetings, and on its deliberations on this topic, the National Academies submitted a report to the NRC in March 2002. The report contains nine recommendations on the decision-making process, potential approaches for controlling the disposition of solid materials, and additional technical information needed. In particular, the National Academies report indicates that NRC’s current approach for controlling the disposition of solid materials protects public health and does not need immediate revamping. However, the National Academies report also states that NRC’s current approach is

<sup>5</sup> The term “clearance” is also used by various organizations and in various documents to mean removal from regulatory control of material that meets certain release criteria.

incomplete and inconsistent and concludes that NRC should therefore conduct a process to evaluate a broad range of alternatives to provide clear risk-informed direction on controlling the disposition of solid materials. The report notes that broad stakeholder involvement and participation in the NRC's decision-making process on the alternatives is critical as the process moves forward. The report also notes that an individual dose standard of 10  $\mu\text{Sv}/\text{yr}$  (1 mrem/yr) provides a reasonable starting point for the process of considering alternatives for a dose-based standard. A summary of the National Academies report can be found in an NRC staff paper, SECY-02-0133, and a link to the National Academies report, itself, is contained in the Background section of the NRC's web page.

As noted above, the NRC has been conducting technical studies to provide additional analyses to better understand and evaluate the alternatives for controlling the disposition of solid materials. These studies are examining potential impacts of alternatives on human health and the environment; costs to licensees, other industries, and the public resulting from the alternatives; and the ability of radiation detectors to verify the radioactivity level on any solid material so that a licensee can verify compliance with an alternative. The results of some of these studies have been issued for public comment and are available on NRC's web page; additional results will be provided for public comment when they are available.

In addition to NRC efforts in this area, other scientific organizations are engaged in similar processes. Recognized radiation protection standards organizations like the National Council on Radiation Protection and Measurements (NCRP), International Commission on Radiological Protection (ICRP), and American National Standards Institute (ANSI) have issued findings about possible criteria for controlling the disposition of solid materials. The U.S. Department of Energy (DOE) is preparing a Programmatic Environmental Impact Statement on alternatives for disposition of DOE scrap metals. The U.S. Environmental Protection Agency (EPA) sets radiation protection standards in the general environment although they do not currently have a program on controlling the disposition of solid materials from licensed facilities. International agencies (such as the International Atomic Energy Agency and the European Commission) as well as other

individual nations, are in the process of establishing standards for controlling the disposition of solid materials. These efforts are significant for the NRC because inconsistency in standards between the U.S. and other nations can result in confusion regarding international trade, in particular if materials released under other nations' regulations arrive as imports in the U.S.

## 2. Summary of Information and Comments Received to Date on Alternatives

As discussed in Section III.1, NRC has obtained information from public comments, from efforts by scientific organizations, and from various technical studies, including that done by the National Academies. The following sections summarize the information and views obtained about potential alternatives for controlling the disposition of solid materials, as well as the process for examining our approach. This material reflects the NRC performance goals noted in Section III.6, above.

### A. Alternative 1—No Action: Retain Current Approach of Allowing Unrestricted Use Using Measurement-based Guidelines

All rulemakings include consideration of a no-action alternative that would continue NRC's current approach. As discussed in Section II.3, above, Alternative 1 permits solid materials that are in restricted or impacted areas to be released for unrestricted use if a radiation survey does not detect radioactivity from licensed operations on the material or, if it does detect radioactivity, the amount is below a level that is considered to be protective of public health and safety. NRC's regulations do not specify the level below which the material can be released; decisions are currently made using levels contained in a set of existing guidelines based primarily on the ability of survey meters to measure the radioactivity level on, or in, the solid material.

The advantages and disadvantages of Alternative 1 were discussed in SECY-02-0133 based on the public comments received on the June 1999 Issues Paper and on the National Academies report. As discussed in SECY-02-0133, advantages of Alternative 1 are that NRC's current approach: (a) Is sufficiently protective of public health and does not need immediate revamping; (b) is workable and familiar to licensees; and (c) requires no staff resources to amend regulations at this time which would allow NRC to focus on other higher-priority safety issues,

whereas decommissionings on a large scale are not expected for some time. Disadvantages of Alternative 1 include: (a) Lack of an overall risk basis or consistent approach; (b) use of outdated measurement bases; (c) international consistency issues; (d) issues of regulatory finality caused by lack of regulation as the basis for the current approach; (e) licensees problems using the current approach when dealing with materials day-to-day, and (f) expenditure of NRC staff resources on case-specific reviews under the current approach, which are anticipated to possibly increase due to expanded use of radiation monitors for detecting solid materials with small amounts of radioactivity outside NRC-licensed facilities.

### B. Alternative 2: Dose-Based Regulation on Unrestricted Use

As noted in Section II.7, Alternative 2 would allow solid materials to be released for use in general commerce if a radiation survey verifies that the level of radioactivity is protective of public health and safety and if there is some benefit in the materials' recycle or reuse. The June 1999 Issues Paper discussed a range of potential options for values for an allowable dose level, including 0, 1, 10, and 100  $\mu\text{Sv}/\text{yr}$  (0, 0.1, 1.0, and 10 mrem/yr). The National Academies recommended in their study that a value of 10  $\mu\text{Sv}/\text{yr}$  (1 mrem/yr) was a good starting point for discussion for a dose-based release standard.

#### (1) Summary of information from scientific organizations on the unrestricted use alternative:

A number of scientific organizations have provided information indicating that 10  $\mu\text{Sv}/\text{yr}$  (1 mrem/yr) presents a negligible level of risk to the public and is therefore protective of public health and safety. The National Academies report indicates that 10  $\mu\text{Sv}/\text{yr}$  (1 mrem/yr) is within the acceptable range of values used in U.S. health-based standards, is a small fraction of natural background, and is accepted by recognized national and international organizations. The NCRP and the ICRP both indicate that a 10  $\mu\text{Sv}/\text{yr}$  (1 mrem/yr) level poses a negligible risk. The Health Physics Society notes that 10  $\mu\text{Sv}/\text{yr}$  (1 mrem/yr) is well below doses received in routine activities without discernable health effect. EPA radioactive effluent standards in similar areas have safety goals that are comparable to 10  $\mu\text{Sv}/\text{yr}$  (1 mrem/yr). ANSI has concluded that a value of 10  $\mu\text{Sv}/\text{yr}$  (1 mrem/yr) is an appropriate criterion for release of solid materials and has published its findings in a standard entitled "Surface and Volume

Radioactivity Standards for Clearance," N13.12-1999, August 1999; it is noted that the National Technology Transfer and Advancement Act of 1995 requires Federal agencies to consider this type of technical standard in rulemakings in pertinent areas.

(2) *Summary of information received in public comments:*

Public comments generally fell into categories of issues related to (a) protection of public health and safety and (b) regulatory burden:

(a) *Issues related to public health and safety:*

Certain commenters agreed with use of the unrestricted use alternative for the reasons noted in the scientific studies. However, other commenters were concerned about an unrestricted use alternative, noting that risks associated with these solid materials are avoidable and involuntary; long term and cumulative impacts cannot be accurately modeled; there is a potential for exposures to multiple products; any dose increases cancer risk; even a small risk when spread over the U.S. population is too high; there is no justification for adding more dose to what we receive from background; releases would not be accurately measured and tracked; licensees and the government cannot be trusted to assure that any releases would be carefully monitored; and a contractor who participated in NRC's technical support analyses had a conflict of interest.

(b) *Issues related to regulatory burden:*

This alternative engendered strong comment on both sides of this issue. The metals and concrete industries opposed unrestricted use because it would result in a large negative economic impact on steel/concrete industries because consumers would not buy products made with recycled solid material; the amount of steel available from licensed facilities is small, and therefore the economic benefit of recycling is small; and generators of the solid material should handle their own problem and not pass it along to other stakeholders. Other commenters were in favor of unrestricted use because the alternative of disposal of all solid material with no, or very small amounts of, radioactivity in a licensed LLW disposal site is costly to licensees without an accompanying health and safety benefit; and would cause a severe economic impact for small licensees, e.g., medical facilities, universities.

(3) *Summary:* Scientific studies, including the National Academies report, indicate that unrestricted use at a level in the range of 10  $\mu$ Sv/yr (1

mrem/yr) presents negligible risk and is therefore protective of public health and safety, however there was also significant stakeholder comment related to health impact and economic burden issues which could make this alternative potentially difficult to implement.

C. Alternative 3—Conditional Use

Conditional use is an alternative in which solid material could be released but its further use would be restricted to only certain authorized uses.

(1) *Summary of information received in public comments:*

Public comments received generally fell into categories of issues related to (a) protection of public health and safety, (b) regulatory burden, and (c) concern over feasibility of conditional use.

(a) *Issues related to public health and safety:*

Some commenters noted that a benefit of this alternative is that it could limit radiation dose by permitting the solid material to be released for only certain authorized uses (e.g., industrial products, metal in sewer lines or bridges, concrete in construction fill) that have limited potential for public exposure.

(b) *Issues related to regulatory burden:*

A benefit cited with the conditional use alternative is that solid materials that have no, or very small amounts of, radioactivity could be used under certain authorized conditions rather than using the more costly licensed LLW disposal alternative.

(c) *Concerns about feasibility of conditional use:*

Some commenters expressed concern about the feasibility or viability of conditional use, noting: (a) It may not be viable economically to set up a recycling process dedicated only to the limited quantities of solid material from licensed facilities; (b) a regulatory system of restrictions to limit where solid material is used would be hard to establish and enforce; and (c) it is not clear that restrictions would work to limit where the material goes, i.e., solid material could wind up being released for unrestricted use. Commenters also noted that, even if a system of restrictions was set up, the authorized use would have some limited lifetime and the solid material might ultimately end up in an unrestricted use, and therefore that it makes more sense to focus on establishing criteria for unrestricted use. Some commenters indicated that the only viable conditional use would be to retain the

solid material within the NRC licensing arena or the DOE complex.

(2) *Summary:* Restricting the further use or disposition of solid materials from licensed facilities to only certain authorized uses can have merit in public health considerations in that exposure scenarios are minimized. However, based on the comments received in the NRC public comment process, it is not evident that conditional use is a technically viable way to make sure the material ends up in its authorized use or that it is an economically feasible approach that will work.

D. Alternatives 4 and 5—Disposal of Solid Materials in Either EPA-Regulated Landfills or NRC/AS-Licensed LLW Disposal Sites

In this alternative, solid material would be prohibited from general commerce. The solid material would be required to be disposed of at an EPA-regulated landfill (Alternative 4) or under NRC's existing regulations in 10 CFR Part 61 in an NRC/AS-licensed LLW disposal site (Alternative 5) (see Section II.7 above).

EPA regulates municipal and industrial solid waste under the Resource Conservation and Recovery Act (RCRA). Under RCRA Subtitle C, the hazardous waste program establishes a system for controlling hazardous waste from the time it is generated until its disposal. Under RCRA Subtitle D, the solid waste program encourages states to develop comprehensive plans for managing non-hazardous industrial solid waste and municipal solid waste and also sets criteria for municipal solid waste landfills and other solid waste disposal facilities. RCRA does not address radioactive material under NRC jurisdiction.

(1) *Summary of information on this alternative from scientific organizations:*

The National Academies report compared disposing of solid material in landfills and in licensed LLW disposal sites, and found that disposal of solid materials in EPA regulated Subtitle C or Subtitle D landfills would be substantially less costly than disposal in sites licensed by the NRC or Agreement States under 10 CFR Part 61.

(2) *Summary of information received in public comments:*

Public comments generally fell into the categories of issues related to (a) protection of public health and safety, (b) regulatory burden, and (c) feasibility of landfill disposal.

(a) *Issues related to public health and safety:*

A rationale for this approach is that it would prevent solid material from

licensed facilities from entering general commerce thus limiting the potential for radiation dose to the general public. Opponents of this approach cite the National Academies study and the NCRP which both indicate that 10  $\mu\text{Sv}/\text{yr}$  (1 mrem/yr) levels are trivial for health reasons and, therefore, a requirement for a general prohibition would have minimal positive health impact.

*(b) Issues related to regulatory burden:*

A principal comment regarding Alternative 5 is that requiring all material, even that which has no, or very small amounts of, radioactivity but which has some economic value, to be sent to NRC/AS-licensed LLW disposal sites would be costly to licensees, in particular smaller entities like hospitals, without an accompanying health and safety benefit. However, a regulation limiting disposal of these materials to an EPA-regulated landfill would have much smaller costs than disposal at a licensed LLW disposal site and place much smaller economic burden on licensees for controlling the disposition of solid materials.

*(c) Issues related to concerns over feasibility of landfill disposal:*

Some commenters expressed concern about the viability of landfill disposal, noting that a regulatory system of restrictions to limit solid materials would have to consider NRC, EPA, and State responsibilities. Also, it is not clear how restrictions would work to limit where material goes, and it is not clear that landfill operators would accept solid material released from NRC-licensed facilities.

(3) *Summary*—An alternative in which all material from a licensed facility is prohibited from release and instead disposed of either at an EPA-regulated landfill or an NRC/AS-licensed LLW disposal site would keep additional radioactivity out of general commerce, although would be likely more costly than unrestricted or conditional use. If all solid material is required to be disposed of at NRC/AS-licensed LLW sites, the economic burden imposed might be large, especially on small licensees, and the health benefit obtained would likely be small. The economic burden of disposing of this solid material in an EPA-regulated landfill should not be as large. However, some of the same concerns noted in Section III.2.C, above, would also exist for the landfill alternative, in particular regarding whether there would be assurance that the material would not be diverted from, or taken from, the landfill, and also whether landfills would accept all this

material. EPA, in cooperation with the NRC, is considering a rulemaking that could permit disposal of certain NRC regulated material in a RCRA permitted facility subject to, if necessary, an appropriate NRC approval process (e.g., a site-specific or general license, or exemption). EPA is working with NRC on an EPA Advance Notice of Proposed Rulemaking to solicit stakeholder comment on disposing of such materials in a RCRA regulated facility.

**IV. Current Status of Efforts and Request for Additional Information**

As discussed in Section III.1, there has been extensive and wide-ranging discussion of alternatives for controlling the disposition of solid materials as part of NRC and other organizations' efforts. Substantial and substantive information has been developed and input received on potential impacts of the various alternatives on public health and regulatory burden. NRC has received over 800 comment letters and held several public information meetings on controlling the disposition of solid materials. In addition, the National Academies conducted a study on this subject during which they held several information gathering meetings open to the public, and several scientific organizations are conducting studies and/or developing standards in this area.

Based on the National Academies report and on other factors affecting decision-making, the NRC staff developed a set of options for a regulatory process for examining alternatives for controlling the disposition of solid materials and presented these regulatory options to the Commission in SECY-02-0133 on July 15, 2002. Based on this information, the Commission, on October 25, 2002, directed the NRC staff to proceed with an enhanced participatory rulemaking to develop specific requirements for controlling the disposition of solid materials at licensed facilities. Subsequently the staff prepared a plan for conducting this rulemaking which the Commission approved on January 27, 2003.

In directions to the NRC staff, the Commission noted that the rulemaking should give fair consideration to all alternatives in developing a proposed rule so that a broad range of alternatives is identified and can be weighed by the Commission. In particular, the Commission indicated that the NRC staff should seek stakeholder participation and involvement in considering alternative approaches. The Commission noted that, in approaching stakeholders on this issue, the staff

should reiterate the Commission's continuing support for the release of solid materials when there are no significant health consequences. This is consistent with the NRC's agency mandate to ensure that the nation's use of radioactive materials is carried out in a manner that protects the public health and safety and the environment.

In its direction to the staff, the Commission noted the considerable information on controlling the disposition of solid materials previously collected (see Section III.1) and indicated that, rather than duplicating these efforts, the staff should build on this existing information (including the concerns and comments expressed in public comment) and utilize it as a starting point to focus on potential solutions. In particular, the Commission directed the staff to explore increased use of web-based methods for interacting with stakeholders for issues that might not warrant additional discussion at a workshop, and to focus additional workshops on areas where substantial new input is needed.

With regard to Alternatives 1, 2, and 5 (no action, unrestricted use, and disposal in NRC-regulated LLW disposal sites), the efforts described in Section III.1 have provided substantial information. However, NRC is interested in obtaining any additional information, beyond that expressed earlier, that should be considered for each of the types of materials noted in Section II.1. This includes areas where:

(a) There has been modification of the views that have been expressed in earlier public comments on any of the alternatives;

(b) additional scientific information is available with regard to any of the alternatives;

(c) additional economic information is available with regard to any of the alternatives;

(d) there are new or modified alternatives beyond those discussed above.

In certain other areas, in particular with regard to Alternative 3 (conditional use) and Alternative 4 (EPA regulated landfill disposal), earlier information collection efforts did not obtain sufficient information to clearly indicate the viability or economic feasibility of these alternatives. Although these alternatives were noted by the National Academies report as potential methods for controlling the disposition of solid materials, earlier public comments raised concerns about their viability. Thus, the Commission specifically directed the staff to explore and document the feasibility of these alternatives and, in particular, noted

that the staff should have discussions with stakeholders with regard to whether the alternatives: (1) Are effective; (2) are reasonably possible to implement; and (3) would increase public confidence in the process. To further consider these issues, input on the following questions is requested for each of the types of materials noted in Section II.1:

*With regard to conditional use:*

(1) The intent of the conditional use alternative is that solid material would be restricted to only certain authorized uses and kept separate from general consumer uses. Consideration needs to be given as to whether this alternative can: (a) Provide assurance that solid material goes to its authorized use and is not diverted to unrestricted use and (b) be established and implemented in a manner that is both practical and economical. Specific questions are:

(a) Can a scrap/manufacturing/distribution process that is not licensed by NRC provide assurance that the material is limited to its authorized use?

(b) Would it be necessary for NRC to maintain regulatory control by licensing all or some portion of the process (e.g., only the scrap process or the scrap and manufacturing process)? Could involvement by another Federal Agency in the scrap/manufacturing/distribution process provide assurance that the material remains with its authorized use? What are the feasibility, cost, and increased assurance aspects of NRC or other Federal agency involvement?

(c) What are the feasibility, economic, and assurance aspects of a smelter facility being dedicated to such material, either full-time or as a portion of its process capability?

(d) What end use products could be manufactured under such a conditional use, e.g., bridge girders, sewer pipes, industrial coils? Would there be sufficient need for these products so that a process to manufacture them would be viable given the magnitude of material from NRC/AS licensed facilities and/or from other facilities having similar material?

(e) What typical lifetimes might the conditional (authorized) uses have, and what would likely happen to the solid material after the lifetime was over? Could the material continue to be part of a conditional use, or would it become available for unrestricted use?

(2) What criterion of acceptability should be used before allowing release of solid material to a conditional use (e.g., should dose-based or concentration-based criterion be used and what should it be?)

*With regard to landfill disposal:*

(1) The intent of the landfill disposal alternative is that the solid material be isolated from the public, and not be diverted to unrestricted use, either in transit or after disposal. Specific questions are:

(a) Would placing the material in a RCRA Subtitle C site accomplish the goal of isolating the material from the public? If so, what controls are in place in a RCRA Subtitle C site to provide such assurance?

(b) Would placing the material in a RCRA Subtitle D landfill accomplish the goal of isolating the material from the public? If so, what controls are in place in a RCRA Subtitle D site to provide such assurance?

(c) What criteria of acceptability should be used before allowing disposal of solid material at a landfill such that the public and landfill workers are protected? In particular, should a different regulatory scheme be used depending on the radioactivity level of the material potentially to be placed in the landfill facility, i.e. lesser requirements if the potential dose is lower?

(d) Is it necessary for NRC to maintain regulatory control to achieve the desired isolation of NRC regulated material from the public? If so, is there a need for NRC to license a RCRA landfill either under a specific or general license, or is an exemption with specific conditions adequate to cover material that has come from NRC-licensed facilities?

What cost considerations need to be taken into account and what possible additional assurance of isolation might be realized under these regulatory approaches?

(2) If EPA and/or NRC rulemaking is developed in this area, would RCRA Subtitle C or Subtitle D landfill operators accept material which had been surveyed and released from a NRC-licensed facility?

*For either conditional use or landfill disposal*

(1) As a backup, should a "cap" be placed limiting the dose that would occur if the restrictions for the conditional use became no longer effective, or if the material being disposed of at a landfill was diverted or removed from the landfill, and the material wound up in an unrestricted use? If so, what should the cap value be?

**V. Request for Comment and Announcement of Workshop**

To provide opportunity to discuss the issues noted in Section IV, we invite written and electronic comment. To supplement this request for comment, we also plan to hold a workshop on May 21–22, 2003, at NRC headquarters to

discuss the alternatives. The workshop agenda will afford an opportunity to discuss the National Environmental Policy Act (NEPA) process (see Section VI of this FRN) and the alternatives being considered, with specific emphasis on building on NRC's earlier information collection efforts (see Section III.1). Because these earlier efforts did not obtain sufficient information to clearly indicate the viability of conditional use or landfill disposal, the workshop will focus on the feasibility of these alternatives as discussed in Section IV above, in particular with regard to the questions raised in Section IV. The first half of the first day of the workshop will focus on background, the NEPA process, and the alternatives being considered for controlling the disposition of solid materials. The second half of the first day and the majority of the second day of the workshop will focus on conditional use and landfill disposal. A detailed agenda will be made available in advance of the workshop. In doing so, we will be receptive to a range of options or scenarios for conditional use or landfill disposal to determine the feasibility of these options that (1) are effective, (2) are reasonably possible to implement, and (3) would increase public confidence in the process.

**VI. Scoping Process for Environmental Impact Statement**

An environmental scoping process was initiated in June 1999 as part of issuance of the Issues Paper. The rationale for combining the two efforts was that issues raised in a scoping process and in the Issues Paper were similar and therefore it was an efficient use of stakeholder's time and energies to combine the two. As noted earlier, in August 2000 the Commission decided to defer a rulemaking in this area pending a study by the National Academies of alternatives for controlling the disposition of solid materials. Following completion of that study in March 2002, the Commission decided, in October 2002, to conduct an enhanced participatory rulemaking which considers alternatives for controlling the disposition of solid materials. Hence, this FRN provides an opportunity to announce this rulemaking effort and to re-open the earlier scoping process.

In a rulemaking, the Commission must consider the effect of its actions on the environment in accordance with the National Environmental Policy Act (NEPA). Section 102(1) of NEPA requires that the policies, regulations, and public laws of the United States be interpreted and administered in accordance with the policies set forth in

NEPA. It is the intent of NEPA to have Federal agencies incorporate consideration of environmental issues into their decision-making processes.

NRC regulations implementing NEPA are contained in 10 CFR Part 51. To fulfill its responsibilities under NEPA, the NRC would prepare a generic environmental impact statement (EIS) by analyzing alternative courses of action and the impacts and costs associated with those alternatives. A generic EIS would analyze alternatives for establishing requirements for controlling the disposition of solid materials. All reasonable alternatives associated with the proposed action would be analyzed to determine their impacts and costs.

The Commission's regulations in 10 CFR 51.26 contain requirements for conducting a scoping process prior to preparation of an EIS, including preparation of a notice of intent in the **Federal Register** regarding the EIS and indication that the scoping process may include holding a scoping meeting. Requirements are contained in 10 CFR 51.27 regarding the content of the notice of intent, in particular that it should describe the proposed action and describe possible alternatives to the extent that information is available. In addition, the notice of intent is to describe the proposed scoping process, including the role of participants, whether written comments will be accepted, and whether a public scoping meeting will be held.

Participants in this scoping process on the environmental impacts of controlling the disposition of solid materials from licensed facilities may provide written or electronic comments and/or attend the workshop indicated under the **DATES** heading of this notice and provide oral comments on the proposed action and possible alternatives. Written (and electronic) comments on the proposed action and alternatives from the public, as well as from meeting participants, can be submitted as indicated under the **DATES** and **ADDRESSES** heading of this notice.

According to 10 CFR 51.29, the scoping process is to address the following topics:

(1) *Define the proposed action.* The NRC is considering whether to develop a regulation for controlling the disposition of solid materials that have no, or very small amounts of, radioactivity resulting from licensed operations.

(2) *Determine EIS scope and significant issues to be analyzed in depth.* The NRC is considering analyzing the impacts and costs associated with rule alternatives for

controlling the disposition of solid materials at licensed facilities. Information will be developed on (a) types, and contamination levels, of solid materials present at licensed facilities potentially available for release; (b) pathways of exposure to, and environmental impacts of, solid materials released from licensed facilities; and (c) regulatory alternatives and methods of approach for analysis of the alternatives. Information is specifically requested regarding inventory of solid materials at licensed facilities, including quantities and radioactivity levels, and how control processes at licensed facilities function so that materials from different areas of a facility are kept separate to assure that those materials with no, or very small amounts of, radioactivity do not become mixed with those with higher levels. Information is also requested on scenarios associated with the alternatives, and in particular with regard to viable conditional use and landfill disposal alternatives.

(3) *Identify and eliminate from detailed study issues which are not significant or which are peripheral or which have been covered by prior environmental review.* The NRC has not yet eliminated any issues. Analysis of the scope of environmental impacts for this effort would be principally intended to provide input to decision-making for establishing acceptable regulatory alternatives for controlling the disposition of solid materials, and would not involve analysis of site-specific issues which may arise in the licensing process at specific facilities. The extent to which the environmental analysis may be applicable to a site-specific NEPA process would be described in a draft EIS and draft rulemaking.

(4) *Identify any environmental assessments or environmental impact statements which are being or which will be prepared that are related but are not part of the scope of the EIS under consideration.*

None are being prepared by the NRC. The DOE is preparing a programmatic EIS on disposition of scrap metals.

(5) *Identify other environmental review or consultation requirements related to the proposed action.* The NRC is obtaining contractor assistance in preparation of the generic EIS and cost information for use in the environmental analyses. The NRC has also placed contracts to obtain specific technical assistance regarding material inventories, exposure pathways, collective doses, and the capability of radiation survey instruments to practically and accurately detect

radioactive contamination at levels near background.

(6) *Indicate the relationship between the timing of the preparation of environmental analysis and the Commission's tentative planning and decision making schedule.* A draft generic EIS is scheduled to be issued for public comment in September 2004.

(7) *Identify any cooperating agencies.* No cooperating agencies are involved at this time.

(8) *Describe the means by which an EIS would be prepared.* As part of its rulemaking effort, NRC will prepare a draft EIS in accordance with its regulations in 10 CFR Part 51. Specifically, in accordance with 10 CFR Part 51.71, a draft EIS will be prepared using the considerations of the scoping process and will include a preliminary analysis which considers and balances the environmental and other effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental and other effects, as well as the environmental, economic, technical and other benefits of the proposed action.

In accordance with 10 CFR 51.29, at the conclusion of the scoping process, a concise summary of the determinations and conclusions reached, including the significant issues identified, will be prepared and a copy sent to each participant in the scoping process.

Dated at Rockville, Maryland, this 21st day of February 2003.

For the Nuclear Regulatory Commission.

**Martin Virgilio,**

*Director, Office of Nuclear Material Safety and Safeguards.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-NM-157-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Bombardier Model CL-600-1A11 (CL-600), CL-600-2A12 (CL-601), and CL-600-2B16 (CL-601-3A, CL-601-3R, and CL-604) Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to