



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 8, 2021

ALL AGREEMENT STATES, CONNECTICUT
NON-AGREEMENT STATES
STATE LIAISON OFFICERS
FEDERALLY RECOGNIZED TRIBES

NOTICE OF REQUEST FOR COMMENT: PETITION FOR RULEMAKING THAT WOULD REQUIRE ADVANCE TRIBAL NOTIFICATION OF CERTAIN RADIOACTIVE MATERIAL SHIPMENTS (STC-21-019)

Purpose: To provide notice of the publication of the U.S. Nuclear Regulatory Commission's (NRC) request for public comment on a petition for rulemaking (PRM) requesting that the NRC revise its regulations to ensure consistency regarding advance Tribal notification of certain radioactive material shipments with similar regulations for State notification.

Background: The PRM was filed by Richard Arnold and Ron Johnson on behalf of the Tribal Radioactive Materials Transportation Committee (TRMTC). The PRM requests that the NRC revise its regulations at Part 37 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Physical protection of category 1 and category 2 quantities of radioactive material," to ensure consistency with 10 CFR Part 71, "Packaging and transportation of radioactive material," and 10 CFR Part 73, "Physical protection of plants and materials," regarding advance Tribal notification of certain radioactive material shipments. The petition may be found in the NRC's Agencywide Documents Access and Management System Accession No. ML21042B011.

The letter from the petitioner states, "TRMTC believes consistent notification standards must be applied to states and tribal governments...". This letter identifies a discrepancy between 10 CFR Part 37 and 10 CFR Parts 71 and 73 regarding advance notification of Tribal Governments for certain radioactive material shipments. The NRC regulations in § 71.79, "Advance notification of shipment of irradiated reactor fuel and nuclear waste," require licensees provide advance notification to the NRC, States, and participating Tribes for irradiated fuel and for the shipment of licensed material, other than irradiated fuel, meeting certain conditions. The NRC regulations in § 73.37, "Requirements for physical protection of irradiated reactor fuel in transit," require licensees provide advance notification to the NRC, States, and participating Tribes for spent nuclear fuel. While § 37.77, "Advance notification of shipment of category 1 quantities of radioactive material," requires licensees provide advance notice to the NRC and States for the shipment of licensed material in a category 1 quality, there is no requirement for licensees to provide advance notification to Tribes for such shipments.

Discussion: Enclosed with this letter is the *Federal Register* notice (FRN) announcing docketing of the petition and a 75-day public comment period. The FRN was published on April 9, 2021, and posted on the Federal rulemaking portal <https://www.regulations.gov> under Docket No. NRC-2021-0051. The FRN describes how to submit comments. Comments on the PRM are due by June 23, 2021.

If you have any questions regarding this PRM or this correspondence, please contact the individuals named below:

POINT OF CONTACT: David Drucker
TELEPHONE: (301) 415-6223


E-MAIL: David.Drucker@nrc.gov

POINT OF CONTACT: Alexa Sieracki
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E-MAIL: Alexa.Sieracki@nrc.gov

Sincerely,

Brian C.
Anderson

 Digitally signed by Brian
C. Anderson
Date: 2021.04.08
16:53:10 -04'00'

Brian Anderson, Branch Chief
State Agreement Liaison Programs Branch
Division of Materials Safety, Security, State,
and Tribal Programs
Office of Nuclear Material Safety
and Safeguards

Enclosure:
Federal Register Notice

ENCLOSURE

FEDERAL REGISTER NOTICE

NUCLEAR REGULATORY COMMISSION

10 CFR Part 37

[Docket No. PRM-37-2; NRC-2021-0051]

Advance Tribal Notification of Certain Radioactive Material Shipments

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of docketing, and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a petition for rulemaking from Richard Arnold and Ron Johnson on behalf of the Tribal Radioactive Materials Transportation Committee, dated December 4, 2020, requesting that the NRC revise its regulations to ensure consistency regarding advance Tribal notification of certain radioactive material shipments with similar regulations for State notification. The petition was docketed by the NRC on February 11, 2021, and has been assigned Docket No. PRM-37-2. The NRC is examining the issues raised in PRM-37-2 to determine whether they should be considered in rulemaking. The NRC is requesting public comment on this petition at this time.

DATES: Submit comments by **[INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however,

the NRC encourages electronic comment submission through the **Federal Rulemaking Web Site**:

- **Federal Rulemaking Web Site:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2021-0051. Address questions about NRC Docket IDs to Dawn Forder; telephone: 301-415-3407; e-mail: Dawn.Forder@nrc.gov. For technical questions contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

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

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

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: David Drucker, telephone: 301-415-6223, e-mail: David.Drucker@nrc.gov, and Anita Gray, telephone: 301-415-7036, e-mail: Anita.Gray@nrc.gov. Both are staff of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2021-0051 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2021-0051.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, 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. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section.

- **Attention:** The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via e-mail at PDR.Resource@nrc.gov or call 1-800-397-4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking Web site (<https://www.regulations.gov>). Please include Docket ID NRC-2021-0051 in your comment submission.

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

The petition for rulemaking (PRM) was filed by Richard Arnold and Ron Johnson on behalf of the Tribal Radioactive Materials Transportation Committee (TRMTC). The PRM requests that the NRC revise its regulations at part 37 of title 10 of the *Code of Federal Regulations* (10 CFR), “Physical protection of category 1 and category 2 quantities of radioactive material,” to ensure consistency with 10 CFR part 71, “Packaging and transportation of radioactive material,” and 10 CFR part 73, “Physical protection of plants and materials,” regarding advance Tribal notification of certain radioactive material shipments. The petition may be found in ADAMS at Accession ML21042B011.

III. Discussion of the Petition

The letter from the petitioner states, “TRMTC believes consistent notification standards must be applied to states and tribal governments...”. This letter identifies a discrepancy between 10 CFR part 37 and 10 CFR parts 71 and 73 regarding advance notification of Tribal Governments for certain radioactive material shipments. The NRC regulations in § 71.79, “Advance notification of shipment of irradiated reactor fuel and

nuclear waste,” require licensees provide advance notification to the NRC, States, and participating Tribes for irradiated fuel and for the shipment of licensed material, other than irradiated fuel, meeting the certain conditions. The NRC regulations in § 73.37, “Requirements for physical protection of irradiated reactor fuel in transit,” require licensees provide advance notification to the NRC, States and participating Tribes for spent nuclear fuel. While § 37.77 requires licensees provide advance notice to the NRC and States for the shipment of licensed material in a category 1 quality, there is no requirement for licensees to provide advance notification to Tribes for such shipments.

IV. Conclusion

The NRC has determined that the petition meets the sufficiency requirements for docketing a PRM under § 2.803, “Petition for rulemaking-NRC action.” The NRC will examine the issues raised in PRM-37-2 and any comments received in response to this comment request to determine whether these issues should be considered in rulemaking.

Dated: April 5, 2021.

For the Nuclear Regulatory Commission.

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