NUCLEAR REGULATORY COMMISSION

10 CFR Parts 71 and 73

RIN 3150–AG41

[NRC–1999–0005]

Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations that govern packaging and transportation of radioactive material and physical protection of plants and materials. Specifically, the amendments require licensees to provide advance notification to participating Federally-recognized Tribal governments regarding shipments of irradiated reactor fuel and certain nuclear wastes for any shipment that passes within or across their reservations. The rule extends to Tribal officials, his or her designee, and Tribal law enforcement personnel relief from fingerprinting requirements required for access to Safeguards Information (SGI). The participating Tribal government is required to protect the shipment information as SGI.

DATES: *Effective Date:* This final rule is effective on August 10, 2012.

Compliance Date: Compliance with the Tribal advance notification provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) 71.97(c)(3) and 73.37(f) is required on June 11, 2013.

ADDRESSES: Please refer to Docket ID NRC–1999–0005 when contacting the NRC about the availability of information for this final rule. You may access information and comment submittals related to this final rule, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–1999–0005.
- *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 email to *pdr.resource@nrc.gov*.

- *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.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–8126; email: *Merri.Horn@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
A. What action is the NRC taking?
B. What is the purpose of the final rule?
C. Whom would this action affect?
D. Would all Tribes receive advance notifications?
E. How and when would Tribes be given the option to receive advance notifications?
F. Does a Tribe's decision to receive advance notification affect whether shipments pass through that Tribe's reservation?
G. How would licensees determine who the Tribal contacts are?
H. How would advance notifications be made to Tribal officials?
I. Would Tribes be required to protect the advance notifications?
J. Would Tribal officials need to be fingerprinted and undergo a background investigation for access to SGI?
K. When do these actions become effective?
III. Summary and Analysis of Public Comments on the Proposed Rule
IV. Discussion of Final Amendments by Section
V. Criminal Penalties
VI. Agreement State Compatibility
VII. Voluntary Consensus Standards
VIII. Environmental Impact: Categorical Exclusion
IX. Paperwork Reduction Act Statement
X. Regulatory Analysis
XI. Regulatory Flexibility Certification
XII. Backfit Analysis
XIII. Congressional Review Act

I. Background

Current NRC regulations in 10 CFR require licensees to inform State governors, or the governor's designee, of certain shipments of irradiated reactor fuel and certain nuclear waste passing through or across the boundary of their States. Section 73.37, "Requirements for physical protection of irradiated reactor fuel in transit," requires licensees to provide advance notifications for shipments of irradiated reactor fuel in excess of 100 grams in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding. Section 71.97, "Advance notification of shipment of irradiated reactor fuel and nuclear waste," requires licensees to provide advance notice for (1) shipments of irradiated reactor fuel in quantities less than that subject to § 73.37; and (2) certain licensed material that is required to be transported in Type B packaging and is being transported to a disposal facility or a collection point for transport to a disposal facility. The advance notification provisions apply if the quantity of licensed material in a single package exceeds the least of the following: (1) 3000 times the A_1 value of the radionuclides as specified in Appendix A, Table A–1 of 10 CFR Part 71, "Packaging and Transportation of Radioactive Material," for special form radioactive material; (2) 3000 times the A_2 value of the radionuclides as specified in Appendix A, Table A–1 of 10 CFR Part 71, for normal form radioactive material; or (3) 1000 Terabequerel (TBq) (27,000 curies). Certain information provided for shipments of irradiated reactor fuel is considered to be SGI under the NRC regulations and must be protected under the requirements in § 73.21, "Protection of Safeguards Information: Performance requirements," and § 73.22, "Protection of Safeguards Information: Specific requirements."

The NRC first developed these advance notification regulations in 1982 to comply with the NRC Authorization Act for Fiscal Year 1980. The NRC Authorization Act for Fiscal Year 1980 was enacted to deal with concerns expressed by States about their abilities to fulfill their responsibilities to protect public health and safety while waste shipments pass through their jurisdictions. Neither the Atomic Energy Act of 1954, as amended (AEA), nor the notification regulations required licensees to notify Native American Tribes of this type of shipment passing through their Tribal reservations. Tribal officials requested similar notification in the 1990s.

On December 21, 1999 (64 FR 71331), the NRC published an Advance Notice of Proposed Rulemaking (ANPR) to solicit stakeholder input on a possible rulemaking that would consider requiring advance notification to Native American Tribes of transportation of certain types of nuclear waste. Information was sought on minimizing the burden to licensees, identifying the location of Tribal reservations in relationship to shipment routes, and the sharing and protecting of SGI. A total of 44 comment letters were received. Thirty-six of the letters received were from Tribes and Tribal organizations; four letters were received from private citizens; and letters were received from a licensee, an industry association, a State agency, and a Federal agency. Virtually all the commenters favored providing advance notification to Tribal governments with some disagreement on the details of the implementation. Most commenters were in favor of providing Tribal governments the same advance notification that State governments receive regarding high-level radioactive waste shipments. Commenters encouraged the NRC to provide advance notification through more up-to-date means of communication, e.g., via the Internet. Tribal representatives and others encouraged the NRC to communicate directly with Tribal governments during the rulemaking process as well as when implementing procedures for advance notification. The comments received in response to the ANPR were taken into account during the development of this rule.

On November 6, 2000, President Clinton issued Executive Order (E.O.) 13175, "Consultation and Coordination with Indian Tribal Governments." The E.O. 13175 emphasized the importance of respecting the sovereignty of Tribal governments and working with them on a government-to-government basis.[1] On November 5, 2009, President Obama expressed his commitment to E.O. 13175 at the White House Tribal Nations Conference and Interactive Discussion with Tribal Leaders. During the conference, the President signed an Executive Memorandum on Tribal consultation for the heads of Executive Departments and Agencies, directing Cabinet agencies to take steps to develop regular and meaningful consultation with Tribal governments regarding the implementation of E.O. 13175. While the Executive Memorandum does not directly apply to independent agencies, the NRC has adopted agency practices that are consistent with the principles of consultation and cooperation with Indian Tribal governments articulated in President Clinton's April 29, 1994, guidance and E.O. 13175. The NRC's practice is to conduct its activities in a manner that respects the rights of sovereign Tribal governments, and involves consultation and cooperation

[1] These ideas were previously emphasized in a Presidential Memorandum dated April 29, 1994, entitled "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951; May 4, 1994) and Executive Orders 12875 and 12866.

with Federally-recognized Tribes on a government-to-government basis.

II. Discussion

A. What action is the NRC taking?

The NRC is amending its regulations to require licensees to provide to participating Tribal officials, or their designees, advance notice of shipments of irradiated reactor fuel under § 73.37 and other nuclear wastes listed in § 71.97 before crossing the border of Tribal reservations. For the purposes of these regulatory provisions, "Tribal official" is defined as the highest ranking individual that represents Tribal leadership, such as the Chief, President, or Tribal Council leadership of an Indian Tribe. This action would only affect commercial shipments being made by the NRC and Agreement State licensees. This action does not include shipments that are not subject to NRC regulation, including many shipments made by the U.S. Department of Energy (DOE) or the U.S. Department of Defense (DOD).

B. What is the purpose of the final rule?

The purpose of the final rule is to recognize Tribal sovereignty by informing Tribes that choose to receive advance notification of shipments of irradiated reactor fuel and other nuclear wastes passing across their reservations and to recognize Tribal governments' interest in being informed of activities occurring on Tribal reservations.

C. Whom would this action affect?

The final rule would apply to any NRC licensee that ships irradiated reactor fuel. The final rule also affects any licensee that ships other nuclear wastes listed in § 71.97, namely, certain licensed material that is: (a) Required to be transported in Type B packaging; (b) being transported to or across a State boundary enroute to a disposal facility or to a collection point for transport to a disposal facility; and (c) the quantity of licensed material in a single package exceeds the least of the following: (1) 3000 times the A_1 value of the radionuclides as specified in Appendix A, Table A–1 of 10 CFR Part 71, for special form radioactive material; (2) 3000 times the A_2 value of the radionuclides as specified in Appendix A, Table A–1 of 10 CFR Part 71, for normal form radioactive material; or (3) 1000 TBq (27,000 curies).

Finally, the rule affects any Tribe that chooses to receive the advance notifications of shipments passing within or across its Tribal reservation.

D. Would all Tribes receive advance notifications?

No. Given the information protection requirements involved, the NRC believes that Tribes should have the option to decide whether to receive advance notifications of shipments that pass across their Tribal reservations. If a Tribe opts to receive the advance notifications, the Tribe is obligated to protect the schedule and itineraries of the shipments under the SGI requirements in §§ 73.21 and 73.22. If a Tribe opts not to receive the advance notifications, the Tribe has no information protection obligations relating to the shipments. For the purposes of the advance notifications, an "Indian tribe" is defined as an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994. There are currently 565 Federally-recognized Tribes.

E. How and when would Tribes be given the option to receive advance notifications?

The NRC staff will contact each Federally-recognized Tribe to provide them information on the rule. As part of the information, the Tribe will be asked if they would like to receive advance notifications of irradiated reactor fuel and other nuclear wastes listed in § 71.97 before crossing the border of the Tribal reservation. The Tribe can then notify the NRC as to whether it would like to receive the advance notifications and certify that the SGI information will be appropriately protected. Tribes will be able to change their decision to receive or not receive the advance notifications by informing the NRC at any time. Information will be available on the NRC Web site on how a Tribe can change its decision. In addition, the NRC plans to contact all Federally-recognized Tribes every 5 years to give Tribes an opportunity to change their status in regards to receiving notifications.

F. Does a Tribe's decision to receive advance notification affect whether shipments pass through that Tribe's reservation?

No. This rulemaking would only give the Tribe a voluntary opportunity to receive advance notification of shipments that cross their reservation. A Tribe's decision to receive or not receive advance notifications does not bear upon shipment routes, which are reviewed and approved subject to different NRC requirements.

G. How would licensees determine who the Tribal contacts are?

The NRC will maintain a list of Tribal contacts as is done for State governmental contacts. The NRC will work with the Tribes to complete and maintain the list. The Tribal official will designate who is intended to represent the Tribe. The NRC staff currently intends to annually publish a list of Tribal contacts in the **Federal Register** and post the list on the Web site maintained by the NRC's Office of Federal and State Materials and Environmental Management Programs. The NRC also plans to have a map on the Web site that shows the location of the Tribal reservations. The Web site associated with the map will also provide the necessary contact information for the Tribe.

H. How would advance notifications be made to Tribal officials?

The methods permitted for communication of advance notifications are detailed in § 71.97(c), "Procedures for submitting advance notification." Notifications are made in writing. The written notifications could be sent by mail or courier. The SGI may not be transmitted by unprotected telecommunication circuits. Requirements for the transmittal of SGI are contained in § 73.22(f), "External transmission of documents and material."

I. Would Tribes be required to protect the advance notifications?

Tribes are required to protect some of the information contained in the advance notification as SGI as specified by §§ 73.21 and 73.22. Only individuals that have a "need-to-know" the information and have undergone both a Federal Bureau of Investigation criminal history records check and a background check for determination of trustworthiness and reliability or have been relieved from these checks under § 73.57, "Requirements for criminal history records checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information," or § 73.59, "Relief from fingerprinting, identification and criminal history records checks and other elements of background checks for designated categories of individuals," may be provided access to the SGI. Basic protection requirements include storing unattended SGI in a locked security storage container. Access to the lock information, such as a combination, must be strictly controlled to prevent disclosure to an individual not authorized to access SGI.

Documents containing SGI must be destroyed by burning, shredding, or any other method that precludes reconstruction by means available to the public at large. The specific requirements for the protection of SGI are located in § 73.22. Failure to comply with these regulatory requirements could result in civil enforcement action, including civil monetary penalties, and Federal criminal prosecution.

J. Would Tribal officials need to be fingerprinted and undergo a background investigation for access to SGI?

Section 149 of the AEA requires fingerprinting and submission of fingerprints to the Attorney General for identification and criminal history records check for any individual permitted access to SGI, unless the Commission, by rule, has relieved that individual from the fingerprinting, identification, and criminal history records check requirements. The Commission may relieve individuals from these regulatory requirements "if the Commission finds that such action is consistent with its obligations to promote the common defense and security and protect the health and safety of the public," 42 U.S.C. 149(b). As allowed by Section 149 of the AEA, the NRC enacted § 73.59 to relieve specific categories of individuals from fingerprinting and criminal history records checks prior to receiving SGI. The categories of individuals covered by this regulation include the governor of a State or his or her designated State employee representative; Federal, State, or local law enforcement personnel; and representatives of foreign government organizations that are involved in planning for, or responding to, nuclear or radiological emergencies or security incidents whom the Commission approves for access to SGI.

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Indian tribes exercise inherent sovereign powers over their members and territory. The United States recognizes the right of Indian tribes to self-government and supports Tribal sovereignty and self-determination. As a result, the NRC has determined that exempting Tribal officials, Tribal official designees, or Tribal law enforcement personnel is analogous to exempting the State governor, State governor designees, or State law enforcement personnel from the fingerprinting and background check requirements. Furthermore, some Tribes have emergency response responsibilities similar to States. Revising the regulations permits the Commission and licensees to more efficiently provide SGI relating to advance notification of shipments to Tribes who determine this information enables them to be more effective in their day-to-day efforts to ensure the protection of nuclear materials and respond to emergencies within their territories. Therefore, the Commission has determined that the rule helps the Commission fulfill its obligations to promote the common defense and security and to protect the health and safety of the public.

The Tribal official, Tribal official designee and Tribal law enforcement personnel are considered trustworthy and reliable to receive SGI by virtue of their occupational status which is subject to direct oversight by Tribal Government authorities in their day-to-day job functions. Under the final rule, if the Tribe decides to participate in the advance notification of shipment program, the Tribal official, Tribal official designee, or Tribal law enforcement personnel who need-to-know this SGI information to perform their job function, may have access to SGI information regarding advance notification of shipments affecting their territories without undergoing fingerprinting or a criminal history check. In addition, the NRC has extended the relief to cover other types of SGI. Revising the regulations permits the Commission to more efficiently provide SGI to Tribes when it is determined that the Tribe has a need-to-know. The NRC believes that exempting Tribal officials, Tribal official designees, or Tribal law enforcement personnel from the fingerprinting requirement is analogous to exempting the State governor, State governor designees, or State law enforcement personnel from the fingerprinting and background check requirements. Providing the relief also recognizes the right of Indian tribes to self-government and supports Tribal sovereignty and self-determination. Relief from the fingerprinting requirement cannot be provided by Commission order, it can only be provided by rule. By including the relief in this rulemaking for all types of SGI, a future rulemaking will not need to be conducted, thus saving NRC resources. Tribal officials will still need to have an established need-to-know before they would be given access to any other types of SGI. This rulemaking establishes need-to-know for the advance notifications for irradiated reactor fuel and nuclear waste shipments that pass within or across the boundary of a Tribal reservation.

The final rule adds Tribal official, his or her designee, and Tribal law enforcement personnel to the list of categories of individuals that are granted relief from the fingerprinting, identification and criminal history records checks, and other elements of background checks. All individuals granted access to SGI are required to abide by the requirements in §§ 73.21 through 73.23 for proper management and protection of SGI.

K. When do these actions become effective?

The final rule will be effective 60 days after publication in the **Federal Register**. However, licensees will not need to comply with the Tribal advance notification provisions in 10 CFR 71.97 and 73.37(f) for 1 year after the rule is published in the **Federal Register**. This date was inserted into the regulatory text. This provides time for the NRC to work with the Tribes and develop the list of Tribal contacts, develop a map showing the location of Tribal reservations, provide training on protection of SGI to the Tribes, and provide time for licensees to develop procedures and conduct training on the new requirements.

III. Summary and Analysis of Public Comments on the Proposed Rule

The proposed rule was published on December 6, 2010 (75 FR 75641), for a 75-day public comment period that ended on February 22, 2011. The NRC received comments from 10 entities. The commenters on the proposed rule included Tribes, a Tribal organization, individuals, companies, and a Federal agency. Copies of the public comments are available in the NRC's PDR, 11555 Rockville Pike, Rockville, Maryland 20852 or at *http://www.regulations.gov* under Docket ID NRC–1999–0005.

In general, most of the commenters expressed support for the rulemaking. There were no comments received in opposition to the rule. Many of the comments received were related to implementation. The Commission specifically requested input on two subjects: (1) The best method for informing Tribes of the obligations of possessing SGI; and (2) whether the relief from fingerprinting should be applied generally to access other types of SGI. A discussion of the comments and the NRC's responses follow.

Comment 1: In the proposed rule, the NRC specifically invited comment on the best method for informing Tribes of the obligations of possessing SGI. Two commenters addressed this topic

directly, and two other commenters addressed the training aspect. One commenter noted that when working with Indian tribes, there is no "one size fits all" approach. The commenter noted that once this rule is final, it will be important first to identify Tribes that would likely be impacted by shipments from NRC licensees to inform them of the rule change and their ability to receive advance notifications. The commenter stated that once the interested Tribes are identified, the NRC should convene a meeting (or training course) for the interested Tribes to inform them of their options for participating, the obligations of possessing SGI should the Tribe choose to receive the advance notifications, and to develop a range of options to inform the Tribes. Another commenter indicated that the NRC should carefully consider the methods used to inform the Tribal governments of their responsibility in possessing SGI, as failure to comply with these requirements could result in civil or criminal liability. The commenter noted that the mechanisms should be reasonable, effective, and based on further research. The commenter suggested that the NRC should first determine whether this material is the type that would lend itself to Webinars or short-term orientation training. The commenter suggested that after selecting a mechanism by which to disseminate the material, the NRC should attempt to gain insight into the Tribal governments' perspectives on the material by conducting surveys to determine if the material is comprehensible, or alternatively, whether it contains complex legal provisions and unclear obligations. The commenter noted that both parties should anticipate the appropriate costs and the time commitments involved with such training. Another commenter noted that training is likely to be the biggest expense. The commenter noted that Tribes should be afforded opportunities for training regarding the obligations for possessing SGI, and the NRC should consider developing both distant learning opportunities and a training of trainers program to share with Tribal leaders and Tribal law enforcement agencies. One commenter noted that effective security training is as important as the decision to share the information itself. The commenter suggested that the NRC use Web-based mechanisms as well as more traditional methods of communication, such as information packets and training courses. The commenter pointed out that the NRC should customize its outreach to each Tribal government based on the Tribal government's capacity and level of engagement. The commenter pointed out that the NRC's outreach effort could be incorporated into existing procedures where an NRC staff member contacts individual Tribes. The commenter indicated that the NRC should offer each participating Tribe training options. Participating Tribes could choose from a range of training options, including technologically advanced options, like Webinars, and more traditional options such as training packets and training courses. The commenter noted that Tribes are willing to make a good-faith effort to carry out their obligations regarding SGI possession and that while training courses may require more resources, the nature of the responsibility involved justifies such attention to training.

Response: The NRC agrees that there is no one-size-fits-all approach that will work. The NRC is considering several different mechanisms to inform the Tribes of the Agency's SGI protection requirements. Initially, the NRC plans to contact by letter all 565 Federally-recognized Tribes when the final rule is published in the **Federal Register**. This initial contact will include a copy of the final rule and information on the protection of SGI, as well as a request to inform the NRC if the Tribe wants to receive the advance notifications. For those Tribes that express interest, more detailed training will be available by Webinar, meetings, training classes, compact disk, etc. Decisions on the best mechanism to provide the training will depend on such things as the number of Tribes that will need the training, locations of the Tribes, and the Tribe's preference.

Comment 2: In the proposed rule, the NRC specifically invited comment on whether the relief from fingerprinting should be applied generally to access other types of SGI. Only one commenter addressed this topic. The commenter felt that the relief from fingerprinting should be expanded and should be applied generally to other types of SGI based on the presumption that the established information protection procedures employed are presumed to meet the general performance requirement.

Response: The NRC has decided to expand the relief to all types of SGI. The SGI includes security-related information such as security plans, alarm information, lock combinations, information related to response forces, adversary characteristics, and other types of information listed in §§ 73.22 and 73.23. The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Indian tribes exercise inherent sovereign powers over their members and territory. The United States recognizes the right of Indian tribes to self-government and supports Tribal sovereignty and self-determination. As a result, the NRC has determined that exempting Tribal officials, Tribal official designees, or Tribal law enforcement personnel is analogous to exempting the State governor, State governor designees, or State law enforcement personnel from the fingerprinting and background check requirements. Furthermore, some Tribes have emergency response responsibilities similar to those of States. Revising the regulation permits the Commission to more efficiently provide SGI to Tribes when it is determined that the Tribe has a need-to-know. Need-to-know is determined on a case-by-case basis. Factors in the decision can include a determination that the information enables the Tribe to be more effective in its day-to-day efforts to ensure the protection of nuclear materials and respond to emergencies within its territories. Therefore, the Commission has determined that the rule helps the Commission fulfill its obligations to promote the common defense and security and to protect the health and safety of the public. Individuals would still need to have an established need-to-know before they would be given access to any other types of SGI. This rulemaking establishes need-to-know for the advance notifications for irradiated reactor fuel and nuclear waste shipments that pass within or across the boundary of a Tribal reservation.

Relief from the fingerprinting requirement cannot be provided by Commission order; it can only be provided by rule. By including the relief in this rulemaking, a future rulemaking will not need to be conducted. As noted elsewhere in the Statement of Considerations, the Tribal official would have to certify that the Tribe has the necessary protection measures in place and that they will protect the SGI in accordance with the requirements in 10 CFR Part 73 (§§ 73.21 through 73.23).

Comment 3: Most of the commenters expressed support for the rulemaking. One commenter noted that the transportation of nuclear waste shipments has always been of concern to Tribal government officials and community members as the potential long-term effects of a transportation accident and possible contamination of Tribal ecosystems poses a high risk to

cultural continuity. One commenter noted that the rule is meaningful because it will increase the Tribal government's ability to perform its responsibilities in protecting public health and safety, as well as recognize Tribal sovereignty. Another commenter expressed support because the NRC's approach acknowledges that sovereign Tribal nations require the same information provided to the States in order to protect health and the environment. The commenter noted that the Tribe's all-hazard Fire Department can be more prepared for very unlikely incidents involving nuclear waste if the Tribe is informed of the shipments. One commenter commends the NRC for its understanding of the unique legal relationship between the Federal government and Tribal governments as the basis for amending the regulations, and for adhering to the principles of consultation and cooperation articulated in E.O. 13175. Commenters noted that Tribal governments exercise regulatory jurisdiction over a broad range of activities on their lands and that Tribal government officials, just like State officials, are charged with protection of the public and have a need-to-know the type and amount of hazardous materials that traverse through their jurisdictions. Commenters noted that notification to Tribal authorities will acknowledge the rights and sovereignty of Tribal governments as well as the responsibility that tribes have for the welfare and safety of natives and non-natives within their jurisdictional boundaries. Commenters noted that notification to Tribal governments will allow Tribal law enforcement and other officials to prepare for safety and security of shipments as well as develop emergency preparedness plans in the event of a transportation accident. One commenter noted that the rule acknowledges a Tribe's sovereign right to be notified of these risks in order to protect the health and safety of its citizens. Several Tribes indicated that they wanted to receive the advance notifications.

Response: The NRC acknowledges the support for the rule. No additional response is necessary.

Comment 4: There were several questions related to the notifications and how enforcement would occur. One commenter wanted to know: (1) How licensees will know if their shipment will pass through Tribal lands subject to the notification requirements; (2) whether the licensee would be in violation if it notified a Tribe that had originally requested notifications but had recently decided not to receive the advance notifications; and (3) whether a licensee would be in violation for failing to notify a Tribe that had recently decided to receive the notifications.

Response: The NRC will maintain a list of those Tribes that want to receive the notifications. The list will be published annually in the **Federal Register** and posted on the NRC Web site. The NRC plans to place a map on the Web site that will denote the location of the Tribal reservations of those Tribes that decide to participate and receive the advance notifications. A licensee will need to check the map to see if the route traverses any of the reservations in order to determine whether it will need to contact any Tribes. A licensee would be in violation if it provided safeguards information to a Tribe that was not participating in the advance notification program. A licensee would also be in violation if it did not provide information to a Tribe that should receive notifications. If the map had not been updated before the notifications were or were not provided, the licensee would not be in violation, as it would have had no method of knowing. The NRC will update the list and map promptly upon receiving notification from a Tribe of any change in the decision to receive advance notifications.

Comment 5: Several commenters expressed support for the provision that allows flexibility for the Tribe to decide if it wants to receive the advance notifications or not, particularly as there is a resource requirement for safeguarding the information. One commenter noted that this option should be explained clearly to the Tribal governments. Another commenter noted that accommodations should be made to assist the Tribes in implementing this rule. These accommodations would include assistance with implementing personnel safeguard protocols. One commenter noted that the provision presents implementation challenges. The commenter suggested that the NRC should contact the Tribes at preestablished times, perhaps once a year, to confirm whether the Tribe would like to continue receiving notifications. The commenter noted that if a Tribe decides to opt out that licensees should be notified and the change reflected in the annual **Federal Register** notice. The commenter also noted that if a Tribe decides to receive the advance notifications, the NRC should establish a clear procedure for notifying licensees and scheduling training on the protection of the information. The commenter noted that Tribal boundaries should be clearly defined and conveyed to both the licensee and the participating Tribe.

Response: The NRC plans to initially contact the Tribes when the final rule is published in the **Federal Register**. This initial contact will include a copy of the final rule and information on the protection of SGI, as well as a request to inform the NRC if the Tribe wants to receive the advance notifications (possibly by utilizing a prepaid, self-addressed postcard). Once a year, the NRC will contact those Tribes that choose to receive the notifications. The NRC outreach will include a request to update any contact information and ask if the Tribe wishes to continue to receive the advance notifications. Every 5 years, the NRC plans to contact all of the Federally-recognized Tribes to inform them of the option to receive the advance notifications and the associated responsibilities that accompany those notifications. The NRC will also contact non-participating Tribes when a newly approved route crosses the Tribal reservation. The NRC's Web site will also contain detailed instruction on how a Tribe can choose to opt in or opt out. The list of participating Tribes will be published in the **Federal Register** once a year and will be posted on the NRC's Web site. Additionally, a map will be posted on the NRC's Web site that shows the location of the Tribal reservations and the routes that surround them. The Web site will also have Tribal contact information. As soon as the NRC receives information from a Tribe on the Tribe's decision to participate and receive the advance notifications or the decision to stop receiving the advance notifications, the NRC will promptly update the information on the NRC's Web site. Information addressing training concerns is detailed in the response to Comment 1.

Comment 6: The NRC received several questions related to route approvals. One commenter wanted to know: (1) For future route approval requests, whether the Tribes will be identified similar to counties and be listed under individual states or treated similar to states; (2) for future route surveys, how the jurisdictions will be determined as not all counties and Tribes are marked along interstate and secondary routes; (3) whether the Tribal emergency response contacts will be listed; and (4) whether current approved routes will need to be resurveyed and amended to show each Tribe. Another commenter noted that the NRC must clearly outline procedures for route changes and enforcement. G1

Response: The Tribes will be identified and listed separately as is done for the States. The licensee should provide the 24-hour contact information

that is available for the Tribe's local law enforcement agency in each county along the route. The route plan must be segmented by counties and Tribal reservations for each state. The NRC will have a map on its Web site that denotes the locations of the Tribal reservations. The Tribal emergency contacts will be listed. The currently approved routes will not be resurveyed, but will be amended if a Tribe along the route opts to be notified.

Comment 7: One commenter noted that a letter, post-marked 7 days prior to the 7-day window of transport, is sufficient to constitute notice. The commenter noted that it is unclear what constitutes sufficient notice if the designated Tribal point of contact cannot be reached for schedule changes as schedule changes are typically made via telephone. The commenter indicated that the rule should be clearer about what constitutes notice in these cases and the options for recourse if notice is not provided. The commenter also noted that the rule needs to be explicit on email notification as this is not addressed in the proposed rule.

Response: If the Tribal contact cannot be reached for a schedule change, the licensee can leave a non-SGI voice mail message. Email notification of schedule changes is not prohibited under the rule. Note that if the notification contains SGI, the email must meet the requirements of § 73.22(f).

Comment 8: One commenter noted that the Tribe's law enforcement agency has in place measures to protect SGI and can conduct proper planning, training, and coordination in support of State, local, and railroad police departments once a notification system is in place. The commenter also expressed support for the NRC's requirement to manage this information as SGI on a "need-to-know" basis.

Response: No response is necessary.

Comment 9: One commenter noted that the best method for notification is a phone call to a previously designated individual. The commenter noted that this prevents the creation of an unnecessary paper trail or computer access that may be compromised, and assures the information is provided to the correct individual.

Response: The rule requires that the notification be conducted in writing because it contains SGI, and SGI cannot be transmitted using non-secure devices. Any Tribe deciding to receive the advance notifications would not be required to retain the notification; the Tribe could destroy the notice upon receipt, as long as the destruction is conducted in accordance with § 73.22(i). The notifications of schedule changes may be made by phone, as they typically do not contain SGI.

Comment 10: One commenter did not support additional background investigations for the Tribal Chairman or Tribal Vice Chairman because they are elected officials and have already undergone this procedure prior to taking office. The commenter noted that the Tribe is a sovereign nation and the Tribal leaders are analogous to a State Governor who has been exempted from these additional requirements.

Response: The rule relieves the Tribal official or their designee from the fingerprinting requirement as is done for a governor or the governor's designee. The rule defines the Tribal official as the highest ranking individual that represents Tribal leadership such as the Chief, President, or Tribal Council leadership of an Indian tribe.

Comment 11: One commenter noted that the proposed rule did not contain any discussion about how the rule would be enforced by the NRC on its licensees. The commenter wanted to know: (1) How the NRC will be informed that the licensees have, in fact, notified Tribes of the shipments; and (2) whether there are penalties for non-compliance with the advance notification requirements. The commenter noted that enforcement needs to be addressed before moving forward and that the NRC needs to inform licensees of their obligation to provide the advance notification to the Tribes impacted by their shipments. Two commenters urged the NRC to implement effective oversight mechanisms to ensure compliance by licensees. One of the commenters noted that this should include specific remedies for failure to provide adequate notification.

Response: The licensee is not required to inform the NRC when they have provided the advance notifications to the States and Tribes. The licensee is subject to NRC inspection. As part of routine inspections, the NRC would check records to see if the required notifications have been made. If the required notifications have not been made, the licensee would be subject to a notice of violation. Depending on the severity, the violation could result in a civil penalty.

Comment 12: One commenter stated that the rule should establish a consultation process that provides for timely input from Tribal governments on route planning and disaster preparedness to ensure greater communication and strategic cooperation. The commenter indicated that it is vital that the NRC make every effort to respect the sovereign jurisdiction of Tribal nations and coordinate with them on matters that affect the health and safety of their citizenry.

Response: The NRC is not directly involved in developing the routes and would therefore not engage in a consultation with the Tribes or with the States through which a route crosses. The NRC does verify contact information after a route is submitted to the NRC. The NRC does not currently plan any consultation with the Tribes on disaster preparedness related to this rulemaking, since the rule is limited to notification requirements. However, the NRC periodically conducts emergency exercises during which the agency coordinates with the Tribes located within the emergency planning zones of NRC facilities. In the unlikely case of an accident and release of radioactive material from a waste shipment, the Federal response would include coordination with the affected Tribes.

Comment 13: One commenter requested notification of traditional and currently adjudicated homelands (which would include South Dakota, North Dakota, Minnesota, Nebraska, Wyoming, Montana, Kansas, and Wisconsin). Another commenter requested that Tribal boundaries should be clearly defined and conveyed to both the licensee and the participating Tribe.

Response: For implementation purposes for this rule, the NRC decided to require licensees to give advance notification to participating Federally-recognized Tribes when a shipment of irradiated reactor fuel and other radioactive wastes crosses the external boundary of the Tribal reservation. This definition provides a clearly defined area that can be used by the licensee to evaluate their routes and provide notification to the interested Tribal governments. The NRC expects to provide information (e.g., a map) on the NRC's Web site to delineate the locations of Tribal reservations and Tribal contact information to aid the licensee compliance with the regulatory requirements.

The licensee will not be required to provide advance notification to participating Tribal governments for traditional and currently adjudicated homelands outside the external boundary of a Tribal reservation. These are not clearly defined areas, and some cases are currently under dispute. For areas outside the external Tribal reservation boundaries, the current regulations require that the licensee provide notice to the applicable State government.

Comment 14: One commenter noted that DOE has for more than 27 years

recognized the need to include Tribes as necessary parties for radioactive waste management and transportation activities including emergency management planning components. The DOE indicated that it has provided advance notice of DOE shipments to Tribal officials for a number of years and has not experienced any resulting security problems or concerns. The DOE noted that the NRC's proposed amendments are consistent with DOE's current practice regarding advance notification of DOE shipments. The DOE noted that it supports the NRC's proposal to amend its regulations so that NRC licensees would be required to provide notification to Tribes. The DOE noted that the proposed amendments respect Tribal sovereignty, do not pose an increased threat to security, and can enhance safety. The DOE further indicated that advance notification helps ensure the preparedness of law enforcement and emergency response personnel along a shipping route, and the DOE believes that providing advance notification to States and Tribes enhances the safety of its shipments.

Response: No response is necessary.

Comment 15: One commenter asked if the rule changes will impact emergency response and first responder protocols for the licensee.

Response: The rule should not impact emergency response and the first responder protocols.

Comment 16: One commenter suggested that the NRC should create a system that continually seeks to update any outdated technology, policies, or procedures and that performs an annual review of the system's effect on both the Tribal governments, as well as licensees, to determine whether the regulation is costing either party unexpected financial loss.

Response: The NRC does not plan to conduct such reviews on the rule's ongoing impact. However, a regulatory analysis of the rule that provides an estimated cost to States and Tribes was completed as part of the rulemaking process. Tribes have the option to opt out and not participate in receiving the advance notifications. If a Tribe felt that receiving the notifications would have too great of a financial impact, the Tribe could decide not to receive the notifications.

Comment 17: One commenter stated that the NRC used plain language effectively and that the rule is clear.

Response: No response is necessary.

Comment 18: One commenter noted that the regulatory analysis is accurate and supports the rule. One commenter noted that the cost and burden to the NRC or its licensees in implementation of a rule change should not be a consideration in amending the regulation. The commenter noted that as an agency of the Federal Government, the NRC has a responsibility to protect Tribal lands and peoples. The commenter noted that licensees must be cognizant of the risks that their activities could pose to every segment of the population, and licensees have an ongoing duty to ensure the safety and security of Tribal communities. The commenter stated that because of the high-risk nature of the licensees' products and activities, notification to appropriate Tribal government officials should be part of the licensees' standard business process.

Response: The NRC prepares a regulatory analysis to support most rulemakings. The analysis lays out both the costs and benefits of the rule so that the NRC can make an informed decision.

Comment 19: One commenter noted that it is not clear whether the proposed rule change encompasses all current and potential Federal spent nuclear fuel and high-level radioactive waste campaigns. The commenter stated that the origin and destination of these materials is relevant because the fiduciary duty to Tribes is borne by all Federal entities responsible for these shipments, including the DOE and DOD. The commenter stated that all similar spent nuclear fuel and high-level radioactive materials shipments and potential impacts need to be addressed by the NRC, and appropriate Federal agencies. Another commenter requested that the rule include shipments from the DOE and DOD. Another commenter noted that it is unclear whether nuclear waste shipments going to a Federal repository or interim storage facility would be subject to this rule. The commenter believed that once waste leaves a commercial nuclear power plant for Federal disposal, the shipments are considered to be DOE shipments. The Commenter noted that the language must be clarified to ensure that any shipment originating from an NRC-licensed facility (i.e., all commercial power plants) would be covered by the rule provisions, even if the DOE takes possession of the material and it becomes a DOE shipment.

Response: Under the AEA and the Energy Reorganization Act of 1974, as amended, the NRC has authority over shipments of NRC-licensed material. The DOE and DOD may transport DOE and DOD titled spent nuclear fuel and high-level radioactive waste shipments outside of the NRC's regulatory authority. These DOE and DOD spent nuclear fuel and high-level radioactive waste shipments are not licensed by the NRC for transportation. In some circumstances Congress mandated that the DOE follow the NRC notifications of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste for disposal at a repository or for monitored retrievable storage. The mandate does not include Native Tribes; however, the DOE has a policy in place to provide notification to Federally-recognized Tribes in advance of any shipments of spent nuclear fuel or high-level radioactive material.

Comment 20: One commenter noted that certain Tribes have designated their lands as nuclear-free zones. In order to more fully achieve the NRC's stated goal of respecting Tribal sovereignty, the commenter encouraged the NRC and its licensees to establish alternative transportation routes that do not involve these territories.

Response: Although the NRC does approve the routes proposed by the licensee, the licensee is responsible for designating the routes for nuclear waste shipments for which advance notification will be required under this rule. With respect to these shipments, regulations of the U.S. Department of Transportation in 49 CFR Part 397, Subpart D, "Routing of Class 7 (Radioactive) Materials," and Subpart E, "Preemption Procedures," govern a carrier's selection of the highway route. These regulations also contain the procedures which must be followed by a State or Indian tribe to designate a highway route over which these shipments may or may not be transported. See also the Federal hazardous material transportation law at 49 U.S.C. 5112 and 5125(c).

In particular, 49 CFR Part 397, Subpart D sets forth the standards for the States and Indian tribes to follow when designating specific highway routes for transportation of Class 7 (radioactive) materials. In particular, 49 CFR 397.103, "Requirements for State routing designations," requires the routing agency to select routes to minimize radiological risk and consult with affected local jurisdictions and other affected States to ensure consideration of all impacts and continuity of designated routes. A list of State-designated preferred routes is available upon request to Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC–EC), 1200 New Jersey Ave. SE., Washington, DC 20590–0001.

Comment 21: One commenter noted that the Tribes' resources and experience vary with regard to

navigating government-to-government relations of this nature. The commenter indicated that the NRC needs to make a good-faith effort in these inaugural stages as some Tribes are able to assist the NRC with advanced tools, such as digital mapping of their areas, while others are struggling with funding for even older, more established projects.

Response: The NRC is aware that the Tribes' resources and experience vary which is why all Tribes will be initially contacted by letter. The NRC will offer different methods for conducting training on protection of SGI so that Tribes can select the appropriate method to fulfill their needs.

Comment 22: One commenter noted that there is no provision in the rule concerning feedback or review and that feedback on training, notification processes, and general implementation issues would be very valuable to successful execution of the rule. The commenter noted that feedback would also help facilitate dialogue with the Tribal governments over other issues in nuclear transportation. The commenter noted that the proposed rule may benefit from an institutionalized review procedure, particularly in the initial years.

Response: Although the NRC does not have an institutionalized review procedure, it does request feedback when it conducts training and outreach efforts during public meetings.

Comment 23: One commenter encouraged the NRC to coordinate with other government agencies that regularly work with sovereign Tribal governments, and particularly with the DOE. The commenter encouraged the NRC to make use of the methods and contacts that the DOE currently employs in its regular communication with Tribal governments as such coordination would likely reduce the labor required to maintain an accurate list of Tribal government contacts. The commenter also noted that out of respect for the sovereignty of Tribes and Tribal governments, coordination with other government agencies and consistent communication procedures would also reduce the administrative burden on the Tribes themselves.

Response: The NRC does coordinate with other Federal agencies on a case-by-case basis. For example, the NRC worked with the Bureau of Indian Affairs (BIA) and the National Council of American Indians in developing the list of Federally-recognized Tribes contacted about this rule and for other activities, including the creation of an NRC database encompassing all 565 Federally-recognized Tribes. The NRC frequently coordinates with DOE in areas of mutual interest, including DOE's Tribal outreach.

Comment 24: One commenter suggested that the NRC work with the DOE and other agencies to develop a central database of Tribal information that can be easily accessed by licensees. The commenter noted that accurate information about the recognized geographical boundaries of Tribes is of utmost importance to successful implementation of the rule. The commenter stated that the NRC should work with the DOE and BIA to create and regularly update a map of Tribal jurisdictions. The commenter noted that the map could be made available to licensees on the NRC's Web site. The commenter indicated that the NRC should also coordinate with other agencies to acquire information on cultural holidays or events that could result in a particular Tribal government being closed and not receiving its necessary notification.

Response: The NRC is currently developing and will maintain a United States map that shows the Tribal reservations, using a State-by-State presentation, and the contacts for those Tribes that choose to receive the notifications. The NRC will coordinate with DOE and BIA as appropriate. Additionally, the NRC has already developed a calendar of Tribal days of significance for internal use and will consider adding the information to the NRC's Web site.

Comment 25: One commenter noted that a primary concern about this rule is that the additional dissemination of nuclear waste transportation information could threaten information security. The commenter believes that the rule adequately safeguards against this concern by making the advance notification voluntary, ensuring security in a manner commensurate with State procedures, and providing clear equipment and training requirements. The commenter stressed that Tribal governments are just as invested in preventing harmful uses of nuclear waste as State governments and that the rule not only recognizes Tribal sovereignty, but also their stake in this decision-making process.

Response: The NRC agrees with the commenter that the rule provides adequate protection of the information contained in the advance notifications.

IV. Discussion of Final Amendments by Section

Section 71.4 Definitions

The definition for *Indian tribe* is based on the term as defined in E.O. 13175. The definition of *Tribal official* describes the highest ranking individual that represents Tribal leadership, such as the Chief, President, or Tribal Council leadership.

Section 71.97 Advance Notification of Shipment of Irradiated Reactor Fuel and Nuclear Waste

Current paragraph (a) is renumbered as paragraph (a)(1) and revised to reflect shipments within or across the State boundary instead of through or across. This change is made for consistency of rule language. Paragraph (a)(2) is added to require licensees to provide advance notification to Tribal officials or their designee of the shipment of licensed material within or across the boundary of the Tribe's reservation.

Paragraph (c) is revised to require notifications to be made to the office of each appropriate Tribal official or his or her designee. Paragraph (c) is also revised to indicate how the list of Tribal officials will be made available.

Paragraph (d) is revised to include arrival at Tribal reservation boundaries.

Paragraph (e) is revised to require that revision notices be provided to Tribal officials or their designee if schedule information previously provided will not be met.

Paragraph (f) is revised to require that cancellation notices be provided to each Tribal official or his or her designee that had previously been notified of an advance shipment.

Section 73.2 Definitions

The definition for *Indian tribe* is based on the terms as defined in E.O. 13175. The definition for *Tribal official* is added to describe the highest ranking individual that represents Tribal leadership, such as the Chief, President, or Tribal Council leadership.

Section 73.21 Protection of Safeguards Information: Performance Requirements

Paragraph (a)(2) is revised to include Tribal law enforcement agencies in the list of agencies whose information protection procedures are presumed to meet the general performance requirements for the protection of SGI.

Section 73.37 Requirements for Physical Protection of Irradiated Reactor Fuel in Transit

Paragraph (f) is revised to require that advance notification of irradiated fuel shipments be provided to participating Tribes if a shipment crosses Tribal reservation boundaries.

Paragraph (g) is revised to add Tribal officials and Tribal employees to the list of individuals that must protect schedule information against

unauthorized disclosure as specified in §§ 73.21 and 73.22.

Section 73.59 Relief From Fingerprinting, Identification and Criminal History Records Checks and Other Elements of Background Checks for Designated Categories of Individuals

New paragraph (l) is added to include Tribal official, Tribal official's designee, and Tribal law enforcement personnel to the categories of individuals that are relieved from the requirement for fingerprinting, identification and criminal records checks, and other elements of background checks.

V. Civil and Criminal Penalties

For the purposes of Sections 223 and 234 of the AEA, the Commission is amending 10 CFR Parts 71 and 73 under one or more of Sections 161b, 161i, or 161o of the AEA. Violations of the rule could result in civil enforcement action, including civil monetary penalties, and Federal criminal prosecution.

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 final rule is a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among the Agreement States and the NRC requirements. The NRC staff analyzed the final rule in accordance with the procedure established within Part III, "Categorization Process for NRC Program Elements," of Handbook 5.9 to Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs" (a copy of which may be viewed at *http://www.nrc.gov/reading-rm/doc-collections/management-directives/*).

The NRC program elements (including regulations) are placed into four compatibility categories (see the Compatibility Table in this section). In addition, the NRC program elements can also be identified as having particular health and safety significance or as being reserved solely to the NRC. Compatibility Category A are 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 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 are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which 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 Category C program elements. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, and, thus, do not need to be adopted by Agreement States for purposes of compatibility.

Health and Safety (H&S) are program 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 the H&S category based on those of the NRC that embody the essential objectives of the NRC program elements because of particular health and safety considerations.

Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to Agreement States under the AEA, or provisions of 10 CFR. These program elements are not adopted by Agreement States. The following table lists the parts and sections that are being revised and their corresponding compatibility categorization under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs."

COMPATIBILITY TABLE FOR FINAL RULE

Section	Change	Subject	Compatibility	
			Existing	New
10 CFR Part 71				
71.4	New	Definition Indian tribe		B
71.4	New	Definition Tribal official		B
71.97	Amend	Advance notification of shipment of irradiated reactor fuel and nuclear waste	B	B
10 CFR Part 73				
73.2	New	Definition Indian tribe		NRC
73.2	New	Definition Tribal official		NRC
73.21	Amend	Protection of Safeguards Information: Performance Requirements	NRC	NRC
73.37	Amend	Requirements for physical protection of irradiated reactor fuel in transit	NRC	NRC
73.59	Amend	Relief from fingerprinting, identification and criminal history records checks and other elements of background checks for designated categories of individuals.	NRC	NRC

VII. 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 final rule, the NRC is requiring that advance notification be provided to participating Tribal governments for shipments of irradiated reactor fuel and other nuclear wastes listed in § 71.97 that pass within or across Tribal reservations. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

VIII. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

IX. Paperwork Reduction Act Statement

This final 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.*). These requirements were approved by the Office of Management and Budget (OMB), approval numbers 3150–0008 and 3150–0002.

The burden to the public for these information collections is estimated to average 0.422 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Information Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS.RESOURCE@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151), Office of Management and Budget, Washington, DC 20503. You may also email comments to *Chad_S_Whiteman@omb.eop.gov* or comment 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.

X. Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O–1F21, Rockville, MD 20852 and can be found at *http://www.regulations.gov* by searching on Docket ID NRC–1999–0005.

XI. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The amendments will apply to reactor licensees and a few licensees who possess large sources of byproduct materials. The majority, if not all, of these licensees are not "small entities" under either the Regulatory Flexibility Act or the NRC's size standards (10 CFR 2.810).

XII. Backfit Analysis

The NRC has determined that the backfit rule, which is found in the regulations at 10 CFR 50.109, 70.76, 72.62, 76.76, and in 10 CFR Part 52, does not apply to this final rule because this amendment would not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

XIII. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

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 and 553; the NRC is adopting the following amendments to 10 CFR parts 71 and 73.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

■ 1. The authority citation for part 71 is revised to read as follows:

Authority: Atomic Energy Act secs. 53, 57, 62, 63, 81, 161, 182, 183, 223, 234, 1701 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2273, 2282, 2297f); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act sec. 180 (42 U.S.C. 10175); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005). Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

■ 2. In § 71.4, new definitions for *Indian tribe* and *Tribal official* are added in alphabetical order to read as follows:

§ 71.4 Definitions.

* * * * *

Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

* * * * *

Tribal official means the highest ranking individual that represents Tribal leadership, such as the Chief, President, or Tribal Council leadership.

* * * * *

■ 3. In § 71.97, paragraphs (a), (c)(1), (c)(3), (d)(4), (e), and (f)(1) are revised to read as follows:

§ 71.97 Advance notification of shipment of irradiated reactor fuel and nuclear waste.

(a)(1) As specified in paragraphs (b), (c), and (d) of this section, each licensee shall provide advance notification to the governor of a State, or the governor's designee, of the shipment of licensed material, within or across the boundary of the State, before the transport, or delivery to a carrier, for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage.

(2) As specified in paragraphs (b), (c), and (d) of this section, after June 11, 2013, each licensee shall provide advance notification to the Tribal official of participating Tribes referenced in paragraph (c)(3)(iii) of this section, or the official's designee, of the shipment of licensed material, within or across the boundary of the Tribe's reservation, before the transport, or delivery to a carrier, for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage.

* * * * *

(c) *Procedures for submitting advance notification.* (1) The notification must be made in writing to:

(i) The office of each appropriate governor or governor's designee;

(ii) The office of each appropriate Tribal official or Tribal official's designee; and

(iii) The Director, Division of Security Policy, Office of Nuclear Security and Incident Response.

* * * * *

(3) A notification delivered by any other means than mail must reach the office of the governor or of the governor's designee or the Tribal official or Tribal official's designee at least 4 days before the beginning of the 7-day period during which departure of the shipment is estimated to occur.

(i) A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of nuclear waste was published in the **Federal Register** on June 30, 1995 (60 FR 34306).

(ii) The list of governor's designees and Tribal official's designees of participating Tribes will be published annually in the **Federal Register** on or about June 30th to reflect any changes in information.

(iii) A list of the names and mailing addresses of the governors' designees and Tribal officials' designees of participating Tribes is available on request from the Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

* * * * *

(d) * * *

(4) The 7-day period during which arrival of the shipment at State boundaries or Tribal reservation boundaries is estimated to occur;

* * * * *

(e) *Revision notice.* A licensee who finds that schedule information previously furnished to a governor or governor's designee or a Tribal official or Tribal official's designee, in accordance with this section, will not be met, shall telephone a responsible individual in the office of the governor of the State or of the governor's designee or the Tribal official or the Tribal official's designee and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the name of the individual contacted for 3 years.

(f) *Cancellation notice.* (1) Each licensee who cancels an irradiated reactor fuel or nuclear waste shipment for which advance notification has been sent shall send a cancellation notice to the governor of each State or to the governor's designee previously notified, each Tribal official or to the Tribal official's designee previously notified, and to the Director, Division of Security Policy, Office of Nuclear Security and Incident Response.

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 4. The authority citation for part 73 is revised to read as follows:

Authority: Atomic Energy Act secs. 53, 147, 161, 223, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2273, 2282, 2297(f), 2210(e)); Energy Reorganization Act sec. 201, 204 (42 U.S.C. 5841, 5844); Government Paperwork Elimination Act sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Section 73.1 also issued under Nuclear Waste Policy Act secs. 135, 141 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

■ 5. In § 73.2, new definitions for *Indian tribe* and *Tribal official* are added in alphabetical order to read as follows:

§ 73.2 Definitions.

* * * * *

Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

* * * * *

Tribal official means the highest ranking individual that represents Tribal leadership, such as the Chief, President, or Tribal Council leadership.

* * * * *

■ 6. In § 73.21, paragraph (a)(2) is revised to read as follows:

§ 73.21 Protection of Safeguards Information: Performance Requirements.

(a) * * *

(2) Information protection procedures employed by Federal, State, Tribal, and local law enforcement agencies are presumed to meet the general performance requirement in paragraph (a)(1) of this section.

* * * * *

■ 7. In § 73.37, paragraphs (f) and (g) are revised to read as follows:

§ 73.37 Requirements for physical protection of irradiated reactor fuel in transit.

* * * * *

(f) A licensee subject to this section shall notify the governor or the governor's designee prior to the transport of spent fuel within or across a State. After June 11, 2013, a licensee subject to this section shall notify the Tribal official or Tribal official's designee of each participating Tribe referenced in § 71.97(c)(3) of this chapter prior to the transport of spent fuel within or across the Tribal reservation. The licensee shall comply with the following criteria in regard to a notification:

(1) The notification must be in writing and sent to the office of each appropriate governor or the governor's designee and each appropriate Tribal official or the Tribal official's designee. A notification delivered by mail must be postmarked at least 7 days before transport of a shipment within or across the State or Tribal reservation. A notification delivered by messenger must reach the office of the governor or the governor's designee and any Tribal official or Tribal official's designee at least 4 days before transport of a shipment within or across the State or Tribal reservation. A list of the mailing addresses of governors and governors' designees and Tribal officials and Tribal officials' designees is available upon request from the Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

(2) The notification must include the following information:

(i) The name, address, and telephone number of the shipper, carrier, and receiver.

(ii) A description of the shipment as specified by the Department of Transportation in 49 CFR 172.202 and 172.203(d).

(iii) A listing of the routes to be used within the State or Tribal reservation.

(iv) A statement that the information described in paragraph (f)(3) of this section is required by the NRC regulations to be protected in accordance with the requirements of §§ 73.21 and 73.22.

(3) The licensee shall provide the following information on a separate enclosure to the written notification:

(i) The estimated date and time of departure from the point of origin of the shipment.

(ii) The estimated date and time of entry into the governor's State or Tribal reservation.

(iii) For the case of a single shipment whose schedule is not related to the schedule of any subsequent shipment, a statement that schedule information must be protected in accordance with the provisions of §§ 73.21 and 73.22 until at least 10 days after the shipment has entered or originated within the State or Tribal reservation.

(iv) For the case of a shipment in a series of shipments whose schedules are related, a statement that schedule information must be protected in accordance with the provisions of §§ 73.21 and 73.22 until 10 days after the last shipment in the series has entered or originated within the State or Tribal reservation and an estimate of the date on which the last shipment in the series will enter or originate within the State or Tribal reservation.

(4) A licensee shall notify by telephone or other means a responsible individual in the office of the governor or in the office of the governor's designee and the office of the Tribal official or in the office of the Tribal official's designee of any schedule change that differs by more than 6 hours from the schedule information previously furnished in accordance with paragraph (f)(3) of this section, and shall inform that individual of the number of hours of advance or delay relative to the written schedule information previously furnished.

(g) State officials, State employees, Tribal officials, Tribal employees, and other individuals, whether or not licensees of the Commission, who receive schedule information of the kind specified in paragraph (f)(3) of this section shall protect that information against unauthorized disclosure as specified in §§ 73.21 and 73.22.

■ 8. In § 73.59, new paragraph (l) is added to read as follows:

§ 73.59 Relief from fingerprinting, identification and criminal history records checks and other elements of background checks for designated categories of individuals.

* * * * *

(l) Tribal official or the Tribal official's designated representative, and Tribal law enforcement personnel.

Dated at Rockville, Maryland, this 5th day of June 2012.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

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