



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

April 1, 2014

Ms. Nancy McFadden
Office of Governor Edmund G. Brown, Jr.
State Capitol
Sacramento, CA 95814

SUBJECT: GOVERNOR'S DESIGNATED REPRESENTATIVE TO RECEIVE ADVANCE NOTICE OF SHIPMENTS OF RADIOACTIVE MATERIAL PURSUANT TO TITLE 10 OF THE CODE OF FEDERAL REGULATIONS PARTS 37, 71 AND 73

Dear Ms. McFadden:

I am writing to request the name (if applicable) and contact information of the Governor's designated representative(s)¹ for notifications that would be made pursuant to the Title 10 of the *Code of Federal Regulations* (10 CFR) Parts 37, 71, and 73 and for the preplanning and coordination of shipments regulated pursuant to 10 CFR Parts 37 or 73.

The U.S. Nuclear Regulatory Commission (NRC) has issued orders and established regulations that require that licensees provide advance notice of certain shipments of radioactive material to the Governor or the Governor's designated representative. The NRC has recently revised its regulations to require licensees to provide advance notice to the Office of the Governor or the Governor's designated representative of category 1 quantities of radioactive material beginning on March 19, 2014.² Category 1 and category 2 quantities of radioactive material are described in enclosure 1. The NRC has conducted a review of the existing Governor's designations, including that for the State of California, and has identified an issue with the documentation that has been used in lieu of documentation from the Governor of the State of California or the Office of the Governor. Without a Governor's designation, licensees are to provide the advance notice of certain shipments of radioactive material to the Governor or the Office of the Governor. If the advance notice is to be provided to someone else, please provide the designation and the contact information.

¹ This letter contains requests associated with information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This information request has previously been approved by the Office of Management and Budget (OMB) 3150-0029 and was resubmitted to OMB for review and continued approval of information collection. The estimated burden per response to comply with this voluntary collection is approximately 15 minutes for States updating contact information and 45 minutes for states providing a copy of a Governor's designation. Send comments regarding the burden estimate to the Information Services Branch (T-5F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by e-mail to infocollects.resource@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0029 and -0020), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

² Nationally, there was an average to 317 shipments of category 1 quantities of radioactive material (see Appendix A to 10 CFR Part 37, which is provided in Enclosure 1) per year (2005 – 2008) and fewer shipments in 2009 and 2010.

Background on the Advance Notification Program

The NRC advance notification requirements for certain shipments of radioactive material were first established as required by Section 301 of Public Law 96-295 and implemented by provisions in 10 CFR Parts 71 and 73. To enhance security measures following the terrorist events of September 11, 2001, the NRC issued orders that required licensees to provide advance notification for shipments of other types of radioactive material not previously required under 10 CFR Parts 71 and 73. These orders were issued to both NRC and Agreement State licensees. The NRC recently established the 10 CFR Part 37 regulations that require licensees to provide advance notice of shipments of category 1 quantities of radioactive material. The advance notifications made under the orders will continue to be made under the orders until the regulations that supersede the orders are implemented and the orders are rescinded.

The NRC requirements for the advance notification of certain shipments of radioactive material to States (i.e., 10 CFR 37.77, 71.97, 73.35, and 73.37) while in transit are provided in enclosure 1 and include the requirement that licensees preplan and coordinate aspects of the shipment of category 1 quantities of radioactive material with the Governor or the Governor's designated representative. The advance notification requirements at 10 CFR 37.77 and 73.35 became effective on May 20, 2013, and compliance is required from NRC licensees beginning on March 19, 2014. Agreement State licensees that were issued security orders will continue to provide advance notifications under the orders until the effective date of the compatible requirements issued by their State. Each Agreement State, including the State of California, will follow its own process for issuing these requirements. As the State-issued requirements become effective, the NRC will rescind the orders for the licensees of that State.

Review Results for the State of California Designations

Previously, California relied upon the California Vehicle Code section 33002 in lieu of a Governor's designation; and we have been working directly with the California Highway Patrol, which identified Lieutenant Ken Roberts to receive advance notifications for shipments regulated pursuant to 10 CFR Parts 71 and 73. From our review, we have determined that the California vehicle Code section 33002 applies only to carriers and only to the shipment of commercially produced spent radioactive fuel, rather than to NRC or Agreement State licensees — unless they were to also be a carrier of commercially-produced radioactive fuel. The NRC and Agreement State regulations that require providing the Governor, or the Governor's designated representative, with advance notice of shipments of radioactive material apply to NRC and Agreement State licensees. Consequently, the California Vehicle Code section 33002 is not sufficient to replace a Governor's designation.

Background on Designations

The Governor's designation establishes a "need to know" and is used to exempt the Governor's designated representative from criminal history and background checks. In response to the terrorist events of September 11, 2001, the NRC recently established regulations at 10 CFR Part 37, that require licensees to provide advance notice of shipments of category 1 quantities of radioactive material and to preplan and coordinate aspects of the shipment with the Governor or the Governor's designated representative. In the absence of a designated representative, the notification is to be sent to the Office of the Governor and the preplanning and coordination is to be done with the Governor or the Governor's designated representative. My staff will

identify the designee in a future *Federal Register* notice and will make their contact information available to licensees.

Please note:

- The NRC requests that the Governor: 1) designate only one individual as the Governor's designated representative to receive the advance notifications for the notifications made pursuant to a particular Part of the NRC regulations and 2) provide contact information for their designated representative. However, the Governor may choose to designate a back-up (or alternate) designee or designees for those instances where the Governor's designated representative is unavailable.
- The Governor's designated representative may be identified through a position or title. The position or title should be specific enough to correspond to an individual (i.e., it should not be a generic position or title that may be held by more than one person at one time).
- The same individual may be the Governor's designated representative for the different types of advance notifications (see enclosure 2).
- The advance notifications provided pursuant to 10 CFR Part 37 may include sensitive or safeguards information — modified handling (SGI-M) (i.e., safeguards information with modified handling requirements) that is to be handled and protected appropriately.
- The advance notifications provided pursuant to 10 CFR Part 73 may include safeguards information that is to be handled and protected appropriately.
- The Governor's designated representative is relieved from the background checks and fingerprinting normally required before having access to safeguards information, if they are a State employee.
- The information protection procedures employed by Federal, State, Tribal, and local law enforcement agencies are presumed to meet the general performance requirements for protecting safeguards information (SGI).
- There is no required format for the designation, but it needs to be clear that the designation is by the Governor or the Office of the Governor. Suggested language for the designation is provided in enclosure 2.

Handling of Sensitive Information

The designated representative to receive advance notice pursuant to 10 CFR Part 73 may receive sensitive information or safeguards information and will be responsible for protecting this information. They will be responsible for: 1) ensuring that recipients of such information are trustworthy and reliable and have a "need-to-know" and 2) implementing the appropriate measures for storing and protecting the information from unauthorized disclosure in accordance with 10 CFR 73.21, 73.22 and 73.23, which are provided in enclosure 3. I am enclosing NRC Regulatory Guide 5.79, "Protection of Safeguards Information" (enclosure 4, Accession No. ML103270219, also available electronically at:

<https://adamsxt.nrc.gov/WorkplaceXT/getContent?id=release&vsId=%7B7F0AA663-07DA-493E-B029-5A8B28793EB2%7D&objectStoreName=Main...Library&objectType=document>),

which describes a method that NRC considers acceptable for use in implementing the specific requirements for the protection of SGI. The Regulatory Guide provides guidance on establishing an information protection system that addresses:

- (1) information to be protected;
- (2) conditions for access and maintenance of the records associated with the access granting process;
- (3) protection while in use or in storage;
- (4) preparation and marking of documents or other matter;
- (5) reproduction of matter containing SGI;
- (6) external transmission of documents and material;
- (7) processing of SGI on electronic systems;
- (8) removal from the SGI category; and
- (9) destruction of matter containing SGI.

If you have any questions relating to the advance notification requirements; preplanning and coordination; or the information protection requirements, you can reach my staff by phone at 301-415-2326, e-mail at Government.Liaison.Resource@nrc.gov, or facsimile at 301-415-5955. You can provide updates to your contact information by e-mail, facsimile (301-415-5955), or mail: ATTN Transportation Designation, Mail Stop T-8F42, Intergovernmental Liaison Branch, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, 20555-0001.

N. McFadden

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We appreciate your cooperation in maintaining the Governor's designee information for the advance notification of certain shipments of radioactive material current. Please inform us of any changes to the designation that involve a change to the Governor's designated representative or the scope of their designation.

Sincerely,

/RA/

Christopher G. Miller, Director
Division of Intergovernmental Liaison
and Rulemaking
Office of Federal and State Materials
and Environmental Management Programs

Enclosures:

1. Advance Notification Requirements (10 CFR 37.73, 37.75, and 37.77; 10 CFR Part 37, Appendix A; 10 CFR 71.97; and 10 CFR 73.35 and 73.37)
2. Suggested language for advance notification designations
3. Information Protection Requirements for SGI (10 CFR 73.21, 73.22, and 73.23)
4. Regulatory Guide 5.79, "Protection of Safeguards Information"

cc: R. Weisenmiller, SLO
K. Roberts

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