

FINAL SUPPORTING STATEMENT  
FOR  
TRIBAL PARTICIPATION IN THE ADVANCE NOTIFICATION PROGRAM

3150-XXXX

NEW

Description of the Information Collection

The U.S. Nuclear Regulatory Commission's (NRC) regulations in Title 10 of the Code of Federal Regulations (10 CFR) Parts 71 and 73 governing the packaging and transportation of radioactive material and the physical protection of nuclear power plants, other facilities, and materials were amended on June 11, 2012 ("Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste," Final Rule, 77 FR 34194). When certain shipments of nuclear waste or shipments of irradiated reactor fuel will occur within or will cross the boundary of a federally recognized Indian Tribe's reservation, licensees must now provide advance notification to those Tribal governments that choose to receive the advance notifications.

In order to receive these notifications, federally recognized Indian Tribes will affirmatively opt-in to receive the notifications. These notifications may contain safeguards information (SGI). SGI is a special category of sensitive unclassified information that, if disclosed, could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security. Therefore, prior to participating in the advance notification program, Tribal governments and those individuals handling the SGI must be prepared to protect the SGI. Before participating in the advance notification program, the Indian Tribes will submit the following certifications: 1) the Tribal official or their designee(s) has (or have) taken training on the handling of SGI and 2) the Indian Tribe has the necessary protection measures in place and the Indian Tribe will protect the SGI. If the Tribal official is designating another person to receive the advance notifications, notification of that designation will be provided. The Indian Tribe will also provide the contact information for the Tribal official or the Tribal official's designee(s). The Indian Tribe will also provide an affirmation of the boundaries of the Indian Tribe's reservation or the necessary corrections to a map provided by the NRC. The NRC will also collect the name and contact information for the Indian Tribe's emergency response contact(s). The specific information that will be requested has been uploaded separately as an information collection instrument.

A. JUSTIFICATION

1. Need for and Practical Utility of the Collection of Information

The information that the NRC requests is necessary to implement the advance notification program as it pertains to federally recognized Indian Tribes, ensure SGI provided to participating Indian Tribes will be protected, and to respond to potential transportation incidents. The NRC makes this information available to others, including NRC licensees and Agreement State licensees to enable them to comply with NRC and Agreement State regulations. NRC licensees will use the information to comply with the NRC's regulations that require them to provide advance notice of certain shipments of radioactive material to participating Indian Tribes. Agreement State licensees may use the information to comply with the compatible Agreement State regulations.

## 2. Agency Use of Information

The NRC uses the collected information to implement the advance notification program, which includes the following purposes. First, information is collected and made available to licensees to enable licensees to comply with NRC and Agreement State regulations. Second, to facilitate correspondence to the Tribal official, Tribal official's designated representative, or the Indian Tribe's emergency response contact on matters related to transportation or the implementation of the advance notification program.

The NRC uses the designation to determine who the Tribal official has designated to receive the advance notifications for the Indian Tribe and has the need-to-know the safeguards information that may be contained within the advance notifications. The NRC will use the contact information to direct correspondence on issues related to the transportation of radioactive materials and the advance notification program to the appropriate individual. The NRC verifies contact information on transportation routes submitted to the NRC for approval. The NRC requires the Tribal official or the Tribal official's designee to be trained on the handling of SGI and to certify that they have taken the training and for the Indian Tribe to certify that the Indian Tribe has the necessary protection measures in place to protect SGI and that they will protect the SGI. The NRC will collect information for the emergency response contact that will be used in the event of transportation incident occurring on the Indian Tribe's reservation.

The NRC makes information available to licensees to enable licensees to comply with the NRC's regulations at 10 CFR 71.97 and 10 CFR 73.37; these regulations require licensees to provide advance notice of certain shipments of radioactive material to participating Indian Tribes. This information includes the following:

1. Maps of the Tribal reservation boundaries, which allow licensees to identify which Indian Tribes require advance notice of their shipments; and
2. Contact information for the Tribal official or the Tribal official's designee, which allows licensees to know: 1) to whom they need to provide the advance notice, 2) who has the need-to-know the SGI that may be included in the advance notification, and 3) how to contact this person.

The NRC will also make the emergency response contact information available to licensees.

## 3. Reduction of Burden Through Information Technology

The NRC has issued *Guidance for Electronic Submissions to the NRC* which provides direction for the electronic transmission and submittal of documents to the NRC. Electronic transmission and submittal of documents can be accomplished via the following avenues: the Electronic Information Exchange process, which is available from the NRC's "Electronic Submittals" Web page, by Optical Storage Media (OSM) (e.g. CD-ROM, DVD), by facsimile or by e-mail. It is estimated that approximately 40 percent of the potential responses will be filed electronically.

## 4. Effort to Identify Duplication and Use Similar Information

- The NRC uses information from the United States Census Bureau to develop the maps of the reservations that are provided to those federally recognized Indian Tribes that have expressed interest in participating in the advance notification program.
- Although other agencies may have information on emergency management contacts within Indian Tribes, these contacts may not be the Indian Tribe's preference for shipments of radioactive material that require advance notification.
- The Agreement States do not collect similar contact information for their licensees. Consequently, Agreement State licensees will use the information that the NRC collects and makes available.
- The advance notifications may contain SGI, so the NRC needs to have confidence that it has the correct mailing address for the Tribal official or the Tribal official's designee to receive the advance notifications and relying on other sources of information would increase the likelihood of the inadvertent release of SGI. For the other information that will be collected, there are no sources of similar information that are available.

#### 5. Effort to Reduce Small Business Burden

Approximately 95 percent of responding Indian Tribes are estimated to be small entities. In order to minimize burden on the responding Indian Tribes, the NRC provides the Indian Tribes with reservation maps from the United States Census Bureau and requests confirmation of reservation boundaries. This allows the Indian Tribes to affirm that the map is correct or to provide changes. In addition, the NRC assists the Indian Tribes by providing training on how to protect SGI and provides this training in ways that will reduce the burden on the Indian Tribes. In addition, the NRC's regulations at 10 CFR 73.59 extended the relief from fingerprinting requirements required for access to SGI to Tribal officials, Tribal official designees, and Tribal law enforcement personnel. These individuals will not need to be fingerprinted for access to SGI.

#### 6. Consequences to Federal Program or Policy Activities if the Collection Is Not Conducted or Is Conducted Less Frequently

The NRC requests information from those federally recognized Indian Tribes interested in receiving advance notifications. The NRC will provide federally recognized Indian Tribes with information about their ability to participate in the advance notification: 1) every 5 years, 2) after an Indian Tribe achieves Federal recognition, and 3) when a transportation route is approved that is within a reservation or crosses a reservation boundary. This allows Tribes that may be affected by the transportation of spent nuclear fuel or shipments of nuclear waste to participate in the advance notification program and to receive advance notice of higher risk shipments on their territory. If the information is not collected on this frequency, Tribes would be unaware of their ability to receive this information and would not be notified of these shipments in, to, or through the Tribal reservation.

For participating Indian Tribes, the NRC will request information when there is a change in Tribal leadership. The NRC will also request information when there is a change in the Tribal official's designation. This is the minimum frequency necessary to ensure that the advance notice is provided to the appropriate Tribal official or Tribal official designee. If the information is not collected, NRC licensees would not be able to comply with the NRC's regulations to provide advance notice of certain shipments of radioactive material to participating Indian Tribes, the NRC would not know which Indian Tribes are interested in receiving the advance notifications, there would be an increased likelihood that SGI would not be sufficiently protected, and there would be an increased risk of unauthorized disclosure of SGI.

Indian Tribes may provide information in response to one of the reminders described above (e.g., when the NRC informs the Indian Tribe that a transportation route has been approved that is within a reservation or crosses a reservation boundary) that the NRC will send to the Indian Tribe. Some information is requested only one time. The other information would only need to be provided when there is a change, making the update necessary. If this information is collected less frequently, the advance notification may not go to the appropriate individual and the Indian Tribe would not be properly informed of the shipment, affecting the opportunity provided to the Indian Tribe to identify concerns about the timing of the shipment to the licensee and there would be an increased risk of unauthorized disclosure of SGI. Collecting the information less frequently could also affect the timeliness of the emergency response activities related to a transportation incident.

The Tribal official, or the Tribal official's designee, needs to receive training on the protection of SGI one time before they can receive information to ensure that they understand their responsibilities for handling, storage, and disposal of safeguards information. This one-time training is considered the minimum necessary.

#### 7. Circumstances Which Justify Variation from OMB Guidelines

There is no variation from OMB guidelines.

#### 8. Consultations Outside the NRC

Opportunity for public comment on the information collection requirements for this clearance package was published in the *Federal Register* on August 9, 2019 (84 FR 39381). Due to the time elapsed since the publication of the initial notice, the NRC published a second 60-day comment request on April 5, 2021 (86 FR 17646).

Following the August 2019 solicitation of comments, members of four federally recognized Indian Tribes were contacted by phone as part of the consultation process. The NRC received one out-of-scope comment and received comments by phone from one Tribal representative.

One Tribal representative expressed a view that the estimates for the burden of providing the reporting responses were reasonable but the burden estimate of 6 hours per response for the initial collection might be too high. In response to this comment, the estimated burden for the reporting burden involved in the initial request to participate in the advance notification program was reduced by 0.5 hours to 5.5 hours per response.

One Tribal representative expressed the view that information collection is sufficiently clear and most of the information is provided by e-mail and the Tribal representative did not have a recommendation for making the collection more efficient. No changes were made in response to this comment.

One Tribal representative noted that the opt-in part of the process is the hardest step for federally recognized Indian Tribes to participate in the advance notification program and suggested that the NRC provide technical assistance by providing training to Indian Tribes to make it easier for them to participate. Although no changes in the estimated burden were made in response to this comment, the NRC will continue to provide assistance to federally recognized Indian Tribes that may be interested in participating in the advance notification program. This assistance also includes training on the protection of safeguards information.

Following the April 2021 solicitation of comments, five members of four federally recognized Indian Tribes were contacted by e-mail as part of the consultation process. Two members provided no comments.

One Tribal representative expressed the view that information collection supporting the Advance Tribal Notification Program improves tribal safety, the training in SGI handling is appreciated, and, the information collection effort has not been burdensome. No changes were made in response to this comment.

One Tribal representative expressed the view that the information collection effort is not burdensome and that the Advance Tribal Notification Program enhances communication among the parties involved with the transportation of radioactive material. No changes were made in response to this comment.

One Tribal representative expressed the view that the information collection effort is not necessary and asked how the Tribes will benefit from the Advance Tribal Notification Program.

NRC Staff response: The NRC uses the collected information to implement the advance notification program, which includes the following purposes. First, information is collected and made available to licensees to enable licensees to comply with NRC and Agreement State regulations. Second, to facilitate correspondence to the Tribal official, Tribal official's designated representative, or the Indian Tribe's emergency response contact on matters related to transportation or the implementation of the advance notification program. If the information were not collected, Tribes would be unaware of their ability to receive this information and would not be notified of shipments in, to, or through the Tribal reservation. The Tribal official, or the Tribal official's designee, needs to receive training on the protection of SGI one time before they can receive information to ensure that they understand their responsibilities for handling, storage, and disposal of safeguards information. This one-time training is considered the minimum necessary. In addition, Tribal participation in the advance notification program is voluntary. No changes were made in response to this comment.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality of Information

Confidential and proprietary information is protected in accordance with NRC regulations at 10 CFR 9.17(a) and 10 CFR 2.390(b). However, no information normally considered confidential or proprietary is requested.

11. Justification for Sensitive Questions

No sensitive information will be requested.

12. Estimated Burden and Burden Hour Cost

The NRC staff estimates that it takes 5.5 hours for the initial request to participate in the advance notification program, which includes the following:

Reporting

- Preparing the Tribal official's designation (0.5 hours)
- Providing contact information for the Tribal official or Tribal official's designee and the Indian Tribe's emergency response contact (0.25 hours)
- Confirming reservation boundaries (1 hour)
- Taking SGI training and certifying completion (1 hour)
- Establishing the necessary protection measures in place and certifying that the Indian Tribe will protect the SGI (2.75 hours)

In addition, the NRC staff estimates that it takes 2 hours for subsequent requests, such as when there is a change in the Tribal official or Tribal official's designee.

Table 1 summarizes the annual anticipated recordkeeping responses and burden.

	Respondents	Responses per respondent	Total responses	Burden per response	Total burden
Initial requests	3	1	3	5.5	16.5
Change requests	4	1	4	2	8
Total reporting	7		7		24.5

Recordkeeping

- Maintaining procedures for the protection of SGI (0.5 hour)
- Protecting retained SGI before it is decontrolled or destroyed (1 hour)

Information protection procedures employed by Tribal law enforcement agencies are presumed to meet the general performance requirements for protecting safeguards

information. The staff estimates that 67 percent of 15 federally recognized Indian Tribes requesting to participate in the advance notification program will need to maintain procedures that are not used by Tribal law enforcement agencies. The staff estimates that federally recognized Indian Tribes not using the procedures of a Tribal law enforcement agency will spend 0.5 hours annually for maintaining these procedures.

The staff estimates that participating federally recognized Indian Tribes choosing to store SGI will spend 1 hour annually for recordkeeping associated with the storage of SGI before it is decontrolled or destructed.

Table 2 shows a summary of recordkeeping burden.

Table 2. Annual Recordkeeping Burden			
	Recordkeepers	Burden per recordkeeper	Total burden
Maintaining SGI procedures	10	0.5	5
SGI storage	5	1	5
Total recordkeeping	15		10

The total burden for the proposed information collection is show in Table 3. The total burden is estimated to be 36 hours annually at a cost of \$10,044 (36 hours x \$279/hr).

Table 3. Burden Totals and Cost			
	Responses	Hours	Cost at \$279/hr
Reporting	7	24.5	\$6,811
Recordkeeping	15	10	\$2,780
Total	22	34.5	\$9,591

The \$279 hourly rate used in the burden estimates is based on the NRC's fee for hourly rates as noted in 10 CFR 170.20 "Average cost per professional staff-hour." For more information on the basis of this rate, see the Revision of Fee Schedules; Fee Recovery for Fiscal Year 2020 (85 FR 37250, June 19, 2020).

### 13. Estimate of Other Additional Costs

Federally recognized Indian Tribes receiving SGI will need a way of destroying the SGI. Federally recognized Indian Tribes choosing to store SGI would need a way of storing the information in an approved storage container (e.g., a secure filing cabinet). The staff estimates that a one-time purchase of an approved shredder would cost \$250. The staff estimates that a one-time purchase of a secure filing cabinet would cost \$500. The staff estimates that 100 percent of participating federally recognized Indian Tribes would purchase both a shredder and a secure filing cabinet. The staff estimates that the burden for storing and destroying SGI using approved methods is \$11,250 (15 participating federally recognized Indian

Tribes x \$250 for each shredder and \$500 for each secure filing cabinet = \$11,250), annualized to \$3,750 over the three-year clearance period (\$11,250/3 years).

14. Estimated Annualized Cost to the Federal Government

The NRC professional staff will review the information submitted and update the web site used to provide the information to licensees, which requires 25 hours of staff time annually at a cost of \$6,975 (25 hours x \$279/hr.).

15. Reasons for Change in Burden or Cost

This is a new information collection that would impose an estimated 34.5 hours of annual burden at a cost of \$9,625.50 (34.5 hours x \$279/hr.) on federally recognized Indian Tribal governments that opt-in to receiving notifications when certain shipments of nuclear waste or shipments of irradiated reactor fuel occur within or cross the boundary of their reservations. The information provided is the minimum necessary to satisfy the Commission's policy decisions on the information needed for federally recognized Indian Tribes to opt-in to receive advance notice of certain shipments of radioactive material and for the NRC to have confidence that the SGI would be adequately protected.

16. Publication for Statistical Use

This information will not be published for statistical use.

17. Reason for Not Displaying the Expiration Date

The expiration date will be displayed in correspondence to the federally recognized Indian Tribes.

18. Exceptions to the Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.