

RULEMAKING ISSUE NOTATION VOTE

July 23, 2010

SECY-10-0095

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

SUBJECT: PROPOSED RULE: ADVANCE NOTIFICATION TO NATIVE
AMERICAN TRIBES OF TRANSPORT OF CERTAIN TYPES
OF NUCLEAR WASTE (RIN 3150-AG41)

PURPOSE:

To request Commission approval to publish a proposed rule in the *Federal Register* that would require licensees to provide to Federally recognized Tribal governments advance notification regarding shipments of irradiated reactor fuel and certain nuclear wastes listed in Section 71.97 of Title 10 of the *Code of Federal Regulations* (CFR) for any shipment that passes through Tribal reservations.

BACKGROUND:

Current U.S. Nuclear Regulatory Commission (NRC) regulations require licensees to inform State governors, or the governor's designee, of certain shipments of irradiated reactor fuel and certain nuclear wastes listed in § 71.97 that pass through or across the boundary of States. The NRC developed these advance notification regulations in 1982 to comply with the NRC Authorization Act for Fiscal Year 1980. 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 Tribal reservations. Tribal officials sought similar notification in the 1990s.

CONTACT: Merri Horn, FSME/DILR
(301) 415-8126

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. Forty-four comment letters were received on the ANPR. In SECY-01-0021, dated February 2, 2001, the staff provided a summary of the ANPR comments and a rulemaking plan to proceed with a proposed rule. The staff suspended the rulemaking following the terrorist attacks of September 11, 2001. The staff now proposes to go forward with the proposed rule. The comments received in response to the ANPR were taken into account during the development of this proposed rule.

DISCUSSION:

The purpose of the proposed rule is to recognize Tribal sovereignty and to recognize Tribal governments' interest in being informed of activities occurring on Tribal reservations by offering to inform Tribes of shipments of irradiated reactor fuel and certain nuclear wastes described in § 71.97 passing through their reservations.

Regulations under § 73.37 require advance notifications to State governors 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. Regulations under § 71.97 require advance notice for shipments of irradiated reactor fuel in quantities less than that subject to § 73.37 and 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: (1) 3000 times the A_1 value of the radionuclides as specified in Part 71, Appendix A, Table A-1, for special form radioactive material; (2) 3000 times the A_2 value of the radionuclides as specified in Appendix A, Table A-1, for normal form radioactive material; or (3) 1000 Terabequerel (TBq) (27,000 curies). Schedule and itinerary information provided for shipments in excess of 100 grams of irradiated reactor fuel is considered to be Safeguards Information (SGI) under NRC regulations and must be protected in accordance with requirements in §§ 73.21 and 73.22. The staff is proposing to amend these regulations to include a provision that would require licensees to provide to Tribal officials, or their designees, advance notice of shipments of irradiated reactor fuel and other nuclear wastes listed in § 71.97 before crossing the border of Tribal reservations. The proposed changes would also include revising § 73.59 to provide relief for Tribal officials, Tribal officials' designees, and Tribal law enforcement officials from the criminal history checks, fingerprinting, and other elements of background checks that are required for access to SGI for receiving the advance shipment notifications. Recipients must also satisfy the "need to know" criteria in § 73.21(c)(1) before receiving the advance notification SGI material.

The current regulations provide relief from the criminal history checks, fingerprinting, and other elements of a background investigation that are required for access to any SGI for federal, state, and local government representatives. At this time the staff is not proposing to provide this broader relief to Tribal officials, Tribal official's designees, or tribal law enforcement officials for access to other types of SGI. Because the scope of this rule is limited to advance notifications, the relief being proposed is only for receipt of the SGI contained in advance shipment notifications. A rulemaking to provide broader relief from criminal history background checks, fingerprinting, and other elements of background investigations for Tribal officials, Tribal official's

designees, or Tribal law enforcement officials to receive all SGI (subject to a need to know) could be conducted in a future rulemaking, if directed by the Commission.

Implementation

The staff plans to recommend that the final rule, if approved, would be effective 1 year after publication in the *Federal Register*. This would provide time for NRC to develop the list of Tribal contacts, provide training on protection of SGI to the Tribes, and provide time for licensees to develop procedures and conduct training on the new requirements.

In order to receive the advance notifications, Tribes would need to declare that they would like to receive the information and certify that the Tribe would appropriately protect any SGI information. Given the information protection requirements involved, the NRC believes Tribes should have the option of choosing whether to receive advance notifications of shipments that pass within or across their Tribal reservations. If a Tribe opts to receive the advance notifications, the Tribe would be obligated to protect the schedule of the shipments and itineraries in accordance with SGI information handling requirements in §§ 73.21 and 73.22. If a Tribe opts not to receive the advance notifications, the Tribe would have no SGI information protection obligations relating to the shipments. If the final rule is approved by the Commission, the NRC staff would contact each Federally recognized Tribe to develop a list of contacts for those Tribes that decide to receive the advance notifications.

No change to the enforcement policy should be necessary for implementation.

Strategic Goals and Objectives

The proposed rule is consistent with NRC strategic objectives and performance goals. The proposed rule would continue to ensure the protection of public health and safety and the common defense and security. The rulemaking will be conducted in an open process that allows the public to comment on the advance notification measures. The proposed rule will be published in the *Federal Register* for a 75-day public comment period.

AGREEMENT STATE ISSUES:

A copy of the draft proposed rule *Federal Register* Notice was provided to the Agreement States so they could have an early opportunity for review.

NRC staff has analyzed the proposed rule in accordance with the procedures established within Part III of the Handbook to Management Directive 5.9, "Categorization Process for NRC Program Elements." The proposed changes to Part 71 would be Compatibility Category B and the changes to Part 73 would be reserved to the NRC. Compatibility is also addressed in Section V of the Statements of Consideration. The Standing Committee on Compatibility reviewed the proposed rule and agreed that these proposed amendments to the NRC regulations are a matter of compatibility between the NRC and the Agreement States. The Committee and the staff have reached agreement on the compatibility designations.

COMMITMENTS:

Notify each Federally recognized Tribe of the opportunity to comment on the proposed rule.

RECOMMENDATIONS:

That the Commission:

1. Approve for publication in the *Federal Register* the proposed amendments to Parts 71 and 73 (Enclosure 1).
2. Note:
 - a. That the proposed amendments will be published in the *Federal Register*, allowing 75 days for public comment.
 - b. That the Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it, as required by the Regulatory Flexibility Act, 5 U.S.C. 605(b).
 - c. That a draft Regulatory Analysis has been prepared for this rulemaking (Enclosure 2).
 - d. That appropriate Congressional committees will be informed of this action.
 - e. That a press release will be issued by the Office of Public Affairs when the proposed rulemaking is filed with the Office of the Federal Register.
 - f. An Office of Management and Budget (OMB) Paperwork Reduction Act review is required and a clearance package will be forwarded to OMB no later than the date the proposed rule is submitted to the Office of the Federal Register for publication.

RESOURCES:

The estimated resources to complete the rule are included in the fiscal year (FY) 2010 President's Budget and FY 2011 budget request.

COORDINATION:

The Office of the General Counsel has no legal objection to the proposed rulemaking. The Office of the Chief Financial Officer has reviewed this Commission Paper for resource

The Commissioners

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implications and has no objections. The rule suggests changes in information collection requirements that must be submitted to OMB no later than the date the proposed rule is forwarded to the *Federal Register* for publication.

/RA/

R. W. Borchardt
Executive Director
for Operations

Enclosures:

1. *Federal Register* Notice
2. Draft Regulatory Analysis

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: U. S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations that govern packaging and transportation of radioactive material and physical protection of plants and materials. Specifically, the proposed amendments would require licensees to provide advance notification to 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 Tribal government would be required to protect the shipment information as Safeguards Information (SGI).

DATES: Submit comments on the rule by **(insert 75 days from date of publication)**. Submit comments specific to the information collections aspects of this rule by **(insert date 30 days from date of publication)**. Comments received after the above dates will be considered if it is

practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC-1999-0005 in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, see Section I, "Submitting Comments and Accessing Information" in the SUPPLEMENTARY INFORMATION section of this document. You may submit comments by any one of the following methods.

Federal e-Rulemaking Portal: Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-1999-0005. Comments may be submitted electronically through this Web site. Address questions about NRC dockets to Carol Gallagher, telephone 301-492-3668; e-mail Carol.Gallagher@nrc.gov.

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

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301-415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

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, e-mail, Merri.Horn@nrc.gov.

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I. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site <http://www.regulations.gov>. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's

public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, or 301-415-4737, or by e-mail to PDR.Resource@nrc.gov.

Federal Rulemaking Web Site: Public comments and supporting materials related to this proposed rule can be found at <http://www.regulations.gov> by searching on Docket ID NRC-1999-0005.

II. Background

Current NRC regulations in Title 10 of the *Code of Federal Regulations* (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 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 requires licensees to provide advance notice for shipments of irradiated reactor fuel in quantities less than that subject to § 73.37 and 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, 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). Schedule and itinerary

information provided for shipments of more than 100 grams of irradiated reactor fuel is considered to be SGI under NRC regulations and must be protected under the requirements in §§ 73.21 and 73.22.

The NRC developed these advance notification regulations in 1982 to comply with the NRC Authorization Act for Fiscal Year 1980, which 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, 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 (64 FR 71331; December 21, 1999). 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 proposed rule.

On November 6, 2000, President Clinton issued Executive Order (EO) 13175, “Consultation and Coordination with Indian Tribal Governments.” EO 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 EO 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. The Memorandum underscored a commitment to regular and meaningful collaboration and consultation with tribal officials, and sought complete and consistent implementation of EO 13175. 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 EO 13175. The NRC practice is to conduct its activities in a manner that respects the rights of sovereign Tribal governments, and involves consultation and cooperation with Federally recognized Tribes on a government-to-government basis.

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.

III. Discussion

A. What Action is the NRC Taking?

The NRC is proposing to amend its regulations to require licensees to provide to 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. This action would only affect commercial shipments being made by NRC and Agreement State licensees. This action would not include shipments made by the Department of Energy or the Department of Defense.

B. What Is the Purpose of the Proposed Rule?

The purpose of the proposed rule is to recognize Tribal sovereignty by informing Tribes 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 proposed rule would apply to any NRC licensee that ships irradiated reactor fuel. The proposed rule would also affect 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 proposed rule would affect 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 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 would be 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 notification, the Tribe would have 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 564 Federally recognized Tribes.

E. How and When Would Tribes be Given the Option to Receive Advance Notifications?

After the final rule has been approved by the Commission, the NRC staff would contact each Federally recognized Tribe to provide them information on the rule. As part of the information, the Tribe would 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 NRC whether they would like to receive the advance notifications and certify that the SGI information will be appropriately protected. Tribes would be able to change their decision to receive or not receive the advance notifications by informing the NRC. In addition, the NRC would periodically contact all Federally recognized Tribes 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 affect shipment routes.

G. How Would Licensees Determine Who the Tribal Contacts Are?

The NRC would maintain a list of Tribal contacts as is done for State governmental contacts. The NRC would work with the Tribes to complete and maintain the list. The NRC staff currently intends to annually publish a list of Tribal contacts in the *Federal Register* and post it on the web site maintained by the NRC's Office of Federal and State Materials and Environmental Management Programs.

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 would be made in writing. The notifications could be sent by mail or courier. SGI may not be transmitted over the phone, by e-mail, or by facsimile unless it is transmitted and received by NRC-approved secure electronic devices.

I. Would Tribes be Required to Protect the Advance Notifications?

Tribes would be required to protect the schedule and itinerary 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 (FBI) criminal history records check and a background check for determination of trustworthiness and reliability or have been relieved from these checks under §§ 73.57 or 73.59 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 access to 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.

J. Would Tribal Officials Need to be Fingerprinted and Undergo a Background Investigation for Access to SGI?

Before being given access to SGI, individuals must undergo fingerprinting and a criminal history records check, unless the individual falls under one of the categories of individuals that have been given relief from the requirement. As allowed by the AEA, relief has been granted to the governor of a State or his or her designated State employee representative and Federal, State, or local law enforcement personnel. The proposed rule would add Tribal official, his or her designee, and Tribal law enforcement personnel for the purpose of advance notifications 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. Those individuals granted access to SGI are required to abide by the requirements in §§ 73.21 and 73.22 for proper management and protection of SGI.

K. When Do These Actions Become Effective?

The NRC is recommending that the final rule be effective one year after publication in the *Federal Register*. This would provide time for NRC to work with the Tribes and develop the list of Tribal contacts, provide training on protection of SGI to the Tribes, and provide time for licensees to develop procedures and conduct training on the new requirements.

L. What Should I Consider as I Prepare My Comments to the NRC?

Tips for preparing your comments: When submitting your comments, remember to:

- i. Identify the rulemaking (RIN 3150-AG41; [NRC-1999-0005]).
- ii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

- iii. Describe any assumptions and provide any technical information and/or data that you used.
- iv. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- v. Provide specific examples to illustrate your concerns, and suggest alternatives.
- vi. Explain your views as clearly as possible.
- vii. Make sure to submit your comments by the identified comment period deadline.
- viii. The NRC is particularly interested in your comments concerning the following issues: Section V of this document contains a request for comment on the compatibility designations for the proposed rule; Section VI contains a request for comments on the use of plain language; Section VIII contains a request for comments on the environmental assessment; Section IX contains a request for comments on the information collection requirements; and Section X contains a request for comments on the draft regulatory analysis.

IV. Discussion of Proposed Rule by Section

Section 71.4 Definitions.

Definitions for *Indian tribe* and *Tribal official* are proposed based on those terms as defined in Executive Order 13175.

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

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

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

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

Section 73.2 Definitions.

Definitions for *Indian tribe* and *Tribal official* are proposed based on those terms as defined in Executive Order 13175.

Section 73.21 Protection of Safeguards Information: Performance Requirements.

Paragraph (a)(2) would be 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) would be revised to require that advance notification of irradiated fuel shipments be provided to Tribal officials if a shipment crosses Tribal reservation boundaries.

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) would be added to include Tribal official, Tribal official's designee, and Tribal law enforcement personnel that receive the advance notifications 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. Criminal Penalties

For the purpose of Section 223 of the AEA, the Commission is proposing to amend 10 CFR Parts 71 and 73 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

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; Sept. 3, 1997), this proposed rule would be 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 proposed 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/>).

NRC program elements (including regulations) are placed into four compatibility categories (see the Draft 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, above, 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 would be revised and their corresponding compatibility categorization under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs."

The NRC invites comment on the compatibility category designations in the proposed rule and suggests that commenters refer to Handbook 5.9 of Management Directive 5.9 for more information (a copy of which may be viewed at: <http://www.nrc.gov/reading-rm/doc-collections/management-directives/>). The NRC notes that, like the rule text, the compatibility category designations can change between the proposed rule and final rule, based on comments received and Commission decisions regarding the final rule. The NRC encourages anyone interested in commenting on the compatibility category designations to do so during the comment period.

Draft Compatibility Table for Proposed Rule

Section	Change	Subject	Compatibility	
			Existing	New
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
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. Plain Language

The Presidential Memorandum “Plain Language in Government Writing” published June 10, 1998 (63 FR 31883), directed that the Government’s documents be in clear and accessible language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent as indicated under the “ADDRESSES” heading of this document.

VIII. 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 proposed rule, the NRC would require that advance notification be provided to Tribal governments for shipments of irradiated reactor fuel and other nuclear wastes listed in § 71.97 that pass within or across Tribal reservations. The NRC is not aware of any voluntary consensus standards that address the subject matter of this proposed rule. The NRC will consider using a voluntary consensus standard if an appropriate standard is identified. If a voluntary consensus standard is identified for consideration, the submittal should explain why the standard should be used.

IX. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed 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 proposed rule.

X. Paperwork Reduction Act Statement

This proposed 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.) This rule has been submitted to the Office of Management and Budget (OMB) for review and approval of the information collection requirements.

Type of submission, new or revision: revised

The title of the information collection: 10 CFR Parts 71 and 73, "Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste."

The form number if applicable: NA

How often the collection is required: On occasion; each time a shipment of irradiated reactor fuel or certain other nuclear wastes listed in § 71.97 is made that crosses Tribal reservation borders.

Who will be required or asked to report: Licensees that are shipping irradiated reactor fuel or certain other nuclear wastes listed in § 71.97.

An estimate of the number of annual responses: 386 (380 responses plus 6 record keepers).

The estimated number of annual respondents: 18.

An estimate of the total number of hours needed annually to complete the requirement or request: 163 (6.4 recordkeeping hours plus 156.4 third party hours) all of which is associated with Part 73.

Abstract: The NRC is proposing to amend its regulations to put in place a new requirement for licensees to provide advance notification to participating Tribes of any shipments of irradiated reactor fuel or certain other nuclear wastes listed in § 71.97 that pass within or across Tribal reservations.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC worldwide website <http://www.nrc.gov/public-involve/doc-comment/omb/index.html> for 60 days after the signature date of this notice.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by **(INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*)** to the Information Services Branch (T-5F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to INFOCOLLECTS.Resource@NRC.gov and to the Desk Officer Christine Kymn, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0008, 0002), Office of Management and Budget, Washington, DC 20503. Comments on the proposed information

collections may also be submitted via the Federal eRulemaking Portal at <http://www.regulations.gov>, Docket Number NRC-1999-0005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail comments to Christine J. Kymn@omb.eop.gov or comment by telephone at (202)-395-4638.

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.

XI. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading of this document. The analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852 and can be found at <http://www.regulations.gov> by searching on Docket ID NRC-1999-0005.

XII. 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 NRC’s size standards (10 CFR 2.810).

XIII. 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 proposed 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.

List of Subjects

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Import, Nuclear materials, Packaging and containers, Reporting and record keeping 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. 553; the NRC is proposing to adopt 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 continues to read as follows:

AUTHORITY: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (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 elected or duly appointed official of Indian tribal governments.

* * * * *

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, 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, 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 continues to read as follows:

AUTHORITY: Secs. 53, 161, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as

amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); 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 secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (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). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876(42 U.S.C. 2169).

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 elected or duly appointed official of Indian tribal governments.

* * * * *

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) Prior to the transport of spent fuel within or across a State or Tribal reservation, a licensee subject to this section shall notify the governor or the governor's designee and the Tribal official of each participating Tribe referenced in § 71.97(c)(3) of this chapter or the Tribal official's designee. 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.

(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 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 officials or the designated representatives, and Tribal law enforcement personnel to whom access has been granted for the purpose of advance notification of shipments under provisions of § 73.37(f).

Dated at Rockville, Maryland, this day of 2010.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

Draft Regulatory Analysis

**Proposed Rulemaking: Advance Notification to Native American Tribes
of Transportation of Certain Types of Nuclear Waste
(10 CFR Parts 71 and 73)**

U.S. Nuclear Regulatory Commission

Office of Federal and State Materials and Environmental Management Programs

May 2010



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1. Introduction

The U.S. Nuclear Regulatory Commission (NRC) regulations currently require NRC licensees who ship irradiated reactor fuel and certain nuclear wastes listed in § 71.97 to provide advance notification of such shipments to governors of States or their designees. This rulemaking would amend these regulations to extend the provision for advance notification to Tribal governments. This action would further Federal efforts to consult and coordinate with Tribal governments with regard to Federal affairs that are of concern to them, in recognition of the right of Native American Tribes to self-government, thereby supporting Tribal sovereignty and self-determination.

This regulatory analysis evaluates the consequences associated with the “Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste” proposed rule. This document presents background material, rulemaking objectives, alternatives, input assumptions, and analysis of the consequences of the rule language and alternative approaches to accomplish the regulatory objectives.

The remainder of this introduction is divided into two sections. Section 1.1 states the problem and the objective of the rulemaking. Section 1.2 provides background information.

1.1 Statement of the Problem and Objective of the Rulemaking

The NRC has determined that there is a need to modify existing regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Parts 71 and 73 which currently require a licensee to inform a State governor, or the governor’s designee, of certain shipments of irradiated reactor fuel and certain nuclear wastes listed in § 71.97 passing within or across the boundary of the State. The NRC promulgated these regulations in 1982 to comply with the NRC Authorization Act for Fiscal Year 1980.

The objective of the current rulemaking is to amend NRC regulations to extend the advance notification to include Federally recognized Tribal governments regarding shipments of irradiated reactor fuel and certain nuclear waste listed in § 71.97 passing within or across their reservations.

The primary purpose of the rule contemplated by the Commission would be to inform Native American Tribes of shipments passing within or across the boundary of Tribal reservations as recognition of Tribal sovereignty as well as the need for Tribes to be aware of activities that occur on Tribal reservations. Although emergency preparedness would not be the main reason for developing such a rule, Tribes that do have emergency preparedness capabilities would benefit from advance notification.

1.2 Background

Irradiated reactor fuel comes from commercial nuclear power plants and domestic research and test reactors. After the fresh fuel has been used in a reactor, highly radioactive irradiated reactor fuel assemblies remain. The assemblies must be removed from the reactor for storage to make room for new assemblies and to allow the fuel to cool. Currently, most irradiated fuel

assemblies are stored in pools of water, above ground vaults, or concrete casks. Irradiated reactor fuel may be shipped to temporary storage sites when space at reactor sites is limited. Irradiated reactor fuel is also shipped for various research studies. The NRC regulates irradiated reactor fuel shipments in terms of both public health and safety and common defense and security.

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 wastes listed in § 71.97 passing within or across the boundary of States. Section 73.37 requires advance notifications for shipments of irradiated reactor fuel in excess of 100 grams in net weight, 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 requires advance notice for shipments of irradiated reactor fuel in quantities less than that subject to § 73.37 and 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 also 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, 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). Schedule information provided for shipments in excess of 100 grams of irradiated reactor fuel is considered to be Safeguards Information (SGI) under NRC regulations and must be protected under the requirements in §§ 73.21 and 73.22.

The NRC developed these advance notification regulations in 1982 to comply with the NRC Authorization Act for Fiscal Year 1980, which 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 within or across their Tribal reservations.

In 1994, President Clinton issued a memorandum entitled "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951; May 4, 1994). Although this memorandum did not impose any new obligations on NRC as an independent regulatory agency, it does encourage Federal agencies to consult with Tribal governments before engaging in activities that may affect Tribes, and to remove any procedural impediments to agencies being able to work directly with Tribal governments. This direction from the President was also reiterated in Executive Order (EO) 13084 (63 FR 27655; May 19, 1998), "Consultation and Coordination with Indian Tribal Governments," issued on May 14, 1998.

On December 21, 1999, 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 (64 FR 71331, December 21, 1999). Information was sought on minimizing the burden to licensees, identifying location of Tribal reservations in relationship to shipment routes, and the sharing and protecting of SGI. Forty-four comment letters were received from a variety of stakeholders including Tribal governments, Tribal associations, private citizens, a State, a

Federal agency, a licensee, and an industry association. Virtually all the comments favored providing advance notification to Tribal governments with some disagreement on the details on the implementation. Most comments were in favor of treating Tribal and State governments on the same basis. Commenters encouraged the NRC to make it possible to use more up-to-date means of communication of advance notifications, 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 proposed rule.

On November 6, 2000, President Clinton issued Executive Order (EO) 13175, "Consultation and Coordination with Indian Tribal Governments." EO 13175 emphasized the importance of respecting the sovereignty of Tribal governments and working with them on a government-to-government basis. On November 5, 2009, President Obama expressed his commitment to EO 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. The Memorandum underscored a commitment to regular and meaningful collaboration and consultation with tribal officials, and sought complete and consistent implementation of EO 13175. The NRC has adopted agency practices that ensure consultation and cooperation with Indian Tribal governments and are fully consistent with both President Clinton's April 29, 1994, guidance and EO 13175. The NRC practice is to conduct its activities in a manner that respects the rights of sovereign Tribal governments, and involves consultation and cooperation with Federally recognized Tribes on a government-to-government basis.

2. Identification and Preliminary Analysis of Alternative Approaches

The following discussion describes the two regulatory options being considered, with additional analysis presented in Section 3 of this analysis.

2.1 Option 1: No Action

Under Option 1, the No-action alternative, NRC would not amend the current regulations regarding advance notification of shipments of irradiated reactor fuel and certain nuclear wastes. The baseline of the analysis is Option 1, the No-action alternative, for which there are no costs nor benefits.

2.2 Option 2: Amend Regulations to Provide for Advance Notification of Tribal Governments

Under this option, NRC would conduct a rulemaking to amend several sections of 10 CFR Part 71 and Part 73 to enable advance notification of participating Tribal governments of shipments of irradiated reactor fuel and certain nuclear wastes in §71.97 passing through Tribal reservations. These changes are to: (1) amend 10 CFR 71.4 and 73.2 to add definitions of "Indian tribe" and "Tribal official"; (2) amend 10 CFR 71.97, and 73.37, to extend the advance notification that now applies to States to also apply to participating Federally recognized Tribal governments; (3) amend 10 CFR 73.21 to state that information protection procedures

employed by Tribal law enforcement agencies are presumed to meet the general performance requirements for protection of SGI; and (4) amend 10 CFR 73.59 to extend to Tribal officials, his or her designee, and Tribal law enforcement personnel relief from fingerprinting requirements that are required for access to advance notifications that contain SGI.

The NRC has estimated the benefits and costs of this option, as described in Sections 3 and 4 of this regulatory analysis, and has pursued Option 2 for the reasons discussed in Section 5.

3. Estimation and Evaluation of Values and Impacts

This section describes the analysis conducted to identify and evaluate the benefits (values) and costs (impacts) of the two regulatory options. Section 3.1 identifies the attributes expected to be affected by the proposed rulemaking. Section 3.2 describes how the values and impacts have been analyzed. Finally, Section 3.3 presents the detailed results of the projected values and impacts.

3.1 Identification of Affected Attributes

This section identifies the factors within the public and private sectors, that the rule is expected to affect, using the list of potential attributes provided in Chapter 5 of NUREG/BR-0184, "Regulatory Analysis Technical Evaluation Handbook," dated January 1997, and in Chapter 4 of NUREG/BR-0058, Rev. 5, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," dated September 2004. The evaluation considered each attribute listed in Chapter 5. The basis for selecting those attributes is presented below.

Affected attributes include the following:

- *Industry Implementation* -- The proposed action would require licensees to read the amended regulations.
- *Industry Operation* -- Licensees would be required to identify affected Federally recognized Tribal reservations prior to shipment. Licensees would be required to produce additional notifications of shipments for Federally recognized Tribal governments and would incur any costs associated with these notifications.
- *NRC Implementation* -- NRC will need to revise existing regulatory guidance as well as develop a contact list of Federally recognized Tribal governments that choose to receive the advance notifications. Training for SGI may be provided to Tribes who choose to receive notifications.
- *NRC Operation* -- NRC would need to update the participating Federally recognized Tribal government contact list on an annual basis as well as publicize the updated contact list.
- *Other Government* -- The proposed action would affect Federally recognized Tribal governments choosing to receive advance notification of irradiated reactor fuel and other certain nuclear waste shipments crossing their reservations. Tribes would need to protect

SGI contained in the advance notifications and provide NRC with contact information. The proposed rule recognizes Tribal governments' interest in being informed of activities occurring on Tribal reservations. Agreement State governments will incur a one-time cost for adopting this final rule into their State regulations governing the use of radioactive material. The Bureau of Indian Affairs (BIA), Department of Energy (DOE), Department of Transportation (DOT) and the United States Geologic Survey may serve as resources depending upon how the rule is implemented. However, these effects would be marginal incremental efforts for services already currently provided and are not deemed significant.

- *Safeguards and Security Considerations* -- The proposed rule would modify the types of entities (i.e., by adding Tribal officials or those designated by them to receive such information) afforded SGI access privileges. The rule could increase the potential for perception by the public of unauthorized disclosure of SGI due to wider dissemination of information.

Attributes that are *not* expected to be affected by the rulemaking options include the following:

- Occupational Health (Routine);
- Occupational Health (Accident);
- Public Health (Routine);
- Public Health (Accident);
- Off-site Property;
- On-site Property;
- Environmental Considerations;
- General Public;
- Improvements in Knowledge; and Anti-trust Considerations;
- Regulatory Efficiency.

3.2 Analytical Methodology

This section describes the methodology used to analyze the consequences associated with the proposed rule. The values (benefits) include any desirable changes in the affected attributes. The impacts (costs) include any undesirable changes in affected attributes.

The NRC collected input assumptions using data and information from the following sources: NRC workgroups and staff experience; NRC databases; and reports and documents.

As described in Section 3.1, the attributes expected to be affected include the following:

- Industry Implementation;
- Industry Operation;
- NRC Implementation;
- NRC Operation;
- Other Government;
- Safeguards and Security Considerations.

This analysis relies on a qualitative evaluation for several of the affected attributes (other government and safeguards and security considerations) due to the difficulty in quantifying the impact of the current rulemaking. One attribute (other government) is analyzed both qualitatively and quantitatively.

The remaining attributes (industry implementation, industry operation, NRC implementation, and NRC operation) are evaluated quantitatively. Quantitative analysis requires a baseline characterization of the universe, including factors such as the number and location of Federally recognized Tribes affected by the number of shipments of irradiated reactor fuel and other nuclear wastes listed in § 71.97, and the travel routes of each shipment. The analysis proceeds quantitatively for these attributes and makes numerous assumptions as discussed in Sections 3.2.1 and 3.2.2.

In accordance with Office of Management and Budget guidance and NUREG/BR-0058, Rev. 4, the results of the analysis are presented using both 3 percent and 7 percent real discount rates. The NRC seeks public comments on the accuracy of these regulatory analysis assumptions and on the validity of the proposed rules value and impact estimation methods.

3.2.1 Model Design

This section describes the cost model and the data sources used to calculate the values and impacts for the affected attributes of the proposed rule. The analysis is driven, in part, by the number of shipments requiring notifications and the number of Federally recognized Tribes to be notified. Shipment data was taken from NUREG-0725 Revision 15.

In January of 2010, DOE established a Blue Ribbon Commission on America's Nuclear Future to review policies for managing the back end of the nuclear fuel cycle. This coincided with DOE's notification to the NRC of its intent to withdraw its Yucca Mountain High Level Waste (HLW) Repository license application. This regulatory analysis cost model assumes shipping routes and actual shipments for a 10-year period. The shipments made during this timeframe will largely be for research purposes. The potential for and impact of policy changes to the back end of the nuclear cycle makes it prudent to keep this cost model at the 10-year period.

3.2.2 Data and Assumptions

3.2.2.1 Data/Affected Entities

Licensees

- Operating commercial power reactors: 104 commercial power reactors (65 sites) are currently generating irradiated reactor fuel. The analysis assumes that no new reactors will ship irradiated fuel within the 10 year time period.
- There are 15 decommissioned non-operating commercial power reactors.

- Operating Research and Test Reactors (RTRs): There are 32 RTRs which will be included in the analysis. The 10 Decommissioning Research and Test Reactors are not included in this analysis.
- On-Site Independent Spent Fuel Storage Installations (ISFSIs): Shipments from reactors to dedicated ISFSIs maintained by reactor licensees themselves (e.g., Calvert Cliffs maintains an on-site ISFSI) are assumed not to traverse Tribal reservations and are not included in the analysis.
- Off-Site Independent Spent Fuel Storage Installations: The General Electric ISFSI in Morris, IL is included in the analysis. Shipments to and from yet-to-be-licensed commercial ISFSIs will not be considered in the analysis.
- Costs associated with shipping irradiated reactor fuel and other wastes shipped under Section 71.97 are incurred by licensees. If shippers (e.g., trucking companies) conduct any of the activities required by the rule, the analysis assumes that the costs of these activities will be passed onto the licensee. Thus, shippers are not affected by the rule.

Agreement States

- The 38 Agreement State governments will incur a one-time cost for adopting this proposed rule into their State regulations governing the use of radioactive material.

Federally Recognized Tribal Governments

- The analysis assumes that of the 564 Federally recognized Native American Tribes, only 168 will be affected by the proposed rule, calculated as follows:
 - 228 Tribes located in Alaska will not be affected by the proposed rule because shipments will not pass through Alaska.
 - Of the remaining 336 Tribes it is assumed half, or 168 will elect to receive advanced notifications of shipments of irradiated reactor fuel and other nuclear wastes listed in § 71.97 passing through Tribal reservations.
 - Only those participating Tribes whose reservations are crossed will be notified of shipments. Tribes notified will depend on the particular route of individual shipments. The NRC estimates 300 notifications will be issued to a total of 50 Tribes on an annual basis. Note that an individual Tribe will likely receive more than one notification.

3.2.2.2 Assumptions/shipping routes

- For the analysis, the NRC assumed an average of 20 shipments annually over the next 10 years would be affected by the regulation under both the No-Action Alternative and the Rulemaking Alternative. Table 1 shows the history of shipments from 1979-2007; the last

10 years showed an average of 17 shipments per year. The NRC assumes 20 shipments per year for the next 10 years.

- The 20 shipments would break down to 16 shipments via highway and 4 via railways. The NRC does not anticipate any shipments via waterways.
- The NRC estimates that the shipments would pass through or cross an average of 5 states per shipment.
- The NRC estimates that 3 Tribes per State (15 per shipment) would be notified.
- The NRC anticipates 5 shipments annually would incur some issue(s) which would require revisions to the schedule.
- In addition, the NRC anticipates that one shipment would be canceled over a 3-year period.
- The analysis does not include shipments of irradiated fuel other than commercial irradiated reactor fuel. These shipment figures assume that all currently operating commercial power reactors renew their operating licenses for an additional 10 years. It includes only shipments of academic, industrial, and utility irradiated reactor fuel and other wastes shipped under Section 71.97 subject to NRC regulation. The NRC does not regulate DOE or Department of Defense shipments; therefore, this analysis does not include those shipments.

3.2.2.3 Shipment Routes

- To simplify the analysis, the NRC assumed that all shipments will comply with NRC approved shipping routes. See Table 2 for list of NRC approved routes used from 1998 to 2007.
- The analysis estimates the number of Tribes to be notified in a given State to average three Federally recognized tribes that are participating in the notification program.

3.2.2.4 Other

- Assumed labor rate for NRC staff is \$119 per hour.
- Assumed \$100 hourly labor rate for licensee personnel and \$36.54 for Agreement State personnel.
- We estimate the salary for Tribal personnel compiling the information to be \$33.83 per hour. This estimate is based on the Bureau of Labor Statistics' Employer Costs for Employee Compensation – September 2008, for the category of Management, Professional, and Related staff. Including a multiplier of 1.4 for benefits results in a total salary of \$47.36 per hour.
- The analysis assumes the rule will become effective in January 2013.

3.3 Detailed Results

This section presents a detailed estimate of the values and impacts for the proposed rulemaking (Option 2). Some values and impacts are addressed qualitatively for reasons discussed in Section 3.2. These results are summarized in Exhibits 3-1 and 3-2.

Option 1: No-action

By definition, this option does not result in any values or impacts.

Option 2: Amend Regulations to Provide for Advance Notification of Tribal Governments

Agreement States Implementation

Impact: Agreement State governments will incur a one-time cost for adopting this final rule into their State regulations governing the use of radioactive material.

- On average each State will expend 208 hours (0.1 FTE) to amend their State regulations.

Industry Implementation

Impact: Read the amended regulations.

- One time incremental effort of 1.5 hours per licensee.

Industry Operation

Impact: Identify Tribal government reservations crossed by shipments (truck and rail), and obtain Tribal government contact information.

- Effort of 2.5 hours per licensee for each shipment.

Impact: Send notification to Tribal government(s) by mail, messenger/courier.

- $(\$10.00 \text{ delivery charge} + 0.5 \text{ hour of labor}) \times \text{the total number of shipments per year per licensee} \times \text{total number of Tribes requiring notification.}$

Impact: Notify Tribal government(s) by telephone if shipment schedule changes.

- $(\text{Phone call} + 5 \text{ minutes of labor}) \times 25 \text{ percent of all shipments per licensee per year.}$

Impact: Notify Tribal government(s) by telephone if shipment is cancelled.

- $(\text{Phone call} + 5 \text{ minutes of labor}) \times 1 \text{ shipment in a 3 year period.}$

Impact: Recordkeeping:

- 1 hour per shipment of administrative labor (e.g., marking records as Safeguards Information, and filing). No incremental capital cost will be incurred to store the records (i.e., licensees already own secure filing cabinets).

NRC Implementation

Impact: Develop rule guidance:

- One time incremental effort of 80 hours to develop new guidance or revise existing guidance.

Impact: Develop initial Federally recognized Tribal government contact information listing for those Tribes that choose to participate:

- One time incremental effort of 240 hours of labor.

Impact: Publicize initial contact information for Federally recognized Tribal governments (e.g., web page, FRN):

- One time incremental effort of 80 hours.

Impact: Develop and distribute SGI training package for the participating Federally recognized Tribal governments.

- One time incremental effort of 80 hours.

Impact: Distribute information package for the Federally recognized Tribal governments.

- One time incremental effort of 40 hours.

NRC Operation

Impact: Update Federally recognized Tribal government contact list information of participating Tribes

- Annual incremental effort of 120 hours per year to collect, review, and update contact information for the Federally recognized Tribes electing to receive advance notifications.

Impact: Publicize updated contact information of participating Federally recognized Tribal governments (e.g., web page, FRN):

- Annual incremental effort of 80 hours.

Other Government

Value: Tribes will be given the option to be informed of nuclear waste shipments passing through their reservations. The proposed rule recognizes Tribal governments' interest in being informed of activities occurring on Tribal reservations.

Impact: The BIA, DOE, and DOT may be marginally affected by the proposed rule to provide information to assist in the identification of the location(s) of Federally recognized Tribal reservations. The incremental burden on these entities is estimated to be negligible or zero.

Tribal Government Implementation:

Impact: Read regulations and familiarize with the requirements:

- One-time burden of 1.5 hours per Tribe x all Federally recognized Native American Tribes in the United States.

Impact: Determine if Tribe wants to receive notification and Identify individuals to receive notifications:

- One-time burden of 4 hours per Tribe x the number of Tribes electing to receive notifications.

Impact: SGI Training for the 168 Tribes who determine they want to receive notification.

- One-time burden of 4 hours per participating Tribe (2 hour training for 2 individuals to receive training).

Impact: Notify NRC of contact person for notification:

- One-time burden of 0.5 hours per participating Tribe.

Impact: Purchase shredder to destroy SGI:

- 168 Tribal governments are estimated to purchase a shredder at a one-time cost of \$250.

Impact: Purchase security storage container for SGI:

- 168 Tribal governments are estimated to purchase a secure filing cabinet at a one-time cost of \$500.

Impact: Develop information safeguards procedures for shipment schedule information in accordance with 10 CFR 73.21:

- One-time burden of 3 hours per Tribe x 168 Tribes.

Tribal Government Operations:

Value: Tribes will be given the option to be informed of commercial nuclear waste shipments passing through their reservations. The proposed rule recognizes Tribal governments' interest in being informed of activities occurring on Tribal reservations.

Impact: Provide contact information to NRC:

- Annual burden of 0.5 hour per participating Tribe to fill-out updated contact information paperwork and send to NRC.

Impact: Process written notifications:

- The burden is 15 minutes per Tribe processing the shipment information.

Impact: Process revision notifications:

- The burden 5 minutes per phone call, 5 shipments annually will require notification of the Tribes of the new shipment information.

Impact: Process cancel notifications:

- The burden is 5 minutes per cancel notification; one shipment in a 3-year period will be canceled.

Safeguards and Security Considerations

Impact: Increased potential for public perceptions of unauthorized disclosure of SGI due to wider dissemination of information.

Exhibit 3-1
Quantitative Results in Dollars (Total Present Value through 2022)
 Value (+) or Impact (-)

	One-time Implementation Costs	Annual Operating Costs
Industry Costs	(17,100)	(22,880)
Agreement States	(288,812)	0
Tribal Governments Costs	(332,584)	(7,846)
Sub-total	(638,496)	(30,726)
NRC Costs	(68,530)	(23,800)
Total	(707,026)	(54,526)

Total Annual Costs 2012-2021 at 3% discount	(465,118)
Total Annual Costs 2012-2021 at 7% discount	(382,968)
Total Combined Implementation and Annual Costs 2012-2021 at 3% discount rate	(1,172,144)
Total Combined Implementation and Annual Costs 2012-2021 at 7% discount rate	(1,089,994)

4. Presentation of Results

4.1 Values and Impacts

This section summarizes the values (benefits) and impacts (costs) estimated for the regulatory options. (A more detailed analysis is presented in Section 3.3.) To the extent that the affected attributes could be analyzed quantitatively, the net effect of each option has been calculated and is presented below. However, some values and impacts could be evaluated only on a qualitative basis.

The results of the value-impact analysis are summarized in Exhibit 4-1. Relative to the No-action alternative (Option 1), rulemaking (Option 2) would result in a net quantitative impact estimated of \$1,172,144 over a 10-year period at a 3 percent discount rate and \$1,089,994 over a 10-year period at a 7 percent discount rate.

The costs breakdown (10-year period at a 3 percent discount rate) associated with Option 2 is industry (\$212,271), Agreement States (\$288,812), NRC (\$271,549) and Tribes (\$399,714). Each of the 564 Tribes may incur a one time cost of \$259 to read the regulations and decide if they want to receive notification. If a Tribe does decide to receive notification they will incur an additional one time cost of \$1,103. For those Tribes who chose to receive notification they will incur on average annual cost of \$43. The analysis estimates that Option 2 would result in qualitative benefits in the following attributes: other government.

**Exhibit 4-1
Summary of Values and Impacts**

Regulatory Option	Net Value (+) or Impact (-) (Total Present Value)	Qualitative Values/Impacts
Option 1: No Action	\$0	N.A.
Option 2: Proposed Action	<u>Agreement States</u> -\$288,812 <u>Industry:</u> -\$212,271 <u>Tribal Governments:</u> -\$399,512 <u>NRC:</u> -\$271,549	<p><u>Values:</u></p> <p><i>Other Government</i> - Tribes will be given the option to be informed of commercial nuclear waste shipments passing through their reservations. The proposed rule recognizes Tribal governments' interest in being informed of activities occurring on Tribal reservations.</p> <p><u>Impacts:</u></p> <p><i>Safeguards and Security Considerations</i> - Increased potential for public perception of unauthorized disclosure of SGI, due to wider dissemination of information.</p>

4.2 Backfit Analysis

The NRC has determined that the backfit rule does not apply to this proposed rule because this amendment does not add or modify any regulations to impose backfits as defined in 10 CFR 50.109 or 10 CFR 72.62. Therefore, a backfit analysis is not required.

5. Decision Rationale

NRC's current regulations require a licensee to inform a State governor, or the governor's designee, of certain shipments of irradiated reactor fuel and certain nuclear wastes listed in 10 CFR 71.97 passing through the boundary of the State. Current regulations, however, do not require that licensees provide such advance notifications to Federally recognized Native American Tribes.

The proposed rule would revise sections of 10 CFR Part 71 and 73 to (1) require advance notification of participating Tribal governments of shipments of irradiated reactor fuel and certain nuclear wastes listed in 10 CFR 71.97 passing through Tribal reservations and (2) extend to Tribal officials, his or her designee, and Tribal law enforcement personnel relief

from fingerprinting requirements required for access to the SGI contained in the advance notifications.

The proposed rule would result in a net quantitative estimated cost of \$1,172,144. The rule also might pose a risk to public perceptions regarding safeguards and safety considerations due to wider dissemination of SGI on shipments. However, the rule would result in several benefits. Tribes will be given the option to be informed of commercial nuclear waste shipments passing through their reservations. The proposed rule recognizes Tribal governments' interest in being informed of activities occurring on Tribal reservations.

For the reasons discussed above, the proposed option is superior to the No-action alternative.

6. Implementation

The staff is recommending that the final rule be effective 1 year after publication in the *Federal Register*. This would provide time for NRC staff to develop and publish the Federally recognized Tribal contact list and to provide training on the protection of SGI. It would also provide time for licensees to put the necessary programs in place, develop procedures, and conduct training on the new requirements.

In order to receive the advance notifications, Tribes would need to declare that they would like to receive the information and certify that the Tribe would appropriately protect any SGI. The NRC staff believes that in view of the information protection requirements, a Tribe should be given the option to receive advance notifications.

7. References

1. Nuclear Regulatory Commission, "Regulatory Analysis Technical Evaluation Handbook, Final Report," NUREG/BR-0184, January 1997.
2. NUREG/CR-0725, Rev. 15, Public Information Circular For Shipments of Irradiated Reactor Fuel.
3. NUREG/BR-0058, Rev. 5, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," September 2004.
4. Department of Interior, Bureau of Indian Affairs, Office of Indian Services. "Tribal Leadership Directory," Winter 2009.

Table 1 - Domestic Shipments from 1970-2007

Year	Highway	Railway
1979	2	11
1980	73	5
1981	30	2
1982	80	0
1983	92	0
1984	209	3
1985	114	18
1986	88	15
1987	85	15
1988	10	7
1989	11	6
1990	0	8
1991	4	10
1992	20	6
1993	14	12
1994	6	9
1995	7	9
1996	3	8
1997	7	4
1998	11	11
1999	8	9
2000	10	4
2001	9	6
2002	6	16
2003	15	14
2004	7	14
2005	6	7
2006	5	7
2007	6	7

Table 2 - NRC Approved Routes used from 1998 to 2007

Origin State	Shipment	NRC Route Number	States on route	Status of Route	Transport Mode	Shipment Years
Alabama	Browns Ferry Nuclear Station to GE Vallecitos Nuclear Center	209	AL, MS, LA, TX, NM, AZ, CA		Highway	2003
California	GE Vallecitos Nuclear Center to Argonne National Lab	190	CA, NV, UT, WY, NE, IA, IL	Expired Route	Highway	2000, 2001
	General Atomic to Bechtel BWXT, INEEL	207	CA, NV, AZ, UT, ID	Expired Route	Highway	2003
Florida	University of Florida to Savannah River Site	222	FL, GA, SC		Highway	2006, 2007
Illinois	La Salle County Station to Newport News	208	IL, IN, KY, WV, VA	Expired Route	Highway	2003
	University of Illinois to INEEL	214	IL, IA, NE, WY, UT, ID	Expired Route	Highway	2004
	University of Illinois to University of Texas, Austin	213	IL, MO, AR, TX	Expired Route	Highway	2004
Indiana	Purdue University Training Reactor to Savannah River Site	225	IN, KY, TN, NC, SC		Highway	2007
Iowa	Duane Arnold Energy Center to GE Vallecitos Nuclear Center	163	IA, NE, WY, UT, NV, CA	Expired Route	Highway	1998, 2008
Maryland	Dundalk Marine Terminal to GE Vallecitos Nuclear Center	180	GA, AL, MS, LA, TX, NM, AZ, CA	Expired Route	Highway	2000
	National Institute of Standards and Technology to Savannah River Site	187	MD, WV, VA, NC, SC	Expired Route	Highway	1999, 2003

Origin State	Shipment	NRC Route Number	States on route	Status of Route	Transport Mode	Shipment Years
Massachusetts	Massachusetts Institute of Technology to Savannah River Site	166	MA, CT, NY, PA, MD, WV, VA, NC, SC	Expired Route	Highway	1998 thru 2002
	University of Massachusetts, Lowell to Savannah River Site	215	MA, CT, NY, PA, MD, WV, VA, NC, SC	Expired Route	Highway	2004
	Massachusetts Institute of Technology to Savannah River Site	217	MA, CT, NY, PA, MD, WV, VA, NC, SC		Highway	2005 thru 2007
Michigan	University of Michigan to Savannah River Site	196	MI, OH, KY, TN, GA, SC	Expired Route	Highway	1999, 2000, 2003
Missouri	University of Missouri, Columbia to Savannah River Site	182	MO, IL, KY, TN, GA, SC	Expired Route	Highway	1998 thru 2004
	University of Missouri, Columbia to Savannah River Site	182B	MO, IL, KY, TN, GA, SC		Highway	2005 thru 2007
Nebraska	Veteran Administration to US Geological Survey, Denver Federal Center	206	NE, WY, CO	Expired Route	Highway	2002
New York	Cornell University to Bechtel BWXT, INEEL	212	NY, PA, OH, IN, IL, IA, NE, WY, UT, ID	Expired Route	Highway	2003
	McMaster University to Savannah River Site	198	NY, PA, WV, VA, NC, SC	Expired Route	Highway	2000
	University of Toronto to Savannah River Site	198	NY, PA, WV, VA, NC, SC	Expired Route	Highway	2000

Origin State	Shipment	NRC Route Number	States on route	Status of Route	Transport Mode	Shipment Years
New York (Continued)	University of NY, Buffalo, NY to Idaho National Laboratory, Scoville, ID	216	NY, PA, OH, IN, IL, IA, NE, WY, UT, ID	Expired Route	Highway	2005
North Carolina	Brunswick Nuclear Plant to Harris Nuclear Plant	130	NC		Railway	1998,1999, 2001 thru 2007
Ohio	Battelle, West Jefferson Site to Savannah River Site	211	OH, WV, VA, NC, SC	Expired Route	Highway	2003
Pennsylvania	Limerick Generating Station to GE Vallecitos Nuclear Center	197	PA, MD, WV, OH, IN, IL, IA, NE, WY, UT, NV, CA	Expired Route	Highway	19,992,003
South Carolina	H.B. Robinson Steam Electric Plant to Harris Nuclear Plant	135	SC, NC		Railway	2000,2002 thru 2004
	H.B. Robinson Steam Electric Plant to GE Vallecitos Nuclear Center	200	SC, GA, AL, MS, LA, TX, NM, AZ, CA	Expired Route	Highway	2001
	Charleston to Savannah River Site	185	SC	Expired Route	Railway	1999,2001, 2002,2004 thru 2007
	Charleston to Savannah River Site	192	SC		Highway	2000 2001 2004 2007
	Charleston to Savannah River Site	201A	SC, GA	Expired Route	Railway	1998 thru 2003
	Charleston to Savannah River Site	210	SC	Expired Route	Highway	2003, 2005
	Charleston to INEEL	192 & 195	SC, GA, TN, KY, IL, IA, NE, WY, UT, ID		Highway	1999

Origin State	Shipment	NRC Route Number	States on route	Status of Route	Transport Mode	Shipment Years
South Carolina (Continued)	Savannah River to INEEL	195	SC, GA, TN, KY, IL, IA, NE, WY, UT, ID		Highway	2000,2001 2003
	Savannah River to INEEL	202	SC, GA, TN, KY, IL, MO, IA, NE, WY, UT, ID		Highway	2004, 2006
	Oconee Nuclear Site to AECL Chalk River	203	SC, NC, VA, WV, PA, NY	Expired Route	Highway	2001, 2002
Texas	Texas A&M University to INEEL	221	TX, OK, KS, CO, WY, UT, ID		Highway	2006, 2007
Virginia	North Anna Power Station to Studsvik Nuclear	204A	VA	Expired Route	Highway	2002

Table 3 - Number of Federally recognized Tribal Governments by State

* Tabulated from the "Tribal Leadership Directory", Department of Interior, Bureau of Indian Affairs, Office of Indian Services, Winter 2009.

Number of Tribes by State
AK - 227
AL - 1
AZ - 20
CA- 104
CO - 2
CT - 2
FL - 2
IA - 1
ID - 4
KS - 4
LA - 4
MA - 2
ME - 4
MI - 12
MN - 6
MO - 1
MS - 1
MT - 7
NC - 1
ND - 4
NE - 4
NM - 21
NV - 17
NY - 7
OK - 37
OR - 9
RI - 1
SC - 1
SD - 8
TX - 3
UT - 5
WA - 29
WI - 11
WY - 2