



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

January 30, 2012

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-11-0142

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

The Commission (with all Commissioners agreeing) approved the final rule as noted in an Affirmation Session and recorded in the Staff Requirements Memorandum (SRM) of January 30, 2012.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, appearing to read "Annette Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
EDO
PDR

VOTING SUMMARY - SECY-11-0142

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X				X	12/13/11
COMR. SVINICKI	X				X	12/21/11
COMR. APOSTOLAKIS	X					11/30/11
COMR. MAGWOOD	X				X	11/29/11
COMR. OSTENDORFF	X				X	11/14/11

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Chairman Gregory B. Jaczko
SUBJECT: SECY-11-0142 – FINAL RULE: ADVANCE
NOTIFICATION TO NATIVE AMERICAN TRIBES OF
TRANSPORT OF CERTAIN TYPES OF NUCLEAR
WASTE (RIN 3150-AG41)

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___



SIGNATURE

12/13/11

DATE

Entered on "STARS" Yes x No ___


**Chairman Jaczko's Comments on SECY-11-0142,
"Final Rule: Advance Notification to Native American Tribes of
Transport of Certain Types of Nuclear Waste"**

I approve the staff's recommendation to publish this final rule, subject to the attached edits, in the *Federal Register* to require licensees to provide advance notification to Federally-recognized Tribal governments prior to shipping irradiated reactor fuel and certain radioactive wastes through Tribal reservations. I join my fellow Commissioners in recognizing that the staff has done an excellent job in outreach to the Tribes during the development of this rule.

I note that Page 3 of the Commission paper states that:

"The staff is recommending that the final rule be effective 60 days after publication in the *Federal Register* and inserts a date in the regulatory text that is 1 year after publication of the rule, before the licensees are required to implement the regulatory provisions. The 1 year period provides time for the NRC to develop the list of Tribal contacts, develop the map that shows locations of Tribal reservations, provide training on protection of SGI to the Tribes, and provide time for licensees to develop procedures and conduct training on the new requirements. However, the relief from the background investigation for access to SGI will be effective 60 days after publication of the final rule."

The staff should ensure that training on the handling of SGI is provided to the Tribes prior to the relief from the background investigation.



Gregory B. Jaczko

12/13/11

Date

Commission fulfill its obligations to promote the common defense and security and to protect the health and safety of the public.

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

commenter suggested that the NRC should first determine whether this material is the type that would lend itself to Webinars or short-term orientation training. The commenter suggested that after selecting a mechanism in which to disseminate the material, the NRC should attempt to gain insight into the Tribal governments' ~~prospective~~ ~~perspective~~ on the material by conducting surveys to determine if the material is comprehensible, or alternatively, whether it contains complex legal provisions and unclear obligations. The commenter noted that both parties should anticipate the appropriate costs and the time commitments involved with such training. Another commenter noted that training is likely to be the biggest expense. The commenter noted that Tribes should be afforded opportunities for training as to the obligations for possessing SGI, and the NRC should consider developing both distant learning opportunities and a training of trainers program, to share with Tribal leaders and Tribal law enforcement agencies. One commenter noted that effective security training is as important as the decision to share the information itself. The commenter suggested that the NRC use Web-based mechanisms as well as more traditional methods of communication, such as information packets and training courses. The commenter pointed out that the NRC should customize its outreach to each Tribal government based on the Tribal government's capacity and level of engagement. The commenter pointed out that the NRC's outreach effort could be incorporated into existing procedures where an NRC staff member contacts individual Tribes. The commenter indicated that the NRC should offer each participating Tribe training options. Participating Tribes could choose from a range of training options, including technologically advanced options, like Webinars, and more traditional options such as training packets and training courses. The commenter noted that Tribes are willing to make a good-faith effort to carry out their obligations

requested that the rule include shipments from the DOE and DOD. Another commenter noted that it is unclear whether nuclear waste shipments going to a Federal repository or interim storage facility would be subject to this rule. The commenter believed that once waste leaves a commercial nuclear power plant for Federal disposal, the shipments are considered to be DOE shipments. The Commenter noted that the language must be clarified to ensure that any shipment originating from an NRC- licensed facility (i.e., all commercial power plants) would be covered by the rule provisions, even if the DOE takes possession of the material and it becomes a DOE shipment.

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

Comment 20: One commenter noted that certain Tribes have designated their lands as nuclear-free zones. In order to more fully achieve the NRC's stated goal of respecting Tribal

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-11-0142 – FINAL RULE: ADVANCE
NOTIFICATION TO NATIVE AMERICAN TRIBES OF
TRANSPORT OF CERTAIN TYPES OF NUCLEAR
WASTE (RIN 3150-AG41)

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below XX Attached _____ None _____

I approve for publication in the *Federal Register* the notice of final rulemaking (Enclosure 1 to SECY-11-0142), subject to the attached edits. I commend the staff for the thoroughness and responsiveness of their work on this rule. The staff should ensure that training on the handling of safeguards information is provided in a timely manner to those Tribes requesting to participate in the receipt of notifications.



SIGNATURE

12/21/11

DATE

Entered on "STARS" Yes No _____

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

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

individuals, companies, and a Federal agency. Copies of the public comments are available in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD or at <http://www.regulations.gov> under Docket ID NRC-1999-0005.

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

Comment 1: In the proposed rule, the NRC specifically invited comment on the best method for informing Tribes of the obligations of possessing SGI. Two commenters addressed this topic directly, and two other commenters addressed the training aspect. One commenter noted that when working with Indian tribes, there is no "one size fits all" approach. The commenter noted that once this rule is final, it will be important ~~to~~first to identify Tribes that would likely be impacted by shipments from NRC licensees to inform them of the rule change and their ability to receive advance notifications. The commenter stated that once the interested Tribes are identified, the NRC should convene a meeting (or training course) for the interested Tribes to inform them of their options for participating, the obligations of possessing SGI should the Tribe choose to receive the advance notifications, and to develop a range of options to inform the Tribes. Another commenter indicated that the NRC should carefully consider the methods used to inform the Tribal governments of their responsibility in possessing SGI, as failure to comply with these requirements could result in civil or criminal liability. The commenter noted that the mechanisms should be reasonable, effective, and based on further

research. The commenter suggested that the NRC should first determine whether this material is the type that would lend itself to Webinars or short-term orientation training. The commenter suggested that after selecting a mechanism ~~in~~-by which to disseminate the material, the NRC should attempt to gain insight into the Tribal governments' prospective perspectives on the material by conducting surveys to determine if the material is comprehensible, or alternatively, whether it contains complex legal provisions and unclear obligations. The commenter noted that both parties should anticipate the appropriate costs and the time commitments involved with such training. Another commenter noted that training is likely to be the biggest expense. The commenter noted that Tribes should be afforded opportunities for training ~~as to~~regarding the obligations for possessing SGI, and the NRC should consider developing both distant learning opportunities and a training of trainers program, to share with Tribal leaders and Tribal law enforcement agencies. One commenter noted that effective security training is as important as the decision to share the information itself. The commenter suggested that the NRC use Web-based mechanisms as well as more traditional methods of communication, such as information packets and training courses. The commenter pointed out that the NRC should customize its outreach to each Tribal government based on the Tribal government's capacity and level of engagement. The commenter pointed out that the NRC's outreach effort could be incorporated into existing procedures where an NRC staff member contacts individual Tribes. The commenter indicated that the NRC should offer each participating Tribe training options. Participating Tribes could choose from a range of training options, including technologically advanced options, like Webinars, and more traditional options such as training packets and training courses. The commenter noted that Tribes are willing to make a good-faith effort to carry out their obligations

regarding SGI possession and that while training courses may require more resources, the nature of the responsibility involved justifies such attention to training.

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

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

Response: The NRC has decided to expand the relief to all types of SGI. SGI includes security-related information such as security plans, alarm information, lock combinations, information related to response forces, adversary characteristics, and other types of information listed in §§ 73.22 and 73.23. The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive

official would have to certify that the Tribe has the necessary protection measures in place and that they will protect the SGI in accordance with the requirements in 10 CFR ~~part~~ Part 73 (§§ 73.21 through 73.23).

Comment 3: Most of the commenters expressed support for the rulemaking. One commenter noted that the transportation of nuclear waste shipments has always been of concern to Tribal government officials and community members as the potential long-term effects of a transportation accident and possible contamination of tribal ecosystems poses a high risk to cultural continuity. One commenter noted that the rule is meaningful because it will increase the Tribal government's ability to perform ~~their~~ its responsibilities in protecting public health and safety, as well as recognize Tribal sovereignty. Another commenter expressed support because the NRC's approach acknowledges that sovereign Tribal nations require the same information provided to the States in order to protect health and the environment. The commenter noted that the Tribe's all-hazard Fire Department can be more prepared for very unlikely incidents involving nuclear waste if the Tribe is informed of the shipments. One commenter commends the NRC for its understanding of the unique legal relationship between the Federal government and Tribal governments as the basis for amending the regulations, and for adhering to the principles of consultation and cooperation articulated in E.O. 13175. Commenters noted that Tribal governments exercise regulatory jurisdiction over a broad range of activities on their lands and that Tribal government officials, just like State officials, are charged with protection of the public and have a need-to-know the type and amount of hazardous materials that traverse through their jurisdictions. Commenters noted that notification to Tribal authorities will acknowledge the rights and sovereignty of Tribal governments as well as the responsibility that tribes have for the welfare and safety of natives

and non-natives within their jurisdictional boundaries. Commenters noted that notification to Tribal governments will allow Tribal law enforcement and other officials to prepare for safety and security of shipments as well as develop emergency preparedness plans in the event of a transportation accident. One commenter noted that the rule acknowledges a Tribe's sovereign right to be notified of these risks in order to protect the health and safety of ~~their~~its citizens. Several Tribes indicated that they wanted to receive the advance notifications.

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

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

Response: The NRC will maintain a list of those Tribes that want to receive the notifications. The list will be published annually in the *Federal Register* and posted on the NRC Web site. The NRC plans to place a map on the Web site that will denote the location of the Tribal reservations of those Tribes that decide to participate and receive the advance notifications. A licensee will need to check the map to see if the route traverses any of the reservations in order to determine whether it will need to contact any Tribes. A licensee would be in violation if it provided safeguards information to a Tribe that was not participating in the advance notification program. A licensee would also be in violation if it did not provide information to a Tribe that should receive notifications. If the map had not been updated before

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

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

V. Civil and Criminal Penalties

For the purposes of Sections 223 and 234 of the AEA, the Commission is amending 10 CFR Parts 71 and 73 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement. Additionally, depending on the severity, a violation may result in a civil penalty.

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 final rule is a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among the Agreement States and the NRC requirements. The NRC staff analyzed the final rule in accordance with the procedure established within Part III, "Categorization Process for NRC Program Elements," of Handbook 5.9 to Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs" (a copy of which may be viewed at

AFFIRMATION ITEM

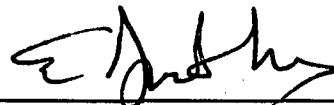
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Apostolakis
SUBJECT: SECY-11-0142 – FINAL RULE: ADVANCE
NOTIFICATION TO NATIVE AMERICAN TRIBES OF
TRANSPORT OF CERTAIN TYPES OF NUCLEAR
WASTE (RIN 3150-AG41)

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below Attached None X



SIGNATURE

11/30/11

DATE

Entered on "STARS" Yes No

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MAGWOOD
SUBJECT: SECY-11-0142 – FINAL RULE: ADVANCE
NOTIFICATION TO NATIVE AMERICAN TRIBES OF
TRANSPORT OF CERTAIN TYPES OF NUCLEAR
WASTE (RIN 3150-AG41)

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached None _____



SIGNATURE


29 November 2011

DATE

Entered on "STARS" Yes No _____

Commissioner Magwood's comment on SECY-11-0142: Final Rule: "Advance Notification to Native American Tribes of Transport of Certain Types of Nuclear Waste"

I approve, subject to the attached edits, the publication of the final rule amending 10 CFR Parts 71 and 73 to require that licensees offer advance notification to participating Federally-recognized Tribal governments prior to shipping irradiated reactor fuel and certain radioactive waste through Tribal reservations. This rule recognizes the interest of sovereign Tribal governments in being informed of activities occurring on Tribal reservations. I commend the staff for its extensive outreach efforts to Tribal governments during the rulemaking process. I encourage the staff to maintain the same level of outreach during the development of the list of participating Tribes, tribal contact information, and map delineating the participating Tribe's reservations.



William D. Magwood, IV 11 | 29 | 11
Date

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

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

Failure to comply with these regulatory requirements could result in civil or criminal penalties or Federal prosecution.

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

Section 149 of the AEA requires fingerprinting and submission of fingerprints to the Attorney General for identification and criminal history records check for any individual permitted access to SGI, unless the Commission, by rule, has relieved that individual from the

Commission fulfill its obligations to promote the common defense and security and to protect the health and safety of the public.

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

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

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

V. Criminal Penalties

For the purpose of Section 223 of the AEA, the Commission is amending 10 CFR Parts 71 and 73 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to civil penalties and/or Federal criminal prosecution 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 final rule is a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among the Agreement States and the NRC requirements. The NRC staff analyzed the final rule in accordance with the procedure established within Part III, "Categorization Process for NRC Program Elements," of Handbook 5.9 to Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs" (a copy of which may be viewed at <http://www.nrc.gov/reading-rm/doc-collections/management-directives/>).

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER OSTENDORFF
SUBJECT: SECY-11-0142 – FINAL RULE: ADVANCE NOTIFICATION TO NATIVE AMERICAN TRIBES OF TRANSPORT OF CERTAIN TYPES OF NUCLEAR WASTE (RIN 3150-AG41)

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below Attached X None

I approve, subject to the attached edits, the final rule amending 10 CFR Parts 71 and 73 to require that licensees provide advance notification to participating Federally-recognized Tribal governments prior to shipping irradiated reactor fuel and certain radioactive wastes through Tribal reservations. The rule is an important and proactive way to recognize tribal interests in accordance with Executive Order 13175. I commend the staff for its extensive outreach to the tribes during the rulemaking process.

W O Ostendorff
SIGNATURE

11/14/11
DATE

Entered on "STARS" Yes No

Tribes of the shipments; and 2) whether there are penalties for non-compliance with the advance notification requirements. The commenter noted that enforcement needs to be addressed before moving forward and that the NRC needs to inform licensees of their obligation to provide the advance notification to the Tribes impacted by their shipments. Two commenters urged the NRC to implement effective oversight mechanisms to ensure compliance by licensees. One of the commenters noted that this should include specific remedies for failure to provide adequate notification.

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

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

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

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

Response: No response is necessary.

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

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

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

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