

DRAFT SUPPORTING STATEMENT FOR PROPOSED RULE  
10 CFR PARTS 71 AND 73  
ADVANCE NOTIFICATION TO NATIVE AMERICAN TRIBES OF TRANSPORT OF  
CERTAIN TYPES OF NUCLEAR WASTE  
(3150-0008) (3150-0002)

REVISION

Description of the Information Collection

The U.S. Nuclear Regulatory Commission (NRC) regulations in 10 CFR Part 71 prescribes requirements for packaging and preparation for shipment and transportation of licensed materials. The regulations are issued pursuant to the Atomic Energy Act of 1954, as amended, and Title II of the Energy Reorganization Act of 1974, as amended. 10 CFR Part 71 contains reporting requirements to provide States with advance notification of shipments of certain wastes when the shipment crosses through a State boundary. The advance notification reporting provisions were required by Public Law 96-295.

The NRC regulations in 10 CFR Part 73 prescribe requirements for the establishment and maintenance of a system for physical protection of special nuclear material (SNM) at fixed sites, SNM in transit, including spent nuclear fuel (SNF), and of plants in which SNM is utilized. The regulations are issued pursuant to the Atomic Energy Act of 1954, as amended, and Title II of the Energy Reorganization Act of 1974, as amended. 10 CFR Part 73 contains reporting requirements to provide States with advance notification of shipments of certain wastes when the shipment crosses through a State boundary. The advance notification reporting provisions were required by Public Law 96-295.

The proposed amendments will require licensees to provide to Tribal officials advance notice of shipments of irradiated reactor fuel and other radioactive wastes listed in 10 CFR 71.97 before crossing the border of Tribal reservations. The purpose of the proposed rule is to recognize Tribal sovereignty by informing Tribes of waste shipments passing through their reservation and to recognize Tribal governments' interest in being informed of activities occurring on tribal land. This proposed rule requires revisions to Information Collections contained in OMB Clearance 3150-0008 and 3150-0002, which were previously approved by OMB.

A. JUSTIFICATION

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

In general, the third party notifications are necessary to recognize Tribal sovereignty and treat the Tribes similar to States.

Specific requirements for reports and records in the proposed amendments to 10 CFR Part 71 and 73 are identified below:

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

**Section 71.97(a)(1)** would require each licensee to give advance notification to the

governor of a State, or the governor's designee, of the shipment of licensed material through, or across the boundary of, the state. The requirement was previously contained in § 71.97(a) and is not a new requirement.

**Section 71.97(a)(2)** would require a licensee to provide advance notification to the Tribal official of participating Tribes referenced in paragraph 71.97(c)(3)(iii) of the shipment of licensed material through or across the boundary of the Tribe's reservation before the transport. This is a new requirement.

**Section 71.97(c)** requires that the advance notification for shipments in section 71.97(b) must be in writing and specifies the procedures for submitting the advance notification. Section 71.97(c)(1) would be revised to add a requirement for notifications to be made to the office of each appropriate Tribal official. Section 71.97(c)(3) specifies when the advance notification must be received and provides information on where the list of State officials can be obtained. The section would be revised to include Tribal officials in addition to State officials.

**Section 71.97(d)** requires that the written advanced notification for shipments of irradiated reactor fuel or nuclear waste must contain the name, address, and telephone number of the shipper, carrier, and receiver of the irradiated reactor fuel or nuclear waste; a description of the irradiated reactor fuel or nuclear waste, the point of origin of the shipment, the 7-day period during which departure of the shipment is expected to occur, and the 7-day period during which arrival of the shipment at State boundaries is estimated to occur; the destination of the shipment and the 7-day period during which arrival of the shipment is estimated to occur, and a point of contact, with a telephone number, for current shipment information. Section 71.97(d)(4) would be revised to include the 7-day period during which arrival of the shipment at Tribal reservation boundaries is estimated to occur.

**Section 71.97(e)** requires that licensees must also give advance notice of revisions to schedules and of cancellations of shipments for which notification was given to the governor of a State, or the governor's designee will not be met shall telephone a responsible individual of the extent of the delay beyond that originally scheduled. Licensees must keep for one year a record of the name of the individual who was contacted and informed concerning a revision in shipment schedule information. The section would be revised to include advance notice of revisions to Tribal officials or their designees.

**Section 71.97(f)(1)** requires licensees to notify the governor and the NRC of cancelled shipments. The section would be revised to include notification of Tribal officials of cancelled shipments.

### **73.21 Protection of Safeguards Information: Performance Requirements.**

**Section 73.21(a)(2)** states that information protection procedures employed by Federal, State, and local law enforcement agencies are presumed to meet the general performance requirement in 73.21(a)(1). The section would be revised to add Tribal enforcement agencies to the list.

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

**Section 73.37(f)** requires licensees to notify State(s) prior to the shipment of SNF within or through a State or, prior to the delivery to a carrier for transport of the licensed material outside the confines of the licensee's facility or other place of use or storage. It also requires a licensee to notify by telephone a responsible individual in the office of the governor or in the office of the governor's designee of any schedule change that differs by more than 6 hours from the schedule information previously furnished and shall inform that individual of the number of hours of advance or delay relative to the written schedule information previously furnished. This section would be revised to include notification of Tribal officials if the shipment would cross Tribal reservations and to notify Tribal officials if the schedule changes.

**Section 73.37(g)** requires State officials, state employees, and other individuals who receive schedule information to protect the information against unauthorized disclosure. This section would be revised to add Tribal officials and Tribal representatives to the list.

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

**Section 73.59(l)** would be added to the regulations to include tribal officials or their designated representatives and Tribal law enforcement personnel to whom access has been granted for the purpose of advance notification of shipments under provision of 73.37(f) to the list of designated categories of individuals that would be granted relief from fingerprinting and other requirements.

2. Agency Use of Information

The information is not collected or reviewed by the NRC staff but is being provided to a third party, in this instance the information is provided by the licensee to a Tribal official.

3. Reduction of Burden Through Information Technology

There are no legal obstacles to reducing the burden associated with this information collection. The NRC encourages respondents to use information technology when it would be beneficial to them. NRC issued a regulation on October 10, 2003 (68 FR 58791), consistent with the Government Paperwork Elimination Act, which allows its licensees, vendors, applicants, and members of the public the option to make submissions electronically via CD-ROM, e-mail, special Web-based interface, or other means. It is estimated that approximately 2% of the potential responses are filed electronically.

4. Effort to Identify Duplication and Use Similar Information

No sources of similar information are available. There is no duplication of requirements. NRC has in place an ongoing program to examine all information collections with the goal of eliminating all duplication and/or unnecessary information collections.

5. Effort to Reduce Small Business Burden

Since the consequences to the common defense and security are the same for large and small entities, it is not possible to reduce the burden on small businesses by less frequent or less complete reports, records, plans, and procedures. However, no small entities are expected to be impacted by the proposed rule.

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

If the information collection was not conducted or was conducted less frequently, the Tribes would not have information on shipments crossing Tribal reservations.

7. Circumstances Which Justify Variation from OMB Guidelines

Certain sections of Parts 71 and 73 vary from the OMB Guidelines by requiring that licensees provide notification of shipments less than 30 days.

8. Consultations Outside the NRC

Opportunity for public comment on the information collection requirements for this clearance package has been published in the *Federal Register*.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality of Information

Confidential and proprietary information is protected in accordance with NRC regulations at 10 CFR 9.17(a) and 10 CFR 2.390(b).

11. Justification for Sensitive Questions

Not applicable.

12. Estimated Burden and Burden Hour Cost

The NRC estimates the potential impacted "universe" of respondents for this proposed rule will consist of Commercial Power Reactors Sites, Decommissioning Reactor Sites, Research and Test Reactors (RTRs), and Independent Spent Fuel Storage Installations (ISFSI) resulting in an estimated "universe" of 162 licensees. The NRC estimates that there will be 16 shipments by highway along with 4 shipments by rail for a total of 20 shipments annually. Two licensees will ship on average twice a year and sixteen licensees will have one annual shipment. All of the shipments will be under Part 73. This proposed rule will impose the following new information collection requirements:

- Section 71.97(a)(2) is a new third party reporting requirement on the written advance notification to participating Tribes. No shipments are expected.
- Section 71.97(e) is a new third party reporting requirement that the licensees contact the participating Tribes of any revised shipment. No shipments are expected.
- Section 71.97(f) is a new third party reporting requirement that the licensees contact the participating Tribes of any canceled shipments. No shipments are expected.
- Section 73.37(f)(1) is a new third party reporting requirement on the written advance notification to participating Tribes. Each of the estimated 20 shipments per year will require written notification to an average of 15 Tribes. This will require a total of 300 written notifications with each notification estimated to take 0.5 minutes, for a total of 150 hours of annual burden.
- Section 73.37(f)(4) is a new third party reporting requirement that the licensees contact the participating Tribes of any revised shipment. The NRC expects this to occur for 5 shipments. The NRC estimates this additional burden to be 6 hours annually. The NRC estimates that there would be 1 cancellation every 3 years that fall under revisions. The NRC estimates an additional burden to be 1.2 hours every 3 years or 0.40 on an annualized basis.

In addition, the licensee is required to keep a record of the individual contacted. It is estimated to be 5 minutes per contact for a total of 6 hours.

- The total annual burden for this proposed rule is 163 hours (6.4 recordkeeping hours + 156.4 third party hours).

### 13. Estimate of Other Additional Costs

NRC has determined that the records storage cost is roughly proportional to the recordkeeping burden cost. Based on a typical clearance, the recordkeeping storage cost has been estimated to be equal to .04 percent of the recordkeeping burden. Therefore, the additional recordkeeping storage cost for the proposed rule is estimated to be \$0.66 (6.4 recordkeeping hours x \$257 x .0004).

### 14. Estimated Annualized Cost to the Federal Government

This section calculates the estimated annualized cost to the government over the three-year period covered by the analysis, including both one-time costs and annual costs. There are no estimated one-time cost to the government for review of required reports and records.

### 15. Reasons for Change in Burden or Cost

The proposed rule will increase the recordkeeping and third party notification requirements in Part 73 by 163 hours from 524,820 to 524,983 because this is a new requirement to notify participating Tribes of shipments

that cross Tribal reservations. All of the burden is associated with Part 73; there is no expected increase for Part 71

The total annual burden for this proposed rule is 163 hours (6.4 recordkeeping hours + 156.4 third party hours). The total annualized burden cost for this proposed rule is \$41,891 (163 hours x \$257/hr).

16. Publication for Statistical Use

None.

17. Reason for Not Displaying the Expiration Date

The requirements are contained in a regulation. Amending the Code of Federal Regulations to display information that, in an annual publication, could become obsolete would be unduly burdensome and too difficult to keep current.

18. Exceptions to the Certification Statement

None.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not Applicable.

TABLE 1

ANNUALIZED THIRD PARTY REPORTING BURDEN, 10 CFR PART 73

Section	No. Of Respondents	Responses per Respondent	Total No. of Annual Responses	Burden Hours per Response	Total Annual Reporting Burden (Hrs)	Total Labor cost (\$257) per hour
73.37(f)(1)	18	16.67	300	0.5	150	\$38,550
73.37(f)(4)-revisions	5	15	75	0.08	6	\$1,542
71.97(f)(4)-cancellations	1	5	5	0.08	0.40	\$102.80
Total	18		380		156.4	\$40,194.80

Table 2 ANNUALIZED RECORDKEEPING BURDEN, 10 CFR PART 73					
Section	No. Of Recordkeepers	No of Records per Recordkeeper	Hours per Record	Total Annual Reporting Burden (Hrs)	Total Labor cost (\$257) per hour
73.37(f)(4) revisions	5	15	0.08	6	\$1,542
73.37(f)(4) cancellations	1	5	0.08	0.40	\$102.80
Total	6			6.4	\$1644.80

The total annual burden for this proposed rule is 163 hours (6.4 recordkeeping hours + 156.4 third party hours). The total annualized burden cost for this proposed rule is \$41,891 (163 hours x \$257/hr).