

FINAL SUPPORTING STATEMENT FOR
10 CFR PART 73
PHYSICAL PROTECTION OF IRRADIATED REACTOR FUEL IN TRANSIT, FINAL RULE
(3150-0002)

REVISION

Description of the Information Collection

The U.S. Nuclear Regulatory Commission (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 and recordkeeping requirements which are necessary to help ensure that an adequate level of protection is provided for nuclear facilities and nuclear material. After the attacks of September 11, 2001, the NRC determined that additional security measures were needed to enhance the protection of SNF shipments from theft, diversion, or radiological sabotage. On October 3, 2002, the NRC began issuing orders to select licensees. The orders were issued to licensees who had shipped or received SNF during the period 1999 through 2002 and who expected to ship or receive by June 2004. Since 2002, orders have been issued only to licensees that have given NRC advance notification of a SNF shipment.

The current regulations require a licensee to implement a physical protection program during the transport of SNF to minimize the risk of radiological sabotage and to ensure swift recovery following the theft, diversion, or radiological sabotage of a shipment. Although these regulations provide adequate protection of SNF shipments, the NRC determined that further security enhancements were needed. For example, the existing regulations in 10 CFR 73.37 require armed escorts in heavily populated areas but not for other areas along the route. This relaxation of security in less populated areas creates vulnerability. An adversary could take control of the shipment in an unpopulated area and move it to a population center for a radiological sabotage event.

In addition, the rulemaking considers the State of Nevada on June 22, 1999-Petition for Rulemaking (PRM-73-10). The Petition requested that the NRC initiate rulemaking to strengthen its regulations governing safeguards for shipments of SNF against sabotage and terrorism. The State cited significant changes in the threat environment since the development of the § 73.37 as a part of the basis of their request. Some aspects of the Petition will be addressed by this rulemaking effort. The proposed rule also considered information gathered by staff during the implementation and inspection of the past orders and insights gained since the events of September 11, 2001.

The Section 73.37, "Requirements for Physical Protection of Irradiated Reactor Fuel in Transit," were established on June 15, 1979 (44 FR 34466). By the promulgation of these regulations the NRC recognized that a licensee's loss of control of SNF, whether inadvertent or through a deliberate act, could threaten public health and safety, the environment, or the common defense and security of the United States. There has been no significant update of these regulations in almost 30-years.

The § 73.37 regulations require licensees to put in place a physical protection system for spent fuel shipments that meet the objectives to: (1) minimize the possibilities for radiological sabotage of spent fuel shipments especially within heavily populated areas, and (2) facilitate the location and recovery of SNF shipments that may have come under the control of unauthorized persons. It also provides for: (1) early detection and assessment of attempts to gain unauthorized access to, or control over, spent fuel shipments, (2) notification to the appropriate response forces of any sabotage events, and (3) the impeding of attempts at radiological sabotage of SNF shipments in heavily populated areas or attempts to illicitly move such shipments into heavily populated area.

The NRC issued EA -02-109, "Issuance of Order for Interim Safeguards and Security Compensatory Measures for the Transportation of Spent Nuclear Fuel Greater than 100 Grams" on October 3, 2002. The orders were issued to licensees who had shipped or received SNF within 3-years and who planned to ship or receive SNF in the foreseeable future. The specifics of the orders are protected as SGI, as such; their details cannot be discussed in this document. In general, the security requirements resulted in enhancements in the following areas: preplanning and coordination with States and local law enforcement agencies; improved communications among movement control personnel; the development of normal and contingency procedures; a minimum number of weapons for escorts and more thorough background investigations of individuals associated with the spent fuel shipment. The burden for these orders was included in the Part 73 renewal package which expires February 28, 2015.

The NRC's objectives for the rulemaking are to establish and update generically applicable security requirements similar to those previously imposed by the NRC orders issued after the terrorist attacks of September 11, 2001. The rulemaking adds new requirements, not derived directly from the Order requirements that were developed as a result of insights gained from implementation of the security orders. In addition, the revisions will reorganize § 73.37 in a more logical, step-by-step approach that is more user-friendly. Finally, it addresses and considers the Nevada Petition requesting the NRC strengthen safeguards for shipments of Spent Nuclear Fuel.

In addition, subsequent to the publication of the proposed rule for the amendment of 10 CFR Part 73.37, "Physical Protection of Irradiated Reactor Fuel in Transit," in the Federal Register on October 13, 2010 (75 FR 62695), section 10 CFR 73.37(f) was revised. The rule "Advance Notification to Native American Tribes of Transport of Certain Types of Nuclear Waste (Advance Tribal Notification)," was approved by the Commission on January 30, 2012 and was published as a final rule on June 11, 2012 (77 FR 34195), with an effective date of August 10, 2012, and a compliance date of June 11, 2013. This rulemaking for the physical protection of SNF in transit re-designates § 73.37(f), the advance notifications provision, as § 73.37(b)(2). Therefore, the § 73.37(b)(2) provisions were changed from the proposed rule language to reflect the Advance Tribal Notification final rule changes to § 73.37(f). The re-designation of this section did not affect the reporting and recordkeeping burdens associated with this rulemaking.

There are regulatory actions since the publication of the proposed rule, "Physical Protection of Irradiated Reactor Fuel in Transit," that have impacted the supporting statement for the final rule in the area of background check collection information in §73.38: On July 27, 2011, the NRC submitted to OMB a renewal package for the 10 CFR Part 73, Physical Protection of Plants and Materials 3150-0002, Revision Burden Updates. This renewal will expire on February 28, 2015. This renewal package included burden hours for all final rules for 10 CFR Part 73 that became effective since the last renewal of June 22, 2008, and the submission of the July 27, 2011-renewal. In addition, subsequent to the renewal package, a final rulemaking was completed on

May 11, 2012, "Requirements for criminal history records checks of individuals granted unescorted access to a nuclear power facility, or access to Safeguards Information by power reactor licensees." (77 FR 2757) This rule revised § 73.57, which is referenced in § 73.38(d)(3) of the final rule, "Physical Protection of Irradiated Reactor Fuel in Transit." All estimates in the supporting statement for this final rule take into account final rules published prior to this rule including the NPR fingerprinting final rule and the Protection of Safeguards Information final rule. Individuals already fingerprinted under other existing regulations are not included in burden estimates for this rule.

The NRC estimates the impacted "universe" of respondents for this final rule consists of operating Nuclear Power Reactor sites (64 sites account for the 104 operating reactors since some sites have more than one reactor), Decommissioning Reactor Sites (fuel on site-6), non-power reactors (Research and Test Reactors-31), Independent Spent Fuel Storage Installations (ISFSI)(15 not under a general license of a commercial power reactor) and some Part 70 licensees (9) resulting in an estimated "universe" of 125 licensees.

A. JUSTIFICATION

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

In general, the reports, third party notification and records are necessary for one or more of the following reasons:

- Information describing the content and planned operation of the licensee's physical protection system (e.g., Security Plan, Contingency Plan, or Training and Qualification Plan). This information is essential to enable the NRC to make a determination about the adequacy of the licensee's planned system in meeting regulatory requirements.
- Information describing the normal operation of the physical protection system (e.g., access authorizations, equipment performance logs), is needed to permit the NRC to make a determination as to reasonable assurance that the physical protection system operates in accordance with the regulatory requirements.
- Information notifying the NRC of the occurrence of and circumstances surrounding abnormal events (e.g., report of theft, sabotage, or overdue shipment). This information is needed to enable the NRC to fulfill its responsibilities to respond to, investigate, and correct situations which adversely affect public health and safety or the common defense and security.

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

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

Section 73.37(b)(1)(iv) requires licensees to preplan and coordinate SNF with the governor of a State, or the governor's designee, of a shipment of SNF through, or across their boundary, the NRC estimates on average each shipment will cross the border into five states. This is a new requirement.

Section 73.37(b)(1)(vi) requires licensees to preplan and coordinate with the NRC to obtain advance approval of the routes used for road and rail shipments of SNF, and of any U.S. ports where vessels carrying spent fuel shipments are scheduled to stop. This is a new requirement.

Section 73.37(b)(2)(i-iii) incorporates the existing advance notification requirements in §§ 73.37(f)(1)-(3). As currently required in §§ 73.37(f)(1)-(3), the new section § 73.37(b)(2)(i-iii) would require licensees to notify State(s) prior to the shipment of SNF within or through a State. This is not a new requirement. In addition, in accordance with the Advance Tribal Notification final rule, after June 11, 2013, a licensee would be required to notify the Tribal official or Tribal official's designee of each participating Tribe referenced in 10 CFR 71.97(c)(3) prior to the transport of spent fuel within or across the Tribal reservation. This is not a new requirement since it is covered under the Advance Tribal Notification final rule.

However, this section also requires licensees to notify State(s) prior to the delivery for transport the licensed material outside the confines of the licensee's facility or other place of use or storage. This revision removes the § 73.72(b) notification exemption for short-duration shipments of SNF that are transported on public roads. This is a new requirement

Section 73.37(b)(2)(iv) incorporates the existing advance notification revision requirements in § 73.37(f)(4). As currently required in § 73.37(f)(4) the proposed § 73.37(b)(2)(iv) requires a licensee shall notify by telephone 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 the proposed § 73.37(b)(2)(iii), and shall inform that individual of the number of hours of advance or delay relative to the written schedule information previously furnished. This is not a new requirement.

Section 73.37(b)(2)(v) requires licensees who cancels a shipment for which advance notification has been sent shall send a cancellation notice to the governor or to the governor's designee of each State previously notified, each Tribal official or the Tribal official's designee previously notified, and to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being canceled. The NRC estimates that one shipment will be canceled over a three year period (60 total shipments in three years). This is a new notification requirement from licensees to r governor(s) or to the governor's designee(s). However, this is not a new requirement for Tribal official(s) or the Tribal official's designee. The requirement for NRC licensees to send notification of cancellation of SNF shipments to Tribes was added to Section 71.97(f)(1) as a part of the Tribal notification rulemaking.

Section 73.37(b)(2)(vi) requires licensees to retain a copy of the preplanning and coordination activities, advance notification, and any revision or cancellation notice as a record for 3 years. This is a new requirement.

Section 73.37(b)(3)(iv) requires the movement control center personnel and escorts to maintain a written log for each spent fuel shipment, which will include information describing the shipment and significant events that occur during the shipment. The log

will be available for review by authorized NRC personnel for a period of at least 3 years following completion of the shipment. These requirements are currently included in the existing § 73.37(b)(5). This is not a new requirement.

Section 73.37(b)(3)(v) requires the licensee to develop, maintain, revise and implement written transportation physical protection procedures. These requirements are currently included in the existing § 73.37(b)(2). This is not a new requirement.

Section 73.37(b)(3)(vi) requires the licensee to retain as a record the transportation physical protection procedures for 3 years after the close of period for which the licensee possesses the spent nuclear fuel. These requirements are currently included in the existing § 73.37(b)(2). This is not a new requirement.

Section 73.37(b)(3)(vii)(B) requires as a part of the transportation physical protection system that shipment escorts make calls to the movement control center at random intervals, not to exceed 2 hours, to advise of the status of the shipment for road and rail shipments, and for sea shipments while shipment vessels are docked at U.S. ports. These requirements are currently included in the existing § 73.37(b)(11). This is not a new requirement.

Section 73.37(b)(3)(vii)(C) requires that at least one armed escort remains alert at all times, maintain constant visual surveillance of the shipment, and periodically reports to the movement control center at regular pre-set intervals during periods when the shipment vehicle is stopped, or the shipment vessel is docked. These requirements are currently included in the existing §§ 73.37(b)(9) and 73.37(b)(11). This is not a new requirement.

Section 73.37(b)(4)(iii) requires the licensee to retain the contingency and response procedures as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license for which the plan is used and superseded material for three years after each change.—These requirements are currently included in the existing § 73.37(b)(2). This is not a new requirement.

Section 73.37(f) requires each licensee who makes arrangements for the shipment of spent nuclear fuel to immediately conduct an investigation, in coordination with the receiving licensee, of any shipment that is lost or unaccounted for after the designated no-later-than arrival time in the advance notification. These requirements are incorporated in the existing § 73.71 reporting provisions. This is not a new requirement.

§ 73.38 Personnel access authorization requirements for irradiated reactor fuel in transit.

Section 73.38(a)(2) requires the licensee to establish, implement, and maintain its access authorization program. An access authorization program requires fingerprinting and background investigation of each individual permitted unescorted access to protected and vital areas of nuclear facilities, to certain materials, and access to Safeguards information in order to increase the assurance that only trustworthy and reliable individuals have unescorted access to these facilities, materials, or access to Safeguards Information. It also ensures that these individuals do not constitute an unreasonable risk to public health and safety or the common defense and security, including the potential to commit radiological sabotage.

This is not a new requirement for nuclear power plants (64) and decommissioning power plants (6); they are subject to similar requirements in § 73.56 (a)(2). Non-power reactors (31) are subject to similar requirements in § 73.57 (b)(2)(v) This is a new requirement for ISFSIs (15) and some Part 70 licensees (9).

Section 73.38(c)(2)(v) requires a 3 year recordkeeping requirement pertaining to documentation for access authorization for any individual who has an active Federal security clearance. There is zero burden associated with this rulemaking section. This is a new requirement.

Section 73.38(d) requires the licensee to conduct background investigations before allowing an individual to act as an armed escort or have unescorted access to spent reactor fuel in transit. This is not a new requirement for nuclear power plants (64) and decommissioning power plants (6); they are subject to similar requirements in § 73.56. (b). Non-power reactors (31) are subject to similar requirements in § 73.57 (a)(3). This is a new requirement for ISFSIs (15) and some Part 70 licensees (9).

Section 73.38(d)(1) requires the licensees not to initiate any element of a background investigation without the informed and signed consent of the subject individual. This is not a new requirement for nuclear power plants (64) and decommissioning power plants (6); they are subject to similar requirements in § 73.56 (d)(1). This is a new requirement for non-power reactors (31), ISFSIs (15) and some Part 70 licensees (9).

Section 73.38(d)(2) requires any individual who is required to have a background investigation under the licensee's access authorization program to disclose personal history information that is necessary to make a determination of the individual's trustworthiness and reliability.. This is not a new requirement for nuclear power plants (64) and decommissioning power plants (6); they are subject to similar requirements in § 73.56 (d)(1) This is a new requirement for non-power reactors (31), ISFSIs (15) and some Part 70 licensees (9).

Section 73.38(d)(3) requires the licensee to conduct fingerprints and an FBI investigation and criminal history records check in accordance with § 73.57. The form is FD-258, which is indicated as an acceptable method for submitting fingerprints. The fingerprint card Form FD-258, covered under OMB Clearance 1110-0046 states the following as the Authority for the collection of information:

“Authority: The FBI's acquisition, preservation, and exchange of information requested by this form is generally authorized under 28 U.S.C. Depending on the nature of your application, supplemental authorities include numerous Federal statutes, hundreds of State statutes pursuant to Pub.L. 92-544, Presidential executive orders, regulations and/or orders of the Attorney General of the United States, or other authorized authorities. Examples include, but are not limited to: 5 U.S.C. 9101; Pub.L. 94-29; Pub.L. 101-604; and Executive Orders 10450 and Executive Orders 10450 and 12968. Providing the requested information is voluntary; however, failure to furnish the information may affect timely completion or approval of your application.”

This requires the licensee to transmit the fingerprints to the NRC. This is not a new requirement for nuclear power plants (64), decommissioning power plants (6); and non-power plants (31). They are subject to similar requirements in § 73.57 (g). This is a new requirement for ISFI's (15) and some Part 70 licensees (9).

Section 73.38(d)(5)(iv)(A) requires the licensee to document if a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information. This is not a new requirement for nuclear power plants (64), and decommissioning power plants (6). They are subject to similar requirements in § 73.56(d)(4)(iv). This is a new requirement for non-power plants (31), ISFI's (15) and some Part 70 licensees (9).

Section 73.38(d)(5)(vi) requires the licensee when obtaining information on employment history to document any telephone calls. This is not a new requirement for nuclear power plants (64), and decommissioning power plants (6). They are subject to similar requirements in § 73.56(d)(4)(vi). This is a new requirement for non-power plants (31), ISFI's (15) and some Part 70 licensees (9),

Section 73.38(f)(5) requires the licensee to retain all fingerprint and criminal history records received from the FBI, or a copy if the file has been transferred, on an individual (including data indicating no record) for 5 years from the date the individual no longer requires unescorted access or access authorization relative to spent nuclear fuel in transit. This is not a new requirement for nuclear power plants (64), and decommissioning power plants (6). They are subject to similar requirements in § 73.56(o)(2)(iii). This is a new requirement for non-power plants (31), ISFI's (15) and some Part 70 licensees (9).

Section 73.38(i) requires any individual who has applied for an access authorization or is maintaining an access authorization to report to the reviewing official, his or her supervisor, or other management personnel designated in licensee procedures any legal action(s) taken by a law enforcement authority or court of law to which the individual has been subject that could result in incarceration or a court order or that requires a court appearance. This is not a new requirement for nuclear power plants (64), and decommissioning power plants (6). They are subject to similar requirements in § 73.56(g)). This is a new requirement for requirement for non-power plants (31), ISFI's (15) and some Part 70 licensees (9).

Section 73.38(j) requires the licensee to develop, implement, and maintain written procedures for conducting background investigations for persons who are applying for unescorted access authorization for spent nuclear fuel in transit. This is not a new requirement for nuclear power plants (64), decommissioning power plants (6); and non-power plants (31). They are subject to similar requirements in § 73.57 (d). This is a new one time reporting requirement for ISFI's (15) and some Part 70 licensees (9).

Section 73.38(l) requires the licensee to maintain records of background investigations 5 years from the date the individual no longer requires access to spent nuclear fuel. This section also requires a copy of the access authorization program procedures as a record for 5 years after it is no longer needed. In addition, the licensee must retain the list of persons approved for unescorted access for 5 years after the list is superseded or

replaced. This is not a new requirement for nuclear power plants (64), decommissioning, and power plants (6). They are subject to similar requirements in § 73.56 (o). This is a new requirement for non-power reactors (31), for ISFSI's (15) and some Part 70 licensees (9).

§ 73.72 Requirement for advance notice of shipment of formula quantities of strategic special nuclear material, special nuclear material of moderate strategic significance, or irradiated reactor fuel.

Section 73.72(a)(4) requires that the NRC Headquarters Operations Center be notified about the shipment status by secured telephone at the telephone numbers listed in Appendix A of the part. Classified notifications shall be made by secure telephone. The notifications shall take place at the following intervals

- (i) At least 2 days before commencement of the shipment (existing requirement);
- (ii) Two hours before commencement of the shipment (new requirement); and
- (iii) Once the shipment is received at its destination. (new requirement).

2. Agency Use of Information

The information collected is reviewed by the NRC staff to assess the adequacy of the licensees' ability to implement and execute a physical protection program during the transport of SNF. The NRC will ensure that the physical protection program is in compliance with proposed regulations and ensures swift recovery following the theft, diversion, or radiological sabotage of a shipment.

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.

The requirements for SNF in transit were reexamined in light of recent rulemakings to identify any overlapping or duplicative requirements.

Section 73.38(c)(2) eliminates duplication by identifying individuals that are relieved from fingerprinting and an FBI identification and criminal history records

Section 73.38(d) eliminates duplication by specifying that background investigations do not apply to Federal, State or local law enforcement personnel who are performing escort duties.

Section 73.38(g) eliminates duplication by specifying that individuals who have a valid unescorted access authorization pursuant to an NRC order or regulation within 5 years of the effective date of the SNF in transit final will not be required to have a new fingerprint-based FBI criminal history records check.

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 NRC would not be notified in time to provide rapid response and quick assistance in achieving timely resolution of safeguards events. Reports are submitted and evaluated as events occur. Thus, if this information is not collected, there is a high probability that adverse impacts on the public health and safety and the common defense and security could occur.

7. Circumstances Which Justify Variation from OMB Guidelines

Certain sections of Part 73 vary from the OMB Guidelines by requiring that licensees submit reports to the NRC in less than 30 days. Sections 73.37 and 73.71 require immediate notifications to response forces, NRC, and local law enforcement authorities, communications between convoys and movement control centers, and immediate notifications of consignees and shippers. These notification requirements are needed to promptly engage response forces, NRC, law enforcement authorities, shippers, and consignees to confirm the integrity of shipments or to determine whether there has been a theft or diversion of SNF and to initiate prompt action for recovery of such material. They also mitigate the occurrence of radiological sabotage.

Some sections of Part 73 vary from the OMB Guidelines by requiring that licensees retain records for more than 3 years. Section 73.38(f)(5) requires the licensee to retain all fingerprint and criminal history records received from the FBI, or a copy if the file has been transferred, on an individual (including data indicating no record) for 5 years from the date the individual no longer requires unescorted access or access authorization relative to spent nuclear fuel in transit. It is necessary for licensees to retain access authorization records for extended periods of time to assist the licensee's reinvestigation process and to share information with other licensees when appropriate. Section 73.38(l)(2) require access authorization program procedures to be retained as a record for 5 years after the procedure is no longer needed or until the Commission terminates the license. These requirements are necessary to ensure that procedures for handling and safeguarding nuclear materials are available throughout the period in which the licensee possesses the material or operates the facility.

8. Consultations Outside the NRC

Opportunity for public comment on the information collection requirements for the proposed rule was published in the Federal Register on October 13, 2010 (75 FR 62695), for a 90-day public comment period that was to end on January 11, 2011. After receiving several requests to extend the comment period, the NRC published on January 10, 2011 (76 FR 1376), a notice extending the public comment period until April 11, 2011.

The NRC received 17 comment letters. The commenter's included State organizations, licensees, industry organizations, individuals, and a Federal agency. One-hundred and twenty-five comments were received on the proposed rule. Of the 125 comments, the NRC received two comments regarding information collections.

Comment 1: (Comment Issue 30)

The comment was regarding the requirement for movement control center personnel and the armed escorts to maintain a written log for each spent nuclear fuel shipment, stating that LLEA personnel serving as escorts reported that keeping a log of the shipment is a major distraction that takes away from their primary function of driving and observing the shipment.

Response 1:

The NRC does not agree with this comment. This is not a new requirement. It has been a requirement since the June 1980 amendments. The intent of this requirement is that a single written log be maintained and that the entries in the log be coordinated between the armed escorts and the movement control center personnel monitoring the shipment. It is the responsibility of the licensee to determine the means and methods used to maintain this log. The current § 73.37(b)(5) requires "maintenance of a written log by the escorts and communications center personnel for each spent nuclear fuel shipment."

Comment 2: (Comment Issue 34)

The comment was regarding Contingency Response and recommended that a new subparagraph (F) be added after § 73.37(b)(iv)(E) to require licensees (or their monitoring center) to notify the NRC of transportation safeguards events in accordance with § 73.71.

Response 2:

The NRC response was the revisions suggested are already included in the rule. The §§ 73.37(b)(3)(iii) and 73.37(b)(3)(v)(C) require reporting of safeguards events under the provisions of § 73.71.

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). If the applicant includes any sensitive information in its reports, it will only be available to those NRC staff that are authorized and have a need-to-know.

Certain information designated as Safeguards Information is prohibited from public disclosure in accordance with the provisions of the Atomic Energy Act of 1954, as amended, Chapter 12, Section 147, or designated as classified National Security Information, in accordance with Executive Order 12958.

The rule requires the licensee to conduct a background investigation that includes the collection of fingerprints and an FBI criminal history records check. The information is used by the licensee to determine that an individual's suitability for unescorted access authorization to spent nuclear material in transit or access to safeguards information.. Licensees are required to have procedures for protection of the personal information from unauthorized disclosure. Licensees can only use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to spent nuclear material in transit or , access to safeguards information. The rule also limits who the licensee can share information with to those approved by the individual and those that need the information to do their job. The licensee is required to obtain written consent from the individual before beginning the background investigation.

The NRC only collects the fingerprints, either cards or electronically. The NRC digitizes fingerprints captured via card and passes the fingerprints electronically to the FBI. The FBI runs the fingerprints and provides the criminal history report to the NRC. The NRC then passes the report on to the licensee, but does not retain a copy of this report. The NRC practice is to destroy the fingerprint cards after approximately a month. The cards are destroyed in accordance with federal guidelines. The NRC system keeps a record of all the submissions, but can only produce a copy of that record for a year; after a year, NRC cannot print out a copy. The fingerprint cards are handled by NRC personnel (Division of Facilities and Security) that handle NRC's clearance information for NRC employees. These individuals are trained and know how to process and protect privacy information. This information collection for privacy information is listed in the NRC's annual Republication of Privacy Act Systems of Records Notice under the heading of NRC-39, Personnel Security Files and Associated Records (75 FR 57334). The NRC does not disclose or share the information with anyone (except the initial submittal of fingerprints to the FBI and passing on the FBI report to the licensee).

11. Justification for Sensitive Questions

The information required by Part 73 to be reported, collected and maintained consists of sensitive information which could be used by unauthorized personnel to gain unauthorized access to spent nuclear material in transit which could constitute an unreasonable risk to the public health and safety. The NRC needs this information to assess the adequacy of the licensee's planned system in meeting regulatory requirements, determine with reasonable assurance that the physical protection system operates in accordance with the regulatory requirements, and to respond to, investigate, and correct situations which adversely affect public health and safety or the common defense and security.

12. Estimated Burden and Burden Hour Cost

The NRC estimates the potential impacted "universe" of respondents for this final rule will consist of Commercial Power Reactors Sites, Decommissioning Reactor Sites,

Research and Test Reactors (RTRs), Independent Spent Fuel Storage Installations (ISFSI) and a number of Part 70 licensees resulting in an estimated “universe” of 125 licensees. In addition, the NRC estimates that there will be 10 shipments by highway along with 10 shipments by rail for a total of 20 shipments annually. Although 20 shipments are expected, two licensees will ship on average twice a year and sixteen additional licensees will have one annual shipment resulting in 18 annual shipments. This final rule will impose the following burden for information collection requirements:

- **Section 73.37(b)(1)(iv)** is a new third party notification requirement to the impacted states of 3 hours per each state and 100 total states notified for the 20 shipments. Although 20 shipments are expected, two of these 18 will ship twice for a total of 20 annual shipments. This is an annual burden of 300 hours.
- **Section 73.37 (b)(1)(vi)** is a new reporting requirements on the pre-planning coordination with the NRC. This is estimated to be 25 hours per shipment for a total new reporting burden of 500 hours annually.
- ***Section 73.37(b)(2)(i-iii)** is a new third party and reporting requirement on the written advance notification to the NRC, affected Tribes and States relative to the removal of the exemption currently in §73.72(b). Each of the estimated 20 shipments per year will require written notification to an average of five states and to the NRC. This will require a total of 220 written notifications with each notification estimated to take 30 minutes, for a total of 110 hours of annual burden. There is zero burden associated with this rulemaking for this section.
- **Section 73.37(b)(2)(v)** is a new reporting and third party reporting requirement that the licensees contact the NRC and impacted States and affected Tribes of any canceled shipments. The NRC expects this to be a rare occurrence. However, a local or national emergency, i.e., Hurricane Katrina or 9-11 events, may require cancellation of a previously approved shipment. The NRC estimates this additional burden to be 2 hour annually.
- ***Section 73.37(b)(2)(vi)** contains a new recordkeeping requirement. Licensees are required to retain as a record for 3-years pre-planning and coordination activities, advanced notifications, and revisions and cancellations of notifications. The NRC estimates this additional burden to be 60 hours annually. There is zero burden associated with this rulemaking for this section. (R- 3 yrs)
- **Section 73.37 (b)(3)(v)** contains a recordkeeping requirement. Licensees are required to retain as a record the transportation physical protection procedures for 3 years after the close of period for which the licensee possesses the spent nuclear fuel. This is not a new requirement. There is zero burden associated with this rulemaking for this section. (R- 3 yrs)
- **Section 73.38(a)(2)** places a new recordkeeping requirement for each licensee to maintain its access authorization program under the requirements of this section. The NRC estimates this additional burden to be 5 hours annually. (R-3 yrs)
- **Section 73.38(c)(2)(v)** contains a 3 year recordkeeping requirement pertaining to documentation for access authorization for any individual who has an active Federal security clearance. There is zero burden associated with this rulemaking section. (R-3 yrs)
- **Section 73.38(d)** is a new reporting requirement for licensees to conduct background investigations before allowing an individual to act as an armed escort or have unescorted access to spent reactor fuel in transit. The NRC estimates it will take 6 hours for the individual to complete the paperwork. The NRC estimates that each of the 18 licensees will experience turnover requiring 1 new

background investigations annually for a total of 18 background investigations each year. The total annual burden will be 108 hours.(FD-258)

- **Section 73.38(d)(1)** is a new third party collection requiring the licensee not to initiate any element of a background investigation without the informed and signed consent of the subject individual. The total annual burden will be 9 hours. This will have a one-time third party burden to 10 individuals working for the 2 transportation companies supporting the licensee. This will be a one-time 5 hour burden.
- **Section 73.38(d)(2)** is a new third party disclosure to have individuals required to have a background investigation to disclose the personal history information that is required by the licensee's access authorization program. The total annual burden will be 9 hours. This will have a one-time third party burden to 10 individuals working for the 2 transportation companies supporting the licensee. This will be a one-time 5 hour burden.
- **Section 73.38(d)(3)** is a new reporting requirement for the licensee to transmit the fingerprints to the NRC. It is estimated to take 15 minutes to transmit each of the 18 fingerprint packages to the NRC for a total of 5 hours annually. (FD-258)
- **Section 73.38(d)(5)(iv)(A)** is a new recordkeeping requirement for the licensee to document if a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information. It is estimated to take 15 minutes to document this requirement; the NRC estimates no responses for this requirement for 0 hours annually. The NRC estimates no responses for this requirement for 0 one-time recordkeeping hours. (R-5 yrs)
- **Section 73.38(d)(5)(vi)** is a new recordkeeping requirement for the licensee when conducting an employment history evaluation, the licensee may obtain information and documents by electronic means, including telephone. Licensees shall make a record of the contents of the telephone call and shall retain that record. It is estimated to take 15 minutes to document this requirement; the NRC estimates 18 responses for this requirement for 5 hour annually. This will be a one-time 3 hour burden. (R-5 yrs)
- **Section 73.38(f)(5)** is a new recordkeeping requirement for the licensee to retain all fingerprint and criminal history records received from the FBI, or a copy if the file has been transferred, on an individual (including data indicating no record) for 5 years from the date the individual no longer requires unescorted access or access authorization relative to spent nuclear fuel in transit. (FD-258), (R-5 yrs)
- **Section 73.38(i)** is a new third party reporting requirement of any individual who has applied for an access authorization or is maintaining an access authorization to report to the reviewing official, his or her supervisor, or other management personnel designated in licensee procedures any legal action(s) taken by a law enforcement authority or court of law to which the individual has been subject that could result in incarceration or a court order or that requires a court appearance. The NRC estimates no responses for this requirement for 0 third party burden hours.
- **Section 73.38(j)** is a new one time reporting requirement that licensees shall develop, implement, and maintain written procedures for conducting background investigations for persons who are applying for unescorted access authorization for spent nuclear fuel in transit. It is estimated to be a one-time 70 hour burden per licensee.
- **Section 73.38(l)** is a new recordkeeping requirement for the licensee to maintain records on the background investigations for 5 years from the date the individual

no longer requires access to spent nuclear fuel. It is estimated to take 5 hours annually for the licensees to maintain these records. (R-5 yrs)

- ***Section 73.72(a)(4)(i)-(iii)** is a new reporting requirement for licensees on notification on 2 days, 2 hours and upon arrival. The NRC estimates that the 60 new notification requirements will take 18 minutes each. This is an annual burden of 18 hours. There is zero burden associated with this rulemaking for this section.

(R= Retention periods)

*** The burden associated with Section 73.37(b)(2)(i-iii), Section 73.37(b)(2)(vi), and Section 73.72(a)(4)(i)-(iii) is covered under Commission Orders (Spent Nuclear Fuel in Transit) in the Part 73 clearance renewal. The burden is estimated to average 188 hours but does not impact this rulemaking and the current burden for these sections is estimated to be zero for this rulemaking.**

The total annual burden for this rule is: 1,395 (1,273 in year 1 annualized to 424.3 hours + 613.33 annual reporting + 38 annual recordkeeping + 319.65 annual third party).

The overall estimated burden cost for the industry to respond to this collection is \$382,306 (\$348,774 one-time reporting + one-time third-party disclosure + one-time recordkeeping annualized to \$116,258 + \$168,052 annual reporting + \$10,412 annual recordkeeping + \$87,584 annual third-party). The rule change is requiring an estimated \$382,306 increase in recordkeeping/reporting, resulting in an overall collection burden cost of \$144,280,269.

The NRC has compiled a detailed table documenting all changes in burden from the previous estimates on record for each requirement to the current estimates. See Supplementary Documents.

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 records storage cost has been determined to be equal to 0.0004 percent of the recordkeeping burden. Therefore, the records storage is estimated to be \$4.27 (39 recordkeeping hours x 0.0004 x \$274).

The currently approved additional cost for Part 73 is \$52,044. The requested additional costs are \$52,048 (\$52,044 + \$4).

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. The NRC does estimate the burden amounts to \$164,400 (600 hours per year at \$274/hr). The cost is fully recovered by license fee assessments to NRC licensees pursuant to 10 CFR Parts 170 and/or 171.

The previously approved burden to the Federal government for Part 73 is \$1,169,868. The requested burden to the Federal government is \$1,334,268 (\$1,169,868 + \$164,400).

15. Reasons for Change in Burden or Cost

The final rule will increase the overall burden by 1,395 hours from 555,346 to 556,741.

This increase in burden is due to the re-evaluation of NRC's security requirements for SNF in transit. The NRC estimates the potential impacted "universe" of respondents for this final rule will consist of Commercial Nuclear Power Reactors Sites, Decommissioning Nuclear Reactor Sites, Research and Test Reactors, Independent Spent Fuel Storage Installations and a number of Part 70 licensees resulting in an estimated "universe" of 125 licensees. In addition, the NRC estimates that there will be 10 shipments by highway along with 10 shipments by rail for a total of 20 shipments annually. Although 20 shipments are expected, two licensees will ship on average twice a year and sixteen additional licensees will have one annual shipment resulting in 18 annual shipments. This final rule will impose the following burden for information collection requirements:

Reporting Burden

The new reporting requirements have increased due to the pre-planning coordination with the NRC, the licensees must contact the NRC and impacted states of any canceled shipments, and licensees must conduct background investigations before allowing an individual to act as an armed escort or have unescorted access to spent reactor fuel in transit. These new requirements will result in an estimated annual burden of 613.33 hours.

Recordkeeping Burden

The new recordkeeping burden requires each licensee to maintain its access authorization program under the requirements of 73.38(a)(2), it requires the licensee to maintain records on the background investigations for 5 years from the date the individual no longer requires access to spent nuclear fuel, it also requires the licensee when conducting an employment history evaluation, and the licensee may obtain information and documents by electronic means, including telephone. Licensees shall make a record of the contents of the telephone call and shall retain that record. These new requirements will result on an estimated annual burden of 38 hours.

Third-Party Disclosure Burden

The new third-party notification requirement increase will impact states, requiring the licensee not to initiate any element of a background investigation without the informed and signed consent of the subject individual. It also requires third party disclosure to have individuals required to have a background investigation to disclose the personal history information that is required by the licensee's access authorization program. These new requirements will result in an estimated annual burden of 319.65 hours.

One-time Burden

The new one-time burden requirement increase is due to licensees developing, implementing, and maintaining written procedures for conducting background investigations for persons who are applying for unescorted access authorization for spent nuclear fuel in transit. These new requirements will result in an estimate annual burden of 1,273 in year 1 annualized to 424.3 hours. [424.3 one-time burden

hours (420 one-time reporting burden, 3.3 one-time third-party disclosure, and 1 hr. one-time recordkeeping burden)].

The information being collected permits NRC to make a determination as to the adequacy of the licensee's planned security system in meeting regulatory requirements. Information describing the normal operation of the physical protection system is needed to permit NRC to make a determination as to reasonable assurance that the physical protection system operates in accordance with the regulatory requirements. This information is needed to enable NRC to fulfill its responsibilities to respond to, investigate, and correct situations which adversely affect public health and safety or the common defense and security.

The total annual burden for this rule is: 1,395 (1,273 in year 1 annualized to 424.3 hours + 613.33 annual reporting + 38 annual recordkeeping + 319.65 annual third-party).

Also, there is a change in cost because the hourly rate increased from \$258/hour to \$274/hour.

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 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 Hours	Total Burden Cost \$274/hr
73.37(b)(1)(vi)	18	1.11	20	25	500	\$137,000
*73.37(b)(2)(i-iii)	18	6.66	120	0.5	* 0	\$0
73.37(b)(2)(iv)	covered under 73.37(f)(4)					
73.37(b)(2)(v)	1	1	1	0.33	0.33	\$90
73.37(b)(3)(iv)	covered under 73.37(b)(5)					
73.37(b)(3)(v)	covered under 73.37(b)(2)					
73.37(b)(3)(vi)	covered under 73.37(b)(2)					
73.37(b)(3)(vii) (B) and (C)	covered under 73.37(b)(9) and (11)					
73.37(b)(4)(iii)	covered under 73.37(b)(2)					
73.37(f)	covered under 73.71					
73.38(d)	18	1	18	6.00	108	\$29,592
73.38(d)(3)	18	1	18	0.25	5	\$1,370
*73.72(a)(4)(i)-(iii)	18	3.33	60	0.30	* 0	\$0
TOTAL	18		237		613.33	\$168,052

TABLE 2**ANNUALIZED THIRD- PARTY DISCLOSURE 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 Hours	Total Burden Cost \$274/hr
73.37(b)(1)(iv)	18	5.55	100	3	300	\$82,200
*73.37(b)(2)(i-iii)	18	5.56	100	0.5	* 0	\$0
73.37(b)(2)(v)	1	5	5	0.33	1.65	\$452
73.38(d)(1)	18	1	18	0.5	9	\$2,466
73.38(d)(2)	18	1	18	0.5	9	\$2,466
73.38(i)	18	0	0	0.5	0	\$0
TOTAL	18		241		319.65	\$87,584

* Denotes information collections currently being completed under Commission Orders (Spent Nuclear Fuel in Transit). Burden for these collections is already included in the current Part 73 (3150-0002) renewal package and therefore is not included in the estimates for this rule.

TABLE 3**ANNUALIZED RECORDKEEPING BURDEN, 10 CFR PART 73**

Section	No. Of Recordkeepers	No of Records per Recordkeeper	Hours per Record	Total Annual Recordkeeping Burden Hours	Total Burden Cost \$274/hr	Retention period
*73.37(b)(2)(vi)	18	1.11	3	* 0	\$0	3 years
73.37(b)(3)(v)	18	1	0.25	5	\$1,370	3 years
73.38(a)(2)	18	1	0.25	5	\$1,370	3 years
73.38(c)(2)(v)	0	0	0.25	0	0	3 years
73.38(d)(5)(iv)(A)	0	0	0.25	0	\$0	5 years
73.38(d)(5)(vi)	18	1	0.25	5	\$1,370	5 years
73.38(f)(5)	18	1	1	18	\$4,932	5 years
73.38(l)	18	1	0.25	5	\$1,370	5 years
TOTAL	18			38	\$10,412	

TABLE 4**ANNUALIZED ONE-TIME REPORTING BURDEN, 10 CFR PART 73**

Section	No. Of Respondents	Response per Respondent	Total Responses	Burden hrs per Response	Total Burden Hours	Burden Cost @ \$274/hr
73.38(j)	6	1	6	70	420	\$115,080
** TOTAL	6		6		420	\$115,080

**** The overall total for the one-time reporting burden hours is 1,260 hours (1,260/3 years = 420) and 18 responses (18/3 years = 6).**

TABLE 5**ANNUALIZED ONE-TIME THIRD-PARTY DISCLOSURE REPORTING, 10 CFR PART 73**

Section	No. Of Respondents	Notifications per Respondent	Total Number of Notifications	Burden hrs per Notification	Total Burden Hours	Burden Cost @ \$274/hr
73.38(d)(1)	3.3	1	3.3	0.5	1.65	\$452.10
73.38(d)(2)	3.3	1	3.3	0.5	1.65	\$452.10
** TOTAL	3.3		6.6		3.3	\$904.20

**** The overall total for the one-time third-party reporting burden hours is 10 hours (10/3 years= 3.3) and 20 responses (20/3 years = 6.6).**

TABLE 6

ANNUALIZED ONE-TIME RECORDKEEPING BURDEN, 10 CFR PART 73

Section	No. Of Recordkeepers	Number of Records per Recordkeeper	Hours per Record	Total Record-keeping Burden Hours	Total Burden cost \$274/hr	Retention period
73.38(d)(5)(iv) (A)	0	0	0.25	0	\$0	5 years
73.38(d)(5)(vi)	3.3	1	0.25	1	\$274	5 years
**TOTAL	3.3			1	\$274	

**** The overall total for the one-time recordkeeping burden hours is 3 hours (3/3 years= 1) and 10 responses (10/3 years= 3.3).**

TABLE 7

ANNUALIZED BURDEN SUMMARY, 10 CFR PART 73

Table Number	Burden Source	Respondents	Responses	Burden Hours	Burden Cost @ \$274/hr
1	Annual Reporting	18	237	613.33	\$168,052
2	Annual Third-Party Disclosure	18	241	319.65	\$87,584
3	Annual Recordkeeping	18	18	38	\$10,412
4	One-Time Reporting	18	6	420	\$115,080
5	One-Time Third -Party Disclosure	10	6.6	3.3	\$904
6	One-Time Recordkeeping	10	3.3	1	\$274
Total		28	512	1,395	\$382,306

Overall Burden Summary for Part 73

Total Burden Hours: 1,395 (1,273 in year 1 annualized to 424.3 hours [420 one-time reporting + 3.3 one-time third-party disclosure + 1hr. one-time recordkeeping]+ 613.33 annual reporting + 38 annual recordkeeping + 319.65 annual third-party)

Responses: 512 responses (243 reporting + 247.6 third-party disclosure + 21.3 recordkeepers [28 in year 1 + 18 in year 2 + 18 in year 3 = 64 / 3 = 21.3])

Respondents: 28 (18 respondents + 10 one-time respondents)

Total Burden Hour Cost: \$382,306 (\$348,774 one-time reporting + one-time third-party disclosure + one-time recordkeeping annualized to \$116,258 + \$168,052 annual reporting + \$10,412 annual recordkeeping + \$87,584 annual third-party)