

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 Disapproved Abstain

Not Participating

COMMENTS: Below Attached None



SIGNATURE

12/13/11

DATE

Entered on "STARS" Yes 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

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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