Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 37

[Docket No. PRM–37–2; NRC–2021–0051]

Advance Tribal Notification of Certain Radioactive Material Shipments

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; consideration in the rulemaking process.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will consider in its rulemaking process the issue raised in a petition for rulemaking (PRM), PRM–37–2, submitted by Richard Arnold and Ron Johnson, on behalf of the Tribal Radioactive Materials Transportation Committee, dated December 4, 2020. The petitioner requests that the NRC amend its regulations to include advance Tribal notification of certain radioactive material shipments.

DATES: The docket for the petition for rulemaking, PRM–37–2, is closed on November 8, 2022.


SUPPLEMENTARY INFORMATION:

Table of Contents

I. The Petition

II. Public Comments on the Petition
 A. Comments Supporting the Petition
 B. Comments Out of the Scope of the Petition

III. Reasons for Consideration
 A. Availability of Documents

V. Conclusion

I. The Petition

The NRC identified one issue in the petition, as follows: 1

Issue: In 10 CFR part 37, the requirement for licensees to provide advance notification of certain radioactive material shipments only involves State government notifications and does not include Tribal government notifications. In contrast, the advance notification provisions of 10 CFR part 71, “Packaging and Transportation of Radioactive Material,” and 10 CFR part 73, “Physical Protection of Plants and Materials,” require licensees to provide advance notification to both State and Tribal governments for certain shipments. TRMTC states it is “concerned with the divergence that exists in Part 37 in contrast to the content that is provided in Parts 71 and 73.” The petitioner also states that “consistent notification standards must be applied to states and tribal governments as well as constituencies under their respective jurisdictions.”

II. Public Comments on the Petition

The notice of receipt and docketing for the PRM invited interested persons to submit comments. The comment period closed on June 23, 2021. The NRC received 10 comment submissions comprising 63 comments from interested stakeholders, including the Nuclear Energy Institute, Midwestern Radioactive Materials Transportation Committee, Western Interstate Energy Board, High-Level Radioactive Waste Committee, Tribal Radioactive Materials Transportation Committee, Oneida Nation, The Navajo Nation, Pueblo of Sandia, and two private citizens.

The NRC binned the comments related to the petition into two categories. The following discussion provides a summary of each comment and the NRC’s response to the comment. Within each bin, the NRC further grouped the comments by topic. The following discussion also provides a summary of each group of comments and the NRC’s response to that group of comments.

1 The petitioner also stated that NRC’s amendment to Part 37 may encourage the U.S. Department of Energy (DOE) to revise DOE Order 460.2A, Department Materials Transportation and Packaging Management, to have tribes eligible to receive the same advanced notifications for applicable DOE shipments. Potential changes to DOE orders are outside the NRC’s legal authority.
A. Comments Supporting the Petition

Comment: The NRC received several comments that supported the assertion made by the petitioner that consistent notification standards must be applied to States and Tribal governments. The commenters urged the NRC to examine these discrepancies and to take appropriate action to modify the language in 10 CFR part 37 to be consistent with 10 CFR part 71 and 10 CFR part 73 advance Tribal notification provisions.

NRC Response: The NRC agrees with this comment. As stated above, the NRC is planning to conduct rulemaking to revise 10 CFR part 37 to be consistent with advance Tribal notification standards provided in 10 CFR part 71 and 10 CFR part 73. This action is also supported by NRC’s Tribal Policy Statement, which established the NRC’s principles to promote effective Government-to-Government interactions with Federally recognized Tribes, and to encourage and facilitate Tribal involvement in the areas over which the Commission has jurisdiction.

Comment: Several commenters described the importance of consistency between regulations applicable to States and Tribes and stated that this concept reinforces NRC’s Principles of Good Regulation.

Response: The NRC agrees with this comment. As stated above, the NRC is planning to conduct rulemaking to revise 10 CFR part 37 to be consistent with advance Tribal notification standards provided in 10 CFR part 71 and 10 CFR part 73.

Comment: Two commenters stated they believed the proposed rulemaking would benefit all stakeholders. Another commenter stated that the proposed amendment would benefit licensees by creating predictability in planning for conducting radioactive material transportation.

Response: The NRC agrees with these comments. Consistency and predictability of regulations is a goal stated in the NRC’s Principles of Good Regulations, which is beneficial to the regulated community and the public.

Comment: One commenter supported the petition, stating that they believed the current petition is based on an apparent oversight of ensuring complete and rigorous efforts in the notification process.

Response: The NRC disagrees with the comment. The NRC specifically said that it may consider providing advance Tribal notification for 10 CFR part 37 radioactive material in the future when responding to a public comment concerning the “Physical Protection of Byproduct Material” rule. See 78 FR 16922, 16991 (March 19, 2013).

Comment: One commenter stated that a shipment of radioactive material that was subject to the 10 CFR part 37 notification requirements to the States went through Tribal land in 2020 without notification to Federally recognized Tribes. The lack of notice caused significant concerns for the Tribe and its residents.

Response: The NRC understands this concern. The proposed rulemaking would address notification of participating Tribes.

Comment: One commenter discussed implementation of the rule, such as requiring Tribes to submit a letter to the NRC to “opt in” to receive advance notification or requiring Tribes to comply with safeguards information training requirements that are currently in place for participation in the 10 CFR part 71 and 10 CFR part 73 advance Tribal notification program.

Response: The NRC will consider the issues raised in this comment during the rulemaking process.

Comment: Several commenters stated that Tribes govern themselves and the NRC needs to recognize them as sovereign governments.

Response: The NRC agrees with this comment. The NRC recognizes the right of each Indian Tribe to self-governance and supports Tribal sovereignty and self-determination. In the Tribal Policy Statement, Principle 2 states that the NRC recognizes Tribal governments as independent from State governments, with separate and distinct authorities with inherent sovereign powers over their members and territory, consistent with applicable statutes and authorities.

Comment: Two commenters stated that Tribal governments need to be recognized and acknowledged with the same treatment and respect as States, and that they have the right to be notified if radioactive materials are being shipped through their lands.

Response: The NRC agrees with this comment. The NRC recognizes the need for States and Tribes to have consistent treatment for advance notification for Category 1 radioactive material shipments and plans to conduct rulemaking to address this issue.

Comment: The NRC received several comments underlining the importance of advance Tribal notification of radioactive shipments in order to allow the Tribes adequate time to prepare to respond in the event of an incident or accident. Several commenters also stated the importance of the Tribes’ emergency preparedness, response, and risk management in potential incidences of accidental radiological release during shipment.

Response: This comment is outside the scope of the petitioner’s request. The NRC is planning to conduct rulemaking to amend its regulations to improve consistency for advance Tribal notifications for Category 1 radioactive material. In accordance with Tribal Policy Statement, Principle 2, the NRC recognizes Tribal sovereignty, independent from State governments and Tribal governments’ interest in being informed of activities occurring on Tribal lands.

Comment: Several commenters identified the importance for States and Tribes to coordinate and communicate for successful planning of shipments. Other commenters indicated effective communication is paramount in the instance of hazardous, radioactive material transport. Another comment stated that the public’s perception of these shipments is not materially altered by the different regulatory categories, and thus the Tribes’ public information responsibilities would be much the same as for irradiated reactor fuel and special nuclear material, regardless of the different types of materials being moved.

Response: The NRC agrees with the comments. The NRC’s view is that the importance of communication between the States, Tribes, and the public supports the NRC’s plan to conduct this rulemaking.

B. Comments Outside the Scope of the Petition

Three comments within the comment submissions were beyond the scope of the petitioner’s request. They are summarized below.

Comment: One comment submission discussed irradiated fuel rods and how they can be rendered harmless using liquid nitrogen.

Response: This comment is outside the scope of the petition for the NRC to revise 10 CFR part 37 to require advance Tribal notification of shipments for Category 1 radioactive materials.

Comment: One commenter discussed the lack of consultation regarding the determination of transport routes and availability of resources, training, and infrastructure for Tribal emergency preparedness, response, and risk management in potential incidences of accidental radiological release during shipment.

Response: This comment is outside the scope of the petitioner’s request that the NRC revise 10 CFR part 37 to require advance Tribal notification of shipments for Category 1 radioactive materials.
V. Conclusion

For the reasons cited in this document, the NRC will consider the issue raised in the petition in its rulemaking process. The public can monitor further NRC action on the rulemaking titled, “Advance Tribal Notification of Certain Radioactive Material Shipments,” that will address the issue in this petition by searching for Docket ID NRC–2021–0051 on the Federal rulemaking website, https://www.regulations.gov. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2021–0051); (2) click the “Subscribe” link; and (3) enter an email address and click on the “Subscribe” link. Publication of this document in the Federal Register closes Docket ID NRC–2021–0051 for PRM–37–2.


For the Nuclear Regulatory Commission.
Brooke P. Clark, Secretary of the Commission.

[FR Doc. 2022–24351 Filed 11–7–22; 8:45 am]
BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2021–0638]

Airworthiness Criteria: Special Class Airworthiness Criteria for the Joby Aero, Inc. Model JAS4–1 Powered-Lift

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed airworthiness criteria.

SUMMARY: The FAA announces the availability of, and requests comments on, the proposed airworthiness criteria for the Joby Aero, Inc. (Joby) Model JAS4–1 powered-lift. This document proposes airworthiness criteria the FAA finds to be appropriate and applicable for the powered-lift design.

DATES: The FAA must receive comments by December 8, 2022.

ADDRESSES: Send comments identified by docket number FAA–2021–0638 using any of the following methods:

• Federal eRegulations Portal: Go to http://www.regulations.gov and follow the online instructions for sending your comments electronically.

• Mail: Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• Hand Delivery of Courier: Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 8 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

• Fax: Fax comments to Docket Operations at 202–493–2251.