

U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)

**MD 5.1                      CONSULTATION AND COORDINATION                      DT-20-07**  
**WITH GOVERNMENTS AND INDIAN**  
**TRIBES**

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*Issuing Office:*                      Office of Nuclear Material Safety and Safeguards  
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**EXECUTIVE SUMMARY**

Management Directive (MD) 5.1, “Consultation and Coordination with Governments and Indian Tribes,” is revised to—

- Add delegations of authority and responsibilities on Tribal issues for the Deputy Executive Director for Operations for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital Programs;
- More effectively integrate consultation and coordination with Indian Tribes into the MD;
- Include responsibilities arising from the Tribal Policy Statement; and
- Clarify office directors’ and regional administrators’ roles to increase the efficiency of the agency’s intergovernmental consultation.

The MD is retitled from “Intergovernmental Consultation” to “Consultation and Coordination with Governments and Indian Tribes,” reflecting the expanded scope of activities described in this MD. The MD addresses general responsibilities for consultation and coordination with governments and federally recognized Indian Tribes and is not intended to exhaustively capture all consultation responsibilities. In addition, this revision updates references to Executive Orders, laws, and the agency’s regulations, delegations of authority, and guidance.

Directive Handbook 5.1 is eliminated because it was determined to be unnecessary because it was limited to excerpts of public laws. The reference section of MD 5.1 includes the Federal laws from which the excerpts were taken and adds additional references that indicate where consultation and coordination with States, federally recognized Indian Tribes, and Federal agencies are required.

**TABLE OF CONTENTS**

**I. POLICY.....2**

A. States and Federal Agencies.....2

B. Indian Tribes.....3

C. Consultation and Coordination.....4

**II. OBJECTIVES .....5**

**III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY.....6**

A. Chairman.....6

B. Commission.....6

C. Executive Director for Operations (EDO) .....6

D. Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital Programs (DEDM) .....8

E. General Counsel.....8

F. Director, Office of Nuclear Material Safety and Safeguards (NMSS).....9

G. Director, Office of Nuclear Security and Incident Response (NSIR)..... 10

H. Office Directors and Regional Administrators ..... 10

I. NMSS Tribal Liaisons ..... 11

J. Regional State Liaison Officers..... 11

K. Regional State Agreements Officers ..... 12

**IV. APPLICABILITY .....12**

**V. DEFINITIONS .....12**

**VI. DIRECTIVE HANDBOOK .....16**

**VII. REFERENCES.....16**

**I. POLICY**

**A. States and Federal Agencies**

1. The U.S. Nuclear Regulatory Commission (NRC) will provide appropriate and meaningful consultation and coordination that begins as soon as practicable between the NRC and States, other Federal agencies, interstate governmental agencies, and national or regional organizations of States, when imposing regulatory requirements that might significantly or uniquely affect these entities or when consultation is required by Federal law or Federal regulation. References throughout this directive to “State” or “States” include the State government for any State, as defined in Section 274n of the Atomic Energy Act of 1954 (42 U.S.C. 2021); local governments; and other political subdivisions established by a State.

2. The NRC, as authorized and directed by the Atomic Energy Act of 1954 (42 U.S.C. 2011), will cooperate with the States in the formulation of standards for protection against hazards of radiation and to ensure that the Agreement State programs for protection against hazards of radiation will be adequate and compatible. Except where it is otherwise indicated, all objectives that apply to States apply to non-Agreement States and Agreement States. Actions for which the NRC may consult with, or seek the views of, States and national or regional organizations of States include, but are not limited to the following: licensing actions, major interagency agreements, rules and regulations, guides and standards, and major studies that (1) may have a significant impact on States or (2) involve the development of standards for protection against hazards of radiation.

## **B. Indian Tribes**

1. The NRC published its Tribal Policy Statement in the *Federal Register* on January 9, 2017 (82 Federal Register (FR) 2402). The Tribal Policy Statement establishes policy principles to be followed by the NRC to promote effective government-to-government interactions with Indian Tribes and to encourage and facilitate Tribal involvement in the areas over which the NRC has jurisdiction.<sup>1</sup> Consistent with the Tribal Policy Statement, the NRC will provide appropriate, timely, and meaningful consultation and coordination that begins as soon as practicable between the NRC and federally recognized Indian Tribes for NRC regulatory actions that have substantial direct effects on one or more of these tribes, as well as those regulatory actions for which Tribal consultation is required under Federal law. Further, when the NRC receives a request from a Tribe to consult that goes beyond the scope of the consultations contemplated in the Tribal Policy Statement, the NRC will make a reasonable effort to grant the request, taking into consideration the nature of the activity at issue, past consultation efforts, available resources, timing issues, and other relevant factors.
2. Consultation and coordination with federally recognized Indian Tribes may also include outreach to and interaction with relevant intertribal agencies and Indian Tribal organizations. Further, the NRC recognizes the distinction between Indian Tribes that are federally recognized, and those that are not. Consistent with the Tribal Policy Statement, the NRC will reach out to States to identify the appropriate State-recognized Tribes to invite the Tribes to participate in its regulatory process, including opportunities related to rulemaking, licensing, and decommissioning.

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<sup>1</sup> The Tribal Policy Statement is not intended to, and does not, grant, expand, create, or diminish any rights, benefits, or trust responsibilities, substantive or procedural, enforceable at law or in equity in any cause of action by any party against the United States, the Commission, or any person. The Tribal Policy Statement does not alter, amend, repeal, interpret, or modify Tribal sovereignty or any treaty rights of any Indian Tribes, or preempt, modify, or limit the exercise of such rights. Nothing therein shall be interpreted as amending or changing the Commission's regulations.

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### C. Consultation and Coordination

1. This management directive (MD) addresses consultation and coordination with States, federally recognized Indian Tribes, other Federal agencies, interstate governmental agencies, and national or regional organizations of States. The NRC will seek the views of and ensure appropriate consultation and coordination as soon as practicable with these entities, and the NRC will consider Federal laws, regulations, and treaties with Tribes when consulting or coordinating with Tribes. The NRC's consultation and coordination will depend on the entity's relationship to the United States and the particular circumstances of the activity at issue. Two examples of the NRC's unique relationship with government entities are provided below.
  - (a) The NRC shares the Federal Government's unique Trust Relationship with and Trust Responsibility to federally recognized Indian Tribes. Under the Federal Trust Doctrine, the United States—and the individual agencies of the Federal Government—owe a fiduciary duty to federally recognized Indian Tribes. As an independent regulatory agency that does not hold in trust Tribal lands or assets, or provide services to federally recognized Tribes, the NRC fulfills its Trust Responsibility through implementation of principles of the Tribal Policy Statement (82 FR 2402; January 9, 2017), by providing protections under its implementing regulations, and through recognition of additional obligations consistent with other applicable treaties and statutory authorities.
  - (b) The NRC and the Agreement States are co-regulators for the National Materials Program. The NRC and the Agreement States cooperate to ensure that the NRC and Agreement State programs for protection against hazards of radiation are coordinated. Consequently, Agreement States may, in some instances, be treated differently than non-Agreement States. For example, the NRC will involve the Agreement States in regulatory efforts that affect facilities licensed by an Agreement State.
2. This MD addresses the general responsibilities for government-to-government consultation and coordination with governments and federally recognized Indian Tribes. It is not intended to exhaustively capture all consultation responsibilities other requirements for consultation and coordination may apply (such as consultation required under the National Historic Preservation Act (54 U.S.C. 300101) and the implementation of the National Environmental Policy Act (42 U.S.C. 4332)). References to Federal laws, Federal regulations, Executive Orders, NRC policy, NRC guidance, and NRC correspondence associated with the NRC's policy or practice for consulting with States, federally recognized Indian Tribes, and other Federal agencies are provided in Section VII, "References," of this directive.<sup>2</sup>

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<sup>2</sup> The NRC may have additional responsibilities to consult pursuant to Federal laws and Federal regulations that are not covered by this Management Directive.

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Additionally, the NRC may have signed agreements with these entities (e.g., programmatic agreements, memorandums of agreement) that include provisions for cooperation, consultation, training, information exchange, or observation of or participation in certain NRC activities, such as inspections.<sup>3</sup>

3. The appropriate scope and extent of consultation may be influenced by case-specific considerations, including—
  - (a) The activity's significance;
  - (b) The activity's effects on States and federally recognized Indian Tribes;
  - (c) The degree that the activity could affect the relationship between the Federal government and States and federally recognized Indian Tribes;
  - (d) The activity's potential to be disruptive to States and federally recognized Indian Tribes;
  - (e) The activity's cost to States and federally recognized Indian Tribes;
  - (f) The extent that the activity is either broadly applicable to or disproportionately affects States and federally recognized Indian Tribes;
  - (g) The amount of interest by States and federally recognized Indian Tribes, and whether the activity is controversial; and
  - (h) Guidance provided in the agency's Tribal Policy Statement.

## II. OBJECTIVES

- Provide appropriate and meaningful consultation and coordination with States, federally recognized Indian Tribes, Federal agencies, and national or regional organizations of States occurs for the NRC's consulting activities.
- Achieve a better understanding within the NRC of the interests of States, federally recognized Indian Tribes, and certain Federal agencies.
- Improve the understanding that States, federally recognized Indian Tribes, and Federal agencies have of the NRC's policies and procedures.
- Provide for appropriate cooperation with the States in the formulation of standards for protection against hazards of radiation.

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<sup>3</sup> When the NRC discontinues its regulatory authority over certain radioactive materials in a State, the State becomes an Agreement State upon the effective date of the agreement. In these circumstances, the NRC may not be bound by some or all provisions of a programmatic agreement or memorandum of agreement because the NRC would no longer have the requisite authority to enter into or remain party to an agreement related to the regulation of materials now under the Agreement State's jurisdiction.

- Provide for early and substantial involvement of the Agreement States in rulemakings and other NRC regulatory efforts that affect facilities licensed by Agreement States.
- Incorporate the Tribal Policy Statement, organizational responsibilities arising from the Tribal Policy Statement, and associated delegations of authority, into this MD.

### **III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY**

#### **A. Chairman**

As NRC's official spokesperson, signs outgoing correspondence to State, Tribal, and Federal officials that involves major new policy questions and all correspondence to the President and Chairpersons of the NRC's Congressional Oversight Committees. Such correspondence is reviewed and approved by the full Commission (see Section III.B.2 of this directive).

#### **B. Commission**

1. Resolves significant questions of policy related to the NRC's program of cooperation and liaison with States, federally recognized Indian Tribes, and Federal agencies.
2. Reviews and approves outgoing correspondence to State, Tribal, and Federal officials that involves major new policy questions, and all correspondence to the President and Chairpersons of the NRC's Congressional Oversight Committees.

#### **C. Executive Director for Operations (EDO)**

1. Presents significant questions of policy related to the NRC's program of cooperation and liaison with States, federally recognized Indian Tribes, and Federal agencies to the Commission for resolution.
2. Delegates to the Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital Programs (DEDM) the following authority (see the delegation of authority in the Agencywide Documents and Access Management System (ADAMS) ML15357A341):
  - (a) Assist and act for the EDO in executing the EDO's responsibilities related to Tribal issues and to serve as the point-of-contact in the OEDO on all Tribal issues.
  - (b) Act as the designated official for the NRC for consultation with federally recognized Indian Tribes.
  - (c) Take action, as necessary, to ensure that the NRC implements the Tribal Policy Statement and associated commitments.
  - (d) Take action, as necessary, to ensure that the NRC staff has considered the effects of regulatory actions with Tribal implications and to ensure that the Commission is fully informed about Tribal concerns for matters that require Commission deliberation.

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- (e) Take action, as necessary, to facilitate the NRC's meaningful and timely consultation and coordination with federally recognized Indian Tribes on (1) the NRC's regulatory actions that have substantial direct effects on one or more Indian Tribes, (2) the NRC's regulatory actions for which Tribal consultation is required under Federal law or Federal regulation, and (3) other matters requested by Tribal officials.
3. Delegates to the Director, Office of Nuclear Material Safety and Safeguards (NMSS), the authority to (see the delegation of authority in ADAMS ML15321A170)—
- (a) Plan and direct the NRC's program of cooperation and liaison with States, federally recognized Indian Tribes, Indian Tribes as defined in 25 U.S.C. 5304 (formerly cited as 25 U.S.C. 450b), State-recognized Tribes, Indian Tribal organizations, intertribal agencies, local governments and other political subdivisions of a State; interstate governmental agencies, quasi-governmental agencies, and other Federal agencies and their national or regional organizations.
- (b) Take action, including consulting and coordinating, for activities in NMSS's area of responsibility or as deemed necessary to maintain the NRC's communications with States, federally recognized Indian Tribes, intertribal agencies, local governments and other political subdivisions of a State, interstate governmental agencies, quasi-governmental agencies, and other Federal agencies and their national or regional organizations.
- (c) Provide policy and program guidance in order for NRC regional management to direct the regulatory activities of the NRC's Regional State Liaison Officers.
- (d) Identify and take action, as necessary, to conduct consultation and coordination with federally recognized Indian Tribes as well as to implement the Tribal Policy Statement and any associated commitments made by the NRC for activities in NMSS's area of responsibility.
- (e) Conduct consultation and coordination with States, local governments and other political subdivisions of a State, interstate governmental agencies, quasi-governmental agencies, and other Federal agencies and their national or regional organizations for activities in NMSS's area of responsibility.
- (f) Promote the visibility of the NRC at other Federal agencies and conduct liaison activities with other Federal agencies.
- (g) Act as the NRC liaison to the Conference of Radiation Control Program Directors, Incorporated.
4. Delegates to office directors (apart from the Director, NMSS), and regional administrators the authority to (see the delegation of authority in ADAMS ML15321A104)—
- (a) Conduct consultation and coordination with States; local governments and other political subdivisions of a State; interstate governmental agencies; intertribal

agencies; quasi-governmental agencies; and other Federal agencies and their national or regional organizations for activities in the area of responsibility for each position.

- (b) Identify and take action, as necessary, to conduct consultation and coordination with federally recognized Indian Tribes and implement the Tribal Policy Statement and any associated commitments made by the NRC for activities in the area of responsibility for each position.

**D. Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital Programs (DEDM)**

1. Authorities delegated by the EDO (See Section III.C.2).
2. Ensures that the NRC staff makes efforts to grant requests for consultation from Tribal officials, after considering the nature of the request, past consultations, available resources, timing, and other factors.
3. Conducts outreach activities with federally recognized Indian Tribes on matters where the federally recognized Indian Tribes may have an interest.
4. Coordinates with NMSS on responses to requests for consultation or other requests received from Tribal officials, and provides direction to the Director, NMSS, on Tribal liaison activities that are to be conducted by the NMSS Tribal liaisons.

**E. General Counsel**

1. Provides legal opinions and advice with respect to all of the NRC's regulatory activities including, but not limited to, the interpretation and application of—
  - (a) The Atomic Energy Act of 1954 (42 U.S.C. 2011);
  - (b) The Energy Reorganization Act of 1974 (42 U.S.C. 5844);
  - (c) The Reorganization Plan No. 1 of 1980 (5 U.S.C. App.1);
  - (d) The Administrative Procedure Act (5 U.S.C. 500 et seq.);
  - (e) The National Environmental Policy Act (42 U.S.C. 4321);
  - (f) The Nuclear Waste Policy Act of 1982 (42 U.S.C. 10161);
  - (g) The Federal Advisory Committee Act (5 U.S.C. App.2); and
  - (h) Other relevant Federal laws, regulations, case law, treaties, and NRC policies and activities involving consultation, coordination, liaison, or sharing sensitive information with States; federally recognized Indian Tribes; Federal agencies; local governments, and national or regional organizations of States.
2. Provides guidance on the legal obligations of the NRC arising from treaties with federally recognized Indian Tribes, Federal laws, and Federal regulations, and



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Executive Orders and Executive Memoranda, consistent with the NRC's Trust Responsibility and the Tribal Policy Statement.

**F. Director, Office of Nuclear Material Safety and Safeguards (NMSS)**

1. Authorities delegated by the EDO (See Section III.C.3).
2. Coordinates proposed recommendations on policy matters that require Commission involvement and that relate to the NRC's program of cooperation and liaison with States, federally recognized Indian Tribes, and Federal agencies at the Commission level, through the EDO, so that the Commission may review such policies.
3. Consults with the Office of the General Counsel (OGC) to ensure compliance with applicable treaties, laws, Executive Orders, and NRC policies related to the NRC's program of cooperation and liaison with States, federally recognized Indian Tribes, and Federal agencies.
4. Facilitates maintenance of working relationships with elected and appointed officials so that—
  - (a) The NRC can better understand the interests and concerns of States, federally recognized Indian Tribes, and Federal agencies; and
  - (b) States, federally recognized Indian Tribes, and Federal agencies are informed of the NRC's activities and policies.
5. Arranges meetings to resolve major differences when requested by State officials or officials of national or regional organizations of States or by NRC offices or regions.
6. Arranges meetings to resolve major differences with federally recognized Indian Tribes on consulting activities when requested by Tribal officials or by NRC offices or regions.
7. Provides recommendations and assistance to office directors and regional administrators on consultation and coordination with States, federally recognized Indian Tribes, intertribal agencies, Indian Tribal organizations, and national or regional organizations of States.
8. Provides recommendations and assistance to office directors and regional administrators on coordination with Federal agencies.
9. Assists office directors and regional administrators in determining the appropriate means, level of interaction, and timing of actions involving the States, federally recognized Indian Tribes, Federal agencies, intertribal agencies, Indian Tribal organizations, and national or regional organizations of States; also assists with performing these actions.
10. Conducts Tribal liaison activities as directed by the DEDM.
11. Informs and educates the NRC staff about topics that could contribute to improving the consultation and coordination with federally recognized Indian Tribes, including:

the Federal Trust Responsibility, the Tribal Policy Statement, known issues of concern for specific federally recognized Indian Tribes, and cultural considerations for working with federally recognized Indian Tribes.

**G. Director, Office of Nuclear Security and Incident Response (NSIR)**

Consults and coordinates with Federal agencies when developing any contingency plans for dealing with threats, thefts, and sabotage related to special nuclear materials, high-level radioactive waste, and nuclear facilities resulting from all activities licensed under the Atomic Energy Act of 1954.

**H. Office Directors and Regional Administrators**

1. Authorities delegated by the EDO (See Section III.C.4).
2. Address the views of States and inform the Commission of the views of States in decision documents that involve State issues.
3. Provide NMSS with early notice of activities that may require consultation or coordination assistance by NMSS.
4. Inform NMSS of policy and process issues associated with consultation and coordination with States, federally recognized Indian Tribes, and national or regional organizations of States.
5. Coordinate with NMSS Tribal Liaisons for assistance in identifying federally recognized Indian Tribes for which consultation or coordination for NRC licensing and regulatory activities should be sought, and in determining the appropriate means, level, and timing of involvement of federally recognized Indian Tribes, intertribal agencies, and Indian Tribal organizations for such activities.
6. Ensure that the NRC representative for consultation with representatives of Tribal governments has an appropriate rank and position, and to the extent possible can serve as agency decisionmaker, based on—
  - (a) The activity involved,
  - (b) The level of interaction,
  - (c) The established agenda, and
  - (d) The rank of the Tribal officials participating in the meeting.
7. Coordinate with NMSS Tribal Liaisons for assistance in identifying State-recognized Indian Tribes, intertribal agencies, and Indian Tribal organizations that the staff may wish to conduct outreach to and coordinate with for NRC licensing and regulatory activities, and provide State-recognized Indian Tribes, intertribal agencies, and Indian Tribal organizations with opportunities to participate in such activities.

8. Maintain working relationships with regional elected and appointed officials so that—
  - (a) The NRC can better understand the interests and concerns of States, federally recognized Indian Tribes, and Federal agencies; and
  - (b) States, federally recognized Indian Tribes, and Federal agencies are informed of the NRC's activities and policies.

**I. NMSS Tribal Liaisons**

1. Implement NMSS's responsibilities related to the NRC's program of cooperation and liaison with federally recognized Indian Tribes.
2. Serve as the primary points-of-contact for federally recognized Indian Tribes. Separate from the government-to-government consultation activities described in this MD also serve as the point-of-contact for coordination with State-recognized Tribes, intertribal agencies, and Indian Tribal organizations.
3. Conduct Tribal liaison activities as directed by the DEDM.
4. When requested, assist NRC staff in identifying federally recognized Indian Tribes. Separate from the government-to-government interactions described in this MD also assist NRC staff in identifying State-recognized Tribes, intertribal agencies, and Indian Tribal organizations that staff may wish to conduct outreach to or coordinate with for NRC licensing or regulatory activities. Assist the NRC staff in determining the appropriate means, level, and timing of involvement of federally recognized Indian Tribes, State-recognized Tribes, intertribal agencies, and Indian Tribal organizations for such activities.
5. Inform and educate the NRC staff about topics that could contribute to improving the consultation and coordination with federally recognized Indian Tribes, including the following: the Federal Trust Responsibility, the Tribal Policy Statement, known issues of concern for specific federally recognized Indian Tribes, and cultural considerations for working with federally recognized Indian Tribes.
6. Coordinate Tribal consultation, to the extent possible, with other Federal agencies.

**J. Regional State Liaison Officers**

1. Serve as the primary points-of-contact for States, regional offices of Federal agencies, and, as needed, local elected and appointed officials.
2. Conduct State liaison and outreach activities as directed by regional management.
3. Conduct liaison and outreach activities with federally recognized Indian Tribes as directed by regional management and in coordination with the NMSS Tribal Liaisons.
4. Inform and educate NRC staff about political, regulatory, and public interest issues within applicable States and local jurisdictions.

### **K. Regional State Agreements Officers**

1. Serve as the primary points-of-contact for Agreement State regulatory agencies.
2. Monitor and evaluate Agreement State regulatory programs in accordance with NMSS policies and procedures.
3. Conduct outreach and coordination with Agreement State regulatory agencies, as directed by regional divisional management and in coordination with NMSS.

## **IV. APPLICABILITY**

The policy and guidance in this directive apply to all NRC staff.

## **V. DEFINITIONS**

### **Agreement State**

Any State with which the Commission or the Atomic Energy Commission has entered into an effective agreement under subsection 274b of the Atomic Energy Act.

### **Consulting Activities**

Actions for which the NRC is required to consult and actions for which the NRC consults as a matter of policy.

### **Consultation**

For States and other Federal agencies, consultation includes, but is not limited to, efforts through which the NRC confers with, seeks the views of, or arranges the opportunity for States and other Federal agencies to provide input to the NRC. These efforts may include, but are not limited to:

- Timely communication;
- Circulating draft documents for comment, when appropriate;
- Issuing letters inviting comments or an expression of interest;
- Participating in meetings or workshops; and
- Issuing invitations to establish committees to work with the NRC on a specific program.

For federally recognized Indian Tribes, consultation means the NRC's efforts to conduct meaningful and timely discussions between the NRC and Tribal governments on the NRC's regulatory actions that have substantial direct effects on one or more federally recognized Indian Tribes and those regulatory actions for which Tribal consultation is required under Federal law. The NRC's Tribal consultation allows federally recognized Indian Tribes the opportunity to provide input on regulatory actions with Tribal implications and in which Tribal consultation is required, and is different from the

outreach and public comment periods. The consultation process may include, but is not limited to, providing for mutually-agreed protocols, timely communication, coordination, cooperation, and collaboration. The consultation process provides opportunities for appropriate Tribal officials or representatives to meet with NRC management or staff to achieve a mutual understanding between the NRC and the federally recognized Indian Tribes of their respective interests and perspectives.

### **Coordination**

Includes cooperating with and working collaboratively with States, federally recognized Indian Tribes, and Federal agencies. Coordination includes, but is not limited to, the participation of States, federally recognized Indian Tribes, and Federal agencies (1) in meetings or workshops, (2) in the coordination of agency reviews, such as those required for the National Environmental Policy Act and the National Historic Preservation Act; and (3) on committees working with the NRC on a specific program. Coordination also includes taking independent or interdependent action towards a defined objective (e.g., the programs of cooperation for the control of radiation hazards associated with byproduct, source, and special nuclear materials and the orderly regulatory program development for the use and regulation of byproduct, source, and special nuclear materials).

### **Federal, State, and Tribal liaison program**

Consists of the activities of NMSS, the NRC regions, and the Regional State Liaison Officers that enable the NRC to work in cooperation with Federal agencies, States, local governments, Federally recognized Indian Tribes, State-recognized Indian Tribes, quasi-governmental agencies, intertribal agencies, Indian Tribal organizations, interstate governmental agencies, and national or regional organizations of States. The program ensures that the NRC maintains effective relations and communications with these entities and to promote greater awareness and mutual understanding of the policies, activities, and concerns of all parties as they relate to radiological safety at NRC-licensed facilities. The program also includes the efforts to maintain communication with State Liaison Officers and maintain effective communication at the policy level between the NRC and other Federal agencies.

### **Indian Tribe**

An Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Indian Tribe List Act of 1994, 25 U.S.C. 5130 (formerly cited as 25 U.S.C. 479a).

### **Indian Tribal organization**

Includes national or regional organizations of federally recognized Indian Tribes or their representatives.

### **Interstate governmental agency**

An agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties relevant to NRC licensing or regulatory activities.

### **Intertribal agency**

An agency established by two or more federally recognized Indian Tribes that is authorized by the governing bodies of those Indian Tribes to consult with the NRC on regulatory actions with Tribal implications.

### **National Materials Program**

The broad collective framework within which both the NRC and the Agreement States function in carrying out their respective radiation safety regulatory programs. The framework also includes the Organization of Agreement States and the Conference of Radiation Control Program Directors, Incorporated.

### **National or regional organizations of States**

Includes national or regional organizations of States, local governments, or Federal agencies whose primary membership includes State governments; local governments; agencies of State governments, or local governments; Federal agencies; other political subdivisions established by a State; interstate governmental agencies; quasi-governmental agencies established by a State government or a State constitution; or their representatives.

### **NMSS Tribal liaisons**

NRC staff that serve as the primary points-of-contact for federally recognized Indian Tribes. Separate from their involvement with government-to-government activities described in this MD; NMSS Tribal liaisons also serve as the primary points-of-contacts for State-recognized Indian Tribes, intertribal agencies, and Indian Tribal organizations.

### **Outreach**

NRC staff efforts to inform Federal agencies, States, local governments, federally recognized Indian Tribes, State-recognized Indian Tribes, quasi-governmental agencies, intertribal agencies, Indian Tribal organizations, interstate governmental agencies, and national or regional organizations of States about the agency's actions and plans. Outreach includes sharing information and encouraging the communication of concerns and interests to the NRC staff.

### **Program of cooperation and liaison with States, Indian Tribes, and Federal agencies**

Refers to the collective efforts of the NRC staff to consult, conduct outreach, coordinate, cooperate, and collaborate with Federal agencies, States, local governments, federally recognized Indian Tribes, State-recognized Indian Tribes, quasi-governmental agencies,

Federal agencies, intertribal agencies, Indian Tribal organizations, interstate governmental agencies, and national or regional organizations of States. It includes 1) the programs of cooperation for the control of radiation hazards associated with byproduct, source, and special nuclear materials; 2) the orderly regulatory program development for the use and regulation of byproduct, source, and special nuclear materials; and 3) programs where there are shared intergovernmental responsibilities or administration. It also includes the participation of State governments and federally recognized Indian Tribes in NRC license reviews.

### **Regional State Agreements Officers**

NRC regional staff that serve as the primary points-of-contact for Agreement State regulatory agencies.

### **Regional State Liaison Officers**

NRC staff that serve as the primary points-of-contact for States, regional offices of Federal agencies, and, as needed, local elected and appointed officials.

### **Regulatory actions with Tribal implication**

Regulations, proposed legislation, legislative comments, and other policy statements or actions that have substantial direct effects on one or more federally recognized Indian Tribes, on the relationship between the Federal Government and federally recognized Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and federally recognized Indian Tribes.

### **State**

Includes the State government for any State, as defined in Section 274n of the Atomic Energy Act of 1954 (42 U.S.C. 2021); local governments; and other political subdivisions established by a State.

### **State-recognized Indian Tribe**

Any Tribe, band, nation, village, or community of Indians that (1) the Secretary of the Interior has not acknowledged to exist as an Indian Tribe, pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5130 (formerly cited as 25 U.S.C. 479a), and (2) either has been recognized as an Indian Tribe by any State or has been determined by any State to be eligible for State services and State funding for which Tribal organizations may apply.

### **Tribal official**

An elected, appointed, or designated official or employee of a federally recognized Indian Tribe or authorized intertribal organization.

### **Tribal Policy Statement**

The Commission's statement of policy (82 FR 2402; January 9, 2017) that sets forth principles to be followed by the NRC staff to promote effective government-to-government interactions with American Indian and Alaska Native Tribes and to encourage and facilitate Tribal involvement in the areas over which the Commission has jurisdiction.

### **Trust Responsibility**

A fiduciary duty, on the part of the United States to protect Tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of Federal law with respect to Indian Tribes. The NRC exercises its Trust Responsibility in the context of its authorizing laws, which include the Atomic Energy Act of 1954, the Energy Reorganization Act of 1974, the Nuclear Waste Policy Act of 1982, the Low-Level Radioactive Waste Policy Act of 1985, and the Uranium Mill Tailings Radiation Control Act of 1978. As an independent regulatory agency that does not hold in trust Tribal lands or assets, or provide services to federally recognized Tribes, the NRC fulfills its Trust Responsibility through implementation of the principles of the Tribal Policy Statement, by providing protections under its implementing regulations and through recognition of additional obligations consistent with other applicable treaties and statutory authorities.

## **VI. DIRECTIVE HANDBOOK**

Directive Handbook 5.1 is eliminated because it was determined to be unnecessary because it was limited to excerpts of public laws. The reference section of MD 5.1 includes the Federal laws from which the excerpts were taken and adds additional references that indicate where consultation and coordination with States, Federally recognized Indian Tribes, and Federal agencies are required.

## **VII. REFERENCES**

### ***Code of Federal Regulations***

10 CFR, Part 2, "Agency Rules of Practice and Procedure."

10 CFR, Part 20, "Standards for Protection Against Radiation."

10 CFR, Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material."

10 CFR, Part 40, "Domestic Licensing of Source Material."

10 CFR, Part 50, "Domestic Licensing of Production and Utilization Facilities."

10 CFR, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

10 CFR, Part 60, "Disposal of High-Level Radioactive Wastes in Geologic Repositories."



10 CFR, Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste."

10 CFR, Part 63, "Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain."

10 CFR, Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste."

36 CFR, Part 800, "Protection of Historic Properties."

41 CFR, Part 102-3, "Federal Management Regulation."

### ***Executive Orders***

Executive Order 12866, "Regulatory Planning and Review," dated September 30, 1993 (58 FR 51735).

Executive Order 13132, "Federalism," dated August 4, 1999 (64 FR 43255).

Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," dated November 6, 2000 (65 FR 67249).

### ***Presidential Guidance***

"Government-to-Government Relations with Native American Tribal Governments," Memorandum from William J. Clinton, President, to the Heads of Executive Departments and Agencies, April 29, 1994.

### ***Federal Register Documents***

"Agreement State Program Policy Statement," 82 FR 46840 (October 6, 2017), available at <https://www.nrc.gov/docs/ML1726/ML17262B205.pdf>.

"Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement," 46 FR 7540 (January 23, 1981), as amended by policy statements published at 46 FR 36969, July 16, 1981, and 48 FR 33376 (July 21, 1983), available at <https://www.nrc.gov/reading-rm/doc-collections/commission/policy/48fr33376.pdf>.

Statement of Policy on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities," 57 FR 6462 (February 25, 1992), available at <https://www.nrc.gov/reading-rm/doc-collections/commission/policy/57fr6462.pdf>.

"Tribal Policy Statement," 82 FR 2402 (January 9, 2017).

### ***Nuclear Regulatory Commission***

AD-200, "Format for STC and RCPD Letters," December 23, 2014 (ML14352A335).

AD-800, "Communications Between FSME/Regional Offices and the Agreement States," October 15, 2009 (ML092860355).

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COMKC-91-007, "Improving Cooperation with Agreement States," Memorandum from Samuel J. Chilk, Secretary, to James M. Taylor, Executive Director for Operations, and Harold R. Denton, Director, Office of Governmental and Public Affairs, April 11, 1991 (ML010100091).

COMSECY-06-0046, "Recommendation on Establishing a Single, Visible, High-Level Point of Contact in the Office of the Executive Director for Operations for the Tribes," Memorandum from Luis Reyes, Executive Director for Operations, to Chairman Klein, Commissioner McGaffigan, Commissioner Merrifield, Commissioner Jaczko, and Commissioner Lyons, September 29, 2006 (ML062690156).

Internal Commission Procedures,  
<https://www.nrc.gov/about-nrc/policy-making/internal.html>.

Letter to Leon E. Panetta, Director, Office of Management and Budget, from Ivan Selin, Chairman, NRC, November 17, 1993 (ML17068A047).

Letter to Mitchell E. Daniels, Jr., Director, Office of Management and Budget, from Paul H. Lohaus, Director, Office of State and Tribal Programs, NRC, February 1, 2001 (ML010370444).

Letter to Peter Orszag, Director, Office of Management and Budget, from Gregory B. Jaczko, Chairman, NRC, March 10, 2010 (ML093620067).

Letter to Robert G. Damus, Esq., General Counsel, Office of Management and Budget, from Karen D. Cyr, General Counsel, NRC, September 7, 1999 (ML003672643).

Letter to Rosalyn Rettman, Esq., Acting General Counsel, Office of Management and Budget, from Karen D. Cyr, General Counsel, NRC, January 26, 2001 (ML010260297).

#### Management Directives—

5.2, "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilizations Facilities."

5.3, "Agreement State Participation in Working Groups."

5.6, "Integrated Materials Performance Evaluation Program (IMPEP)."

5.7, "Technical Assistance to Agreement States."

5.8, "Proposed Section 274b Agreements with States."

5.9, "Adequacy and Compatibility of Program Elements for Agreement State Programs."

6.3, "The Rulemaking Process."

9.17, "Organization and Functions, Office of the Executive Director for Operations."

9.26, "Organization and Functions, Office of Nuclear Material Safety and Safeguards."

Memorandum to Chairman Meserve, NRC, from Karen D. Cyr, General Counsel, "Executive Order No. 13132, 'Federalism,'" December 27, 1999 (ML003672638).

Memorandum to Frederick D. Brown, Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital Programs, from Victor M. McCree, "Delegation of Authority to Act as the Point of Contact for the U.S. Nuclear Regulatory Commission and the Office of the Executive Director for Operations on Tribal Issues and Designated Official for Tribal Consultation," June 7, 2017 (ML15357A341).

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TR-100, "Tribal Liaison Roles and Responsibilities," December 19, 2018  
(ML18275A329).

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Nuclear Waste Policy Act of 1982, Section 141(h) (Pub. L. 97-425) (42 U.S.C. 10161).

Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Section 3116 (50 U.S.C. 2602 note).

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