

NUCLEAR REGULATORY COMMISSION

[NRC-2012-0235]

Draft Tribal Protocol Manual and Scoping for Proposed Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is seeking comments on its draft “Tribal Protocol Manual” dated September 2012. After the Tribal Protocol Manual is issued, the NRC intends to use it as a starting point for developing a policy statement on consultation with Native American tribes. The NRC is committed to an open and collaborative regulatory environment in the development of its policies and licensing actions, and therefore is committed to meaningful consultation and coordination with Native American tribes.

In addition to the request for comments on the draft Tribal Protocol Manual, the NRC also seeks suggestions on the development of the proposed tribal consultation policy statement from tribal governments and organizations, the public, and other interested parties. The questions found in section II are offered for consideration. Respondents are not limited to these questions and are encouraged to submit any comments/feedback they think would benefit the NRC in developing a tribal consultation policy statement.

DATES: Submit comments on the draft Tribal Protocol Manual or on the proposed tribal consultation policy statement by April 1, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on <http://www.regulations.gov> under Docket ID **NRC-2012-0235**. You may submit comments by any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2012-0235**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; e-mail: Carol.Gallagher@nrc.gov.

- **NRC Home Page:** A graphic displaying the Tribal Protocol Manual will be prominently displayed on the NRC home page (<http://www.nrc.gov>) for a period of time, after which it will be move to the “Spotlight” Section.

- **Mail comments to:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

- **Fax comments to:** RADB at 301-492-3446.

FOR FURTHER INFORMATION CONTACT: Cardelia H. Maupin, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2312; e-mail: Cardelia.Maupin@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID **NRC-2012-0235** when contacting the NRC about the availability of information regarding this draft Tribal Protocol Manual or the proposed tribal consultation policy statement. You may access information related to these documents, which the NRC possesses and is publicly available, by any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2012-0235**.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may access publicly-available documents online in the NRC Library at

<http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The draft "Tribal Protocol Manual" dated September 2012, is available electronically under ADAMS Accession Number: ML12261A423.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID **NRC-2012-0235** in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

In January 2009, the Commission directed the staff to develop an internal protocol for interactions with Native American tribal governments¹ that allows for custom tailored approaches to address the interests of both the NRC and the tribal governments on a case-by-case basis.² On November 5, 2009, President Obama issued a Presidential

¹ For the purposes of this notice, the terms “Native American tribal governments” and “Native American tribes” are used interchangeably. In addition, these terms also include the term “Native Hawaiian organization,” as that term is defined in 36 CFR 800.16(s)(1).

² Staff Requirements Memorandum, “Briefing on Uranium Recovery,” M081211 (ML090080206) January 8, 2009.

Memorandum that reaffirmed Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," and emphasized the importance of strengthening government-to-government relationships with Native American tribes. In SECY-09-0180, "U.S. Nuclear Regulatory Commission Interaction with Native American Tribes," (ADAMS Accession No. ML092800263), dated December 11, 2009, NRC staff reviewed its various interactions with Native American tribes, and noted that these interactions were limited to a small number of activities under the NRC regulatory authority. At that time, staff concluded that a "case-by-case" approach had proven effective in interactions with Native American tribes by allowing for custom-tailored approaches that met Commission and tribal needs, and that no formal policy was needed. The NRC staff also noted that the internal guidance on tribal protocol would further enhance staff's engagement with Native American tribes. The internal NRC guidance, "Tribal Protocol Manual: Guidance for NRC Employees" was developed and issued in March 2010.

As described in enclosure 1 to SECY-09-0180, the NRC has consulted with several tribes, including some instances of government-to-government meetings, regarding various NRC regulatory and licensing activities. The subjects of these actions have included reactor inspections of the Prairie Island Nuclear Generating Plant (PINGP) in Welsh, Minnesota, the renewal of PINGP's operating license, the proposed Yucca Mountain high-level waste repository in Nevada, uranium milling operations in New Mexico and Arizona, the potential placement of a power reactor in Galena, Alaska, and the reclamation of the Sequoyah Fuels Corporation site in Gore, Oklahoma. Recently, a heightened interest in uranium recovery development and new nuclear reactor construction has resulted in a significant increase in the number and complexity of consultations between the NRC and Native American tribes in order to address the obligations and requirements of Section 106 of the National Historic Preservation Act (NHPA).

The NHPA was enacted in 1966 to coordinate and support public and private efforts to identify, evaluate, and protect historic properties. Section 106 of the NHPA directs Federal agencies to consider the effects of their proposed actions on historic properties as a part of their decision making process. Specifically, the regulations of the Advisory Council on Historic Preservation, which implement Section 106, set forth requirements for a Federal agency's consultation with Native American tribes.³

In light of these increased interactions with Native American tribes and to improve communication with tribal governments, the Commission, by Staff Requirements Memorandum (COMWDM-12-0001), "Tribal Consultation Policy Statement and Protocol," (ADAMS Accession No. ML121430233), dated May 22, 2012, directed the NRC staff to develop a proposed policy statement and protocol on consultation with Native American tribal governments. As a part of these efforts, the NRC staff identified minor revisions to the March 2010 "Tribal Protocol Manual: Guidance for NRC Employees," and produced the draft Tribal Protocol Manual, dated September 2012. The NRC staff recognizes that additional changes to improve the draft Tribal Protocol Manual may be needed and is thus seeking public comment on the document in order to consider a broad range of experiences and perspectives on tribal interactions, including consultation and government-to-government meetings. Therefore, the NRC is requesting comments on the draft Tribal Protocol Manual and the development of a proposed tribal consultation policy statement from tribal governments and organizations, the public, and other interested parties. The questions in section III are intended to assist the NRC in developing an effective tribal consultation policy statement.

³ 36 CFR 800.2(c)(2).

III. Questions on the proposed policy statement

Tribal governments and organizations, the public, and other interested parties submitting comments are not limited to responding to the questions set forth below and are encouraged to submit any comments or other feedback they think would benefit the NRC in developing a tribal consultation policy statement.

- How can the NRC strengthen government-to-government relationships with Native American tribes?
- What practices have the NRC or other Federal agencies employed that have been effective in identifying tribal interests and resolving tribal concerns about proposed agency actions?
- Are there specific Tribal Policy Statements in other Federal agencies that could serve as
- a starting point for the NRC efforts?
- What unique tribal issues should the NRC be aware of as a non-landholding⁴, regulatory agency that issues licenses under the Atomic Energy Act?

Dated at Rockville, Maryland, this 4th day of October 2012.

For the Nuclear Regulatory Commission.

/RA/

Larry W. Camper, Acting Director
Office of Federal and State Materials
and Environmental Management Programs

⁴ A landholding agency, such as the Bureau of Land Management, holds or controls land as part of carrying out its agency mission.

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