[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NRC-2012-0235]

Tribal Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing this Statement of Policy to set 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. It provides agencywide guidelines that achieve consistency, but also encourage custom-tailored approaches to consultation and coordination that reflect the circumstances of each situation and the preference of each Tribal government. It is the NRC's expectation that all program and regional office consultation and coordination practices will be consistent with or adhere to the NRC Tribal Policy Statement.

DATES: This policy statement is effective on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Please refer to Docket ID **NRC-2012-0235** when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using 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: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection 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's 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 Tribal Policy Statement, in its entirety, is in the attachment to this document.

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

FOR FURTHER INFORMATION CONTACT: Kevin O'Sullivan, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-8112, e-mail: Tribal_Outreach.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

The purpose of the NRC Tribal Policy Statement is to establish 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 Commission has jurisdiction. The NRC licenses and regulates the Nation's civilian use of radioactive materials to protect public health and safety, common defense and security, and the environment under the Atomic Energy Act of 1954, as amended (AEA) (42 U.S.C. 2011). Other statutory provisions such as the National Historic Preservation Act (NHPA) (54 U.S.C. 300101) can require Tribal consultation as part of the NRC's evaluation of agency activities during licensing actions, rulemaking, or policy development. The NRC complies with statutory provisions and NRC regulatory provisions that require Tribal consultation and interacts with Tribal governments accordingly.

A. NRC Previous Interactions with Indian Tribes

Historically, the NRC has had limited, but significant, interactions with Indian Tribes. The Commission has upheld statutory obligations to consult with Tribes under Federal law and acted in a manner consistent with the spirit of certain Presidential initiatives pertaining to Tribal consultation and coordination. However, the NRC has not previously formalized an agencywide policy statement.

Many Federally recognized Tribes have an interest in public health and safety and environmental protection associated with NRC regulatory activities that include uranium recovery, commercial nuclear power, and nuclear waste transportation, disposal, and storage activities. The NRC has exercised its Trust Responsibility in the context of its authorizing statutes, including the AEA. The NRC Tribal Policy Statement formally reflects the NRC's recognition of the Federal Trust Responsibility and the NRC's commitment to a government-to-government relationship, which is distinct from interactions with members of the public, with Federally recognized Tribes. The NRC will make efforts to consult in good faith with Indian Tribes on agency actions that have substantial direct effects on one or more Indian Tribes as well as those regulatory actions for which Tribal consultation is required under Federal Statute. Under the NRC's policy, the NRC or Tribal governments can request consultation on regulatory activities that have Tribal implications. The NRC's policy is to consult on a government-to-government basis with Tribal governments as soon as practicable on NRC regulatory actions with Tribal implications.

On November 6, 2000, President Clinton issued Executive Order (EO) 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249). Executive Order 13175 states, "'Policies that have Tribal implications' refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes." Executive Order 13175, established the following principles to guide agencies when forming and implementing policies with potential Tribal implications:

- The United States has a unique legal relationship with Indian Tribal governments as set forth in the Constitution of the United States, treaties, statutes, EOs, and court decisions. The Federal government recognizes Indian Tribes as domestic dependent nations under its

protection and has enacted statutes and promulgated regulations that establish and define a trust relationship with Indian Tribes.

- The Federal government has recognized the right of Indian Tribes to self-government with inherent sovereign powers over their members and territory. The United States continues to work with Indian Tribes on a government-to-government basis to address issues concerning Tribal self-government, Tribal trust resources, and Indian Tribal treaty and other rights.

- The United States recognizes the right of Indian Tribes to self-government and supports Tribal sovereignty and self-determination.

As an independent regulatory agency, the NRC is exempt from the requirements of certain EOs, including EO 13175. However, on January 26, 2001, the Commission sent correspondence to the Office of Management and Budget stating that "…in exercising its regulatory authority this agency [NRC] acts in a manner consistent with the fundamental precepts expressed in the Order [EO 13175]" (ADAMS Accession No. ML010260297). To that end, the Commission has developed agency practices for Tribal consultation consistent with the principles articulated in EO 13175.

The NRC's past practice for government-to-government interaction with Federally recognized Tribes has reflected the spirit of the relevant EOs, without establishing a formal policy. The NRC has interacted with Tribal governments on a case-by-case basis, allowing the NRC and the Tribes to initiate communication and consultation. The NRC staff has also maintained working relationships with Tribal governments and Tribal organizations that have an interest in NRC regulated activities.

B. Development of the Draft Tribal Policy Statement

In SECY-96-187, "Policy Issues Raised in Meeting with Prairie Island Dakota Indian Representatives" (ADAMS Accession No. ML16293A128), the NRC staff provided to the Commission an analysis of Tribal issues. The paper centered on issues raised by representatives from the Prairie Island Dakota Indian Community including: 1) entering into a Memorandum of Understanding with the NRC; 2) allowing Tribal representatives to observe inspections at the Prairie Island Nuclear Generating Plant; and 3) developing a formal policy on cooperation with Federally recognized Tribes. In the Staff Requirements Memorandum (SRM) dated November 13, 1996, the Commission approved the staff's recommendation not to develop a formal policy on cooperation with Federally recognized Tribal governments at that time, but to continue addressing Native American issues on a case-by-case basis and operating with Tribal governments on a government-to-government basis (ADAMS Accession No. ML16293A154).

On January 8, 2009, the Commission issued SRM-M081211, from the December 11, 2008, "Briefing on Uranium Recovery," directing the NRC staff to develop and implement an internal protocol for interaction with Native American Tribal Governments that would allow for custom tailored approaches to address both the NRC and Tribal interests on a case-by-case basis (ADAMS Accession No. ML090080206). The Commission also directed the NRC staff to assess what policies other Federal agencies have for interactions with Native American Tribal Governments and to report those findings, which could determine the efficacy of an NRC Tribal Policy Statement, to the Commission. The NRC staff responded to this Commission direction in SECY-09-0180, "U.S. Nuclear Regulatory Commission Interaction with Native American Tribes" (ADAMS Accession No. ML092920384). The staff communicated the determination that the NRC's case-by-case approach to interaction was effective and met the needs of the Commission and the Tribes. The staff concluded that Tribal interactions would not benefit from a formal Tribal policy at that time. The NRC staff also developed NUREG-2173,

"NRC Tribal Protocol Manual: Guidance for NRC Employees," as an internal protocol for interacting with Tribal governments (ADAMS Accession No. ML092990559).

On May 22, 2012, the Commission issued the SRM for COMWDM-12-0001, "Tribal Consultation Policy Statement and Protocol" (ADAMS Accession No. ML121430233), directing the NRC staff to provide a proposed Policy Statement and protocol on consultation with Tribal governments. The Commission also directed the NRC staff to do the following when developing the proposed policy statement: (1) use the existing "Tribal Protocol Manual: Guidance for NRC Employees," and the NRC staff's ongoing efforts outlined in SECY-09-0180 as a starting point and the basis for developing the proposed policy statement and protocol; (2) seek input from the Tribes and the public on how to improve the existing manual; (3) clearly articulate in the policy statement and protocol that the NRC's actions must be in accordance with its governing statutes and regulations; (4) respect and reflect in the policy statement and protocol sensitivity to the distinction made in executive orders and statutes between Indian Tribes who are Federally recognized and those who are not; (5) indicate in the policy statement and protocol that the NRC will conduct outreach to State-recognized Tribes on a case-by-case basis; (6) explore additional opportunities within our current regulatory processes for information sharing and outreach to State-recognized Tribes; and (7) make the protocol prominently publicly available on the NRC's public Web site. The Commission also specified that the proposed policy statement should serve as a high-level foundation for the protocol and should echo the language and spirit of the relevant Presidential Memoranda and EOs.

The NRC staff formed an agency working group to develop a proposed NRC Tribal Policy Statement and to revise the NRC Tribal Protocol Manual. On October 12, 2012 (77 FR 62269), the NRC requested public comment on the NRC Tribal Protocol Manual and requested suggestions for the development of a proposed NRC Tribal Policy Statement to establish policy principles to be followed by the NRC to promote effective government-to-government interactions with Indian Tribes, and to encourage and facilitate involvement by Indian Tribes in

the areas over which the Commission has jurisdiction. The public comment period was open for 180 days, and the NRC received a total of six comment letters from two Tribal governments, two mining associations, one inter-Tribal organization, and a Tribal college.

Informed by internal working group representatives, external outreach, and review of similar policies at other Federal agencies, the NRC developed the proposed NRC Tribal Policy Statement. The NRC engaged with Tribal governments and other interested parties by: (1) collaborating with the National Congress of American Indians to conduct mass mailings to Federally recognized Tribes; and (2) participating in Tribal meetings hosted by Tribal organizations and other Federal agencies (these meetings included attendees from Federally recognized and State-recognized Tribes). Additionally, the NRC staff reviewed Tribal policy statements of executive departments, their related agencies, and other independent agencies and provided their findings to the Commission.

The proposed NRC Tribal Policy Statement was consistent with the language of EO 13175 and was intended to cover a broad range of Tribal consultations, outreach, and interactions conducted by NRC staff. The proposed NRC Tribal Policy Statement applied to Federally recognized Indian Tribes as defined by the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a). It also encouraged participation by State-recognized Tribes in the NRC's regulatory process. On December 1, 2014, the NRC published the proposed NRC Tribal Policy Statement in the *Federal Register* for public comment (79 FR 71136). (See Section III, "Opportunity for Public Participation," of this document for additional information.)

C. Development of the Final NRC Tribal Policy Statement

After the December 2014 publication of the proposed NRC Tribal Policy Statement in the *Federal Register*, the NRC staff engaged in internal and external collaboration and outreach to inform the final NRC Tribal Policy Statement. The NRC staff also sought comments on the final NRC Tribal Policy Statement through participation in external conferences and presentations,

periodic telephone calls, teleconferences, and webinars. The NRC staff continued to participate in standing Tribal meetings hosted by Federal partners and Tribal organizations and initiated additional outreach to Tribal leadership through various regional or affiliated Tribal leadership councils. A list of all outreach efforts can be found in NRC Tribal Liaison Annual Report Fiscal Year 2015 (ADAMS Accession No. ML15247A011).

The final NRC Tribal Policy Statement reflects responses to both internal and external comments. The final NRC Tribal Policy Statement applies to all NRC staff and activities within the NRC's regulatory jurisdiction. The NRC Tribal Policy Statement is written at a high level to cover a wide variety of interactions, consultation, and outreach to Indian Tribes, including Federally recognized American Indian and Alaska Native Tribes.

II. Discussion

Within the context of this discussion, the following definitions will apply unless otherwise indicated:

Consultation means 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 Indian Tribes and those regulatory actions for which Tribal consultation is required under Federal statute. The NRC's Tribal consultation allows Indian Tribes the opportunity to provide input on regulatory actions with Tribal implications and those where 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 Tribes of their respective interests and perspectives.

Indian Tribe means any American Indian or Alaska Native Tribe, Band, Nation, Pueblo, or other organized group or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

Interaction means reciprocal actions involving the NRC and Indian Tribes, and may include, but is not limited to, outreach, consultation, coordination, training, and information exchanges. Interactions may be oral or written and can take place remotely (through electronic media) or in face-to-face meetings.

Outreach means NRC staff efforts to inform Indian Tribes about the agency's actions and plans. Outreach includes sharing information and encouraging Tribal governments to communicate their concerns and interests to NRC staff.

Regulatory Actions with Tribal Implications refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Tribal Official means an elected, appointed, or designated official or employee of an Indian Tribe or authorized intertribal organization.

Trust Responsibility means 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 statutes, which include the AEA, 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 amended. 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.

III. Opportunity for Public Comment

On December 1, 2014 (79 FR 71136), the NRC published a *Federal Register* notice requesting public comments on the proposed NRC Tribal Policy Statement. The original 120-day comment period was extended to 180 days (ending on May 31, 2015) through an additional *Federal Register* notice that was published on February 5, 2015 (80 FR 6553).

A. Overview of Public Comments

The NRC received nine comment submissions, including comments from two representatives from Federally recognized Tribes, two representatives from inter-Tribal organizations, a Federal agency, an electric utility company, and three individuals who did not provide an organizational affiliation.

Comments and responses related to the proposed NRC Tribal Policy Statement are listed in this section, and comments are quoted directly from comment submissions. The NRC Tribal Protocol Manual was published concurrently with the proposed Policy Statement in the *Federal Register* for public comment; comments and related responses will be published separately, with the exception of overlapping comments that cover both the NRC Tribal Policy Statement and the NRC Tribal Protocol Manual.

The following table lists the commenter's name and affiliation, ADAMS accession number for the comment submission, and the document related to each comment.

Commenter Name	Affiliation	Comment Submission ADAMS Accession No.	Document
Charlene Dwin Vaughn	Advisory Council on Historic Preservation (ACHP)	ML15154A842	Proposed Tribal Policy Statement
R. Budd Haemer	Indiana Michigan Power	ML15155A564	Proposed Tribal Policy Statement and Tribal Protocol Manual
Richard Arnold	National Transportation Stakeholders Forum Tribal Caucus	ML15175A161	Proposed Tribal Policy Statement
Bill Thompson	National Tribal Air Association	ML15124A013	Proposed Tribal Policy Statement
Philip R. Mahowald	Prairie Island Indian Community	ML15159A181	Proposed Tribal Policy Statement and Tribal Protocol Manual
Heather Westra	Prairie Island Indian Community	ML15065A219	Proposed Tribal Policy Statement
Cassandra Bloedel	Private Citizen	ML15159A179	Proposed Tribal Policy Statement
Doreen Dupont	Private Citizen	ML15159A180	Proposed Tribal Policy Statement
Savannah Halleaux	Private Citizen	ML14345A750	Proposed Tribal Policy Statement

B. Public Comment Analysis

The NRC has reviewed every comment submission and has identified 42 unique comments requiring NRC consideration and response. Comments and the NRC responses are presented in this section. The comments generally fell within the following categories: NRC's Trust Responsibility as a Federal agency; suggested changes to the language of the NRC Tribal Policy Statement; NRC's Tribal outreach and consultation; and NRC's government-to-government relationship with Tribes. Commenters provided additional comments that did not fall within those categories as well as comments that were out of scope of the NRC Tribal Policy Statement; these comments have been included at the end of this section, along with NRC responses.

1. NRC's Trust Responsibility as a Federal Agency

Multiple commenters provided input related to the NRC's Trust Responsibility to Federally recognized Tribes as a Federal agency.

Comment 1.1. "Politics should not come into play in the Trust Relationship. The Trust Relationship requires more in terms of interactions access, and voice."

Response 1.1. The NRC agrees with this comment. The NRC upholds its Trust Relationship with Federally recognized Tribes without consideration of politics. In achieving its mission, the NRC adheres to the principles of good regulation—independence, openness, efficiency, clarity, and reliability. The NRC seeks to use the highest possible standards of ethical performance and professionalism with regard to regulatory activities. Tribal governments and others are encouraged to participate in the regulatory process to provide relevant facts and opinions pertaining to an action. The NRC considers many, and possibly conflicting public interests, when making decisions that are based on objective, unbiased assessments of all information, and must be documented with reasons explicitly stated.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 1.2. "It is inconsistent to say that the Trust Responsibility is met simply by meeting standards for the general public. Need to recognize the uniqueness of Tribes and the Trust Relationship. Trust relationship requires more than simply meeting what is required."

Response 1.2. The NRC agrees with this comment. Under the Federal Trust Doctrine, the United States—and the individual agencies of the Federal government—owe a fiduciary duty to Indian Tribes. The nature of that duty depends on the underlying substantive laws (i.e., treaties, statutes, agreements) creating the duty. The NRC exercises its Trust Responsibility under its authorizing statutes including the AEA, 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 amended. 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. The NRC Tribal Policy Statement formally reflects the NRC's recognition of the Federal Trust Responsibility and the NRC's commitment to a government-to-government relationship with Federally recognized Tribes that is distinct from interactions with members of the public. The NRC will consult in good faith with Indian Tribes on agency actions that have substantial direct effects on one or more Indian Tribes as well as those agency actions for which Tribal consultation is required under Federal Statute.

The NRC Tribal Policy Statement has been revised to reflect the comment, in part.

Comment 1.3. "NRC has not historically met its Trust Responsibilities. Tribal Advance Notification Rule and the requirement for tribes to 'opt-in' is inconsistent with the Tribal Policy Statement. States do not have to opt-in, while Tribes have to. Tribes should be given the opportunity to 'opt-out.'"

Response 1.3. The NRC disagrees with the comment that the NRC has not historically met its Trust Responsibility. Under the Federal Trust Doctrine, the United States—and the individual agencies of the Federal Government—owe a fiduciary duty to Indian Tribes. The nature of that duty depends on the underlying substantive laws (i.e., treaties, statutes, agreements) creating the duty. The NRC exercises its Trust Responsibility under its authorizing statutes including the AEA, 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 amended. 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. The NRC Tribal Policy Statement formally reflects the NRC's recognition of the Federal Trust Responsibility and the NRC's commitment to a government-to-government relationship with Federally recognized Tribes that is distinct from interactions with members of the public. In addition to affording Tribal members protections under its implementing regulations, the NRC will consult in good faith with Indian Tribes on agency actions that have substantial direct effects on one or more Indian Tribes as well as those agency actions for which Tribal consultation is required under Federal statute.

While the comment related to the Tribal Advance Notification Rule is out of scope of the NRC Tribal Policy Statement, the NRC believes the Tribal Advance Notification Rule is consistent with the NRC Tribal Policy Statement because it requires Tribal governments to opt-in to participate in the advanced notification program. The Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste (Tribal Advance Notification Rule) amends NRC rules to require licensees to provide advance notification to participating Federally recognized Tribal governments regarding shipments of irradiated reactor fuel and certain types of nuclear waste for any shipment that passes within or across their reservations (77 FR 34194). After reviewing public comments received during the development of the Tribal Advance Notification Rule, the NRC staff concluded that Tribes should have the option of whether to opt into the program because the program requires training, certain equipment, and has civil and criminal penalties for non-compliance.

The NRC Tribal Policy Statement has been revised to reflect the comment, in part.

Comment 1.4. "The ACHP [Advisory Council on Historic Preservation] recommends expanding the discussion on trust responsibility [related to policy principle 2 on Trust Responsibility] and including an acknowledgement of trust responsibility. For more information about trust responsibility, please reference the Bureau of Indian Affairs [BIA] definition of trust responsibility (http://www.bia.gov/FAQs/)."

Response 1.4. The NRC agrees with this comment. In comparison with the BIA, the NRC is an independent regulatory agency and does not hold in trust Tribal lands or assets or provide services to Federally recognized Tribes. Under the Federal Trust Doctrine, the United States—and the individual agencies of the Federal Government—owe a fiduciary duty to Indian Tribes. The nature of that duty depends on the underlying substantive laws (i.e., treaties, statutes, agreements) creating the duty. The NRC exercises its Trust Responsibility in the context of its authorizing statutes including the AEA, 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 amended. 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. The NRC Tribal Policy Statement formally recognizes the unique relationship between the Federal Government and Indian Tribes and describes NRC's continuing commitment to a government-to-government relationship with Tribal governments that is distinct from the interactions that the agency has with members of the public. The discussion section of Policy Principle 1 has been revised to provide further clarification and acknowledgment of the NRC's Trust Responsibility.

The NRC Tribal Policy Statement has been revised to reflect the comment.

Comment 1.5. "To Indian tribes, upholding a Trust relationship with Indian tribes means more to Indian tribes than just ensuring the tribal members receive the same protections that are available to other persons (i.e., the general public). In our view, the NRC is required to do more, not less.

"The 'trust responsibility' that the federal government owes to Indian tribes imposes both substantive and procedural duties on the federal government."

Response 1.5. The NRC agrees with the comment. Under the Federal Trust Doctrine, the United States—and the individual agencies of the Federal Government—owe a fiduciary duty to Indian Tribes. The nature of that duty depends on the underlying substantive laws (i.e., treaties, statutes, agreements) creating the duty. The NRC exercises its Trust Responsibility under its authorizing statutes including the AEA, 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 amended. 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. The NRC Tribal Policy Statement formally reflects the NRC's recognition of the Federal Trust Responsibility and the NRC's commitment to a government-to-government relationship with Federally recognized Tribes that is distinct from interactions with members of the public.

Other procedural components for carrying out interactions with Tribal governments are articulated in the Tribal Protocol Manual and specific agency regulations and guidance documents.

The NRC Tribal Policy Statement has been revised to reflect the comment.

Comment 1.6. "PIIC [Prairie Island Indian Community] believes that the trust responsibility must mean more than solely complying with existing statutes and regulations. Compliance of this type is no different than what is owed to the general public. In order for the trust responsibility to have any vitality, Federal agencies must exercise a higher responsibility when taking action that may affect a tribe. This is especially true when the issues concern lands held in trust by the United States for a tribe and the tribal cultural and historic resources and a tribe's ancestral homeland."

Response 1.6. The NRC agrees with this comment. Under the Federal Trust Doctrine, the United States—and the individual agencies of the Federal Government—owe a fiduciary duty to Indian Tribes. The nature of that duty depends on the underlying substantive laws (i.e., treaties, statutes, agreements) creating the duty. The NRC exercises its Trust Responsibility under its authorizing statutes including the AEA, 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 amended. 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. The NRC Tribal Policy Statement formally reflects the NRC's recognition of the NRC's commitment to a government-to-government relationship with Federally recognized Tribes with respect to agency actions that have a substantial direct effect on one or more Indian Tribes that is distinct from interactions with members of the public. The NRC also upholds the statutory obligation to consult with Federally recognized Tribes under Section 106 of the NHPA, which is intended to protect historic properties that may be affected by a Federal undertaking. The NHPA requirement to engage in Tribal consultation applies regardless of the location of the historic property and can include Tribal ancestral lands that are not part of the Tribe's current reservation or trust lands.

The NRC Tribal Policy Statement has been revised to reflect the comment.

2. Suggested changes to the language of the NRC Tribal Policy Statement

Multiple commenters proposed changes to the language of the NRC Tribal Policy Statement or to the discussion section that defines terms utilized throughout the NRC Tribal Policy Statement.

Comment 2.1. "While the 6 principles [of the NRC Tribal Policy Statement] originally proposed serve as foundation of which to build upon, the [U.S. Department of Energy] DOE National Transportation Stakeholders Forum Tribal Caucus believes the proposed principles should be expanded to include an additional Principle Policy Statement #7. Specifically, it is recommended that the existing policy statement include:

PRINCIPLE POLICY STATEMENT #7

7. *NRC is committed to collaborating with tribes in regulatory activities that may have the potential of affecting tribal interests."*

Response 2.1. The NRC disagrees with this comment. The NRC Tribal Policy Statement is consistent with EO 13175, which states "Policies that have tribal implications refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes." The suggested language could be interpreted to require the NRC to seek consultation and collaboration on all of NRC's activities because they have the potential to impact Tribal members even if the activity has no greater potential effect on Tribal members than the general public. For example, health and safety regulations relating to well-logging or medical use of byproduct material could fall under this definition. Therefore, the NRC limited the obligation for the NRC to specifically seek Tribal consultation to activities defined in EO 13175 and those for which Tribal consultation is required under Federal statute. However, Tribes can always request consultation with the NRC regarding "regulatory activities that may have the potential of affecting Tribal interests." The NRC would evaluate such requests on a case-by-case basis.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 2.2. [The commenter suggested including the underlined text in the discussion of policy principle 1.] "The NRC shall respect Indian Tribal self-government and sovereignty, will honor Tribal **treaty and other** rights, and meet responsibilities that arise from the unique relationship between the Federal government and Indian Tribal governments. **Further, the NRC shall encourage states to recognize the Federal government's trust relationship with Tribes and incorporate this recognition in their own practices**."

Response 2.2. The NRC disagrees with this comment. Our understanding of the phrase "Tribal rights" would also cover "tribal treaty and other rights," so the change is unnecessary.

Section 274b. of the AEA authorizes the NRC to enter into agreements with States so that the NRC relinquishes, and the State assumes, regulatory authority over the radioactive material and activities specified in the agreement. The NRC approves the agreement if the NRC finds the State program adequate to protect public health and safety and compatible with the NRC's regulatory program. The NRC periodically reviews the State's program, but the NRC does not mandate to the State how they should interact with Tribal governments when implementing these regulatory requirements and the States apply their own laws to implement their radiation control program for the specified AEA radioactive materials covered in the Agreement.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 2.3. [The commenter suggested including the underlined text in the discussion of policy principle 2, "The NRC Recognizes and Is Committed to a Government-to-Government Relationship With Indian Tribes."] "The NRC recognizes the right of each Indian Tribe to self-governance and supports Tribal sovereignty and self-determination. The NRC recognizes Tribal governments as dependent domestic sovereign nations, independent from

State governments, with separate and distinct authorities **with inherent sovereign powers over their members and territory**."

Response 2.3. The NRC agrees with this comment. The second sentence of the discussion related to Policy Principle 2 now reads, "The NRC recognizes Tribal governments as dependent domestic sovereign nations, independent from State governments, with separate and distinct authorities with inherent sovereign powers over their members and territory, consistent with applicable statutes and authorities."

The NRC Tribal Policy Statement has been revised to reflect the comment.

Comment 2.4. [The Commenter suggested including the underlined text in the discussion of policy principle 4, "The NRC Will Engage in Timely Consultation."] "The NRC will provide timely notice to, and consult with, Tribal governments on NRC's regulatory **and non-regulatory** actions that have substantial direct effects on one or more Indian Tribes. Tribal officials may request that the NRC engage in government-to-government consultation with them on matters that have not been identified by the NRC to have substantial direct effects on one or more Indian Tribes. The NRC will make efforts to honor such requests, taking into consideration the nature of the activity at issue, past consultation efforts, available resources, timing issues, and other relevant factors. The NRC will establish early communication and begin consultation at the earliest permissible stage, as appropriate. The NRC will consult in good faith throughout the agency decisionmaking process and develop and maintain **regular and meaningful** effective communication, coordination, and cooperation with Indian Tribes. The NRC representatives for consultations with Tribal officials or representatives will be of an appropriate rank of NRC representatives and level of interaction commensurate with the circumstances **and who shall have decision-making power**. The appropriate level of interaction will be determined by past and current practices, continuing dialogue between NRC and Tribal governments, and program office consultation procedures."

Response 2.4. The NRC agrees in part and disagrees in part with this comment. The term “regulatory action” is used to reflect the scope of the NRC’s mission as a regulatory agency, and no change has been made to the existing text. “Effective communication” already reflects that communication should be ongoing during the consultation process. The text has been revised to reflect that “The NRC representatives for consultations with Tribal officials or representatives will be of an appropriate rank and the level of interaction will be commensurate with the circumstances. The appropriate level of interaction will be determined by a discussion between the NRC and Tribal governments, and program office consultation procedures and guidance. Participating Tribal and NRC representatives will serve as respective decisionmakers, based on the established agenda and to the extent possible.”

The NRC Tribal Policy Statement has been revised to reflect the comment.

Comment 2.5. [The commenter suggested including the underlined text in the discussion of Policy Principle 5, “The NRC Will Coordinate with Other Federal Agencies.”] “The NRC Will Coordinate With Other Federal Agencies **and States**. When the Commission's action involves other Federal agencies **and States**, the NRC will perform its Tribal consultation jointly with other Federal agencies **and States**, as appropriate.”

Response 2.5. The NRC agrees in part and disagrees in part with this comment. The NRC coordinates with other Federal agencies and with States, as appropriate, during consultations. For example, when following the regulatory procedures related to the NHPA and National Environmental Policy Act (NEPA) the NRC coordinates with the State by communicating with the State Historic Preservation Officer, who is included as a consulting party under the NHPA, or the State agency regarding State listed species of concern for environmental impact determinations on specific resource areas. The NRC disagrees that Policy Principle 5 should be revised to include States since the Principle is limited to Federal coordination.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 2.6. "The ACHP recommends defining *interactions* and using *interactions* consistently throughout the document. In certain cases, *interactions* could be confused with more formal government to government consultations."

Response 2.6. The NRC agrees with this comment. The definition of interaction has been included in the discussion section of the policy statement to identify activities covered by the term "interaction."

The discussion section related to the NRC Tribal Policy Statement has been revised as a result of the comment.

Comment 2.7. "The ACHP recommends defining *substantial direct effects* in order to provide clarity to the NRC's practices addressing Executive Order 13175."

Response 2.7. The NRC disagrees with this comment. The use of "substantial direct effects" is consistent with the language used in EO 13175, which also does not define the term. Since the Tribal Policy Statement covers a vast range of regulatory activities, the NRC has not defined "substantial direct effects" in the NRC Tribal Policy Statement. The NRC will consider including criteria in future guidance documents to determine whether an activity has a "substantial direct effect" on one or more Indian Tribes.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 2.8. "The ACHP recommends specifying *outreach* should be done in addition to formal government to government consultation with Native Americans tribes and/or Native Hawaiian Organizations. Also, the NRC should include a definition for *outreach*. Outreach and consultation should be discussed as two separate activities conducted by the NRC."

Response 2.8. The NRC agrees in part and disagrees in part with this comment. The NRC agrees that outreach is distinct from government-to-government consultation. The NRC

Tribal Policy Statement reflects the distinction between outreach and consultation by putting forth two separate and distinct policy principles related to outreach and consultation. In an effort to provide clarification regarding the distinction between outreach and consultation, Policy Principle 3 has been revised.

The NRC agrees that a definition of *outreach* should be included in the Discussion Section in an effort to provide further clarification The purpose of NRC's Tribal outreach can be broad, ranging from participation in standing Tribal meetings hosted by Federal partners and Tribal organizations, to conducting informational meetings related to a licensing project or rulemaking, to an informational webinar. The NRC Tribal liaison team continues to seek new opportunities to engage Tribal representatives.

The NRC disagrees that the NRC Tribal Policy Statement's discussion of outreach should include Native Hawaiian Organizations. The Tribal Policy Statement pertains to consultation with Tribal Governments recognized by the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. (See response to Comment 4.1 for additional information regarding the Native Hawaiian Organizations.)

The NRC Tribal Policy Statement has been revised as a result of the comment.

Comment 2.9. "The ACHP recommends stating [in the discussion of policy principle 4, "The NRC Will Engage in Timely Consultation"] that it is the federal agency's responsibility to engage in consultation. It is not the tribe's responsibility to request engagement in consultation."

Response 2.9. The NRC agrees in part and disagrees in part with this comment. The NRC agrees that it is its responsibility to initiate consultation when Tribal consultation is required under Federal statute. The discussion of Policy Principle 4 has been revised to clarify that the NRC also engages in consultation when required under Federal statute. However, the NRC disagrees with the suggestion to state specifically in Policy Principle 4 that "it is the federal agency's responsibility to engage in consultation" or that "it is not the tribe's responsibility to request engagement in consultation." As stated in Policy Principle 4 the NRC will provide timely

notice and consult in good faith with Tribal Governments on NRC regulatory actions that have substantial direct effects on one or more Indian Tribes as well as those regulatory actions for which Tribal consultation is required under Federal statute. In some circumstances, Federally recognized Tribes may request to engage in consultation on matters that have not been identified by the NRC as having substantial direct effects on one or more Indian Tribes or for which Tribal consultation is not required under Federal statute. The NRC can make a good faith effort to invite Tribes to consult, but cannot mandate their participation in the process.

The NRC Tribal Policy Statement has been revised to address this comment, in part.

Comment 2.10. "The Policy and Manual generally reflect the differences between outreach and consultation. However, there are several specific spots, discussed below, where the language is unclear or the terms are used interchangeably. Confusion as to whether the NRC is engaged in outreach or consultation or the scope of consultation can result in confusion and delay. The Tribes may even get the impression that the NRC is only pretending to consult; see, for example, the eighth bullet on page 6 of the letter from the Seneca Nation of Indians, dated April 1, 2013, in this docket.

"Principles 3 and 4 of the Policy are potentially confusing as they use the terms 'consult' and 'outreach' interchangeably. In addition, these Principles state that they apply to 'regulatory actions' without clarifying whether what is meant are policy setting, rulemaking, issuing guidance, or a licensing action. As reflected in Section 1.D and associated note 25 of the Manual, as a regulatory agency, the NRC fulfills the fiduciary obligation to Tribes by ensuring uniform treatment action in providing protection under its implementing regulations. On the other hand, where the NRC is engaged in setting policy, issuing rules, or providing guidance that directly impact Tribes, consultation on subjects within the scope of the impact may be appropriate where the impact is significant. To minimize confusing ambiguity, the following clarifications are suggested:

A. The Policy

(1) In Principle 3, replace ‘consult’ with ‘inform’ in the first sentence and replace ‘NRC regulatory actions that have substantial direct impacts on one or more Indian Tribe’ with ‘NRC regulatory actions, including licensing actions, in which one or more Indian Tribes have an interest.’ This clarification ensures that outreach to Indian Tribes will include any regulatory action of interest to a Tribe.”

Response 2.10. The NRC disagrees in part and agrees in part with this comment. The NRC recognizes that consultation and outreach are distinct terms that should not be used interchangeably. The NRC disagrees with the proposed changes to Policy Principle 3, but agrees that Policy Principle 3 should be revised to provide greater clarity. “Consult” has been removed from the first sentence, but “regulatory actions that have substantial direct impacts on one or more Indian Tribe” remains. The NRC Tribal Policy Statement reflects the distinction between outreach and consultation by setting forth two separate and distinct policy principles related to outreach and consultation. In an effort to provide clarification regarding the distinction between outreach and consultation, Policy Principle 3 has been revised. The purpose of NRC’s Tribal outreach can be broad, ranging from participation in standing Tribal meetings hosted by Federal partners and Tribal organizations to conducting informational meetings related to a licensing project or rulemaking to an informational webinar. The NRC Tribal liaison team continues to seek new opportunities to engage Tribal representatives.

The NRC Tribal Policy Statement has been revised as a result of the comment.

Comment 2.11. “In Principle 4, replace ‘on NRC’s regulatory actions’ with ‘prior to the NRC issuing policies, rules, or guidance’ in the first sentence. This clarification reflects that consultation on NRC licensing actions would generally not be consistent with the NRC’s statutory authority. This clarification also harmonizes the Policy with the Presidential directive for agencies to consult on policies with tribal implications, E.O. [Executive Order] 13175, § I(a), Nov. 6, 2000.”

Response 2.11. The NRC agrees in part and disagrees in part with this comment. The focus of EO 13175 is specifically related to consultation on "policies that have Tribal implications" (i.e., "regulations, legislative comments on proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes"). The revised text proposed by the commenter would harmonize the Policy Statement with the EO by replacing the term "NRC's regulatory actions" with a specific set of activities that are consistent with the activities covered in the EO. However, the NRC Tribal Policy Statement covers a broader set of activities than those covered in the EO. Not all NRC Tribal consultation is related to "policies, rules, or guidance" as noted in the comment. The NRC licensing actions may also trigger Tribal consultation under other Federal statutes. Therefore, the discussion of Policy Principle 4 has been revised to clarify the broader set of activities covered by the Policy Statement.

The NRC Tribal Policy Statement has been revised to address the comment, in part.

Comment 2.12. "Consistent with the practices of other agencies, the Policy designates an official to facilitate meaningful and timely consultations with Indian Tribes. See generally, E.O. [Executive Order] 13175, § 5(a), Nov. 6, 2000. The designated official is to work with other NRC personnel to ensure Tribal implications have been considered. The conclusions from these intra-agency considerations should be documented in the papers provided to the Commission (SECY papers), much the way the conclusions of the Chief Financial Officer or legal office are reflected now. Such documentation would serve to provide timely feedback to the Commission, to be mindful with the resource implications associated with formal Tribal consultations, and to show respect for the solemnity of conducting Tribal consultations on a Government-to-Government basis. Also, the second sentence of the first paragraph under 'Designated Official and Tribal Liaisons' is an ambiguous, run-on sentence that does not clarify that where the NRC is engaged in setting policy, issuing rules, or providing guidance that directly impact Tribes, consultation on subjects within the scope of the impact may be

appropriate where the impact is significant as reflected in Comment 2, above. It is suggested that sentence be split into four sentences that read:

> *The designated Official shall ensure that agency program personnel have considered the Tribal implications related to their responsibilities within the NRC's scope of jurisdiction. Where programs, policies, rulemaking or guidance are proposed to the Commission, the conclusions from review of these considerations shall be briefly discussed; specifically whether or not there potentially are direct effects on one or more Indian Tribes. The designated official shall facilitate meaningful and timely consultation concerning the development, administration, and enforcement of NRC's policy, rulemaking, or guidance actions that have a substantial direct effect on one or more Indian Tribes, including obtaining Commission approval to initiate formal consultation with one or more Indian Tribes on subjects within the scope of such substantial direct effects. Prior Commission approval to initiate consultation is not required where consultation is required by a Federal statute*."

Response 2.12. The NRC agrees in part and disagrees in part with this comment. The NRC agrees that the "designated official" should be involved in regulatory actions that have Tribal implications, but disagrees with the commenter's suggested edits and related implications. Some of the commenter's proposed language would introduce procedures that are not appropriate for a high-level policy statement. The NRC would consider developing specific procedures in a future guidance document. Regulatory actions involving Tribal consultation, would be reviewed by the Office of the Executive Director for Operations, including the designated official, before being sent to the Commission. The NRC Tribal Policy Statement identifies the Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital Programs as the "designated official" for

purposes of the NRC Tribal Policy Statement, and not pursuant to EO 13175, as noted by the commenter. The NRC agrees that the second sentence of the section titled, "Designated Officials and Tribal Liaisons," referenced by the commenter should be restructured and has divided it into two sentences.

The NRC Tribal Policy Statement has been revised to reflect part of the comment.

3. Outreach and Consultation

Multiple commenters provided input related to the use of the terms "outreach" and "consultation" in the policy principles of the NRC Tribal Policy Statement.

Comment 3.1. "The NTAA [National Tribal Air Association] supports Principle No. 3 which provides:

The NRC Will Conduct Outreach to Indian Tribes.

The NRC will consult and coordinate with Indian Tribes, as appropriate, related to its regulatory actions with Tribal implications and will seek additional opportunities for general outreach. The NRC will participate in national and regional Tribal conferences and summits hosted by Federal agencies and Tribal organizations, and will seek Tribal representation in NRC meetings and advisory committees concerning NRC regulatory actions that have substantial direct effects on one or more Indian Tribes.

While the NTAA supports Principle No. 3, it does not find that current NRC outreach to Indian Tribes is being done or happening in a timely manner. For example, apart from some local efforts, the NTAA is unaware of any venue where Tribes are being brought together to discuss radiation issues and air quality impacts from the nuclear program. The NTAA finds that NRC must be more diligent in conducting outreach on all issues as they are brought to the attention of the NRC by Tribes, the NTAA, or other Tribal organizations."

Response 3.1. The NRC agrees in part and disagrees in part with this comment. The NRC agrees with the commenter's support of the NRC Tribal Policy Principle 3. The NRC

disagrees that the NRC has not conducted outreach to Indian Tribes in a timely manner. While the NRC has not hosted particular meetings to bring Tribes together to discuss radiation issues and air quality impacts from the nuclear program, the NRC has participated in national and regional Tribal conferences and summits hosted by Federal agencies and Tribal organizations. Additionally, the NRC has provided instructor-led training sessions at multiple Tribal Colleges and Universities to inform Tribes regarding NRC's mission, basic health physics, radiation safety, and environmental review. The NRC will continue to provide training, as needed, to Tribes who are affected by regulated activities and will seek outreach opportunities.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 3.2. "Principle No. 4: Development of a Consultation Plan. The NTAA recommends that Principle No. 4 require the NRC to also develop a comprehensive Tribal consultation plan for NRC regulatory and non-regulatory actions having potentially substantial direct effects on one or more Indian Tribes. Although Tribes consider consultation to be very important, Tribes have limited resources and time to expend on it. The NRC must be sensitive to this fact and make every effort to provide Tribes with any additional resources and assistance that they might require to engage in effective consultation. Some recommendations to help the NRC to conduct effective consultation with Tribes include:

1. Develop guidance on how the NRC intends to assure that consultation meetings result in meaningful dialogue rather than simply pro forma consultation;

2. Assign a Tribal liaison to the specific NRC action who has extensively worked with Tribes on similar issues; and

3. Provide adequate time to Tribes to review and provide comments concerning proposed NRC actions well beyond the 30- to 60-day periods provided to the public to make its comments."

Response 3.2. The NRC disagrees in part and agrees in part with this comment. The NRC staff has developed an implementation plan that will be revised to reflect the final NRC Tribal Policy Statement. The NRC disagrees that Policy Principle 4 should state specifically that the NRC has to develop a comprehensive Tribal consultation plan for NRC regulatory and non-regulatory actions having potentially substantial direct effects on one or more Indian Tribes. The NRC agrees that the NRC should consider development of consultation plans for actions that have substantial direct effects on one or more Indian Tribes as well as those regulatory actions for which Tribal consultation is required under Federal statute, in an effort to promote more effective consultations. The NRC Tribal liaison staff will continue to work in conjunction with program office staff during licensing and other regulatory actions, and may be assigned to specific sites or actions, as resources and staffing permit. The NRC strives to establish an effective consultation process and will consider time allowed for Tribal engagement, including Tribal review and comment of relevant documents, on a case by case basis, as appropriate, during the regulatory process.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 3.3. "Further, the NRC must engage in government-to-government consultation with individual Tribes and not groups of Tribes which might occur as part of an outreach session at a conference or other similar gathering. Such a consultation approach is necessary for a number of reasons. First, it provides for more candid conversations between the individual Tribe and NRC than would occur otherwise during a group meeting. Second, each Tribe's circumstances are unique and must be treated as such by the NRC. A group meeting of Tribes would only give short shrift to these circumstances. Third, most cultural resources information is protected from release under statutory exemptions to the Freedom of Information Act. Discussion of such information by an individual Tribe as part a group meeting of Tribes risks its release to the general public and potentially endangers Tribal cultural sites

and practices. Finally, the subject matter may be so unique that government-to-government consultation between the individual Tribe and NRC provides the best opportunity for a resolution to the situation versus a group meeting of Tribes where any number of Tribal issues could be discussed in a finite period of time."

Response 3.3. The NRC agrees with this comment. The NRC does not consider outreach during a conference to be consultation. The NRC will make an effort to engage Tribes on a government-to-government basis, and will consider whether it is more appropriate to consult individually or simultaneously with multiple Tribes, on a case-by-case basis, taking into consideration site-specific facts, resource limitations, and preference of consulting Tribes.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 3.4. "The NRC will consult and coordinate with Indian Tribes, as appropriate, related to its regulatory actions with Tribal implications and will seek additional opportunities for general outreach. The NRC will participate in national and regional Tribal conferences and summits hosted by Federal agencies and Tribal organizations, and will seek Tribal representation in NRC meetings and advisory committees concerning NRC regulatory actions that have substantial direct effects on one or more Indian Tribes.

"Attending major tribal conferences and meetings is an excellent way of interacting with Indian tribes. As well, NRC staff should endeavor to attend meetings of other federal agencies that attract tribal representatives.

"…[I]t is important to recognize that while there might not be delineated reservation or Trust lands in a given area that does not necessarily mean that there are no tribes interested in or impacted by NRC regulatory actions. Many tribes were forcibly removed from their ancestral lands or ceded vast tracts of land to the federal government through treaties and have retained or reserved rights (fishing, hunting, gathering) for these lands or these lands contain archaeological, cultural or historical resources, including important sacred sites."

Response 3.4. The NRC agrees with this comment. The NRC agrees that attending conferences and meetings is an effective way of engaging Tribes and that the NRC staff should attend meetings held by other Federal agencies that attract Tribal representatives. The NRC staff participates in Tribal meetings hosted by other Federal agencies, including conferences hosted by the U.S. Environmental Protection Agency, the U.S. Department of Energy, and the U.S. Department of Transportation, along with meetings hosted by inter-Tribal organizations, including the National Congress of American Indians. The NRC also agrees that Tribes may have an interest in areas that do not have current reservation or trust lands. The current location and geographic proximity to NRC regulated sites is not the sole consideration of the NRC when engaging in outreach with Tribes. The NRC also considers whether there are Tribes that have historic and cultural ties to the land in question.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 3.5. [The Commenter provided input specific to policy principle 4, "The NRC Will Engage in Timely Consultation."] "Early and frequent consultation must be the cornerstone of the government-to-government relationship. Publishing a notice in the *Federal Register* is not consultation. It should be noted that sometime the consultative process can take time."

Response 3.5. The NRC agrees with this comment. The definition of "consultation" and Policy Principle 4 have been revised to provide further clarification. The revisions clarify that consultation is a process and may include, but is not limited to, providing for mutually-agreed protocols, timely communication, coordination, cooperation, and collaboration and 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 Tribes of their respective interests and perspectives.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

4. NRC's Government-to-Government Relationship with Tribes

Comment 4.1. "The ACHP recommends including Alaska Natives and Native Hawaiians in the NRC Tribal Policy Statement and the Tribal Protocol Manual. The NRC is responsible for licensing materials in Alaska and Hawaii. Additionally, the NRC should avoid homogenizing Native American tribes and reference Native American communities [in the Tribal Protocol Manual], not the Native American community."

Response 4.1. The NRC disagrees in part and agrees in part with this comment. The NRC disagrees that the NRC Tribal Policy Statement should include Native Hawaiian Organizations. The NRC Tribal Policy Statement and Tribal Protocol Manual pertain to consultation with Tribal governments recognized by the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. The definition of Indian Tribe includes Alaska Native Tribes. The United States has recognized and implemented a special political and Trust Responsibility with the Native Hawaiian community through programs and services that are, in many respects, analogous to, but separate from the programs and services enacted for Federally recognized Indian Tribes. However, Native Hawaiian Organizations are not governmental entities. As a result, Native Hawaiian Organizations are not covered by the NRC Tribal Policy Statement. The NRC does comply with statutory obligations to consult with Native Hawaiian Organizations. For example, the NRC consults with Native Hawaiian Organizations, as appropriate, under Section 106 of the NHPA.

The NRC agrees with the comment, "the NRC should avoid homogenizing Native American Tribes" and recognizes distinctions between Federally recognized Tribes, as noted in the Tribal Protocol Manual. The Tribal Protocol Manual has been revised to reflect the suggested change from "community" to "communities."

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 4.2. "Taken together, both the Tribal Protocol Manual and the NRC Tribal Policy Statement (and their respective *Federal Register* notices) provide important historical information, such as various treaties, Congressional Acts affecting Indian tribes and rights, and a discussion of the Federal Trust Responsibility. This information provides the proper historical context critical to understanding the unique relationship federally recognized Indian Tribes have with the Federal Government. This point is underscored in the Tribal Protocol Manual, which notes that Indian tribes are not the public or special interest groups, but are, in fact, governments. This point is important in understanding why tribes desire to have a government-to-government relationship with the NRC and do not wish to be considered 'stakeholders'."

Response 4.2. The NRC agrees with this comment. The NRC Tribal Policy Statement and Tribal Protocol Manual underscore the NRC's commitment to a government-to-government relationship with Indian Tribes. The NRC Tribal Policy Statement formalizes the NRC's commitment to engaging Indian Tribes on a government-to-government basis, providing opportunities for participation in the NRC's regulatory process beyond those available to members of the general public or interested stakeholders, consistent with the principles articulated in EO 13175.

No changes were made to the NRC Tribal Policy Statement or Tribal Protocol Manual as a result of the comment.

Comment 4.3. [The commenter provided input on policy principle 2, "The NRC Recognizes and Is Committed to a Government-to-Government Relationship with Indian Tribes."]

"It should be noted that there are differences among tribes and that there is no 'one size, fits all' approach when it comes to interacting with and understanding Indian tribes. Each tribe is unique and should be treated as such. There should not be a 'standard process' as recommended by some commenters."

Response 4.3. The NRC agrees with this comment. The NRC recognizes distinctions between Federally recognized Tribes, as noted in the Tribal Protocol Manual. The NRC Tribal Policy Statement does not prescribe a "standard process" for interacting with Tribes. Instead, it identifies policy principles that guide the NRC's interactions with Indian Tribes.

No changes were made to the NRC Tribal Policy Statement as a result of the comment.

5. *Additional Comments*

Comment 5.1. "The Nuclear Regulatory Commission should look to the policies and practices of the Environmental Protection Agency [EPA] in developing its relationship with tribal governments. In particular, the EPA identified certain tribal governments to be granted with the same treatment as states, allowing the tribes to have primacy in civil jurisdiction with regards to enforcement of EPA regulations on tribal lands. The NRC should consider implementing a similar policy with some or all tribal governments."

Response 5.1. The NRC disagrees with this comment. Unlike States, the AEA does not authorize Tribal governments to assume regulatory authority over AEA radioactive material. However, the NRC has treated Federally recognized Tribes in a similar manner to States in some instances. For example, Tribal governments can participate in a program to receive advance notification of shipments of certain types of radioactive material and spent nuclear fuel under the Tribal Advance Notification Rule.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 5.2. "NRC needs to be committed to the Tribal Policy Statement. If not, policies can be easily side-stepped. NRC needs to implement these policies."

Response 5.2. The NRC agrees with this comment. The Commission approved a Tribal Policy Statement Implementation Plan in March 2015 (ADAMS Accession No. ML15078A039), which aligns the agency's Tribal activities with policy principles in the NRC Tribal Policy

Statement. The NRC staff will utilize the plan to implement the NRC Tribal Policy Statement, and will update it, as appropriate.

No change has been made to the NRC Tribal Policy Statement as a result of this comment.

Comment 5.3. "The NRC should encourage tribal participation on working groups."

Response 5.3. The NRC agrees with this comment. The NRC will consider inviting Tribes to participate on working groups related to regulatory actions that have substantial direct effects on one or more Indian Tribes, as appropriate.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 5.4. "As subject-matter experts, the NRC will invite tribal representatives to participate on working groups developed for those activities that have the potential of impacting tribal interests, including but not limited to: Integrated Performance Evaluation Program [(IMPEP)] Reviews, Rule-making and other related activities impacting our tribal governments."

Response 5.4. The NRC disagrees in part and agrees in part with this comment. The NRC disagrees with the threshold for Tribal working group participation set by the commenter's language, "for those activities that have the potential of impacting Tribal interests." The NRC agrees that it may invite Tribal representatives to participate on working groups on matters that have substantial direct effects on one or more Indian Tribes, as appropriate. This is consistent with Policy Principle 3 on the NRC outreach to Indian Tribes, which states "The NRC will encourage Tribal governments to communicate their preferences to NRC staff during outreach activities and will seek to provide information about opportunities for Tribal participation in NRC meetings and advisory committees concerning NRC regulatory actions that have substantial direct effects on one or more Indian Tribes, as appropriate." Because the NRC does not have statutory authority to enter into agreements with Tribes like it does with States, Tribal government employees cannot participate in IMPEP Reviews as a review team member in the

same manner as an Agreement State government employee. However, IMPEP reports are publically available and meetings are open to the public.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 5.5. "Further, the NRC will present a yearly report to tribal organizations describing all agency undertakings involving or relating to Indian Tribes."

Response 5.5. The NRC disagrees with this comment. The NRC has no current plans to present an annual report describing "all agency undertakings involving or relating to Indian Tribes." As part of the NRC Tribal Policy implementation Plan, the NRC staff prepares an annual report of the agency's implementation of the NRC Tribal Policy Statement, including some of the agency's Tribal-related interactions. While the report is intended for internal use, it will be available on the NRC's public Web site. It will also be available in hardcopy, upon request.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 5.6. "Yes, extend the comment period."

Response 5.6. The NRC agrees with this comment. The comment period was extended for the NRC Tribal Policy Statement from 120 days to 180 days. The NRC considers comments received after the end of the comment period if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before the comment period closes.

No changes were made to the NRC Tribal Policy Statement as a result of the comment.

Comment 5.7. "We believe that the key to effectively implementing the Tribal Policy Statement is via actions that will protect Indian people, lands, and resources. Toward that end, an evaluation of existing staff guidance is a strong start. This evaluation should not be limited to the Tribal Protocol Manual, but all NRC staff guidance."

Response 5.7. The NRC agrees with this comment. The NRC staff has reviewed numerous agency and office-level guidance documents to determine if changes were necessary before the Commission approves the final NRC Tribal Policy Statement, ensuring that the guidance documents are consistent with policy principles in the NRC Tribal Policy Statement. The NRC will revise guidance, as needed, to reflect the policy principles of the final NRC Tribal Policy Statement.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 5.8. "We suggest that the NRC work with a number of tribes, representing a cross-section of NRC regulatory activities, as well as the Bureau of Indian Affairs (BIA) to gain a better understanding of Indian land tenure and the potential consequences of contamination to Indian lands.

"We understand that the NRC may possibly be developing a guidance document pertaining to the National Historic Preservation Act (NHPA) Section 106 consultation. We applaud this effort. We recommend that the NRC work with tribes, the Advisory Council on Historic Preservation (ACHP), industry (limited participation), and possibly other federal agencies to develop this guidance document.

"Finalizing and fully implementing the Tribal Protocol Manual will also help NRC staff to be informed on tribal issues. Training, awareness, and continuity of staff are also key elements of an effective tribal program."

Response 5.8. The first part of this comment related to Indian land tenure is out of scope of the NRC Policy Statement. The NRC Tribal Policy Statement is an agencywide, high-level document that encompasses a broad range of NRC Tribal interactions, consultation, and outreach. NRC disagrees in part and agrees in part with the remainder of the comment. The NRC is in the process of finalizing NHPA Section 106 guidance for uranium recovery licensing. The NRC sought input from NRC Staff, ACHP, Tribal governments, industry representatives,

and members of the public. The NRC published the draft Interim Staff Guidance, FSME–ISG–02, ‘‘Guidance for Conducting the Section 106 Process of the National Historic Preservation Act for Uranium Recovery Licensing Actions,’’ for public review and comment on June 18, 2014 (79 FR 34792). On September 3, 2014, the NRC extended the comment period (79 FR 52374). The NRC staff is in the process of developing the final program specific guidance. The NRC staff has reviewed staff guidance documents and concluded that no guidance documents directly contradict the NRC Tribal Policy Statement. The NRC staff review identified documents that will need to be revised to be consistent with the final NRC Tribal Policy Statement. Guidance will be updated as scheduled, and will incorporate the final NRC Tribal Policy Statement, as appropriate. The NRC staff has also developed and implemented a Tribal cultural sensitivity training that is available agencywide.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

6. Out of Scope Comments

Comment 6.1. “We have reviewed the comment letters submitted in 2013 by other entities on the Tribal Protocol Manual (most notably those representing the uranium mining industry) and found the comments to be self-serving, ill-informed and insensitive [to] tribal history, culture and tradition. These commenters complained that the Section 106 process was ‘too cumbersome, time consuming, and costly for the uranium recovery industry’ and that the pace of the consultation should be accelerated and standardized. Moreover, the commenters suggested that the NRC should not be making an exhaustive effort to identify all potentially impacted Indian tribes. In other words, hurry up and get it done!

The NRC has an obligation under the NHPA to ensure that its actions do not have adverse impacts. The NRC also has an obligation to federally recognized Indian tribes.

With regard to tribes delaying the process or lacking incentive to work with the NRC, it should be noted that it can be a burden (financially and technically) to effectively participate in NRC proceedings."

Response 6.1. This comment is out of scope of the NRC Tribal Policy Statement because the comment centers on specific statutory requirements to consult with Tribes under NHPA. The NRC Tribal Policy Statement is an agencywide, high-level document that encompasses a broad range of NRC Tribal interactions, consultation, and outreach. It does not prescribe procedural requirements for fulfilling NHPA consultation requirements. The NRC upholds all statutory obligations to consult with Federally recognized Tribes, including consultation responsibilities under the NHPA and NEPA.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 6.2. "The NEPA process (for either [an] EA [environmental assessment] or EIS [environmental impact statement]) does not ensure that environmental issues and concerns identified by the impacted tribes will be addressed adequately, as EA's or EIS's are disclosure tools that do not and cannot offer remedies or mitigation. It is through the NRC's Atomic Safety and Licensing Board (ASLB) adjudicatory process that identified issues can be addressed (if the Board admits the affected tribe as an intervener because the tribe has articulated a deficiency with an application before the NRC). Achieving intervener status is a difficult and costly undertaking, given the high legal and regulatory standards to be met. Nevertheless, this is a huge barrier that many tribes cannot overcome and this should be recognized a severe limitation to effective participation by any tribes impacted by NRC licensing actions."

Response 6.2. This comment is out of scope of the NRC Tribal Policy Statement. The NRC Tribal Policy Statement is an agency-wide, high-level document that encompasses a broad range of NRC Tribal interactions, consultation, and outreach. It does not prescribe procedural requirements for fulfilling NEPA Tribal consultations. The process for achieving

intervenor status before an NRC Atomic Safety and Licensing Board (or other NRC adjudicator) is outside the scope of the NRC Tribal Policy Statement. Under the NRC Tribal Policy Statement, the NRC will provide timely notice and consult in good faith with Tribal governments on NRC's regulatory actions that have substantial direct effects on one or more Indian Tribes. In addition, Tribes will have the opportunity to raise environmental, historic, and cultural issues during the NEPA environmental review and NHPA process. This process provides an additional opportunity to address the Tribe's concerns with a proposed licensing action. Good faith efforts to consult with Indian Tribes under the NRC Tribal Policy Statement or during the NEPA and NHPA review process may also have the potential to resolve issues outside the hearing process.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 6.3. "In 2013, the NRC finalized its advance notification rule (10 CFR 71.97) that allows Indian tribes to receive advance notification of shipments of irradiated reactor fuel through reservation land (not Trust lands). To participate, interested tribes must 'opt in' and complete safeguards training. Although the NRC was very flexible with some of the prerequisites, the fact that no tribe is currently participating in this pre-notification program should cause the NRC to pause and ask why. It could be that it is just too cumbersome for the tribes to participate, due to a lack of resources (staff, financial, etc.) or competing priorities for resources."

Response 6.3. This comment is out of scope of the NRC Tribal Policy Statement. The NRC Tribal Policy Statement is an agencywide, high-level document that encompasses a broad range of NRC Tribal interactions, consultation, and outreach. The Tribal Advance Notification Rule amended NRC regulations to require licensees to provide advance notification to participating Federally recognized Tribal governments regarding shipments of irradiated reactor fuel and certain types of nuclear waste for any shipment that passes within or across their

reservations (77 FR 34194). After reviewing public comments received during the development of the Tribal Advance Notification Rule, the NRC staff concluded that Tribes should have the option of whether to opt into the program because the program requires training, certain equipment, and has civil and criminal penalties for non-compliance. As of July of 2016, one Indian Tribe completed the process of enrolling in the Tribal Advance Notification Program. A list of participating Tribes is maintained on the NRC Web site at http://www.nrc.gov/about-nrc/state-tribal/tribal-advance-notification.html#tribes.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 6.4. "Principle No. 4: An Example of Lack of Implementation. In 2012, the NRC proposed an Advance Notification Rule, by which Indian Tribes would receive advance notification of shipments of irradiated reactor fuel and other nuclear wastes transported across their reservations. ("Tribal Advance Notification" at http://www.nrc.gov/about-nrc/state-tribal/tribal-advance-notification.html#def (last visited on April 12, 2015).)

"Yet, the NRC claims that 'there are no tribes that have the prerequisite required to receive advance notifications.' ("Tribal Advance Notification" at http://www.nrc.gov/about-nrc/state-tribal/tribal-advance-notification.html#def (last visited on April 12, 2015).)

"Nuclear waste is being transported through a number of reservations weekly by unmarked trucks (e.g., missing placards) and Indian Tribes of these reservations have not been made privy to the transportation schedules for the waste. Knowing the schedule would enable Tribes to protect their reservation environments by having emergency response teams in place in case of any accidental waste releases. Regardless of whether Tribes meet the aforementioned prerequisite, the NRC should still be actively consulting with Tribes on shipments across their reservations and other NRC actions having potentially substantial air quality and other direct effects on one or more Tribes.

"The NTAA has also seen several inconsistencies in the reporting of the number of regulated facilities in Indian Country. The NTAA finds that, an update of NRC's maps or inventories of regulated facilities, would help the NRC to more effectively contact and identify Tribes about NRC regulatory and non-regulatory actions having substantial air quality and other direct effects on one or more Tribes."

Response 6.4. This comment is out of scope of the NRC Tribal Policy Statement in part. The NRC Tribal Policy Statement is an agencywide, high-level document that encompasses a broad range of NRC Tribal interactions, consultation, and outreach. The Tribal Advance Notification Rule amended NRC regulations to require licensees to provide advance notification to participating Federally recognized Tribal governments regarding shipments of irradiated reactor fuel and certain types of nuclear waste for any shipment that passes within or across their reservations (77 FR 34194). After reviewing public comments received during the development of the Tribal Advance Notification Rule, the NRC staff concluded that Tribes should have the option of whether to opt into the program because the program requires training, certain equipment, and has civil and criminal penalties for non-compliance. As of July of 2016, one Indian Tribe completed the process of enrolling in the Tribal Advance Notification Program. A list of participating Tribes is maintained on the NRC Web site at: http://www.nrc.gov/about-nrc/state-tribal/tribal-advance-notification.html#tribes. The NRC continues to update maps of Tribal reservation and trust lands within a 50-mile radius of NRC-regulated nuclear power plants. The NRC staff is developing tools that they may utilize to identify Tribal lands near other NRC-regulated facilities.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 6.5. "Hire natives to be liaisons with our own people. Create trust, transparency and rapport. These people have been deceived and betrayed since the white man stepped foot on this land. It's very important to really reach the native people and it's high time

they got many seats at the round table. Thank you for your work and hope it can improve to genuinely include First Nation's peoples."

Response 6.5. This comment is out of scope of the NRC Tribal Policy Statement. The NRC Tribal Policy Statement is an agencywide, high-level document that encompasses a broad range of NRC Tribal interactions, consultation, and outreach. However, the NRC does seek to foster a diverse workplace. The Office of the Chief Human Capital Officer participates in extensive recruitment, including the American Indian Science and Engineering Society's annual conference. Additionally, the NRC's Office of Small Business and Civil Rights promotes diversity by sponsoring Equal Employment Opportunity Advisory Committees, including the Native American Advisory Committee (NAAC). The NAAC recommends initiatives and approaches to attract qualified Native Americans and Alaskan Natives to the NRC and to support and retain the Native American and Alaskan Native employees of the NRC. The Committee has also forged a working relationship with the American Indian Science and Engineering Society through a memorandum of understanding. For clarification, the listed activities do not cover the "First Nations [of Canada]" referenced by the commenter.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 6.6. "Lastly, the NRC will ensure there are mechanisms in place to prevent an unfunded mandate upon any tribe, including but not limited to requirements of acquiring GSA safe or other supplies or materials as stipulated in the in the advance notification rule."

Response 6.6. This comment is out of scope of the NRC Tribal Policy Statement. The NRC Tribal Policy Statement is an agencywide, high-level document that encompasses a broad range of NRC Tribal interactions, consultation, and outreach. The Tribal Advance Notification Rule amended NRC regulations to require licensees to provide advance notification to participating Federally recognized Tribal governments regarding shipments of irradiated reactor fuel and certain types of nuclear waste for any shipment that passes within or across their

reservations (June 11, 2012; 77 FR 34194). After reviewing public comments received during the development of the Tribal Advance Notification Rule, the NRC staff concluded that Tribes should have the option of whether to opt into the program because the program requires training, certain equipment, and has civil and criminal penalties for non-compliance. The NRC is committed to ensuring that Tribal Nations are informed of the requirements for receiving Safeguards Information and sensitive information. It is the responsibility of all Tribal governments that volunteer to participate in the Tribal Advance Notification program to ensure that the information is secure and used in a manner that will provide for the protection of the public health and the environment.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 6.7. "It is important to note, even though NRC has expanded educational tools for Radiation Workshops as open communication protocol, there is a need for Native speakers to provide the information. Non-English speakers attend the workshops and do not comprehend the contents. More workshops related to DOE Radiation site locations throughout Indian Country is strongly urged that NRC has oversight. Many of these sites are under DOE-LM [DOE Office of Legacy Management] and not necessarily under DOE-EM [DOE Office of Environmental Management] as it seems there is a communication barrier, and updated cleanups by site is missing, especially with transport of radioactive sludge from holding/evaporation ponds.

"Many transport routes go through Native communities, and are not part of the DOE-EM START [Stakeholder Tool for Assessing Radioactive Transportation] programming. It may be missing out of other regulatory components as 108(c) under DOE for transport. Consideration for links for the public with RECA [Radiation Exposure Compensation Act] benefits and DownWinder websites under NRC is important as many suffer the health devastation of cancer due to radiation."

Response 6.7. This comment is out of scope of the NRC Tribal Policy Statement. The NRC Tribal Policy Statement is an agencywide, high-level document that encompasses a broad range of NRC Tribal interactions, consultation, and outreach. Previously the NRC staff received similar feedback on the inclusion of non-English speakers in the NRC's Tribal Training Program. The NRC will consider the inclusion of Native speakers when arranging future training sessions for Tribes. DOE-EM START programming is not administered by the NRC, and therefore is not covered by the NRC Tribal Policy Statement. The RECA benefits are administered by the Department of Justice's program for claims relating to atmospheric nuclear testing and claims relating to uranium industry employment. The NRC does not oversee the program, make related determinations, or administer payment of claims. The Downwinder Web sites are maintained by the U.S. Department of Health and Human Services and do not fall under the NRC's jurisdiction.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

Comment 6.8. [The commenter quoted policy principle 5, "The NRC Will Coordinate with Other Federal Agencies," stating "When the Commission's action involves other Federal agencies, the NRC will perform its Tribal consultation jointly with other Federal agencies, as appropriate."] "This will be especially important if/when shipments of spent nuclear fuel to a federal repository or an interim storage facility commence. Shipments of spent nuclear fuel will involve the NRC, the US Department of Energy (DOE) and the US Department of Transportation (DOT). Equally important is the engagement of federal agencies involved in the uranium mining regulation (i.e., the Bureau of Indian Affairs or the Bureau of Land Management)."

Response 6.8. This comment is out of scope of the NRC Tribal Policy Statement. The NRC Tribal Policy Statement is an agencywide, high-level document that encompasses a broad range of NRC Tribal interactions, consultation, and outreach. The NRC currently coordinates

with other Federal agencies, as appropriate, on issues within its regulatory jurisdiction, including the shipment of spent nuclear fuel and licensing and regulation of uranium recovery facilities. Currently, there is neither a Federal repository for spent nuclear fuel nor an interim storage facility but the NRC will follow the Tribal Policy Statement and appropriate regulations when processing any applications for these facilities. The NRC does have regulations that govern the transport of spent nuclear fuel and implements them in coordination with relevant Federal agencies, including the DOE and the DOT. The NRC does not have regulatory authority over uranium mining facilities. However, the NRC does have regulatory authority over uranium recovery and uranium milling facilities and coordinates with other Federal agencies, as appropriate, including the Bureau of Land Management and EPA, during the consultation process.

No change has been made to the NRC Tribal Policy Statement as a result of the comment.

V. Procedural Requirements

Congressional Review Act Statement

This final NRC Tribal Policy Statement is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Paperwork Reduction Act Statement

This Policy Statement does not contain new or amended information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Dated at Rockville, Maryland, this 3rd day of January, 2017.

For the Nuclear Regulatory Commission.

/RA/

Annette L. Vietti-Cook,
Secretary of the Commission.

Tribal Policy Statement

The purpose of this Tribal Policy Statement is to set forth principles to be followed by the U.S. Nuclear Regulatory Commission (NRC) to promote effective government-to-government interactions with Federally recognized American Indian and Alaska Native Tribes, and to encourage and facilitate Tribal involvement in the areas that the NRC has jurisdiction. It seeks to provide agencywide principles to achieve consistency but also encourage custom-tailored approaches to consultation and coordination that reflect the circumstances of each situation and the preference of each Tribal government. It is the NRC's expectation that all program and regional office consultation and coordination practices will be consistent with or adhere to the NRC Tribal Policy Statement. This NRC Tribal Policy Statement is based on the United States Constitution, treaties, statutes, Executive Orders, judicial decisions, and the unique relationship between Indian Tribes and the Federal government.[1]

The following principles will guide the NRC's interaction with Indian Tribes:

1. The NRC Recognizes the Federal Trust Relationship with and Will Uphold its Trust Responsibility to Indian Tribes.

The NRC shares the Federal government's unique Trust Relationship with, and Trust Responsibility to, Indian Tribes. Under the Federal Trust Doctrine, the United States—and the individual agencies of the Federal government—owe a fiduciary duty to Indian Tribes. The

[1] This 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. This Tribal Policy Statement does not alter, amend, repeal, interpret, or modify Tribal sovereignty, any treaty rights of any Indian Tribes, or preempt, modify, or limit the exercise of such rights. Nothing herein shall be interpreted as amending or changing the Commission's regulations.

nature of that duty depends on the underlying substantive laws (i.e., treaties, statutes, agreements) creating the duty. The NRC exercises its Trust Responsibility in the context of its authorizing statutes including the Atomic Energy Act, 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 amended. 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.

2. The NRC Recognizes and is Committed to a Government-to-Government Relationship with Indian Tribes.

The NRC recognizes the right of each Indian Tribe to self-governance and supports Tribal sovereignty and self-determination. The NRC recognizes Tribal governments as dependent domestic sovereign nations, independent from State governments, with separate and distinct authorities with inherent sovereign powers over their members and territory, consistent with applicable statutes and authorities.

3. The NRC Will Conduct Outreach to Indian Tribes.

The NRC will conduct outreach to keep Indian Tribes informed about the agency's actions and plans, as appropriate, related to its regulatory actions that have substantial direct effects on one or more Indian Tribes. The NRC will participate in national and regional Tribal conferences and summits hosted by Federal agencies, Tribal governments, and Tribal organizations, as

appropriate. The NRC will encourage Tribal governments to communicate their preferences to NRC staff during outreach activities and will seek to provide information about opportunities for Tribal participation in NRC meetings and advisory committees concerning NRC regulatory actions that have substantial direct effects on one or more Indian Tribes, as appropriate.

4. The NRC Will Engage in Timely Consultation.

The NRC will provide timely notice and consult in good faith with Tribal governments on NRC's regulatory actions that have substantial direct effects on one or more Indian Tribes as well as those regulatory actions for which Tribal consultation is required under Federal statute.

Tribal officials may also request that the NRC engage in consultation with them on matters that have not been identified by the NRC to have substantial direct effects on one or more Indian Tribes as well as those regulatory actions for which Tribal consultation is not required under Federal statute. The NRC will make efforts to grant such requests, taking into consideration the nature of the activity at issue, past consultation efforts, available resources, timing issues, and other relevant factors.

The NRC will establish early communications and begin consultation as soon as practicable. The NRC will consult in good faith throughout the agency decisionmaking process and develop and maintain effective communication, coordination, and cooperation with Indian Tribes. The NRC representatives for consultations with Tribal officials or representatives will be of an appropriate rank and the level of interaction will be commensurate with the circumstances. The appropriate level of interaction will be determined by a discussion between the NRC and Tribal governments, and program office consultation procedures and guidance. Participating Tribal and NRC representatives will serve as respective decisionmakers, based on the established agenda and to the extent possible.

5. The NRC Will Coordinate with Other Federal Agencies.

When the Commission's action involves other Federal agencies, the NRC will perform its Tribal consultation jointly with other Federal agencies, as appropriate and to the extent possible.

6. The NRC Will Encourage Participation by State-recognized Tribes.

The NRC recognizes the distinction between Indian Tribes who are Federally recognized and those who are not. The NRC will reach out to States to identify the appropriate State-recognized Tribes to invite to participate in its regulatory process, including opportunities related to rulemaking, licensing and decommissioning.

Designated Official and Tribal Liaisons

The Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital Programs serves as the NRC's designated official for Tribal consultations. The designated official will ensure that the agency program personnel have considered the Tribal implications related to their responsibilities within the NRC's jurisdiction. The designated official will also make efforts to facilitate meaningful and timely consultation and coordination regarding NRC's regulatory actions that have substantial direct effects on one or more Indian Tribes as well as those regulatory actions for which Tribal consultation is required under Federal statute.

The designated official will be supported by staff who have functional responsibility to serve as intergovernmental liaisons to Indian Tribes. These NRC Tribal liaisons will facilitate government-to-government consultation by serving as the agency's primary points of contact for Indian Tribes, coordinating with the appropriate office or personnel regarding programmatic

inquiries, and will facilitate the appropriate level of communication and exchange of information between Tribal officials and the NRC staff. The Tribal liaisons will also educate the NRC staff about Tribal issues including cultural sensitivity and the Federal Trust Responsibility. The designated official will have the authority to delegate tasks to the NRC Tribal liaisons as he/she deems fit.